

REPORT

TO: Chief Executive

FOR: Council Meeting – 23 March 2022

FROM: Jocelyn Lewes, Strategy and Policy Planner

DATE: 11 March 2022

SUBJECT: **PRIVATE PLAN CHANGE 82 –DECISION ON HOW TO CONSIDER THE PRIVATE PLAN CHANGE REQUEST FROM BROOKSIDE ROAD RESIDENTIAL LIMITED**

RECOMMENDATION

'That, in respect to Private Plan Change 82 to the Operative Selwyn District Plan lodged by Brookside Road Residential 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 the Brookside Road Residential Limited (the proponents) plan change request (PC 82) against the relevant Resource Management Act 1991 (the Act) 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 is a procedural requirement of the Act and does not trigger the Council's Significance and Engagement Policy, pursuant to Section 5 of the policy.

3. HISTORY/BACKGROUND

The PC 82 request was formally received by Council on 1 November 2021. Access to the full request has been made available on Council's website.

The plan change area has an area of approximately 109 hectares, comprised within a number of titles, and is located to the west of Dunns Crossing Road, the south of Brookside Road and the east of Edwards Road, on the south-western side of Rolleston, as shown in Figure 1 below. PC 73 adjoins to the plan change area to the south. The site is currently zoned Rural (Outer Plains) and the requests proposed that this be rezoned for residential purposes.



**Figure 1- Aerial photograph of PC 82 area (outlined in white)
(Source: Selwyn District Council Maps)**

The site is not identified within the Canterbury Regional Policy Statement (CRPS) as either a greenfield priority area or a future development area and the rezoning would be contrary to the CRPS as it currently stands. The site is also not identified within the Rolleston Projected Infrastructure Boundary.

However, the National Policy Statement on Urban Development (NPS-UD), which came into force on 20 August 2020, provides a policy framework to allow developments providing 'significant capacity' to be accepted even when that development conflicts with the existing CRPS direction. It is on the basis of the direction of the NPS-UD that the proponents have applied for the rezoning. The direction of the NPS-UD is discussed further below in Section 5.

Since lodgement, PC 82 has been reviewed in terms of the adequacy of the information provided. A Request for Further Information (RFI) was issued on 13 December 2021, with the proponents response received on 20 January 2022.

On 21 December 2021, the Resource Management Act (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the Amendment Act) came into force. This included specific requirements relevant to private plan changes, depending on what stage of the plan change process they are at. In respect of PC 82, clause 35 of Part 5 of Schedule 12 of the Act applies to this request, as:

- a. The request has been made before Council has notified its Intensification Planning Instrument (the IPI/Variation);
- b. Clause 34 of the same section does not apply; and

- c. The request seeks the creation of a new residential zone that proposes to adopt all the zone provisions of a relevant residential zone but does not amend the provisions in the relevant residential zone.

The implications of the Amendment Act on this plan change request have taken some time to consider and interpret. Once resolved, a follow-up request was made to the proponent, and their response was received on 11 March 2022. This is discussed further below in Section 5.

The PC 82 request, along with the responses to the RFI, has been peer reviewed by relevant the relevant internal SDC officers or external consultants to check the adequacy of information provided. Officers consider 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 82, in accordance with the provisions of the Act.

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 Act, Council must either reject, accept or adopt the request, or 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 PC 82 outright are that:

- 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 Act; or
- e. The District Plan has been operative for less than two years.

In terms of (a), the content of PC 82 is not considered to be frivolous or vexatious. The request seeks a change to the zoning to facilitate the type of development enabled under a Living zone framework. It is common practice for plan changes to seek rezonings to enable such development.

In terms of (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 terms of (c) and (d), the request is considered to be generally consistent with Part 5 of the Act, which relates to standards, policy statements and plans. However, s75(3)(c) requires the district plan to give effect to any regional policy statement. On initial assessment, PC 82 would generally give effect to the CRPS. However, as acknowledged in the request, it would be inconsistent with the direction in the CRPS to provide for new urban development only in identified greenfield priority areas or future development areas, as the area is not included in Map A of Chapter 6 of the CRPS.

Generally, a change that would be contrary to the CRPS would not be considered to accord with sound resource management practice as it would result in the District Plan

being inconsistent with one of the provisions in Part 5 of the Act. However, with the introduction of the NPS-UD, this consideration is not so straightforward, as the NPS-UD provides for consideration of 'unanticipated' or 'un-sequenced' development, where a plan change would add significantly to development capacity; if that development capacity would also contribute to a well-functioning urban environment, is well-connected along transport corridors and meets specified criteria. This is considered to provide an avenue for plan change requests to be considered for processing even where there is a conflict with the CRPS.

While not specific to this plan change request, the Council received legal advice on the conflict between the NPS-UD and the existing CRPS and the provisions for rejection of the plan change request under clause 25(4). The advice outlined that Council need not rely on the CRPS to reject a plan change under Clause 25 simply because the site of the plan change is outside of the 'development areas' identified on Map A of the CRPS.

For the reasons set out below (refer to Option 3), the plan change request is considered to align with the NPS-UD in terms of providing for significant development capacity, and the subsequent processes set out in the Act will test the extent to which it would contribute to a well-functioning urban environment.

In addition, under clause 25(4A), as included by the Amendment Act, a council must not accept or adopt a request if it does not incorporate the Medium Density Residential Standards (MDRS) as required by s80F(1). As discussed further below, the proponent has amended the request to incorporate MDRS, therefore there are no grounds pursuant to clause 25(4A) to reject the request.

As such, it is not considered that there are any sound reasons to reject PC 82 under the current set of circumstances.

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.

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 proponent; or involves a complex issue or a number of landowners that would benefit from Council coordinating the plan change process.

PC 82 will have some economic benefit to the wider community, through providing construction and employment opportunities and flow-on benefits of additional development occurring within the district. The request may involve a cost to Council where services (roading, water, sewer and stormwater) are vested in Council. This is likely to occur, in line with similar plan changes, and Council would be responsible for the operation and ongoing maintenance of the systems. Overall, the cost to Council from any infrastructure vested would be minimal and in line with similar private plan change requests. PC 82 is not particularly complex. While the area is currently in multiple parcels under different ownership, this has been addressed through the plan change request being made by one party, covering the whole area, and through provision of an outline development plan (ODP) covering the whole area.

An opportunity is also provided under clause 35 of Part 5 of Schedule 12, for Council to adopt the request and incorporate it into the forthcoming Variation to incorporate the

MDRS into the PDP. In this regard, the area of the request would be identified as a *new residential area*¹ within the Variation.

Usually, pursuant to Clause 25(2)(a)(iii), if Council were to adopt the request, it would have legal effect from the date of *notification*, rather than the date of *decision* however, pursuant to s86BA of the Act, this would not be the case if Council were to adopt the request as part of its Variation.

As discussed above, the substantive merits of the request have not been considered at this time, merely the adequacy of the information provided to enable continued processing. As such, limited consideration has been given to the question of whether Council supports the plan change request or not, however adopting the plan change request, in whole or in part, as currently presented or modified, either on its own or as part of the Variation, would imply that Council generally supports the request.

It is not recommended that the Council adopt the request as it is considered that there are a number of merit-based matters that it is appropriate to consider at the substantive hearing stage, with the potential that other matters may be raised by interested parties through the submissions process.

Option 3: Accept the Plan Change

Accepting PC 82, under Clause 25(2)(b), would enable the plan change request to be publicly notified and for the request to be subject to the participatory processes provided under the Act. 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 could not be on-charged.

As mentioned in Option 1 above, PC 82 is located outside of the development areas identified on Map A of the CRPS, but the NPS-UD provides for consideration of 'unanticipated' or 'un-sequenced' development, where a plan change would add significantly to development capacity; if that development capacity would also contribute to a well-functioning urban environment, is well-connected along transport corridors and meets specified criteria.

The request² states that it will contribute to a well-functioning urban environment, because it:

- a. has a variety of lots sizes that will support different housing typologies and generate varied and more affordable housing options in the locality;
- b. provide accessibility to the town centre; open space areas; existing public transport options; the state highway and railway line (and any future opportunities it may provide for alternative rail-based public transport); and to the increasing range of employment opportunities in Rolleston;
- c. will respond to the shortage of land for development in Rolleston and help to foster competition in the local land market;

¹ A **new residential zone** means an area proposed to become a relevant residential zone that is not shown in a district plan as a residential zone.

² Paragraph 46 of the request

- d. support reductions in greenhouse gas emissions, through having good accessibility to local centres and neighbouring areas, including by active and public transport modes, and,
- e. not be at risk from climate change induced extreme natural hazard events like sea level rise or river flooding.

In terms of the criteria, the NPS-UD directs that the regional policy statement include criteria for determining what plan changes will be considered as adding significantly to development capacity. These are currently being developed by Greater Christchurch Partnership local authorities and have not yet been included in the CRPS.

In the absence of any criteria, the plan change request states that it provides significant development capacity in that it will enable development of up to 1320 additional residential sites. This is the equivalent of up to 24% of the housing stock in Rolleston, as of 2018³.

The NPS-UD direction does not mean that every development providing capacity is appropriate. A plan change proponent must firstly demonstrate how a proposed development will add significantly to development capacity and meet the direction of the NPS-UD; and while the Council must have “particular regard” to the development capacity provided, the Council may still determine that the request is not the most appropriate course of action, and any plan change will still need to be considered on its merits overall.

As mentioned above, in accordance with the Act, Council must not accept or adopt a request if it does not incorporate the Medium Density Residential Standards (MDRS). As there are a number of private plan change requests before Council that would be captured by the reach of clause 35, Council’s preferred approach has been to develop a stand-alone zone – Living Medium Density (Living MD) – in respect of the application of the MDRS.

The proponent has acknowledged this approach, and as amended the request to rezone the area to Living MD and largely adopted the provisions provided by staff without amendment. However, in regards to density, the proponent has requested a modification (in the form of a cap on household numbers, set out within the ODP), in order to accommodate a qualifying matter and in response to the findings in the transport assessment.

It is considered that the merits of the plan change request overall, including the weight and consideration that should be given to the development capacity provided by the request and the appropriateness of the qualifying matter, are best tested through the substantive assessment process provided for under the Schedule 1 process, including the submissions and hearing processes.

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 82 as a resource consent.

³ Paragraph 3 (e) of the plan change request.

As the request seeks to enable MDRS, as required by the Act, through the inclusion of a new zone, the Operative District Plan does not include the necessary provisions to the future development of the area. Processing the request as a resource consent is not therefore considered appropriate.

Recommended Option:

Option 3, to accept PC 82 for further consideration, is recommended.

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 Act. And while Council could adopt the plan change as its own within the Variation, for the reasons set out above, this is not recommended.

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

As the Act affords the opportunity for the proponent to request changes to the District Plan, the recommended option to accept PC 82 for notification will enable the request to be publicly notified, submissions and further submissions to be received and for the substantive merits of the request to be considered at a public hearing.

Accepting the private plan change request for notification does not signal that Council supports the request. The opportunity remains for Council to recommend that the request be supported, amended or opposed at a later stage. The benefit in accepting the request is that public input can be received to inform the overall assessment of the merits of the request, including that of the qualifying matter proposed by the proponent.

6. VIEWS OF THOSE AFFECTED / CONSULTATION

(a) Views of those affected and Consultation

If the recommendation to accept the request for notification is adopted, then the content of PC 82 will be subject to the statutory consultative provisions of the Act where the opportunity for public involvement is mandatory. Council will be required to publicly notify PC 82 and serve notice on all directly affected parties and organisations who then have the opportunity to participate in the process.

The proponent did not consult with Selwyn District Council while preparing PC 82. As addressed above, the request has been peer reviewed by the relevant internal Council staff to consider the adequacy of information provided and amendments have been made.

(b) Māori and Treaty implications

No wāhi tapu or wāhi taonga sites of cultural significance within the plan change area have been identified. The plan change request indicates that a copy of the request has been forwarded to Mahaanui Kurataiao Limited on behalf of local rūnanga for their feedback.

(c) Climate Change considerations

The request includes an assessment of the resilience of the request to the effects of climate change. The adequacy of this assessment will be tested through the submission and hearings processes.

7. FUNDING IMPLICATIONS

If PC 82 is accepted for processing then the proponent is responsible for the costs associated with processing a private plan change request, with Council costs being recoverable. Council would be responsible for the cost of defending its decision should it be appealed to the Environment Court.

8. INPUT FROM OTHER DEPARTMENTS

As discussed above, the contents of the request, including relevant technical reports, were circulated to Council's Asset Managers for review. Queries received from the Asset Managers were included in the RFI and the response received has been provided back to the relevant staff for their consideration.



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STRATEGY AND POLICY PLANNER

Endorsed For Agenda



Tim Harris
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