

## CONFIDENTIAL MEMORANDUM

**TO:** Council

**MEETING DATE:** 24 June 2020

**TITLE:** Appeal to Plan Change C Kākātangiata Stage 1: Kikiwhenua Residential Area

**PRESENTED BY:** David Murphy, City Planning Manager

**APPROVED BY:** Sheryl Bryant, General Manager - Strategy & Planning

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It is recommended that this report be considered with the public excluded, as permitted by the Local Government Official Information and Meetings Act 1987 under clause:

**s7(2)(i) Negotiations**

### **REASON FOR CONFIDENTIALITY**

The reason for this report to be confidential is  
The appeals are subject to alternative dispute resolution and / or an Environment Court hearing.

### **RECOMMENDATION FOR PUBLIC RELEASE**

Following the resolution of the appeals.

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### **RECOMMENDATIONS TO COUNCIL**

1. That the memorandum titled 'Appeals to Plan Change C Kākātangiata Stage 1: Kikiwhenua Residential Area' as reported to the 24 June 2020 Council meeting is received.
  2. That the City Planning Manager (or nominee) be authorised to resolve the appeals on Plan Change C Kākātangiata Stage 1: Kikiwhenua Residential Area through alternative dispute resolution facilitated by the Environment Court.
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### **1. ISSUE**

- 1.1 Two appeals have been lodged with the Environment Court in relation to Proposed District Plan Change C Kākātangiata Stage 1: Kikiwhenua Residential Area (Plan

Change C). A specific delegation to an officer is required to enable the appeals to be resolved through alternative dispute resolution facilitated by the Environment Court. If the appeals are not resolved through alternative dispute resolution, an Environment Court hearing will be required.

## **2. BACKGROUND**

### **Plan Change C**

- 2.1 Plan Change C addressed the Kikiwhenua Residential Area and is stage one of the Kākātangiata growth area (formerly City West). Plan Change C proposed to rezone the land bound by the Mangaone Stream, Te Wanaka Road and Pioneer Highway from Race Training to Residential to enable residential development. A detailed structure plan was included in Plan Change C to guide subdivision and development of the Kikiwhenua Residential Area.
- 2.2 23 original submissions and six further submissions were received. The hearing for Plan Change C was held in August 2019 and the decision was issued on 14 February 2020.

### **Plan Change C Decision**

- 2.3 Plan Change C was approved by the Hearings Panel and included a series of amendments in response to submissions. Key amendments included:
- a) The requirement for a speed limit reduction on Te Wanaka Road and Pioneer Highway (SH 56), commitment to an intersection upgrade at Te Wanaka Road and SH 56, and a notified plan change or variation to Plan Change C covering the zoning of the western side of Te Wanaka Road prior to any subdivision and development.
  - b) A maximum building height of 4m along the eastern side of Te Wanaka Rd.
  - c) The inclusion of a community facility and play area in the structure plan and rules.
  - d) The requirement for cul-de-sacs to include a 10m wide pedestrian link to an adjacent road or reserve.
  - e) The requirement for pressure sewer systems as part of the development.

## **Appeals**

- 2.4 RACE Inc and Pioneer City West Limited and Heritage Estates (2000) Ltd lodged appeals on Plan Change C. The appeal points are summarised below.

### **RACE Inc Appeal Points**

- a) The requirement for a variation to Plan Change C or a new plan change exploring the zoning of land west of Te Wanaka Road to be notified prior to subdivision of the Kikiwhenua Residential Area.
- b) The requirement for the upgrade of the Te Wanaka Road/Pioneer Highway intersection to traffic lights or a roundabout to be committed to prior to subdivision of the Kikiwhenua Residential Area.
- c) The requirement for an average lot size of between 500-550m<sup>2</sup>.
- d) The requirement for a 10m wide pedestrian link connecting cul-de-sac bulbs with an adjacent road or reserve.
- e) The requirement for a height limit of 4m on structures with direct frontage to Te Wanaka Road.

### **Pioneer City West Limited and Heritage Estates (2000) Limited Appeal Points**

- a) The requirement for the upgrade of the Te Wanaka Road/Pioneer Highway intersection to traffic lights or a roundabout to be committed to prior to subdivision of the Kikiwhenua Residential Area.
- b) The extent to which Plan Change C gives effect to the National Policy Statement for Urban Development Capacity.
- c) The extent to which Plan Change C demonstrates the ability to mitigate stormwater and flood risk on the wider Kākātangiata Growth Area.

### **Parties to the Appeals**

- 2.5 The following submitters have filed notices to be party to the appeals:
- a) New Zealand Transport Agency
  - b) Dean Philpott
  - c) Milmac Homes Limited

- d) Pioneer City West Limited and Heritage Estates (2000) Limited
- e) Residents Group West Te Wanaka Road
- f) Neil Wright

### **Alternative Dispute Resolution and Council Officer Delegation**

- 2.6 Previous District Plan appeals have been resolved via alternative dispute resolution under delegation by Council officers. A specific delegation has been sought for the Plan Change C appeals as it is not clear that the delegation exists within the current Delegations Manual. Legal advice was sought on this matter and is included as Attachment One. This situation arose with the last review of the Delegations Manual when limitations were applied which created the uncertainty addressed in the legal advice.
- 2.7 The management of the appeals is a matter for the Court. The Environment Court process relied heavily on alternative dispute resolution, such as mediation and expert conferencing, with a view to resolving appeals before hearing. When matters do proceed to a hearing, scope will usually be limited to those issues where parties have not been able to reach agreement through mediation.
- 2.8 Council officers anticipate the following steps taking place: informal negotiations on issues that are amenable to resolution at any time; Court assisted mediation, with Council officers seeking to mediate on all issues wherever possible; and finally, any (and only) unresolved issues proceeding to an Environment Court hearing.
- 2.9 While the management of the appeals sits with the Court, final decisions on the District Plan are still to be made by the full Council. Therefore, once the appeals are resolved (including by any consent order of the Court following a mediated outcome), Plan Change C will return to the Council to be formally approved and made operative. This is a final administrative step in the Plan Change process as it follows the consideration of submissions and evidence by the Hearings Panel and the Environment Court.
- 2.10 Council officers are working through the issues presented by the appeals, taking advice from expert consultants and considering Council's position with respect to the appeals and proposals to resolve the outstanding issues. As it presently stands Council officers are of the view that there is scope for discussions on a number of the issues raised through the appeals including transport/pedestrian matters, the nature, timing and effects of zoning of land west of Te Wanaka Road, and amenity matters (height limits, for example).

- 2.11 To inform these discussions Council officers are reviewing and seeking advice on a range of matters including the effects of the Kikiwhenua Structure Plan (e.g. equine effects), proposed development yield scenarios, and transport related assessments (e.g. proposed intersection and speed limits).
- 2.12 The team involved in responding to the appeals includes:
  - a) Nick Jessen, CR Law.
  - b) David Murphy, City Planning Manager.
  - c) Keegan Aplin-Thane, Planner.
  - d) Harriet Fraser, Consultant Traffic Engineer and Transport Planner.
- 2.13 Council officers will continue to update the Council as to progress of the appeals, so to ensure it continues to have oversight of the appeal process and the progress. Notwithstanding, the appeal process requires a responsive and flexible approach, particularly in circumstances where the timing of responses is dictated by the Environment Court and/or Environment Court Commissioner in the case of mediation. Council officers attending any mediation will also be expected to have the authority to be able to consider and commit to a mediated settlement.
- 2.14 For these reasons Council officers request that Council delegate to the City Planning Manager (or nominee) the authority to settle the Environment Court appeals in negotiations or at Court mediation, with full authority to reach agreement on any amendments to Plan Change C, and to sign consent orders on behalf of the Council as respondent.

**3. NEXT STEPS**

- 3.1 Participate in alternative dispute resolution and continue to update the Council as to progress of the appeals in accordance with the approach outlined within this memorandum.

**4. COMPLIANCE AND ADMINISTRATION**

Does the Committee have delegated authority to decide? If Yes quote relevant clause(s) from Delegations Manual	<b>No</b>
Are the decisions significant?	<b>No</b>
If they are significant do they affect land or a body of water?	<b>No</b>
Can this decision only be made through a 10 Year Plan?	<b>No</b>
Does this decision require consultation through the Special Consultative	<b>No</b>

procedure?		
Is there funding in the current Annual Plan for these actions?		<b>Yes</b>
Are the recommendations inconsistent with any of Council's policies or plans?		<b>No</b>
The recommendations contribute to Goal 1: An Innovative and Growing City		
The recommendations contribute to the outcomes of the City Development Strategy.		
The recommendations contribute to the achievement of action/actions in the Housing and Future Development Plan		
The actions are:		
<ol style="list-style-type: none"> <li>1. Rezoning land and review the District Plan to ensure land supply continues to exceed demand by 20%.</li> <li>2. Collaborate with the development community to deliver new housing developments and new forms of housing.</li> <li>3. Implement the National Policy Statement on Urban Development Capacity.</li> </ol>		
Contribution to strategic direction and to social, economic, environmental and cultural well-being	The recommendations will contribute to ensuring that sufficient development capacity is available for housing.	

**ATTACHMENTS**

1. Cooper Rapley Lawyers Memorandum - Plan Change C Kikiwhenua: Delegation to resolve appeals at mediation