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**REGULATORY AND PLANNING COMMITTEE  
6 MAY 2010**

**A meeting of the Regulatory and Planning Committee  
was held on Thursday 6 May 2010 at 9am.**

**PRESENT:** Councillor Sue Wells (Chairperson),  
Councillors Helen Broughton, Sally Buck, Claudia Reid, Mike Wall  
and Chrissie Williams.

**IN ATTENDANCE:** Councillor Norm Withers.

**APOLOGIES:** Councillors Ngaire Button, Yani Johanson and Bob Shearing.

An apology for lateness was received and accepted from Councillor Sally Buck who arrived at 9.45am and was absent for clauses 1-3.

Councillor Mike Wall retired at 9.37am and was absent for clauses 2-7.

Councillor Chrissie Williams retired at 10.15am and was absent for clauses 4-7.

The Committee reports that:

**PART A - MATTERS REQUIRING A COUNCIL DECISION**

1. **NOTIFICATION OF COUNCIL PLAN CHANGE 44 TO CITY PLAN – LISTING OF THE LOWLAND KAHIKATEA FOREST REMNANT, WHICH FORMS PART OF THE GREATER RICcarton BUSH AND HOUSE RESERVE AT 12-16 KAHU ROAD, UNDER VOLUME 3, APPENDIX 4 – HERITAGE/NOTABLE TREES, CATEGORY 2 NOTABLE TREES**

<b>General Manager responsible:</b>	General Manager Strategy and Planning, DDI 941 8281
<b>Officer responsible:</b>	Team Leader, District Plan
<b>Author:</b>	Anita Hansbury, Assistant Planner, District Plan

**PURPOSE OF REPORT**

1. This report describes the Council initiated proposed Plan Change 44 – Listing of the Lowland Kahikatea Forest Remnant (forest remnant), which Forms Part of the Greater Riccarton Bush and House Reserve at 12-16 Kahu Road, under Volume 3, Appendix 4 – Heritage/Notable Trees, Category 2 Notable Trees and seeks a Council resolution to publicly notify this Plan Change.

**EXECUTIVE SUMMARY**

2. The proposed Plan Change 44 (refer **Attachment 2**) seeks to provide the forest remnant, commonly known as Riccarton Bush, with better protection from the effects of external activities. The plan change proposes to achieve this by applying the Category 2 – Notable Tree/Group of Trees status to the lowland kahikatea forest remnant at 16 Kahu Road and amending Volume 3, Part 10 of the City Plan by adding this new listing to Appendix 4 – Heritage/Notable Trees. The protected trees provisions in Part 10 are also amended with references specific to the forest remnant. The rules applicable to Category 2 – Notable trees seek to protect the listed trees/groups of trees and their roots from development and other activities, which have the potential to cause damage to the trees. Properties situated in Ngahere Street, Totara Street, Kauri Street and Riccarton Road, which are adjacent to the forest remnant boundary may be affected by the setback rules applicable to protected trees.

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3. The group/area of trees proposed to be listed is the entire lowland kahikatea forest remnant area enclosed within the predator proof fence, which forms part of the greater Riccarton Bush and House Reserve zoned Conservation 1. The protected trees area also includes the kahikatea tree growing close to the north-west legal boundary of the reserve, adjacent to 11B Ngahere Street. Planning Map 38B is proposed to be amended by introducing a new 'Protected trees area' symbol, which is a polygon shape covering the forest remnant area (refer to **Attachment 1**, Diagram 2 in the appended Plan Change document). The City Plan rules applicable to notable trees place restrictions on certain activities (defined as 'works' in Clause 2.2.4 – refer **Attachment 1**) e.g. building or earthworks, that may occur within 10 metres of the base of a protected tree. The outer line of the 'Protected trees area' applicable to the forest remnant is deemed to be the base of the tree for the purpose of the relevant rules.
4. The forest remnant is well protected from within through Conservation 1 zoning, the ecological heritage site status, the heritage and amenities provisions applicable to it as part of "the setting" associated with Riccarton House listed as a heritage item and importantly through the Riccarton Bush Act 1914. Currently, however, there are no mechanisms protecting it from the external threats posed by peripheral urban development occurring along its legal boundaries. These threats include damage to trees and/or their root systems, negative effects of impervious surfaces on the soil moisture content and aeration, shading of trees and the surrounding vegetation by buildings, fire risk, chemical spray drift and reverse sensitivity associated with leaf and branch litter, windthrow and shading by trees.
5. The forest ecosystem needs to be protected as a whole to allow for natural forest regeneration, further growth of the mature and juvenile replacement kahikatea trees and their extensive root systems in particular.
6. The Section 32 Assessment (refer **Attachment 3**) concludes that out of the three options considered i.e. 'Status quo', 'Six metre setback on all adjoining land' and 'Protected tree status applied to the entire forest remnant', the third option is the most efficient and effective means of providing the desired protection to the forest remnant and achieving the City Plan's objectives and policies.
7. It should be noted that this plan change does not cover or relate in any way to trees outside of the forest remnant area. That is to say that the scheduled protected trees on the remainder of the Riccarton Bush and House Reserve are not covered by this plan change.

**FINANCIAL IMPLICATIONS**

8. Should the Council resolve to proceed with notifying the plan change there are legal processes which must be followed in accordance with the First Schedule of the Resource Management Act (RMA) 1991. This is a standard process that all plan changes must follow and there are no particular issues or risks that would be incurred if the processes are correctly followed. There would be costs arising at various stages of the plan change process relating to the preparation of officer reports and a hearing in response to submissions. The scale of costs would depend on the level and complexity of the submissions received. There is a potential for costs associated with responding to any Environment Court appeals received. Funding is provided from the existing budget as part of the District Planning work programme adopted by the Council and provided for in the LTCCP.

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

9. Yes.

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**LEGAL CONSIDERATIONS**

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

10. There is a legal process set out in the RMA which must be followed. It includes Section 32 assessment, public notification of the plan change followed by submissions, reporting, hearings, decisions and possible appeals. Provided the process is followed correctly there are no particular risks associated with this plan change.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

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

11. The proposal is part of the district planning levels of service in the LTCCP.

**ALIGNMENT WITH STRATEGIES**

**Do the recommendations align with the Council's strategies?**

12. The attached Section 32 report demonstrates that the proposed plan change meets the objectives and policies of the City Plan more effectively and efficiently than the current provisions.
13. The proposal gives better effect to the provisions of Chapter 8 of the Canterbury Regional Policy Statement which addresses issues associated with protection of regionally significant landscape, ecology and heritage.

**CONSULTATION FULFILMENT**

14. In 2008 the Council sought feedback from the local residents, the Riccarton Bush Trust, the Riccarton/Wigram Community Board and tangata whenua on possible ways of achieving greater protection for the lowland kahikatea forest remnant from the threats of peripheral development. A discussion paper outlining four options for protecting the forest remnant (Status quo, Ten metre setback on adjoining land, Protected tree status to individual kahikatea trees and Advocacy programme) was circulated to some 123 local residents. A public meeting providing an opportunity to ask further questions followed. Six written responses were received in total. The consultation feedback is discussed in the attached Section 32 report (p. 35).
15. The matter has also been presented to the Riccarton/Wigram and Fendalton/Waimairi Community Boards at a joint seminar on 10 March 2010. While the members were supportive of providing the proposed protective measures for the forest remnant, the level of protection through discretionary, non-complying or prohibited activity status was discussed.

**STAFF RECOMMENDATION**

That the Council:

- (a) Adopt the attached Proposed Plan Change 44 - Listing of the Lowland Kahikatea Forest Remnant, which Forms Part of the Greater Riccarton Bush and House Reserve at 12-16 Kahu Road, under Volume 3, Appendix 4 – Heritage/Notable Trees.
- (b) Adopt the attached Section 32 assessment.
- (c) Agree to publicly notify Proposed Plan Change 44 - Listing of the Lowland Kahikatea Forest Remnant, which Forms Part of the Greater Riccarton Bush and House Reserve at 12-16 Kahu Road, under Volume 3, Appendix 4 – Heritage/Notable Trees pursuant to Clause 16a in Schedule 1 of the Resource Management Act 1991.

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**COMMITTEE RECOMMENDATION**

The Committee recommends that:

- (a) The staff recommendation be adopted.
- (b) The Council note the following recommended changes:
  - 2.4.2 (l) delete “which often extend six to 10 metres from the base of the tree”.
  - Attachment 5 Map – annotated line of 10 metre setback should follow the line of the base of the fence.
  - Clarify the explanation of the proposed Plan Change to explain clearly its intent.

Councillor Mike Wall declared an interest and took no part in the discussion or voting on this item.

Councillor Helen Broughton abstained from voting on this item.

**BACKGROUND AND DISCUSSION**

**The Plan Change**

16. In the recent years a significant number of properties in the Living 1 zone adjoining Riccarton Bush have been subdivided and/or redeveloped, which has resulted in buildings establishing very close to the lowland kahikatea forest remnant (forest remnant) boundary and creating a range of adverse effects on it. The City Plan promotes more intensive use of the existing urban areas through redevelopment and infill in order to achieve a more compact city. These urban consolidation policies and associated rules may create further infill opportunities for properties adjoining Riccarton Bush, potentially exacerbating the adverse effects of such development on the health of the forest remnant. It is therefore important that new provisions aimed at better protection of the forest remnant periphery from future urban development are introduced.
17. The existing City Plan objectives and supporting policies give sufficient recognition to Riccarton Bush as a significant ecological and heritage site containing the last lowland kahikatea forest remnant in the Christchurch area. The objective and policy framework has been translated to date into the Conservation 1 zoning of the site, ecological heritage site status for the lowland kahikatea forest remnant commonly known as Riccarton Bush, protected building status given to Riccarton House and its setting, which includes the forest remnant, and finally recognition of a number of exotic trees in the Riccarton House grounds as notable trees. The Riccarton Bush Act 1914 and the Riccarton Bush Trust Board’s Riccarton Bush Reserve Management Plan 1991 provide assurance of sustainable management of the forest remnant and its important ecological heritage. Individually and collectively these provisions ensure that the entire Conservation 1 zone is protected and well managed within its boundaries but they do not provide sufficient protection needed to address those issues associated with external activities that threaten the survival of the forest remnant.
18. The anticipated environmental results and the proposed implementation methods in the City Plan provide an existing framework for introducing better protection for the forest remnant and mitigating any adverse effects that peripheral urban development may have on the forest ecosystem. The purpose of the proposed Plan Change 44 is to provide the desired increased level of protection to the forest remnant by applying a Category 2 – Notable Tree/Group of Trees status to all forest vegetation contained within the predator proof fence and including the kahikatea tree growing close to the north-west legal boundary of the forest remnant, adjacent to 11B Ngahere Street. The forest remnant will be marked as a Protected Trees Area on Planning Map 38B.
19. The forest’s ecosystem needs to be protected as a whole, rather than as a group of individual trees, to allow for natural forest regeneration, further growth of the mature and juvenile replacement kahikatea trees and their extensive root systems in particular. The Volume 3, Part 10, Rules 2.3.1, 2.3.2 and 2.3.3 of the City Plan, applicable to notable trees, place

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restrictions on 'works' (as defined in Clause 2.2.4) that may occur within 10 metres of a protected tree including the removal and pruning of trees, construction of buildings and impervious surfaces, laying of underground services and depositing of harmful substances. As the predator proof fence, which forms the boundary of the proposed forest remnant protected trees area, is set back approximately four metres from the legal boundary of Riccarton Bush Reserve, this rule will affect the land on the adjacent private properties to the depth of up to six metres. The boundary line of the protected trees area is also deemed to be the 'base of the tree' for the purposes of setback rules.

20. The notable tree 10 metre 'setback' provision, which is set at a discretionary level, will enable any encroaching developments or works to be evaluated against the amended assessment criteria related to the effects of the proposed works on the health and appearance of the forest. The kahikatea surface root systems, which are particularly important to the overall health of the trees, are most at risk from the effects of typical development occurring around the forest remnant periphery. These roots often reach 6–10 metres in length and spread into the properties beyond the forest remnant boundary. There have been instances, for example, of such tree roots being damaged and cut to allow for the construction of buildings on the adjacent properties in very close proximity to the boundary shared with Riccarton Bush. The assessment of similar future proposals may lead to conditions being imposed on the development relating to, for example, setbacks, the use of pile foundations, hand excavation around the root system or soil aeration systems.

#### Description of the Site

21. The lowland Kahikatea Forest remnant, being part of the greater Riccarton Bush and House Reserve, is located in the suburb of Riccarton, approximately three kilometres west of the centre of Christchurch and covers approximately 7.8 hectares. It is the last remnant of lowland podocarp forest once present on the Canterbury Plains. A dominant feature of the forest remnant is the presence of tall kahikatea trees that can reach heights of 45 metres or more and live for hundreds of years. One of mature kahikatea's distinctive features is an extensive system of large surface roots which may extend over 10 metres from the base of the tree. Most of the kahikateas are estimated to be between 300 to 500 years old, with the oldest being up to 600 years old. A range of other native species (e.g. three species of mistletoe) are present in the forest remnant together with native bird (e.g. kereru and the recently established kiwi 'crèche') and insect life (e.g. unusual species of moths).
22. The Living 1 zone (L1) adjoins approximately three quarters of the periphery of the forest remnant site. The applicable L1 setback provisions allow buildings to be erected very close (1.8 metres for houses) or right up to the site boundary (no setback for accessory buildings under 9 metres in length). There is potential for further infill development to occur on the adjoining L1 sites.
23. The St Teresa's School site zoned Cultural 3 zone (Cu3) adjoins the forest remnant along a portion of the south-western boundary. Although Cu3 rules require school buildings to be set back six metres from the boundary, some caretaker's or accessory buildings can be built very close or right up to the reserve boundary. Should St Teresa's School decide to dispose of any of the Cu3 zoned land surplus to their requirements, the land would then revert to the underlying L1 zoning opening up the potential for further urban intensification.
24. The two environmental asset waterways running along parts of the north-western and south/south-eastern boundaries of the forest remnant (refer to Attachment 6 in the Section 32 Assessment appended as **Attachment 3**) provide it with potential indirect protection through a provision stating that any building development, filling and excavation within seven metres of these waterways is a discretionary activity. In reality though, any resource consent application for such works within the seven metre setback would only be able to be considered in the context of the effects on the adjacent waterway and not the forest remnant trees/ tree roots.

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25. The general city rules also place some restrictions on the volume of filling and excavation within various zones (including L1 and Cu3) where no waterway is present. There are exceptions, for example, for the installation of utilities and permitted building foundations, which may lead to serious damage of tree roots extending beyond the forest remnant boundary and affect the health of the trees.

**Description of Issues**

26. None of the provisions currently applicable to Riccarton Bush protect the kahikatea forest remnant sufficiently from the external threats posed by activities associated with development intensification along its periphery. The attached Section 32 assessment accompanying the plan change provides the full background and reasons for the proposed changes. The following is the summary of issues associated with peripheral development and its potential adverse effects on the health and amenity of the forest remnant.
27. Damage to trees and their root systems - The extensive root systems of large trees growing close to the forest remnant boundary, kahikateas in particular, are likely to extend into adjacent properties and be particularly susceptible to adverse effects of residential activities. Tree roots will potentially be cut and damaged during ground works associated with laying building foundations and services. There have already been instances of such root damage occurring along the boundary. Root damage can make trees vulnerable to disease and dieback resulting in loss of branches, overall form and, in extreme cases, the loss of tree's stability and potentially windthrow. Similar effects can result from inappropriate tree branch trimming. While property owners have the right to cut any overhanging branches, there have been occasions when neighbours have also cut vegetation within the forest remnant to reduce shading effects on their properties. Conversely, shading of the forest vegetation by taller buildings in close proximity to the forest remnant, may inhibit vegetation growth in the vicinity, cause disease or even dieback of nearby trees.
28. Windthrow - The current forest remnant management principles allow natural ecological processes to occur in the forest with minimum human intervention. As a result of natural conditions, e.g. old age or poor health, the trees are susceptible to shedding large branches or even to windthrow. Edge trees are more exposed to strong winds and therefore more prone to windthrow. With the close proximity of buildings to the forest remnant comes the risk of branches or trees falling onto residential properties, particularly in extreme weather. This may be exacerbated where, due to residential activities taking place, the roots have been trimmed or disturbed to the extent that trees become sick and/or unstable. The risk to life and property created by the possibility of branch shedding or windthrow increases as the peripheral development intensifies on the forest remnant boundary.
29. Hydrological and soil aeration effects - Buildings, footpaths, terraces and driveways in the vicinity of the forest remnant create large areas of impervious surfaces that disrupt the natural hydrological patterns of the soil. The stormwater runoff is diverted into the reticulated stormwater systems and the infiltration of rain water into the soil immediately adjacent to the forest remnant is reduced. This affects the amount of rain water available to the roots of plants growing in the vicinity. Soil compaction associated with building construction, filling and extensive areas of impervious surfaces may also affect the level of soil aeration around the tree roots extending, or potentially extending, beyond the forest remnant boundary. Poor soil aeration inhibits the growth of new roots and can result in the death and decay of a large proportion of the existing root system.
30. Risk of fire - Whenever a residential development is located in close proximity to a forest there is an increased risk of fire spreading between the developed areas and the trees. The effect of fire on the slow growing forest remnant vegetation could be potentially devastating and that threat may increase as the development around the boundary intensifies. Accessory buildings such as

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garages and sheds, often used to store flammable substances, are of a particular risk and there has been at least one incident of fire in a garage within metres from the forest remnant boundary. Equally, a fire starting in the forest could pose a serious danger to the surrounding properties located close to the forest remnant boundary.

31. Contamination and cross-pollination - Properties adjoining the forest remnant are a source of invasive weeds challenging the flora of the indigenous forest. The practise of dumping the garden waste over the shared boundary into the forest has contributed to this problem. Close proximity of private gardens also creates a threat to the forest remnant gene pool resulting from cross-pollination with hybridised and non-endemic natives planted in private gardens nearby. The maintenance of private gardens along the forest remnant boundary may involve the use of herbicides and insecticides. The associated chemical spray drift poses another threat to the forest remnant as it can cause dieback of vegetation.
32. Impacts on visual amenity - Development close to the forest remnant boundary have the potential to adversely impact on the visual amenity of the forest remnant as enjoyed by the local residents and visitors to Riccarton Bush - both from within the forest remnant and from privately and publicly owned sites, walkways and roads external to the forest remnant. While single storey buildings will generally not obscure the views of the forest upper strata from roads nor be highly visible from within the forest remnant or other properties, the higher density, two storey developments can dominate the environment, obscure the views of the forest remnant and significantly detract from its amenity.
33. Reverse sensitivity issues - 'Reverse sensitivity' effects are complaints made by newcomers against the established activities or the effects they produce. One of the most commonly received complaints of this nature is about the shading of the adjoining properties caused by the forest trees, particularly along the southern and south-eastern boundaries. Complaints from neighbours about the branch and leaf fall as well as the risk of windthrow have also been received by the Trust. As the replacement trees planted along the forest remnant boundary in the 1980s mature and the boundary canopy grows higher, the neighbouring properties close to the boundary will potentially experience an increase in shading. New development intensification would exacerbate the problem of reverse sensitivity further, although the existing four metres, or more in places, separation zone may help alleviate some of the problems.

## OPTIONS

34. Section 32 report evaluates the following three options for resolving the potential conflict between the urban development activities on the forest remnant boundary and the long term health and survival of the kahikatea forest remnant.
35. **Option 1 - Status Quo**  
This option considers leaving the current provisions unchanged (the status quo). The objectives and policies give recognition to the outstanding natural and amenity values of the Kahikatea Forest remnant and promote its protection. The associated rules provide it with effective protection within its boundaries but do not mitigate the adverse effects of peripheral urban development on the forest remnant. The coincidental protection through separation requirements for the two environmental asset waterways adjoining the western and southern boundaries of the forest remnant site is limited. The assessment concludes that despite an adequate objectives and policies framework the existing provisions are ineffective in achieving sufficient protection of the forest remnant from the effects of peripheral development.
36. **Option 2 - Six metre setback provision on all adjoining land**  
This option would seek to restrict urban development in proximity of the forest remnant by introducing a new policy specific to the protection of the forest remnant from external influences and new six metre separation or setback rules for all development and earth works on the L1 and Cu3 zoned land adjoining the forest remnant. The setback would be measured from the boundary with the Conservation 1 zone and extend six metres into the adjoining properties.

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When added to the four metre distance between the Riccarton Bush reserve legal boundary and the predator proof fence containing the forest remnant, the six metre setback would result in the total separation of at least 10 metres. Any development or earth works proposal within that six metre separation area would be a discretionary activity and require resource consent.

37. Although development opportunities on private properties adjoining the forest remnant may potentially be restricted under this option, the assessment concludes that the proposed provisions would be effective in achieving sufficient long term protection of the forest remnant and meet the Plan objectives. In some areas the cleared space between the outer forest remnant boundary and the predator proof fence is greater than four metres creating a separation greater than 10 metres between private properties and the forest remnant. Therefore, the uniform six metre setback from the legal boundary may not be seen as equitable by some property owners. The Plan would require a substantial number of amendments to the Natural Environment policies, Living 1 and Cultural 3 zone provisions, filling and excavation provisions, clarifications to the definitions of 'building' and 'works', as well as exceptions to the rules for properties on the northern and north-eastern boundaries which are far more than 10 metres away from the forest remnant. This option is not therefore seen as entirely efficient.
38. **Option 3** - Protected (notable) tree status applied to the entire lowland kahikatea forest remnant. An alternative option is to apply a protected trees area status (Category 2 Notable trees) to the entire forest remnant which is an area of significant indigenous vegetation of national importance. This classification covers both the ancient kahikatea trees, to which alone the heritage tree status would apply, and all other vegetation including the younger regenerating or replacement trees, which may not classify as notable at this stage but are important in the natural functioning and regeneration of the forest ecosystem. On balance, it is considered appropriate to apply a notable tree status to the entire forest remnant. The extent of the 10 metre setback from the base of the forest remnant Protected Trees Area is shown in the Section 32 report (**Attachment 3**) on the map marked there as Attachment 5. The details of the proposed applicable provisions are discussed in paragraphs 19 – 21 above.
39. This option gives better effect to the relevant objectives and policies associated with heritage (trees), natural environment and amenity protection. It relies on the existing rule framework and requires minimal amendments to the Plan. The 10 metre setback would achieve the level of protection recommended by Professor David Norton in his kahikatea roots research. As under Option 2 above, the development opportunities on private properties adjoining the forest remnant may potentially be restricted, however, the assessment concludes that the proposed provisions would be effective in achieving sufficient long term protection of the forest remnant and better meet the Plan objectives. The proposed protection mechanisms are considered the most efficient, therefore this is the preferred option.

## CONCLUSIONS

40. While recognised by its own Act of Parliament and identified in the City Plan as an ecological heritage site containing the last remnant of lowland kahikatea forest in the Christchurch area, the kahikatea forest remnant is still susceptible to the negative environmental effects of the activities peripheral and external to its legal boundaries. The current mechanisms contained in the City Plan provide a high level of protection to the forest remnant within its site. The existing provisions, however, have proved insufficient to protect the forest remnant from the effects of peripheral urban development. A number of recent developments along the forest remnant periphery have resulted in undesirable outcomes with respect to the health of the forest and reverse sensitivity issues, including locating buildings over the tree root systems and very close to the boundary.
41. Classifying the lowland kahikatea forest remnant as a Group 2 Notable group of trees (Protected Trees Area) will result in a 10 metre separation rule applying to activities defined as 'works' in the adjoining Living 1 and Cultural 3 Zones and provide the forest remnant with the desired level



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of protection from external activities. The discretionary activity status for such works would provide a certain amount of flexibility to the adjoining property owners who may wish to proceed with some form of development in proximity to the forest remnant boundary. The necessary resource consent process will provide the Council with an opportunity to assess the potential impacts of the proposal on the forest remnant and use its discretion with regard to imposing conditions or refusing the application.

42. Section 32 of the Resource Management Act requires the Council to be satisfied that any proposed plan change is a more efficient and effective means of achieving the Plan's objectives and policies than the current or alternative provisions. The attached Section 32 report concludes that this is the case for the proposed amendments to the City Plan. Should the Council resolve to publicly notify the proposed plan change then those changes will be available for the community to make submissions on. The submitters will then be able to present their submission at a public hearing following which the hearing panel will be obliged to make a recommendation to the Council on whether or not the plan change should be accepted, amended or rejected.

## 2. PROPOSED TERRITORIAL AUTHORITY REORGANISATION SCHEME IN THE VICINITY OF TEMPLETON AND OLD TAI TAPU ROAD

<b>General Manager responsible:</b>	General Manager Strategy and Planning, DDI 941 8281
<b>Officer responsible:</b>	Programme Manager District Plan
<b>Author:</b>	Philip Barrett, Team Leader District Plan

### PURPOSE OF REPORT

1. The purpose of this report is to seek Council approval to release draft reorganisation schemes for public notification and invite submissions as required by clause 12(3), Schedule 3 of the Local Government Act 2002 and to recommend to the Council that it appoint a hearings panel to consider submissions on the draft reorganisation schemes and make recommendations on the submissions to the Council.

### EXECUTIVE SUMMARY

2. On 10 December 2009 the Council resolved to confirm two separate draft reorganisation proposals to:
- (i) File with the Selwyn District Council (SDC) to start the formal Local Government Act reorganisation process (refer paragraph 4 below);
  - (ii) Instruct officers to draft a reorganisation scheme in the likely event SDC would appoint the Christchurch City Council (the Council) to manage the process; and
  - (iii) Ask the Chief Executive Officer (CEO) of the Council to enter into negotiations with the CEO of the SDC regarding cost sharing associated with the reorganisation process.
3. The main reason for initiating the reorganisation process is because the present location of the territorial authority boundary bisects a number of properties, creating avoidable and potentially confusing situations in relation to rates collection, service provision, bylaw administration and electoral and census activities as well as dual zonings.
4. Officers have now prepared two draft reorganisation schemes in accordance with Schedule 3 of the Local Government Act 2002 (refer **Appendices A and B**). Two separate reorganisation proposals were drafted because the Tai Tapu reorganisation scheme involves a single landowner thereby avoiding potential appeal delays associated with the Templeton scheme that involves multiple land owners.

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5. Following the Council meeting of 10 December 2009 the Council Chief Executive Officer, Mr Marryatt sent a letter to Mr. Davey CEO of SDC requesting that the Council give notice of the two proposals to the Secretary of Local Government and the Local Government Commission pursuant to clause 10, Schedule 3 of the Local Government Act 2002 thereby confirming the draft alteration proposal. SDC was also asked to determine whether SDC or the Council or a joint committee will be responsible for preparing the draft reorganisation scheme and finally to confirm cost sharing negotiations between the CEOs.
6. The reorganisation proposals and the associated requests were submitted to the full SDC Council on 10 February 2010 where it resolved to give effect to those matters contained in Mr Marryatt's letter (SDC Minutes: Friday 10 February 2010, page 8).
7. Once approved the draft reorganisation schemes shall be released for a two-month public notification period. In addition to public notification the draft schemes must be also be sent directly to the Local Government Commission, SDC and other named parties in clause 12(3) of Schedule 3.
8. An additional report will be forthcoming (post submission close date) requesting the Council to appoint a committee to consider submissions and if necessary convene a hearing.

**FINANCIAL IMPLICATIONS**

9. This boundary alteration program forms part of the agreed and current financial year district plan work programme in which internal officers cost have been budgeted. The associated Council legal input costs are to be absorbed by Legal services. Both the Council and SDC have resolved that cost sharing is appropriate. The proposed 2010/11 district plan budget has anticipated additional hours of internal officers and legal services time to manage the preparation of submissions and hearings.

**Do the Recommendations of this Report Align with 2006-19 LTCCP budgets?**

10. Yes. Covered by existing unit budget.

**LEGAL CONSIDERATIONS**

11. The process for undertaking a boundary alteration is set out in Schedule 3 of the Local Government Act 2002. In preparing the draft reorganisation schemes, the Council must comply with clause 59 of Schedule 3. The draft schemes comply with these requirements.
12. Once the draft reorganisation schemes have been approved, the Council must notify the schemes and conduct a submission process. Clause 16 of Schedule 3 authorises the Council to appoint a committee consisting of two or more of its members to consider the submissions on the draft schemes and make recommendations to the Council in respect of the submissions. Clause 17 of Schedule 3 sets out how the appointed local authority or the joint committee must conduct the submission process. It must consider all submissions as soon as practicable. It may convene hearings and hold discussions. A person who has made a written submission must be given the opportunity to be heard in support of his or her submission.
13. If there are no submissions, the draft reorganisation schemes will become the final reorganisation schemes. A scheme is then referred to the Minister of Local Government for the preparation of an Order in Council to give effect to it.
14. Legal services have provided continued advice throughout the process and in helping to draft the reorganisation schemes. It is anticipated continued support and advice will be needed during any hearings, appeals to the Local Government Commission and the final lodgement of documentation with the Minister for Local Government.

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

15. See above.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

16. Aligns with LTCCP 2009-2019, p156: Council, and community board decisions to achieve 100 percent compliance with statutory requirements.

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

17. Yes, see above.

**ALIGNMENT WITH STRATEGIES**

18. The draft reorganisation scheme aligns with the objectives of the South West Area Plan, notably the objective to visibly define and reinforce the urban limit. The draft reorganisation scheme also aligns with the Greater Christchurch Urban Development Strategy which seeks a well defined district boundary demarcating the boundary between urban and rural areas.

**Do the recommendations align with the Council's strategies?**

19. Yes, in particular with the South West Area Plan and the Urban Development Strategy.

**CONSULTATION FULFILMENT**

20. The boundary alteration proposal that has lead to this draft reorganisation scheme went through a consultation process with affected parties such as SDC, Riccarton/Wigram Community Board, Statistics New Zealand and the Local Government Commission as reported in the December 2009 report to the Regulatory and Planning Committee.
21. No additional consultation has been undertaken since this time. However, once these draft reorganisation schemes have been approved by the Council, a formal statutory process will start as required by clause 12 of Schedule 3 of the Local Government Act 2002. The Council must also give notice of the draft reorganisation schemes to the Local Government Commission, SDC, the Auditor-General, the Parliamentary Commissioner for the Environment, the Secretary of Local Government, the Secretary for the Environment, the Chief Executive of Te Puni Kokiri, any affected Maori organisations identified by Te Puni Kokiri and any other organisations that the Council considers appropriate.
22. The submission period will be open for two months and any interested person or body has the right to make a written submission on the draft reorganisation schemes. Clause 17 of Schedule 3 sets out how the hearings panel may consider and hear submissions.

**STAFF RECOMMENDATION**

That the Council:

- (a) Approve for public notification the two draft reorganisation schemes pursuant to clause 12(3), Schedule 3 of the Local Government Act 2002.
- (b) Appoint a hearings panel (a committee under clause 16 of Schedule 3 of the Local Government Act 2002) to consider submissions on the draft reorganisation schemes and make recommendations on any submissions to the Council.

**COMMITTEE RECOMMENDATION**

That the staff recommendation be adopted.

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## BACKGROUND

23. The draft reorganisation schemes are driven by the need to create a more rational and coherent boundary between Christchurch and Selwyn in the vicinity of Templeton and Old Tai Tapu Road. At present, the current boundary bisects a number of properties such as the Golden Mile Tavern (10 Trents Road); the shop at the Cookie Time Factory (7 Trents Road); 17 properties and/or buildings located between 785 and 784 Main South Road and 3 Barbers Road; and a single property at 280 Old Tai Tapu Road.
24. Two draft reorganisation schemes have been developed, one for Templeton and one for Old Tai Tapu Road. The reorganisation scheme for 280 Old Tai Tapu Road involves only one property owner who is in support of the reorganisation. The alteration of the boundary at Templeton involves seventeen properties and is more likely to be the subject to submissions and appeals. Two separate schemes will allow 280 Old Tapu Road to continue should the Templeton scheme be appealed.
25. Both proposals will promote good local government in both Christchurch City and Selwyn District. They relate to very small boundary adjustments and both Christchurch City Council and Selwyn District Council will continue to:
- (a) Have the resources necessary to enable them to carry out their responsibilities, duties and powers;
  - (b) Have districts that are appropriate for the efficient and effective performance of their roles as specified in section 11 of the Local Government Act, 2002;
  - (c) Contain within their districts sufficiently distinct communities of interest; and
  - (d) Be able to meet the requirements of section 76 of the Local Government Act 2002.
26. On 10 December 2009 Council resolved to confirm two separate draft reorganisation proposals to:
- (i) File with the Selwyn District Council (SDC) to start the formal Local Government Act reorganisation process (refer paragraph 4 below);
  - (ii) Instruct officers to draft a reorganisation scheme in the likely event SDC would appoint the Christchurch City Council (the Council) to manage the process; and
  - (iii) Ask the CEO of the Council to enter into negotiations with the CEO of the SDC regarding cost sharing associated with the reorganisation process.
27. Following the Council meeting, Mr Marryatt (CEO, the Council) sent a letter to Mr. Davey CEO of SDC requesting that Council give notice of the two proposals to the Secretary of Local Government and the Local Government Commission pursuant to clause 10, Schedule 3 of the Local Government Act 2002 thereby confirming the draft alteration proposal. SDC was also asked to determine whether SDC or the Council or a joint committee will be responsible for preparing the draft reorganisation scheme and finally to confirm cost sharing negotiations between the CEO's.
28. The reorganisation proposals and the associated requests were submitted to the full SDC Council on 10 February 2010 where that Council resolved to:
- i. Approve the proposed alteration of the district boundary between Christchurch City Council and the Selwyn District Council in Templeton and Old Tai Tapu Road;*
  - ii. Appoint the Christchurch City Council as the appointed local authority to manage the boundary alteration process;*
  - iii. Authorise the Chief Executive to enter into negotiations with Christchurch City Council over cost sharing arrangement for this process.*

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29. Christchurch City Council has now prepared the two draft reorganisation schemes in accordance with clause 3(1) Schedule 3 of the Local Government Act 2002 (refer **Appendices A and B**). The schemes cover the following matters:
- (a) the new boundary for Selwyn District and Christchurch City:
  - (b) the wards that each area will move out of and into as the case may be (either the Springs Ward of Selwyn District or the Riccarton/Wigram Ward of Christchurch City):
  - (c) provide for transitional matters relating to the Resource Management Act 1991, LTCCPs and the Annual Plans, functions and responsibilities, rates, levies and other money payable, bylaws:
  - (d) subject to the Schemes, apply the provisions of clause 67 of Schedule 3 of the Local Government Act 2002.
30. Once approved by the Council, the draft reorganisation schemes will be open for submissions for a two-month public notification period. In addition to public notification the draft schemes must be also be sent directly to those parties listed at paragraph 22 above.

**THE OBJECTIVES**

31. To create a rational and coherent territorial boundary in the vicinity of Templeton and Old Tai Tapu Road that meets Local Government Act conditions for the reorganisation of territorial boundaries.
32. This can be achieved should Council:
- (a) Approve for public notification the two draft reorganisation schemes pursuant to clause 12(3), Schedule 3 of the Local Government Act 2002.
  - (b) Appoint a hearings panel to consider submissions on the draft reorganisation schemes and make recommendations on the submissions to the Council.

**3. DIRECT REFERRAL OF APPLICATIONS TO THE ENVIRONMENT COURT**

<b>General Manager responsible:</b>	General Manager Regulation and Democracy Services, DDI 941-8462
<b>Officer responsible:</b>	Environmental Policy & Approvals Unit Manager
<b>Author:</b>	Maurice Dale, Senior Planner

**PURPOSE OF REPORT**

1. The purpose of this report is to inform the Council of the process under the Resource Management Act 1991 (as amended by the Resource Management Amendment Act 2009), that provides for certain applications to be directly referred to the Environment Court for a decision. The report also seeks input as to internal communication practices and the criteria that staff has developed to assist in determining whether such individual applications should be referred to the Environment Court or should instead be first determined by the Council as per usual practice. The criteria that have been developed are for use by Council Planning Officers in making recommendations to the Council Hearings Panel or alternatively Commissioners who have delegated decision making powers to determine whether an application should be referred to the Environment Court. The criteria are also for use by the Panel and Commissioners to assist them making decisions.

**EXECUTIVE SUMMARY**

2. The Resource Management (Simplifying and Streamlining) Amendment Bill 2009 came into effect on 1 October 2009. It introduced a number of changes to the Resource Management Act 1991 with the aim of simplifying and streamlining the planning processes under the Act. Part of

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the streamlining provisions included the ability for applicants for notified resource consent applications, and applications for notices of requirement for designations and heritage orders, to request to have their applications considered by the Environment Court without first having to proceed through the Council hearing process. This ability to refer applications directly to the Environment Court, does however not apply to private plan change requests.

3. The intent of the provisions enabling direct referral of applications is to reduce duplication of process, costs and time delays as a result of applications going through a Council hearing process and then being heard again in the Environment Court. Thus, direct referral of an application enables all interested parties to debate the merits of the application before the Court without the usual time delays and costs associated with first proceeding through a Council hearing process.
4. To initiate direct referral of a notified application, an applicant must first apply in writing to the Council for the application to be referred under section 87D (notified resource consents) or 198B (notices of requirement). The request may be made on the day that the application is lodged up until five working days after which submissions on the application have closed. If the Council receives a request before it has determined whether to notify an application, it must defer its decision on whether to directly refer the application until a decision on notification has been made. If the Council determines that the application will not be notified, it must return the request.
5. Under sections 87E(5) or 198C(4) of the Act, if the Council determines to notify the application, it must make a decision as whether to directly refer the application within 15 working days after the date of the decision on notification. The Act specifies that no submitter has a right to be heard by the Council on a request for direct referral.
6. If the Council declines the request for direct referral, it must give the applicant its reasons in writing. The applicant then may object the decision to the Council under section 357/357A of the Act. Under section 358(1), there is no further right of appeal beyond this to the Environment Court for a direct referral request relating to a resource consent application, but there is for a notice of requirement. Appeals to the High Court on points of law are however also possible.
7. Where the Council agrees to the request, the application is directly referred to the Environment Court who make a decision on the application. Where it does not agree (and any objection is unsuccessful), the application continues to be processed by the Council as per normal processes under the Act.
8. Notices of requirement for designations and heritage orders by Council's (as opposed to by requiring authorities) may also be subject to direct referral to the Environment Court. The process however differs in reflection that there is no request per-se for referral and that the decision on direct referral is therefore essentially an internal one for the Council.
9. Since the enactment of the Resource Management Amendment Act 2009, there have been just three requests nationwide for applications to be referred to the Environment Court. These all relate to notified resource consents and include a supermarket proposal in Rodney District, a sewerage scheme in Hawkes Bay Region, and finally one in Christchurch City for the proposed expansion of the Lyttelton Port Company coal yard by way of reclamation.
10. The Lyttelton Port Company (LPC) proposal has been subject to applications made jointly to both the Christchurch City Council and Environment Canterbury. Following the close of public submissions on those applications, LPC applied to both Councils seeking that the applications be referred to the Environment Court for a decision thereby bypassing the Council hearing stage of the process. The reasons stipulated for LPC requesting direct referral included in summary:
  - The port's strategic infrastructural and economic importance.
  - Need for process certainty for project planning purposes.

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- Likelihood of appeal to the Environment Court .
  - Many of the issues raised in submissions related to global environment issues which were unlikely to be resolved through mediation.
  - The technical nature of the evidence would be best determined by the Court from the outset.
  - The Court process would assist in focussing the cases of submitters and encourage the pooling of submitter resources.
  - Direct referral would be a more efficient decision making process overall.
11. Direct referral of the LPC applications has been accepted by both Christchurch City and Environment Canterbury under their respective delegations. The Christchurch City Council decision was made by a Commissioner due to the Councils partial ownership of the port company. A decision was required to be made in advance of the criteria recommended in this report being developed and reported through the Committee, in order to meet statutory timeframes for making a decision.
  12. In respect of all three direct referral applications nationwide, there has been a lack of guidance for the respective Councils as to what basis they should make a decision on the request for direct referral. Neither the Act or the Ministry for the Environment presently provide guidance as to how Councils should exercise their decision making power. Indeed the Ministry has advised that they do not intend to produce any such guidance or criteria for making direct referral decisions therefore leaving it up to individual Councils to set their own. The absence of such criteria makes it difficult for Councils to determine what are appropriate grounds to accept or reject a direct referral request and ensure that individual decisions on direct referral are made on a consistent basis.
  13. To date Environment Canterbury (ECAN) is the only Council in the country that has produced any internal guidance to assist in exercising its discretion on direct referral requests. The ECAN criteria were also used by the Hawkes Bay Regional Council in determining the one direct referral request they have considered. The ECAN criteria were also looked at by Christchurch City Council officers in reviewing the LPC direct referral request and making a recommendation to the Commissioner for direct referral of the LPC proposal to the Environment Court.
  14. While there is no statutory requirement to establish criteria, it is considered desirable that criteria are adopted for considering any future requests for direct referral of an application by council officers, and the making of decisions by the Hearings Panel and Commissioners. Adopting such criteria will provide consistency in decision making and ensure that decisions to refer or not refer are based on sound reasoning. This is important so that any decision that is challenged is defensible.
  15. The criteria that are recommended to be adopted for considering direct referral requests to Christchurch City Council are attached as **Attachment 1**. The criteria largely mirror those devised by Environment Canterbury but have been adapted for Christchurch City Council purposes.
  16. The criteria are self explanatory and separated into four sections. The first section addresses whether referral of an application is necessary. The second section addresses whether referral will support the enabling intent of the Act. The third section addresses the cost and timeliness of the process. Finally the fourth section addresses technical assessment of applications. It is not intended that the criteria be binding on the reporting officer or decision makers but are merely to assist them in making recommendations and decisions. The criteria are framed in such a way so as to not unduly constrain decision makers and maintain sufficient discretion to determine whether to directly refer an application based on the individual circumstances of the application being considered. There may also be other unique factors that individual applications present and the criteria need to be flexible so as to enable such unique factors to be taken into account.

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17. It is expected that over time that the criteria will further evolve as more direct referral requests are considered nationwide. It is also expected that in time a body of case law will develop on direct referral matters which may assist in refining the appropriate matters that the Council should consider in determining direct referral requests.
18. Aside from the recommended criteria for making direct referral decisions, it is apparent that internal processes are required in order to ensure appropriate communication of requests for direct referral to Councillors, Community Boards, as well as potential submitters on a resource consent or notice of requirement. The Act contains no requirement or guidance for such lines of communication, however it is considered desirable that elected members for the ward or community board are advised where a request for direct referral has been received. It is also considered desirable that submitters or potential submitters are advised when a request for direct referral has been received. Subsequent communication to elected members and submitters or potential submitters should also advise whether the request has been granted. While submitters have no rights to be heard by the Council in considering a direct referral request, such communication is considered important so that they are fully informed of the implications of a direct referral request for their involvement in the consent process.
19. It is therefore recommended that the relevant Councillors, Community Board Members, and submitters and potential submitters be advised when a request is received and the outcome of that request. It is also recommended that such requests and the outcome of those requests be reported through the Regulatory and Planning Committee as part of the Planning Administration Managers monthly report.

**FINANCIAL IMPLICATIONS**

20. There are no direct financial considerations.

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

21. There are no LTCCP budgetary implications.

**LEGAL CONSIDERATIONS**

22. The adoption of these criteria does not conflict with the statutory requirements of the Resource Management Act 1991 as amended by the Resource Management (Simplifying and Streamlining) Amendment Bill 2009.
23. Potentially Environment Court and High Court case law may develop over time in respect to the direct referral provisions. Should this occur, the Council direct referral criteria may occasionally need to be revised and updated to reflect that case law.

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

24. Yes. The recommended criteria will support decision making related to the powers of direct referral in the Resource Management Act.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

25. Page 156 of the 2009-2019 LTCCP – Level of Service under Democracy and Governance.

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

26. Yes. Supports the level of service that Council and Community Board decisions comply with statutory requirements.

**ALIGNMENT WITH STRATEGIES**

27. Not applicable.



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**Do the recommendations align with the Council's strategies?**

28. Not applicable.

**CONSULTATION FULFILMENT**

29. Not applicable.

**STAFF RECOMMENDATION**

That the Council :

- (a) Adopt the criteria in Attachment 1 for use by Officer's, the Hearings Panel, and Commissions in respect to making decisions on requests for applications to be directly referral to the Environment Court.
- (b) Direct Officers to implement processes to ensure that relevant Councillors, Community Board Members, and the Regulatory and Planning Committee are advised when an application for direct referral is received, and the outcome of that request.
- (c) Direct Officers to implement processes to ensure that submitters or potential submitters are advised when an application for direct referral is received, the outcome of that request, and the implications for their involvement in the process.

**COMMITTEE RECOMMENDATION**

The Committee recommends that this report lie on the table until the June Regulatory and Planning Committee meeting.

**PART B – REPORTS FOR INFORMATION****4. DISTRICT PLAN REVIEW SCOPING REPORT UPDATE**

Staff provided the Committee an update on the District Plan Review scoping report.

The Committee **decided** to receive this report for information.

**5. NATIONAL DEFAULT DISCOUNT POLICY FOR RESOURCE CONSENTS**

The Committee received a report noting the National Discount Policy for resource consents and that process changes have been initiated or are proposed to meet statutory timeframes.

The Committee **decided** to:

- (a) Receive this report for information.
- (b) Note that process changes have been initiated or are proposed to meet statutory timeframes.
- (c) Ask staff to provide a seminar to all elected members regarding the implications of the discount policy changes.

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**6. PLANNING ADMINISTRATION, BUILDING CONSENT AND LIQUOR LICENSING QUARTERLY REPORT (JANUARY TO MARCH 2010)**

The Committee received the second combined Planning Administration, Building Consent and Liquor Licensing Quarterly Report for the months January to March 2010.

The Committee **decided** to receive this report for information.

The Committee asked staff to provide the Committee an indication of non-compliant issues in non-notified applications and to make this information public.

**7. BYLAWS: ANNUAL PERFORMANCE AND DATA ANALYSIS REPORT 2009**

Staff provided the Committee with the 2009 data analysis report on the operation of the Waste Management Bylaw 2009 and the Parks and Reserves Bylaw 2008.

The Committee **decided** to receive this report for information.

The meeting concluded at 12.12pm

**CONSIDERED THIS 27TH DAY OF MAY 2010**

**MAYOR**