



## Private Plan Changes To The District Plan

### What is a Private Plan Change?

A private plan change is a change to the District Plan initiated by a member of the public, an incorporated organisation, company or sector group. A proposed private plan change seeks to amend the District Plan to achieve an outcome sought by the initiator.

### When is a private plan change the appropriate tool to use?

The Resource Management Act (RMA) allows both private plan changes and resource consents, and does not display a preference for one procedure over the other.

However, where a proposed plan change is contrary to objectives or policies in a District Plan, or departs significantly from the provisions of the District Plan, then a proposed private plan change is considered to be a more appropriate tool than a resource consent.

Where a development proposal would have significant effects on a locality, then it may be considered that a private plan change (rather than a resource consent application) is a more appropriate resource management mechanism to address the environmental issues raised by the development.

**Council strongly encourages people who are considering applying for a privately initiated plan change to contact the Council as early as possible to discuss the matter.**

### When can a plan change be made?

All plan changes (including private plan changes) can only be made to operative planning documents. This means that private plan changes can be made to Waitakere City Council's Operative District Plan.

## Who can request a private plan change?

The RMA states that "any person (defined to include companies and incorporated organisations) may request a council to change a district plan, and the district plan may be changed in the manner set out in the First Schedule".

## What process does it follow?

Part II of the First Schedule to the RMA sets out the procedural matters for dealing with requests for changes to a District Plan. A process diagram which shows the path a private plan change progresses through is set out on the back page.

Key stages in the private plan change process are:

- Preparation and lodgment of the private plan change request by the applicant or their adviser;
- Processing of the request by the Council, including the determination of the need for further information, and the possible commissioning of reports relating to the request;
- Provision of more information by the applicant if required by the Council;  
Council consideration of the request and decision whether to:
  - modify the request (only possible with the applicant's permission);
  - adopt the request in whole or in part as a Council plan change;
  - accept the request in whole or part;
  - convert the request into a resource consent; or
  - reject the request (the applicant may appeal this decision);
- Public notification of the plan change occurs within four months of the council agreeing to accept the proposed plan change, or within the period that the Environment Court directs;
- Council hearing of submissions and decision on the private plan change; and
- Applicant or other party appealing the private plan change request if not satisfied with the Council decision

## **What form must the private plan change request take?**

The private plan change request must be made in writing.

The purpose of the private plan change must be explained and reasons for it given. Where environmental effects are anticipated these must be described, taking into account the matters listed in the Fourth Schedule of the RMA.

The degree of information provided is at the discretion of the applicant, but the Council may request further information .

A section 32 evaluation is not required to be provided by a private plan change applicant. The Council is not required to provide a section 32 evaluation before the plan change is notified, unless the Council adopts the private plan change as its own (see below).

## **How does the Council process a private plan change request?**

The Council has 30 working days to deal with the plan change request after either:

- receiving the request; or
- receiving all required information; or
- receiving any reports commissioned by the Council; or
- modifying the request.

The Council may either:

- adopt the plan change request as its own;
- accept the request in whole or part;
- decide to covert it into a resource consent; or
- reject the request, on certain grounds.

The Council must notify the person who made the private plan change request of the decision within 10 working days of considering the request, and must give reasons for the decision.

## **On what grounds can a private plan change request be rejected?**

A private plan change request may only be rejected, in whole or in part, on the following grounds:

- that it is frivolous or vexatious; or
- that the substance of the change has been dealt with by the Council or the Environment Court within the last two years; or

- the change is not in accordance with sound resource management practice; or
- the change would make the operative district plan inconsistent with Part V of the RMA (other policies and plans); or
- the district plan to which the change is being made has been operative for less than two years.

Case law illustrates that a private plan change request can also be rejected if services (such as roading) cannot be provided at a rate that the community can physically and economically cope with.

## **What are the rules for providing further information?**

The Council can request (in writing) further information within 20 working days of receipt of the private plan change request.

The Council can request further information from the plan change requester on the following matters:

- environmental effects;
- mitigation of adverse effects;
- benefits and costs;
- the efficiency and effectiveness;
- possible alternatives to the request; and
- the nature of any consultation that has been undertaken.

There is no time limit in which the plan change requester needs to provide the further information requested by the Council.

Some section 32 matters can be requested as part of further information and also as part of any reports commissioned about the requested plan change.

If the Council commissions a report in relation to the private plan change request, it needs to notify the person who made the plan change request. The requester cannot appeal the Council's decision to commission the report, nor can they determine the matters included in the report, as this is determined by the Council.

## **Can a private plan change request be modified?**

The Council may modify the plan change request but only with the agreement of the requester.

## **Can a private plan change request be withdrawn?**

The person requesting the private plan change can withdraw it at any time before the Council notifies its decision. The Council does not have the option of withdrawing a requested plan change without the agreement of the requester, unless it has sent notice to the requester asking them to confirm that they wish to continue, and have had no response within 30 working days.

If there is a withdrawal of the private plan change request, this must be publicly notified and reasons for the withdrawal set out.

## **Section 32 of the RMA**

Section 32 of the RMA sets out duties to consider alternatives and assess benefits and costs that need to be considered before a plan change is adopted. This is done in order to help determine whether it achieves the purpose of the RMA. Section 32 is concerned with:

- the extent to which the change is necessary in achieving the purpose of the RMA;
- other means that could be used to achieve the same end;
- reasons for and against adopting the proposed plan change;
- evaluating benefits and costs of the principal alternative means to the plan change; and
- showing satisfaction that the proposed plan change is necessary in achieving the purpose of the RMA, and the change is the most appropriate way of exercising the function having assessed the efficiency and effectiveness of the plan change compared to other means.

In the case of a private plan change, the Council must only address the section 32 duties when it makes a decision about whether to decline, approve, or approve with modifications its decision on a plan change. However, Council-initiated plan changes must have a section 32 record available at the time the proposed plan change is publicly notified.

## **The difference between the Council “Adopting” and “Accepting” a private plan change**

To “adopt” means the requested private plan change becomes a proposed plan change made by the Council. It must be publicly notified and is subject to the RMA. Once it is notified it takes effect.

The term “accept” is used where the Council agrees that the proposed plan change can proceed to notification and follow the private plan change decision-making procedures set out in Part II of the First Schedule of the RMA. A private plan change does not have effect until it is made operative.

If the Council decides to adopt a private plan change rather than accept it, the adoption limits the involvement of the person who made the private plan change request. There is no obligation for the Council to further consult the requester if it “adopts” the plan change. The Council does need to continue to consult with the requester if it “accepts” the private plan change.

## **Costs of a privately initiated plan change**

The RMA enables the cost of private plan changes to be recovered from the requester. The Council will recover all reasonable costs (both internal and external) that it may incur from the processing of private plan changes. These costs will include Council planners and both internal and external experts time prior to notification, notification costs, hearing costs and administrative costs.

Making an application for a plan change requires the payment of a deposit. Interim invoices may be issued to the private plan change requester at key stages of the process.

This brochure is only a guide to privately initiated plan changes in Waitakere City. If you have any queries, require further information or are considering initiating a private plan change, please ask Waitakere City Council Civic Centre Staff or telephone the Council Call Centre on (09) 839 0400. Council encourages people who are considering applying for a privately initiated plan change to contact the Council as early as possible to discuss the matter.