

ATTACHMENT 1

Overview of options for Council to consider for ad hoc rezone requests prior to the District Plan review

Options for Council to Consider	Benefits	Costs	Staff Recommendations
<p>Option 1 – Do Nothing (status quo)</p>	<ul style="list-style-type: none"> • This option would incur no cost to Council. • Land would be rezoned as part of the comprehensive District Plan process if identified in the adopted spatial plans. 	<ul style="list-style-type: none"> • Development may become hindered by current zoning and does not provide for further growth to occur. • The resource consent pathway is likely to be used to “fast track development” meaning that applications for industrial activities in current zoning would apply pursuant to S104D of the Resource Management Act 1991 therefore testing existing the existing Operative District Plan objectives and policies. • This option could result in ad-hoc development not supported by appropriate zoning therefore undermining the strength and integrity of the Operative District Plan. 	<p>Not the preferred option</p> <p>Council would need to investigate consenting issues and whether Council would grant resource consent for activities within current zoning as Non-Complying Activities. This may be an “interim” option until the District Plan review picks up on the zoning through its process.</p>
<p>Option 2 – Developers apply for private plan changes with KDC to rezone land under the Operative District Plan for various areas</p>	<ul style="list-style-type: none"> • A Private Plan Change process is completely at the developers cost meaning no ratepayer funds would be used for this process. 	<ul style="list-style-type: none"> • Individual developers may consider that Council needs to undertake zone changes to accommodate growth in a more comprehensive way. 	<p>The preferred option</p> <p>Places the onus on developers to pursue a zone request at their cost and reduces the risk of any public</p>

	<ul style="list-style-type: none"> • If the Private Plan Change is accepted by Council, land proposed for rezoning would be rezoned to meet current demands. • No risk of public perception that Council are favouring developers or “cherry picking” areas for rezoning, which will benefit specific landowners. 	<ul style="list-style-type: none"> • Potential for multiple Private Plan Change’s to be applied for by different developers, all at different times. • There is a risk that the private plan change process may not align with the District Plan process (i.e. is not completed prior to a draft plan being prepared in 2022) or decided prior to the Proposed District Plan timeframes if appealed to the Environment Court). • The outcomes of the Private Plan Change could also be relitigated through the District Plan review process. • Will require staff resourcing as various plan changes may have to be administered at the same time. 	<p>perception that Council are favouring specific landowners</p> <p>There is the risk for developers that timeframes may not align with the District Plan review.</p> <p>If the developer wants different provisions than the operative District Plan we might land with several “Precinct Plans” which may be contrary to the Overall DP i.e. lot sizes.</p>
<p>Option 3 – Council initiates a plan change for rezoning ad hoc growth areas</p>	<ul style="list-style-type: none"> • Council provides for additional growth prior to the District Plan review. • Rezoning of these “high growth areas” could occur in one integrated plan change. • Timing may mean that the plan change can be finalised 	<ul style="list-style-type: none"> • Cost would lie with Council, not the developers. • Risk of public perception that Council are favouring specific landowners/developers. • Need to be clear about the information that would be required to undertake the 	<p>Not necessarily the preferred option</p> <p>Council would need to investigate what costs need to be undertaken in respect to supporting evidence for s32 evaluation report (i.e. geo-tech, economic, provision for infrastructure etc) before agreeing to this option. Average cost per ‘simple’ plan change will conservatively be</p>

	<p>before the Proposed District Plan is notified.</p>	<p>plan change and what the potential costs are bearing in mind the average cost per plan change (excluding legal costs and appeals) is about \$80K.</p> <ul style="list-style-type: none"> • Timing is critical for the plan changes to ensure they align with the District Plan review. • Additional resources may be required to manage the additional plan change, while also managing the District Plan review. 	<p>about \$80K, exclusive of legal costs and appeals.</p>
<p>Option 4 – Hybrid of options 2 and 3. Council can “adopt” a private plan change request as one of its own.</p>	<ul style="list-style-type: none"> • Council can get agreement from the developer for the Private Plan Change to be funded or co-funded. • Avoids multiple Private Plan Change’s from being requested on different timeframe pathways. 	<ul style="list-style-type: none"> • Some costs will still be incurred by Council. • Risk of public perception that Council is favouring specific landowners/developers. • If an individual developer wants more than Council are willing to rezone, or if it falls outside of the spatial plan areas, this could be an issue and stalemate the process. 	<p>Not the preferred option.</p> <p>This could be a good option if costs can be agreed with the developers and provided the developers do not wish to zone more land than Council is willing to rezone in accordance with the spatial plans.</p> <p>Having one single Plan Change zoning multiple areas would be ideal and could be of benefit to Council, however it may be difficult to get developers on board and work out a division of costs if there are multiple developers involved</p>

Evaluation of options

Option 1 – Do Nothing (status quo)

Option 1 presents the status quo option, which would mean that Council does nothing at this present time in respect to either Council initiated Plan changes or accepting Private Plan changes initiated by developers. As summarised, the costs and benefits of this option are finely balanced by whether Council is focused on reducing costs to the ratepayers and putting resource into the District Plan review, which is likely to deliver the same results, albeit some time from now.

The consequences of the “do nothing” approach is that subdivision and landuse development may continue to occur in an ad hoc way across the District irrespective of the current zoning. This happens via the resource consent process and can test the strength and integrity of the current Operative District Plan objective and policy framework where the proposal fails the rule framework for the zone and requires a more robust assessment. At present there are a number of non-complying activity resource consents for development out of zone, particularly in Mangawhai, which means the consent planners are often using S104D of the Resource Management Act 1991 to process applications. S104D is the most stringent consenting pathway under the Act and often the most costly for applicants and requires a two-step “gateway test” which assesses the proposal against both effects (s104D(1)(a)) and the relevant objective and policy frameworks (s104D(1)(b)). While the consent planners are using Council’s spatial plans to provide some guidance as to where future zoning is earmarked to occur in certain areas across the District, there are often issues with developments meeting Council’s objective and policy framework. Appeals may be lodged against these consents on the basis that it is contrary to the Objectives and Policies and against the integrity of the District Plan. However, the risk to Council is that the Environment Court may overturn Council’s decision to decline a consent and ad hoc development may result in locations where Council did not plan or anticipate growth to occur.

Option 2 – Council accepts requests for private plan changes from individual developers

A Private Plan Change request can only be lodged on an Operative District Plan, and when submitted, a local authority administers the plan change in terms of Part 2 of the First Schedule of the RMA. Option 2 provides for individual developers to lodge a private plan change to the operative District Plan (existing plan). A developer may opt to only request a straight-forward rezone of land or a more comprehensive suite of provisions (objectives, policies and rules). As outlined above, the most significant benefit of private plan changes is that it is funded by the developer and not by Council. Additionally, if the developer wishes to extend the proposed area for rezoning beyond the areas identified in the spatial plans, the zoning would be at the discretion of the decision makers and is not reflective of a Council position. These would likely become Precinct Plans in the District Plan review unless they conform with the new provisions of the Proposed District Plan and can be easily integrated.

The risk of private plan changes is that Council could be in a position of processing a number of private plan changes at the same time, depending on the timing of them and how motivated developers are to proceed. This needs to be considered in respect to resourcing for the District Plan review. Further, the timing of decisions is an important consideration in respect to the notification of the Proposed District Plan. Ideally, having all private plan changes decided and any appeals settled before the Proposed District Plan is notified is the best outcome, bearing in mind that changes can only be made to the operative District Plan zones and provisions. Therefore these changes are subject to submissions and re-litigation through the Proposed District Plan process if the plan change is decided before the Proposed Plan is deemed operative. If the developer wants different provisions i.e. lot sizes than is provided for in the Operative District Plan then various "Precincts Plan" may be the result

There are circumstances under which Council might justify Council to 'take over' a privately initiated Variation or 'adopt' a private plan change request, or initiate a plan change itself. These criteria may include, but is not limited to:

1. The proposed plan change will have a significant benefit to the public at large e.g. provision of commercial land for economic development.
2. The proposed plan change will assist in resolving an appeal.
3. The proposed plan change will resolve a demonstrable problem where no other remedy or opportunity is available (for example where there are a number of private plan change applications from adjacent lands). Council might take the opportunity to integrate development where public infrastructure will be required, not only for the land involved, but for the general area in the future.

4. The proposed plan change will resolve conflict between Policy and Environmental Standards.
5. The proposed plan change will address an omission or error in the current District Plan which cannot be remediated through Clause 20A of the First Schedule to the RMA;
6. The proposed plan change will give effect to Strategic Council Policy documents such as Growth Strategies and Structure Plans.
7. The proposed plan change will incorporate the urban design principles of transition, infill, contiguous development, and choice.
8. The proposed plan change should only be considered when a certain percentage (say 60%) of land in a particular land use zone is taken up and developed. At any one time there must be equilibrium between land supply and demand of all land use zones including some oversupply to cater for market fluctuations.
9. The proposed plan change will take into consideration the population projection of the area and the rate of growth or anticipated growth with a ten-year lead in for the provision of services and the LTP time frame.
10. The proposed plan change will address any other relevant matter considered of strategic importance by the Council.

Several of the above criteria could be applied to the current areas suggested for rezoning, in particular criteria numbers 1, 3,6, 8 and 9.

Council charges for the administration of applications for plan changes and for variations where the developer clearly would receive the advantage if the Plan Change or Variation is adopted. These costs will include all time spent on the processing of the application including any cost for consultants and legal costs or omissions to assist Council in arriving at a decision, whatever that decision might be. This has to be accepted by the applicant.

As plan changes can only be introduced to an Operative District Plan as the definition of a Plan only refers to an Operative Plan and not to a Proposed Plan, the question therefore arises as to how Council should deal with these privately initiated plan changes, if at all, in the period before the (Proposed) District Plan becomes an Operative Plan and how Council deals with Private Plan Changes once the District plan has become Operative.

With regards to Private Plan Change Requests, in terms of Clause 25(2) of Part 2 of the First Schedule to the Act Council can either:

- i. 'Adopt' the request as if it was made by itself.
- ii. 'Accept' the request if it was possible to apply for a plan change.
- iii. Change the request to a resource consent; or
- iv. 'Reject' the requests.

To 'adopt' the plan change effectively changes the request for a privately initiated plan change to a variation where the Council takes the Plan Change over. In the case of a Proposed Plan or an Operative District Plan the privately initiated plan change becomes a public or a Council plan change.

To 'accept' the private plan change before the plan has become operative would imply that the hearings of submissions have to be deferred until after the Plan has become operative where after the request is dealt with as a normal private plan change.

To change the request to a resource consent would mean that it can then be processed by the consents team as a subdivision or landuse proposal (or both) and would be processed as such.

Matters under which a private plan change request can be rejected are very limited.

The local authority may reject the request in whole or in part (Clause 25(4) First Schedule of the Act) but only on the grounds that:

- a. The request is frivolous or vexatious; or
- b. The request has been given effect or rejected within the last 2 years; or
- c. The request is not in accordance with sound resource management practice; or
- d. The request is inconsistent with Part IV of the Act (Compilation of Plans); or
- e. If the Plan has been operative for less than 2 years.

Option 3 – Council initiated plan change

A local authority can undertake both Variations on a Proposed District Plan and Plan Changes on an Operative District Plan under the provisions of Part 1 of the First Schedule to the RMA. At this point in the District Plan review process, a change could only be made to the Operative District Plan.

The benefits of Council initiating its own Plan Change is that Council can undertake an integrated approach to control the areas of rezoning to be released for private development to occur and additionally Council could control the timeframes of the Plan Change to coincide with the District Plan review timeframes, not taking into account any appeals which may result.

However, with a Council initiated plan change, the cost of the process is fully borne by the Council and ratepayers. There is a risk that a plan change targeted at developer pressures may be perceived to be an inefficient use of Council funds, given that the District Plan review will give effect to the Council adopted spatial plans providing for the next 10 years growth across the District, pending confirmation of the provision of services. Given that a Council initiated plan change normally costs upwards of \$100,000, depending on technical reports required, legal input and any potential appeals which may result, there is a risk that a Council initiated plan change could result in a public perception that the plan change is only targeted at specific landowners and developers and should be considered as a holistic package as part of the upcoming District Plan review.

Should Council consider this option to be the preferred option in light of the upcoming District Plan review, it is recommended that only a straight-forward rezone of the key strategic areas of land identified in the spatial plans be undertaken and that Council should not amend the existing Operative District Plan provisions (objectives, policies or rules). In order to satisfy section 32 RMA requirements, this proposal would still need to be supported by information such as geotechnical, capacity for infrastructure, economic, landscape etc, which is still an unknown factor where further work would need to be carried out in this regard.

Option 4 – Hybrid of options 2 and 3

Option 4 is a hybrid of both options 2 (Private Plan Change) and 3 (Council initiated Plan Change), which would enable both Council and the developers to undertake an integrated Plan Change with a cost-sharing arrangement in place. Similar to both options 2 and 3, there are some

key benefits and costs. However, if agreement were to be reached as to the key areas for development and what technical information would be required in order to satisfy section 32 RMA requirements, both parties could work through a Council initiated Plan Change Process. The goal would be to complete the plan change prior to notification of the Proposed District Plan, bearing in mind staffing required for the upcoming District Plan review process which would coincide with the plan change.

With this option there is still a risk of public perception in respect to favouring specific landowners/developers and there would still be a cost to Council, despite shared costs. As identified in Option 3, further work would need to be carried out in order to understand what technical evidence is required to meet s32 requirements.

Should developers wish to deviate from the key areas for development identified by Council, it is recommended that a private plan change (option 2) would provide the best option.

Recommendation to Council

Staff recommend **option 2** to be the best outcome for Council and private developers who are seeking rezoning across the District.

On face value, option 4 appears to be the best option to ensure Council input and shared costs with the developer. However if it is not likely that Council will be able to get all developers on board with both the key strategic rezoning areas, costs or information required to satisfy s32 requirements, a private plan change (option 2) is the best option, as it places full risk on the developers and takes the risk away from Council in respect to public perception of rezoning discrete blocks of land for individual developers. This leaves staff to fully focus on the District Plan review and outsource the private plan changes to external consultants (at the developers cost – which would need to be made clear upfront).

The District Plan review will deliver on each of the key growth areas. Buying more time through the DPR process is to Council's advantage, so that Council can provide for Infrastructure in these key growth areas in an integrated manner to ensure the areas can be serviced in the longer term.

The alternative to all 3 options is option 1 (status quo), where developers who are eager to get development will likely take the consenting pathway as a Non-Complying activity instead of rezoning the land. Council consent planners can use the spatial plans and infrastructure strategies to ensure growth is occurring where it can be supported by services etc. However, where development does not fit with Council's plans, the S104D test would provide a robust process to ensure development is appropriately located. The key risk for Council with this pathway is where a decision to decline consent is appealed and the decision overturned meaning additional costs to Council and development which was not anticipated in ad hoc locations.

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