

23. Finalisation of the Draft proposal to amend the District Plan in relation to the Residential Unit Overlay using section 71 of the Greater Christchurch Regeneration Act 2016

Reference: 18/1089114

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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 approve the final draft proposal prepared under section 65 of the Greater Christchurch Regeneration Act 2016 to be sent to the Minister for Greater Christchurch Regeneration and Regenerate Christchurch.

Origin of Report

- 1.2 This report is being provided to fulfil Council resolution CNCL/2018/00231 of 15 October 2018; that staff report back to Council with a summary of feedback and a final draft proposal for approval to submit to the Minister and Regenerate Christchurch, in accordance with the next steps of the section 71 process.

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, the lack of clarity for residents wanting to build on vacant properties within the Residential Unit Overlay, and Council direction to resolve the issue with urgency.
 - 2.1.2 The community engagement and consultation outlined in this report reflect this assessment to the extent that the timeframes have enabled.

3. Staff Recommendations

That the Council:

1. Note feedback from strategic partners, along with the Department of the Prime Minister and Cabinet and Regenerate Christchurch, and affected community groups, which has been considered by staff.
2. Note additional legal advice has been provided on the proposed new rule 5.4.6.1 P2.
3. Approve the final draft proposal and supporting information and direct staff to send it to the Minister of Greater Christchurch Regeneration and Regenerate Christchurch immediately.

4. Key Points

- 4.1 This report supports the [Council's Long Term Plan \(2018 - 2028\)](#):
 - 4.1.1 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 an
- 4.2 On 15 October 2018 the Council resolved to approve the draft proposal for consultation with strategic partners along with DPMC and Regenerate Christchurch, and instructed staff to report back on 1 November with a final draft proposal (**Attachment A**).
- 4.3 Pursuant to section 66 of the Greater Christchurch Regeneration Act 2016 (GCRA), the proposal was circulated to strategic partners as well as the Department of the Prime Minister and Cabinet (DPMC) and Regenerate Christchurch for consultation. All feedback received was either in general supportive of the proposal or confirmed that the organisation had no specific comments or objections (see **Attachment B** for concise statement of views).
- 4.4 Following a workshop with affected community groups on 11 October 2018, and subsequent feedback, staff have investigated further matters in relation to clarity of terms in the policy and the scope of activities covered by the proposed rule P2.
- 4.5 No changes have been made to the draft District Plan amendments as a result of feedback, but additional information and actions to support the implementation of these changes is proposed such as internal practice notes, external guidance notes and monitoring.
- 4.6 Additional legal advice has been provided on the proposed new rule 5.4.6.1 P2 (See the package of supplementary information, Item 6 in **Attachment C**). This advice confirms that inserting the proposed rule in the District Plan is lawful if the Greater Christchurch Regeneration Act process is followed.
- 4.7 To improve clarity and understanding of the existing planning framework and context, the current restricted discretionary rule 5.4.6.2 RD2, along with other relevant district plan provisions have also been shown in the package of supplementary information, Item 2 (**Attachment C**).

5. Context/Background

The draft proposal

- 5.1 The draft proposal (**Attachment A**) is to:
 - 5.1.1 Amend Policy 5.2.2.2.1(b) of the Christchurch District Plan to support the Residential Unit Overlay rule 5.4.6.2 RD2. Under this amended policy, resource consent may be granted where the future risk from coastal flooding is able to be appropriately mitigated to an acceptable level;
 - 5.1.2 Broaden the application of an existing rule which allows replacement of existing houses within the Residential Unit Overlay as a permitted activity. This will allow properties which had a house on them prior to the earthquakes (irrespective of when the house was demolished) to have a house rebuilt without the need for a resource consent, where the rebuilt house is of a similar scale, and position on the site;
 - 5.1.3 Make all other consequential changes that flow from those two changes.

- 5.2 The purpose of this amendment is to give effect to the Independent Hearings Panel (IHP) Decision 53 in relation to the Residential Unit Overlay and provide certainty for property owners rebuilding houses in this area.
- 5.3 The changes proposed will allow for differing levels of assessment and regulation in the High Flood Hazard Management Area (HFHMA) based on the immediacy of risk, appropriateness of mitigation, and pre-earthquake use of a site. These amendments are consistent with the overarching approach in the District Plan, and are targeted to areas which are predominantly influenced by sea level rise.
- 5.4 The proposal is currently in a final draft form and staff are seeking approval to finalise. If approved, the next step required by the GCRA is to submit the proposal to the Minister and to Regenerate Christchurch.
- 5.5 Once sent to the Minister, she will then make a decision whether to proceed (section 67 of the GCRA), and if so, will then invite public comment (section 68 of the GCRA), and subsequently make a decision on whether to exercise power in section 71 (section 69 of the GCRA). DPMC have advised that to make it more likely that the final decision is made before Christmas, the proposal will need to be submitted to the Minister as soon as possible.
- 5.6 If for any reasons further changes are desired by the Council, it is likely that, best case timeframes will be affected.

Feedback from strategic partners, DPMC and Regenerate Christchurch

- 5.7 Following the Council meeting on 15 October 2018, the draft proposal was circulated to strategic partners identified in the Act – Environment Canterbury, Selwyn District Council, Waimakariri District Council and Te Rūnanga o Ngāi Tahu, along with DPMC and Regenerate Christchurch for consultation.
- 5.8 All feedback was either in general support of the approach and draft wording or confirmed that the organisation in question had no specific comments or objections. See the concise statement of views in **Attachment B**.
- 5.9 Additional matters and suggestions which were raised can be grouped into the following themes:
 - 5.9.1 Consistent application of the amended policy – Regenerate Christchurch recommend Council prepares a Practice Note for consents staff and implements a Quality Assurance process for advice provided and decisions made.
 - 5.9.2 Avoiding legacy issues for future climate change adaptation – Regenerate Christchurch and Te Rūnanga o Ngāi Tahu note the need to continue to inform people of the risks and future potential impacts of sea level rise, and ensure no legacy issues are created for future climate change adaptation projects and strategies.
 - 5.9.3 Alternative mechanisms to respond to change in risk over time – Regenerate Christchurch have suggested Council monitor the application of the amended policy for evidence as to when or if mitigation of flood risk is or will not be possible for particular properties to inform future strategic approach to coastal hazards.
 - 5.9.4 Providing for local commercial services – Regenerate Christchurch note the impact to local commercial services in the area, which is out of scope of this project, but recommends Council considers (through a separate process) a more permissive activity status to allow these small commercial sites to redevelop
 - 5.9.5 Value in conditions for hazard mitigation in P2 rule – Environment Canterbury suggested consideration of including conditions on the permitted activity rule to require appropriate hazard mitigation in the design of a dwelling.

- 5.10 Staff appreciate the suggestions above and intend to include actions on the first three of these matters as part of the package of internal processes and communications which will support the implementation of the proposal. These are outlined in more detail in 5.25 below.
- 5.11 As is discussed in more detail in 5.15, the consideration of a more permissive approach to commercial services is out of scope for this work, but may be able to be addressed through the Southshore and South New Brighton Regeneration Strategy and future plan changes.
- 5.12 In regards to including further hazard mitigation design conditions or standards on the permitted activity rule, this would be difficult to do in practice as appropriate mitigation requires assessment on a case by case basis. This would be inconsistent with the planning principles of permitted activities which need to provide certainty, and the intent of the original permitted activity rule which P2 is derived from.
- 5.13 No changes have been made to the draft proposal itself as a result of the feedback received.

Community feedback

- 5.14 On 11 October, representatives from the Coastal-Burwood Community Board, the Linwood-Central-Heathcote Community Board, CCRU, South Brighton Residents' Association, Southshore Residents' Association, and Redcliffs Residents' Association were invited to a workshop with Council staff. The purpose of the workshop was to update affected community boards and Resident's Associations on the process, proposed changes and potential implications, and provide opportunities for feedback.
- 5.15 There was general support for the proposed approach by four out of the five community groups, but four matters were raised for further consideration by staff. The staff response on these matters and actions intended to be taken are set out in the table below:

Feedback	Staff Response	Action
Whether "unacceptable risk" and "appropriate mitigation" could be further defined or clarified	Agree further clarity could be provided, but a definition is not the appropriate mechanism to do that as both terms are site specific, hazard specific, and in the case of appropriate mitigation – design specific, so they require assessment in the circumstances of each consent.	No change to the draft proposal. External guidance and internal practice notes to be prepared to support implementation of the policy
Whether there is enough scope within the P2 rule to accommodate access structures necessary to meet floor level requirements	Proposed rule P2 can already include access ramps and stairs which are necessary to meet new floor level requirements, as the building only has to be similar, not exactly the same. Decks are generally for amenity, and in some cases can have adverse effects on neighbours, so it is not considered appropriate for these to be included in this exemption.	No change to the draft proposal. Already partially provided for to the extent that is considered appropriate.
Whether it would be appropriate to include commercial buildings in the P2 rule	The purpose and scope of this process was confirmed through the Council resolution dated 27 September and was to provide more policy support and clarity for residential activities within the Residential Unit Overlay, where they are currently subject to the restricted discretionary rule	No change to the draft proposal, as the suggestion is out of scope. May be able to be addressed through the Southshore and South

	<p>RD2. This rule relates specifically to <u>residential units</u>.</p> <p>For this reason the consideration of commercial building is out of scope of the section 71 process and could lead to inconsistency with the IHP Decision 53.</p>	<p>New Brighton Regeneration Strategy instead.</p>
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- 5.16 The South Brighton Residents Association did not support the proposal in the absence of protection measures against flood and erosion and the remediation of earthquake damage in the suburb. The relief sought by this group was to request that the Minister for Greater Christchurch Regeneration (the Minister) suspend the District Plan until these matters have been dealt with.
- 5.17 The issues raised by the South Brighton Residents Association are outside the scope of this work, but these have been acknowledged and passed on to staff working on related projects. It is not possible for the District Plan to be suspended, as the Resource Management Act requires that there must at all times be a district plan for each district.

Legal advice on P2

- 5.18 In response to feedback at the Council meeting on 15 October, additional legal advice has been provided on the proposed new rule 5.4.6.1 P2 (**Attachment C**).
- 5.19 This advice outlines the lawfulness of the proposed rule and confirms it is lawful if it is inserted into the District Plan by the Minister following the process set out in the GCRA.

Scope and intent of the proposal

- 5.20 The intent of the proposal is to give better effect to IHP Decision 53 in relation to the Residential Unit Overlay and provide certainty for property owners rebuilding houses in this area. It is not about revisiting the merits of decision 53 or developing a new or wider approach to areas affected by sea level rise or coastal hazards in the future.
- 5.21 Any changes made to the District Plan as a result of this proposal will affect only a small number of properties in a discrete area and will not predetermine any future approach or strategies on wider issues.
- 5.22 The evidence underpinning the Residential Unit Overlay relates to depths and velocity of flooding, and includes 1m of sea level rise in the modelling. It does not address the full range of coastal hazards the area may be exposed to, or any updated information available since the IHP hearings in June 2016. Further work to develop coastal hazard provisions in the District Plan is necessary to ensure that a comprehensive and strategic approach is taken to this risk.
- 5.23 In Decision 53, the IHP considered it appropriate for:
- The replacement and repair of existing residential buildings to be permitted as it does not give rise to unacceptable risk; and
 - A restricted discretionary consenting path to be provided for new residential units on existing residentially zoned land where the flooding risk is predominantly from sea level rise and appropriate mitigation of flood risks is possible, due to the fact that the risk is a future rather than a current risk.
- 5.24 A more enabling approach was not considered appropriate for the rest of the HFHMA outside the Residential Unit Overlay due to the current high flood hazard risk, and for any subdivision (either within or outside the Residential Unit Overlay) due to the potential for that giving rise to additional and unacceptable long term risks to people property and infrastructure.

Supporting the implementation of the proposal

- 5.25 It is evident from the comments received that clear advice and direction is necessary to support the changes proposed to the District Plan. Council staff intend to take the following actions to support implementation:
- Update Land Information Memoranda (LIM) notations for properties covered by the HFHMA and Residential Unit Overlay to clarify that development restrictions may apply, and to provide links to further information;
 - Produce practice notes for processing planners and guidance notes for property owners seeking resource consent to ensure consistent application of the amended policy and clarify the terms “appropriate mitigation” and “unacceptable risk”;
 - Update Council website information on the HFHMA and Residential Unit Overlay, ensure applicants and the general public have access to information clarifying the terms “appropriate mitigation” and “unacceptable risk” so far as possible, and communicating extent and nature of future risk in the area through future work programmes.
 - Monitor the application of the amended policy, to establish an evidence base of circumstances where mitigation of flood risk is not possible for particular properties, so as to inform future strategic approach to coastal hazards.

Past legal opinions

- 5.26 A number of legal opinions have been obtained since late 2017 to clarify the interpretation of the HFHMA policy and the process undertaken during the IHP hearings. See **Appendices D-H**.

6. Option 1 – Approve the attached proposal and send to the Minister and Regenerate Christchurch

Option Description

- 6.1 Staff will send the final proposal to the Minister and Regenerate Christchurch, along with the concise statement of views of strategic partners along with DPMC and Regenerate Christchurch, as per the legislative requirements for the section 71 process. If no changes are required by Councillors, this can be done immediately, providing the Minister with more time to potentially make the decisions required before Christmas.

Significance

- 6.2 The level of significance of this option is high consistent with section 2 of this report.
- 6.3 The views of strategic partners, along with DPMC and Regenerate Christchurch have been sought on the draft proposal, as is required under the GCRA for this process.

Impact on Mana Whenua

- 6.4 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 an area of cultural significance in the District Plan.
- 6.5 Te Rūnanga o Ngāi Tahu (TRONT) are a strategic partner under the GCRA and have provided their views as follows:
- That the proposed changes do not directly impact any matters of cultural significance to manawhenua and do not raise any issues in respect of objectives and policies within the Mahaanui Iwi Management Plan 2013;
 - That the matters of concern that have led to this proposal relate to the detail of wording, interpretation and administrative processes that are the responsibility of the Council, and as

such TRONT generally support any changes to the operative plan to clarify the intent and approve administration.

- 6.6 Additional comment was provided regarding the need to continue to inform people of the risks and future potential impacts of sea level rise, and ensure no legacy issues are created for future climate change adaptation projects and strategies.

Community Views and Preferences

- 6.7 The views of directly affected communities in Southshore, South New Brighton, New Brighton and Redcliffs were sought through earlier engagement with Community Boards and Residents' Associations.
- 6.8 The views of the wider public will be sought by the Minister through the public consultation process required under the GCRA.

Alignment with Council Plans and Policies

- 6.9 This option gives further effect to IHP Decision 53 in relation to the Residential Unit Overlay and is consistent with the existing direction relating to natural hazards in the District Plan. This direction seeks to avoid unacceptable risk to people, property and infrastructure.
- 6.10 Approval of the proposal will not predetermine or limit different potential approaches being considered through other programmes of work. Key work programmes are outlined below:
- The Council is in the early stages of engaging with coastal communities to undertake adaptive planning for coastal hazards as recommended by the Ministry of the Environment. This is the step required before any district plan provisions are developed. The first project in this work is the development of a Regeneration Strategy for Southshore and South New Brighton which is being led by Regenerate Christchurch, and supported by Christchurch City Council and Environment Canterbury. A programme is being drawn up for engagement with other coastal communities. This work sits under the "Living with Water" programme.
 - Any engagement with communities on coastal hazards will be informed by the latest Tonkin and Taylor 2017 Coastal Hazard Assessment report, and any relevant new or updated information.
 - Other related projects include work across the Council to develop an updated climate change strategy and actions plans to meet Global Covenant of Mayors for Energy and Climate Change commitments, and various Land Drainage Recovery Plan projects related to multi-hazard floodplain management approaches.

Financial Implications

- 6.11 Cost of Implementation – Staff time to continue progressing the proposal and supporting DPMC on this where needed.
- 6.12 Maintenance / Ongoing Costs - Nil
- 6.13 Funding source - Existing operational budgets for the District Plan

Legal Implications

- 6.14 This report has been reviewed and approved by the Legal Services Unit
- 6.15 The legal considerations are accurately described elsewhere in this report, its attachments, and in the report on 15 October 2018.

Risks and Mitigations

- 6.16 As Council has already resolved in the Council meeting on 27 September 2018, to request the Minister use the section 71 process to resolve the uncertainty for residents seeking to build in the Residential Unit Overlay as soon as possible, the risks and mitigations discussed in this report are restricted to the effectiveness of the proposal in meeting this outcome.

- 6.17 If the proposal is not approved or substantive changes are required, this will delay the proposal being sent to Minister and Regenerate Christchurch. Depending on the changes sought, this risk may be able to be mitigated by:
- Approving the draft proposal to be finalised with no changes, and providing additional information to support implementation, as discussed in 5.25, or
 - Utilising more appropriate workstreams to progress future work.
- 6.18 Decision timeframes of the Minister are subject to her availability, how quickly advice is able to be provided, the number and complexity of written comments received, and whether the Minister wants to inform Cabinet of the final decision.
- Council staff have been working with DPMC to reduce timing risks.
 - These risks may be further mitigated by approving the draft proposal to be finalised with no changes, so it can be sent to the Minister and Regenerate Christchurch immediately, providing the Minister with more time to make decisions before Christmas.
- 6.19 If substantive changes are made to the draft proposal, there is a risk of not achieving certainty and giving effect to the IHP decision. Approving the draft proposal to be finalised with no changes will mitigate this risk. For example:
- If the policy change only is made, but the proposed rule change is not included, this will not provide certainty for owners rebuilding in affected areas and will therefore continue an existing fairness and equity issue.
 - Further changes to the draft proposal to include commercial buildings in the permitted activity rule would go beyond the scope of the IHP decision and be inconsistent with this approach.
- 6.20 There is a risk that creating a more enabling framework for development in these areas will result in some properties being built in a way that does not fully mitigate the future risk from sea level rise and other coastal hazards. This risk is partially mitigated by:
- The scope of the proposal, which for properties subject to the proposed permitted activity rule P2, would apply to up to 32 properties;
 - The fact that the pre-earthquake risk will not be increased, so the effects of replacement houses are no different to the effects that previously existed;
 - The development of a strategic approach to risk from sea level rise and coastal hazards in the future through the Living with Water programme and the Southshore and South New Brighton Regeneration Strategy.

Implementation

- 6.21 Implementation dependencies - Changes outlined in the proposal will only be made if approved by the Minister under section 69 of the GCRA to exercise section 71 of the GCR Act to amend the Christchurch District Plan.
- 6.22 Implementation timeframe – If approved, staff will circulate the final proposal immediately to the Minister and Regenerate Christchurch.

Option Summary - Advantages and Disadvantages

- 6.23 The advantages of this option include:
- Continuing to facilitate a timely solution to the issue raised by coastal communities;
 - The draft proposal is generally supported by four out of five community groups, all strategic partners, along with DPMC and Regenerate Christchurch, and Council staff;

- The draft changes will provide greater certainty for the affected communities to rebuild in areas predominantly affected by sea level rise, without increasing the pre-earthquake risk of flooding from sea level rise.

6.24 The disadvantages of this option include:

- It does not fully address all matters raised by community, where this was not appropriate or necessary based on staff investigations.
- The proposed rule P2 will allow a limited number of houses to be built in a way that may not fully mitigate future risk from sea level rise, although they will be required to meet minimum finished floor levels. However this does not predetermine future work on implementing a strategic approach to future hazards or prevent changes to the District Plan at a later date.

Attachments

No.	Title	Page
A ↓	Draft section 65 report - Residential Unit Overlay District Plan Changes	14
B ↓	Concise statement of views by strategic partners, Regenerate Christchurch and DPMC on draft proposal - Residential Unit Overlay	24
C ↓	Supplementary information for s65 report	26
D ↓	Simpson Grierson legal opinion re. HFHMA District Plan policy 5.2.2.2.1(b) - 10 October 2017	65
E ↓	Simpson Grierson legal opinion re. HFHMA interpretation - 21 February 2018	75
F ↓	Brookfields draft legal opinion re. High Flood Hazard Management Area - 10 August 2018	78
G ↓	Simpson Grierson memo re. Policy 5.2.2.2.1(b) - summary of process - 5 September 2018	98
H ↓	Brookfields letter of advice to CCC re. HFHMA - 26 September 2018	104

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

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