
REPORT 2
(1215/52/IM)

PLAN CHANGE 73: CURTIS STREET REZONING

1. Purpose of Report

The purpose of this report is to provide information to Councillors to assist their consideration of the agenda item requested by Cr Foster under Standing Order 148. The item seeks the withdrawal of the part of Plan Change 73 that proposed rezoning 55-85 Curtis Street from a mix of Outer Residential and Open Space B, to Business 2.

2. Executive Summary

As part of the rolling review of the District Plan, a review of the chapters covering suburban centres and residential areas in the City was begun in 2007. This is now at the final stage of the process required under the Resource Management Act (RMA) before being made operative.

As a result of the review the site at 55-85 Curtis Street was rezoned in Plan Change 73 (PC73) from a mix of Outer Residential and Open Space B, to Business 2.

Since the Council's decision to rezone the land a resource consent for a Mitre 10 development on the site has been lodged. The consent application is currently on hold at the request of the applicant.

There is legal mechanism to withdraw the part of PC73 that rezoned the Curtis Street site. However there are significant implications in using this legal mechanism at this late stage in the plan change process. In particular, to do so risks undermining confidence in the Council's plan change processes, setting a precedent for other rezonings and resource consents, and introducing a level of uncertainty that could affect future investment decisions in the City.

3. Recommendation

Officers recommend that Council:

- 1. Receive the information.*

4. Background

Procedural Background

Under Standing Order 148 an elected member may submit an item to be placed on the agenda of the relevant committee. Cr Foster requested that the following agenda item be considered by Council:

The revocation of part of Plan Change 73 covering the rezoning of 55-85 Curtis Street from the operative plan zoning Outer Residential and Open Space B, to Business 2.

The item has been placed on the agenda of the Strategy and Policy Committee as it has the delegation to make a decision on this matter. Under SO148 the Chief Executive has requested that officers prepare a report to provide the Committee with information on the agenda item.

Plan Change Background

Council has been undertaking a rolling review of its District Plan. A review of the residential and suburban centres chapters in the District Plan was started in 2007 and is now at the final stage of the RMA First Schedule process, i.e. all that remains is the resolution of the various Environment Court appeals lodged against the Council's decision.

Because of the significance of the residential and suburban centres review, Council undertook an extensive process, beginning with City-wide consultation in May-July 2008 to alert residents that changes were being considered. The draft plan changes were then subject of a second City-wide consultation process between December 2008 and April 2009. Feedback on the draft plan changes was incorporated into the notified plan changes. When PC 72 and 73 were notified in September 2009, the public notice and an accompanying information sheet were mailed to residents and ratepayers to inform them about the general nature of the plan changes, and the opportunity to make submissions. A summary of the plan changes was also made available.

The rezoning of the land at 55-85 Curtis Street from a combination of Outer Residential and Open Space to Business 2 was proposed after consultation on the draft plan changes. The reasons for rezoning the site were that the high voltage transmission lines make it unsuitable for residential use, and Open Space zoning of the land remaining after the development of Whitehead Road was considered inappropriate given the land is now in private ownership. Business 2 zoning was considered more appropriate to facilitate the future development of the land, and Plan Change 73 was notified with this zoning proposed.

There were no submissions opposing the proposed zoning. In August 2010 the Council decision confirmed the proposed zoning for the site as Business 2. Prime Property Group (PPG), the landowner, has lodged an appeal seeking a more permissive business/ commercial zoning. There are no appeals seeking a return to the zoning in the operative plan.

The residential and suburban centres review has been a significant planning exercise and has resulted in a large number of changes to zones, zone boundaries, and zone rules across the City. The report to the Strategy and Policy Committee prior to notification of PC72 and PC73 lists over 100 rezonings and zone amendments, one of which is the Curtis Street rezoning. The notification process the Council undertook met the statutory requirements and this has been confirmed by legal advice.

Resource Consent

In April 2011 the owner of the site lodged an application for a proposed Mitre 10. This proposal was prepared and lodged under a planning framework of both the operative plan, and the PC73 provisions which anticipate this type of use of the site. The application was limited notified in June 2011 with submissions invited from specific property owners (i.e. those located immediately across the road and at a similar level to the proposed building). The application is opposed by a number of landowners in the wider area.

When the substantive decision on the resource consent application is made, both the provisions of the operative plan and PC73 will apply. The weighting will be in favour of the PC73 provisions because of the late stage of the plan change process and the nature of the only relevant appeal. The next stage in the resource consent process is the hearing to consider whether to approve or decline the application. The hearing has not yet been scheduled as the application is currently on hold at the request of the applicant.

RMA First Schedule - Notification

The legal process the Council must follow when initiating a plan change and when completing the process are prescribed in the First Schedule of the RMA. Clause 5 provides the notification requirements. The public notification requirements are quite minimal and mechanical in nature and reflect a deliberate change from the pre-RMA legislation which was more prescriptive.

In summary, the Council must prepare a public notice specifying where the notified plan change can be inspected and advising of the opportunity and timeframe for making public submissions. The detail required in the notice is specified in clause 5 and a prescribed form. The Council must send a copy of this public notice to all ratepayers in the area it considers likely to be directly affected by the proposed plan change, and to any other person directly affected. When sending the public notice to the ratepayers, the council may include any additional information it thinks appropriate. The proposed plan change must be available for viewing at every public library and any other place Council considers appropriate.

The steps taken have been reviewed by our external lawyers and the advice received is that the Council has met the legal requirements of the First Schedule.

RMA First Schedule - Power to Withdraw

Under clause 8D of the First Schedule a council can withdraw all or part of a plan change at any time up until an Environment Court hearing on appeals commences. The Court hearing on the PPG appeal on PC73 has not yet commenced, and therefore there is a legal mechanism for Council to withdraw the part of PC73 that rezoned the Curtis Street site.

Clause 8D does not provide any guidance on relevant considerations and equally, does not provide any constraints except for the fact that public notice of the withdrawal must be given and reasons must be provided. However, as a consequence of section 76 of the LGA 2002, when making a decision under clause 8D, the decision-making principles Part 6 of the LGA 2002 apply (as applicable) to any decision to withdraw part of the plan change.

A clause 8D decision could be challenged under the RMA, which provides a mechanism for challenging any actions taken under Schedule 1, or in some circumstances the decision could be challenged on the grounds of reasonableness through judicial review.

5. Discussion

A decision to withdraw part of the Plan Change at this late stage has a number of implications for the Council's plan change and resource consent processes, and for the resource consent currently lodged for the site.

Plan Change Processes

PC 73 has been through a full public process, with early consultation, formal notification, submissions, and a hearing chaired by an independent commissioner. All the requirements of the RMA were met. As a result the Council agreed that Business 2 was the most appropriate zoning for this site. Interested parties can reasonably expect that this most recent statement of the appropriate zoning and landuse for the site will not change. Lack of certainty or confidence in plan changes that have followed due process may negatively influence investment decisions.

A withdrawal could encourage lobbying of the Council seeking withdrawal of all or part of a plan change as an alternative way to oppose a resource consent application through the use of a district plan process. A withdrawal could also have an impact on other parts of PC72 and PC73, and on future plan change processes. Looking across New Zealand, the most common reasons for withdrawal of plan changes are because of a significant error in the plan change, where it is no longer necessary because new provisions have been promulgated, or (less often) to resolve an appeal on a plan change.

Effects on the Resource Consent

A withdrawal will have no impact on the notification decision for the resource consent, because that decision has already been made.

If a decision to withdraw the rezoning is made before a decision on the resource consent, PC 73 and the Business 2 zoning will not be considered when Council makes its substantive decision. Rather, the application will be considered against the operative plan and zoning, and any other relevant matters in section 104 of the RMA. In effect, the planning provisions would revert back to those in place in 2009 prior to PC73 being notified. If the same or similar rezoning was renotified at a future time, it would not have any relevance to the resource consent because the RMA no longer gives effect to a proposed plan until the council has made its decision on the plan change following submissions.

Future Zoning of Curtis Street

Should the Council decide to withdraw the rezoning of Curtis Street, Council will need to identify what zoning and future development is appropriate for the site. Officers' advice is that a business zoning is likely to remain appropriate, given the location of the site and its constraints.

6. Conclusion

The plan change process Council carried out was robust, and the consultation and notification met the requirements of the RMA.

The option of withdrawing part of PC73 is legally available to Council under clause 8D of the First Schedule of the RMA. However there are a number of significant implications in withdrawing the rezoning at this late stage in the process.

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Supporting Information

1) Strategic Fit / Strategic Outcome

The District Plan supports a wide range of strategic outcomes, particularly those under Urban Development, Transport key outcome areas.

2) LTCCP/Annual Plan reference and long term financial impact

Relates to the ongoing administration of the District Plan. Project C533 – District Plan.

3) Treaty of Waitangi considerations

All District Plan work is required to take into account the principles of the Treaty of Waitangi (refer to section 8 of the Resource Management Act 1991).

4) Decision-Making

This is not a significant decision.

5) Consultation

There has been significant consultation and input into the suburban centres and residential reviews, and as part of Plan Changes 72 and 73.

6) Legal Implications

Council's lawyers have provided advice on the process Council undertook for Plan Change 73, and on the implications of withdrawing part of the plan change.

7) Consistency with existing policy

Withdrawing part of Plan Change 73 would constitute a change in policy.