CHRISTCHURCH CITY COUNCIL
AGENDA

THURSDAY 11 NOVEMBER 2010

9.30AM

COUNCIL CHAMBER, CIVIC OFFICES,
53 HEREFORD STREET

AGENDA - OPEN

Christchurch City Council

CHRISTCHURCH CITY COUNCIL

Thursday 11 November 2010 at 9.30am
in the Council Chamber, Civic Offices, 53 Hereford Street

Council: The Mayor, Bob Parker (Chairperson).
Councillors Helen Broughton, Sally Buck, Ngaire Button, Tim Carter, Jimmy Chen, Barry Corbett, Jamie Gough, Yani Johanson, Aaron Keown, Glenn Livingstone, Claudia Reid, Sue Wells and Chrissie Williams.

11. 11. 2010

1. APOLOGIES

2. CONFIRMATION OF MINUTES - COUNCIL MEETING OF 22.10.2010

Attached.

3. DEPUTATIONS BY APPOINTMENT

4. PRESENTATION OF PETITIONS

11. 11. 2010

5. RATES RELIEF FOR OWNERS OF EARTHQUAKE DAMAGED PROPERTY

General Manager responsible:	General Manager Corporate Services, DDI 941-8528
Officer responsible:	Corporate Finance Manager
Author:	Steve Kelsen, Funds and Financial Policies Manager

PURPOSE OF REPORT

1. On 30 September 2010, the Council resolved to review its rates remission policy prior to 15 November 2010. The purpose of this report is to recommend to the Council several amendments to its Rates Remission Policy for those ratepayers most badly affected by the earthquake.

EXECUTIVE SUMMARY

Rates Relief

2. The 4 September 2010 Canterbury earthquake and aftershocks caused extensive damage to land and buildings in Christchurch. Earthquake Commission (EQC) information shows that as at 28 October 2010 the number of claims made in Christchurch was 83,626 (note: EQC covers residential property only). Of those claims there are approximately:

   - 9,000 for claims in excess of $100,000 or for land damage
   - 45,000 for claims between $10,000 and $100,000
   - 22,000 claims less than $10,000, and
   - 8,000 contents-only claims.

3. EQC has reported there are 856 properties within Christchurch where land must be remediated. 840 of these properties will have their buildings demolished and may be rebuilt. The remaining 16 properties cannot be rebuilt upon. A further approximately 1,200 properties will not require land remediation, but insurance firms may determine that residences are not economic to repair and the buildings will be demolished and rebuilt.

4. Historically, the Council has not waived or remitted rates payable that are damaged (eg by fire) during a rating year. This practice is based on the fact that rates are legally payable and that insurance cover provides alternative accommodation for the owners/occupiers of that property. Given the extraordinary nature of the recent earthquake it is appropriate for the Council to consider offering rates relief for the owners of properties badly affected by the earthquake. However, any consideration of rates relief must be made in the context of the potential lost revenue and the additional financial demands that will be placed on the Council as Christchurch is rebuilt.

5. Rates make up over 50 per cent of Council revenue and are used as a funding source for the majority of the Council's operating activities as well as funding the renewal and replacement of fixed assets. Specific targeted rates collect revenue for water, wastewater, waterways and land drainage, and organics and recyclables collection, while the General Rate and Uniform Annual General Charge (UAGC) fund activities such as Streets and Transport, Regulatory Services, Parks, Libraries, and Recreation and Sports Services.

6. Only a small proportion of the Council's services are delivered directly to a property. Water, wastewater, refuse collection and, to an extent, land drainage services are provided direct to properties. All other Council services are accessed by residents and ratepayers remotely from their properties and are funded via the General Rate and UAGC.

7. Additionally, both business and residential insurance policies generally provide cover which ensures that ratepayers are not paying two sets of rates, one on un-inhabitable property and a second set on the alternative accommodation being used by the ratepayer.

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8. On this basis staff propose that the Council adopt policies providing rates relief only to the owners of properties who have suffered damage that is expected to take an extended period to repair (eg where land remediation is required) or where the Council services have not been delivered for a period. The recommended options and estimated costs are outlined below:

	Estimated Cost			
	2010/11	2011/12	2012/13	Total
Rates remission for residential properties on land requiring remediation	$0.860m	$1.147m	$0.287m	$2.294m
Rates remission for residential properties with significant interruption to Council services	$0.003m			$0.003m
Total cost of recommended remissions	**$0.863m**	**$1.147m**	**$0.287m**	**$2.297m**

9. A number of other options for rates remissions together with their estimated costs are outlined in the background to this paper. However these other options are not recommended because commercial and domestic insurance is available to cover most instances.

City-wide General Revaluation

10. At the time the 4 September 2010 earthquake struck, the Council's valuers were preparing the 2010 city-wide general revaluation. This revaluation would have had an effective date of 1 August 2010 and individual property values were due to be released to property owners in early November 2010. This revaluation would have been used to strike rates for the 2011/12 financial year.

11. Following the earthquake, Council staff proposed to the Valuer General that the revaluation be deferred to give the Council's valuers the opportunity to inspect individual properties and record the value lost as a result of the earthquake prior to recalculating property values for the entire city. The Valuer General agreed with this approach and has discussed this matter with relevant Ministers and Government agencies. He has advised that an Order in Council enabling the Council to defer its General Revaluation until December 2011 is likely to be approved by the end of November 2010. The effect of this is that the existing city-wide valuation will be used for one additional year (2011/12) and the revaluation will be done in time to strike rates for the 2012/13 financial year.

12. However, properties significantly damaged by the earthquake will be revalued by the Council's valuation service provider prior to the striking of rates on 30 June 2011 for the 2011/12 financial year. This will ensure that 2011/12 rates reflect the capital value of properties as they exist at 30 June 2011 and take into account any earthquake damage to property and subsequent reconstruction.

FINANCIAL IMPLICATIONS

13. Should the Council amend its Rates Remission Policy as recommended below, the cost to the Council is estimated at $2.3 million.

Rates Remission				
	2010/11	2011/12	2012/13	Total
	$863,000	**$1,147,000**	**$287,000**	**$2,297,000**

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14. The administration of rates remissions as recommended would require additional staff resources within the Rates and Debt Management Team. This is estimated as 0.2 FTEs at a cost of $16,000.

15. During discussions with the Canterbury Earthquake Recovery Commission (CERC), staff have requested government support in four main areas: economic development stimulus package, rates remissions, increased assistance for roading costs and reimbursement for temporary works required. The cost of the remissions recommended in this paper are expected to be met through this central government assistance.

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

16. No.

LEGAL CONSIDERATIONS

17. The Council adopted a Rates Remission Policy in the 2009-19 LTCCP. Section 102(6) of the Local Government Act 2002 enables a Rates Remission Policy to be amended only as an amendment to the LTCCP. The Canterbury Earthquake (Local Government Act 2002) Order 2010 exempts the Council from this provision in certain circumstances.

18. These circumstances include a decision made by the Council that is necessary or desirable to further one or more of the purposes of the Canterbury Earthquake Response and Recovery Act 2010. The relevant purposes in respect of the proposed review of the rates remissions and rates postponement policies are:

    (a) To facilitate the Council's response to the earthquake.

    (b) To provide adequate statutory power to assist with the response.

    (c) To enable the relaxation or suspension of statutory provisions that may not be reasonably capable of being complied with, or complied with fully, owing to the circumstances resulting from the earthquake.

19. Should the Council resolve to amend its Rates Remissions Policy as recommended in this report that decision would fall within the purposes of the Canterbury Earthquake Response and Recovery Act 2010. The Council is therefore entitled to rely on the exemption from compliance with section 102(6) of the Local Government Act 2002 contained in the Canterbury Earthquake (Local Government Act 2002) Order 2010.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

20. Not applicable.

ALIGNMENT WITH STRATEGIES

21. Not applicable.

CONSULTATION FULFILMENT

22. The Council adopted a new significance policy in its 2009-19 LTCCP. This requires the Council to consider undertaking a Special Consultative Procedure before making decisions that would result in changes to levels of service specified in the LTCCP.

23. The exemptions provided by the Canterbury Earthquake (Local Government Act 2002) Order 2010 enable the Council to make the decisions sought in this report without having to undertake a Special Consultative Procedure before doing so.

11. 11. 2010

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STAFF RECOMMENDATION

It is recommended that the Council:

(a) Resolve to amend its Rates Remission Policy to enable the provision of rates relief to the owners of earthquake-damaged properties as follows:

(i) Remit 100 per cent of rates to properties required by the Earthquake Commission to be demolished for land remediation, from 1 September 2010 until the earlier of the completion of rebuilding or six months following completion of land remediation, at an estimated cost of $860,000 in 2010/11, $1,147,000 in 2011/12, and $287,000 in 2012/13.

(ii) Remit the Sewerage Rate for three months to those properties that remain unable to connect to the reticulated wastewater network at 31 October 2010 at an estimated cost of $3,000 in 2010/11.

(b) Note that the Council is exempt from the requirements in section 102(6) of the Local Government Act 2002 that the policy can only be amended as an amendment to the LTCCP. This exemption is provided by the Canterbury Earthquake Response and Recovery Act 2010 and the Canterbury Earthquake (Local Government Act 2002) Order in Council 2010;

(c) Delegate to the General Manager Corporate Services authority to finalise the wording of the amended Rates Remission Policy;

(d) Delegate to the Team Leader Rates and Debt Management authority to approve earthquake-related rates remissions in accordance with Council policy;

(e) Endorse staff to continue discussions with the Canterbury Earthquake Recovery Commission and central government to provide support for the following key areas:

- Economic development stimulus package
- Rates remissions
- Increased assistance for roading costs, and
- Reimbursement for temporary works required.

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BACKGROUND (THE ISSUES)

24. The 4 September 2010 Canterbury Earthquake and aftershocks have caused extensive damage to land and buildings in Christchurch. It is not yet possible to determine exactly the number of properties damaged or the financial value of that damage. Information gathered from the Earthquake Commission (EQC) shows that as at 28 October 2010 the number of claims made in Christchurch was 83,626 (note: EQC covers residential property only). Of those claims there are approximately:

    - 9,000 for claims in excess of $100,000 or for land damage
    - 45,000 for claims between $10,000 and $100,000
    - 22,000 claims less than $10,000, and
    - 8,000 contents only claims.

    These numbers are based on self assessment of damage by property owners. Once insurance assessors have completed inspections the number of claims and the assessment of damage may change considerably.

25. EQC has reported there are 856 properties within Christchurch where land must be remediated. 840 of these properties will have their buildings demolished and may be rebuilt. The remaining 16 properties cannot be rebuilt upon. A further approximately 1,200 properties will not require land remediation, but insurance firms may determine that residences are not economic to repair and the buildings will be demolished and rebuilt.

26. Christchurch City Council building inspections have concentrated on buildings in the CBD and arterial routes, along with those suburbs worst affected by the earthquake. Data from those inspections (as at 22 October 2010) showed the following:

Placards	**Residential**	**Business /Other**	**Total**
Total	6,339	2,262	8,601
Green	5,465 (86%)	1,769 (78%)	7,234 (84%)
Yellow	669 (11%)	342 (15%)	1,011 (12%)
Red (safety)	126 (2%)	150 (7%)	276 (3%)
Red (health)	79 (1%)	1 (0%)	80 (1%)

27. A further 256 properties remain unconnected to the wastewater system and will do for some time. The majority of these properties are a subset of the 856 properties with land damage requiring remediation. These properties are currently having septic tanks installed at the Council's expense.

Liability for rates

28. The Local Government (Rating) Act 2002 requires that rates be assessed based on the value of a rating unit as at 30 June of the year prior to the commencement of a new rating year. This means that 2010/11 rates must be set based on the capital value of each property, and the services provided to that property, as it existed on 30 June 2010. There is no provision in the Act to enable or allow rates to be adjusted for any event after 30 June. Historically the Council has not waived or remitted the rates payable on properties damaged or destroyed by fire or any other reason during a rating year. This practice is based on the fact that rates are legally payable, and that insurance cover provides alternative accommodation for the owners/occupiers of that property.

29. Therefore, ratepayers affected by the earthquake are liable for the rates as advised to them in the rates assessment notices issued earlier this year, and based on historic practice Council would not remit those rates.

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What rates pay for

30. Rates make up over 50 per cent of Council revenue and are used as a funding source for the majority of the Council's activities as well as funding the renewal and replacement of fixed assets. Specific targeted rates collect revenue for water, wastewater, land drainage and organics and recyclables collection, while the General Rate and Uniform Annual General Charge (UAGC) fund activities such as Streets and Transport, Regulatory Services, Parks, Libraries, and Recreation and Sports Services.

31. Only a small proportion of the Council's services are delivered to a property. Water, wastewater, refuse collection and, to an extent, land drainage services are provided direct to properties. All other Council services are accessed by residents and ratepayers remotely from their properties and paid via the General Rate and UAGC.

Capital value basis of rates

32. 87 percent of rates collected by Christchurch City Council are assessed based on the capital value of the rating unit. This high percentage of capital value based rates effectively make Christchurch rates a property-based wealth tax. In the normal course of events this is appropriate because independent research, including that carried out for the Local Government Rates Inquiry, found that the capital value of a property is a strong indicator of the ability of its owner to pay rates.

Insurance

33. Residential insurance policies generally provide six to twelve months accommodation or a lump sum payment to home-owners when the insured property is uninhabitable. Therefore, for the period covered, if ratepayers are obliged by the Council to continue paying rates on an un-inhabitable property they will be paying rates on one property only (the one they own rather than the one they are temporarily residing in).

34. Commercial business interruption insurance generally provides for the loss of profit based on the business' historic revenue and gross profit percentage and therefore indirectly funds businesses and/or commercial ratepayers for their rates payments while they are unable to continue with their normal business operation due to damage to property. There are also a number of policy extensions available that do not require damage to the insured's premises directly including "Prevention of Access", "Damage to Customer Premises" and "Closure by Authorities". These latter forms of insurance are less often used by the market than standard business interruption insurance.

ASSESSMENT OF OPTIONS

Options for earthquake-related rates relief

35. There are a number of possible approaches to offering rates relief to ratepayers whose property has been damaged by the earthquake, and the more realistic options are set out below. It should be noted that these estimates are based on the best information currently available and may change.

Rates remission for properties on land requiring remediation

36. As mentioned above EQC have advised that 856 properties have land damage that must be remediated. Of these properties 16 will not be remediated because it is uneconomic to do so, and the remaining 840 properties will have the houses demolished, the land remediated, after which houses may be rebuilt.

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37. If the Council were to remit 100 per cent of rates on properties required by the Earthquake Commission to be demolished for land remediation, from 1 September 2010 until the earlier of the completion of rebuilding or six months following completion of land remediation, the average remission per ratepayer and total cost is estimated to be:

Rates Remission				
	2010/11	2011/12	2012/13	Total
average remission	1,005	1,340	335	
Total Cost	$860,000	$1,147,000	$287,000	$2,294,000

Rates remission for properties with significant interruption to Council services

38. While most Council services were restored within days after the 4 September 2010 earthquake, significant damage to the wastewater system has meant that 256 properties remain unconnected to the reticulated wastewater system (the Council is in the process of installing septic tanks for these properties so that inhabitants are no longer required to use portaloos). The cost of remitting three months Sewerage Rate to those properties, to recognise the interruption in Council service, is estimated to be $3,000 in 2010/11. This figure is low because the majority of these properties will qualify for a full remission of rates under a remission for properties on land requiring remediation. The average refund per property would be $47.

Rates remission for business properties classified as R, R1 or R2

39. Council data indicate that 118 business properties, housing 277 separately used parts, have buildings classified as R (unsafe), R1 (significant damage repairs strengthening possible) and R2 (severe damage demolition likely). These properties cannot be occupied or used until buildings are demolished or significant strengthening work is completed.

40. These properties have a combined Capital Value of $117 million, which is broken down into Land Value of $82 million and Improvement Value of $35 million. Should the Council choose to remit all rates relating to the Improvement Value of these properties (effectively treating them as bare land) from 1 September 2010 the cost is estimated to be $161,000 in 2010/11. No remission of rates would be required in future years because each property will be valued as at 30 June 2011 and 2011/12 rates will reflect the state of the property at that date.

41. Should the Council choose to remit all rates on these properties from 1 September 2010 the estimated cost is $467,000 for 2010/11.

42. However as mentioned above, business interruption insurance is available for commercial ratepayers in this situation. Therefore, staff do not recommend that the Council remit rates for business properties classified as R, R1 or R2.

Rates remission for business properties classified as R3

43. Council data indicate that 11 business properties, housing 24 separately used parts, have buildings classified as R3 (unsafe due to adjacent property). These properties cannot be occupied or used until adjoining buildings are demolished or significantly strengthened.

44. Should the Council chose to remit six months of rates on business properties with buildings that have been classified as R3 the estimated cost is $24,000 in 2010/11. Staff do not recommend this option because commercial insurance cover is available to cover this situation.

11. 11. 2010

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Rates remission for residential properties that are uneconomic to repair and will be demolished

45. EQC have advised that approximately 1200 residential properties are on land that does not require remediation but which will be uneconomic to repair. It is expected that insurance companies will require the houses to be demolished and rebuilt.

46. These houses remain habitable, and the occupants will only be required to move to temporary accommodation once the demolition and rebuilding process commences. If the owners of these properties are insured, the cost of alternative accommodation, and the cost of rates on that accommodation, will be provided by the insurer. The occupants of these properties will therefore continue to receive full Council services, regardless of their location, and will only be liable for the rates on one property. For this reason rates remission for these 1200 properties is not recommended.

47. Should the Council consider it is appropriate to provide three months rates relief to these properties, reflecting the approximate length of time for demolition and rebuilding, the estimated cost would be:

Rates Remission				
	2010/11	2011/12	2012/13	Total
Average remission	335	-	-	
Total Cost	$402,000	-	-	$402,000

Rates remission for business properties classified as Y, Y1, or Y2

48. Council data indicate that 275 business properties have buildings with yellow placards and classified as Y (restricted use), Y1 (short term entry) or Y2 (no entry to parts until secured or demolished). These properties are able either to be used, or entered for the purpose of transferring the occupying businesses to new premises. Additionally, repair work on these buildings is able to commence.

49. Y classified properties have an estimated capital value of $310 million, broken down into $164 million of improvements and $77 million of land value. Should the Council choose to remit all rates relating to the Improvement Value of these properties (effectively treating them as bare land) for three months the cost is estimated to be $233,000 in 2010/11.

50. Should the Council choose to remit all rates on these properties for three months the estimated cost is $340,000 for 2010/11.

Financial hardship

51. The Council's Rates Postponement Policy currently allows ratepayers, particularly the elderly, to postpone their payment of rates where the payment of those rates would cause financial hardship. Additional support for ratepayers suffering financial hardship is available through the New Zealand Red Cross Canterbury Earthquake Appeal.

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52. Summary of options

Option	Estimated Cost				Recommendation
	2010/11	2011/12	2012/13	Total	
Rates remission for residential properties on land requiring remediation	$0.860m	$1.147m	$0.287m	$2.294m	Preferred
Rates remission for residential properties with significant interruption to Council services	$0.003m			$0.003m	Preferred
Rates remission for business properties classified as R, R1 or R2 – remission on Improvement Value	$0.161m			$0.161m	Not preferred
Rates remission for business properties classified as R, R1 or R2 – remission on Capital Value	$0.467m			$0.467m	Not preferred
Rates remission for business properties classified as R3	$0.024m			$0.024m	Not preferred
Rates remission for residential properties that are uneconomic to repair and will be demolished	$0.402m			$0.402m	Not preferred
Rates remission for business properties classified as Y, Y1, or Y2 – remission on Improvement Value	$0.233m			$0.233m	Not preferred
Rates remission for business properties classified as Y, Y1, or Y2 – remission on Capital Value	$0.340m			$0.340m	Not preferred
Total cost of preferred remissions	**$0.863m**	**$1.147m**	**$0.287m**	**$2.297m**	

53. Rates remissions policies being considered by, or adopted by, other authorities affected by the earthquake are:

Waimakariri District Council

Waimakariri District Council has resolved to:

- Remit all rates from 1 September 2010 to all properties that are uninhabitable due to the September earthquake and associated aftershocks until the property is able to become available for use
- Remit the Sewer rate to inhabited properties that have had no reticulated sewer systems for a period of more than one month due to the Earthquakes, until the sewer service is available for use
- Remit the Central Business Area rate for all properties within the Kaiapoi Central Business Area for the 2,3,4 instalments.

Remission of rates is to be provided in response to an application by the affected ratepayer, and Waimakariri District Council will also consider deferral of the payment of rates, under its existing Rates Postponement Policy, in cases of financial hardship.

Selwyn District Council

Because of the low number of significantly damaged properties in the District the Selwyn Council has not adopted a new rates remission policy following the earthquake. Discussions with officers have indicated that, if considered necessary, Selwyn is likely to adopt a policy similar to that adopted by Christchurch or Waimakariri.

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Environment Canterbury
Commissioners meet in-committee on Thursday 28 October and one of the agenda items discussed was rates relief. As yet they have not made an announcement regarding rates relief.

The Preferred Option

54. The preferred earthquake related-rates remissions are:

(a) Remit 100 per cent of rates to properties required by the Earthquake Commission to be demolished for land remediation, from 1 September 2010 until the earlier of the completion of rebuilding or six months following completion of land remediation, at an estimated cost of $860,000 in 2010/11, $1,147,000 in 2011/12, and $287,000 in 2012/13.

(b) Remit three months Sewerage Rate to those properties that remain unable to connect to the reticulated wastewater network at 30 October 2010 at an estimated cost of $3,000 in 2010/11.

	Benefits (current and future)	**Costs (current and future)**
Social	None Identified	Nil
Cultural	None Identified	Nil
Environmental	None Identified	Nil
Economic	Provides financial relief to those residential and commercial ratepayers who are extremely adversely affected by the earthquake.	$2.297 million over three years.

Extent to which community outcomes are achieved:

The preferred option contributes to the following community outcomes:

- A Prosperous City
  Providing rates relief to the worst affected of Christchurch's ratepayers will assist them during current financial difficulties and help enable their future prosperity.

- A City of Inclusive and Diverse Communities
  Providing rates relief for those people worst affected by a natural disaster will continue the post-earthquake support that has brought our community closer together.

Impact on the Council's capacity and responsibilities:
The financial cost of providing rates relief must be met from other sources. Staff are in discussions with central government to meet the cost of the required rates remissions.

Effects on Maori:
None identified.

Consistency with existing Council policies:
The preferred option would extend the eligibility criteria of Council's existing Rates Remissions Policy to allow for rates relief for those ratepayers extremely adversely affected by the 4 September earthquake and aftershocks.

Views and preferences of persons affected or likely to have an interest:
It is possible that a large number of ratepayers will consider that they are entitled to rates relief because of minor or moderate damage to their properties or temporary interruptions to Council services. This view must be balanced against the widely-held view that rates and rates increases must be kept to a minimum. Consideration of rates relief must, therefore, balance a desire to assist ratepayers affected by the earthquake with the need to pay for that assistance.

Other relevant matters:
None identified.

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Application of rates relief policies

55. It is proposed that where the Council is able to identify ratepayers that qualify for remissions that remission will be automatically provided to the ratepayer. Only where the Council is unable to identify qualifying ratepayers will they need to apply for a remission. It is also proposed that the Team Leader Rates and Debt Management be delegated authority to approve earthquake-related rates remissions.

56. In general the remissions proposed above are for periods of three, six, or nine months. This is to simplify the process of calculating and administering remissions by aligning the remissions to rates quarterly instalments.

57. The administration of rates remissions as recommended would require additional staff resources within the Rates and Debt Management Team. This is estimated as 0.2 FTEs at a cost of $16,000.

CITY-WIDE GENERAL REVALUATION

58. At the time the 4 September 2010 earthquake struck, the Council's valuers were preparing the 2010 city-wide general revaluation. This revaluation would have had an effective date of 1 August 2010 and individual property values were due to be released to property owners in early November 2010. This revaluation would have been used to strike rates for the 2011/12 financial year.

59. Following the earthquake Council staff proposed to the Valuer General that the revaluation be deferred to give the Council's valuers the opportunity to inspect individual properties and record the value lost as a result of the earthquake prior to recalculating property values for the entire City. The Valuer General agreed with this approach and has discussed this matter with relevant Ministers and Government agencies. He has advised that an Order in Council enabling the Council to defer its General Revaluation until December 2011 is likely to be approved by the end of November. The effect of this is that the existing city-wide valuation will be used for one additional year (2011/12) and the revaluation will be done in time to strike rates for the 2012/13 financial year.

60. However, properties significantly damaged by the earthquake will be revalued by the Council's valuation service provider prior to the striking of rates on 30 June 2011 for the 2011/12 financial year. This will ensure that 2011/12 rates reflect the capital value of properties as they exist at 30 June 2011 and take into account any earthquake damage to property and subsequent reconstruction.

11. 11. 2010

6. RICCARTON BUSH ACT 1914 – APPROVAL OF COUNCIL ACTING AS PROMOTER OF AMENDMENT BILL)

General Manager responsible:	General Manager Regulation & Democracy Services, DDI 941-8462
Officer responsible:	Acting Manager, Legal Services Unit
Author:	Robert O'Connor, Solicitor, Legal Services Unit

PURPOSE OF REPORT

1. The purpose of this report is to seek the approval of the Council to the proposal that it acts as the formal promoter of the Riccarton Bush Amendment Bill ("the Bill") in relation to the Bill's progress through the parliamentary process.

EXECUTIVE SUMMARY

2. This report appeared on the agenda for the Council meeting of 25 February 2010, but was left to lie on the table pending the Council's consideration of the 'Outside Appointments – Conflict of Issue' matter. This occurred at the Council meeting held on 26 August 2010. The Council's resolution of 26 August 2010 included a request that the draft Bill be altered to allow the Council to appoint either elected members or non-elected members to the Riccarton Bush Trust Board, rather than just elected members as originally drafted. As the Riccarton Bush Trust Board has formally agreed to this amendment, this report may now be considered by the Council.

3. The Bill proposes to amend the Riccarton Bush Act 1914 ("the Act"), the statute governing Riccarton House and Bush, in a number of areas to reflect current circumstances and practice.

4. The Legal Services Unit, working closely with a Working Party appointed by the Riccarton Bush Trustees ("the Board"), has prepared the draft Bill.

5. Full details of the amendments proposed to be made to the Act by the Bill were discussed in a report considered by the Council on 23 April 2009.

6. At its meeting of 23 April 2009 the Council considered the draft Bill and resolved:

   "(a) To approve the draft Riccarton Bush Amendment Bill and to support its enactment into law.

   (b) To authorise Council staff to make a submission in support of the Bill to the Select Committee considering the draft Bill."

7. When the draft Bill was previously considered by the Council, it was the expectation of the Board and the Legal Services Unit that the Board would formally act as the promoter of the Bill and that the Council would simply act in support.

8. Subsequently, the Office of the Clerk of the House has advised the Board that the Bill, as a 'local bill', should more properly be promoted by the Council rather than the Board. The reason for this is that as the Act is a 'local act' it should be amended by a 'local bill', which may only be promoted by a local authority. The Office of the Clerk has advised that historically the previous amendments to the Act have been promoted by this Council. The Riccarton Bush Trustees are not a "local authority" for the purposes of Parliament's Standing Orders.

9. As the promoter of the Bill, the Council would be responsible for the drafting of the Bill (subject to comments by the Office of the Clerk of the House and the Parliamentary Counsel Office) and complying with the Parliamentary Standing Orders in relation to the Bill. This means that the Council must:

   (a) Prepare the necessary documentation and attend to the public notification of the Bill before it is introduced into Parliament.

   (b) Liaise with the Member of Parliament who will be in charge of the Bill in the House (note that Hon. Gerry Brownlee has indicated he is willing to take on this role) and liaise with the Office of the Clerk.

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(c) Finalise the Bill for introduction for the House which involves the Chief Executive making a written declaration, and paying a $2000 parliamentary fee to the Office of the Clerk.

(d) Make a submission on the Bill once it is referred to a Select Committee for consideration.

(e) Be available to assist with the passage of the Bill through the House (for example providing information to members of Parliament).

10. The drafting of the Bill has already been finalised with the Board, the Office of the Clerk and the Parliamentary Counsel Office. Similarly, the public notification documentation is largely ready for publication (subject to some adjustments being made to provide that the Council is the promoter of the Bill).

11. The Board has formally consented to the Council acting as the formal promoter of the Bill and have agreed to continue to be liable to meet the $2000 fee payable to the Office of the Clerk.

12. It is not anticipated that the role as promoter of the Bill will result in the imposition of any additional expense or cost upon the Council other than that already anticipated. As the Board is a Council Controlled Organisation, the Council has already acted in support of the Board in its endeavour to have the Bill enacted into law through the Legal Services Unit taking a lead role in the process to date. Whether the Council acts as promoter of the Bill or not, that same level of support would still be provided to the Board.

13. Notwithstanding the assumption of the formal status as promoter of the Bill, the Council will continue to work closely in partnership with the Board to seek the enactment of the Bill into law.

FINANCIAL IMPLICATIONS

14. It is not anticipated that the role as promoter of the Bill will result in the imposition of any additional expense or cost upon the Council. The Board has agreed to continue to be liable to meet the $2000 fee payable to the Office of the Clerk of the House.

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

15. Yes.

LEGAL CONSIDERATIONS

16. Yes, see above.

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

17. Yes, see above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

18. Yes.

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

19. Yes.

ALIGNMENT WITH STRATEGIES

20. Yes.

6 Cont'd

Do the recommendations align with the Council's strategies?

21. Yes.

CONSULTATION FULFILMENT

22. As detailed in the report to the Council considered at its meeting of 23 April 2009, the Board has completed a comprehensive consultation process in respect of the draft Bill, which resulted in the receipt of 10 submissions in support of the Bill. No submissions were received in opposition to the draft Bill. It is not considered that a Council decision to act as promoter of the Bill imposes any additional consultation requirement. In any event the progress of the Bill through the Parliamentary process will involve the further opportunity for the public to make submissions on the Bill.

STAFF RECOMMENDATION

It is recommended that the Council resolves to:

(a) Promote the Riccarton Bush Amendment Bill to Parliament.

(b) Authorise the Chief Executive to:

(i) Take such steps as are necessary to promote the draft Bill through the Parliamentary process, including signing the declaration for a local bill and any other documentation on behalf of the Council required.

(ii) Make such changes to the draft Bill as are required as a result of the Parliamentary process, provided that those changes do not materially alter the intent or purpose of the Bill.

11. 11. 2010

7. COUNCIL SUBMISSION ON MARINE AND COASTAL AREA (TAKUTAI MOANA) BILL

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Acting Manager, Legal Services Unit
Author:	Vivienne Wilson, Solicitor

PURPOSE OF REPORT

1. The purpose of this report is to set out the background to the Marine and Coastal Area (Takutai Moana) Bill and ask the Council to approve the attached draft submission on the Bill (**Attachment 1**). Submissions must be lodged with the Māori Affairs Select Committee by 19 November 2010.

EXECUTIVE SUMMARY

Terms of the Bill

2. The Government has introduced the Marine and Coastal Area (Takutai Moana) Bill. A copy of the explanatory note to the Bill is attached (**Attachment 2**). The general policy statement to the Bill notes as follows:

> *The Marine and Coastal Area (Takutai Moana) Bill (the Bill) repeals the Foreshore and Seabed Act 2004 … and restores the customary interests extinguished by that Act. It recognises, through the protection of public rights of access, navigation, and fishing, the importance of the common marine and coastal area for its intrinsic worth for the benefit, use, and enjoyment of all New Zealanders. The Bill recognises the mana tuku iho of iwi and hapū, as tangata whenua, over the foreshore and seabed of New Zealand, and it contributes to the continuing exercise of that mana by giving legal recognition, protection, and expression to the customary interests of Māori in the area.*

3. Under the Foreshore and Seabed Act 2004 (the FSA), the public foreshore and seabed (excepting private titles) was vested in the Crown. The FSA also had the effect of extinguishing any uninvestigated Māori customary title (a common law concept that allows for the continuation of indigenous systems of law and rights) to the foreshore and seabed. In the FSA the foreshore and seabed is the area from the high-water mark at mean high-water spring tides extending seawards for 12 nautical miles (the territorial sea). This area includes the subsoil and the waterspace and airspace above this area (but not the air or water itself).

4. As alluded to in the Government's consultation document earlier this year, this Bill removes Crown ownership of the public foreshore and seabed by repealing the FSA, stating that this area (to be known as the common marine and coastal area) is not owned, and cannot be owned, by any person. This area now has a "special status".

5. The Bill continues the rights of public access in, on, over, and across the common marine and coastal area. It also provides that nothing in the Bill affects existing commercial, recreational, and customary fishing rights and it preserves rights of navigation in the area. These rights of public access, fishing, and navigation are subject only to restrictions authorised by legislation.

6. The Bill states that the Minister of Conservation is responsible for managing the common marine and coastal area. This role does not override the roles and responsibilities of other Ministers, local authorities, or other people who are specified in the Bill or other legislation.

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7. The Bill states that resource consents in the common marine and coastal area that were in existence immediately before the commencement of the Bill are not limited or affected by the Bill. Existing leases, licences, and permits will run their course until expiry. Coastal permits will be available for the recognition of these interests after expiry. There is also some protection for nationally or regionally significant structures and infrastructure and their associated operations.

8. The Crown retains ownership of petroleum, gold, silver, and uranium.

11. 11. 2010

7 Cont'd

ALIGNMENT WITH STRATEGIES

29. In August 2010, the Council adopted the Public Open Space Strategy 2010-2040. The strategy sets out a vision for public open space over the next 30 years. The vision has two aspects which are:

    - To provide, develop and maintain a publicly accessible network of open space to enhance and protect health, recreation and liveability for residents and visitors to Christchurch and Banks Peninsula.

    - To contribute to maintaining and enhancing the district's environmental quality, landscape character, cultural values and cultural heritage through the public open space system.

30. The Open Space Strategy divides public open space into three categories. These are green spaces, blue spaces and grey spaces. Green Spaces are land areas that are largely covered in vegetation, including parks, conservation land, cemeteries *and margins of water bodies*. Blue Spaces are surface water bodies or waterways occurring on the surface of the land, such as lakes, rivers and streams. *Public land adjoining or providing access to beaches is also included*. Grey spaces primarily refers to the street network.

Do the recommendations align with the Council's strategies?

31. Yes, the submission advocates for a publicly accessible marine and coastal area.

CONSULTATION FULFILMENT

32. Given the time available to prepare the submission and the fact of the local authority elections, the Council has not sought the view of any external party about the terms of this submission. However, internally, staff from the Legal Services Unit, Strategy and Planning and Transport and Greenspace have discussed the Bill and the terms of the draft submission.

33. In the case of the two recent submissions on the foreshore and seabed consultation (May 2009 and April 2010), the Council provided a copy of its submissions to Te Runanga O Ngāi Tahu after the submissions had been approved by the Submissions Panel.

34. LGNZ are preparing a submission on the Bill and in late September asked for comments on three matters associated with the Bill. LGNZ required feedback by 22 October 2010. Staff has not provided feedback to LGNZ at this stage. A copy of the LGNZ memorandum is attached to this report (**Attachment 4**).

STAFF RECOMMENDATION

It is recommended that the Council:

(a) Notes the terms of this report and approves the draft submission (to be signed by the Mayor and the Chief Executive) for lodging with the Māori Affairs Select Committee.

7 Cont'd

9. The Bill provides that, while there is no owner of the common marine and coastal area, existing ownership of structures and roads in the area will continue. New structures can be privately owned. Structures that have been abandoned will vest in the Crown.

10. The Bill sets out a new regime for reclamations.

11. The Bill also sets out a regime for the recognition of Māori customary interests in the common marine and coastal area. There are three types of interest that may be recognised being mana tuku iho, protected customary rights, and customary marine title. There are various "rights" that are linked to these interests.

History of Council submissions on this issue

12. In 2004, the Council made a submission on the Foreshore and Seabed Bill. The Council supported the Local Government New Zealand (LGNZ) submission for the most part but also made some other submissions. The Council's submission was also aligned with Ngāi Tahu. The key aspect of the Council's submission was that it did not support the introduction of the Foreshore and Seabed Bill. The Council argued that the Bill should not proceed any further and that the government embark upon a comprehensive consultation process of the issues arising out of the *Ngati Apa* case. The Council also submitted that that process have as its primary goal an aim to seek to achieve a consensus amongst the New Zealand community on the issues in that case. The council believed that if there was informed and considered discussion on those issues between Māori and Pakeha, then such consensus would be feasible.

13. The Council also made a series of technical submissions including that the Bill should clarify the legal status of services owned by local authorities (eg water mains, sewers) and other infrastructure operators in the land to be transferred to the Crown. The Council also asked that clause 13 dealing with roads be clarified.

14. In 2009, the Council made a submission to the Ministerial Review Panel, stating that it had not changed its position from its 2004 submission. The Council supported a full review of the FSA. The Council submitted that any changes to the law relating to the foreshore and seabed needed to be made in a way that provided an opportunity for full and meaningful consultation and implemented a consensus solution which meets the concerns of both Māori and Pakeha. The Council argued that such consultation should not be rushed. It was important to find the right solution for all New Zealanders, not a hasty solution as was the case in 2004.

15. In April this year, the Council made a submission on the Foreshore and Seabed Consultation document (the precursor to the Bill). A copy of that submission is attached to this report (**Attachment 3**).

16. Given the Council's prior involvement with this issue, it is considered appropriate for the Council to make a submission on the Marine and Coastal Area (Takutai Moana) Bill.

Proposed submission

17. A draft submission is attached to this report. The key aspects of the draft submission are that the Council supports the introduction of the Bill but it has some concerns about the way in which certain clauses will apply. The key concerns relate to:

- The definition of "common marine and coastal area" and "deemed accommodated activity".
- Clause 13 and the way in which the Bill deals with land accretions.
- Clause 18 and what happens when roads are no longer in use or their construction is stopped.
- The management and administration powers of the Minister of Conservation in clauses 30, 119 and 120.
- The treatment of future Council infrastructure should it be located within a customary rights protected area or a customary marine title.
- The effect of a planning document.

11. 11. 2010

7 Cont'd

Impact of FSA on the Council

18. In approving the submission, the Council should also take into account the impact of the FSA on the Council in the last six years.

19. From a practical perspective, the FSA did not have a significant effect on the Council as a territorial authority. The council's district boundary extends to mean low water springs so the "foreshore" as such is included in the district as are the various harbours.

20. The Council retained ownership of any formed roads situated in the foreshore and seabed under section 15. Unformed roads in the foreshore and seabed were vested in the Crown. Under section 16, the Council retained ownership of its "fixtures" on, under or over the foreshore and seabed such as pipelines, wharves, jetties, buildings etc.

21. There was an impact in terms of the Council as a landowner. Approximately 50 parcels of land that were vested in the Council before the FSA came into force, and were situated in the foreshore and seabed, were subsequently vested in the Crown. The Council, under section 25 of the act was permitted to apply to the minister of conservation for redress. The Council did apply and received redress (i.e. compensation of $238,000) for two parcels of land. One parcel was the beach area containing the lifeboat sheds in Sumner along Heberden Avenue. The other was a piece of land containing the Christchurch yacht club fronting the main road in Redcliffs.

22. The Council under the RMA has to comply with any customary rights orders and the provisions relating to any foreshore and seabed reserves if such a reserve is established in the district. However, no foreshore and seabed reserves have been established yet via the territorial customary rights process in the High Court or through negotiations with the Crown.

FINANCIAL IMPLICATIONS

23. It appears that the Council has not acquired any further land located in the public foreshore and seabed since the FSA came into force. Consequently, it doe not stand to be divested of any additional parcels of land as a result of the new Bill.

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

24. This is not a matter that would normally be provided for the LTCCP budgets.

LEGAL CONSIDERATIONS

25. A discussion of the clauses of the Bill are set out in the background to this report.

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

26. The draft submission addresses the legal implications for the Council.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

27. This matter is not normally provided for in the LTCCP or Activity Management Plans.

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

28. Not applicable.

7 Cont'd

BACKGROUND (THE ISSUES)

35. When the National Party and the Māori Party entered into a Confidence and Supply Agreement, the National Party agreed that it would initiate as a priority a review of the application of the FSA to ascertain whether it adequately maintained and enhanced mana whenua. In the event of the repeal of the FSA, the National-led Government also agreed that it would ensure that there would be appropriate protection in place to ensure that all New Zealanders enjoy access to the foreshore and seabed, through existing and potentially new legislation.

36. In 2009, the Ministerial Review Panel subsequently concluded that the FSA was discriminatory and recommended that new legislation be enacted to reflect the principles of the Treaty of Waitangi and to recognise and provide for the interest of whanau, hapu, and iwi and for public interests in the foreshore and seabed.

37. The Government then issued a discussion paper on its preliminary proposals and options for a possible replacement of the FSA. A key aspect of the Government's proposals was that no one would own the foreshore and seabed, and that the foreshore and seabed would reside in the "public domain". The Government also proposed that Māori would be able to protect their customary interests, both territorial and non-territorial, either by negotiating with the Crown or going through a Court process.

38. The Government has now introduced the Bill.

Purpose of Bill

39. The purpose of the Bill is set out in clause 4. It is to:

    (a) Establish a durable scheme to ensure the protection of the legitimate interests of all New Zealanders in the marine and coastal area of New Zealand;
    (b) Recognise the mana tuku iho exercised in the marine and coastal area by iwi and hapū as tangata whenua;
    (c) Provide for the exercise of customary interests in the common marine and coastal area; and
    (d) Acknowledge the Treaty of Waitangi (te Tiriti o Waitangi).

Definition of marine and coastal area

40. The Bill dispenses with the phrase "foreshore and seabed", and introduces the term "marine and coastal area". Broadly speaking the marine and coastal area covers the area that is bounded on the landward side by the line of mean high-water springs, and on the seaward side by the outer limits of the territorial sea. The "common marine and coastal area" specifically excludes land that is in private ownership, or land that is owned by the Crown with the status of conservation area, national park and reserve, or wildlife management reserve, wildlife reserve, or wildlife sanctuary. This follows the same approach in the FSA.

Special status

41. Part 2 of the Bill sets out the provisions dealing with the creation of the common marine and coastal area. The new and different status of the common marine and coastal area is set out in clause 11. Subclauses (1) to (4) provide as follows:

    (1) The common marine and coastal area is accorded a special status by this section.
    (2) Neither the Crown nor any other person owns, or is capable of owning, the common marine and coastal area, as in existence from time to time after the commencement of this Part.
    (3) On the commencement of this Part, the Crown and every local authority are divested of every title as owner, whether under any enactment or otherwise, of any part of the common marine and coastal area.

7 Cont'd

(4) Whenever, after the commencement of this Part, whether as a result of erosion or other natural occurrence, any land owned by the Crown or a local authority becomes part of the common marine and coastal area, the title of the Crown or the local authority as owner of that land is, by this section, divested.

42. Clause 13 of the Bill deals with the boundary changes of the marine and coastal area. Under clause 13(3), when land in the common marine and coastal area is, as a result of natural processes, such as accretion, moved above the line of mean high-water springs, the land ceases to be part of the common marine and coastal area and subsequently vests in the Crown.

43. Clause 14 repeals the FSA, and clause 15 restores any customary interests in the common marine and coastal area that were extinguished by the FSA. Clause 16 deals specifically with roads. Formed roads in the marine and coastal area will continue to be owned by the Crown, local authorities, or other persons. Ownership of new roads formed in that area can be acquired. However, under clause 18(3), any road within the marine and coastal area becomes part of the common marine and coastal area if its use or construction as a road has been stopped or failed to commence.

44. Clause 19 provides that structures that are fixed to or under or over, any part of the common marine and coastal area are to be regarded as personal property and not as land or an interest in land. These structures do not form part of the common marine and coastal area. The ownership of these structures is not affected by the Bill. However, under clause 20(1), the Crown is deemed to be the owner of any structure that is abandoned in the common marine and coastal area.

45. Clause 21 provides that resource consents granted before the commencement of the Bill are not affected.

46. Under clause 22, proprietary interests in the common marine and coastal area continue to exist and apply in the normal way. This includes interests under leases, licences or permits.

47. Rights of access, rights of navigation and fishing rights are preserved under clauses 27, 28 and 29. In terms of access, under clause 27(1), every individual has the right:

(a) To enter, stay in or on, and leave the common marine and coastal area;
(b) To pass and repass in, on, over, and across the common marine and coastal area; and
(c) To engage in recreational activities in or on the common marine and coastal area.

48. However, the rights conferred by clause 27(1) are subject to any authorised prohibitions or restrictions that are imposed under clause 78 (relates to the protection of wahi tapu), or by or under any other enactment. An enactment is defined to include bylaws, regional plans, and district plans.

49. The Minister of Conservation will be the manager of the common marine and coastal area and will have the necessary administrative and management powers. This includes the powers to make bylaws in relation to the marine and coastal area. The bylaw making powers are set out in clause 120 of the Bill and provide that the Minister may make bylaws:

(a) Prohibiting or regulating the use or parking of vehicles in a specified part of the common marine and coastal area.
(b) Regulating the use or mooring of vessels in the specified part of a common marine and coastal area.
(c) Prohibiting the hovering or landing of any aircraft over or in a specified part of the common marine and coastal area.
(d) Prescribing fines, not exceeding $500 in any one case, for the breach of any bylaws made under this section.

11. 11. 2010

7 Cont'd

Reclaimed land

50. Under the FSA, the ability to apply for freehold title to new reclamations was removed. The Bill will create a new regime for the ownership of reclamations in the coastal marine area, so that:

- Land reclaimed from the coastal marine area for which no separate title has issued will be owned by the Crown (and is thus excluded from the common marine and coastal area).
- Responsibility for the issuing of title for such reclamations will lie with the Minister of Lands, rather than the Minister of Conservation.
- It will be possible to apply for freehold title, subject to limitations (clauses 37-42).

51. The issuing of title in reclamations for river beds or lake beds will remain in the RMA. If a reclamation in the coastal marine area is already underway, the applicant will be able to choose whether to continue under the RMA process or under the new Act. (In all cases, a resource consent under the RMA will still be required to undertake the reclamation works.)

52. The Bill provides that developers of reclamations may apply to the Minister of Lands for an interest in that reclaimed land. A network utility operator may also apply for an interest. If land has been reclaimed for more than 10 years and no interest has been granted, then anyone may apply to the Minister for an interest.

53. While it will be possible for any developer to obtain freehold title, the Bill refers to the "minimum interest" that is reasonably needed for the purpose of the grant. This suggests that in general the presumption is that a lesser interest will be granted, for example, leasehold title. The holder of a lesser interest will be able to apply for a renewal of that interest at the end of the term, and will also be able to apply for the grant of a freehold interest at that time. However the Bill does not appear to envisage automatic rights of renewal.

54. On the other hand, for certain applicants there will be a presumption that they will be granted a freehold interest in reclaimed land. This will apply to port companies and port operators, the airport companies for Auckland International Airport and Wellington International Airport, and any group holding customary marine title for the relevant area.

55. The Bill will allow an application for title to be made while the reclamation is being carried out. Under the current RMA regime, it is not possible to apply for an interest or a title until the reclamation has been completed.

56. Where a freehold interest in reclaimed land has been granted, the Minister of Lands will have the right of first refusal if the land is sold. If the Minister does not exercise that right, the iwi or hapū exercising customary authority over the area will have the right of first refusal. If the land is not sold under that process, the owner will be able to sell the land by public tender.

Customary interests

57. The Bill introduces a new regime to protect Māori interests in the common marine and coastal area. The three elements of this are mana tuku iho, customary rights, and customary marine title.

Mana tuku iho

58. The first part of this regime is known as mana tuku iho. Affected iwi or hapu will have the right to participate in conservation processes in the common marine and coastal area. Conservation processes include the establishment of marine reserves and conservation areas, and the management of stranded marine mammals. (Clauses 49 -52).

7 Cont'd

Protected customary rights

59. The second part of this regime is a mechanism to determine and protect customary rights. A customary right is one that has been exercised since 1840 and continues to be exercised in a particular part of the common marine and coastal area in accordance with the tikanga of the applicant group (whether it continues to be exercised in exactly the same or similar way, or evolves over time). Examples of these sorts of rights are launching waka or gathering hangi stones. These rights are protected through a customary rights order from the High Court or an agreement with the Crown.

60. Under clause 54(1), a protected customary right may be exercised under a protected customary rights order or an agreement without a resource consent, despite any prohibition, restriction, or imposition that would otherwise apply in or under sections 9 to 17 of the Resource Management Act 1991. With respect to the right, a protected customary rights group may do any of the following:

    (a) Delegate the rights conferred by a protected customary rights order or an agreement in accordance with tikanga.
    (b) Transfer a protected customary rights order or an agreement in accordance with tikanga.
    (c) Derive a commercial benefit from exercising its protected customary rights.
    (d) Determine who may carry out any particular activity, use, or practice in reliance on a protected customary rights order or agreement.
    (e) Limit or suspend, in whole or in part, the exercise of a protected customary right.

61. However, the Bill specifically provides that a protected customary right does not include any right or title over the part of the common marine and coastal area where the protected customary right is exercised, other than the rights provided for in clause 54.

62. What is the position when a person applies for a resource consent for an activity that is undertaken wholly or in part within a protected customary rights area? Under clause 57, the consent authority will not be able to grant a resource consent for an activity in a protected customary rights area if the activity will have more than a minor adverse effect on the exercise of protected customary rights, unless:

    (a) The relevant protected customary rights group gives its written approval for the proposed activity; or
    (b) The activity is one to which subsection (3) applies.

63. Note that this is a stronger limitation on a consent authority than that currently under section 107A of the RMA, which prevents a consent authority from granting a resource consent if an activity will have a significant adverse effect on a recognised customary activity.

64. Subsection (3) covers:

    - Coastal permits to enable an existing aquaculture activity to continue;
    - Resource consents necessary for an existing nationally or regionally significant infrastructure and its associated operations (as defined in clause 8(2));
    - Resource consents for deemed accommodated activities;
    - Resource consents for activities relating to the exercise of any petroleum privilege (as referred to in section 9(1)(b)); and
    - Emergency activities (as defined in clause 8(2)).

65. Part 1 of Schedule 2 of the Bill sets out various matters that that relevant to determining resource consent applications 57.

11. 11. 2010

7 Cont'd

Customary Marine Title

66. The third part of the regime is a mechanism to determine and protect customary marine title. Customary marine title may exist if the common marine and coastal area has been used and occupied by a group according to tikanga and to the exclusion of others without substantial interruption from 1840 to the present day. In clause 61, the Bill sets out various factors that may be taken into account in determining whether customary marine title exists in a specified part of the common marine and coastal area.

67. As with customary rights, customary marine title may only be recognised by a High Court order or through an agreement with the Crown.

68. The Bill sets out the nature of the interest in land created by a customary marine title and what rights are conferred by that title. Clause 63(1) provides that customary marine title:

    (a) Provides an interest in land, but does not include a right to alienate or otherwise dispose of any part of a customary marine title area;
    (b) Provides only for the exercise of the rights listed in section 64 and described in sections 65 to 91; and
    (c) Has effect on and from the effective date.

69. The rights conferred by, and that may be exercised under a customary marine title order or agreement are set out in clause 64 as follows:

    (a) A Resource Management Act 1991 (RMA) permission right (see sections 65 to 69);
    (b) A conservation permission right (see sections 70 to 74);
    (c) A right to protect wāhi tapu and wāhi tapu areas (see sections 77 to 80);
    (d) Rights in relation to:
        (i) Marine mammal watching permits (see section 75);
        (ii) The process for preparing, issuing, changing, reviewing, or revoking a New Zealand coastal policy statement (see section 76);
    (e) The prima facie ownership of newly found taonga tūturu (see section 81); and
    (f) Despite section 63(1)(b), the ownership of minerals other than:
        (i) Minerals within the meaning of section 10 of the Crown Minerals Act 1991; or
        (ii) Pounamu to which section 3 of the Ngāi Tahu (Pounamu Vesting) Act 1997 applies (see section 82); and
    (g) The right to create a planning document (see sections 84 to 91).

70. With respect to the RMA permission right, a customary marine title group may permit or withhold permission for an activity in a customary marine title area at any time before the consent would otherwise commence under section 116 of the RMA. A resource consent must not commence without that permission. There is no right of appeal against a decision of a customary marine title group, nor of objection. Note that the right does not apply with respect to accommodated activities.

71. With respect to the planning document, under clause 84, a customary marine title group has a right to have a planning document. The purpose of the planning document is to set out the objectives and policies of the group in respect of its customary marine title area, including objectives and policies that, in accordance with tikanga, relate to:

    (a) The sustainable management of the natural and physical resources of the customary marine title area of the group; and
    (b) The protection of the cultural identity and historic heritage of the group.

7 Cont'd

72. A planning document must not include matters that cannot be regulated by, amongst other things, a local authority, under both the Local Government Act 2002 and the Resource Management Act 1991. The planning document must be lodged with any agency whose jurisdiction is relevant to the contents of the planning document. It must also be lodged and registered with the chief executive (the Secretary for Justice). Once the planning document has been lodged with a local authority, the local authority must take the planning document into account when exercising its decision-making functions in accordance with any of the following provisions of the Local Government Act 2002:

    (a) Section 77(1) (which relates to the decision-making process of a local authority).
    (b) Section 78 (which requires community views to be taken into account in the decision-making process).
    (c) Section 81 (which provides for Māori to contribute to the decision-making processes of the local authority).
    (d) Section 82(2) (which requires the local authority to provide processes for consulting Māori).

THE OBJECTIVES

73. The Council needs to determine whether it wants to make a submission on the Marine and Coastal Area Bill and the terms of that submission.

THE OPTIONS

74. There are two options. These are to make a submission or not make a submission on the Bill.

THE PREFERRED OPTION

75. The preferred option is to make a submission on the Bill. The Council has participated in the Foreshore and Seabed consultation process since 2004. There are a number of aspects of the Bill that affect local authorities and the Council should take the opportunity to make its view known. A draft submission is attached.

11. 11. 2010

8. CANTERBURY EARTHQUAKE HERITAGE BUILDING FUND

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8281
Officer responsible:	Programme Manager Liveable City
Author:	Carolyn Ingles, Programme Manager Liveable City

PURPOSE OF REPORT

1. The purpose of this report is for the Council to:

   - Endorse the proposed Canterbury Earthquake Heritage Building Fund (CEHBF) policy.
   - To appoint a Christchurch City Councillor to the Canterbury Earthquake Heritage Building Fund Trust Board, the governance body for that fund.
   - To consider the Christchurch City Council funds which will be allocated into the CEHBF

EXECUTIVE SUMMARY

2. The 4 September 2010 earthquake caused significant damage to heritage and character buildings throughout the Canterbury region. In Christchurch City the best current estimate is that approximately 200 heritage buildings have been damaged by the quake. The cost of the repair and restoration will be considerable and the funding gap between insurance and repair costs will be beyond the $763,684 annual budget from within the existing Council Heritage Incentive Grants Fund.

The Canterbury Earthquake Heritage Building Fund (CEHBF)

3. On 17 September 2010 the Minister of Arts, Culture and Heritage announced that Government would contribute up to $10 million in matched funding to assist with the repair, restoration and strengthening of damaged heritage and character buildings in Canterbury. Funding will be targeted at the gap between insurance cover and the actual cost of repairs and associated works, including conservation works, structural upgrading and building code works.

4. To identify the impact of the earthquake across Canterbury discussion with staff from District Councils across the region has occurred. Damage to heritage buildings has occurred in Timaru, Ashburton, Selwyn and Waimakariri Districts and Christchurch City. In Timaru and Ashburton Districts the number of buildings damaged by the quake is small, but there may be applications to the fund.

5. The funds available to distribute will consist of private donations, contributions from territorial authorities and the New Zealand Historic Places Trust (NZHPT), matched funding from the Government up to $10 million and any interest accruing to the fund. Selwyn District Council has agreed to contribute $49,500, Waimakariri District Council $33,000 and the NZHPT $250,000. Private donations received into the fund to date are approximately $1 million. Once in place, the Trust could consider growing the fund through local, national and international initiatives.

6. The Minister for Arts, Culture and Heritage has indicated that the fund should be supported by a policy, which he would approve. Prior to his approval he is seeking agreement from Selwyn, Waimakariri and Christchurch City that the policy is acceptable. The Minister has also indicated that decisions on the fund allocation are to be made locally. The fund is also to be available to repair and restore heritage buildings across Canterbury. There may be reporting requirements to Minister of Arts, Culture and Heritage.

7. The Council considered the draft policy on 4 and 6 October 2010 and provided comments to staff. The background section of the report discusses how those comments have been considered in developing the policy, governance structure and guidelines. The final draft policy is attached for consideration and endorsement (**Attachment 1**).

8 Cont'd

8. Broadly the CEHBF policy covers off the following points:

   - Purpose of the fund
   - Principles for fund operation
   - Funds available for distribution
   - Administration of the fund
   - Eligibility for Assistance
   - Winding up of the Fund.

9. The Fund will be supported by a set of operational guidelines. A draft of these guidelines is attached for information (**Attachment 2**). These guidelines will be approved by the Trust Board at their first meeting as part of their overall governance of the fund. The guidelines include more detailed eligibility criteria, criteria for application assessment, roles and accountabilities, conditions for receipt of funding and monitoring and reporting.

The Canterbury Earthquake Heritage Building Fund Trust Board

10. A number of governance vehicles to allocate the fund were explored. A key criteria in establishing the appropriate governance structure was to enable donations to be tax deductible. After seeking legal advice a Trust was identified as the most suitable structure. Initial advice from the Inland Revenue Department (IRD) indicates that the Canterbury Earthquake Heritage Building Fund would achieve donee status, which means that donations would be tax deductible.

11. The proposal is that the Trust consist of seven Trustees; three of the Trustees would be appointed by Selwyn, Waimakariri and Christchurch City, one trustee from the NZHPT and a further three independent trustees. These independent Trustees would be appointed by the Territorial Authority and NZHPT representatives on the Trust.

12. The proposed Trust Deed is shown in **Attachment 3**.

13. The trust deed identifies that Christchurch City Council will provide secretarial support for the trust, and the cost of this to be agreed amongst the territorial parties. It is the intention that reports to the Trust would be reviewed and recommendations made to the Trust by the appropriate Council and the NZHPT.

14. The Trust is proposed to operate until 30 June 2015, or until the fund has been fully distributed, whichever is the earlier date.

Heritage Incentive Grant Funding

15. The Council already operates the Heritage Incentive Grants Fund (HIG) which has an annual budget of $763,684 in 2010/11. To date in 2010/11 $308,998 has been committed in grant funding, leaving $488,374 Including funds from lapsed grants) to be allocated up to 30 June 2011. There are currently applications in train (received prior to the earthquake) that have a potential value of $105,000. With this deducted it is considered that the current year's uncommitted balance of $383,000 in the HIG fund could be committed to the CEHBF.

16. As noted in paragraph 5 above, other members of the Trust are making contributions to the CEHBF. Should the Council wish to contribute there are a number of options:

    (a) Contribute all of the HIG fund to the CEHBF in 2010/11 and 2011/12 and review future funding is part of 2012 LTCCP.
    (b) Contribute part of the HIG fund to the CEHBF in 2010/11 and 2011/12 and review future funding is part of 2012 LTCCP.
    (c) Establish new funding for the CEHBF.
    (d) Do not contribute to the fund.

8 Cont'd

17. An analysis of these funding options is shown in table 1 below:

Option	Advantages	Disadvantages
Contribute all of the HIG fund to the CEHBF	• Contributes to the funding of earthquake recovery of heritage buildings • Is consistent with Selwyn and Waimakariri District Councils and NZHPT who are contributing to the fund.	• No additional funds would be available through the HIG fund. • Council would not be able to support other ongoing heritage grants to buildings in Christchurch not affected by the earthquake. Council contribution would be far in excess of other parties contributing to the fund. Any current applications would not be processed until future funding was re-established.
Contribute part of the HIG fund to the CEHBF fund.	• Contributes to the funding of earthquake recovery of heritage buildings. • Is consistent with Selwyn and Waimakariri District Councils and NZHPT who are contributing to the fund. • Enables Council to continue with a portion of its current heritage funding process.	• Applications receiving funding would be limited, which could mean some applicants would have to wait until 2011/12.
Establish new funding for the CEHBF	• Does not require any change in operational practice with the existing HIG fund	• Additional extraordinary funding would need to be approved by the Council
Do not contribute to the fund.	• Does not require any change in practice with the existing HIG fund • Will enable ongoing funding of non-earthquake related heritage funding.	• Inconsistent with other Councils who are contributing funding • Would not maximise the matched funding opportunity.

18. It should be noted in respect of the trust that all decisions regarding allocation of the fund will lie with the Trust Board. Should the Council contribute to the fund there can be no guarantee about which buildings the fund will support nor can there be any guarantee that grants will reflect accurately the levels of individual Council contributions. The key benefit which offsets the more hands off approach of using a Trust is that any monies are effectively doubled by the government, that all private donations may also be applied across the whole of Canterbury, and that the governance structure of the Trust should ensure that it expends its funds equitably. Given that the city has by far the majority of the damaged heritage buildings in the region the fund, and the Trust, provide a way to maximize the benefit to Christchurch from the donations received, and the government's contribution.

FINANCIAL IMPLICATIONS

19. The financial implications relating to this fund and its administration are two-fold:

    (a) The secretarial support required to support the CEHBF Trust Board.

    (b) Any financial commitment the Council agrees to make to the fund (which would be match funded by Central Government contributions).

8 Cont'd

20. The secretarial support required has been discussed with Democracy Services staff and will form part of the consideration of resources required as part of the new Council establishing the committee structure for this term. Trust Board meetings are likely to be monthly, papers will be required to be circulated and made available publicly (although this is not a requirement for Trust Board operation). Secretarial support is likely to cost approximately $10,700 per annum. The Trust Deed does provide for the costs of secretarial, treasury and other administrative services to be met in agreed proportions by the Territorial Authorities, although no agreement has been discussed in setting up the Trust to date.

21. The options regarding the Council's financial commitment to fund are identified in paragraph 16 above.

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

22. No, this fund and the secretarial support required lie outside of the 2009-19 LTCCP budgets, although those budgets do provide for supporting the Heritage Incentive Grants and the administration process for those. Section 101(2) of the Local Government Act 2002 requires the Council to make adequate and effective provision in its LTCCP to meet expenditure needs. However, the Canterbury Earthquake (Local Government Act 2002) Order 2010 exempts the Council from this obligations. The Order states that Section 101(2) is not to prevent the Council from doing anything inconsistent with its Annual Plan or LTCCP.

LEGAL CONSIDERATIONS

23. See below.

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

24. Legal advice has been sought throughout the process to develop the policy and establish the Trust Board. A primary consideration in establishing the trust board is to enable contributions to be tax deductible. Council staff is advised that the purpose of the trust is not charitable, so cannot be established as a charitable trust. However preliminary advice received from IRD indicates that the trust would achieve donee status, which would enable that tax deductible status.

25. It should be noted that under the Trust any monies remaining are to be returned to a nominated Final Beneficiary. This has been nominated as the NZHPT. While there may be some concern that final wash up monies may not be returned to individual contributors, the risk that any monies will be left at the end of the period is low, and that as three of the Trustees are local authority representatives there is sufficient governance oversight to ensure that the fund is fully expended during its term.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

26. Heritage Protection is an activity within the current 2009-19 LTCCP.

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

27. Yes, see above.

ALIGNMENT WITH STRATEGIES

28. Yes, in relation to Heritage Protection. Having such a fund available post-earthquake also aligns with the Central City Revitalisation Strategy and the Objectives and Policies as they relate to heritage in the Christchurch City and Banks Peninsula District Plans.

Do the recommendations align with the Council's strategies?

29. Yes, see above.

8 Cont'd

CONSULTATION FULFILMENT

30. Establishing the Canterbury Earthquake Heritage Building Fund has been an initiative developed in response to the 4 September 2010 earthquake and therefore covered by the provision of the Canterbury Earthquake Response and Recovery Act 2010. The Canterbury Earthquake (Local Government Act 2002) Order referred to earlier exempts the Council from decision-making requirements that might otherwise apply.

31. Discussions on the fund and development of the Trust Deed have been undertaken in partnership with the Ministry of Culture and Heritage, NZHPT, Selwyn District Council and Waimakariri District Council. Discussions have also been undertaken with other District Councils in Canterbury. Consultation with Ngāi Tahu is being undertaken by the Ministry of Arts and Culture and a verbal update will be provided at the Council meeting.

STAFF RECOMMENDATION

It is recommended that the Council:

(a) Endorse the attached Canterbury Earthquake Heritage Building Fund Policy.

(b) Approves the Canterbury Earthquake Heritage Building Fund Trust Deed and authorise the affixing of the Council seal to the Trust Deed in respect of the Canterbury Earthquake Heritage Building Fund in the form attached to this report subject to such amendments as may be required for the fund to be granted "donee" status by the Inland Revenue Department;

(c) Appoint a Christchurch City Councillor to the Canterbury Earthquake Heritage Building Fund trust board.

(d) Commit $383,000 from the current 2010/11 Heritage Incentive Grant funding to the Canterbury Earthquake Heritage Building Fund, and agree to commit 50 per cent of the Heritage Incentive Grant fund in 2011/12 to the Canterbury Earthquake Heritage Building Fund.

(e) Consider ongoing support of the Canterbury Earthquake Heritage Building Fund from its Heritage Incentive Fund, as part of the 2012/22 LTCCP process.

(f) Approve the Council acting as secretarial support for the Canterbury Earthquake Heritage Building Fund.

8 Cont'd

BACKGROUND (THE ISSUES)

32. The Council considered the draft CEBHF policy on 4 and 6 October 2010 and provided staff with comments on the draft policy. These comments are shown in the table below along with an indication of how the comment has been considered:

Council comment	Response
That the fund should have full charitable status for tax purposes for those giving donations	The fund and governance structure has been set up to allow donee status. The purpose of the fund does not allow charitable status to be achieved. See paragraph 9 of the report.
That the Christchurch City Council should have at least two Councillor representatives.	The number of Council representatives needs to be limited to less than 49% of the decision-makers to prevent the Trust from becoming a Council-controlled organisation. If that occurs, a Special Consultative Process and amendment to the LTCCP would be required. Staff consider the approach adopted to be the most expedient to ensure the Trust can begin allocating funding as soon as possible.
That consideration be given to funding allocations based on a precinct as well as a building by building basis.	Clause 1.1 (g) defines qualifying buildings and includes groups of buildings
That consideration be given to funding the retention of facades, ICOMOS charter notwithstanding. (One Councillor disagreed).	Façade retention can be funded but would be considered on a case-by-case basis.
That all affected Councils contribute financially to the fund.	Selwyn District Council is contributing $49,500, Waimakariri District Council $33,000.
That consideration be given to how the Council can apply in cases where it may need to purchase buildings to protect them from demolition.	The current HIG fund does not apply to Council-owned properties; staff consider the same criteria should apply in this case. Council staff are working through heritage assets with insurers.
That consideration be given for funding to be made available for retention of 'character housing' that has suffered as a result of the earthquake. (Two Councillors did not support such a broad approach)	Clause 1.1 (g) defines qualifying buildings and includes buildings that make a significant contribution to the visual character of communities.
That consideration be given to getting a comprehensive list of the buildings that may need funding assistance prior to any funding, so that the situation of "first come first served" granting of money does not arise. (The Council was divided on this issue)	This is problematic. Ongoing aftershocks and reassessment of structural integrity of buildings means that this list is still evolving. It is also anticipated that donations will continue to be made to the fund over time.
That with reference to clause 2.3 it be noted that the Christchurch City Council Earthquake Prone Buildings Policy now sets a target of strengthening buildings to 67 per cent of code.	Clause 5.2 of the Canterbury Earthquake Heritage Building Fund Policy refers to the 'relevant provisions of territorial authorities earthquake-prone, dangerous and insanitary buildings policy.

THE OPTIONS

33. There are three options for the Council to consider in relation to contribution to the Canterbury Earthquake Heritage Building Fund:

(a) Contribute all of the HIG fund to the CEHBF.
(b) Contribute part of the HIG fund to the CEHBF.
(c) Establish new funding for the CEHBF.
(d) Do not contribute to the fund.

THE PREFERRED OPTION

34. The preferred option is to contribute the remainder of the HIG funding ($385,740) to the Canterbury Earthquake Heritage Building Fund.

11. 11. 2010

9. PROPOSED NATURAL RESOURCES REGIONAL PLAN – RESPONSE TO THE DECISION

General Manager responsible:	General Manager, Strategy and Planning Group DDI 941-8281
Officer responsible:	Programme Manager - Healthy Environment
Author:	Peter Kingsbury, Principal Advisor - Natural resources

1. The purpose of this report is to seek Council approval of the recommendation not to appeal any part of Environment Canterbury's Decision on Chapters 4 to 8 eight of the Proposed Natural Resources Regional Plan (PNRRP).

2. The report also provides the Council with a summary of:

   (i) The development and nature of Environment Canterbury's Proposed Natural Resources Regional Plan (PNRRP).

   (ii) The City Council's interest in the PNRRP.

   (iii) The decisions, and their significance to the City Council, and particularly its waste water and water supply operations.

EXECUTIVE SUMMARY

3. Decisions on the PNRRP were notified by ECan on 23 October 2010 with a 15 day appeal period. Due to legislative requirements under the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 any appeals on the decisions can only be made on points of law to the High Court. In essence Council may no longer appeal a decision on its merits, which is the principal basis of the majority of appeals to the Environment Court, but appeals can only be countenanced where the decision has erred in law. The changed parameters are significantly more restrictive on potential appellants and the decisions of ECan have had to be addressed solely in this revised context.

4. In preparation of this report, staff has analysed the notified decisions and identified the main issues of concern for the Council, particularly around matters that impact on the Council's operational activities. Areas of key concern were then reviewed by lawyers for consideration as to whether or not an appeal was justified on a point of law. The legal advice on those areas of key concern identified by staff is that there are no issues on which an appeal can be recommended.

5. The requirement of only being able to appeal a regional plan decision on a point of law is a new situation for Council and means that technical issues cannot be addressed through the usual avenue of an appeal to the Environment Court. As summarised in this report there are options available to resolve some of these matters through other means.

6. The PNRRP is an important document for the City Council as it sets provisions which regulate a number of Council activities, particularly relating to discharges to air, land and water. In addition, the RMA requires that the Council's District Plan must not be inconsistent with a regional plan (section 75(4)(b)). For these reasons the PNRRP has significant influence on Council's operations and planning framework.

7. The PNRRP has been developed over about ten years and is the main regional plan for the management of the region's air, water and soil resources. The City Council has taken an active part in the development of the PNRRP through the preparation of submissions and evidence for hearings.

8. The five chapters of the PNRRP subject to the recently released decision are Chapters 4 to 8, respectively dealing with water quality, water quantity, beds and margins of lakes and rivers, wetlands and soil conservation.

9 Cont'd

9. Environment Canterbury's decision on the PNRRP contained 43 matters of particular importance to the City Council. Of those a number were resolved to the technical satisfaction of Council, though 28 were rejected in part or rejected in full in Environment Canterbury's decision. These were subject to review by staff, and in normal circumstances would be candidates for appeal, on technical or merit grounds. However on review, only three were identified as being decisions for which the outcome generated a question of "a point of law" on which the City Council could appeal the decision. Following a detailed legal review of the three matters (on a water quality policy, access to water bodies, and financial contributions), the financial contribution matter was identified as the only point of law that the City Council could pursue. The legal advice on this matter concluded that the interests of the City Council would not be furthered by lodging an appeal.

10. Of the matters rejected in part and in full by Environment Canterbury, other methods to address these matters, to varying degrees, are available to the City Council. These methods include, discussion with ECan on possible variations to the PNRRP, input to the review of the PNRRP once the new RPS becomes operative, and making changes to other statutory and non-statutory documents to address PNRRP matters left 'unresolved'.

DEVELOPMENT PROCESS FOR THE PNRRP

11. The PNRRP has been prepared by ECan to assist in carrying out several of their functions as set out in section 30 of the Resource Management Act (RMA). These functions relate to the integrated management of the region's natural and physical resources, and include, but are not limited to, the control of the use of land for various specified purposes.

12. Except where it may be provided otherwise, the PNRRP applies to the whole of the Canterbury region, apart from the coastal marine area. Resource management issues in the coastal marine area are dealt with in the Regional Coastal Environment Plan (RCEP) and issues relating to water management in the Waimakariri River catchment are dealt with in the Waimakariri River Regional Plan (WRRP). The PNRRP will replace corresponding Transitional Regional Plan (TRP) provisions.

13. Environment Canterbury (ECan) publicly notified five chapters of the PNRRP in July 2004. These were Chapter 4 (Water Quality), Chapter 5 (Water Quantity), Chapter 6 (Beds and Margins of Rivers and Lakes), Chapter 7 (Wetlands), and Chapter 8 (Soil Conservation). City Council submissions on the PNRRP were lodged in December 2004. The Council supported ECan on the preparation of the PNRRP as it provided the opportunity for the review of outdated provisions. While supporting much of the policy provided by the PNRRP, the Council, through its submissions, raised many matters of varying degrees of significance and importance to the Council, including impacts on Council operations.

14. The PNRRP has been developed with significant input from the community. Between 2006 and 2009, hearing commissioners heard submissions and further submissions on the PNRRP from a wide range of interests.

15. Preparation of the submissions was led by the Strategy and Planning Group, with technical assistance from staff across a variety of other Council units. Specific technical and legal input was provided by consultants.

16. While it was the primary responsibility of the Strategy and Planning Group to co-ordinate the submission process, the responsibility of compliance with PNRRP provisions generally rests with various Council operational units. Similarly much of the evidence required at hearings required involvement from a range of Council units.

17. The City Council's submissions on the PNRRP and evidence presented at hearings were generally well received by the ECan hearings panel. Many of the issues raised by the City Council were accepted fully or in part in ECan's Officer Reports. A number of issues weren't addressed to the satisfaction of the City Council in the Officer Reports and remained a concern for the Council.

9 Cont'd

18. ECan released their decision on the PNRRP on 11 October 2010. The decision, publicly notified on 23 October 2010 covered Chapters 4-8 (Variation 1) as well as Variations 2, 4, 5, 6 and 14. Of the greatest significance to the City Council were Variations 1 (PNRRP chapters 4 to 8), 4 (groundwater allocation limits, affects chapter 5), and 6 (Christchurch groundwater protection zones, affects chapter 4).

19. As a submitter to the PNRRP, the Council has 15 working days, to 16 November 2010, to lodge appeals with the High Court. Under the new Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, which was passed by Government in April 2010, there is no right of appeal to the Environment Court on the decisions released for the PNRRP. Submitters can only appeal on points of law to the High Court.

20. The PNRRP decisions have been made under the existing 1998 operative Regional Policy Statement. Once the new regional policy statement is operative, likely to be early 2013, the PNRRP may need to be changed to implement the new policy statement.

21. It is expected that the PNRRP will continue to be amended to reflect community-driven priorities, and in particular, priorities developed through the Canterbury Water Management Strategy and the local water management zone committees.

22. The PNRRP was prepared in parts, known as chapters. The first three chapters, an *Overview*, *Ngāi Tahu and the Management of Natural Resources*, and *Air Quality*, were proposed in June 2002. These chapters went through a public submission and hearing process and a Council (ECan) decision released in September 2007. A number of appeals were made by the City Council on air quality issues and were resolved to the satisfaction of the Council.

23. Chapters 4 to 8 were proposed by way of a variation (*Variation 1*). In September 2005 a seminar was held for all City Council Councillors and Community Board members. Following the seminar the City Council's submission was amended and presented to the Strategy and Finance Committee and to a meeting of the Council for adoption in late September 2005.

24. Hearings on Variation 1 started in September 2006 and finished in June 2009. Of the 32 hearings held, the City Council provided evidence to all but two hearings. The City Council, through its amalgamation with Banks Peninsula District Council (BPDC) in March 2006, included in its evidence additional matters raised by BPDC in their submissions.

25. The provisions of Chapters 4 - 8 of the PNRRP are of particular interest to the City Council, and its activities. These chapters deal respectively with water quality, water quantity, activities in the beds and margins of lakes and rivers, wetlands and soil conservation. Of these five chapters, the two largest and most complex are Chapter 4 Water Quality and Chapter 5 Water Quantity, and the provisions of these two chapters also have the greatest potential impact on Council planning and operational activities. In its submission on the PNRRP the City Council made some 110 specific 'submission points' on Chapter 4 matters alone. Of those points, about 60% were either 'support' or 'support in part', and the remaining 40 per cent, 'oppose'.

26. Since Variation 1 was notified, several other variations have followed. Of greatest significance to the City Council is Variation 6. Variation 6 introduces a new objective, policy, issues and methods, including land use rules and amendments to the existing water quality zone boundaries relating to the Christchurch aquifer system. Variation 6 applies to the area of Christchurch City north of Halkett Road as well as part of Selwyn District. Variation 6 was notified in July 2007 and hearings took place in early 2010.

CITY COUNCIL SUBMISSIONS AND THE DECISION

27. The City Council has supported ECan in the preparation, and specifically the intent, of the PNRRP. A wide range of City Council activities are affected by the PNRRP, and in particular those activities relating to water quality and water quantity. The implications of the provisions of the PNRRP for the City Council include legal issues (mostly compliance and resource consent status), resourcing issues, infrastructural and planning matters.

9 Cont'd

28. A key reason for the City Council's submissions was to help ensure the functions, roles and responsibilities of the City Council were clearly recognised and were not unduly restricted or constrained, or subject to unreasonable costs.

29. The City Council, in its submissions, raised the issue of the complexity of the plan, lack of certainty provided in many of the rules, areas of inconsistency, and the difficulty of relating matters between various chapters and other regional planning documents. Other general matters raised by the City Council include terminology, standards that lack specificity and basis, ambiguous links between objectives and policies and between policies and rules, and lack of useful cross-referencing within the PNRRP. While many useful changes have been made to the PNRRP through the submission and decision process, the plan remains a complex and, in parts, highly technical document. In general the PNRRP now places more reliance on a greater range of methods, and encourages more community involvement in managing the region's natural resources.

30. The City Council has, through the submission process, consistently advocated for the reduction of unnecessary duplication of planning provisions that could result in applicants requiring consents from both district and regional councils for essentially the same activity.

31. The City Council also strongly objected to being directed to achieve outcomes by prescribed methods, when other approaches may be equally effective, and could be developed in consultation with the community and are likely to result in an approach that is more appropriate to the local situation.

32. Forty-three matters discussed in Environment Canterbury's decision, and raised by the City Council through the submission and hearing process, were specifically reviewed by City Council staff. The majority of these were provisions within Chapters 4 and 5, water quality and water quantity respectively. Of the 43 matters of particularly interest to the City Council, 15 were accepted in full by Environment Canterbury, 15 accepted in part, and 13 rejected.

33. Chapter 4 - Water quality

    Chapter 4 deals essentially with surface and ground water quality (including contaminants in land), and community drinking water sources. The following matters were raised by the City Council, specifically in terms of the Council's roles and responsibilities:

    - *Potential contamination of the City's drinking water:* Subdivision and land development intensification in the northwest of the City was prohibited in order to avoid contamination within the *Christchurch Groundwater Recharge Zone*. While supporting the need to avoid contamination, two key issues were raised by the Council, firstly whether the effects justify such a control, and secondly the issue of using subdivision as a tool to trigger this restriction.

      Summary comment on the decision: The concerns raised by the City Council were recognised through the notification of Variation 6.

    - *Contaminants entering surface water - sewage overflows*. In 2004 the City Council obtained resource consents which required the Council to invest about $40m in trunk main capacity upgrades to reduce sewer overflows to the permitted two year return period. The City Council did not wish to re-litigate these consents and has sought recognition that, in a fully vented sewage system, street flooding can on occasions overwhelm system capacity and overflows will occur. These occasional overflows occur when the receiving rivers are 'in fresh' ensuring significant dilution and little impact on the receiving environment.

      Summary comment on the decision: The PNRRP now provides recognition through the policies for the unavoidable occurrence of limited sewerage overflows and spills. There is also the ability for the City Council to apply for a resource consent for very limited discharges of untreated sewerage to surface waters.

9 Cont'd

- *Urban rivers.* The original PNRRP rules and policies did not provide sufficient recognition of the difficulties faced in meeting water quality standards in urban environments. The City Council sought greater recognition of both the challenges of improving surface water quality in urban areas and the special nature of tidally influenced coastal rivers.

  Summary comment on the decision: The PNRRP now provides significant recognition of the character and functions of urban water courses. Required water quality standards addressed in the PNRRP are now more appropriate for water courses in urban areas.

- *Community drinking water supply protection zones.* The key concern was the designation of sewage networks as non-complying uses within these zones. The City Council strongly objected to this requirement. There is currently little evidence that seepage of sewage is causing groundwater contamination.

  Summary comment on the decision: The rule within the PNRRP relating to the consenting of the sewerage network has altered significantly. Network operators are now required to provide ECan with detailed asset management plans for the operation maintenance, and development of the network. This will help ensure that all structures within the network provide a low or moderate risk to the environment and where necessary are improved to meet a high standard. If the network meets the conditions the activity will be permitted, if it doesn't meet the conditions, the activity will remain a non-complying activity.

- *Stormwater discharges and ICMP's.* Integrated catchment management plans (ICMP) were required and the City Council's stormwater discharges will need to meet the water quality standards set in the PNRRP. The City Council supported the approach of addressing stormwater issues on a catchment-wide basis. However, potentially significant cost implications for the City Council were identified. The City Council expressed concern about obtaining consents, timeframes to meet the new standards, practical implications to achieve water quality standards, and practical implications to achieve water quality standards.

  Summary comment on the decision: The provision of ICMP's has been clarified. The plans are now called 'Stormwater Management Plans' (SMPs). The completion of the plans is not mandatory, however, the incentives for completing plans are significant. Water quality standards have been reviewed and are more realistic in respect of their content, and the timeframe for achieving them.

- *Riparian management and setbacks within riparian margins.* There are a number of land use constraints that were identified in the PNRRP that will limit development around the City, including development around waterways. The methods and rules in the PNRRP were considered by the City Council with regard to their consistency with City Plan rules. The City Council has developed setback rules in the City Plan to protect and enhance values associated with waterways and is reluctant to see these hard-won provisions undermined by provisions in the PNRRP. The City Council sought recognition of the City Plan setback provisions.

  Summary comment on the decision: The PNRRP identifies that any person undertaking activities that trigger the setback rules, also need to identify any rules within a district plan which may apply to the activity. Although there is some recognition of the City Council concern, the way in which the City Plan rules have been written, with an inclusion of an exemption from the District plan rule if a consent has been granted under a regional rule, means that the City Council's rule will be undermined.

- *Application of biosolids to land.* The PNRRP lacked any reference to the application of biosolids to land. The City Council sought that policy and rules should be included in the PNRRP to make this a permitted activity providing MfE and New Zealand Waste Water Association (NZWWA) guidelines are complied with.

Summary comment on the decision: It was considered in the decision that even taking into account the NZWWA guidelines, the potential risk of the contamination of groundwater for biosolids or other treated effluent was at a level where this activity required a resource consent.

- *Cemeteries.* Rules associated with the management and establishment of cemeteries posed several difficulties for the City Council. A rule in the PNRRP makes the use of land adjacent to an existing cemetery or the establishment of new cemeteries, a non-complying activity.

  Summary comment on the decision: The PNRRP identifies that there are some substances leached from cemeteries which can pose a significant risk to groundwater and surface water quality. The requirement for a resource consent as either a discretionary or a non-complying activity is considered warranted.

- *Use of artificial watercourses and wetlands to treat discharges.* The City Council requested that rules dealing with discharges be amended so that discharges into artificial watercourses and wetlands designed to treat discharges are discretionary or permitted.

  Summary comment on the decision: The definition of a 'stormwater collection system' has been amended to include any system specifically made or formed to collect or direct stormwater, and includes, but is not limited to kerb and channel, swales, pipes, drains, ponds and sumps.

- *Hazardous substance use and water quality.* The City Council identified the need for consistency between ECan and City Council requirements to provide certainty with the process of consenting, and to ensure there is sharing of information.

  Summary comment on the decision: The PNRRP recognises the potential overlapping responsibilities of local authorities in regard to hazardous substances and water quality, and also the importance of the joint ECan and City Council working party which has been established to manage these shared responsibilities. The nature of the recognition of the working party in the decision is a clear attempt to direct the Council's attention to defining the roles and responsibilities of the two councils, and encouraging progress to resolve current issues of 'ownership' and responsibility.

34. Chapter 5 - Water quantity

The Canterbury region's water resource is used for a wide range of recreational activities, irrigation, industry and community and stock water supply. Managing the competition for water between these different needs and demands is the primary focus of Chapter 5. The following key water quantity issues were raised in the submission and hearing process as a concern for the City Council:

- *Other regional plans.* The relationship between the PNRRP and in particular the Waimakariri River Regional Plan (WRRP) and the Transitional Regional Plan (TRP) was unclear. The City Council highlighted this issue through its submissions and hearing evidence and suggested setting a timeframe for the incorporation of various other regional plans into the PNRRP.

  Summary comment on the decision: Although recognition is given to the association and relationship of the PNRRP with other regional plans in the decision, the resolution of these matters is not able to be undertaken within the PNRRP review process.

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- *Maintaining flow regimes in rivers and streams.* The City Council had concerns over whether the minimum flows set for the Avon and Heathcote, and flows in hill watercourses, achieve the correct balance between stream flows and groundwater takes. The City Council takes water from wells close to the Avon and Heathcote Rivers and the conservative allocations were considered by the City Council as potentially affecting its ability to take water.

  Summary comment on the decision: Changes elsewhere in Chapter 5 provide greater recognition of the requirement of the priority for the City Council to provide water for domestic use.

- *Water allocation for future growth.* The City Council supported a clear objective in the PNRRP that recognised the need for water allocation regimes, within blocks, for identified long term needs. This mechanism would assist with meeting future community needs as Christchurch grows. This matter was not addressed in the policies and rules of the PNRRP.

  Summary comment on the decision: This issue has now been identified within the objectives, policies and rules of the PNRRP, and there is provision for the City Council to apply for community domestic supplies through the resource consent process.

35. Chapter 6 - Beds and margins of lakes and river

Chapter 6 of the PNRRP addresses land use within the beds and margins of lakes and rivers. Activities addressed within this Chapter closely reflect those activities addressed within section 13 of the RMA (that is, within the bed of a lake or river) and section 9 (that is, within the adjacent land - 7.5 m margins). The following water quantity issues were raised in the submission and hearing process as a concern for the City Council:

- *Waterway setback rules. S*ignificant inconsistency issues existed between the PNRRP provisions and City Plan rules, and in particular for excavation, filling, and buildings adjacent to waterways. ECan did not need to consider City Plan provisions therefore allowing the placement of structures, excavation and filling closer to waterways than permitted in the City Plan.

  Summary comment on the decision: As discussed previously, inconsistencies between the rules within Chapter 6 and the City Plan will need to be resolved in the future through other processes, outside of the PNRRP.

- *Biodiversity, wildlife and recreation.* While recognising the value of public access to riverbeds, the City Council questioned the adequacy of provisions to protect biodiversity and wildlife.

  Summary comment on the decision: The PNRRP now gives recognition to any existing biodiversity strategies or other non-statutory plans that territorial authorities may have prepared.

36. Chapter 7 - Wetlands

The wetlands chapter aims to protect wetlands of *moderate* or *higher* significance within the region, while also encouraging the voluntary restoration and enhancement of all wetlands. Special recognition is made of the region's most depleted wetland types such as coastal, lowland and inland basin wetlands. The following matters were raised by the City Council:

- *No overall reduction approach.* At the objective and policy level the chapter proposed a 'no overall reduction' approach for wetlands of moderate or 'better' quality. In practice this permits the loss of good quality wetlands, provided a new wetland (of whatever quality) is created somewhere else. The City Council suggested that this approach was inconsistent with the provisions of the RMA, and that an objective to 'protect and enhance' would be more appropriate.

Summary comment on the decision: The PNRRP has maintained its approach to wetland management. The issue of creating new wetlands is of a scientific nature, and the City Council is likely to continue to pursue this matter by other methods.

- *Regional wetland inventory.* The lack of a regional wetland inventory was considered by the City Council as a significant limitation for achieving the objective and policies, especially if the 'no overall reduction' approach is retained. To partly address this matter the City Council submitted that the City Plan's Ecological Heritage Sites (EHS) inventory be adopted by ECan as an inventory/assessment of wetlands in Christchurch on the understanding that the assessment was technically rigorous and had comprehensive geographical coverage. The City Council believed that this would bring some certainty as to which rules apply in Christchurch City, and the areas they apply to.

  Summary comment on the decision: The City Council's EHS has not been included in the PNRRP. However, as part of the City Plan review it is likely that these sites will be reassessed, and new sites identified and included in the list. It now appears appropriate that the EHS are not included in the PNRRP.

37. Chapter 8 - Soil conservation

Chapter 8 recognises that soils are part of a wider ecosystem where soils, plants, animals and people all interact with each other, and with natural processes such as climate. The main focus of the chapter is on preventing soil erosion that is induced or accelerated by the activities of people and or introduced animals. The following matters were raised by the City Council:

- *General support.* The City Council generally supported the objectives and policies in Chapter 8. The Council specifically noted and supported the implementation methods adopted in this part of the PNRRP which included education, management practices and financial incentives rather than regulation (rules).

- *Establishment of deep rooted vegetation.* Objectives and policies in the PNRRP sought to establish deep-rooted and fast growing exotic vegetation cover (that is, trees and shrubs) on the Port Hills to reduce soil erosion. The City Council recognised the open character of the Port Hills east of Dyers Pass Road and maintained that the Port Hills should be recognised as an outstanding natural feature and landscape that should be protected. Furthermore the City Council considered that the PNRRP does not adequately acknowledge the practical and financial implications of planting deep-rooted vegetation. For example, the cost of achieving the desired level of planting on the Port Hills alone is about $20m, while significant vegetative cover is likely to increase fire risk. The planting of fast growing exotic trees was also noted by the City Council as being contrary to the aim of fostering indigenous biodiversity.

  Summary comment on the decision: The decision generally recognises the importance and value of establishing both exotic and indigenous vegetation. The City Council has the opportunity, through other methods, to advocate and promote a balanced approach to the establishment of appropriate vegetation types in specific areas with specific soil and slope stability characteristics.

APPEAL RECOMMENDATIONS

38. The process undertaken by City Council staff for assessment of whether the Ecan decisions, in the light of the revised legislation, required a two stage process. The first was the standard review of the decision vis the submission sought by the Council. The matters identified through this process were then further required to be reviewed as to whether the decision issues constituted a potential error in law (as opposed to a decision reached on the merits which Christchurch City Council disagreed with). Of the 43 matters of particular concern to Council, 28 were reviewed, as a result of the decisions, and of these 3 were identified as having a

9 Cont'd

potential scope for appeal under the revised legislation. Following this a detailed legal assessment of the three matters which warranted further consideration was undertaken by Cavell Leitch Law Ltd and are attached to this report (**Attachments 2 and 3**). The three matters considered were:

- The interpretation of Policy WQL8 (water quality) as amended.
- The powers of a Regional Council under section 30 to regulate public access to and along the beds of lakes and rivers.
- The lawfulness of the financial contribution provisions in the PNRRP insofar as requirements to comply with section 108(1) of the Act.

39. The legal assessment is that there is no error of law in the first two of those three matters, and that there is an error of law regarding financial contributions.

Despite the potential for an error of law in the decision on financial contributions, the Council's interests are not furthered by lodging an appeal. This is further described in the Attachment 3.

Accordingly, assessment has identified only one matter for which legal assessment has identified an error of law, but the recommendation is to not lodge an appeal in the High Court on that matter.

40. **Attachment 1** to this report provides a summary assessment by PNRRP chapter, hearing stage and submission number, of the key concerns raised by the City Council and discussed in this report. The summary assessment also provides a recommendation on whether any further action is required. Although some matters are deemed unsatisfactory for technical reasons, there are no matters on which an appeal is recommended.

41. In considering the appropriateness of lodging an appeal, the following matters were considered as possible alternatives to appeals. These are:

- Ongoing discussion and negotiation with ECan in preparation for and leading to possible variations to the PNRRP in the future.
- The Regional Policy Statement (RPS) is currently under review. When the new RPS becomes operative, the PNRRP and other regional plans may need to be reviewed to implement the new RPS. A review may allow some of the 'outstanding' issues for the City Council to be revisited, in a technical and applied way, rather than only as a point of law.
- Changes to, and development of, other local government statutory plans and non-statutory documents, such as City Council strategies.

FINANCIAL IMPLICATIONS

42. There are no immediate financial implications for the City Council. However, once the PNRRP is operative there will be financial implications, specifically in relation to the management of waste water and stormwater. Where there are financial implications for the City Council, the timeframes set in the PNRRP allow for a gradual change of approach to meet stricter provisions.

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

43. Yes, although the cost of developing and implementing other methods to address 'outstanding' matters has not, at this time, been specifically identified in LTCCP budgets. Existing and future work programmes of the City Council will need to address these matters.

LEGAL CONSIDERATIONS

44. There is no right of appeal to the Environment Court on the merits of the decision on the PNRRP. The right of appeal is solely to the High Court on points of law.

11. 11. 2010

9 Cont'd

45. Clause 14 of the First Schedule of the Resource Management Act 1991 provides that a person who made a submission on a proposed policy statement or plan may appeal to the Environment Court in respect of:

    (a) A provision included in the proposed policy statement or plan;
    (b) A provision that the decision on submissions proposes to include in the policy statement or plan;
    (c) A matter excluded from the proposed policy statement or plan; or
    (d) A provision that the decision on submissions proposes to exclude from the policy statement or plan if the person referred to the provision or the matter in the person's submission on the proposed policy statement or plan and the appeal does not seek the withdrawal of the proposed policy statement or plan as a whole.

46. The Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (The ECan Act) has removed that right of appeal regarding ECan decisions on policy statements and plans. Section 66 of the ECan Act provides that no person may appeal to the Environment Court under clause 14 of the First Schedule of the RMA in respect of any decision on a proposed plan. A person who made a submission on the proposed plan may appeal to the High Court, but only on a question of law.

47. The RMA provides that appeals to the High Court on points of law must be filed within 15 working days of notification of the decision. Accordingly, any appeal to the High Court on the PNRRP must be filed in the High Court by the end of 16 November 2010.

48. Consideration by the Council of the ECan decisions on the PNRRP must be focussed on identification of any errors of law that the decision makers have made, and the resultant *question of law* that must be resolved.

49. Case law regarding appeals on a point of law under the RMA is well settled. The principle is that the High Court will interfere with the decision of the lower decision maker only if the lower decision maker.

    (a) Applied a wrong legal test;
    (b) Came to a conclusion without evidence or one to which on evidence, it could not reasonably have come;
    (c) Took into account matters which it should not have taken into account; or
    (d) Failed to take into account matters which it should have taken into account.

50. The role of the High Court on an appeal on a point of law is to decide whether the Environment Court (or, in this case, ECan) has acted reasonably, applied correct legal tests, and taken into account all the relevant and correct considerations. The weight to be given to evidence, and deciding on conflicting evidence, is not a point of law on which the High Court can replace its judgment for that of ECan.

51. Potter J in the High Court has summarised the relevant principles from the authorities as (Nicholls v Papakura DC *[1998] NZRMA 233 (HC)*):

    (1) The High Court will not concern itself with the merits of the case under the guise of a question of law;
    (2) The appellate Court's task is to decide whether [ECan] has acted within its powers;
    (3) The question of weight to be given to the assessment of relevant considerations is for the Environment Court [or in this case, ECan] alone, and not for reconsideration by the appellant Court as a point of law;
    (4) Any error of law must materially affect the result of [ECan's] decision before the High Court will grant relief;
    (5) To succeed, an appellant must identify a question of law arising out of [ECan's] determination and then demonstrate that that question of law has been erroneously decided by [ECan]; and

9 Cont'd

(6) On an appeal under s 299 it is not for the High Court to say whether [ECan] was right or wrong in its conclusion but whether it used the correct test and all proper matters were taken into account.

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

52. Yes. Refer to the above section of this report, and **Attachments 2** and **3** to this report.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

53. The recommendations of this report support a range of LTCCP outcomes including those of water supply, wastewater collection and treatment, parks, open space and waterways, and city planning and development.

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

54. As above.

CONSULTATION FULFILMENT

55. Extensive consultation has been carried out at the submission stage, for evidence preparation, and for the review of the decision with specific City Council staff, and with other Canterbury Region local authorities.

STAFF RECOMMENDATION

That the Council does not appeal the Environment Canterbury decision on the Proposed Natural Resources Regional Plan, noting that this decision reflects the particular circumstance and reduced scope of appeal created by the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.

11. 11. 2010

10. APPOINTMENT OF COUNCILLOR DIRECTORS TO CHRISTCHURCH CITY HOLDINGS LIMITED AND SUBSIDIARIES FOLLOWING THE ELECTION

General Manager responsible:	General Manager Regulations and Democracy Services, DDI 941-8462
Officer responsible:	General Manager Regulations and Democracy Services
Author:	Peter Mitchell

PURPOSE OF REPORT

1. The purpose of this report is to:

   (a) Advise the Council on the recommended process for the appointment of Council Directors to the Christchurch City Holdings Ltd (CCHL) Board immediately following the Council election in October 2010.

   (b) To recommend the appointment of the Council Appointments Committee, and the membership of that Committee.

2. If approved by this meeting of the Council, the Mayor and all Councillors will be circularised seeking expressions of interest with a view to the interviews for the four CCHL positions taking place and the Council Appointments Committee making its recommendation to the Council in December.

STAFF RECOMMENDATION

It is recommended that the Council:

(a) Appoint a Council Appointments Committee to recommend to the Council the appointment of four members of the Council to the Christchurch City Holdings Ltd Board in accordance with the Council's 2007 Policy of Appointment and Remuneration of Directors.

(b) Appoint a member of the Council, who is not seeking appointment to the Christchurch City Holdings Ltd Board, a recently retired Councillor and an external experienced director as members of the Committee.

(c) Appoint Mr Bruce Irvine, the Chairperson of Christchurch City Holdings Ltd, as a member of the Committee.

(d) Retain Mr Mike Stenhouse of Sheffield Ltd to assist the Council Appointments Committee regarding the appointment process.

10 Cont'd

BACKGROUND

3. In September 2007 the Council adopted a revised Policy on Appointment and Remuneration of Directors. Such a Policy is required by the Local Government Act 2002 and is attached **(Attachment A**).

4. As this Policy has been formally adopted and published by the Council, it is important that a practical process for implementing it in relation to the Council member appointments to CCHL be clearly understood and established before the new Council commences the process of appointment of Councillors to CCHL following the election.

5. Paragraph 18 of the Policy notes that the CCHL constitution provides:

> *18. The CCHL constitution provides that Council directors must resign on a date specified by the Council being no later than three months after the triennial Council elections, although they may offer themselves for re-appointment. The date selected will be chosen to allow time to select Council directors for appointment as replacement directors in accordance with this policy.*

The current Council directors are the Mayor, Councillors Corbett and Wells and Mr Shearing. The "resignation date specified by the Council…" in paragraph 18 will be set when the Council considers the Committee's recommendations in December.

6. Paragraph 14-17 of the 2007 Policy covers the appointment of CCHL directors as follows:

> *14. The CCHL constitution provides for a maximum of eight directors and it is intended that it comprises a mix of four Council and four non-Council directors. It is critical to the success of this board that it has a composition which is capable of maintaining the confidence of both the Council and the subsidiary companies.*
>
> *15. The Council will establish a Council Appointments Committee immediately after the triennial Council election to recommend to the Council the appointment of Council and non Council Directors to CCHL. This committee will be comprised of four members who are not seeking appointment to the CCHL Board. Where possible the committee members will include the current chair of CCHL, a Councillor, a recently retired Councillor and an external experienced director.*
>
> *16. In the process of selecting Council and non Council directors the Council Appointments Committee will first determine the required skills, knowledge and experience which is necessary for an effective board. In general terms, the Committee will apply similar criteria to potential candidates to those used by CCHL in its assessment of candidates for other CCTOs. However, where necessary the Committee will also take into account a candidate's potential to quickly acquire business and financial skills, as well as his or her existing skills and experience. The candidates' skills must be relevant to the requirements of CCHL in terms of its governance and provide as far as possible that there is a suitable cross- section of skills available at the board table which is capable of meeting the normal criteria of good governance.*
>
> *17. The committee will use the services of a specialist consultant in making an assessment of the suitability of candidates*."

7. Paragraph 16 states that the Committee will apply similar criteria to potential candidates to those used by CCHL in the assessment of candidates for other CCTO's. In this regard paragraphs 46-47 of the Policy provides:

> *46. The mix of skills and experience on the CCTO board will be taken into account, and consideration given to complementing and reinforcing existing skills and reducing known weaknesses where necessary.*

10 Cont'd

47. In general terms, the following qualities are sought in directors of CCTOs:

(a) Intellectual ability.
(b) Commercial experience.
(c) Understanding of governance issues.
(d) Sound judgement.
(e) High standard of personal integrity.
(f) Commitment to the principles of good corporate citizenship.
(g) Understanding of the wider interests of the publicly-accountable shareholder.

Discussion

8. The Policy notes that it is important that the Council Appointments Committee comprises members who have experience in the selection of directors and it is preferable that all members of the Committee be those who have the confidence of the Council. The Policy provides that where possible the members of the Committee be the current Chair of CCHL, Mr Bruce Irvine, a Councillor, a recently retired Councillor and an external experienced director. Since this is a Council committee it is necessary that at least one member of the Committee is a current Councillor.

9. It would be preferable that the Councillor be a person who does not intend to apply to become a CCHL Director.

10. It is recommended that the Council Appointments Committee be assisted by Mike Stenhouse of Sheffield Consulting who has assisted this process in the past and is experienced in assisting CCHL with the selection of directors for the subsidiary companies.

11. In accordance with the Policy the Appointments Committee will make recommendations regarding the Council directors to be appointed to CCHL for final decision by the Council.

PROCESS FOR CCHL DIRECTOR APPOINTMENTS

12. Registrations of interest from Councillors who wish to be considered for appointment to CCHL will be called for the four Council positions on the CCHL Board shortly after this meeting of the Council. The Committee, with the assistance of the management consultant, will then consider those applications and make recommendations to the Council for approval to the Council's December meeting.

APPOINTMENT OF EXISTING DIRECTORS TO SUBSIDIARY COMPANY BOARDS

13. Two former Councillors (Councillors Cox and Sheriff) are directors of subsidiary companies (Vbase and Orion respectively) and have been appointed for specific terms. These terms expire on 31 March 2011 and August 2013 respectively.

14. The Council's 2007 Policy is clear that appointments to these boards (and all other boards) will be subject to the criteria set out in the policy and there is no specific provision for the appointment of Councillors to the boards of these operating companies. Some Councillors may of course meet the criteria in the policy. The policy is based on the skills needs of each board and not on the basis of representation. This is in the interest of the efficient operation of the companies.

15. The policy provides for CCHL to review the composition of subsidiary company boards and where appropriate reappoint existing directors for a further term. CCHL will undertake this review of all director positions held by the former Councillors at the time that the appointments expire and in accordance with the policy exercise the right to reappoint where appropriate. As provided by the policy, any new appointments will be recommended to the Council for approval.

11. 11. 2010

11. ADOPTION OF DATE OF NEXT ORDINARY MEETING

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8642
Officer responsible:	General Manager Regulation and Democracy Services
Author:	Peter Mitchell, General Manager Regulation and Democracy Services

1. The Council will need to adopt a schedule of ordinary meetings for the remainder of the 2010 year and for 2011. In the first instance, however, it will need to confirm the date for the next ordinary meeting of the Council.

STAFF RECOMMENDATION

It is recommended that the next ordinary meeting of the Council be on Thursday 25 November 2010 at 9.30am.

12. NOTICES OF MOTION