

3. APPEAL ON THE DECISION OF ENVIRONMENT CANTERBURY ON PROPOSED CHANGE 3, TRANSITIONAL REGIONAL PLAN

General Manager responsible:	General Manager Strategy & Planning, DDI 941-8281
Officer responsible:	Programme Manager - Healthy Environment
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PURPOSE OF REPORT

1. To seek retrospective approval by the Council of the attached appeal on the decision of Environment Canterbury (ECan) on Proposed Change 3 to the Canterbury Regional Council Transitional Regional Plan (TRP). The appeal was lodged with the Environment Court by the closing date of 16 March 2009.
2. For the Council to decide to either endorse or withdraw the appeal.
3. The report contains the following attachments:
 - **Attachment 1** - Notice of appeal to Environment Court against decision on the Transitional Regional Plan Change 3

There are three appendices to the above attachment:

- **Appendix 1(a)** - Council submission on Change 3 to the Transition Regional Plan
- **Appendix 1(b)** - Decisions of Council on Proposed Change 3 to the Canterbury Regional Council Transitional Regional Plan
- **Appendix 1(c)** - Name and address list of interested parties

EXECUTIVE SUMMARY

4. This appeal originated at the request of ECan in order to resolve an oversight in their decision on Proposed Change 3 to the TRP.
5. The General Authorisation (GA) for the discharge of stormwater contained in the TRP relates to local authority boundaries as they were in September 1991 when the GA became part of the TRP. The listed exclusions to the GA, for the discharge of roof stormwater from buildings and structures either into the ground or directly into groundwater to land, are appropriate for the areas identified in September 1991. The City Council submitted on the plan change in good faith to reflect the change that occurred in our jurisdiction with the merging of Banks Peninsula District Council (BPDC) and Christchurch City Council, and asked paragraph "(1)(d) the Banks Peninsula District Council area" of the TRP be deleted.
6. The ECan officer's report supported that request without realising the significance of including the additional area and the paragraph was subsequently deleted by the ECan hearings committee (decisions adopted by ECan 29 January 2009). It went unnoticed by both ECan and the City Council that the GA referenced the old boundary and that the effect was to now permit roof stormwater discharge to land in the former BPDC area. Because of the soil types in the BPDC area and the effects of erosion and slope instability, and high water table, the discharge of roof stormwater to land as a permitted activity is considered highly undesirable to both ECan and the Council.
7. In order to resolve this in a straightforward way, and to avoid the time and resources required for a further variation, ECan requested that the City Council appeal the decision and request that paragraph (1)(d) be reinstated in the TRP.
8. Retrospective Council approval of the appeal is being sought because the appeal had to be lodged with the Environment Court by 16 March 2009.
9. Since the lodging of the appeal, negotiation has taken place, an agreement has been reached between Environment Canterbury and Christchurch City Council. By way of a Memorandum of Consent, the parties will seek an order from the Court that the consent sought by Christchurch City Council be granted, subject to amendments to the General Authorisation for Stormwater.

FINANCIAL IMPLICATIONS

10. There are no financial implications for the City Council. If the City Council does not appeal, ECan will be required, at some considerable expense, to re-notify TRP Proposed Change 3.

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

11. The cost of preparing and lodging the appeal is covered by existing Strategy and Planning Unit budget.

LEGAL CONSIDERATIONS

12. The Resource Management Act 1991 (First Schedule, Part 1(14)) allows the Council to appeal a decision on a Regional Plan.

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

13. The proposal to appeal the decision was reviewed by the Legal Services Unit and the advice was to proceed with the appeal as it made good business sense to do so.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

14. The appeal seeks to ensure that the Plan Change more appropriately protects groundwater quality and is consistent with achieving the LTCCP objective "To conserve and protect the long-term availability and quality of the city's water" (p.166).

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

15. By better protecting the quality of Christchurch groundwater and avoiding the potential adverse effects of erosion, this action supports the LTCCP objectives for stormwater which includes identifying risks and managing stormwater in a sustainable manner (p.224)

ALIGNMENT WITH STRATEGIES

16. This action supports the approach taken in the Council's Draft Water Supply Strategy and being considered in the preparation of a Draft Surface Water Strategy. In particular, it will assist in protecting water quality and avoiding adverse effects from the management of stormwater.

Do the recommendations align with the Council's strategies?

17. As above.

CONSULTATION FULFILMENT

18. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Regulatory and Planning Committee recommend that the Council appeal the decision of Environment Canterbury to delete paragraph (1)(d) in Proposed Change 3 to the Transitional Regional Plan, and request that the original paragraph (1)(d) be re-instated and a footnote attached to paragraph (1)(d), the footnote being – "The area defined by the Banks Peninsula District Council boundary prior to amalgamation", or similar wording.

COMMITTEE RECOMMENDATION

The Regulatory and Planning Committee recommends that the Council:

- (a) Appeal the decision of Environment Canterbury to delete paragraph (1)(d) in Proposed Change 3 to the Transitional Regional Plan, and request that the original paragraph (1)(d) be re-instated and a footnote attached to paragraph (1)(d), the footnote being – “The area defined by the Banks Peninsula District Council boundary prior to amalgamation”, or similar wording.
- (b) Prepare a Memorandum of Consent seeking an order from the Court that the consent sought by the Council be granted, subject to amendments to the General Authorisation for Stormwater, as set out in recommendation (a) above.