

3. Draft Section 71 proposal to amend the District Plan in relation to the Residential Unit Overlay for consultation

Reference: 18/1030133

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

Brent Pizzey, Associate General Counsel, Legal Services Unit

1. Purpose and Origin of Report

Purpose of Report

- 1.1 The purpose of this report is for the Council to approve for consultation with strategic partners (including Department of Prime Minister and Cabinet [DPMC] and Regenerate Christchurch), the draft proposal prepared under Section 65 of the Greater Christchurch Regeneration Act (GCRA) 2016.
- 1.2 The proposal is to amend Policy 5.2.2.2.1(b) of the District Plan to support the Residential Unit Overlay rule and broaden the application of the existing rule which permits replacement of existing houses within the Residential Unit Overlay.

Origin of Report

- 1.3 This report is being provided to fulfil Council resolution CNCL/2018/00197 of 27 September 2018 that staff prepare and report back to Council with a draft Section 71 proposal to amend the District Plan, before consulting with strategic partners.

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.
- 2.2 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.
- 2.3 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. Approve the draft proposal, proposed changes to the District Plan and supporting information for consultation with strategic partners, the Department of the Prime Minister and Cabinet, and Regenerate Christchurch for feedback.
2. Note that strategic partners, the Department of the Prime Minister and Cabinet, and Regenerate Christchurch have been supportive of the urgency that we are seeking and we expect to receive their feedback within seven working days.
3. Note that staff will report back to Council on 8 November 2018 or before, with a summary of feedback and any amendments to the proposal, in order for the proposal to be submitted to the Minister by 14 November 2018 or before.

4. Key Points

- 4.1 This report supports the:
- 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 27 September the Council resolved to initiate the process in section 71 of the GCRA to amend the existing policy to support the Residential Unit Overlay within the High Flood Hazard Management Area (HFHMA). This process requires a draft proposal to be prepared (**Attachment A**). The Council requested that staff report back with a draft before circulating it to strategic partners, DPMC and Regenerate Christchurch for feedback.
- 4.3 An additional rule amendment was developed by Council staff to broaden the application of an existing rule providing for permits replacement of existing houses. This is expected to resolve fairness and equity issues for up to 32 vacant sites in the Residential Unit Overlay where houses were demolished since the earthquakes.
- 4.4 Staff have worked collaboratively with former members from the IHP, staff from strategic partner organisations, and community groups and relevant Community Boards in the development of this advice.
- 4.5 If approved by the Council, staff will circulate the draft proposal immediately to strategic partners identified in the Act – Environment Canterbury, Selwyn District Council, Waimakariri District Council and Te Rūnanga o Ngai Tahu, along with DPMC and Regenerate Christchurch for feedback. The Mayor and Chief Executive have already asked these parties to respond within seven working days and they have been receptive to this.
- 4.6 Staff will then report back to Council on 8 November 2018, or before, with a summary of this feedback, and a final Section 65 report which incorporates any necessary changes. It is intended that the final proposal is submitted to the Minister by 14 November 2018 or before.

5. Context/Background

Issue summary

- 5.1 The current wording of the HFHMA policy creates some uncertainty for people seeking to build in the Residential Unit Overlay – i.e. parts of New Brighton, South New Brighton, Southshore and Redcliffs, particularly where the intention is to erect a permanent building on a currently vacant site.
- 5.2 There are also a number of properties where houses have been demolished due to earthquake damage which are unable to use a permitted activity rule providing for replacement of existing buildings as a permitted activity. This is due to the demolitions occurring before the rule gained legal effect, which has resulted in these properties being required to seek resource consent. This has created a fairness and equity issue.
- 5.3 On 27 September 2018, the Council resolved to instruct staff to draft a proposal to submit to the Minister for Greater Christchurch Regeneration requesting the use of Section 71 of the GCRA to propose a policy to support the Residential Unit Overlay within the HFHMA in the Christchurch District Plan ([Council report CN 20180927](#), Item 31).
- 5.4 It was acknowledged at the Council meeting that an urgent resolution to the Residential Unit Overlay issue was desired by all parties. Staff have updated the proposed timeline (**Attachment**

B) to progress the work as quickly as possible, while still ensuring the process is robust and results in a proposal that adequately addresses the issue and resolves uncertainty.

- 5.5 On 2 October 2018 and 8 October 2018 updates on how the District Plan Residential Unit Overlay work was progressing were sent to affected residents' associations, community boards, the Christchurch Coastal Residents United (CCRU), strategic partners, DPMC, and Regenerate Christchurch. Updates will continue to be provided throughout this process.
- 5.6 On the 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 this workshop was to provide an update on the process, present the proposed changes, discuss potential implications and provide opportunities for feedback.

Next step under the section 71 process

- 5.7 Under section 65 of the GCRA, if the Council wishes to propose that the Minister for Greater Christchurch Regeneration use section 71, it must prepare a draft proposal asking the Minister to exercise her powers to amend the District Plan under section 71 of the GCRA. This report must also be submitted to Regenerate Christchurch. The report must contain an explanation about how the exercise of power will meet one or more of the purposes of the GCRA, and why the exercise of power is necessary and preferable to any alternatives.
- 5.8 Prior to asking the Minister, section 66 of the GCRA requires the proponent to seek the views of strategic partners – Environment Canterbury, Selwyn District Council, Waimakariri District Council and Te Rūnanga o Ngai Tahu, along with DPMC and Regenerate Christchurch. Staff have been working with officials at DPMC to ensure the draft Section 65 report (**Attachment A**) meets all the statutory requirements and includes the necessary details.
- 5.9 In order to progress the proposal with urgency, the Chief Executive sent letters to these parties on 28 September 2018, and 9 October 2018 requesting their feedback within seven working days following the receipt of the draft proposal. Once feedback has been received, staff will review the comments and amend the proposal, as necessary, to incorporate the views of strategic partners, DPMC, and Regenerate Christchurch. Staff will prepare a Council report for 8 November, or before, to seek Council approval of the revised version of the proposal to be sent to the Minister and Regenerate Christchurch by 14 November 2018.

Proposed changes

- 5.10 Independent Planning Consultant Sarah Dawson (who also was a member of the Independent Hearings Panel who issued decisions in the Replacement Christchurch District Plan) has provided advice on a draft policy amendment to ensure consistency with the original intent of the approach for the Residential Unit Overlay. This advice was provided in her capacity as a planning consultant, not as a panel member.
- 5.11 The starting point for this amendment was a draft policy that was provided by Council staff to the Independent Hearings Panel during their consideration of the natural hazards chapter. Ms Dawson endorsed the general approach of this draft policy, while recommending further changes to ensure the geographic scope was appropriately restricted and to qualify the purpose of any 'appropriate mitigation'. This advice is outlined in **Attachment C** and has been accepted in its entirety.
- 5.12 Brookfields has provided legal advice on the proposed policy amendment (**Attachment D**). This advice confirms that the proposed change provides a more enabling approach while still being consistent with the Natural Hazards Strategic Objective in the Christchurch District Plan.
- 5.13 An additional rule amendment was developed by Council staff to broaden the application of the permitted activity rule for replacing existing houses. This is proposed to apply to all proposals for replacing houses within the Residential Unit Overlay where sites had a house on them prior to

the earthquakes, and the house is to be rebuilt in a similar scale, size and position on the site. The proposed amendment and reasons for the change are outlined in **Attachment E**.

Intended outcomes

- 5.14 The changes proposed will allow for different levels of assessment of resource consent applications in the HFHMA based on the immediacy of risk, appropriateness of mitigation, and pre-earthquake use of a site. These different levels of assessment are not available under the existing policy and rule framework in the District Plan.
- 5.15 These amendments are consistent with the overarching approach in the District Plan, and are targeted to the areas affected within the Residential Unit Overlay, and some areas in the broader HFHMA which are also predominantly influenced by sea level rise, but not originally captured in the Residential Unit Overlay.
- 5.16 With regard to the change to the permitted activity rule, resource consent will still be required, if the site was vacant prior to the earthquakes, if there is a change in the size, scale and location of any replacement, or the property is located outside the Residential Unit Overlay.
- 5.17 With regard to the proposed change to the policy, resource consent may be granted where the future risk from coastal flooding is able to be appropriately mitigated to an acceptable level through measures such as acceptable floor levels, foundation design, ability to relocate, safe access and egress, and limits on the duration of the consent based on either years or extent of sea level rise.
- 5.18 The proposed amendments will not change the current situation for vacant sites within the remainder of the HFHMA where flooding risk is not predominantly influenced by sea level rise. For these sites the existing 'avoid' policy will still apply, which is appropriate as in these locations there is already a high hazard risk from river and rainfall flooding.

6. Option 1 – Circulate draft Section 71 proposal to strategic and regeneration partners for feedback.

Option Description

- 6.1 At the 27 September Council meeting, the Council requested that staff report back with the draft Section 65 report before circulating it to strategic partners, DPMC, and Regenerate Christchurch for feedback. Staff have progressed a draft report and are now seeking approval to circulate it for comment, as per the legislative requirements for this process.
- 6.2 If the Council agrees, staff will seek the views of the strategic partners, DPMC, and Regenerate Christchurch and make any necessary amendments (from elected member and strategic partner feedback) for Council to approve at the Council meeting on 8 November, or before, in order for the proposal to be submitted to the Minister and Regenerate Christchurch by 14 November.

Significance

- 6.3 The level of significance of this option is high consistent with section 2 of this report.
- 6.4 Seeking the views of strategic and regeneration partners is mandatory in the requirements in the GCRA for this process.

Impact on Mana Whenua

- 6.5 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.
- 6.6 Te Rūnanga o Ngāi Tahu are a strategic partner under the GCRA and therefore their views will be sought

Community Views and Preferences

- 6.7 The communities of Southshore, South New Brighton, New Brighton and Redcliffs are specifically affected by this option, due to the application of the Residential Unit Overlay to parts of these areas. Some areas in the broader HFHMA where the risk of flooding is also predominantly influenced by sea level rise, but not originally captured in the Residential Unit Overlay, will also be affected by the policy amendment.
- 6.8 Deputations were received from representatives of CCRU, and the Coastal-Burwood and Linwood-Central-Heathcote Community Boards at the 27 September 2018 Council meeting. Representatives stressed the need for as timely a resolution as possible to the issue, and supported using the Section 71 process to achieve this.
- 6.9 In the workshop on 11 October there was general support for the proposed approach, and it was acknowledged that the policy and rule change will resolve some of the current issues facing the community.
- 6.10 Staff are in the process of investigating a number of matters and suggestions raised during this workshop and will report back on the outcome of these investigations at the Council meeting on 8 November. These include:
- The number of properties outside the Residential Unit Overlay where the amended policy would also apply
 - Whether a definition of unacceptable risk could be added to the Plan
 - Whether there is enough scope within the proposed rule to accommodate access ramps, stairs and decking necessary to meet new floor level requirements
 - Whether it would be appropriate to include commercial buildings in the permitted activity rule
 - Whether 'appropriate mitigation' should also be clarified or given direction in some manner.
- 6.11 Views of the wider public will be sought through the public consultation process required under the GCRA.

Alignment with Council Plans and Policies

- 6.12 The proposed policy amendment 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, which seek to avoid unacceptable risk to people, property and infrastructure; and
 - The current approach to the Southshore and South New Brighton Regeneration Strategy which seeks to find short, medium and long-term options to adapt to the effects of climate change.

Financial Implications

- 6.13 Cost of Implementation – Staff time to continue progressing the proposal.
- 6.14 Maintenance / Ongoing Costs - Nil
- 6.15 Funding source - Existing operational budgets for the District Plan.

Legal Implications

- 6.16 There is no specific legal context, issue or implication relevant to this decision. This decision follows a statutory process.

6.17 This report has been reviewed and approved by the Legal Services Unit.

Risks and Mitigations

6.18 While Council have committed to progressing a section 71 proposal and working towards best case timeframes, there remain uncertainties in this process.

6.19 DPMC officials have raised a number of risks with the decision timeframes of the Minister, including:

- The availability of the Minister and how quickly advice is able to be provided from both DPMC and Regenerate Christchurch;
- The number and complexity of written comments received during the written comment period and how long it takes DPMC officials to analyse these;
- Whether the Minister wants to inform Cabinet of the final decision.

6.20 A number of actions have been initiated to reduce the risk to timing and of significant opposition to the wording of the policy amendment, including:

- The involvement of an external independent party in drafting the policy amendment;
- Sharing early drafts of the proposal with strategic and regeneration partners;
- Holding a workshop with key members of affected stakeholders to discuss the drafting changes proposed, potential implications and provide an early opportunity for feedback.

Implementation

6.21 Implementation dependencies - none

6.22 Implementation timeframe – If approved, staff will circulate immediately to strategic and regeneration partners.

Option Summary

6.23 The advantages of this option include:

- Prompt action to address the issue raised by coastal communities;
- The rewording proposed for the District Plan will provide greater certainty for the affected communities to rebuild in areas predominantly affected by sea level rise, and allow a number of earthquake damaged houses to be rebuilt without the need for resource consent;
- The approach is able to be supported by Council staff and the community.

6.24 The disadvantages of this option include:

- Failure to progress this option will affect the ability to resolve this issue in a timely manner i.e. before Christmas 2018.

Attachments

No.	Title	Page
A ↓	Draft section 65 report - Residential Unit Overlay District Plan Changes	12
B ↓	Residential Unit Overlay section 71 process - updated project timeline	22
C ↓	Residential Unit Overlay policy amendment - advice from Sarah Dawson	23
D ↓	Brookfields legal advice - amended HFHMA policy - 12 October 2018	29
E ↓	Residential Unit Overlay rule amendment - reasons	35

Confirmation of Statutory Compliance

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

(a) This report contains:

- (i) sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages; and
- (ii) 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

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

3. Draft Section 71 proposal to amend the District Plan in relation to the Residential Unit Overlay for consultation

Council Resolved CNCL/2018/00001

That the Council:

1. Approve the draft proposal, proposed changes to the District Plan and supporting information for consultation with strategic partners, the Department of the Prime Minister and Cabinet, and Regenerate Christchurch for feedback.
2. Note that strategic partners, the Department of the Prime Minister and Cabinet, and Regenerate Christchurch have been supportive of the urgency that we are seeking and we expect to receive their feedback within seven working days.
3. Request that staff report back to Council on 1 November 2018 (providing that Strategic Partners support the Section 71 process and have provided advice), with a summary of feedback and any amendments to the proposal, in order for the proposal to be submitted to the Minister by 14 November 2018 or before.
4. Note that staff will include the restricted discretionary rules in the accompanying advice to Strategic Partners.

Mayor/Councillor East

Carried