

MINISTERIAL DECISION REPORT APPROVING THE RESIDENTIAL UNIT OVERLAY DISTRICT PLAN CHANGES PROPOSAL TO EXERCISE POWER UNDER SECTION 71 OF THE GREATER CHRISTCHURCH REGENERATION ACT 2016

1. INTRODUCTION

On 1 November 2018, I received Christchurch City Council's (the Council) Proposal to exercise my power under section 71 of the Greater Christchurch Regeneration Act 2016 (GCR Act) to:

- **Amend the Christchurch District Plan to provide policy support for the Residential Unit Overlay and broaden the application of an existing rule which permits replacement of existing houses.**

Pursuant to section 67 (all references are to the GCR Act unless stated otherwise), on 7 November 2018, I agreed to exercise my powers to proceed with the Residential Unit Overlay District Plan Changes Proposal (the Proposal) and to invite public comment for 10 working days under section 68.

The Proposal outlines the issue, proposed solution, intended outcomes, and the specific proposed amendments to the Christchurch District Plan (the District Plan). The Proposal also includes consideration of the alignment with the purposes of the GCR Act, why the exercise of power is reasonably considered necessary, and a consideration of alternatives that could achieve the objectives of the Proposal.

The Proposal states that the exercise of power under section 71 of the Act "*would facilitate a timely resolution of this matter, provide greater certainty to communities rebuilding in earthquake damaged areas, and allow a number of earthquake damaged houses to be rebuilt without the need for resource consent.*"

I would like to acknowledge the Council for its role as proponent and also the members of the public who participated during the public comment period.

I have considered the Proposal, the public written comments received, and the requirements of the GCR Act, and have decided to approve the Proposal (and thus exercise the power in section 71). This report records the decision I have made under sections 69 and 71.

2. THE ISSUE AND PROPOSED DISTRICT PLAN AMENDMENTS

The District Plan regulates activities in the areas where there is a high risk to people and property in very large flood events (the High Flood Hazard Management Area (HFHMA)). The Residential Unit Overlay (the RUO) applies to that part of the HFHMA where the predominant flooding risk is from future sea level rise, rather than from rainfall and river flooding. There are 1486 sites in total within the RUO, which applies to parts of New Brighton, South New Brighton, Southshore and Redcliffs.

The RUO has a more enabling rule than the remainder of the HFHMA and provides for residential units to be constructed and rebuilt subject to a resource consent where matters relating to management and mitigation of hazard risks are considered. However, the existing HFHMA flooding policy in the District Plan does not support the RUO rule, and this has created uncertainty and confusion for people seeking to redevelop or develop on a currently vacant site

in the RUO. The Council calculates that as at 22 May 2018, there are 74 vacant sites within the RUO.

Furthermore, the existing permitted activity rule for the replacement or repair of buildings damaged by the earthquakes only applies to buildings demolished after the date the rule came into effect on 10 November 2016. As there are a number of properties where earthquake damaged houses were demolished prior to the rule coming into effect (the Council has advised that 32 demolitions occurred in the area between 2011 and 2017), this means that these land owners cannot rely on the existing permitted activity rule to reconstruct their house, and as a result, resource consent is required.

The intent of the proposed new rule is to permit replacement buildings of a similar scale and position to those demolished due to earthquake damage. Resource consent will still be required if there is an increase in the ground floor area or the position of the building on the site, or if the site was vacant prior to the earthquakes.

Any replacement residential unit enabled by the proposed amendments to the District Plan will be required to comply with the existing minimum floor level rules contained in the District Plan. This means that any replacement residential unit cannot be built at the previous floor level (if these are lower than the floor level rule).

The proposed policy amendment will enable resource consent to be granted where appropriate mitigation can be provided that protects people's safety, well-being and property from unacceptable flooding risk.

The proposed amendments will not change the current situation for vacant sites in the remainder of the HFHMA outside of the RUO where flooding risk is not predominantly influenced by sea level rise. The policy which seeks to "avoid" development where it will increase the potential risk to people's safety, well-being and property will still apply in these locations.

The District Plan provisions are of significant concern to the local community as the provisions have created an inequity, uncertainty and confusion amongst residents in these areas, enabling some to rebuild but not others. The provisions are hampering regeneration of affected communities by not enabling some people to adequately recover from the Canterbury earthquakes and are slowing down regeneration momentum, which could contribute to greater adverse effects on the wellbeing of the affected communities.

3. PROCESS AND LEGAL REQUIREMENTS

The Council commenced drafting the Proposal in accordance with section 65 to make amendments to the District Plan to resolve the issues with the RUO.

On 15 October 2018, in accordance with section 66, the Council sought the views of the strategic partners, Regenerate Christchurch and the Chief Executive of the Department of the Prime Minister and Cabinet (DPMC) on a draft proposal.

On 1 November, following consideration of the feedback from those parties, the Council finalised the Proposal and provided it to me, as the Minister for Greater Christchurch Regeneration, and also provided it to Regenerate Christchurch pursuant to section 66(4). On 2 November 2018, Regenerate Christchurch provided me with its views on the finalised Proposal.

Pursuant to section 67, on 7 November 2018, I decided to exercise my powers to proceed with the Proposal. In accordance with section 68, the Proposal and a summary of it and a public notice inviting written comments on the Proposal, was published on DPMC's website, in the

Gazette (9 November 2018), and in *The Press* (10 November 2018). Written comments had to be received by 5pm 26 November 2018. A total of 138 written comments were received.

The GCR Act requires that, in making a decision on whether to approve or decline the Proposal, I must:

- ensure that I exercise my power in accordance with one or more purposes of the GCR Act (section 11(1));
- exercise that power only where I reasonably consider it necessary (section 11(2));
- when considering whether to approve or decline the Proposal:
 - a) take into account the public written comments provided under section 68(c); and
 - b) have particular regard to any views of the strategic partners and Regenerate Christchurch that are provided under section 68(c); and
 - c) make a decision no later than 30 working days after the date specified in the notice published under section 68.

4. CONSIDERATIONS

This section outlines my considerations in making my decision to approve the Proposal.

Purposes of the GCR Act (section 11(1))

The GCR Act supports the regeneration of greater Christchurch through five purposes as set out in section 3(1). Section 11(1) requires me to ensure that I exercise my power to approve the Proposal (and thus agree to exercise my section 71 power) in accordance with one or more purposes of the GCR Act. In order to assess this, I have considered how the Proposal will support regeneration as defined by section 3(2) of the GCR Act:

The Proposal amends the existing District Plan to enable rebuilding or the construction of new buildings in the RUO area (only where a residential unit existed on 4 September 2010), including consideration of the acceptability (or otherwise) of the risks from flooding hazard and the potential for appropriate mitigation of those risks. This would provide greater certainty and confidence to the Council, landowners and the community about what development can or cannot occur in the area. It will assist in supporting regeneration by increasing housing capacity and improving prosperity for residents in the New Brighton, South New Brighton, Southshore and Redcliffs areas.

There is a strong link between the built environment and the economic, social, and cultural well-being of a community:

- **environmental benefits:** the proposed amendments will assist in improving the future resilience of new buildings by ensuring the 'unacceptable risk' of flooding as a result of sea level rise is appropriately mitigated. This accommodation rather than avoidance approach is considered unlikely to compromise future planning in response to sea-level rise and climate adaptation measures where appropriate mitigation measures are implemented.
- **economic benefits:** the proposed amendments will provide greater certainty and clarity for landowners by expressly permitting redevelopment of earthquake damaged buildings in the RUO of a similar scale and position, and providing clearer policy to support

development requiring resource consent, subject to appropriate flooding mitigation. Currently landowners must go through a resource consent process to rebuild, which can be time consuming and costly with uncertain outcomes, or opt not to build on their property. This is a significant impact on private property owners for whom the property may be their most significant, or only, asset.

- **social benefits:** the proposed amendments provide a mechanism for property owners to build on vacant properties in otherwise built up areas which will encourage a more cohesive and “normal” residential environment to be restored. It will lead to increased neighbourhood amenity and community benefits, including psychosocial wellbeing. The proposed amendments will also address the current inequity in the rules and contribute to regeneration.

5. DECISION

Taking the above into account, and for the reasons set out below, I consider that approving the Proposal is in accordance with the GCR Act’s purposes under section 3.

Approving the Proposal, in my view:

Enables a focused and expedited regeneration process (section 3(1)(a))

The Proposal will amend the District Plan to resolve the issues at a time when the District Plan cannot otherwise be amended. The Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (Order) prevents changes being made to the District Plan using normal RMA plan change processes until after the expiry of the Order on 30 June 2021. It also allows the process to be expedited, particularly in comparison to the following alternatives:

- **Regeneration Plan process:** while this power could be used, I do not consider it appropriate for the nature of the Proposal. The development of a Regeneration Plan is better suited to more complex land use proposals across wider areas, land uses and zones. The matters addressed in the Proposal do not require a Regeneration Plan process. I also note that a Regeneration Plan process would take significantly longer than a section 71 process.
- **Standard Resource Management Act 1991 (RMA) process:** the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (Order) means that no changes can be made to the District Plan using standard RMA plan change processes until after the scheduled expiry of the Order on 30 June 2021.
- **Revoking the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014:** Mayor Dalziel has written to me as the Minister for Greater Christchurch Regeneration requesting that the Order be revoked as the District Plan is now operative. This is yet to be considered by Cabinet.

Revocation of the Order in itself would not enable the necessary amendments to the District Plan in a timely and efficient way, as an RMA plan change process would still be required. A plan change of this nature would take 4-8 months from notification for a Council decision and could then be subject to appeals.

- **Other processes:** The Council also considered a number of other alternatives to achieve the outcome of the Proposal including an Environment Court declaration, an amendment to the Land Use Recovery Plan and a Local Bill. These are all time consuming and would not provide certainty of outcomes.

Overall, the alternative options considered do not provide for a focused and discrete change with the same efficiency and certainty as the section 71 process, and could fail to fully resolve issues of fairness, equity and uncertainty for the community. The Proposal will enable a focused and expedited regeneration process by providing greater clarity and certainty for land owners.

Facilitates the ongoing planning and regeneration of greater Christchurch (section 3(1)(b))

The proposed amendments facilitate the ongoing planning and regeneration of greater Christchurch by enabling landowners within the RUO and parts of the HFHMA affected by the earthquakes to rebuild to a similar scale and position on their site, or seek resource consent if they wish to develop beyond the existing scale and position where flooding risk is from future sea level rise. In any case the landowners will need to take into account the floor level heights to mitigate flood risk.

Enabled community input into the exercise of powers under section 71 (section 3(1)(c))

The public had 10 working days to provide written comments on the Proposal. In total, 138 written comments were received, and I have considered these in more detail below.

I also note the Council engaged with affected residents regarding the issue. Representatives of affected community boards, Residents' Associations and the Christchurch Coastal Residents United were invited to a workshop during the drafting process in order to discuss the proposed changes and provide feedback.

Recognises the local leadership of Canterbury Regional Council, Christchurch City Council, Regenerate Christchurch, and Te Rūnanga o Ngāi Tahu and provides them with a role in decision making under the Act (section 3(1)(d))

The Council have recognised the issue with the RUO provisions and have developed the Proposal to exercise power under section 71 of the Act to resolve it. In addition, Regenerate Christchurch, Canterbury Regional Council, and Te Rūnanga o Ngāi Tahu were involved in the development of the Proposal in their statutory roles, and each party provided feedback. The Waimakariri and Selwyn District Councils are not directly affected by the Proposal but were invited to provide feedback. Selwyn District Council confirmed they had no specific comments on the Proposal, and Waimakariri District Council have no objection to the plan amendments given the specific and unusual circumstances.

Public written comment

I have read the individual written comments and the summary of comments prepared by DPMC, including comments from the Canterbury Regional Council.

I note that under the GCR Act I am not able to amend the Proposal to give effect to specific amendments suggested in some of the public comments. My decision is limited to whether to approve the Proposal pursuant to section 69 (and thus agree to exercise my section 71 power) or to decline the Proposal.

I have taken into account the public written comments received (138 written comments, with 131 supporting the Proposal and 7 opposing the Proposal).

In summary, the majority of written comments support the Proposal because it will enable affected communities to recover and rebuild, will correct an inequity, and enhance community wellbeing. The lack of a clear policy is considered to be an error and an obvious disconnect with the rules that does not enable the Council to administer the District Plan in the way that was

intended. The changes will provide clarity and certainty by enabling rebuilding of residential units damaged by the earthquakes of a similar scale and position, and will provide clearer policy support for development within the RUO where appropriate mitigation can be provided. The section 71 process can expedite the process without further delay and costs, and the amendments are fully supported by the Council and other key stakeholders.

Written comment from seven parties was received in opposition. These parties are primarily concerned that the provisions do not adequately recognise the hazard risk for property and personal safety, and consider the issue of climate change should be addressed through long-term planning as a central and local government priority, rather than on a case by case basis. Insurance and council liability issues were also raised. A further issue raised in opposition is that the Proposal is wrong in law and is contrary to the Resource Management Act (RMA), New Zealand Coastal Policy Statement (NZCPS), and the Canterbury Regional Policy Statement (CRPS) and that the use of section 71 would be constitutionally unsound. My view is that these higher order documents allow for an approach of mitigation of risk, and do not dictate that rebuilding must be avoided in all circumstances in high hazard areas. I also understand the Council has commenced planning for future sea level rise.

The use of the section 71 powers in this instance is to enable regeneration and remove inequities and uncertainties in the existing District Plan provisions that prevent regeneration where appropriate mitigation can be provided.

I have had particular regard to the views of the Canterbury Regional Council received as part of the public comment process. The Canterbury Regional Council's main interest in the proposal relates to the statutory responsibility under the RMA to deliver the Canterbury Regional Policy Statement, which includes policy guidance that seeks to avoid new subdivision, use and development of land in high hazard areas, unless the development is located within an existing urban area and can be appropriately mitigated. The Canterbury Regional Council supports the Proposal as the changes to the District Plan will apply to existing residential areas and will provide clarification that the replacement of residential units within the RUO can occur.

In making my decision I have taken into account the matters raised, and note that:

- The Proposal will make provision for earthquake damaged residential buildings that have been demolished to be rebuilt to a similar scale and position as a permitted activity. Of the 74 vacant sites within the RUO, an estimated 32 houses have been demolished since the earthquakes and therefore this change will apply to a relatively discrete number of properties in the context of the 1486 properties in the wider RUO;
- The proposed amendments to the flooding policy will support residential development in the HFHMA where appropriate mitigation can be provided, and otherwise require that development be avoided. This will provide greater clarity and certainty for land owners seeking to build and rebuild by including clear policy which supports the intent of the rules;
- The amendments to the District Plan will provide greater certainty and confidence to the Council, landowners and the community about what development can or cannot occur in the area;
- The risks of sea level rise are managed through the District Plan provisions;
- The Proposal is supported by all stakeholders, the Minister for Climate Change and the Ministry for the Environment subject to appropriate mitigation, and I understand the Council is progressing work on developing new coastal hazard provisions in liaison with the Ministry for the Environment and is developing implementation guidance;

- The use of section 71 of the Act is considered necessary to support a focused regeneration process by enabling discrete amendments to the District Plan and a significantly faster process than alternative processes available under the RMA;
- The section 71 process has enabled public involvement and is a rigorous process whereby tests need to be met in order for powers to be exercised.

I have also made my decision by 29 January 2019, which is 30 working days after the date specified in the notice published under section 68 (s69(c)).

Necessity Test (section 11(2))

I consider that exercising my power to approve the Proposal is reasonably considered necessary to enable a focused and expedited regeneration process and facilitate the ongoing planning and regeneration of greater Christchurch given that:

- There is no ability to make changes to the District Plan under existing statutory processes, and other regeneration planning tools (for example a Regeneration Plan) are not considered appropriate in the circumstances. Therefore, there are no other tools currently available to enable a regeneration process which is as certain, focused, and expedited;
- It facilitates the necessary and discrete planning changes to the District Plan;
- It will provide greater development certainty and enable regeneration of the local community.

In coming to my decision, I have considered the significance of the decision, its consequences, and alternatives to approving the Proposal.

6. CONCLUSION

I have made the decision to approve the Proposal and to exercise my section 71 power for the reasons set out in this report.

I am happy to be able to approve the Residential Unit Overlay District Plan Changes Proposal in the knowledge that it will support the regeneration of the local affected communities.



Hon Dr Megan Woods
Minister for Greater Christchurch Regeneration

Date: 13 December 2018