

31. Proposed process to provide policy support to the Residential Unit Overlay

Reference: 18/986632

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Presenter(s): David Griffiths, Head of Planning and Strategic Transport

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1. Purpose and Origin of Report

Purpose of Report

- 1.1 The purpose of this report is for the Council to endorse and approve an approach to resolve the uncertainty for residents seeking to build in the Residential Unit Overlay in parts of New Brighton, South New Brighton, Southshore and Redcliffs.

Origin of Report

- 1.2 This report responds to the Notice of Motion put to the Council on 13 September 2018 as resolved:

1.2.1 *That the Council:*

1. Accepts the Notice of Motion from Councillor Johanson regarding High Flood Hazard Management Area Policy.

2. Notes that the Linwood-Central-Heathcote and Coastal-Burwood Community Boards held a joint briefing on 13 August 2018 following concerns regarding the High Flood Hazard Management area policy in the District Plan.

3. Notes that the Mayor has asked staff to provide advice as to options for resolving the issue that has been raised in relation to the Independent Hearings Panel decision on the District Plan.

4. Request urgency be accorded this matter so that the District Plan can be amended to reflect the intention of the Independent Hearings Panel as soon as possible.

- 1.3 It is noted that staff had already been working on this process following an earlier request by the Mayor for clarification.

2. Significance

- 2.1 The decision in this report is of high significance in relation to the Christchurch City Council's Significance and Engagement Policy.

2.1.1 The level of significance was determined by the high level of community interest and the lack of clarity for residents wanting to build on vacant properties within the Residential Unit Overlay.

2.1.2 Given the urgency to prepare this report, no community consultation has been undertaken. However, under the proposed approach there would be community consultation.

3. Staff Recommendations

That the Council:

1. Agrees to use the process in section 71 of the Greater Christchurch Regeneration Act 2016 to provide a policy framework that supports the Residential Unit Overlay within the High Flood Hazard Management Area.
2. Direct staff to prepare a proposal to amend the District Plan and engage with strategic partners and Regenerate Christchurch as required under the Greater Christchurch Regeneration Act 2016.
3. Note that staff will investigate options and mechanisms to engage with relevant former members of the Independent Hearings Panel on the Christchurch Replacement District Plan so that they may be able to provide advice on the policy development required for the proposal.
4. Instruct staff to report to the Council by December 2018 with the draft section 71 proposal for the Minister for Greater Christchurch Regeneration.
5. Note that staff are required to continue to process any resource consent applications in accordance with the current decisions, policy and rules of the District Plan, until such time as any new decisions are operative.

4. Key Points

- 4.1 There is uncertainty about how the High Flood Hazard Management Area (HFHMA) Policy applies to additions to existing buildings and the construction of new buildings in the Residential Unit Overlay – i.e. parts of New Brighton, South New Brighton, Southshore and Redcliffs.
- 4.2 This uncertainty arises from the current wording in the HFHMA Policy and the rule for building in the Residential Unit Overlay.
- 4.3 The HFHMA Policy directs that development is **avoided** in the High Flood Hazard Management Area, where development will increase potential risk to people's safety, wellbeing and property (introduced into the District Plan by IHP Decision 6).
- 4.4 The rule for building in the Residential Unit Overlay **requires resource consent as a restricted discretionary activity** for new residential units or additions in the Residential Unit Overlay (introduced into the District Plan by Independent Hearings Panel (IHP) Decision 53).
- 4.5 As a result of this uncertainty there is a perception residents cannot build in the affected area.
- 4.6 Since mid-2017 the Council has been aware of, and progressing various solutions, to address the issue of uncertainty. Public concern has highlighted the urgent need to consider changes to the District Plan to resolve the matter.
- 4.7 This report recommends an approach, to address this issue, which is the fastest and most effective.
- 4.8 This report supports the [Council's Long Term Plan \(2018 - 2028\)](#):
 - 4.8.1 Activity: Strategic Planning and Policy
 - Level of Service: 17.0.1.7 Advice to Council on high priority policy and planning issues that affect the City. Advice is aligned with and delivers on the governance expectations as evidenced through the Council Strategic Framework - Policy advice to Council on emerging issues.
- 4.9 The following feasible options have been considered:
 - Seek agreement of the Minister for Greater Christchurch Regeneration to use the process in section 71 of the Greater Christchurch Regeneration Act 2016 to amend the policy. If the Minister agrees, this will be the fastest way to make the amendment.

- Under this option, should the Minister decline the proposal, the next fastest process is for the Order in Council governing the District Plan to be revoked. The Council could then initiate a plan change. The Council has already asked the Minister for the Order in Council to be revoked and staff will liaise with her office around likely timeframes to amend the Order in Council, including a date for revocation.
- 4.10 All other options would take considerably longer than either the section 71 process or making a plan change once the Order in Council has been lifted. Alternative options that have been considered are detailed in Attachment A.

5. Context/Background

- 5.1 Under the Christchurch District Plan, resource consent applications for development in Residential Unit Overlay areas must be assessed against both:
- 5.1.1 Policy 5.2.2.2.1(b), which is to **avoid** development in the High Flood Hazard Management Area (HFHMA), where development will increase potential risk to people's safety, wellbeing and property (introduced into the District Plan by IHP Decision 6); and
 - 5.1.2 Rule 5.4.6.2 RD2, which **requires resource consent as a restricted discretionary activity** for new residential units or additions in the Residential Unit Overlay (introduced into the District Plan by Independent Hearings Panel (IHP) Decision 53).
- 5.2 High Flood Hazard Management Areas (**HFHMAs**) in the District Plan are areas where flooding (modelled in a 1 in 500 year flood event) has been assessed as resulting in floodwater depths of greater than 1 metre, or where the depth (m) times speed of the water (m/sec) is greater than or equal to 1, taking into account 1m of sea level rise. These areas represent the parts of the Flood Management Areas where the consequence is the highest, i.e. the highest risk to life and of damage to property.
- 5.3 The Residential Unit Overlay (RUO) areas are a smaller subset of the High Flood Management Areas, located in parts of New Brighton, South New Brighton, Southshore and Redcliffs (**Attachment B** labelled [Appendix] 5.8.2.). They are those areas within the HFHMA which are residentially zoned and where the predominant flooding influence is from sea level rise in the next 100 years, rather than from rainfall and river flooding.
- 5.4 There are 1486 sites in total within the Residential Unit Overlay. It is difficult to quantify how much new development will be proposed, but the sites most clearly affected are the 74 vacant sites within the RUO. Most of these vacant sites are in Southshore south of Caspian Street (33) and Redcliffs (23). There is uncertainty about how the HFHMA Policy applies to additions to existing buildings and the construction of new buildings in the Residential Unit Overlay. To date, 31 out of 32 Resource Consent applications that proceeded to a decision have been approved. Some other applications were withdrawn.

Independent Hearings Panel decision

- 5.5 During the development of the replacement District Plan, the IHP inserted a rule into the District Plan requiring resource consent for new residential development (including on vacant residentially zoned sites) as a restricted discretionary activity in the RUO areas, rather than the more onerous non-complying activity that applies elsewhere in the HFHMA. It did not however amend the policy to provide for a different approach to that set out for the remainder of the HFHMA. The decision, as written by, and then released by the IHP was made operative in the District Plan (as is required by legislation). Staff have been applying the policy and rule as set out in the District Plan.

- 5.6 There has been some suggestions that staff altered the District Plan. Staff did not, and do not have the ability to do this (refer to advice from Simpson Grierson Attachment C, in particular para 3 of that advice).
- 5.7 The restricted discretionary activity status was intended to provide a pathway for new residential units or additions to them to be constructed in the RUO areas, where the effects of flooding are appropriately mitigated¹. The IHP set out in their decision that an application for a restricted discretionary resource consent should be refused if the matters of discretion set out in respect of flooding are incapable of being addressed by reasonable conditions.
- 5.8 The 'missing clause' which has been referred to in the media is a draft policy provided to the IHP by Council staff during the hearings as a drafting service. The IHP had not made a decision at this time and the policy was drafted prior to the inclusion of the RUO. No mention was made in the decision by the IHP about amending the policy. In that regard, there is no 'missing clause' - there is no 'omission' - the IHP simply did not include an amendment to the policy in its decision. The IHP [Secretariat] was responsible for writing the decision, which is what they did. They included the RDA Rule and the maps in the District Plan, which became operative at that point.
- 5.9 The Council obtained advice from Simpson Grierson (Attachment C) concerning the alleged omission of the policy by staff. The advice is that there is no evidence to support this allegation. Attachment D is a flowchart that illustrates the IHP procedure as it relates to this matter.

Issues since the District Plan became operative

- 5.10 Issues have arisen with the application of the restricted discretionary activity for new residential buildings (or additions) within the RUO given the strong policy direction in the IHP decisions to avoid increasing the potential risk. Many developments in the Residential Unit Overlay Area could be considered to increase potential risk to people's safety, wellbeing and property, including constructing a new building on a vacant site. In many cases this risk can be mitigated, and it is noted that 31 out of 32 Resource Consents for developments within the RUO, that consent has been granted.
- 5.11 Note the approach within the RUO as it pertains to subdivision is the same as for the broader HFHMA, and still considered appropriate (as it holds non-complying activity status).

Council actions to resolve

- 5.12 Council staff have undertaken a number of actions to clarify the policy interpretation since mid-2017 including:
 - 5.12.1 attending various meetings with community boards, community groups and resource consent applicants
 - 5.12.2 developing a communications plan to provide better information to residents on the HFHMA and RUO
 - 5.12.3 seeking legal advice on the interpretation of the policy direction, testing this advice through the resource consent process.
- 5.13 While Council staff are continuing to administer the District Plan as it stands, based on legal advice, a more effective solution would be to amend the Policy to more clearly articulate the outcomes sought for the Residential Unit Overlay. This would align with recent requests from community groups and Council resolutions to amend the district plan.

¹ Independent Hearings Panel Decision 53: Natural Hazards Stage 3, paragraphs 112-115

6. Option 1 –Draft a proposal to the Minister to use section 71 of the Greater Christchurch Regeneration Act 2016 to amend the High Flood Hazard Management Area policy to provide direction for the Residential Unit Overlay

Option Description

- 6.1 Under this option, the Council would prepare a draft proposal under section 65 of the Greater Christchurch Regeneration Act 2016, asking the Minister for Greater Christchurch Regeneration to exercise her powers under section 71 of the GCRA to amend the District Plan. The section 71 process is outlined in Attachment E.
- 6.2 This is the preferred option to make amendments to the District Plan than any of the other options available (Attachment A). The section 71 process is faster, allows this discrete matter to be dealt with effectively, and provides for certainty of scope.
- 6.3 The detail of the proposal will be developed with strategic partners, to ensure the wording of the amendment accurately addresses and provides policy guidance for resource consent applications in the Residential Unit Overlay.
- 6.4 While a policy was drafted during the IHP hearings (and was submitted to the IHP for their consideration) - and has been subsequently suggested by various parties as a solution - it wasn't tested in the IHP process. There is therefore an opportunity to now fully consider the policy direction to ensure it is fit for purpose.
- 6.5 Council staff will also seek the opportunity to liaise with relevant former members of the Independent Hearings Panel to provide an opportunity for them to give advice to us.
- 6.6 An alternative is to ask Regenerate Christchurch to propose the use of section 71, with the Council providing its views as a strategic partner. This is not recommended as it is more appropriate that the Council lead the process to amend its own District Plan.

If the Minister does not agree to the s71 proposal

- 6.7 The Minister has no power to amend the proposal, therefore must either accept or decline the proposal as it is drafted. If the Minister declines to exercise her powers to amend the policy, staff recommend that the Council proceed with a plan change once the Order in Council governing the District Plan is revoked. In January 2018, the Council asked the Minister to revoke the Order in Council. The Minister has been consulting with Strategic Partners as is required by the Act. As appropriate and if necessary, staff will liaise with the Minister's office staff around likely timeframes.
- 6.8 Once the Order in Council is revoked, the Council can initiate a plan change by applying to the Minister for the Environment for a direction to use the streamlined planning process under the Resource Management Act. The streamlined process would be faster than a standard plan change as there is no requirement for hearings and no appeals on the merits of the Minister's decision once it's made. However the streamlined process will be approximately 12 months to complete.
- 6.9 While there is uncertainty on when this the Order in Council is revoked, it is considered to be the most appropriate option if the section 71 process is unsuccessful. As it is a second option, staff will manage expectations around timeframes through a comprehensive communications plan once there is more certainty about the approach the Council will take.

Significance

- 6.10 The level of significance of this option is high consistent with section 2 of this report.
- 6.11 Engagement requirements are provided for in the GCRA (Attachment E process) and include input from strategic partners in the development of the proposal. Staff also propose providing

an opportunity for the former members of the Independent Hearings Panel to be involved in the process.

Impact on Mana Whenua

- 6.12 This option does involve a significant decision in relation to ancestral land or a body of water or other elements of intrinsic value, therefore this decision does specifically impact Ngāi Tahu, their culture and traditions. Most of the area in the Residential Unit Overlay is a landscape of cultural significance in the District Plan.
- 6.13 Te Rūnanga o Ngāi Tahu are a strategic partner under the GCRA and will be consulted throughout the section 71 process.

Community Views and Preferences

- 6.14 The owners of 74 vacant properties located in the Residential Unit Overlay are specifically affected by this option. The local community views are:
- 6.14.1 Landowners, residents groups, community boards and the media have raised numerous concerns with the approach taken to date. Staff have provided further information, attended meetings and briefed community boards and Councillors in response.
- 6.14.2 On 30 July 2018 Christchurch Coastal Residents United inquired to council staff and some Community Board members about the use of section 71 to resolve the issues with the Independent Hearings Panel decision.
- 6.14.3 A joint briefing of the Coastal-Burwood and Linwood-Central-Heathcote community boards was held in August 2018 following media interest in the matter.
- 6.14.4 Two community organised meetings were held the week of 10 September 2018 which were attended by the Mayor and Chief Executive.
- 6.15 Views will be sought through the public consultation process required under the GCRA (Attachment E).

Alignment with Council Plans and Policies

- 6.16 This option is consistent with Council's Plans and Policies, including the existing direction of Chapter 5 of the District Plan, and Strategic Objective 3.3.6 of the Natural Hazards Chapter.
- 6.17 A proposed amendment through the section 71 process will need to align with the broader Southshore and South New Brighton Regeneration Strategy. There is no overlap with the draft Otākāro-Avon River Corridor Regeneration Plan, which will also include new District Plan rules within the HFHMA but not in the Residential Unit Overlay area. The draft OARC will be specific to a Special Purpose zone only but should not be inconsistent with the approach taken in the section 71 process.

Financial Implications

- 6.18 Cost of Implementation – staff time to develop the proposal and finalise the amendment. If the former members of the Independent Hearings Panel are able to be involved in the development of the policy, there may be costs associated with this.
- 6.19 Maintenance / Ongoing Costs – Nil.
- 6.20 Funding source – existing operational budgets for the District Plan.

Legal Implications

- 6.21 There are statutory processes relevant to this decision. The risks involved in these processes are outlined in Risks and Mitigations below.
- 6.22 This report has been reviewed and approved by the Legal Services Unit.

Risks and Mitigations

- 6.23 The option is available only if it meets one of the purposes of the Greater Christchurch Regeneration Act and the Minister reasonably considers it necessary to use the s71 power. Officers consider that these criteria are met. The process in the Act is that the Council drafts the proposed change to the policy, gets views of strategic partners and Regenerate Christchurch, finalises the proposed change, and then asks the Minister to proceed with the proposed change. If the Minister proceeds with it, the Minister must consult the public on the proposed change. The Minister then decides whether to make the change to the District Plan.
- 6.24 There are a number of uncertainties in this process:
- 6.24.1 One is the views of the strategic partners and Regenerate Christchurch. Their feedback must be considered by the Council and reported to the Minister when asking the Minister to accept the proposal for public notification.
- 6.24.2 Another is that the Minister in that process has no power to amend the proposal. That creates a process risk if the change is controversial and there are submissions seeking change to it.
- 6.25 One way of reducing that process risk would be if the members of the IHP who issued Decision 53 were able to advise the Council on the drafting of the proposed change to the policy. That is the preferred option.

Implementation

- 6.26 Implementation dependencies - the section 71 process (Attachment E) is determined by the Greater Christchurch Regeneration Act. The views of strategic partners must be sought as part of the development process, the Minister must invite public comment, and the decision to approve or decline the proposal is made by the Minister. In the meantime, Council staff will continue to administer the District Plan as it stands, to provide support on a one on one basis via clinics, and develop communication to support interpretation of the process in the interim.
- 6.27 Implementation timeframe - it is anticipated that the process could take a matter of months to complete. Council staff will seek to expedite the process through working with strategic partners, including DPMC and the Minister, as appropriate.

Option Summary - Advantages and Disadvantages

6.27.1 The advantages of this option include:

- Using the Greater Christchurch Regeneration Act section 71 process is the simplest and quickest way to clarify the situation.
- The section 71 process allows for this discrete issue a singular policy change to be dealt with in isolation without impacting other projects or processes.
- The requirement for the Minister for Greater Christchurch Regeneration to either accept or decline, but not to make changes restricts the scope of possible changes which provides greater certainty of outcome and timing.
- The potential to consider the views of the former members of the Independent Hearings Panel who were involved in the original decision making, along with those of Council staff who have experience in using the rules in practice.
- This option has an alternative approach should the Minister decline the section 71 proposal. The alternative approach of seeking a plan change is the second fastest way to address this issue.

6.27.2 The disadvantages of this option include:

- It is not an immediate fix, and there will be pressure on all strategic partners to provide their views in an efficient manner as the process is expedited.

Attachments

No.	Title	Page
A	Alternative process options for changing HFHMA Policy 21 September 2018	
B	Residential Unit Overlay map - Appendix 5.8.2 District Plan	
C	Simpson Grierson narrative advice Chapter 5 Policy 6 September 2018	
D	Flowchart IHP process and decision making	
E	Process diagram - s71 GCRA	

Confirmation of Statutory Compliance

Compliance with Statutory Decision-making Requirements (ss 76 - 81 Local Government Act 2002).

(a) This report contains:

- sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages; and
- adequate consideration of the views and preferences of affected and interested persons bearing in mind any proposed or previous community engagement.

(b) The information reflects the level of significance of the matters covered by the report, as determined in accordance with the Council's significance and engagement policy.

Signatories

Authors	Libby Elvidge - Policy Analyst Maiki Andersen - Policy Advisor Natural Hazards
Approved By	David Griffiths - Head of Planning & Strategic Transport Brendan Anstiss - General Manager Strategy and Transformation

31. Proposed process to provide policy support to the Residential Unit Overlay

Council Resolved CNCL/2018/00001

That the Council:

1. Agrees to use the process in section 71 of the Greater Christchurch Regeneration Act 2016 to provide the policy to support the Residential Unit Overlay within the High Flood Hazard Management Area.
2. Direct staff to prepare a proposal to amend the District Plan and engage with strategic partners and Regenerate Christchurch as required under the Greater Christchurch Regeneration Act 2016.
3. Instruct staff with urgency to report back to the Council at an additional meeting of the Council to be held on 23 October 2018 at the latest for approval of an initial draft S71 proposal (including input from some former IHP members); to then consult with strategic partners immediately thereafter; and then to report back to the Council as soon as that advice has been received so that a final draft proposal to submit to the Minister for Greater Christchurch Regeneration can be submitted as soon as possible.
4. Note that staff are required to continue to process any resource consent applications in accordance with the current decisions, policy and rules of the District Plan, until such time as any new decisions are operative, but will continue to provide supportive advice to applicants including publication of information on the website.

Councillor East/Mayor

Carried