

Proposed Private District Plan Change 45

Rule Amendments and Rezoning of Land at
1N and 57N Mandel Mews

Decision

SUBJECT: **Decision on Private District Plan Change 45 – Rule Amendments and Rezoning of Land at 1N and 57N Mandel Mews**

PREPARED BY: **Cr Lisa Bridson**
Sole Commissioner

REPORT DATE: **21 April 2017**

1. Purpose of report

1.1 This report sets out the findings and decision of Commissioner Lisa Bridson on the submissions received by the Hutt City Council in respect of proposed Private Plan Change 45 (PPC45).

2. Decision

2.1 I accept Private Plan Change 45, with the following changes:

- that the 300mm strip of land at 1N Mandel Mews be rezoned from General Business Activity Area to General Residential Activity Area.
- that the 300mm strip of land at 57N Mandel Mews be rezoned from General Business Activity Area to General Recreation Activity Area, and

3. Summary of Proposed Plan Change 45

3.1 The proposed Private District Plan Change 45 is to delete Rules 4A 2.1(q) and 11.2.2.1(a) 'Other' from the City of Lower Hutt District Plan (District Plan) which apply to the land zoned General Residential Activity Area located at 1N Mandel Mews and to rezone Lot 64 DP 329306 (57N Mandel Mews) from General Residential Activity Area to General Recreational Activity Area.

4. Description of Site

4.1 I accept and adopt the description of the site given in the officer's report.

5. Statutory Provisions

5.1 Section 74 of the RMA sets out the matters to be considered by a territorial authority in preparing or changing its district plan. These matters include doing so in accordance with its functions under section 31, the provisions of Part 2 and its duty under section 32. Further, statutory consideration is also required of other documents, including operative and proposed regional planning documents, management plans and strategies prepared under other Acts and iwi planning documents.

- 5.2 Section 75 of the RMA requires that a district plan must give effect to any national policy statement, any New Zealand Coastal Policy Statement, any regional policy statement and must not be inconsistent with a regional plan.
- 5.3 Section 31 addresses the functions of territorial authorities under the RMA and includes:
- (a) *the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district;*
 - (b) *the control of any actual or potential effects of the use, development, or protection of land,...*
- 5.4 Section 32 of the RMA requires a report which summarises the process of evaluation undertaken in the preparation of the Plan Change. A Section 32 evaluation must examine the following:
- (1) *An evaluation report required under this Act must—*
 - (a) *examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
 - (b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) *identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) *summarising the reasons for deciding on the provisions; and*
 - (c) *contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*
- 5.5 An evaluation must also address the following:
- (2) *An assessment under subsection (1)(b)(ii) must—*
 - (a) *identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
 - (i) *economic growth that are anticipated to be provided or reduced; and*
 - (ii) *employment that are anticipated to be provided or reduced; and*
 - (b) *if practicable, quantify the benefits and costs referred to in paragraph (a); and*
 - (c) *assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

- 5.6 Section 32 requires that a report must be prepared, summarising the evaluation and giving reasons. The section 32 requirements of the RMA were addressed in the officer's report and Plan Change documentation provided by the requestor.
- 5.7 In addition, I note that Section 32AA requires that I undertake a further evaluation of any changes to the Plan Change and refer to that evaluation in this report¹. This evaluation is contained in Section 10 of this decision.
- 5.8 Part 2 of the RMA, being its purpose and principles, is the overarching part of the RMA. Any decision on a plan is subject to Part 2.
- 5.9 The procedure for preparing, notifying, hearing and adopting a plan change is outlined in Schedule 1 to the RMA.
- 5.10 As this is a Private Plan Change, Part 2 of Schedule 1 applies.

Clause 29 of Schedule 1 of the RMA states that:

"29 Procedure under this Part

- (1) Except as provided in subclauses (1A) to (9), Part 1, with all necessary modifications, shall apply to any plan or change requested under this Part and accepted under clause 25(2)(b).*
- (1A) Any person may make a submission but, if the person is a trade competitor of the person who made the request, the person's right to make a submission is limited by subclause (1B)*
- (1B) A trade competitor of the person who made the request may make a submission only if directly affected by an effect of the plan or change that -*
- (a) adversely affects the environment; and*
- (b) does not relate to trade competition or the effects of trade competition.*
- (2) The local authority shall send copies of all submissions on the plan or change to the person who made the request.*
- (3) The person who made the request has the right to appear before the local authority under clause 8B.*
- (4) After considering a plan or change, undertaking a further evaluation of the plan or change in accordance with section 32AA, and having particular regard to that evaluation, the local authority -*
- (a) may decline, approve, or approve with modifications the plan or change; and*
- (b) must give reasons for its decision.*
- (5) In addition to those persons covered by clause 11, the local authority shall serve a copy of its decision on the person who made the request under clause 21.*
- (6) The person who made the request, and any person who made submissions on the plan or change, may appeal the decision of the local authority to the Environment Court.*

¹ Resource Management Act 1991, Schedule 12, Clause 2

- (7) *Where a plan or change has been appealed to the Environment Court, clauses 14 and 15 shall apply, with all necessary modifications.*
- (8) *Where a plan or change has been appealed to the Environment Court, the person who made the request under clause 21 has the right to appear before the Environment Court.*
- (9) *With the agreement of the person who made the request, the local authority may, at any time before its decision on the plan or change, initiate a variation under clause 16A.”*

5.11 Under this clause, because the plan change is a private request, Council is able to, and is obliged to, consider PPC 45 in its entirety and is not restricted to considering just those matters raised in submissions. The reason for this difference from Council initiated plan changes is that a private plan change is not a Council agreed position. There is also no legal requirement for the Council to respond to submissions directly as a result (clause 29(4) vs clause 10) although the submissions received are a relevant matter for the Council to consider as part of the decision making process.

5.12 In relation to the statutory requirements, the request and the report presented, my findings and decisions are set out below.

6. Plan Change Process

6.1 The private plan change request was lodged by Cuttriss Consultants Ltd on behalf of Best Value Homes. Prior to the notification of the proposed private plan change, the requestor consulted with territorial, regional and iwi authorities, as outlined in the officer's report.

6.2 Council formally accepted the private plan change request on 15 December 2016 and instructed the officers to commence the plan change process for a private plan change as set out in Schedule 1 of the Resource Management Act 1991.

6.3 Proposed Plan Change 45 was notified on 24 January 2017 and submissions closed on 24 February 2017. The summary of submissions was notified on 14 March 2017 and further submissions closed on 28 March 2017. This report considers the proposed plan change and the submissions made on the proposed plan change and makes decisions.

6.4 In total three submissions, one late submission and no further submissions were received.

6.5 None of the submitters wished to be heard, so under clause 8C of Schedule 1 of the RMA a hearing was not required. I was appointed as a sole commissioner to act under delegated authority pursuant to sections 34 and 34A of the Resource Management Act 1991 (RMA).

6.6 Ms Bangi prepared an officer's report on the proposed plan change and the submissions received.

6.7 I undertook a site visit on the 10th April of 1N and 57N Mandel Mews and the surrounding area.

7. Submissions

7.1 Submissions were received from

- L&L Williams,
- Sam Gifford, Cuttriss Consulting (on behalf of the requestor)
- Barbara Dunn
- Christine Meredith – late submission

Late Submission

7.2 A submission was received from Christine Meredith on the closing date of the further submission period.

7.3 I have determined, pursuant to section 37 of the Act, that the deadline for receipt of the submission is waived for the application by Christine Meredith on the grounds that:

- There are no new matters raised.
- The submission does not cause prejudice to any party.

8. Issues of Contention

8.1 From reviewing the request and the submissions made on the request, I consider that the following are the relevant issues in contention

- The subsequent construction of a building on the site at 1N Mandel Mews
- Upkeep of the site, including managing rubbish and beautification
- The rezoning of the 300mm strip of land zoned General Business
- Consistency with the District Plan
- Reverse sensitivity and the appropriateness of removal of rules and rezoning

Effects of construction of a building

8.2 Submitters were concerned with the potential effects of construction of a building on the site 1N Mandel Mews, in particular that of resulting parking and traffic, amenity, height, and building set back.

8.3 I note that the actual removal of the rule and rezoning of the site will not result in the construction of a building, but rather, will provide an opportunity for construction to occur. Due to the small size of the site, any proposed building will likely trigger a resource consent requirement, and will provide the more appropriate avenue for potential effects to be considered.

8.4 Therefore my conclusion is that these issues will be addressed through the Resource Consent process.

Upkeep of rubbish and beautification

8.5 Submitters commented on how poorly the land had been kept. In particular, they raised issues around maintenance of landscaping, rubbish and beautification. There was also a request to remove a tree. These are civil matters, and are outside the scope of this decision. I therefore do not address them further.

300mm strip of land zoned General Business Activity Area

- 8.6 The requestor lodged a submission identifying that in the original proposal, there was an error in that the site isn't fully zoned General Residential Activity Area, as there is a 300mm wide General Business Activity Area zoned strip of land along the length of the western boundary of the site with the Kiwirail land. This was included in the summary of submissions report, and notified through the further submission process.
- 8.7 Applying the principles of natural justice, it could be argued that possible submitters should have had the opportunity to comment on this. The officers believe this will have minor or no impact on the parties affected. I would tend to agree with the officers, that this change will make no difference to the nearby residents and further, that the matter was included in the summary of submissions. Therefore, there was an opportunity presented for submitters to respond to this request.
- 8.8 I also consider that the submission point seeking the rezoning is within the scope of the request. This is because the submission is on the subject of the plan change; that is the zoning of the site, and the removal of specific rules relating to the site.
- 8.9 The only possible affected party is Kiwirail, as this strip abuts their site. In effect, by rezoning this to General Residential, there will be greater restrictions placed on the Kiwirail land in terms of noise, separation distances, and other standards that apply along a Residential – Business interface.
- 8.10 Kiwirail have provided the applicant with a letter stating that they support the plan change, as a separate private covenant will set development standards for any future development on the site. They have stated that the zoning of this 300mm strip does not change their view.
- 8.11 I therefore find that this change be allowed to the proposed plan change.

Consistency with objectives and policies

- 8.12 Under section 32, I must consider whether this plan change is consistent with the district plan's objectives and policies.
- 8.13 The section 32 report undertaken identifies the following as relevant:
- 1.10.2. Amenity Value – objective
 - 1.10.3 Residential Activity – objective
 - 1.10.6. Recreation and open space – objective
 - 1.10.11 Lessening Natural Hazards – objective
- 8.14 The two areas have quite different characteristics. 57N is a long, very narrow section, being only 2-3 metres wide. It is currently zoned General Residential Activity, but this is not consistent with the objective 1.10.3 of accommodating residential growth and development, as it is not suitable for residential accommodation. I agree with the requestor and the council officer that General Recreation Activity Area is a more appropriate zoning. Conversely, the land at 1N does provide an opportunity for accommodating residential development, albeit with constraints. I consider the removal of the rules would provide for the use of this site, and is therefore consistent with the objectives and policies of the Plan.
- 8.15 I agree with the applicant's section 32 report, and their assessment of consistency with the objectives and policies of the district plan. In particular, I believe the changes

provide for efficient use of the available land resource within the existing urban environment.

Reverse sensitivity and the appropriateness of removal of rules and rezoning

- 8.16 Rules 4A 2.1(q) and 11.2.2.1(a) are specific to this site, and were introduced in 2004 through the District Plan review process to address potential reverse sensitivity effects of residential activities on the Kiwirail yard.
- 8.17 There are a variety of consent notices and encumbrances that apply to the site.
- 8.18 I am happy that the private land covenant will set development standards for future development of the site, and address any site specific reverse sensitivity effects of the adjoining rail yard. Removing these rules is not inconsistent with the objectives, policies and rules of the plan, in that it allows for efficient use of a vacant and unused piece of land.

9. Ruling on Submissions

- 9.1 I reject the submissions from L&L Williams, Barbara Dunn and Christine Meredith for the reasons outlined above.
- 9.2 I accept the submission from Cuttriss Consulting Ltd on behalf of the requestor.

10. Section 32AA Evaluation

- 10.1 The amendments concerning the 300mm strip do not affect or alter the assumptions or conclusions of the original section 32 report. Section 32AA of the Act requires that, where changes are made to a proposed plan change after public notification, a further section 32 (1) evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes. The amendments proposed are minor, so do not alter the primary purpose or scope of activities that are provided for by the proposed plan change. My conclusion is that the proposed amendments are more consistent, and for the purposes of section 32 (1) (b), more appropriately achieve the Plan objectives and will be more effective than the published PPC45 provisions.



Lisa Bridson

21 April 2017