

# Policy regarding use of the former residential red zone land

## Agile policy for the Ōtākaro Avon Corridor and balance of the residential red zone land use decision making

September 2020

### Introduction

Council has recently formally taken ownership of parcels of the former residential red zone (RRZ) land within the South Shore area and Brooklands. Land within the area now known as the Ōtākaro Avon River Corridor, and on the Port Hills, is progressively transferring from Crown to Council ownership. The circumstances surrounding the Council acquiring the former RRZ land are exceptional, and the Council is likely to receive a high number of proposals for the use of parcels of this land. In response, this policy sets out a streamlined process to deal with such proposals.

This policy seeks to acknowledge the involvement of community and mana whenua in the future of the RRZ to date, and build upon what has been achieved, in order to ensure that those affected by the use of the land have a say in decisions regarding its future.

The Council's *Leasing Council Property Policy* and *Guidelines for submission and assessment of unsolicited proposals* in respect of the procurement of goods and services, provide guidance to this policy. Additionally the policy takes into account procurement guidelines from the Office of the Auditor General and the Ministry of Business, Innovation and Employment, as well as relevant sections of the Local Government Act 2002 and the Council's Significance and Engagement Policy.

It may be appropriate that this policy is limited in its application to a period of 10 years. Before expiry, this policy should be reviewed and assessed for relevance and appropriateness.

### Purpose

This policy outlines how the Council will deal with proposals from third parties to occupy (including licences and access agreements) and or lease the former RRZ land that is presently owned, or will be owned, by the Council. It provides for a collaborative model, which involves the community and mana whenua at key points in the decision-making process. It allows the Council to create an agile process to facilitate the use of former RRZ land by a broad range of community and other groups, and which encourages regeneration of these areas in line with community aspiration and priority.

### Policy Scope

This policy applies to specific proposals received by the Council from third parties to lease, or occupy, the former RRZ land owned by the Council. Note this policy explicitly excludes the sale of former RRZ land. Sale of land will be managed through Council's existing policies and procedures.

For the purposes of this policy, 'former RRZ land' means:

- (a) All the land that was purchased by the Crown in the Ōtākaro Avon River Corridor (OARC), Brooklands, Southshore/South New Brighton and the Port Hills as a result of the Crown's red zone offer to landowners following the 2010 and 2011 Canterbury Earthquakes, and which will transfer to the Council under the Global Settlement Agreement between the Council and the Crown dated 23 September 2019.
- (b) All the Council-owned land in the OARC, being the stopped roads and other lands owned by the Council required to give effect to the reconfiguration of the OARC land titles, as referred to in the Third Schedule of the Global Settlement Agreement between the Council and the Crown dated 23 September 2019.

This policy provides the following guidance:

- (c) Whether to progress a proposal beyond the initial application stage
- (d) How to determine the significance of a proposal
- (e) How to process a proposal according to its significance and consultation and/or tendering requirements.

## Why consider third party proposals in relation to former RRZ land?

### *Local Government Act 2002 (LGA)*

As a territorial local authority the Council is required to fulfil the purpose of local government as specified in the LGA:

- (f) to enable democratic local decision making and action by, and on behalf of, communities; and
- (g) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

To help achieve this purpose, the Council encourages innovative ideas and solutions from the private sector and communities to be put forward. Such proposals may help to maximise the value and collaboration opportunities provided to our community.

### *Ōtākaro Avon River Corridor Regeneration Plan*

The 602 hectare OARC includes a large portion of the former RRZ land, and is subject to a Regeneration Plan (under the Greater Christchurch Regeneration Act 2016) approved by the Minister for Greater Christchurch Regeneration in August 2019<sup>1</sup>. Under the Global Settlement Agreement finalised in 2019, ownership of Crownowned land is to transfer from the Crown to the Council in tranches.

The OARC Regeneration Area is important for many citizens of Christchurch; it is the location of nearly 7,000 former homes and many past residents still feel a close connection to the area. Extensive community and stakeholder engagement informed the development of the Regeneration Plan, which includes a vision, objectives, and preferred land uses. Appendix 1 of the Regeneration Plan directed the insertion of a new sitespecific zone into the Christchurch District Plan, which enables a variety of land uses consistent with the vision for the Regeneration Area. This planning framework provides certainty about how and where key

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<sup>1</sup> [dpmc.govt.nz/our-programmes/greater-christchurch-recovery-and-regeneration/recovery-and-regeneration-plans/otakaro-avon-river-corridorregeneration-plan](https://dpmc.govt.nz/our-programmes/greater-christchurch-recovery-and-regeneration/recovery-and-regeneration-plans/otakaro-avon-river-corridorregeneration-plan)

activities/preferred land uses can occur, through the inclusion of a Development Plan and consenting pathway for those land uses that require specific management.

Proposals that fall under this policy should enable the implementation of opportunities and outcomes as outlined in the Regeneration Plan (as well as any subsequent plan relating to the former RRZ land).

## Governance arrangements

Where the Crown is still the landowner of the RRZ, it remains the final decision-maker for temporary, transformative land use applications. Te Tira Kāhikuhiku, Red Zone Transformative Land Use Group, provides advice on these decisions, specifically in recommending temporary land use licences, leases, and access authorities; and making decisions or recommendations on grant funding for temporary land uses. The group includes representatives from Linwood-Central-Heathcote, Coastal Burwood, and Banks Peninsula Community Boards, iwi representatives, and representatives from community groups.

As land is transferred to Council ownership, the Council will assume decision-making powers over the RRZ land, and proposes to establish a community co-governance entity to make decisions on its behalf. Although the exact nature of this co-governance arrangement is yet to be determined, it could impact on the decisionmaking process outlined in Appendix 2 of this document.

## Online portal for RRZ proposals

The Council will set up an online portal, or similar mechanism, to invite and gather proposals for the use of the former RRZ land. This portal will enable the public engagement process and:

- act as an informal Request for Proposals (RFP) mechanism
- provide a single point of contact for all interested parties
- test the market for interest in the use of the land
- publish for feedback any proposals the Council has under consideration
- advertise open tenders
- publish decisions on proposals

## Consultation requirements

Sections 76 - 82 and 138 of the LGA apply in relation to consultation requirements for decisions made under this policy:

- (a) Sections 76 - 82 of the LGA set out the principles of decision making and consultation. The views and preferences of persons likely to be affected by, or who have an interest in, a matter must be considered. This does not necessarily mean that the Council is required to undertake a consultation process, but it must have some way of identifying the views and preferences of interested and affected persons.
- (b) Under section 138 of the LGA, the Council is required to consult on any proposal to dispose of a park. 'Park' means land acquired or used principally for community, recreational, environmental, cultural, or spiritual purposes, but does not include land that is held as a reserve, or part of a reserve, under the Reserves Act 1977 (note that none of the RRZ is classified as a reserve).
- (c) 'Dispose of' includes the granting of a lease for more than six months that has the effect of excluding or *substantially* interfering with the public's access to the park (emphasis added).
- (d) Any proposal to lease or occupy any part of this land from the Council that *substantially* interferes with the public's access to the park will require consultation.

## Detail of the policy

Proposals will be assessed against the following broad criteria:

- (a) Alignment with the objectives of the Regeneration Plan and/or any subsequent plan relating to former RRZ land
- (b) Compliance with the Christchurch District Plan, other relevant legislation, and Council policies
- (c) Individual merit, including current and future offerings in and around the RRZ

The details of the process for assessing a proposal, and the criteria to be considered, are in Appendix 1. Applications will be assessed using a proportional method. The greater the risk to the Council and/or the community, the more in-depth the due diligence and ongoing involvement will be.

<b>Policy name</b>	Policy regarding use of the former residential red zone land
<b>Adoption date</b>	12 November 2020
<b>Date of most recent review</b>	N/A
<b>Resolution number</b>	CNCL/2020/00139
<b>Review date</b>	November 2021
<b>Department responsible</b>	Parks
<b>Position responsible</b>	Head of Parks

# Appendix 1 - considerations and criteria

## 1.1 Definition of a 'proposal' in relation to former RRZ land

A proposal is an application to use, occupy (including licenses and access agreements), lease a part of the former RRZ land provided to the Council, primarily either through the Council portal or via a written documented proposal to the Council.

Any proposal will be taken through the general and more detailed evaluation stages, as outlined in these appendices, in close consultation with affected community groups and iwi, as the Council's decision-making partners. This will involve not only the relevant legislated consultation processes, but also the involvement of Te Tira Kāhikuhiku, or any co-governance group existing. As outlined below, key information requirements for most proposals will include details of engagement with mana whenua and affected people and community groups.

## 1.2 General criteria

### 1.2.1 Detail of proposal

The proposal must contain sufficient detail about intentions for the land use, for consideration, in order to proceed.

### 1.2.2 Alignment with regeneration aims and outcomes

The intended activities and particulars of the proposal must facilitate regeneration by improving the environmental, economic, social and cultural wellbeing, and resilience of communities.

The proposal must align with the vision and objectives of the OARC Regeneration Plan (and/ or any subsequent plan relating to the former RRZ land, including spatial plans and any associated Development Plan contained in the Christchurch District Plan, as well as any future implementation plan).

The proposal must demonstrate public benefit. For example, through providing public access to the natural environment, enhancing ecological and environmental outcomes, and creating opportunities for sustainable social, cultural and/or economic activities and connections that enhance community wellbeing and prosperity.

### 1.2.3 Public interest

The level of public interest in the proposal will be a factor in determining how the proposal is assessed and processed. The Council is guided by its *Significance and Engagement Policy*, which provides guidance on how to determine the significance of the proposal, on the basis of a number of criteria. Among other things, these criteria will help to determine the level of public interest in the proposal.

Public interest will further be determined by the particulars of the proposal. A proposal to lease land for a lengthy period of time is likely to be of high public interest, whereas a one-off event or an access agreement may not be at this same level.

This aligns with the consideration of consultation requirements as outlined in the main body of this document.

### 1.2.4 Lease

If the proposal requires a lease the following guidelines will be used for classifying the proposal according to the proposed length of the lease (among other factors, as outlined in Appendix 2 of this document):

- (a) Proposals for leases of six months or less
- (b) Proposals for leases of more than six months, up to and including ten years
- (c) Proposals for leases over 10 years

#### 1.2.5 Cost

The Council will consider whether the proposal is likely to incur any unbudgeted costs. If so, the Council may request that the submitter provides further information, including how these costs could be met, prior to formal consideration.

The Council will also consider whether it is likely to incur unbudgeted costs if the proposal is approved, during the course of any activity under the proposal.

#### 1.2.6 Other

The Council, at its discretion, may take into account any other considerations that it deems relevant to the proposal, including any factors arising as a consequence of the nature and content of the proposal, and/or economic, social, legal or other event.

### 1.3 Information requirements

The level of detail of information and due diligence required will depend on the nature and complexity of the proposal. It is in the best interests of the applicant to provide sufficient information for Council to assess the proposal against the criteria outlined in this policy.

#### 1.3.1 Information that could be required (for any proposal):

- Location and description of the site
- Length of proposed use
- Details of the party making the proposal, including structure, relevant experience and references
- An outline of the concept and purpose of the proposal, including:
  - How the proposal will add value – for example, in improving the economic, social, cultural, and environmental wellbeing of communities
  - How the proposal will contribute to, and align with, any Regeneration Plan (including spatial plans and any associated Development Plan contained in the Christchurch District Plan i.e. Appendix 13.14.6.1 OARC Development Plan)
  - The target market of the proposal
  - Alignment with the Council’s strategic priorities
  - Proposed hours and days of operation, including any seasonal variances
  - Timeframe for establishing the proposal
  - A list of all shareholders and beneficiaries
- Engagement with mana whenua, including level of support offered and any partnerships in place
- Engagement with affected residents’ associations, previous owners and existing lessees (if applicable) and other community groups; any findings from pre-engagement where appropriate
- The findings of the cultural impact assessment
- Compliance with the Christchurch District Plan and Council policies
- Compliance with the Canterbury Land and Water Plan
- Any impact on network utilities infrastructure (Council and third party)

- The plan and commitment to remove structures and remediate land on termination of the proposed use
- Demonstration of the potential impacts of climate change on the proposal
- On-site promotional signage and advertising – developed in accordance with Council guidelines
- Potential adverse effects of proposed activities, including health and safety issues; waste management; environmental impacts; impacts on current and planned Council assets; and traffic considerations
- Tenure issues, such as required leases and licenses, and ownership issues
- Easements, caveats, rights of way, liens and encumbrances to be examined and any relevant terms and conditions to be considered
- Any known consenting issues and requirements, and whether any pre-application meeting has been held with Council planners from the Resource Consents Unit
- Any potential conflict of interest with the Council

### 1.3.2 *Commercial information that could be required (for applicable proposals):*

- Viability of proposal:
  - Numbers of potential customers
  - Demographics
  - Market research
  - Value research
  - Supply and demand analysis
- How the capital will be financed (if more than one source, percentage of each to be shown):
  - Own capital
  - Grants
  - Loan – personal; unsecured; or secured
  - Mortgage
  - General Security Agreement
  - Shares
- Operational budget and cash flow forecasts, including:
  - Asset maintenance and replacement
  - Staffing costs
  - Interest costs
  - Other operational costs
- Proposed charging schedule
- Risk assessment:
  - Break even volumes as a minimum level of business required to ensure business will not operate at a loss
  - Contingency plans
  - Identify risks and contingency plans
- Insurances:
  - Public liability (to an agreed level, based on circumstances)
  - Asset insurance
  - Cash handling insurance

It is the applicant's responsibility to compile the appropriate level of information to enable the Council to progress the proposal through to the next stage of the consideration process.

## **1.4 Evaluation of proposal and due diligence**

The Council will evaluate each proposal to determine whether the due diligence provides sufficient information to progress further. The Council also will consider whether the proposal aligns with the regeneration purposes outlined in the Greater Christchurch Regeneration Act 2016. As outlined above, the Council will undertake this evaluation process in close consultation with affected community groups and iwi.

If the proposal does not fulfil both of these requirements, the applicant will be advised that the Council cannot proceed with considering the proposal. The Council reserves the right to use its discretion to continue a proposal through to the next stage of the consideration process.

An applicant is not prevented from resubmitting a proposal if unsuccessful at this stage.

If the Council decides to proceed at this stage, then it may provide a written approval if the proposal:

- is for a one-off event; and
- does not require a lease of land; and
- does not conflict with the use of the parcel of land by any third party; and
- is not of high public interest.

If the proposal requires either a lease, agreement or sale of land, or is of a high level of public interest then the proposal will be taken through to the process detailed in Appendix 2.



# Appendix 2

## Progressing proposals to occupy or lease RRZ land, and proposals of high public interest

### 2.1 *Proposals for land use for a period of six months or less and not of high public interest*

**Step 1:** Publish the proposal for feedback on the Council's website for a minimum of 14 working days.

**Step 2:** Consider feedback received on the proposal and whether there are any other known proposals to use the same parcel or portion of land (either from the portal, or the period of advertisement).

*If there are no other known proposals, proceed to Step 3, taking into account feedback received.*

*If there are other known proposals, the Council may proceed to consider the tender options, complete a tender process, then proceed to Step 3.*

**Step 3:** Recommendation from Te Tira Kāhikuhiku, Red Zone Transformative Land Use Group in respect of either the proposal (if no tender process required) or the tender process.

**Step 4:** Decision of the **Head of Parks** in respect of the proposal.

**Step 5:** Council to publish outcome on Council website.

### 2.2 *Proposals for land use for a period of more than six months, up to and including 10 years*

**Step 1:** Consider whether the proposal is either: (a) for a lease that may have the effect of excluding or substantially interfering with the public's access to the former RRZ land; or (b) is of high public interest.

*If yes to any question, then this proposal falls into the category described in 2.3. If not then proceed to Step 2.*

**Step 2:** Publish the proposal for feedback on the Council's website for a minimum of 20 working days.

**Step 3:** Consider whether there are any other known proposals to use the same parcel or portion of land (either from the portal, or the period of advertisement)?

*If there are no other known proposals, proceed to Step 4, taking into account feedback received.*

*If there are other known proposals, the Council may proceed to consider the tender options, complete a tender process, then proceed to Step 4.*

**Step 4:** Recommendation from Te Tira Kāhikuhiku, Red Zone Transformative Land Use Group in respect of either the proposal (if no tender process required) or the tender process.

**Step 5:** Decision of the **Head of Parks** in respect of the proposal.

**Step 6:** Council to publish outcome on Council website.

### 2.3 *Proposals for land use of a period of more than 10 years; or a lease that will have the effect of excluding or substantially interfering with the public's access to the former RRZ land; or a proposal that is of high public interest*

**Step 1:** Consider whether it is appropriate to undertake an Open Tender process, prior to consultation on a preferred proposal. An Open Tender process would occur where:

- there is more than one proposal relating to all or part of the relevant parcel of the land relating to the proposal; or
- the Council considers that there is a broader market and public interest in the particular parcel of land relating to the proposal that means there may not be only one use (other than that proposed by the proposal under consideration) that could be realistically activated within a reasonable timeframe. *If no Open Tender process is required, then proceed to Step 3.*

**Step 2:** Tender responses evaluated and outcome of evaluation reported to Council. If the Council agrees to progress consideration of one or more proposals, then proceed to Step 3.

**Step 3:** Is a section 138 (LGA) consultation process triggered? *If no, then proceed to Step 6; if yes, proceed to Step 4.*

**Step 4:** Present to the Council for agreement that the Council undertakes a consultation process on the proposal, and agreement to deal unilaterally with the relevant party (where the first two steps have not been taken).

**Step 5:** Undertake appropriate consultation (level of consultation required based on Significance and Engagement Policy), including with Te Tira Kāhikuhiku, Red Zone Transformative Land Use Group.

**Step 6:** Decision of **Council** in respect of the proposal.

**Step 7:** Council to publish outcome on the Council's website.

## Tendering options

### *Closed Tender*

If the Council has received more than one proposal in respect of the same parcel of the former RRZ land then it may proceed to a closed tender in respect of the proposals, where this is more efficient and cost effective in enabling the use of this particular parcel of land.

### *Open Tender*

The Council may decide to commence an open tender process in respect of a parcel of the former RRZ Land that a proposal relates to, if the Council determines that it is in the best interests of the Council, the affected community or the public in general for an open tender to occur.