

Planning Assessment of District Plan Character Areas

The purpose of this report is to assess the impact of activity status on Character Area outcomes, and consequently, the appropriate activity status to apply within Plan Change 14.

The Character Area overlays of the Christchurch District Plan became operative in December 2016.

There are currently 15 Character Areas across the City. These are located in different residentially zoned sites, including Residential Suburban, Residential Suburban Density Transition, Residential Medium Density, Residential Banks Peninsula and the Residential Hills zone. There are slightly different triggers for assessment, depending on which zone the activity is located, for example, within the Residential Suburban zone, any relocation of a building, new building or addition or alteration to an existing building, when it is visible from the street, located between the road boundary and the main residential unit or involves changes to the front façade of the main residential unit, requires assessment as a controlled activity (District Plan rule 14.4.3.1.2).

There are a number of other triggers for assessment and for the majority of non-compliances, a resource consent application within the character area, is assessed against the matters in rule 14.15.23.

In some instances, a proposal within a character area can be assessed as a restricted discretionary activity, such as when the proposal does not comply with the site density rule (14.4.3.2.1). In this instance the application would still be assessed against the matters of discretion in 14.15.23, however, there would be discretion to potentially notify or decline the resource consent.

When an application is to be assessed as a controlled activity, as detailed in section 104A of the Resource Management Act, the consent has to be granted by the Council and cannot be publically or limited notified. The adverse effects of the activity can only be managed through consent conditions and conditions can only be for matters over which control has been reserved.

A restricted discretionary activity may be notified and may also be refused, or granted with conditions. For restricted discretionary activities the Council limits the range of matters that can be considered. In this case, the application would be assessed against the matters in rule 14.15.23 of the District Plan.

The purpose of the Character Area Overlay is to ensure the maintenance of character values identified for specific area. The Character Areas were recently re-assessed by Boffa Miskell Limited, as a potential Qualifying Matter, in conjunction with Council's Intensification Planning Instrument through Plan Change 14. As a result of this and pre-notification submissions and further review, amendments are proposed via Plan Change 14 that remove, amend, or add boundaries to the Character Areas.

Triggers for Assessment for Activities within a Character Area

The below tables outline the different triggers for assessment within character areas. It can be seen from below that, with the exception of some additional matters in the Residential Banks Peninsula zone, activities within character areas are to be assessed against the matters in 14.15.23 of the District Plan.

Residential Suburban and Residential Suburban Density Transition

Activity status rule	Standard not met	Matters of control or discretion	Notification clause
14.4.3.1.3 RD8	14.4.3.2.1 – Site Density – Character Area 8 – Beverley only	Character Area Overlay – Rule 14.15.23	Can be notified
14.4.3.1.2 – C1	14.4.3.2.17 – Landscaped Areas	Character Area Overlay – Rule 14.15.23	Cannot be notified
14.4.3.1.2 – C1	Relocation of a building, new building and alterations or additions to existing buildings, accessory buildings, fences and walls, when visible from the street, located between the road boundary and the main residential unit or involves changes to the front façade of the residential unit.	Character Area Overlay – Rule 14.15.23	Cannot be notified

Residential Medium Density

Activity status rule	Standard not met	Matters of control or discretion	Notification clause
14.5.3.1.3 RD6	14.5.3.2.4 – Site Density – Character Area 8 – Beverley - only	Character Area Overlay – Rule 14.15.23	Can be notified
14.5.3.1.2 C1	14.5.3.2.6 – Landscaped Areas	Character Area Overlay – Rule 14.15.23	Cannot be notified
14.5.3.1.2 C1	Relocation of a building, new building and alterations or additions to existing buildings, accessory buildings, fences and walls, when visible from the street, located between the road boundary and the main residential unit or involves changes to the front façade of the residential unit.	Character Area Overlay – Rule 14.15.23	Cannot be notified

Residential Banks Peninsula Zone

Activity status rule	Standard not met	Matters of control or discretion	Notification clause
14.8.3.1.3 RD3	Within the Lyttelton Character Area Overlay – <ul style="list-style-type: none"> - External alterations or additions to, or demolition of existing buildings, except for the demolition of accessory buildings - The erection of a building and accessory buildings, except within the Lyttelton Port Influences Overlay - The relocation of a building onto a site. 	Character Area Overlay – Rule 14.15.23	Can be notified

Activity status rule	Standard not met	Matters of control or discretion	Notification clause
14.8.3.1.3 RD4	Within the Akaroa Character Area overlay – <ul style="list-style-type: none"> - External alterations or additions to, or demolition of existing buildings, except for the demolition of accessory buildings - The erection of a building and accessory buildings - The relocation of a building onto a site 	Character Area Overlay – Rule 14.15.23	Can be notified
14.8.3.1.3 RD5	14.8.3.2.2 – Site Density – Lyttelton only	Character Area Overlay – Rule 14.15.23	Can be notified
14.8.3.1.3 RD6	14.8.3.2.3 – Site Coverage – Lyttelton only	Character Area Overlay – Rule 14.15.23	Can be notified
14.8.3.1.3 RD7	14.8.3.2.6 – Landscaping – Akaroa only	Street Scene – Rule 14.15.17	Can be notified
14.8.3.1.3 RD8	14.8.3.2.4 – Minimum building setback from internal boundaries	Impacts on neighbouring property – Rule 14.15.3 Minimum building window and balcony setback – Rule 14.15.18	Can be notified

Residential Hills

Activity status rule	Standard not met	Matters of control or discretion	Notification clause
14.7.3.1.2 – C1	Relocation of a building, new building and alterations or additions to existing buildings, accessory buildings, fences and walls, when visible from the street, located between the road boundary and the main residential unit or involves changes to the front façade of the residential unit.	Character Area Overlay – Rule 14.15.23	Cannot be notified

Permitted Baseline

When assessing any application, the adverse effect of activities permitted by the District Plan may be disregarded. This is called the “permitted baseline”.

In the context of assessment of an application within a character area there are very few true permitted baseline scenarios. This is because the controlled activity status requires that any new buildings, or relocation, alteration, addition, accessory building, fences or walls, when visible from the street require resource consent.

One exception to this is that any additional vehicle access to a site is a permitted activity if the site frontage is greater than 16m in width and providing parking to the front of a building also would not require resource consent, provided that a 2m landscape strip along the road boundary was provided. This is at odds with the matter of discretion that states that the location of vehicle access and parking areas within the front yard or where it visually dominates the street scene should be avoided.

Current Matters of Discretion

The current matters of discretion for the Character Area Overlay are the matters over which control is reserved. As above, for the majorities of activities in character areas, these matters are:

- a. **Area context**
 - i. Whether development recognises the distinctive landforms, landscape setting and development patterns of the character area in respect to:
 - A. retaining and enhancing the areas' natural features;
 - B. integrating with the existing pattern and grain of [subdivision](#) and [building](#);
 - C. the extent and scale of vegetation retained and/or provided;
 - D. the relationship with [adjoining sites](#) and [buildings](#), including any recorded [historic heritage](#) values;
 - E. the visual coherence of the area.
- b. **Site character and street interface**
 - i. Whether the development complements the residential character and enhances the amenity of the character area by:
 - A. providing a balance of open space to [buildings](#) across the [site](#) consistent with the surrounding [sites](#) within the block, and to a lesser extent, the wider area;
 - B. providing a front yard [building setback](#) which is consistent with the overall depth and pattern of the character area, and in particular with other [sites](#) within the street;
 - C. retaining the front yard for outdoor living, open space, tree and garden planting
 - D. avoiding the location of [vehicle access](#), [parking areas](#) and garaging within the front yard, or where it visually dominates the streetscene;
 - E. having low [height](#) or no fencing on the street frontage; and
 - F. orientating the [building](#) on the [site](#) to face the street.
- c. **Built character**
 - i. Whether the development supports the residential built character values of the character area in regard to:
 - A. the scale and form of the [building](#), including the roof form;
 - B. architectural detailing including features such as verandas, materials, [window](#) and front entry design and placement;
 - C. complementary and compatible [building](#) design;
 - D. the recognition of recorded [historic heritage](#) values of adjacent [buildings](#).
- d. **Akaroa and Lyttelton**
 - i. In addition to the matters listed above, in respect to Akaroa and Lyttelton character areas, whether the development:
 - A. retains important views from public places;
 - B. reduces the potential for visual dominance of the development when viewed from elsewhere within the viewing catchment;

- C. responding through the use of the landscape at the street interface to the existing informality or formality of the streetscape;
 - D. retains residential [buildings](#), including [accessory buildings](#), that were built prior to 1945 and/or that contribute to the architectural traditions and character values;
 - E. reflects the small scale and simple forms of residential [building](#); and
 - F. recognises any recorded [historic heritage](#) values adjacent and opposite to the development.
- ii. Where the [site](#) is within the Akaroa Heritage Area, the matters set out in Rule [9.3.6.3](#).

Whilst S104A of the RMA states that the consent authority cannot decline consent for the erection of a new building, the controlled activity matters in 14.15.23 enable the consent authority to impose conditions that relate to any of the above matters. In some instances, conditions have gone as far as to require a different design of a building (such as RMA/2018/2601 – 25 Petrie Street), however, the controlled activity status is more limiting than a restricted discretionary activity as conditions cannot be so limiting as to effectively prevent the activity from taking place (i.e. declining it).

Limitation of Above Rules

As can be seen from above, with the exception of the site density rule and some additional rules in the Residential Banks Peninsula zone, assessment of the effects within a character area are controlled activities and therefore consent cannot be declined, nor conditions imposed that would effectively prevent the activity from taking place.

The matters of discretion, for all of the controlled activities in the Character Areas, are assessed by the same matters of discretion, rule 14.15.23. These are split into 4 areas, area context, site character and street interface, built character and an additional matter solely for Akaroa and Lyttelton.

Whilst the matters of discretion are quite comprehensive, due to the few numbers of triggers for assessment in the Character Areas and that these are controlled activities, satisfactory outcomes have been limited, as detailed by the assessment and case studies, undertaken by Chris Wang, Council Graduate Urban Designer and contained in Appendix 6 of the Technical Analysis of Proposed Character Area Provisions technical report, undertaken by Josie Schröder.

For example, in RMA/2018/2438 – 51 Tainui Street, a garage in the front setback was approved. This application was restricted discretionary overall, due to the garage also breaching a street scene setback rule. The garage was 2.4m from the road boundary, when the District Plan required a 4.5m setback. It was considered that, had the garage position been amended slightly so that it was 4.5m from the road boundary, the proposal would then be for a controlled activity. If the garage had been 4.5m from the road boundary, it would still have been between the road boundary and the dwelling. It was considered that, only a small change to the proposal would mean that only the character area matters of discretion could be considered and therefore the weighting of the non-compliance effect was low.

Given that this was a proposal for a garage on an existing site with an existing dwelling, to require the garage to be located at the rear of the site, would have required the removal of an existing building. Therefore, whilst conditions requiring garages being located at the rear of the site had been included on proposals in character areas in the past, it was considered by the processing

planner that it could not be included on this consent. The conditions were therefore limited to landscaping and materials required. Had the character area assessment been restricted discretionary, there would have been more scope to potentially decline the consent.

Another example where it was considered that the proposal did not meet the expected outcomes for the character area was RMA/2017/1118 – 16 Heaton Street. The proposal was for a three lot subdivision with land use for a dwelling on each lot. The consent was restricted discretionary overall, due to a number of non-compliances with the District Plan. House 1, which fronted Heaton Street, was considered to not be in keeping with the existing subdivision pattern or architectural style in the character area. The applicant did make some changes to the roof design, with the aim for the new dwelling to be more in keeping with the buildings in the area, however not all of the changes suggested by the Council urban designer were made. The processing planner ultimately considered that, whilst weighting up all the relevant matters in the consent, that the application could be approved. In particular, whilst the Council urban designer noted that the proposed house 1 had a reduced setback in relation to the neighbouring character dwellings along Heaton Street, the processing planner considered the setback was not out of keeping with the wider area (the site was located on the edge of the character area). The District Plan rules for the Residential Suburban zone, which this site was located, require a 4.5m setback from the road boundary. Any breach of this rule is to be assessed as a restricted discretionary activity. Whilst not explicitly stated in the report, it is considered that the processing planner may have given this rule more weighting, than the character area matters of discretion.

There have been occasions where the outcomes sought within the character areas have been achieved. For example, RMA/2018/2601 - 25 Petrie Street, was for a new dwelling with attached garage in the Dudley character area. The proposal was for a dwelling of a modern design, with the garage to the front of the building and within the front yard setback. The urban designer considered it would be a visually dominant feature of the site when viewed from the street.

The application was a controlled activity and both the urban designer and Council planner considered that the application could not be supported in its current form. In this instance, a condition of consent was included stating that a number of design changes were required, including that no buildings or structures, including the garage could be located within 7m of the road boundary and the garage could not be in front of the façade of the residential unit. As these changes were achieved via a condition, rather than decline of the consent and re-submission, the changes sought were still limited. Whilst a number of changes were required by the condition of consent, the decision still allowed for a four bedroom dwelling with an attached double garage. Had the site been smaller or not as wide, this same outcome may not have been able to be achieved as a condition requiring these changes would have had the effect of preventing the activity from taking place.

RMA/2018/2412 – 114 Dyers Pass Road, was for the conversion of an existing garage for use as a residential unit. Whilst the application was restricted discretionary overall, a number of the built form standard non-compliances were for traffic related breaches and therefore the matters of discretion did not overlap with the character area matters of discretion. The processing planner recommended a number of conditions regarding landscaping and also required the addition of windows within the building elevation facing Dyers Pass Road. The majority of the site was not visible from the street, due to the steep topography of the site, with the road boundary being the

highest part of the site. In this instance the processing planner concluded that, on balance, the conditions would be sufficient to achieve the outcomes sought in the character area.

Whilst most of the triggers for assessment in character areas are controlled activities, a breach of site density is to be assessed as a restricted discretionary activity. The urban design analysis of previously granted resource consents in character areas found that there were not many applications for a breach in the site density.

Restricted discretionary activities can potentially be notified and or declined. However, if the only trigger in a character area is the site density rule, whilst the matters of discretion are quite comprehensive, the assessment has to be considered against what the anticipated level of development could be, which may be the same building, on a slightly larger section. Therefore, having only one rule in a character area (excluding Residential Banks Peninsula), which is a restricted discretionary activity, limits the scope of assessment. The urban design assessment noted that of the 20 resource consents analysed, 12 had a Restricted Discretionary activity status as the result of other non-compliances with District Plan provisions, including building setback, landscape and site coverage. However, as noted above in the 114 Dyers Pass Road example, if the matters of discretion do not overlap, the application could not be declined based on character area attributes not being met.

Requirements for conditions of resource consents

As many of the character area assessments are controlled activities, outcomes can only be controlled via conditions. However, there are limitations to how a condition can mitigate or enhance a proposal. Conditions regarding building materials, location, species and height of landscaping or fence height and design are regularly included as conditions of consent. As shown in the urban design technical report and considered above, conditions aiming to alter the location of a building or the design of a building have been included only on a handful of occasions, where they have been able to included, because they were not considered to be a condition which fundamentally altered what the applicant had applied for. If a condition would fundamentally alter what has been applied for, this would be comparable to declining the condition and would therefore be invalid. A full redesign of a proposal via a condition of consent is also not possible with a controlled activity. As shown in the 25 Petrie Street example above, whilst a number of positive outcomes were achieved via conditions of consent, full control of the design was not possible. The controlled activity status can therefore undermine the aim of maintenance of character area values.

Conclusion

It is recommended that a restricted discretionary activity status be applied to the character area overlay provisions. These will need to be associated with comprehensive matters of discretion which allow for the whole of the proposal to be assessed, including provision of landscaping, materials used, scale of proposed buildings and building design features to ensure positive character outcomes.