

22. 4. 2010

**REGULATORY AND PLANNING COMMITTEE
1 APRIL 2010**

**A meeting of the Regulatory and Planning Committee
was held on Thursday 1 April 2010 at 9am.**

PRESENT: Councillor Sue Wells (Chairperson),
Councillors Helen Broughton, Sally Buck, Ngaire Button, Yani
Johanson, Claudia Reid, Bob Shearing, Mike Wall and
Chrissie Williams.

IN ATTENDANCE: Councillor Norm Withers.

APOLOGIES: Councillor Williams left the meeting at 11.55am and was absent for
part of item 8.

The Committee reports that:

PART A - MATTERS REQUIRING A COUNCIL DECISION

1. WEATHERTIGHT HOMES

General Manager responsible:	General Manager, Regulation and Democracy Services, DDI 941-8462
Officer responsible:	General Manager, Regulation and Democracy Services
Author:	Steve McCarthy, John Buchan

PURPOSE OF REPORT

1. This report had been requested by the Committee at its 4 March 2010 Committee Meeting.

EXECUTIVE SUMMARY

2. At that 4 March meeting the Committee considered a report on Weathertight Homes and asked that staff report back to the April Committee meeting with a view to formulating a policy response on this issue.
3. At that 4 March meeting the Committee asked staff to specifically report back on the current position of Local Government New Zealand (LGNZ), and also on the model to address the Weathertight Homes issue used in Canada.
4. This report addresses both of those requests and concludes with a recommendation regarding a policy response as requested by the Committee.

LOCAL GOVERNMENT NEW ZEALAND RESPONSE

5. The approach of LGNZ, as adopted by its National Council, has been to work through the Metro Sector meetings of the Mayors and Chief Executives of the metropolitan councils in New Zealand. Those Councils which are represented at Metro Sector meetings are:

Auckland City Council	Christchurch City Council
Dunedin City Council	Franklin District Council
Hamilton City Council	Hutt City Council
Manukau City Council	North Shore City Council
Papakura District Council	Porirua City Council
Rodney District Council	Tauranga District Council
Upper Hutt City Council	Waitakere City Council
Wellington City Council	

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6. The LGNZ has adopted the position taken by the Metro Sector meetings, and in particular the position adopted by Mayors Kerry Prendergast and John Banks regarding their discussions with the Government late last year where those two Mayor's declined the Government's 2009 proposal. (as reflected in the PricewaterhouseCoopers (PWC) report)

7. The two proposals are:

Contributions	Government's 2009 Proposal	LGNZ 2008 Proposal
Homeowners	64%	25% - 75%
Government	10%	50% - 75%
Councils	26%	25%

8. LGNZ supports the approach of the two Mayors that Central Government needs to be actively involved in a much greater way than simply making a contribution which is the current cost to the Government of operating the Weathertight Homes Resolution Service.

9. The current position of LGNZ is best reflected in a position paper it adopted in May 2008 which had formed the basis of the discussions by the two Mayors with Central Government. A copy of extracts from that 2008 LGNZ paper is attached for the Committee's information. **(Attachment A)**

10. Some information regarding the size of the problem in New Zealand has been omitted as that information has now been updated as a result of the PricewaterhouseCoopers report which was released by the Government late last year.

11. On Tuesday 23 March 2010 it was reported in the New Zealand Herald that the Minister of Building and Housing, Maurice Williamson, was due to announce a new scheme in the next few weeks which was to succeed the proposal he had negotiating with a number of Mayors last year. The report stated that discussions had been held between representative's of the Prime Ministers departments, Finance, Treasury and the Department of Building and Housing.

CANADIAN MODEL

12. Vancouver in Canada had reported serious problems in 1993 with leaky problems where buildings had been designed using Stucco Cladding systems.

13. They had tried to address the problems with amendments to the Building Code Guidelines but took a moratorium in 1996 on most of these types of cladding systems to half the problem.

14. The British Columbia Provincial Government established the Reconstruction Loan Programme to provide financial support to help with the cost of repairing homes damaged by water and which were built before 1 July 1999. The programme was funded through a \$750 levy charged on new residential construction. The programme was launched in 1998 to run for 10 years and was anticipated to give out approximately \$250 million in interest free loans. To date the Provincial Government has approved more than \$617 million in no interest loans through the programme, assisting more than 1,600 households to repair leaky homes. The Provincial Government also provided an additional \$23 million in provincial sales tax rebates on repairs.

15. The reconstruction programme covers:

- Cost of repairs.
- Cost of consultants.
- Construction costs including contingencies.
- Miscellaneous expenses, for example landscaping, additional property management fees.
- Litigation fees.
- Warranty costs.

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16. A home owner is eligible if they:
 - (a) own a water damaged home in a coastal climatic zone
 - (b) do not have savings or other assets that could be used to pay for repairs
 - (c) do not qualify for conventional mortgage financing or cannot afford the monthly payment on a conventional loan.
17. If the eligibility criteria is met then financial assistance could be secured for the full amount needed to repair the building envelope. The terms on any loans are generally set for a date between 3 -5 years and the loan is secured by way of mortgage on the title.
18. In July 2009 the Provincial Government announced that the programme will stop accepting new applications as at 31 July 2009. a recent slowdown in residential construction resulted in less money being collected through levies to fund the programme and the Provincial Government has decided it can no longer afford to fund the programme.

SUNSET TERRACES CASE - COURT OF APPEAL DECISION

19. On Monday 22 March 2010 the Court of Appeal released its decision on two cases involving the North Shore City Council. These can be referred to for the purpose of this report as the Sunset Terraces Case and the Byron Avenue decision case. To provide context for this Court of Appeal decision in 1996 the Privy Council had decided in Hamlin v Invercargill City Council that Councils would be liable to the owners of residential properties if those properties were constructed with latent building defects. This decision included liability to the subsequent owners of those properties.
20. Since 1996 there have been a number of court decisions as to the extent of that Hamlin case in terms of the types of buildings for which councils are liable.
21. The Courts have established that the Hamlin duty by Councils does not apply with regard to motels (because of the commercial context), luxury lodges and schools (as they are non-residential buildings).
22. The issue before the Court of Appeal in the Sunset Terraces case and the Byron Avenue case was whether investor owners of apartments and multi unit dwellings (where the owners do not occupy the apartment) fall within the Hamlin duty. So that if negligence can be proved on the part of the Council through the consenting or inspection process then the council would be liable to make a contribution to any damages that may be awarded by the Court.
23. As has been reported in the media the Court of Appeal decided that the Hamlin duty did apply in respect of such multi-unit apartments even though the investor owners do not occupy the apartments. And that duty is owed to any one who acquired one of those apartments where the intended use had been disclosed as residential in the plans submitted for building consent approval.
24. The Court found that there is no material difference between the owners of leaky apartments and the owners of leaky houses in the legal duty to be owed by Councils.
25. As in all these cases there is also the issue of any contributory negligence by the home owner which may lessen the damages to be awarded by the court. Examples of that contributory negligence can be lack of maintenance of the property or purchasing a property being aware from the LIM there are weathertight issues.
26. The Court of Appeal decision on the 2 cases does not alter the fact that a home owner can join a number of parties who the owner believes were negligent in the exercise of their functions regarding the construction of the house. Typically such parties are the architects / designer, engineer (if any), the builder, sub contractors and the Council. So the Council is not the sole party that can be involved in any litigation.

1 Cont'd

27. In terms of the active WHRS claims currently being processed by the Council the decision does not have any real practicable effect as a number of those claims involve multi-units. The court effectively treats owners of stand alone residential houses and owners of apartment units in the same way when it comes to the legal duty of care to be owed by the Council to those owners in any building project. As will be seen from the attached LGNZ Proposal (page 10) that proposal has been prepared on the basis that such owners of apartment buildings should be included in any central government solution to this matter.
28. One of the Court of Appeal judges made a number of general comments on the weather tight homes issue which are of relevance with regards to any forthcoming discussions with the Government. Those comments were:
- *It is also plain that the leaky home problem is the result of what can fairly be described as systemic failure, occurring at all levels within the building industry, in both the public and private sectors. As has been detailed in my colleagues' judgments, the Building Industry Commission's report, Reform of Building Controls recommended an approach to building controls which moved away from the existing highly prescriptive code to a performance-based code which focused on the preservation of the health and safety of occupants and protection of neighbouring properties rather than on the protection of property owners' economic interests in the properties being built. The focus on performance would, it was thought, allow for greater innovation in building methods. Market forces would operate to ensure that owners received value for money, and owners could protect their interests in their properties through insurance arrangements if they chose. Territorial authorities would be subjected to the discipline of competition from private sector building certifiers, who would be required to hold public liability insurance to protect the interests of homeowners. These recommendations were made after a lengthy and highly consultative process.*
 - *In the Building Act 1991 Parliament accepted the philosophy underlying the Report and largely adopted its recommendations. However, the Act did not produce the outcomes anticipated. Market forces, compliance regimes and insurance arrangements did not in fact operate to protect the interests of homeowners and prevent the construction, on a large scale, of residential properties that are not weather-tight. The sheer size of the problem points to systemic failure rather than simply failures by individual players within the industry.*
 - *In this context, litigation, which looks to impose responsibility on particular actors for particular consequences on the basis of legal principles, cannot offer a sufficient solution. Systemic failure of the type that has occurred will not necessarily result in legal liability being imposed on all the entities which have had some part to play in the failure, even though they bear some responsibility (in a moral sense) for what has occurred.*
 - *There is little doubt that litigation is a poor instrument to provide appropriate remedies to people affected by large-scale systemic failure of the type that has occurred. For example:*
 - (a) *Generally speaking, courts are confined to determining the specific issues that particular proceedings raise, certainly where private law claims are made. They are unable to undertake a holistic or comprehensive assessment of the underlying problem, much less to impose a comprehensive solution on all involved. In this context, litigation is piecemeal and ill-directed.*
 - (b) *Whether individual purchasers will be able to obtain relief depends on factors which have nothing to do with their individual merits. For example, whatever legal remedies may theoretically be available, a innocent purchaser whose property was inspected negligently by a private sector building certifier is likely to be in a far worse position than a similar purchaser whose property was inspected negligently by a territorial authority. It is clear that most building certifiers against whom claims might have been made have gone out of business and their insurance*

1 Cont'd

arrangements provided wholly inadequate protection for homeowners. (The same observation applies to most developers, builders, architects and designers.) By way of further example, William Young P has referred to the ten-year long-stop limitation period. Whether a particular purchaser whose property suffers from leaky home syndrome falls within or without the period may well be a matter of chance. In other words, relief through legal proceedings will be available on a haphazard basis, not reflective of underlying merits. It is surely unacceptable that access to relief should be determined by happenstance rather than by merit.

- *Against this background the only realistic solution is one which is comprehensive in its coverage and to which all who bear some responsibility for what has happened contribute. Given that many from the private sector have gone out of business, the burden may ultimately fall substantially on central and local government, but each has played a contributing part. This may be the price that we are all, as taxpayers and ratepayers, obliged to pay for remedying the results of a regulatory construct that simply did not work as envisaged.*

DISCUSSION ON NEW BUILDING ACT

29. Combined with the scheme to resolve historical claims the Government has also released a discussion paper on proposed amendments to the Building Act 2004. The new Act will seek to strike a balance between ensuring the quality of new buildings with an efficient and affordable process of control. The new Act will be significant in the light of any future claims and the Government has signalled that it intends to shift the burden of weathertight claims from local government. The Submissions Panel will consider a draft Christchurch City Council submission on the discussion paper in early April which includes:

A more balanced and cost-effective policy approach to future regulation in the building industry which could include:

- A licensing model which would be underpinned by insurance and protection for homeowners through building warranty provisions.
- A change from joint and several liability, to one of proportional liability.
- A long stop limitation provision which is in alignment with the ability for individuals to obtain insurance for such a period.
- A change in legislation which would enable local authorities to rely on statements for products and services without incurring liability arising out of the acceptance of such certificates.
- Changing legislation to ensure that liability rests with the author of such certificates.

Key initial changes would be:

- Home warranty - possibly funded by a levy on each building consent or included in development costs and passed on to the consumer.
- Registered/licensed builders.
- Registered/licensed products.
- Fully compliant design solutions.
- Pre-purchase inspections and surveys - possibly linked to mortgage lenders.

CONCLUSION

30. The Committee asked staff to report back with a view to formulating a policy response on this issue. It is recommended that the Committee support the work currently being carried out by the Metro Sector Mayors in their ongoing discussion with the Government and supports the model set out in the May 2008 paper prepared by Local Government New Zealand.

1 Cont'd

31. The LGNZ model seeks a significant contribution from Government which, although not stated in so many words, could be said to reflect the view that given Central Government initiated the changes in the early 1990's, which led to changes in building techniques, which led to the present Weathertight Homes situation then that is a position supported by the Committee from comments made at its last meeting

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Supports the Local Government New Zealand 2008 model regarding the Weathertight Homes situation issue.
- (b) That in any future negotiations with the Government on proposals to resolve weathertight homes claims the following matters are taken into account:
- That the proposal reflects a level of contribution that is a fair and affordable contribution by parties including the Government, Councils and the homeowner.
 - That the scale of the issue in particular areas and exposure by individual Territorial Authorities is taken into account.
 - That the proposal generally follows the position paper prepared by LGNZ and attached to this report as **Attachment A**.
- (c) That staff report to the Committee once the Minister has made an announcement regarding a revised Government Scheme.
- (d) That the Council submission on proposed changes to the Building Act 2004 include support for a home warranty scheme for new building works, registered and licensed builders and building products, approval of fully compliant design solutions and compulsory pre-purchase inspections and surveys.

COMMITTEE RECOMMENDATION

It is recommended that the Council:

- (a) Supports the Local Government New Zealand 2008 model regarding the Weathertight Homes situation issue on the basis that the Council advises the Government that it wishes to be formally consulted in advance of any proposals on this issue.
- (b) And that in any negotiations with the Government on proposals to resolve weathertight homes claims the following matters are taken into account:
- That the proposal reflects a level of contribution that is a fair and affordable contribution by parties including the Government, Councils and the homeowner.
 - That the scale and nature of the issue in particular areas and exposure by individual Territorial Authorities is taken into account.
 - That the proposal generally follows the position paper prepared by LGNZ and attached to this report as **Attachment A**.
- (c) That staff report to the Committee once the Minister has made an announcement regarding a revised Government Scheme.
- (d) That the Council submission on proposed changes to the Building Act 2004 consider support for a home warranty scheme for new building works, registered and licensed builders and building products, approval of fully compliant design solutions and compulsory pre-purchase inspections and surveys.

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2. CONSULTATION ON DRAFT REGIONAL POLICY STATEMENT CHAPTERS ON WATER

General Manager responsible:	General Manager, Strategy and Planning Group, DDI 941-8281
Officer responsible:	Programme Manager, Healthy Environment
Author:	Melissa Renganathan, Policy Analyst, Strategy and Planning Group

PURPOSE OF REPORT

1. The purpose of this report is to provide the Council with an overview of the issues arising in draft chapters of the Canterbury Regional Policy Statement (CRPS), currently being reviewed by Environment Canterbury (ECan), and to gain the Council's support on recommendations for feedback to ECan with regard to the draft chapter on Water.
2. This is a non-statutory process which allows for consultation at an early stage of the review. It replaces the ECan seminars and workshops previously held for Council. Instead, over the last couple of years, the Committee has provided comments on a number of draft CRPS chapters, through a Committee report and staff recommendations for feedback to ECan. The Council has recently provided comments on the draft chapters for "The Coastal Environment", "Ecosystems and Indigenous Biodiversity" and "Landscape" in November 2009. The formal (RMA) consultation process is proposed to take place in August 2010 when the entire draft CRPS is completed and notified as a proposed policy statement.
3. The Council is requested to confirm the comments (presented in the grey boxes in the draft chapter attached) on the proposed draft chapters.

EXECUTIVE SUMMARY

4. The CRPS provides an overview of the resource management issues for the Canterbury region and is prepared to meet RMA 1991 requirements. The policies it contains affect the way the Council manages its District Plan as Council will have to give effect to the CRPS (as required under section 75 of the RMA). ECan is currently reviewing the CRPS and is seeking input from the Council as part of the review.
5. The draft chapter (see **Attachment 1**) discusses water issues in Canterbury. Staff comments and recommendations on the draft have been collated and are found within grey text-boxes throughout the chapter.
6. The "Water" Chapter is a rewrite of the current Chapter 9 Water. The preparation of the draft Water Chapter has followed a different process from the previously revised CRPS chapters, in that no Issues and Options paper was prepared before the existing chapter was revised. The initial Scoping Report on issues and approaches to the review of the entire CRPS which was completed in October 2006, noted that there were a number of initiatives at a national (Sustainable Water Programme of Action) and regional (including the Strategic Water Study, the forerunner of the Canterbury Water Management Strategy) level being undertaken to address the region's water issues. It concluded that there was little additional value in undertaking another review of water issues and that it would be more practical to "piggy-back" on these initiatives and make appropriate changes as conclusions emerged.
7. The proposed Chapter is primarily focussed on water as a resource supporting human activities. The Introduction provides little information on the different types or the status of waterbodies in Canterbury. It is also disjointed as some paragraphs and sentences do not follow each other logically. The Issues section does not clearly state what the actual issues are or discuss all issues. For example, although Issue 2 seems to be highlighting the effects of changing land-use on water supplies, the Explanation is heavily weighted towards the use of groundwater for irrigation and potential economic gain to be made by irrigators. As the issues are not clearly presented it is difficult to make links between the Objectives and Policies proposed. For example Objective 1 discusses the need to manage water sustainably, however sustainable management of water is not highlighted as an Issue. Policy 1 seeks the resolution of water management issues, however not all issues are presented in the Issues section.

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Although Council is supportive of the need for a Chapter on Water, a more balanced approach, taking into consideration the needs of the natural environment, indigenous species and habitat, community supply, recreational, business and agricultural activities is needed in the preparation of this Chapter. Detailed comments on the draft Water Chapter are located throughout **Attachment 1**.

8. As detailed above, it is the view of Council staff that significant work is required to redraft the Water Chapter. Due to ECan's timeframes the opportunity to provide feedback is limited to a narrow window. It is considered that despite the current state of the document, the Council should take this opportunity to provide feedback while it exists.
9. In parallel to the review of the CRPS, ECan has also developed the Canterbury Water Management Strategy (CWMS). The CWMS provides a vision to achieve sustainable water management, but the detail of how the CWMS proposals will work on the ground is yet to be fully developed and tested. The draft Water Chapter refers to and repeats some sections of the CWMS in Policies and Methods, however the interaction between the two documents is not clearly explained.
10. ECan is also in the midst of preparing the Natural Resources Regional Plan (NRRP), of which parts of the Air Chapter are currently operative. Decisions on the remaining eight Chapters are expected later this year. The NRRP however must give effect to the RPS (which is proposed to be notified in August this year). The Council is concerned over the alignment between these two regional documents as they have been prepared in the wrong chronological order (with regards to their position in the planning hierarchy).

FINANCIAL IMPLICATIONS

11. The CRPS could result in additional resources being required to amend planning documents in order to give effect to the CRPS. Giving effect to the final CRPS will be achieved through a variety of mechanisms including the Christchurch City Plan and Banks Peninsula District Plan and the LTCCP. The extent of any resources required is unclear at this stage and will need to be considered in subsequent LTCCP or Annual Plan processes.
12. The cost of preparing and participating in the CRPS review is covered by existing unit budgets.

LEGAL CONSIDERATIONS

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

13. The RMA provides for the Regional Council (ECan) to prepare Regional Policy Statements and review them. Council is participating in the ECan consultation process in the preparation of the proposed Chapters. Council will also have the opportunity to influence and shape the proposed CRPS through the formal submission process which is scheduled for August 2010.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

14. The chapter as drafted does not strongly support the LTCCP 2009-29 objectives that aim to ensure the City's water supply is clean, reliable, protected and managed for future generations. The proposed feedback to ECan seeks to improve this alignment.

ALIGNMENT WITH STRATEGIES

15. The recommendations support Council's Biodiversity Strategy 2008-2035 (2008), Water Supply Strategy 2009-2039 (2009), Surface Water Strategy 2009-2035 (2009) and the provisions relating to water in the Christchurch City Plan and the proposed Banks Peninsula District Plan.

CONSULTATION FULFILMENT

16. Not applicable.

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STAFF RECOMMENDATION

It is recommended that the Council:

- (1) Provides feedback to Environment Canterbury on the draft chapter as set out in Attachment 1 and;
- (2) In particular requests that Environment Canterbury provide a more robust explanation of how the Canterbury Regional Policy Statement Water Chapter relates to the Canterbury Water Management Strategy.

COMMITTEE RECOMMENDATION

That the Council:

- (1) Provides feedback to Environment Canterbury on the draft chapter as set out in Attachment 1 and;
- (2) In particular requests that Environment Canterbury provide a more robust explanation of how the Canterbury Regional Policy Statement Water Chapter relates to the Canterbury Water Management Strategy.
- (3) And include the following additional comments in the draft chapter.

The document should:

- Place highest priority on drinking water and recognise the Christchurch-West Melton aquifer system as a regionally significant source of untreated drinking water
- Add a new Issue stating that water is a finite resource
- Amend Issue 2 so that it is stated in a more neutral manner e.g. "... additional water ~~needed~~ *sought* for the expansion of the area irrigated"
- Replace the reference to "the Intergovernmental Panel on Climate Change" with "the National Institute of Water and Atmospheric Research (NIWA)"
- Make it clear that "water banking" (i.e. accumulating consents to take surplus water for trading purposes) is to be avoided
- Amend the explanation for Methods (Policy 1) so that it clearly relates to resolving issues concerning the management of water resources

2 Cont'd

BACKGROUND

17. The CRPS became operative in 1998 and is required to be reviewed within 10 years of it becoming operative. ECan is responsible for the review of the CRPS and is consulting with all Canterbury territorial authorities throughout the review process.
18. This review is a separate process to the preparation of Proposed Change No. 1 to the CRPS, which introduces a new Chapter 12A, (Development of Greater Christchurch). Chapter 12A sets out land use distribution, particularly for areas available for urban development, the household densities for various areas and other key components for consolidated and integrated urban development. It also identifies land which is to remain rural for resource protection and enhancement and other reasons.
19. ECan began discussions over the review of the CRPS with District Councils in late 2006. ECan has consulted with Territorial Authority (TA) Officers on the review process, Issues and Options papers and draft chapters of each CRPS chapter. Discussions have taken place (and will continue) at the officer level through workshops and meetings and at Councillor level through Council and Committee meetings.
20. The current CRPS consists of 14 Chapters which discuss various regional issues (eg water, soil and landscape) and provide objectives, policies and methods with regards to these issues. During the review process, it was decided that some issues would be better dealt with in new chapters (eg contaminated land which was previously dealt with in Chapter 7 Soils and Land Use) or better dealt with in conjunction with other issues (eg the proposed Settlement Chapter will also have transport provisions as well as deal with issues regarding versatile soils).
21. The following sections of the report summarises ECan's review of the current Chapter on Water.
22. The CRPS current water provisions are found in a number of chapters including Chapters 8 Landscape, Ecology and Heritage, 10 Beds of Rivers and Lakes and their Margins, 11 Coastal Environment, 12 Settlement and the Built Environment and 14 Energy.
23. The Scoping Report on issues and approaches to the review of the CRPS completed in October 2006 concluded that there was little value in revising CRPS provisions relating to water management while other similar initiatives were being undertaken. At the national level Central Government was preparing the Sustainable Water Programme of Action, while at the regional level several programmes including the Strategic Water Study, forerunner of the Canterbury Water Management Strategy (CWMS), were underway. It was decided that appropriate changes to the existing Chapter would take place as conclusions from these other initiatives emerged.
24. The CWMS acknowledges that Canterbury's water resources have been under pressure in recent years and that water management methods need to improve to ensure good environmental, social, cultural and economic outcomes. Challenges highlighted by the CWMS include pressures on river and aquifer systems from abstraction, where many are in zones that are already over-allocated, the cumulative effects on ecosystems (including land-use change) leading to biodiversity loss, degrading health of waterways, climate change impacts and infrastructure and efficiency issues.
25. The vision of the CWMS is to "To enable present and future generations to gain the greatest social, economic, recreational and cultural benefits from our water resources within an environmentally sustainable framework." To achieve the vision the CWMS has developed several principals (including setting priorities and primary and supporting principals) to ensure water is managed sustainably. These priorities form part of Objective 1 in the CRPS Chapter.

2 Cont'd

26. The CWMS provides some background to the issues facing Canterbury's water resources, however the CWMS focus seems to be primarily on how to best manage the resource to enable use of the resource while minimising effects on other values (such as biodiversity). In this way the CWMS is quite different to the existing Water Chapter which discusses competing demands placed on water, the land use effects on water quantity and effects of land uses and discharges to water quality.
27. Although sections of the CWMS are repeated in the draft Water Chapter, the Chapter does not provide a clear explanation of the relationship between the CRPS Water Chapter and the CWMS.

3. BANKS PENINSULA DISTRICT COUNCIL PUBLIC PLACES BYLAW REVIEW HOLDOVER

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8281
Officer responsible:	Programme Manager Strong Communities
Author:	Terence Moody

PURPOSE OF REPORT

1. To confirm a Council decision at its meeting on 10 December 2009 to hold over consideration of the revocation of the Banks Peninsula District Council Public Places Bylaw until the review of operational policies in relation to signboards in public places are considered in 2010/11.

BASIS FOR DECISION

2. The Local Government Act 2002 (LGA) requires bylaws to be reviewed within five years of their adoption and the Banks Peninsula District Council Public Places and Signs Bylaw 2004 (BPDC04) was required to be reviewed by December 2009. Parts of the Bylaw have already been reviewed, revoked, and where appropriate, replaced as noted below.
3. Following the review of bylaws undertaken in 2008 and 2009, the Banks Peninsula District Council Public Places and Signs Bylaw 2004 Part 2 Liquor Control in Public Places and Part 3 Public Places of the Bylaw were revoked and replaced by new provisions. These were replaced by the Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009 and Christchurch City Council Public Places Bylaw 2008 respectively. Some clauses of BPDC04 Part 4 Signs were also revoked by the latter bylaw. These related to sandwich boards, flat boards and flags. The provisions of the Christchurch City signboards policy were applied to such signs in public places.
4. Despite a new administrative bylaw having been introduced, the Christchurch City Council General Bylaw 2008, some administrative parts of BPDC04 and a section of Part 4 Signs relating to "remote signs", "remote sign frames", "rural information signs and frames", and "static information signs" were retained.
5. The remaining parts of BPDC04 requiring consideration include the Preamble, Part 1 Administration, and clauses 4.1; 4.5; 4.6; 4.7; 4.8; 4.9; first Schedule; second Schedule; and Design Guidelines of Part 4 Signs. In December 2009 a clause by clause analysis of the Bylaw was undertaken and was attached to the report to the Committee. This revealed that many of the provisions in the Preamble and Part 1 Administration are contained in the Christchurch City Council General Bylaw 2008 and hence the Bylaw could be revoked.
6. The remaining provisions of BPDC04 Part 4 Signs relate to signage under the control of the Council, and did not need to be included in any bylaw. It provided for the Chief Executive to permit remote signs on sign frames provided by the Council in public places under the control of the Council. As far as it was known there had not been any "remote signs", "remote sign frames", "rural information signs and frames", and "static information signs" provided for in the Banks Peninsula ward under the Bylaw.
7. The matters these provisions cover are addressed in the Christchurch City Public Places Bylaw 2008 which prohibits commercial use (such as signage) of public places without the Council's permission. Signage in public places will be further considered in the review of public places operational policies agreed by the Council at its meeting on the 24 September 2009.
8. Subsequently the Public Places Working Party determined that it wished the operational policies relating to signboards in public places should be dealt with on a city-wide basis and those contained in the bylaw should be considered as part of this process. The timetable set for the consideration of these is later in the 2010/11 year and it is anticipated that the signboards in public places policy will be considered by the Council in February/March 2011. Further consideration of the remanent BPDC04 bylaw revocation should therefore take place alongside the review of the signboards in public places policies.

3 Cont'd

FINANCIAL IMPLICATIONS

9. There are no other financial implications other than those with moving the costs associated with the Special Consultative Procedure to another financial year.

Do the Recommendations of this Report Align with 2009-2019 LTCCP budgets?

10. The budgets for the Regulatory Services group of activities in Our Community Plan 2009-2019 Volume 1 Page 89 make general provision for the enforcement of bylaws and the City Plan and investigation of complaints. It is not anticipated that the revocation of this bylaw will significantly impact on those budgets as similar provisions remain in the Christchurch City Council General Bylaw 2008.

LEGAL CONSIDERATIONS

11. The timeframes provided in section 158 of the LGA, that bylaws must be reviewed within five years of introduction, means BPDC04 was required to be reviewed by 15 December 2009. Section 160 of the LGA provides that a bylaw review is done by making the determinations required by section 155 below. If, following the review, the Council determines that the bylaw should be amended, revoked or revoked and replaced; it must act under section 156, and use the special consultative procedure to make, amend or revoke a bylaw.
12. Section 160A applies if a bylaw is not reviewed or earlier revoked it is automatically revoked on the date that is two years after the date it was required to be reviewed. In the case of this bylaw that is December 2011. Accordingly the remanent BPDC04 bylaw can be revoked, or allowed to lapse following the consideration of remote signboards management in the Council public places bylaw operational policy development.

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

13. Yes, as above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

14. Under the Activity Management Plan provisions for Regulatory Services Enforcement and Inspections: *Enforce compliance through Inspection, Enforcement and Monitoring of statutory requirements: Building, Parking, Fencing of Swimming Pools, City Plan & bylaws.*

Do the recommendations of this report support a level of service or project in the 2009-2019 LTCCP?

15. Regulatory Services Enforcement and Inspection: *The Council's regulatory services make sure we follow all the laws and rules that apply in the city to keep our residents healthy and safe. This ensures that residents and businesses comply with rules for building, parking, and City Plan and bylaws.*

ALIGNMENT WITH STRATEGIES

16. There are no specific strategies in relation to this issue.

Do the recommendations align with the Council's strategies?

17. See above.

CONSULTATION FULFILMENT

18. Consultation was undertaken with the Legal Services Unit and the Inspections and Enforcement Unit. It was accepted that the provisions of the Bylaw were adequately covered by the *Christchurch City Council General Bylaw 2008*, as well as other bylaws or operational policies as necessary.

22. 4. 2010

Regulatory and Planning Committee 1.4.2010

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STAFF RECOMMENDATION

That the Council resolve that consideration of the review of the Banks Peninsula District Council Public Places and Signs Bylaw 2004 be held over for consideration at a later date once the operational policies in relation to signboards in public places have been considered.

COMMITTEE RECOMMENDATION

That the staff recommendation be adopted.

Regulatory and Planning Committee 1.4.2010

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4. APPROVAL OF CHANGES TO PROVISIONS IN THE CITY PLAN

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8281
Officer responsible:	Programme Manager District Planning
Author:	David Punselie

PURPOSE OF REPORT

1. This report seeks that the Council approve changes to the City Plan introduced by its decision on Plan Change 25 to the District Plan (**Attachment 1**).

EXECUTIVE SUMMARY

2. Plan Change 25 was initiated by the Council in September 2008. It sought to change the zoning for a number of school sites across Christchurch from their current Living, Rural and Special Purpose zonings (which do not specifically cater for education activities) to Cultural 3 Zoning (Cu3). This zone enables development for educational activities to occur as a permitted activity provided the zone's performance standards are met. In addition, the Plan Change made some minor amendments to Cultural 3 zone provisions to ensure consistency and to update provisions to reflect a decision of the Environment Court. Some site specific rules were also included to reflect conditions imposed when schools were established through the resource consent process.
3. A Hearings Panel heard submissions on the plan change in June 2009. Its recommendation that the plan change be approved with modifications was adopted by the Council as its decision on 26 November 2009. There have been no appeals against the decision. The Council can now take the procedural step to make the plan change operative.

FINANCIAL IMPLICATIONS

4. There are no direct financial implications.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

5. Covered by existing budgets.

LEGAL CONSIDERATIONS

6. The recommendation in this report is for the Council to take a procedural step to make operative the changes introduced by its decision on Plan Change 25. Under Clause 10 of Schedule 1 of the Resource Management Act the City Plan is amended in accordance with the Council's decision from the date public notice of the decision is given. Following the closing of the appeal period and the resolution of any appeals the Council must formally approve the plan change under Clause 17 of Schedule 1 before the plan change becomes operative on a date that is nominated in a public notice of the Council's approval. The Council's decision on this plan change was not appealed so the change has reached the stage where it can be made operative.

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

7. Yes.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

8. Aligns with District Plan Activity Plan.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

9. Yes. Supports the enhancing the City Plan project.

4 Cont'd

ALIGNMENT WITH STRATEGIES

10. Yes.

Do the recommendations align with the Council's strategies?

11. The recommendations do not conflict with any of Council's strategies.

CONSULTATION FULFILMENT

12. This procedural step does not require consultation.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Approve, pursuant to Clause 17(2) of the Resource Management Act 1991, the changes to the District Plan introduced by its decision on Plan Change 25.
- (b) Authorise the General Manager, Strategy and Planning to determine the date on which the changes introduced by Plan Change 25 become operative.

COMMITTEE RECOMMENDATION

That the staff recommendation be adopted.

5. PROPOSED PLAN CHANGE 61 GENERAL LIVING G OBJECTIVES AND POLICIES

General Manager responsible:	General Manager Strategy and Planning DDI 941-8281
Officer responsible:	Programme Manager, District Planning
Author:	Scott Blair

PURPOSE OF REPORT

1. This report discusses Christchurch City Council initiated Proposed Plan Change 61 General Living G Objectives and Policies and seeks that it and the associated Section 32 assessment be adopted by the Council for public notification in May 2010.

EXECUTIVE SUMMARY

2. Proposed Plan Change 61 introduces General Living G wide Objectives and Policies which reflect the Policy directives of Proposed Change 1 to the Regional Policy Statement (RPS) in regard to the mechanics and contents of outline development plans as defined by the Commissioner's decisions on Proposed Change 1 to the RPS.
3. The Council has the option of:
 - (a) resolving to notify Proposed Plan Change 61; or
 - (b) not resolving to notify Proposed Plan Change 61.
4. Proposed Plan Change 61 has a number of General Living G objectives and policies in regard to the structure of Outline Development Plans in peripheral greenfield areas. There is an amended objective in the peripheral urban growth objectives (6.3) that aligns the City Plan with Proposed Change 1 to the RPS as amended by the Commissioners decisions on Proposed Change 1. There is also a new Living Zone Objective 11.7 New Peripheral Urban Development and a number of supporting policies that relate to the structure of Outline Development Plans and the supporting layer diagrams that should accompany the Outline Development Plan. These policies refer specifically to the structure of Living G as it has evolved in the City Plan to date and also reflect the Outline Development Plan policies 7 and 8 in Proposed Change 1 to the Regional Policy Statement. There is an amendment to policy 10.3.2 Innovative Design that makes specific mention of good urban design outcomes in subdivision and minor word changes to Policy 6.1.1 Population Densities.
5. These objectives and policies have been reviewed by District Planning Team members, and legal counsel, who are considering the Council's position in regard to appeals on the Commissioner's decision on Proposed Change 1 to the RPS for consistency with that position. They have found that there are no inconsistencies or conflicts.
6. To date Living G has 'evolved' and is evolving through several separate Resource Management Act 1991 processes. Living G had its genesis in the Masham section 293 application before the Environment Court. Given that the Environment Court has heard and endorsed this structure (in the Masham case) it has been used by both the Council and private plan change applicants as a starting point to develop each separate plan change. Separate statutory processes currently underway are:
 - Belfast Section 293 – Johns Road Horticulture Limited – currently before the Environment Court
 - Proposed Plan Change 5 – Awatea
 - Private Plan Change 24 – Wigram
 - Private Plan Change 30 – Preston's Road, and
 - Private Plan Change 43 – East Belfast.
7. While the Environment Court has determined that the Living G method fits with the existing general urban growth objectives and policies in the City Plan (through the Masham case), there is currently no overarching or linking policy structure in the City Plan that provides a consistent approach to the Living G zone in the City Plan. Proposed Plan Change 61 Objectives and

5 Cont'd

Policies will provide direction as to how this complex zone should be designed for consistent administration of the zone by the Council across the various plan change areas.

8. Proposed Plan Change 61 does not provide objective or policy about the 'where' or the 'when' (timing) of urban growth – that is for resolution of the Proposed Change 1 to the Regional Policy Statement process to determine. Rather it provides additional guidance and direction to the Council and landowners as to the expected character and form of peripheral urban growth. Plan Change 61 supports and reinforces existing City Plan policies and objectives which emphasise urban consolidation, a land form that promotes close proximity and accessibility between living and employment areas, avoids adverse environmental impacts and makes efficient use of physical infrastructure.

FINANCIAL IMPLICATIONS

9. This plan change will require approximately \$20,000.00 to progress in this financial year. This includes public notification fees, consultant's fees and legal opinion fees. This expenditure is covered by the existing District Planning budget.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

10. Refer to the preceding paragraph on Financial Implications.

LEGAL CONSIDERATIONS

11. There is a legal process of notification, submissions, reporting, hearings, decisions and possible appeals which must be followed set out in the RMA.
12. Proposed Plan Change 61 refers to and takes direction from policies 7 and 8 of Proposed Change 1 (PC 1) to the RPS. If any significant changes are made to policies 7 and 8 of PC 1 through decisions of the Environment Court on appeals this could impact on Proposed Plan Change 61. However the risk is minimal. Policies 7 and 8 deal with issues of detailed implementation rather than significant policy directions.
13. PC 1 is currently open to appeal and any appeals lodged are unlikely to be heard until September 2010 at the earliest.
14. The reason Proposed Plan Change 61 is being pursued now is to align it with several current judicial processes, and that it appropriately has regard to PC 1 in its current form. It is therefore not considered a legal or planning risk to include reference to and take direction from PC 1 at this stage.
15. This matter has been discussed in detail with Mr James Winchester, Legal Counsel, Simpson Grierson.
16. Simpson Grierson have reviewed the Proposed Plan Change and provided advice on drafting to ensure that the plan change is tight enough to avoid other matters beyond the plan change coming into scope.
17. Simpson Grierson have also reviewed the Proposed Plan Change 61 in relation to the recommended position that the Council takes on appeals to decisions on Proposed Change 1 to the Regional Policy Statement and found that there is no conflict with this recommended position.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

18. Aligns with Activity Management Plan for 2009 – 2019 LTCCP – Activity 1.3 District Plan: Prioritised programme of plan changes is prepared and approved by the Council on an annual basis. Proposed Plan Change 61 was initially developed as part of Proposed Plan Change 5 – Awatea.

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ALIGNMENT WITH STRATEGIES

19. Aligns with the Greater Christchurch Urban Development Strategy (UDS) and Proposed Change 1 to the Regional Policy Statement.

CONSULTATION FULFILMENT

20. Council undertook consultation by mail out to known participants in the Living G processes (including those persons Officers have received enquiries from in terms of prospective plan changes). That mail-out closed on 19 January 2010. The matters raised in feedback are set out in the consultation section of the Section 32 report in Attachment 1 to this report. In general responses acknowledge the need for an overarching objective and policy direction in the City Plan but some question the level of detail specified for outline development plans.
21. Mr Steve Higgs, Regional Planning Manager, of the New Zealand Transport Agency had a telephone conference with Mr Blair of the Strategy and Planning Group. Mr Higgs was very supportive of Proposed Plan Change 61 and discussed relatively minor drafting matters with Mr Blair.
22. Andrea Lobb of Mahaanui Kurataiao Ltd (MKT) has been contacted for comments on the Proposed Plan Change. Telephone messages were left with MKT, and a visit to MKT's office to contact Ms Lobb was made. At the time of drafting no response had been received from MKT.
23. The Ministry for the Environment was provided a copy of the draft Proposed Plan Change by Council. At the time of drafting this report no response has been received.
24. Partner UDS Council's have been given an opportunity to respond (as either parties to an existing Living G process, ie Environment Canterbury or by mail in the case of Selwyn District Council and Waimakariri District Council.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Adopt the Section 32 Assessment Proposed Plan Change 61 General Living G Objectives and Policies.
- (b) Agree to publicly notify Proposed Plan Change 61 pursuant to the first schedule of the Resource Management Act 1991.

COMMITTEE RECOMMENDATION

That the Council:

- (a) Refer the matter to a Regulatory & Planning Committee workshop in April and that the report come back to the May Regulatory and Planning Committee meeting.

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BACKGROUND

25. To date the Living G zone has evolved and is evolving through several separate Resource Management Act 1991 processes. Living G had its genesis in the Masham Section 293 application by Applefields Ltd before the Environment Court. Given that the Environment Court has heard and endorsed this structure (in the Masham case) it has been used by both the Council and private plan change applicants as a starting point to develop separate plan changes. Several separate statutory processes currently underway are:
 - Belfast Section 293 – Johns Road Horticulture Limited – currently before the Environment Court
 - Proposed Plan Change 5 – Awatea
 - Private Plan Change 24 – Wigram
 - Private Plan Change 30 – Preston's Road
 - Private Plan Change 43 – East Belfast.
26. Staff also receive enquiries from other prospective private plan change applicants now that the Commissioner's decisions from Proposed Change 1 to the RPS have been released.
27. In the Masham Environment Court case the Court determined that the mechanics and structure of Living G fit with the wider objectives and policies of the City Plan. Nevertheless, given the number of disparate statutory processes involving Living G, either before the Environment Court, Council initiated plan changes or private plan changes, it is a concern that there is the potential for these processes to arrive at different outcomes with different and potentially conflicting individual policy structure leading to an unnecessarily complex City Plan. An overarching structure in policy format is considered necessary to ensure that the mechanical form of Living G maintains some consistency across these and future Living G processes.
28. On 11 April 2008 the Environment Court released an interim decision on the Belfast Section 293 application (another Living G process). In that decision the Court made directions as to how the Living G rules package for the Belfast 293 was to be amended. Amongst others the Court, directed that the 'Aims and Principles' and 'key structural elements' written material that sat with the layer diagrams and the outline development plan would become objectives and policies within the City Plan.
29. Further, the Commissioner's decision for Proposed Change 1 to the RPS was released in December 2009. Over the course of developing Proposed Plan Change 5 (Awatea), which the Council has resolved be adopted for public notification, staff have been cognisant of Policies 7 and 8 of Proposed Change 1. These refer to the matters that the Council has to ensure are addressed in plan changes for Greenfield areas. The new Living G policies in Proposed Plan Change 61 take some direction from Policies 7 and 8 of Proposed Change 1 to the RPS. Proposed Plan Change 61 also deletes existing City Plan Policy 6.3.9 Urban Extensions as it creates ambiguity with the urban growth position of Proposed Change 1 to the Regional Policy Statement. The Proposed Plan Change also amends Policy 6.1.1 Population Densities. Comment has been sought from Officers reviewing the Commissioner's decision and drafting the Council's appeal (if any) to the Proposed Change 1 RPS decisions. Other than identifying the ambiguity or conflict with Policies 6.3.9 and 6.1.1, staff have indicated that there are no apparent conflicts with this position. Further Simpson Grierson, the Council's legal representatives on Proposed Change 1 to the RPS have reviewed Proposed Plan Change 61 and found no conflicts, but have recommended that Policy 6.3.9 be addressed as soon as possible. The amendment to Policy 6.1.1 is relatively minor.
30. It is recommended that the policy format in Proposed Plan Change 61, given the aforementioned directions of the Environment Court, and Proposed Change 1 to the RPS be pursued for all Living G in the future. Proposed Plan Change 61 is seen as an opportunity to align Living G in general with the directions of the Environment Court and Proposed Change 1 to the RPS. It is also noted that later in 2010 an Officer of the Council (probably Scott Blair) will be presenting further evidence to the Environment Court on format of the Objectives and Policies in the Belfast Section 293 case. Mr Blair envisages the objective and policy package promoted in his evidence aligning with Proposed Plan Change 61.

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31. Individual Living G plan changes will still contain their own policies – but those policies would be specific to the plan change area and relate directly to the peculiarities of that particular Living G site. For example in Proposed Plan Change 5 (Awatea) a policy supported by a non-complying activity rule restricts development of the Awatea Block until it can be serviced by sewer infrastructure that will not be available for that particular area for several years – this only affects the Awatea block.
32. Existing City Plan Policy 6.3.9 Urban Extensions talks about peripheral urban extensions to the City being smaller incremental extensions. This appears to be diametrically opposed to Proposed Change 1 to the RPS which specifies large areas of peripheral urban growth. An option available to the Council is to delete the policy as part of this plan change. Simpson Grierson have been asked to provide an opinion on the risk associated with Policy 6.3.9. They have found that risk is difficult to determine but that the ambiguity the policy creates is “unhelpful” and that it would be useful if it could be addressed as soon as possible. Existing City Plan Policy 6.1.1 talks about promoting opportunities for higher densities in larger areas of peripheral urban growth. Proposed Plan Change 61 talks about ensuring mixes of densities including higher densities. An amendment to Policy 6.1.1 has been recommended to align 6.1.1 to the new policies in Proposed Plan Change 61.
33. For clarity, it is useful to discuss what Proposed Plan Change 61 does not do. Proposed Plan Change 61 does not introduce objective or policy that talks about where greenfield growth is to occur in Christchurch City or when it is to occur. Those are matters that are specifically dealt with in Proposed Change 1 to the Regional Policy Statement. They are issues that are likely to be hotly debated by appellants to the Commissioner's decisions on Proposed Change 1. It would be premature to seek to align the City Plan with the Commissioner's decisions at this stage – they are matters that should be played out through the Proposed Change 1 process before a change to the City Plan Objectives and Policies is sought.

THE OBJECTIVES

34. To publicly notify the attached Proposed Plan Change 61 General Living G Objectives and Policies.

THE OPTIONS

35. Option 1

Adopt the Section 32 Assessment for Proposed Plan Change 61 and agree to notify Proposed Plan Change 61 pursuant to the first schedule of the Resource Management Act 1991.

36. Option 2

Do not publicly notify Proposed Plan Change 61.

THE PREFERRED OPTION

37. Option 1 is the preferred option. This will enable the Council to provide a framework in the City Plan for policy consistency in across the Living G zones.

6. PROPOSED PRIVATE PLAN CHANGE 62 WIGRAM (PPC 62)

General Manager responsible:	General Manager Strategy and Planning DDI 941-8281
Officer responsible:	Programme Manager District Planning
Author:	Scott Blair

PURPOSE OF REPORT

1. This report discusses Proposed Private Plan Change 62 (PPC 62) Wigram lodged by Ngai Tahu Property Limited (NPL). The report seeks a decision, under Clause 25 of the First Schedule of the Resource Management Act 1991 (RMA), by Council as to whether it will accept, adopt, reject or treat as a resource consent application the private plan change application. This report also seeks that the 25 February resolution of Council in regard to Private Plan Change 24 (PPC 24) be revoked.

EXECUTIVE SUMMARY

2. PPC 62 seeks the rezoning of Special Purpose (Wigram) Zone (approximately 153ha) to Living G (Wigram) Zone (120.7ha), Business 4 Zone (24.9ha), Conservation 3 Zone (8.11 ha) and Business 5 Zone (0.4 ha as part of a split zone boundary adjustment at 45, 57, and 63 Pilkington Way). A copy of PPC 62 is attached as **Attachment 1**. The area of PPC 62 is shown on **Attachment 3**.
3. PPC 62 is the same in content as PPC 24 was, with the exception of the urban design restricted discretionary activity rules and assessment criteria being deleted, and the correction of some minor drafting errors by the applicant.
4. PPC 62 is a new plan change.
5. At its meeting on the 4 February 2010 the Regulatory and Planning Committee resolved to recommend to the Council that PPC 24 be accepted for public notification. Subsequently, and pursuant to Clause 28(1) of the First Schedule of the RMA, NPL formally advised Council on 8 March 2010 of its withdrawal of PPC 24 and subsequent lodgement of a new private plan change - PPC 62 (see **Attachment 4** for a copy of the NPL letter). Clause 28(1) of the RMA provides that the applicant of a private plan change can withdraw the plan change any time before a decision on submissions on that private plan change has been publicly notified. The revocation of PPC 24 is therefore necessary in order to avoid the situation of two plan changes over the same land area.
6. The Officers report for PPC 24 recommended that the Council did not 'adopt' the plan change for notification – just accept it for notification. This recommendation was made because there were a number of differences between officers and NPL on the form and content of the rules. Two discrete but significant differences between Staff and NPL remained:
 - (i) Staff recommended that a restricted discretionary activity rule for urban design remain in the plan change; and
 - (ii) Staff recommended that 2000m² neighbourhood parks be deleted from the open space network layer diagram, supporting the outline development plan.
7. During negotiations with officers over the contents of PPC 24, prior to the 4 February 2010 resolution, NPL had expressed concern about the form and content of the rules i.e. NPL were not fully committed to these rules. The rules were, however, left in the PPC 24 on the basis that if the Council were to 'adopt' the plan change as its own then NPL would make a submission against this particular rule. These urban design rules have now been deleted in PPC 62 given that the Council decided to accept PPC 24 for public notification only.
8. PPC 24 also contained an open space network layer diagram that included 2000m² neighbourhood parks. As discussed in the PPC 24 report that was previously before the Regulatory and Planning Committee these parks cannot currently be provided for under the

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Long Term Council Community Plan (LTCCP) because the developer contributions (DCs) for reserves from the Household Unit Equivalent (HUE) yield will not cover the purchase of them.

Accordingly officers recommended that the PPC 24 be accepted for public notification and not adopted. PPC 62 retains the 2000m² neighbourhood parks on the open space layer diagram and this remains an issue which militates against a recommendation to adopt PPC 62 Wigram.

9. The options for the Committee are to recommend to the Council that the requested PPC 62 Wigram be:
 - (a) Accepted, in whole or in part, and that the Council proceed to notify the request, or part of the request; or
 - (b) Adopted in whole or part, as if it were a plan change made by the Council itself;
 - (c) Rejected in whole or in part; or
 - (d) Dealt with as if it were an application for a resource consent (in which case the provisions of Part 6 of the RMA would apply accordingly).
10. The withdrawal of the urban design rules from PPC 62 Wigram makes this proposed private plan change even less in accord with the directions of Council for future urban development in the City than PPC 24 was. Officers have also concluded that in terms of the matters to be considered at this stage of the plan change there are not the grounds to reject the plan change. It therefore remains the officer's view that the new replacement PPC 62 Wigram should be accepted by Council for notification.

FINANCIAL IMPLICATIONS

11. Should the Council resolve to adopt PPC 62 Wigram as its own then the processing costs would lie with the Council. There is sufficient funding in this financial year to progress this option. The processing costs involve (i) public notification costs, (ii) Council administrative time, (iii) Officer report writing time (including specialist input as needed to respond to issues raised in submissions), (iv) hearing panel time, (v) decision writing time, (vi) notification of decisions. Items (iv), (v), and (vi) are unlikely to fall within this financial year. A best estimate of these costs at this stage is a total of \$50,000.00 - \$60,000.00.
12. Future amendment to the developer contributions (DCs) policy in the Long Term Council Community Plan (LTCCP) may be required to match DCs with the amount of open space shown in the master plan for the development.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

13. Yes.

LEGAL CONSIDERATIONS

14. There is a legal process of notification, submissions, reporting, hearings, decisions and possible appeals which must be followed set out in the RMA. Legal Services have advised that in relation to the 25 February 2010 resolution to accept PPC 24 for public notification that that resolution must be revoked before going onto consider PPC 62. Accordingly this report also seeks that the 25 February 2010 resolution of the Council relating to PPC 24 be revoked.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

15. Aligns with Activity Management Plan for 2009 – 2019 LTCCP – Activity 1.3 District Plan: Prioritised programme of plan changes is prepared and approved by the Council on an annual basis.
16. Aligns with – A prioritised work programme, matched to staff capacity and availability, to be presented for Council approval annually by 30 June of the following financial year.

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ALIGNMENT WITH STRATEGIES

17. Aligns with the South West Area Plan (SWAP) and Proposed Change 1 to the Regional Policy Statement. The Wigram block is shown as an urban growth area in both of these strategies.

CONSULTATION FULFILMENT

18. Extensive consultation on the rezoning of the area was undertaken as part of the SWAP programme. NPL have presented the PPC 24 to the Riccarton-Wigram Community Board twice – the most recent in November of 2009. NPL and the District Planning Team held a combined consultation afternoon at Wigram on 14 October 2009 following a mail-out to approximately 850 surrounding property owners and occupiers inviting feedback on the proposed rezoning. The information afternoon was very well attended with an estimated excess of one hundred people attending. Attendees could ask questions of the NPL and District Planning representatives about the proposal. Written feedback was invited but to date District Planning has received few replies. Replies received have sought clarification and have not expressed any particular significant concerns.
19. On 12 February 2009 Mahaanui Kurataiao Limited (MKT) wrote to NPL to say that nga Rununga were satisfied with the level of consultation that NPL has undertaken with them. MKT represent Te Ngati Tuahuriri Rununga, Te Taumutu Rununga and Te Hapu o Ngati Wheke (Rapaki) Rununga. Outside of the above it is not known if NPL have consulted other parties such as the Ministry of Environment (MFE).

STAFF RECOMMENDATION

That the Council:

- (a) Revoke the following resolution that it made on 25 February 2010:

“That the Council:

- (a) Accept the Section 32 Assessment for the Plan Change*
(b) Accept Plan Change 24 for public notification pursuant to Clause 25(2)(b) of the first schedule of the Resource Management Act 1991.
(c) Note that all associated costs will be borne by the applicant.”

- (b) Accept the Section 32 Assessment for the Proposed Private Plan Change 62 Wigram
- (c) Accept Proposed Private Plan Change 62 Wigram for public notification pursuant to Clause 25(2)(b) of the first schedule of the Resource Management Act 1991.
- (d) Note that all associated costs will be borne by the applicant.

COMMITTEE RECOMMENDATION

That the staff recommendation be adopted noting minor technical amendments including updating the status of Plan Change 46.

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BACKGROUND

20. On 25 February 2010 the Council considered the recommendation of the Regulatory and Planning Committee of 4 February 2010 to publicly notify Proposed Private Plan Change 24. Specifically the Council resolved as follows:

That the Council:

- (a) Accept the Section 32 Assessment for the Plan Change*
- (b) Accept Plan Change 24 for public notification pursuant to Clause 25(2)(b) of the first schedule of the Resource Management Act 1991.*
- (c) Note that all associated costs will be borne by the applicant.*

21. PPC 62 Wigram is a new private plan change. It is the same in content to PPC 24 apart from the now deleted urban design restricted discretionary activity rules and assessment criteria and the correction of some minor drafting errors by the applicant. The withdraw of PPC 24 and the subsequent replacement of it by the new PPC 62 Wigram, took place via a letter received from NPL on 8 March 2010 advising the Council of the withdraw and lodgement of PPC 62 Wigram (**Attachment 4**).
22. Legal Services have advised, in relation to the 25 February resolution of Council set out in paragraph 23 above, that the resolution will need to be revoked before the resolution in relation to PPC 62 is considered.

The Differences between NPL and Council Staff on the structure of Proposed Plan Change 62.

23. It was reported in the PPC 24 report before the Council on 25 February 2010 that there were a number of outstanding differences between NPL and Council Staff on the contents of the rules package. These were reported as:
- *A limit on the floor area in the commercial area;*
 - *Changes to the height limit in the Special Building Height Area;*
 - *Design and appearance controls;*
 - *Non complying activity status for development prior to arrival of sewer;*
 - *Deletion of the smaller neighbourhood parks from the green network layer diagram; and*
 - *More restrictive hazardous substances controls.*
24. All of the above, with the exception of the Urban Design restricted discretionary activity rules and the deletion of 2000m² neighbourhood parks, have now been resolved.

Urban Design Rules

25. PPC 24 that the Council resolved to publicly notify contained an urban design rule as a restricted discretionary activity with assessment criteria. The rule and assessment criteria are a duplication of a rule in Proposed Plan Change 5 Awatea that the Council resolved to publicly notify at the same meeting. In negotiations with officers over the contents of the PPC 24, prior to this resolution, NPL had expressed concern about the form and content of the Urban Design rules.
26. Paragraph 34 of the PPC 24 report noted:
34. *One of the major innovations being introduced in the concurrent Awatea Plan change is a general resource consent as a restricted discretionary activity for design and appearance in both the residential Density A and Business Zones. Officers have alerted NPL that they think these controls should also extend to the Wigram plan change. The attached plan change has some design and appearance controls highlighted. NPL have indicated that they do not form part of their application but are there for discussion. To date they have stated that they do not wish to have these controls as they will add cost and time to consenting the development.*

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27. Following the resolution to accept the PPC 24 for notification, NPL have formally, as is their right as the applicant, withdrawn PPC 24 containing the restricted discretionary activity rules and requested that a new plan change – PPC 62 Wigram – without the restricted discretionary activity rule – be publicly notified in its place. NPL have commented that because PPC 24 was only just accepted and not adopted they prefer not to send 'mixed messages' to the public through having to submit on its own plan change and consequently NPL have lodged the PPC 62 Wigram. While this position from NPL is disappointing to officers who have been negotiating with NPL, the plan change must still be considered and given the situation with the urban design rules and the green space (as set out in paragraphs 29-30 below) the recommendation is still that PPC 62 Wigram be accepted for public notification. The withdrawal of these urban design provisions makes PPC 62 Wigram less desirable in officer's opinion, and the Council will need to address these matters once the plan change is publicly notified.

Open Space

28. NPL attempted to resolve the matter of the 2000m2 parks in the PPC 24 package that was put before the Council on 25 February 2010 by adding mechanisms to the PPC 24 that included:
- A notation on the green network layer diagram made reference to a new policy.
 - Addition of a new policy expressing the desirability of achieving the parks.
 - A new rule stating that the parks do not have to be provided.
29. Officers are concerned that the combined effect of the policy and the rule is that the 2000m2 parks are interpreted as being desirable, thus setting up a conflict with the LTCCP. The report for PPC 24 sets out the problem with the 2000m2 parks and the provision for them in the LTCCP. For ease of reference these paragraphs are shown in **Attachment 2**. PPC 62 should not be adopted as Council's own Plan Change for public notification while these parks remain on the layer diagram and the policy and rules remain.

Options under Clause 25 of the RMA for progressing PPC 62 Wigram

30. The process that the Council must follow in respect to private plan changes are set out in Clauses 21 – 29 of the 1st Schedule to the Resource Management Act 1991 (RMA). In particular clause 25 requires that the Council must consider the request and make a decision as to either:
- (a) Accept the request, in whole or in part, and proceed to notify the request, or part of the request;
 - (b) Adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself;
 - (c) The local authority may reject the request in whole or in part; or
 - (d) The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of Part 6 shall apply accordingly.
31. The implications of the options under Clause 25 are:
- 31.1 Accept the application, proceed to publicly notify and decide the application at the expense of the applicant:
- 31.1.1. Under this scenario the private plan change is notified in the form prepared by the applicant. The Council processes the plan change proposal but the applicant bears all of the costs of notification. Accepting the Proposed Plan Change proposal means:
- (i) The applicant decides what is notified.
 - (ii) Implies the Council is taking a neutral position in the proposal. The public should perceive that the Council neither supports or opposes the proposal.
 - (iii) Implies the applicants will bear the cost of the complete Proposed Plan Change process (including costs associated with the resolution of appeals).

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31.2 Adopt the change as its own and assume the responsibility for putting it through the process outlined in the RMA including all costs.

31.2.1. Under this scenario the Proposed Plan Change becomes a Council led plan change. It is notified, heard and decided the same way as a plan change prepared by the Council. The Council bears all of the associated costs. Adopting the Proposed Plan Change proposal would mean:

- (i) The Council can control the proposal that is publicly notified.
- (ii) It can be interpreted that the Council generally supports the proposal.
- (iii) The Council bears the costs of managing and processing the Proposed Plan Change.
- (iv) The proposed plan change must be taken into consideration in the processing of any resource consent ie it holds some legal weight from the time of public notification.

31.2.2. In regard to point 3.2.1(iii), there is the potential that more Officer time and Council financial resources are spent in the plan change adoption process than in the accepted process. If the Council is concerned about significant aspects of the proposal, this would not be an appropriate course of action. Alternatively if the Council does wish to adopt the Proposed Plan Change little further work would be needed to be undertaken by the Council to amend the Proposed Plan Change to its satisfaction. However NPL as the applicant may have problems with this approach, as the onus would then go onto the Council

31.2.3. Adoption of the Proposed Plan change by the Council has some advantages to NPL. There are the obvious financial implications for NPL of the Council assuming the costs of the statutory process and the support of the Council for the Proposed Plan Change (now being Council's own plan change) during the statutory process.

32.3 Reject the application

32.3.1. There are very limited grounds in the Act for rejecting an application. A Proposed Plan Change can be rejected if:

- It is frivolous or vexatious.
- The substance of the change has been dealt with by the Council or the Environment Court in the last two years.
- The change is not in accordance with sound resource management practice.
- The change would make the District Plan inconsistent with Part V of the Act (other policies or plans, such as Regional Policies or Plans).
- The District Plan has not been operative for more than two years.

32.3.2. This privately requested Proposed Plan Change cannot be said to be frivolous or vexatious. Staff and representatives of Ngai Tahu Property Limited have worked co-operatively on the rules package and format for the Proposed Plan Change and it is considered to be in accordance with sound resource management practice. The differences or concerns set out in paragraphs 19 and 20 of this report are not considered to be sufficient reason to reject the application. The Proposed Plan Change is largely in accordance with the South West Area Plan and is an important growth area in the UDS and Proposed Change 1 to the RPS.

32.3.3. Decisions have been released on Proposed Change 1 to the Regional Policy Statement. If processed through to the point where it is operative the Proposed Plan Change will not create an inconsistency with the Regional Policy Statement and other plans.

32.3.4. The City Plan has be operative for more that two years. Therefore this can not be considered as grounds to reject the application.

6 Cont'd

33.4 Treat the Proposed Plan change as a resource consent

33.4.1. It would not be appropriate to treat this Proposed Plan Change as a resource consent as Ngai Tahu are seeking to set up a framework in which the area will be developed, and under which activities will be permitted or consents will be applied for. A resource consent is more appropriate to a specific proposal with a much finer grain of detail. In addition a resource consent can be limited in its flexibility and in this situation would require constant amendment. Given the complexity of the proposal and need for some flexibility a resource consent is not considered to be appropriate.

THE OPTIONS

34. Option 1

Resolve to accept PPC 62 Wigram and section 32 assessment for public notification pursuant to Clause 25(2)(b) of the first schedule of the Resource Management Act 1991.

35. Option 2

Resolve to adopt PPC 62 Wigram and publicly notifying it as though it were the Council's own plan change pursuant to Clause 25(2)(a) of the first schedule of the Resource Management Act 1991.

36. Option 3

Resolve to reject PPC 62 Wigram pursuant to Clause 25(4) of the first schedule of the Resource Management Act 1991.

37. Option 4

Resolve to deal with the PPC 62 Wigram as if it were an application for resource consent pursuant to Clause 25(3) of the first schedule of the Resource Management Act 1991.

THE PREFERRED OPTION

38. Option 1 to accept Proposed Plan Change 62 – Wigram, is the preferred option. This will enable the development of an area of strategic significance to the South West Area Plan and Proposed Change 1 to the Regional Policy Statement while not taking Council ownership of it due to the situation with the urban design rules and the green space (as set out in paragraphs 27-29 above).

The meeting concluded at 12 noon.

CONSIDERED THIS 22 DAY OF APRIL 2010

MAYOR