1. BRIDLE PATH ROAD DRAFT AREA PLAN

General Manager responsible:	General Manager Strategy and Planning DDI 941-8177
Officer responsible:	Liveable City Programme Manager
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PURPOSE OF REPORT

1. The purpose of this report is to seek the Council's adoption of:

   - 'Development Option 2' as the preferred option for inclusion in the Draft Bridle Path Road Area Plan, and
   - adoption of the Draft Bridle Path Road Area Plan for public consultation.

   A locality map is included in Attachment 1.

EXECUTIVE SUMMARY

Preferred Development Option

2. The land which is the subject of the Bridle Path Road Area Plan comprises 10 lots ranging from 607m^2 to 5.42 hectares. It was zoned 'Rural Horticultural Sub-Zone' in the Proposed City Plan notified in 1995. Several submissions were lodged requesting that the land be rezoned for residential purposes. The Council rejected these submissions and rezoned the area Rural 7. Appeals to the Environment Court against the Council decision followed, and subsequent negotiations between the appellants and the Council led to a Consent Order being signed by parties to the appeal, changing the zoning to Deferred Living Hills A.

3. The Consent Order required seven issues to be addressed prior to residential zoning taking effect. The main issue was land stability, with the area being susceptible to rockfall, landslide and erosion hazards. Other issues identified by the Court as needing further consideration included matters relating to set backs, reverse sensitivity, access and stormwater disposal.

Land stability

4. A preliminary geotechnical study identified the nature and distribution of geotechnical hazards in the area. Four hazard areas were identified. Based on a qualitative assessment of risk, these hazard areas provide a useful general guide to the likely location and significance of natural hazards present on this land, which in turn provides general guidance on potential development constraints.

5. A second geotechnical study focused on mitigation options and strategies that might best achieve appropriate outcomes for the deferred LHA zone. Cost estimates for various options were also produced.

6. Using these studies and other background work (e.g. a landscape study), options for residential development, hazard mitigation and funding were prepared, based on the assumption that protection would be provided further up the slope. These were presented to a Council seminar on 15 May 2007. The options were:

   - Option 1 - No further development in the Deferred LHA zone other than what is permitted in the underlying zoning of Rural 7.
   - Option 2 - Limiting development to the low hazard area on the lower, gentler slopes.
   - Option 3 - Permitting development within both the low (gentle slopes) and minor (steeper slopes) hazard areas at a higher density than LHA.
   - Option 4 - Development within low (gentle slopes) and minor (steeper) hazard areas at a lower density than Option 3.

7. The hazard areas and options are mapped in Attachment 2, and a comparison made covering a range of variables in Attachment 3. This analysis has excluded the upper moderate and high hazard areas from analysis as a development option, because of the much steeper slopes and increased hazard risk, mainly from erosion and rockfall. These areas are considered unsuitable for development.

8. The consensus emerging from the Council seminar on 15 May 2007 was that Option 2 was the preferred option for development involving a higher density than LHA, contained entirely within the lowest risk hazard area, and on the more gentle slopes. Bunding (an earth barrier) has been identified by the consultant as the most appropriate method of ensuring rockfall into the low hazard area does not cause significant property damage. Consequently, the extent of mitigation works and their costs for Option 2 are significantly less than development Options 3 and 4. Option 1, to revert to Rural 7, has been included for completeness. However, based on current information, this option is unrealistic given the expectations which have been created by the Consent Order. If further information suggests that a comprehensive living zone is not feasible, then at some future date the appropriateness of the Deferred Living zone could be reconsidered through appropriate Resource Management Act 1991 (RMA) processes.

9. The costs of hazard mitigation works reduce by approximately half for the less steep areas. Mitigation structures constructed on the upper slopes have been costed at around $1 million + GST, reducing to around $500,000 + GST on the lower slopes. The likely costs for a projected 100 households therefore equates to around $5,000 per lot. This minimises the financial risk to Council if unforeseen circumstances arise where it, rather than a developer, ends up funding the work and having to recover costs through financial contributions.

10. From a geotechnical perspective development is possible further up the slope into the 'minor hazard area', but a future developer will need to meet the costs of any additional mitigation and servicing requirements. Development is unlikely to be approved under Section 106 of the RMA without hazard mitigation in place. The area above the minor hazard zone is likely to remain unattractive for development on a cost/benefit basis and may therefore remain undeveloped. There is no onus on the Council to acquire this land but this is a matter for further consideration following consultation with stakeholders.

Density and Reverse Sensitivity

11. Housing density is an issue closely associated with development options in the hazard areas. Density is affected by topography, Living Hills A (LHA) zoning rules, the location of hazard mitigation structures, and local amenity concerns. The LHA zone description allows for some flexibility in the way rules in the area are applied in order to achieve the outcome of a semi-rural character. Compatibility with the existing living environment is an important consideration, suggesting that the character should be more or less consistent with the pattern that exists elsewhere in the Heathcote Valley. Future development needs to be set back from transmission lines and the Aromaunga Flowers site.

12. Densities were discussed at length at the May 2007 seminar and the prevailing view was that 'higher densities' should be promoted along the Bridle Path Road frontage, and the overall density should be consistent with the Greater Christchurch Urban Development Strategy. Earlier landscape and urban design assessments for the area, although not specifically addressing these options, suggest that higher density is inappropriate on the upper slopes and that buildings should be kept on the lower valley slopes, reinforcing (to some extent) the Councillors' views.

13. The options set out in Attachment 3 are possibilities for development and hazard mitigation provided for comparison. For example with an overall density of around 15 households per hectare in Option 2, the number of lots may be similar to Option 4 but the latter option's lower density is spread over a greater area. Development in Option 4 would require more substantial and costly hazard mitigation structures. Although Option 2 could theoretically provide around 135 households, this has been assessed more realistically at around 100 households. Development potential will be constrained by, for example, topography, space for the required link/connecting road (servicing new lots) and waterway corridor, set backs from transmission lines, provision of a local reserve and the location of the hazard mitigation structure.

Access and Stormwater

14. A requirement for a connecting road, from Morgans Valley Road and the subdivision to the south through to Bridle Path Road north of Martindales Road, is designed to provide connectivity with adjoining areas. A new waterway is currently being planned along the alignment of the proposed road as part of a comprehensive stormwater upgrade for the whole of the Heathcote Valley. This upgrade is already committed and being implemented, with land purchase for the waterway corridor currently being negotiated. This waterway upgrade will be carried out irrespective of whether or not the Area Plan is adopted and will be sized and routed to provide for much of the new area.

15. In summary, Option 2 is regarded as being the most appropriate development scenario for consultation, taking into account all of the above matters. Development will be subject to a comprehensive plan which will integrate staging and timing of development with hazard mitigation and servicing. Development may be able to be staged in two parts, with the southern part proceeding as Stage 1 in a south to north direction between Morgans Valley Road and the northern boundary of No 112 Bridle Path Road. The Draft Area Plan acknowledges that variants of Options 3 and 4 may be achievable following a comprehensive Section 32 assessment under the RMA, and provided that the Council is satisfied over matters to do with legal liability and financial risk.

Draft Area Plan

16. The purpose of an Area Plan is to facilitate integrated land use planning. These plans assist in the coordinated planning of Council managed services, enable the Council to anticipate and budget for infrastructure, provide a framework for development contribution assessments, and identify areas where land needs to be acquired.

17. An Area Plan also provides a basis for a subsequent Plan Change to the Christchurch City Plan incorporating, amongst other things, a comprehensive plan for a specific area. The process for preparing the Area Plan provides confidence that the development is feasible, the area is able to be serviced, and good quality development can be achieved. However, details need to be resolved through the Plan Change process particularly in the preparation of City Plan rules.

18. The Bridle Path Road Area Plan will facilitate the comprehensive and integrated planning for the deferred Living Hills A (LHA) zone. A possible development proposal based on the preferred option 2 is identified in the draft Outline Development Plan in Attachment 4.

19. As a draft Area Plan, it is acknowledged that there are still outstanding matters that need finalising, including thorough consultation with affected parties and the public before the Plan Change process commences. The benefits of this consultation is to gain general consensus and as much resolution as possible on the issues prior to statutory time frames commencing. A consultation plan has been prepared and proposes the following steps:

- Letter and copy of draft Area Plan sent to directly affected parties and residents association.
- Copy of draft Area Plan available via usual Council channels: Services Centres, Website, Have your Say.
- Meeting involving directly affected parties and Heathcote Valley Community Association.
- Summary report on the consultation feedback.

FINANCIAL IMPLICATIONS

20. Attachment 5 sets out the options for funding the hazard mitigation work. The preferred option is that landowners or future developers will be responsible for funding of works needed to mitigate the rockfall hazard for any future development. On the basis of the geotechnical advice received, it is essential that mitigation is in place prior to subdivision and development approval. Although mitigation construction is a prerequisite to development, this may be staged in two parts – the southern part and the northern part, both subject to on-site assessment.

21. There is a risk that the costs to developers could prove too onerous, or there could be difficulties in getting consent from each of the landowners on whose land the hazard mitigation works will be located. In these situations the Council may be asked at some future date to fund some or all of the work and recoup its costs through financial contributions The cost of mitigating these adverse effects on the environment is potentially recoverable from developers via financial contributions under the RMA, imposed as conditions of consent. A Plan Change would be required to the City Plan, as no provision for such financial contributions currently exists for this area. This expenditure would also have to be provided for in the LTCCP, which may lead to delays in getting the development underway.

22. Constructing rockfall mitigation for the benefit of a highly localised area is not a project that is compatible with the Development Contributions Policy adopted by the Council. Moreover, it is not appropriate to recover the cost of such measures via development contributions under the Local Government Act 2002 (LGA), as these are limited to the cost of providing network and community infrastructural services and facilities such as reserves, water supply, wastewater, surface water, transport and leisure facilities.

23. Ongoing costs associated with maintenance and repairing damage from falling rocks cannot realistically be passed on to future landowners. Past Council experience is that landowners are not diligent in voluntarily maintaining such structures and cleaning out the trough/drain uphill of the bund barrier. With the probability of a rock reaching the developed area estimated at one per year, these costs should not be significant, but some budget for Council maintenance will be required unless a different approach is taken i.e. putting the onus on adjoining land owners to maintain the structure.

24. Stormwater disposal is a major infrastructure cost in the Bridle Path area, but there is already provision in the Capital Works Program for an integrated drainage scheme for the Heathcote Valley. Over half the drainage scheme has already been implemented, with the principle works so far being carried out within the Heathcote Valley floodplain.

25. Funding for the scheme will now come via Development Contributions from a 'wider' pool throughout the Heathcote Catchment, which includes the subject land once that development proceeds. Annual funding for the ongoing projects that are still to be completed within the scheme will continue to come from the Transport and Greenspace Unit budget. Adoption of the Bridle Path Road Area Plan will result in future revenue from Development Contributions to help offset costs for which the Council is already committed.

26. The link between the south boundary of the Area Plan area and Morgans Valley Road has been purchased and the formation of this link, together with the internal road, will also need to be a developer responsibility.

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

27. Currently there are no anticipated changes needed to the LTCCP other than likely provision for some operational funding for maintenance of hazard mitigation works. Adopting this Area Plan (refer to the Council report on Bridle Path Road Area Plan), will result in future revenue from Development Contributions to help offset costs for which the Council is already committed.

LEGAL CONSIDERATIONS

Have you considered the Legal Implications of the Issue Under Consideration?

Preferred Development Option

There are three key legal issues:

1) Whether the Council is liable for damages due to a rock falling from Council-owned land above the proposed development;
2) Whether the Council is liable for costs in mitigating this hazard in the context of future development; and
3) Whether the Council is liable to compensate land owners for "lost" development rights if a dispute arises over the costs or responsibilities of installing mitigation measures.

Is the Council liable for damages due to a rock falling from Council owned land above the development?

28. The Christchurch City Council has previously been found liable in Court actions based on negligence where rock fall in the Port Hills area has caused damage to property and the Council did not provide adequate advice to the landowners on the existence of the rock fall hazard[1]. It should be noted that in the Grasmueck case, the Court awarded damages on the basis that the Council had a duty to disclose to the landowners the information it held about the rock fall hazard. The Court found that the Council was negligent in meeting that duty because it did not provide the advice in an accurate and adequate form. Provided the Council places adequate and accurate information in Land Information Memorandum (LIM) reports, registers a notice against the title in terms of the Building Act 2004 and notes the existence of the natural hazard in the policies and objectives of any Plan Change made, it is unlikely a Court would find the Council liable for damages on the grounds of negligent advice as the Council will have fulfilled its duty to provide adequate advice.

[1] (*Grasmueck* v *Christchurch City Council*, Judge Green, DC 6253/92)

29. A landowner could also bring a claim based on nuisance against the Council, on the basis that the rock fall event has interrupted their enjoyment of their land. In New Zealand, Councils to date have been generally successful in defending themselves against such claims, particularly where, as in this case, the location, nature, scale or effect of a rockfall event is unpredictable, and is therefore an unforeseeable event.

Is the Council liable for costs in mitigating this hazard in the context of future development[2]?

30 There is an argument available to developers that the Council should be required to meet the full cost of installing the rockfall hazard mitigation as the Council owns the land from which the hazard originates.

31. The Resource Management Act 1991 does not create any legal duty to prevent the occurrence of a natural hazard[3]. The emphasis within the Act is to avoid, remedy or mitigate the effects of a natural hazard. The need to mitigate that hazard by protecting future residents of the area arises from the increase in the scale and intensity of residential activity. As the effects of the natural hazard occur on the land which is to be developed, there is a reasonable argument that it is the developer's responsibility (not the Council's obligation) to provide the necessary mitigation.

32. Further, based on the geotechnical advice received, there is a logical connection and a causal nexus between increased residential development arising from subdivision activity and the requirement for mitigation from the rockfall hazard. This broad principle was recently applied by the Supreme Court[4] and it is a principle that is now binding on the Environment Court in future cases. There are reasonable arguments that the Council can rely on this principle to require a developer to install the mitigation barrier, either by inserting a rule in the district plan, or alternatively by imposing a condition of consent requiring such works to be performed. It is therefore likely the Court could defend any legal challenge to the requirement for a developer to install rockfall hazard mitigation measures.

Is the Council liable to compensate land owners for "lost" development rights if a dispute arises over the costs or responsibilities of installing mitigation measures?

33. In general terms, the Council is not liable for compensation should development not proceed or be delayed. Furthermore, no compensation is payable in circumstances where as a result of controls imposed by a District Plan a developer's or landowner's interests are affected[5]. The Council is performing a statutory function and achieving the purpose of the RMA. It is not required to compensate parties for consequences of decisions made in the performance of a statutory function and the principles of administrative law were adhered to in the decision making process. In addition, for any such claim for compensation to be successful it will be necessary for a person to demonstrate an actual financial loss caused by such restrictions, rather than a mere lost opportunity. Given that landowners have not had an actual right to develop land in accordance with the proposed Area Plan; it will be very difficult for a landowner to prove the existence of such a right and any losses which accrue.

34. However, it should be noted the Council may be in a situation where the landowners have a legitimate expectation to develop their properties. Such a claim is only available on a judicial review of the Council's decisions (or lack of decision). Broadly speaking, provided the Council can demonstrate that its decisions are reasonable and that progress continues to be made in finalising the proposed zone provisions, it is unlikely that a claim for compensation of this nature would be successful.

[2] Note: The focus of the legal advice provided is for the purpose of assessing the Council's liability for future development. This advice should not be relied on as an accurate statement of law as to the Council's exposure to liability for properties that already exist in this area. If that topic was of interest to Councillors, it would be necessary for advice to be provided in a separate report to the Council.
[3] *Canterbury Regional Council v Christchurch City Council* (HC) [1995] NZRMA 452.
[4] *Waitakere City Council* v *Estate Homes* [2006] NZSC 22
[5] Section 85, Resource Management Act 1991

Other matters:

35. If the preferred Option 2 for developing the lower slopes is adopted, then mitigation would be constructed on private land approximately along the low hazard line, as a bund, and would consequently be less expensive than fencing and planting on the higher slopes. This would result in some practical difficulties with the construction of the hazard mitigation, as each landowner would be required to give their consent for the rockfall mitigation barrier to be constructed. If one landowner did not provide consent, the barrier could only be partially constructed and would not provide effective mitigation. It is feasible for the developer to enter into side agreements to encourage landowners to give their consent or to purchase a portion of land for the erection of the mitigation. However, this practical difficulty may result in constraining the immediacy of actual development occurring on the site while such negotiations are concluded.

36. Resolving the finer details of this practical issue can be deferred until the Plan Change process, where it will be necessary to craft appropriate rules to ensure that the construction of the mitigation barrier by developers is contiguous with increasing the residential activity in this area. However, the law is not well developed on this point and care will need to be taken to address the precise wording of the proposed rules, or wording of consent conditions to ensure that they are valid, binding and reasonably capable of being defended if litigation should eventuate.

37. For completeness, it should also be noted that existing landowners may have grounds to apply for an enforcement order requiring the Council to construct hazard mitigation to protect the existing homes. However, it would be necessary for the landowners to have strong evidence that there was a real and substantial risk of a rock fall event occurring in the immediate future which would have an adverse effect on the environment. The Council's geotechnical advice to date would not support the Court granting orders requiring the Council to install mitigation. On that basis, it is considered that the landowners would not succeed if such an application was made.

38. The Area Plan is a non statutory document. However much of its implementation will have statutory effect through the City Plan via the Plan Change process.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

39. The draft Area Plan will assist in achieving a number of Community Outcomes and Council Strategic Directions under the LTCCP, in particular those concerning planning for the future growth of the City. In particular:

    A safe city, where risks from hazards are managed and mitigated.
    An attractive and well designed city, through comprehensive planning, the provision of open space and recreation networks.

40. The waterway corridor and waterway formation works for this area are consistent with the adopted drainage scheme for the Heathcote Valley. The works are also necessary to meet Environment Canterbury's expected requirements for the renewal/replacement of the existing discharge consent for Morgans Valley. A catchment wide consent application is planned for 2008 which will supersede the Morgans Valley consent.

41. No provision has been made for any potential cost of hazard mitigation works and/or land acquisition to accommodate such works. It is anticipated a Plan Change will be notified during the 2008 calendar year and provision for any potential costs arising from City Plan rules can be accommodated in the 2009-2019 LTCCP.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

42. The relevant Council strategies are as follows:

- Greater Christchurch Urban Development Strategy (UDS) - Bridle Path Road Area Plan is within the proposed urban limits delineated in Proposed Change 1 to the Regional Policy Statement (RPS). Residential development in this area is compatible with both the UDS and the RPS.

- City Plan – the Area Plan achieves a number of City Plan objectives and polices in relation to urban growth, diversity of living environments, rural amenity values, environmental effects, subdivision and development, natural features, amenity value, significant trees, roading and access, water supply, sewage disposal, financial contributions, and the natural environment.

- Heathcote River Floodplain Management Strategy – one of the main underlying objectives of this Strategy is to improve the functioning of the Heathcote River by reducing peak flood levels as a result of upgrades to the stormwater system.

- Waterways and Wetlands Natural Asset Management Strategy 1999 - Heathcote Valley lies within the 'Project Area 1A' Port Hills. A new waterway corridor will add to the linkage between the Port Hills, Morgans Valley, and the stormwater retention ponds/waterways and wetlands restoration on the valley floor.

43. Amongst other strategies, the Area Plan will ensure the creation of linkages such as cycleways, and walkways to the Port Hills, to surrounding neighbourhoods and other green spaces, using (where possible) waterway corridors within the Area Plan.

CONSULTATION FULFILMENT

44. Council staff have maintained regular contact with landowners by letter, public meetings and telephone calls. The most recent meeting with landowners to discuss development options was held on 10 May 2007 and a Council seminar on this matter was held on 15 May 2007. Reports were subsequently presented to the Hagley-Ferrymead Community Board on 30 January 2008. In the Council seminar, the matter of higher densities to be consistent with the Greater Christchurch UDS, was raised. However, this has not been discussed with landowners and that will happen when the draft Area Plan is released for public comment. Most of the issues are matters that need to be resolved directly with landowners and there has been no formal or ongoing consultation with other stakeholders including the Heathcote Valley Community Association since the consent order was signed. It would have been inappropriate to involve the wider community at this stage. Mahaanui Kurataiao Ltd (MKT) has informed the Rapaki Runanga of the existence of the Plan and we are awaiting advice on what consultation, if any, is required.

45. Once adopted by the Council the draft Area Plan made available for public consultation with landowners and the wider community, particularly the Community Association. A communication plan will be developed in consultation with the Community Engagement Team that is likely to involve the following steps:

- Letter and copy of draft Area Plan sent to directly affected parties and Community Association.
- Copy of draft Area Plan available via usual Council channels: Services Centres, Website, Have your Say.
- Meeting involving directly affected parties and Community Association.
- Summary report on the consultation feedback.

46. This process should be effective in clarifying any issues regarding the Area Plan prior to the statutory timeframes imposed by the subsequent Plan Change process.

STAFF RECOMMENDATION

47. It is recommended that the Council adopts:

    1. Development Option 2 as the preferred development option, incorporating the following key features, to be included in the draft Area Plan for public consultation as follows:

        (a) Development is limited to the area referred to as the low hazard area in Attachment 2.
        (b) The number of dwellings to be approximately 100 at Living 1 and/or Living Hills zone density.
        (c) Implementation methods to ensure development occurs in an integrated manner and in accordance with a Development and Staging Plan.
        (d) These features, and others as appropriate, to be given effect through rules in the subsequent Plan Change.

    2. The Bridle Path Road Draft Area Plan for public consultation.

COMMITTEE RECOMMENDATION

It is recommended that the Council adopts:

1. Development Option 2 as the preferred development option, incorporating the following key features, to be included in the draft Area Plan for public consultation as follows:

    (a) Development is limited to the area referred to as the low hazard area in Attachment 2.

    (b) The number of dwellings to be approximately 100 at Living 1 and/or Living Hills zone density.

    (c) Implementation methods to ensure development occurs in an integrated manner and in accordance with a Development and Staging Plan.

2. The Bridle Path Road Draft Area Plan for public consultation.

3. That the result of the consultation and any amendments to the Bridle Path Road Area Plan be reported back to the Regulatory and Planning Committee in the first instances, prior to its consideration by the Council for adoption.

BACKGROUND

Introduction

48 This report, and the need for a decision on a preferred option for development, arose from a Council seminar on 15 May 2007 on the Bridle Path Road Area Plan, Deferred Living Hills A (LHA) zone, in the Heathcote Valley. The purpose of that seminar was to provide an understanding of the issues, priorities and implementation process; to seek feedback prior to finalising the draft Area Plan; and to ultimately progress a Plan Change to the City Plan to uplift the deferred notation for this zone.

49. The need for an Area Plan and consequently this decision, arose from submissions on the Proposed City Plan (notified in 1995), seeking to rezone the horticultural sub zone in Heathcote Valley for housing. The Council rejected those submissions and rezoned the area Rural 7.

50. Those residents making submissions lodged a reference to the Environment Court against the Council decision. Following negotiations between those referrers and the Council, a Consent Order (a negotiated agreement) was signed in the Environment Court recording the area zoned Rural 7 in Heathcote Valley be rezoned deferred Living Hills A. This signalled the intention to allow residential development once the issues were resolved.

51 The Bridle Path Road Area Plan has been prepared to assist implementation of the Consent Order, promote a comprehensive development plan addressing key issues, and to outline the scope of a Plan Change which will remove the deferred status to enable the land to become available for subdivision.

52. The Living Hills A zone includes areas where there is an existing residential settlement having a predominantly low density or semi rural character. Development Options 2 and 3 in this report suggest alternatives to this density and if either one is adopted, an alternative zoning may need to be considered.

53. The draft Area Plan is intended to provide a carefully researched and positive resource management framework to assist in promoting sustainable management, while accepting that an unavoidable presence of a natural hazard (and its consequent risks) exists.

Major Issues

54. The Consent Order listed a number of issues to be addressed prior to the deferment being removed. In particular, the issues requiring Council resolution were land stability, hazard mitigation, and the related issues of building density (lot areas, urban design and landscape).

55. Two geotechnical reports were commissioned by the Council. The first, a geotechnical hazard assessment, identified active natural processes and established hazard areas creating levels of hazard associated with these active processes. These hazard areas, identified in Attachment 2, are indicative, providing guidance on determining areas more suitable for residential development and densities.

56. The low hazard area (9.41 ha), corresponding to Option 2, is more or less along the lower, gentler slopes fronting Bridle Path Road. No significant geotechnical constraints for residential development are known and, with bunding in place, the likelihood of rocks rolling into this area and causing significant property damage has been assessed as negligible. As the slope angles progressively reduce south across the deferred LHA zone, the bunds may potentially move upslope, thereby creating more space for safe residential development in that area. According to the consultant's report, there would be no need to remove larger boulders on high rock strewn slopes of the Conservation 1 zone.

57. The minor hazard area (4.73 ha) has constraints that are generally erosion related, as well as a higher risk from rock fall. Geotechnical evidence suggests specific geotechnical investigation is required although residential development is possible. Without hazard mitigation, rocks are more likely to enter this area than in the low hazard area.

58. The moderate hazard area (6.27 ha) is located on the upper slope and steeper sites than the low and minor hazard areas. General erosion and rockfall hazard here requires detailed specific investigation, such that only isolated areas are suitable for residential development.

59. The high hazard area (0.07 ha) is on the higher, steeper slopes of hillside, generally outside the Rural 7 deferred LHA Zone. This area includes greater hazards from rockfall, landslides and erosion, making this area generally unsuitable for residential development.

60 While the first geotechnical report provided some guidance on how zoning densities may be approached, it was not considered detailed enough for the location and implementation of mitigation works. Consequently a second geotechnical report was commissioned, aimed at identifying in more detail the nature and distribution of geotechnical hazards in and above the deferred LHA zone, with particular emphasis on mitigation options and strategies that might best achieve appropriate outcomes for the deferred LHA zone.

61. In the course of investigating the matters that were the subject of the Environment Court Consent Order, a detailed subdivision plan was prepared for the Council. Its purpose was to determine the feasibility of development, to identify practicable house sites, and to identify where further site assessment might be required while addressing the other issues raised in the Consent Order. This plan produced Option 4 in Attachment 3.

62. Other matters also need to be considered when choosing a development option. Amenity issues are important, particularly in a semi-rural environment like the Heathcote Valley and, together with topography, will affect the density at which development is permitted to occur. In essence, there needs to be a balance between density, amenity and the economies of scale needed in order to generate a financially viable development.

63. The Living Hills A zone includes a range of areas where there is existing residential settlement that has a predominantly low density or semi rural character. The zone would appear to recognise flexibility in development patterns for particular locations. Therefore a higher density over a smaller area could be appropriate for Bridle Path in terms of the zone description. Density may not necessarily be as much a determinant of maintaining visual amenity as a good comprehensive subdivision design.

***Stormwater*:**

64. A catchment plan for surface water management within Heathcote Valley has already been adopted by the Council and has been steadily implemented over the last 6-7 years. Along with other significant works in the Heathcote Valley floodplain, that plan proposes the upgrading and diversion of the Heathcote Valley Drain, from its current alignment within the Morgans Valley development, across the Area Plan area, to connect into an upgraded waterway within Cooks Lane. With the adoption of the Development Contributions Policy, future contributions will now come from a wider 'pool' throughout the greater Heathcote catchment (as well as from the Bridle Path Road area) once development proceeds. Annual funding for the ongoing projects still to be completed within the scheme will continue from the Transport and Greenspace budget.

***Roading, Connections and Access*:**

65. Integrated development and road user safety are also integral to achieving a comprehensive plan sought through the Consent Order. Morgans Valley and the Bridle Path Road Area Plan are intended to be linked to provide connectivity for vehicles, pedestrians and cyclists. The link road which will achieve this, as well as other roading networks required to service the future subdivision, will be the responsibility of landowners/developers.

66. It is desirable that the proposed link road be developed sequentially from Morgans Valley and Morgans Valley Road through to Bridle Path Road. This aims to achieve good development and is a requirement of the Consent Order. To safeguard its efficiency as a Minor Arterial Road, multiple accesses to Bridle Path Road are to be avoided. This can only be achieved through a binding development plan.

Open Space and Recreation Links:

67. The future of the undeveloped land in the minor, moderate and high hazard areas will require further analysis and assessment of options. The undeveloped upper slopes (moderate hazard area) may be taken in their entirety or in part as reserve contribution, or acquired by the Council through a sale and purchase agreement. The use of the Strategic Land Purchase Fund (if Council agrees) or environmental compensation may be other ways to acquire this land. The undeveloped minor hazard area could also be acquired by the Council or be attached to lots in the low hazard area, to be maintained by landowners but with no building permitted. Experience does show however, that parts of lots excluded from building are not always well maintained by landowners. This is particularly significant as this land is likely to contain the bunding which requires ongoing maintenance.

68 Where the Council becomes owner of land unsuitable for development, that land could be combined with the Conservation 1 zone and the Port Hills recreation area for public use and pedestrian access to the Port Hills. The upper slopes might also be planted to provide further mitigation as well as amenity. However, there may be difficulties as the upper slopes become steeper. Availability of water and maintaining planting has historically been difficult and fire risk would need to be managed.

69. A decision on this matter needs a comprehensive assessment of the costs and benefits at the time of the plan change or subdivision process.

***Comprehensive Development and Integration with the Adjoining Morgans Valley Subdivision*:**

70. Although this area is quite small at around 20 ha, the Consent Order recognised the success of development would benefit from a comprehensive plan and integrated infrastructure requirements. Council staff have extended this concept by creating a linkage with the adjoining subdivision to the south in Morgans Valley, mentioned under paragraph 59 above.

71. It would be preferable for at least two reasons for development to be staged from the south. Firstly, the waterway will be constructed from that direction, and the road can follow, incorporating the link with Morgans Valley. Secondly, a two stage implementation plan will enable the hazard mitigation to be broken down into two stages, thereby reducing up-front costs.

THE OBJECTIVES

72. The objectives are to meet the terms of the Consent order and facilitate a comprehensive development that achieves the objectives and policies of the City Plan and the purpose of the Resource Management Act 1991.

THE OPTIONS - SUMMARY

73. Four options have been considered for hazard mitigation and subsequent development. In addition to hazard mitigation, consideration has been given to the terms of the Consent Order, City Plan provisions, the Port Hills environment and landscape, existing overhead transmission lines, and infrastructure requirements particularly for stormwater management.

74. Option 1 – maintain the existing level of development at 13 houses and do not rezone land to Living Hills A (or any form of residential zoning). Hazard mitigation may still be required as there is a 1% probability of rocks falling into this area. Any mitigation is the responsibility of the landowner. On present information Option 1 is unlikely to meet the tests under Section 32 of the RMA. Both the Consent Order and geotechnical reports suggest some form of development is acceptable and adverse effects can be mitigated.

75. Option 2 – rezone and develop the low hazard area only to a density higher than currently anticipated by the LHA Zone. The cost of rockfall hazard mitigation is approximately $500,000 + GST to be paid for by the developer. With the likely maximum development potential being approximately 100 households (having regard to UDS preferred Greenfield densities) the approximate cost per lot would be around $5,000.

76. Option 3 – rezone and develop both the minor and low hazard areas (excluding the moderate and high hazard areas) to a density higher than currently anticipated by the LHA Zone. The total cost of rockfall hazard mitigation would be approximately $1.04 million + GST. The development potential would be up to a maximum of approximately 200 households at a similar cost per lot to Option 2. This form of development could however have a significant visual impact.

77. Option 4 – rezone and develop both the minor and low hazard areas (excluding the moderate and high hazard areas) to a lower density than currently anticipated by the LHA Zone. To ensure Consent Order matters could be met, and site limitations taken into account, a draft survey plan was prepared for the site. The aim was to achieve an LH density closer to Bridle Path Road and more towards an LHA density as the slope increased. This option achieved 116 lots, ranging in area between approximately 700 m^2 -1900 m^2. The cost of rockfall hazard mitigation would be the same as for Option 3.

THE PREFERRED OPTION

78. Option 2 limits development to below the low hazard line on the more gentle slopes which are subject to less severe rock roll and rockfall hazard. Consequently mitigation by bund construction is significantly less expensive than Options 3 and 4. More lots could be provided for by allowing a higher density than usually anticipated in LHA zones. This would provide a similar development potential as Option 4 which the landowners might have an expectation in achieving. However, Option 2 only requires bunding as mitigation and does not require more elaborate and expensive mitigation measures. Option 2 is also preferred to Option 3 which is likely to be unacceptable to the community because of its visual impact and expensive mitigation measures.

ASSESSMENT OF OPTIONS

Option 2 Preferred option

79. Allows for higher density development than otherwise provided for under the LHA zone, limited to below the low hazard line with a bund as rockfall mitigation at the developers responsibility and cost.

	Benefits (current and future)	Costs (current and future)
Social	Higher than LHA density provides more households within the city, increases housing supply and may contribute to a more cohesive community in Heathcote Valley and make schools, businesses etc more viable.	Development costs for landowners and potential landowners may be higher (eg foundations). Amount of development less than that on flat land with medium density development, given infrastructure requirements eg waterway, link road.
Cultural	.	Improved facilities may be required. Some facilities running at capacity eg St Mary's Church Hall.
Environmental	Site surrounded by varying residential development densities. Therefore higher density may not appear visually inconsistent. Less hazard mitigation work required. Bunding only required as opposed to fencing and planting as less probability of rockfall in this area, and rock fall slows further down slope. Balance land for visual, amenity and possible recreation purposes. Development kept off upper slopes, as more difficult to develop.	Development kept on the lower slopes thereby reducing opportunities for views. Less opportunity for open space and amenity within subdivision although compensated for by upper slopes being kept free from development.
Economic	Cost of hazard mitigation approximately half that of other development options - three and four, although the cost per household not significantly different from other options.	Some operational costs for ongoing maintenance of mitigation works.

Extent to which community outcomes are achieved:
This option will contribute, in particular, to the achievement of:

- A safe city, where risks from hazards are managed and mitigated.
- An attractive and well designed city, through comprehensive planning, the provision of open space and recreation networks.

Impact on the Council's capacity and responsibilities:
This option will increase the funding base for the Heathcote Valley drainage scheme with no significant increase in the scheme's cost and bring about a scheme to better manage and mitigate the risk of flooding in the Heathcote Valley; management of rockfall hazard from Council land.

Primary alignment with Community Outcome, City Development, City Plan Urban Growth Objective 6.1.

Refer to legal considerations section for analysis of these responsibilities.

Effects on Maori:
The Council aims to achieve the objectives of Iwi Management Plans in relation to water discharge and quality, particularly into and from natural waterways.

No known recorded association of particular area with Ngai Tahu, although Heathcote Valley floor has areas of known archaeological association.

Consistency with existing Council policies:
Option specifically consistent with relevant Council policies**:**

- Greater Christchurch Urban Development Strategy - takes into account development options for Greenfield development areas and Proposed Change No.1 to the Regional Policy Statement.
- Development Contributions Policy, in relation to providing reserves and network infrastructure to service growth.

Views and preferences of persons affected or likely to have an interest:
Landowners have been regularly consulted by letter, newsletter, telephone and pubic meetings, most recently on 10 May 2007 particularly in regard to Option 4. It would not have been appropriate to consult the wider community while discussions on what were primarily site specific issues were being conducted with landowners. Option 2 was raised at the Council seminar on 15 May 2007, but has not been specifically presented to landowners. This option will be made available to landowners and the wider community when the draft Area Plan is made available for public comment.

Other relevant matters:
Purchase or vesting land for mitigation works, undeveloped land on upper slopes as reserve.

Option 1 - Maintain the Status Quo (if not preferred option)

80. No further development in the deferred LHA zone. Maintain existing 13 dwellings.

	Benefits (current and future)	Costs (current and future)
Social	Lifestyle choice retained	Landowner expectations and Environment Court Consent Order conditions not met. Housing need of city not assisted in being met.
Cultural	None	None
Environmental	More visual open space on Port Hills, though in private use.	No direct costs.
Economic	Nothing specific	Land not effectively or efficiently used. Work such as waterway already planned and budgeted for. Lower rating base to recover costs from.

Extent to which community outcomes are achieved:
This option will contribute less than Option 2 to the achievement of:

- A safe city, where risks from hazards are managed and mitigated.
- An attractive and well designed city, through comprehensive planning, the provision of open space and recreation networks.

Impact on the Council's capacity and responsibilities:
This option will increase the Council's share of the Heathcote Valley Drainage Scheme as there will be fewer Development Contributions.

Refer to legal considerations section for analysis of these responsibilities.

Effects on Maori:
The Council aims to achieve the objectives of Iwi Management Plans in relation to water discharge and quality, particularly into and from natural waterways.

No known recorded association of particular area with Ngai Tahu, although Heathcote Valley floor has sites of known archaeological association.

Consistency with existing Council policies:
Inconsistent with Greater Christchurch UDS, City Plan Urban Growth Objective 6.1, UDS and RPS Proposed Plan Change No. 1 in particular.

Views and preferences of persons affected or likely to have an interest:
Landowners/developers unlikely to support this option due to expectation for development through Consent Order and subsequent discussions by the Council with landowners. Landowners are likely to suffer a loss of public confidence in the planning process provided by the Council.

Other relevant matters:
Purchase or vest undeveloped land on upper slopes as reserve.

Option 3

81. Development within both minor and low hazard areas at higher density than usual Living Hills densities. Rockfall hazard mitigation by fencing and planting. Cost to developers approximately $1.04 million + GST. No development in moderate or high hazard areas.

	Benefits (current and future)	Costs (current and future)
Social	Higher than LHA density provides more households within the city, increases housing supply and may contribute to a more cohesive community in Heathcote Valley and make schools, businesses etc more viable.	Development and hazard mitigation costs increase on steeper land.
Cultural	More people in Heathcote Valley supporting the valley's facilities.	Improved facilities may be required. Some facilities running at capacity eg St Mary's Church Hall.
Environmental		Loss of visual amenity and need for greater hazard mitigation eg higher retaining walls to protect development closer to rockfall hazard. This option has the greatest potential environmental impact
Economic	Higher development contributions for reserves and open space development on the Port Hills. Work such as waterway already planned and budgeted for and which can cope with forecast increase in households. Greater 'pool' of developments (than Options 2, 4), contributing to both the area's drainage scheme and rockfall mitigation.	Development and mitigation costs for developers higher than for Option 2, although lot yield higher than Option 4 therefore potentially lower cost per lot.

Extent to which community outcomes are achieved:
This option will contribute in part to the achievement of:

- A safe city, where risks from hazards are managed and mitigated.
- An attractive and well designed city, through comprehensive planning, the provision of open space and recreation networks.

Impact on the Council's capacity and responsibilities:
Higher costs associated with development on land subject to greater risk from rockfall hazard and associated higher mitigation and ongoing maintenance costs**.**

This option will increase the funding base for the Heathcote Valley drainage scheme with no significant increase in the scheme's cost, and bring about a scheme to better manage and mitigate the risk of flooding in the Heathcote Valley; management of rockfall hazard from Council land.

Refer to legal considerations section for analysis of these responsibilities.

Effects on Maori:
The Council aims to achieve the objectives of Iwi Management Plans in relation to water discharge and quality, particularly into and from natural waterways. No known recorded association of particular area with Ngai Tahu, although Heathcote Valley floor has sites of known archaeological association.

Consistency with existing Council policies:
Supports the Council's City Plan Urban Growth Objective 6.1, the growth strategy for the Greater Christchurch Urban Development Strategy, and, the Proposed Change No 1 to the Regional Policy Statement.

Option more specifically consistent with relevant Council policies**:**

- Development Contributions Policy, in relation to providing reserves and network infrastructure to service growth.

Views and preferences of persons affected or likely to have an interest:
Landowners, potential developers and the wider community have not had this proposition of higher density presented to them. Likely to give some landowners a greater advantage than others, as the benefits of high density development will not be spread evenly across all landowners.

Other relevant matters:
Purchase or vest land for mitigation works, undeveloped land on upper slopes as reserve.

Option 4

82. Development within both minor and low hazard areas at lower density similar to Living Hills A zone hillslope densities. Mitigation costs of $1.04 million + GST at developers' expense.

	Benefits (current and future)	**Costs (current and future)**
Social	Higher than LHA density provides more households within the city, increases housing supply and may contribute to a more cohesive community in Heathcote Valley and make schools, businesses etc more viable.	Development and hazard mitigation costs increase on steeper land.
Cultural	More people in Heathcote Valley supporting the valley's facilities.	Less opportunity for open space and amenity within subdivision although compensated for by upper slopes being free from development. Improved facilities may be required. Some facilities running at capacity eg St Mary's Church Hall.
Environmental	Some Development Contributions for reserves and open space development on the Port Hills. Larger sections provide greater opportunity for private landscaping including larger trees.	Loss of visual amenity and need for greater hazard mitigation eg higher retaining walls to protect development closer to rockfall hazard.
Economic	Work such as waterway already planned and budgeted for. Can cope with forecast increase in development.	Development costs per lot higher than Option 2 for developers. Fewer lots than Option 3.

Extent to which community outcomes are achieved:
This option will contribute in part to the achievement of:

- A safe city, where risks from hazards are managed and mitigated.
- An attractive and well designed city, through comprehensive planning, the provision of open space and recreation networks.

Impact on the Council's capacity and responsibilities:
This option will increase the funding base for the Heathcote Valley drainage scheme with no significant increase in the scheme's cost, and bring about a scheme to better manage and mitigate the risk of flooding in the Heathcote Valley; management of rockfall hazard from Council land.

Refer to legal considerations section for analysis of these responsibilities.

Effects on Maori:
The Council aims to achieve the objectives of Iwi Management Plans in relation to water discharge and quality, particularly into and from natural waterways.

No known recorded association of particular area with Ngai Tahu, although Heathcote Valley floor has sites of known archaeological association.

Consistency with existing Council policies:
Supports the Council's City Plan Urban Growth Objective 6.1, the growth strategy for the Greater Christchurch Urban Development Strategy and the proposed Change No 1 to the Proposed Regional Policy Statement.

Views and preferences of persons affected or likely to have an interest:
Landowners have been familiar with this proposition or similar for some time. It would not have been appropriate to consult the wider community while discussions on what were primarily site specific issues were being conducted with landowners.

Other relevant matters:
Purchase or vest land for mitigation works, and upper slopes as reserve.