

25. PLAN CHANGE 27: RESIDENTIAL DENSITY IN NEW BRIGHTON

Attached as Appendix A is a further copy of the report, which was deferred at the 14 June Council meeting. Councillors are requested to bring with them to the meeting the associated section 32 report included as an attachment in last week's Council agenda.

The following supplementary report has now been submitted, commencing on the related issues raised at last week's Council meeting.

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8549
Officer responsible:	City Plan Team Leader
Author:	David Mountfort

PURPOSE OF REPORT

1. The purpose of this report is to:
 - Outline the possible use of a commissioner or commissioners to hear the submissions related to Plan Change 27: Residential Density in New Brighton
 - Outline the recommended policy for the engagement of commissioners for the hearing of submissions regarding subsequent plan changes
 - Define when the Council's hearings panel would hear such Plan Changes
 - Outline the issues associated with the possible amendment of Plan Change 27 to provide for the current 11 metre development standard height limit to be increased to 15 metres as a critical standard, rather than the 14 metres

EXECUTIVE SUMMARY

2. At the Council meeting on 14 June 2007, the Council considered a report "Notification of Plan Change 27: Residential Density in New Brighton". The report was deferred, to enable staff to report back on:
 - *"The possible use of a commissioner or commissioners to hear this particular plan change, and the recommended policy for the engagement of commissioners for the hearing of submissions regarding subsequent plan changes, as opposed to such changes being heard by the Council's Hearings Panel.*
 - *The possible amendment of Plan Change 27 to provide for the current 11 metre development standard height limit to be increased to 15 metres as a critical standard, rather than the 14 metres as proposed in clause 6 of the report".*
3. The process of deciding whether to publicly notify a plan change is based on the best information available at the time. It is a quite separate process from hearing submissions and reaching a final decision on the Plan Change. There is no requirement that Councillors who participate in the public notification cannot participate in later hearings and decisions, provided that they are able to retain an open mind and remain in a position to change their minds upon receiving further information advice.
4. In general the clear preference is for a Council Hearings Panel to hear submissions. The use of a commissioner is provided for in the delegations register but for Plan Changes, a Council Hearings Panel must first decide on the use of a Council Hearing Panel or commissioner.
5. This report recommends that the Council resolve to notify Plan Change 27 in line with the previous report, as advice received from the General Manager Regulation & Democracy Services is that there are no issues at present that would preclude a Council Hearings Panel hearing this matter.
6. Sound reasons exist for retaining the 14 metre height limit, but if there is dissatisfaction with this then submissions can be made and heard with the matter determined after careful consideration.

FINANCIAL IMPLICATIONS

7. Within City Plan budget.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

8. The costs of public notification are able to be covered by existing unit budgets.

LEGAL CONSIDERATIONS

9. The process of deciding whether to publicly notify a plan change is based on the best information available at the time. It is a separate process from hearing submissions and reaching a final decision on the Plan Change. There is no requirement that Councillors who participate in the public notification cannot participate in later hearings and decisions. A previous legal opinion held by the Council indicates that Councillors are able to participate in both processes provided that they are able to retain an open mind and remain in a position to change their minds upon receiving further information advice.

Have you considered the legal implications of the issue under consideration?

10. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

11. Aligned with City Plan Activity Management Plan. Supports the LTCCP City Plan measure that 10 variations or plan changes be prepared and notified annually.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

12. As above.

ALIGNMENT WITH STRATEGIES

13. N/A

Do the recommendations align with the Council's strategies?

14. Yes

CONSULTATION FULFILMENT

15. RMA Consultation carried out.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Agree to publicly notify Plan Change 27 to the proposed Christchurch City Plan pursuant to clause 16A of the first schedule of the Resource Management Act 1991.
- (b) Does not alter the 14m height limit critical standard that applies in the Living 3 portion of the proposed plan change.

BACKGROUND

A. Issues relating to notification and hearings.

Current situation:

16. Officers have delegated authority to appoint a Councillor panel to hear either notified resource consent applications or Plan Changes - "Delegations Register (j) to approve the composition of hearings panels appointed pursuant to the Resource Management Act 1991 (16.12.04)".
17. As a general rule, Council panels are used in the first instance, unless there are specific reasons why a commissioner would be more appropriate.
18. For resource consent applications the Resource Management Officer Subcommittee has delegated authority to *"To appoint any commissioner or commissioners where, in the opinion of the subcommittee, it is desirable that a commissioner or commissioners be appointed for the purpose of deciding whether:*
 - (a) *an application should be notified or non-notified under s.94;*
 - (b) *to hold a hearing of the application if required; and*
 - (c) *to determine whether to grant consent to the application"*
19. For Plan Changes, officers do not have delegated authority to appoint a commissioner. Should a commissioner be recommended, the practice is for staff to take a report to a Council Hearings Panel, setting out the reasons why the appointment of a commissioner is being sought, for the panel to make the decision to appoint a commissioner. The use of commissioners for Plan Changes is therefore currently an elected member decision. The membership of the Council Hearings Panels is open to all Councillors and Community Board members. The specific elected members who make the decision to appoint commissioners therefore vary, and typically such reports are put before the next available panel that is already sitting to hear some other matter eg a resource consent application.
20. In terms of New Brighton, the Community Board was of the view that more than one commissioner would be appropriate and therefore conveyed this suggestion as a recommendation to Council staff. It is important to understand that the reasons were a combination of a feeling that the Council owned land in the area, that local Councillors had been vocal supporters of an increase in height and therefore a perception by some community members that the end result would be prejudged. Also that the matters were of a reasonably technical nature that needed expert input (hence the desire for more than one commissioner). Ultimately, however, the use of commissioners is a matter for the Council or a Council Hearings Panel to resolve.

Circumstances when a commissioner would typically be used:

21. Lack of elected member availability eg a plan hearing coincides with the election period, Annual Plan/LTCCP hearings, heavy general workload that makes it difficult to form a panel of elected members that are qualified/experienced to hear Plan Changes. Some plan changes can take several weeks to hear.
22. Conflict of interest for the Council/natural justice issues. It is important to note that this includes circumstances where there could be a perception of a conflict of interest. Such a conflict typically involves Plan Changes that directly affect Council-held land or interests. These types of conflicts would not normally apply to Council owned reserves or roads.

23. Conflict of interest for individual elected members or prominent Council officers. Such conflicts typically involve Councillors or key Council officers owning land or commercial interests that might be affected by the Plan Change, or Councillors having a close relationship with submitters. A conflict for an individual Councillor does not necessarily prejudice the use of a Hearings Panel made up of other elected members, or, if the conflict is limited, the affected panel member stepping aside from making a decision on a specific submission or component of the Plan Change. Owing to the potential for a conflict of interest with elected members having a close relationship with submitters, the make-up of a hearings panel is generally determined after submissions have been received.
24. A commissioner may also be used if the matters considered by the Plan Change are of a particularly specialised or technical nature. A relatively recent example of this is Variation 86 (retailing in B4) which required specialist knowledge of the commercial/retail industry. For technical Plan Changes a combination of 'expert' commissioners plus Councillors can also be used, eg Variation 48 (floodplains) where a considerable amount of evidence turned on hydrological modelling. Therefore the panel comprised two Councillors and a commissioner with hydrological expertise.

Does making a resolution on notification preclude involvement in the hearings panel?

25. The essential question at the previous Council meeting appeared to be whether making a decision on notification precluded Councillors from then sitting on a subsequent hearings panel. These are distinctly different roles. The Act clearly anticipates that Councillors will make decisions on notification and sit on hearings panels, otherwise it would have explicitly separated these responsibilities.
26. For a resolution on notification Councillors need to be satisfied that based on the information put before them (S.32 report) the proposed change represents a more effective and efficient means for achieving the purpose of the Act (as set out in Part II) than the current provisions and that the benefits of the change outweigh the costs. Councillors are making a decision to proceed with the Plan Change process through making the proposed change available for public input via submissions, they are not making a decision on the specific merits of the change (although as noted above they do need to have formed a general view (based on the S.32 report) that the proposed change has sufficient merit to justify proceeding to the next stage of the process).
27. The Councillor's role on the Hearings Panel is then to consider all the evidence put before them by submitters (including any new evidence or views that may not have been available in the S.32 report/notification stage), and to assess whether based on this information the proposed plan change still represents a more efficient and effective means of achieving Part II than the current provisions. These are distinctly separate roles, with Councillors expected by the Act to play a role at both stages, and resolving to notify a plan change does not preclude Councillors from subsequently hearing submissions with an open mind.
28. A possible exception is where individual Councillors have acted as strong advocates/promoters of the Plan Change over and above taking part in the more neutral discussions during the development of the plan change eg at Council seminars where all Councillors are expected to participate. In such instances where members have been vocal advocates they can still participate in consideration of whether or not to notify the plan change. However, it may not then be appropriate for them to sit on the hearings panel (owing to the perception of some submitters that the panel member does not have an open mind when considering submissions).

B. Height Limits

29. Further information was requested from Boffa Miskell. The reasons why the 14m standard has been recommended rather than 15m in the L3 areas are:

- Tension between redevelopment and existing built scale, compounded by likely lengthy transition period, so the recommendation is for 'L3 plus' not 'L4 minus' for the outer blocks in the study area.
- 14m enables an easy 4 stories with enough height for a varied roof design and the ability to provide semi-basement parking. The top two floors are likely to gain views. The rule package in essence enables development in the L3 areas to increase from three stories to well designed four stories.
- Five stories are just achievable with 14m but would require a lower than normal stud height and would require a flat roof. Even 15m would still not enable five stories and a varied roofline/design flexibility - if it is desired that the rule package enables well-designed five storey buildings then the permitted height really needs to increase to near 17m to enable a well designed fifth floor and roof - which then significantly increases the scale of the development and changes the nature of the zone from L3 to L4.
- Balanced overall rule package - if height increases then it is likely that plot ratio and recession plane controls would also need to be changed to realistically enable that height to be achieved.
- Wider urban form goals of a clear build-up of height around the mall - if it is reasonably tall all the way along Marine Parade then it diminishes the visual focal point.
- Retention of views of the Port Hills from the pier, which the landscape report indicated would start to be lost with buildings over 14m.
- That said, there is no absolute truth in drafting rules. Plausible arguments exist for both increasing and lowering the proposed heights - the weighing up of these differing valid views could be achieved in a more informed manner following the hearing of submissions.