

REGULATORY AND PLANNING COMMITTEE AGENDA

WEDNESDAY 2 FEBRUARY 2011

AT 9AM

IN COMMITTEE ROOM 2, CIVIC OFFICES, 53 HEREFORD STREET

Committee: Councillor Sue Wells (Chairperson),
Councillors Helen Broughton, Sally Buck, Tim Carter, Jimmy Chen, Jamie Gough, Yani Johanson,
Glenn Livingstone, Claudia Reid and Chrissie Williams.

Principal Adviser
Mike Theelen
Telephone: 941-8281

Committee Adviser
Sean Rainey
Assistant Council Secretary
Telephone: 941-8536

- PART A - MATTERS REQUIRING A COUNCIL DECISION
- PART B - REPORTS FOR INFORMATION
- PART C - DELEGATED DECISIONS

INDEX	PAGE NO
PART C 1. APOLOGIES	
PART B 2. DEPUTATIONS BY APPOINTMENT	
PART A 3. WEATHERTIGHT HOMES RESOLUTION SERVICES (FINANCIAL ASSISTANCE PACKAGE) AMENDMENT BILL	
PART A 4. COUNCIL SUBMISSION ON BUILDING AMENDMENT BILL (NO 3)	
PART A 5. PROPOSED PRIVATE PLAN CHANGE 59 – REZONING OF 21A - 23 BECKFORD ROAD AND 22 WADES AVENUE, ST MARTINS, FROM LIVING 1 TO BUSINESS 2P	
PART B 6. SECTION 35 - REPORT ON EFFECTIVENESS AND EFFICIENCY OF THE CURRENT DISTRICT PLAN	
PART C 7. NORTH WEST REVIEW AREA – PROJECT OUTLINE AND PROPOSED CONSULTATION PROCESS	
PART B 8. EXPLORING NEW HOUSING CHOICES FOR CHANGING LIFESTYLES	
PART B 9. BRIEFING ON SYDENHAM TOWN WORK POST EARTHQUAKE	
PART B 10. BRIEFING ON BUILDING CONSENTS AND TIMELINES	
PART C 11. ELECTION OF DEPUTY CHAIRPERSON	
PART A 12. ESTABLISHMENT OF TERMS OF REFERENCE FOR THE REGULATORY AND PLANNING COMMITTEE	
PART C 13. PROPOSED DRAFT FOR AN ORDER IN COUNCIL FOR HERITAGE	
PART C 14. RESOLUTION TO EXCLUDE THE PUBLIC	
PART B 164. COUNCIL HEARINGS PANEL AND RMA TRAINING	

2. 2. 2011

1. APOLOGIES

2. DEPUTATIONS BY APPOINTMENT

3. WEATHERTIGHT HOMES RESOLUTION SERVICES (FINANCIAL ASSISTANCE PACKAGE) AMENDMENT BILL

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Environmental Policy & Approvals Manager
Author:	Steve McCarthy

PURPOSE OF REPORT

1. The purpose of this report is to present to the Committee a draft submission (**Appendix 1**) on the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill (**Appendix 2**) and outline further details on the operational design and process framework for the Government's Financial Assistance Package for Leaky Homes.

EXECUTIVE SUMMARY

2. The Council has previously considered the Financial Assistance Package from the Government, in response to the leaky buildings issue, on 27 May and 23 September 2010. The key information has been repeated in this report and the 23 September 2010 report (**Appendix 3**).
3. The Council agreed in both May and September to become a party to the package, provided 25 per cent of the remediation cost would be met by each of the Government and Territorial Authorities, leaving homeowners to fund 50 per cent of the remediation costs with access to loan funding and the ability to make further claims against builders, developers or other parties.
4. The Council resolution passed in September included:
 - *Agreeing to participate in the financial assistance package for owners of leaky homes, conditional on the Government passing legislation to address the litigation risk for Councils by third parties, or, if legislation is not able to be passed, that an alternative method to "cap" council liability is found, and agreed by the Council.*
 - *Noting that the decision did not require a special consultative procedure as it did not come within section 97(1)(d) of the Local Government Act 2002, for the reasons outlined in the report.*
 - *Agreeing that the Council will not apply for assistance to repair any Council owned leaky homes under the financial assistance package.*
 - *Agreeing to advise the Government of its decisions*
 - *Delegating the Chief Executive to continue to work with Government officials and the Local Government sector to agree any final details of the financial assistance package including on the litigation risk, insurance issues and lobbying further to exclude commercial retirement villages from eligibility under the package*
5. The Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill largely addresses the issues previously raised by the Council by amending the Weathertight Homes Resolution Services Act 2006 to facilitate the delivery of a financial assistance package to eligible owners of leaky homes (eligible homeowners). The financial assistance package aims to help improve eligible homeowners' access to finance required to repair their homes and to divert litigation costs toward repair costs. The high-level design parameters of the financial assistance package are:
 - The Crown and the participating territorial authority will each provide a 25 per cent direct payment to agreed repair costs. However, the participating territorial authority will only make a direct payment if it signed off the work.
 - If an eligible homeowner opts into the scheme, the homeowner must agree not to sue the participating territorial authority and the Crown (eligible homeowners will still be able to pursue legal action against other parties).
 - The Crown will provide assistance to eligible homeowners in accessing bank finance for the remaining agreed repair costs by offering credit support to banks (by way of a limited Crown guarantee or indemnity) for loans made to eligible homeowners who can meet the banks' lending criteria.

3 Cont'd

The key features of the Bill include—

- Capping the liability of participating territorial authorities (in accordance with a contribution agreement) and the liability of any other contributing parties (for instance, other solvent defendants) for claims being addressed through the financial assistance package. This will help ensure that the financial assistance package diverts litigation costs toward repair costs. If participating territorial authorities or other contributing parties are joined to litigation where they have paid a contribution through the financial assistance package, they will face both the cost of the package and potential ongoing costs of litigation, if any.
 - Removing the Crown's liability for the failure of repairs made under the financial assistance package and any losses suffered as a result of the actions of the Department of Building and Housing or the Crown under the financial assistance package process. The amendment recognises that the Crown is making a significant contribution to solving the leaky-home problem where it has no liability to do so.
 - Authorising the appropriate Minister to give a Crown guarantee or indemnity in respect of loans for repairs made under the financial assistance package.
 - Limiting the period in which eligible homeowners may apply to enter the financial assistance package to five years from the time the financial assistance package becomes operational
6. The Chief Executive and Council staff have worked closely with the other major Metropolitan Councils, Local Government NZ and the Department of Building and Housing on developing the draft operational design and process framework to support the financial package. The Bill addresses the key issues and the operational design and process framework documents contain the detail. A flow diagram from the operational design and process framework documents (**Appendix 4**). This shows critical points in the process where Territorial Authorities agree the eligibility of the claim, reviews the repair plan, agrees to contribute (if appropriate), issues a building consent and inspects the repairs.
7. Submissions on the Bill close on 18 February 2011. The attached draft submission (**Appendix 1**) proposes that Council supports the Bill. It identifies that the Council does not support the package being made available to large commercial "retirement villages" and includes a number of legal points which, if changed, would help to clarify aspects of what is proposed.

FINANCIAL IMPLICATIONS

8. This report principally presents a draft submission on the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill. It remains extremely difficult to provide a reliable estimate of how much extra budget might be required, if any, if the Bill is passed into law. The proposal has ongoing financial implications for the period the scheme will be in force, five years from the passing in law of the Act (expected to be effective from 1 July 2011).
9. The Council currently has \$1 million per annum in its 2010/11 to 2015/16 budgets to meet weathertight homes claims. This figure of \$7 million overall has been based on the Council's previous history of resolving claims under the Weathertight Homes Resolution Service Act 2006 and provides for claimants that would up until now utilise the existing Weathertight Homes Resolution Service (WHRS).
10. The status of existing claims is that we have 94 claims registered with the WHRS and three in the District Court. The Council has already settled 134 claims. More recently, since June 2007 - 56 claims, concerning 135 property units have been settled. Of these, 51 were WHRS claims, four District Court and one High Court claim. The average settlement amount paid by the Council or its insurers was \$64,649 which included legal expenses. This coincidentally represents 25 per cent of the claimed amount but the claimant only received an average of \$39,805 (15.6). The balance was paid in legal expenses.

3 Cont'd

11. The initial Government proposal estimated that the Council will incur \$20 million over the next five years if 50 per cent of claimants take up the scheme. If 70 per cent take up the scheme then the Council will incur \$28 million over the next five years.
12. Council staff have previously analysed the Government projections. Their estimates at that time were that there could be between 20-30 per cent take up of the Government scheme. This could require a further Council contribution of between \$8-12 million in the next five years. For the balance of the homeowners of 'at risk' homes, the Council does not expect to get any claim. In summary, the reasons are that owners are in denial, have already made or will make repairs, or cannot afford to contribute themselves.
13. Under the scheme, the Council may require a further contribution, in addition to the \$7 million already included within the LTCCP. This is not certain and it is extremely likely that the settlement of claims will be spread over the remaining five years and therefore the additional annual commitment is not material and will not trigger a section 97(1)(d) consultation requirement.
14. A report received from Melville Jessup Weaver, Actuaries, who work for major metropolitan councils including Wellington and Auckland, suggest that there are likely to be further savings for the Council for existing claims where claimants opt into the Financial Assistance Package (FAP) proposal. Their expectation is that the cost of existing claims will reduce from \$6,772,000 to \$4,241,000. This represents a reduction of \$2,531,000 for existing claims and would partially offset new claims under this scheme.

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

15. Yes. The Financial Assistance Package may require Council to make some extra provision in its 2009-19 LTCCP and 2011/12 to 2015/16 Annual Plans for extra funding to meet the potential increase in claims. The projections are uncertain as the majority of extra claims are presently unknown and Council is only receiving 14–15 extra claims per year, at present.

LEGAL CONSIDERATIONS

16. The Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill has been reviewed by the Legal Services Unit. The provisions of the Bill are effective in facilitating the delivery of financial assistance to eligible owners of leaky homes while protecting the contributing parties from subsequent litigation.

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

17. The legal review identified a number of legal points which, if changed, would help to clarify aspects of what is proposed in the Bill. These have been included in the proposed submission (**Appendix 1**).

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

18. Aligns with LTCCP page 89, administration of laws around building and development leading to safe buildings and reduction in environmental hazards plus page 187 of the LTCCP, developing our urban environment and sustainable use of buildings.

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

19. Yes.

ALIGNMENT WITH STRATEGIES

20. The Council has historically provided for claims and has an ongoing legal responsibility imposed by the Weathertight Resolution Service Act 2006.

3 Cont'd

Do the recommendations align with the Council's strategies?

21. Yes.

CONSULTATION FULFILMENT

22. There has been extensive consultation with the other major Metropolitan Councils and the Department of Building and Housing, to address issues of concern and give effect to the Council's previous resolution to participate in the package subject to the resolution of these issues. There has also been the development of the draft operational design and process framework with these parties, to support the package.

STAFF RECOMMENDATION

That the Committee recommends to the Council that it:

- (a) Note that the Council agreed previously to participate in the financial assistance package for owners of leaky homes, conditional on the Government passing legislation to address the litigation risk for Councils by third parties
- (b) Note that the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill generally addresses the key issues previously identified with the scheme.
- (c) Note that the Chief Executive and Council staff have worked closely with the other major Metropolitan Councils and the Department of Building and Housing on developing the draft operational design and process framework to support the financial package.
- (d) Forwards the submission on the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill, attached as Appendix 1 to this report.
- (e) Reserves the right to address the Council submission during the Select Committee hearing process.

4. COUNCIL SUBMISSION ON THE BUILDING AMENDMENT BILL (NO 3)

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Environmental Policy and Approvals Manager
Author:	Steve McCarthy and Judith Cheyne

PURPOSE OF REPORT

1. This report is to advise the Committee about the Building Amendment Bill (No 3) (“the Bill”) and for a submission (**Appendix 1**) to be approved by the Council on the Bill.

EXECUTIVE SUMMARY

2. The Bill is the first of two proposed by the Government that are aimed at implementing a number of policy decisions arising from the review of the Building Act 2004 in 2009/10. The Council made a submission on the review discussion document and a copy of the submission is attached to this report (**Appendix 2**).
3. The Bill provides for better regulation of building work, and adjusts the licensing regime for builders already in place under the Act. It seeks to promote accountability from those responsible for ensuring building work complies with the Building Code. The idea is that this should lead to a reduction in liability for Councils.
4. The Bills Digest (prepared for Parliament to assist it in its consideration of the Bill) is attached (**Appendix 3**) to this report, but in brief, the explanatory note to the Bill states that it:
 - (a) More clearly signals the accountabilities of participants involved in building design and construction.
 - (b) Enhances accountability under the licensed building practitioners’ regime.
 - (c) Introduces a stepped risk-based approach to how building consent and inspection requirements are administered so that the role of the building consent authorities at each step is aligned with the risk involved.
 - (d) Repeals the offence of allowing the public use of a building without a Code Compliance Certificate for building work commenced between 1992 and 2005.
 - (e) Provides for an owner-builder exemption from the restricted building work provisions of the Building Act 2004.
 - (f) Makes a number of changes to enhance and clarify the building warrant of fitness regime.
 - (g) Makes a number of other minor and technical amendments.

The whole Bill, including its explanatory note, can be found at:

www.legislation.co.nz/bill/government/2010/0253/latest/viewpdf.aspx?search=ts_bill_building_reseel&p=1

5. The review of the Building Act found that there is still a heavy reliance by the general public on building consent authorities for building quality. It also noted the concerns that were raised during the review raised about the costs, complexity, and delays in building consent processes. The Government determined that change is needed to give incentives to building professionals and tradespeople to take responsibility for the quality of their work and to stand behind it. The current system is unbalanced because of the unduly heavy reliance on building consent authorities (who are mostly Councils) to identify and fix inadequacies in building design and construction. As a result building consent authorities have tended to be more cautious, and this has led to a level of checking and inspection that may be higher than necessary, particularly when low-risk building work is involved.

4 Cont'd

6. The Bill proposes to make it clearer to building consent authorities, builders, designers and building owners the various participants' accountabilities. One way it does this is through new sections proposed for the Act, set out in clause 10 of the Bill:
 - (a) Section 14B: **Owners** of building work are responsible for getting any necessary approvals. An owner is responsible for ensuring the building work complies with the building consent or, if there is no building consent, with the Building Code.
 - (b) Section 14C: **Owner-builders** are responsible for ensuring the work complies with the building consent, and the plans and specifications, to which the building relates.
 - (c) Section 14D: **Designers** are accountable for ensuring that their plans, specifications and advice will meet the requirements of the Building Code.
 - (d) Section 14E: **Builders** are responsible for building to any approved plans or specifications. If there are no approved plans or specifications, then builders are responsible for meeting the requirements of the Building Code. However, there is no requirement for a builder to be a licensed building practitioner or have carried out any particular training. There is also no requirement for a builder to have a guarantee or warranty system in place to cover any significant building work they might do, as was proposed in the Review discussion document.
 - (e) Section 14F: **Building consent authorities** are responsible for checking the Building Code compliance of plans and specifications that accompany a building consent application, and for checking that work is done according to the plans and specifications, as well as issuing the statutory consents and certificates. Building consent authorities must also approve any critical variations.
7. This structure implies that a building consent authority's responsibility should be better balanced with each party involved in a building project now with express responsibilities set out. However, there is no shift in the actual liability system provided for in the Bill. Although Councils have long submitted there should be a proportionate liability system introduced to replace joint and several liability, the Bill does not go that far.
8. Under a joint and several liability regime the injured party need not prove what contribution each wrongdoer made in causing the damage and he/she is not prejudiced if not all of the persons responsible for the loss can be found, or are solvent, or are insured. Where two or more wrongdoers cause the same damage to the one person, the person suffering the loss can recover their entire loss in full from all or any of those liable.
9. What this means for the Council in relation to building related claims is that it will often be the only party still available to be sued or able to pay any compensation that may be awarded by the Court, as others involved in a building project might be "phoenix" companies, formed just for that project and no longer in existence, an individual cannot be located, or the companies or individuals involved can be found but are insolvent.
10. Under a proportionate liability regime, the injured party can only recover from each liable person compensation of an amount that reflects that person's respective responsibility for the damage. The difference being, that the risk that one or more of the persons responsible for the loss will be unavailable to sue, or will be insolvent, or will be uninsured, rests on the person who has suffered the harm and not any other party.
11. However, it does introduce a new stepped risk-based approach to how building consent and inspection requirements are administered. The idea behind this is so the role of the building consent authority at each step is aligned with the risk involved, as well as the skills and capability of the people doing the work.
12. Instead of the one standard consent provided for in the current Act the Bill proposes four types of building consent:

4 Cont'd

- (a) A **low-risk building consent** - this introduces a streamlined consent process for some low-risk work, such as a free-standing garage or a large rural shed. This process simply checks that certain conditions are met (for example, that the work is undertaken by a licensed building practitioner), but involves no further inspection by building consent authorities. Staff have identified some issues with the system proposed, as further discussed in the draft submission attached to this report (**Appendix 1**).
 - (b) A **simple residential building consent** - this provides for a simplified and more prescribed consenting process for certain simple residential building work that is at the lower-risk end of the spectrum. As an example, the Department of Building and Housing identify a single-storey house built using proven methods and design, with low structural and weathertightness risks.
 - (c) A **commercial building consent** - there will be new building consent processes and requirements for commercial buildings, that largely rely on third-party (non-building consent authority) review and assurance processes. These processes are an alternative to the current consenting and inspection requirements, provided certain conditions are met. Staff have also identified issues with these proposals, as further discussed in the draft submission attached to this report (**Appendix 1**).
 - (d) A **standard building consent** - essentially the consent that is currently provided for in the Act.
13. This four consent system proposed in the Bill is more or less the same risk-based system the Council has put in place following the earthquake, to process building consents under the current Act. A diagram of the Council's process is attached to this report (**Appendix 4**).
14. While the Bill makes a number of improvements compared to the current Act, and staff are satisfied with many of the new provisions, the proposals do not address all the matters raised by Council in its previous submission. It also leaves a lot of the detail around the types of consent, etc, to be made by regulations. For example, we do not yet know what type of building work will be low-risk building work, as the interpretation clause of the Bill provides it has the meaning given to it in regulations made under the Act. It is imperative that the Council also has input into the regulation-making process. Councils did not have a chance to provide input on the "change of use" regulations, and they do not work as effectively as they should.
15. The above concerns are set out in the attached draft submission, as well as other suggestions for further changes to the proposed Bill clauses and amendments to the Act.

FINANCIAL IMPLICATIONS

16. If an oral submission is to be made by the Council then there may be financial implications if the Council representatives need to travel to Wellington for the Select Committee hearing.

LEGAL CONSIDERATIONS

17. No legal considerations involved in making a submission on a Bill.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

18. Not applicable.

ALIGNMENT WITH STRATEGIES

19. Not applicable.

CONSULTATION FULFILMENT

20. The Council would not need to consult with any member of the public in relation to its submission on the Bill, because any member of the public can also make their own submission. Staff from the Environmental Policy and Approvals Unit and the Legal Services Unit have worked on this report and submission.

4 Cont'd

STAFF RECOMMENDATION:

That the Committee recommend to the Council that it resolve to:

- (a) Approve the draft submission on the Building Amendment Bill (No 3) (Appendix 1).
- (b) Determine whether the Council should make an oral submission on the Bill and, if so, appoint a Councillor or Councillors to represent the Council at the Select Committee hearing.
- (c) If necessary, make provision for further amendments to be made to the submission by the Council if further information from other territorial authorities or Local Government New Zealand becomes available before the submissions closing date of 4 March 2011.
- (d) That the Council write to the Government seeking to have input into the drafting of the regulations to be made as a consequence of the Bill.

BACKGROUND

21. A brief background is provided on the context of the Building Act review and the position the Council has taken regarding its discussions with the Department of Building and Housing and input to various discussion papers.
22. The Building Act 2004 introduced the requirement for Building Consent Authorities to become accredited and licensed by the Department of Building and Housing, operate within a quality management system and be audited by an audit body (IANZ - International Accreditation NZ). Council was accredited and licensed in 2008. The Building Act 2004 also introduced the requirement for licensed building practitioners to undertake all building works, effective in 2012.
23. 2007 - The Labour Government and Minister of Housing, Shane Jones indicated that it intended to reduce the scope of building works requiring a building consent, make PIMs (Project Information Memoranda) voluntary and look at reducing risk adverse consenting practices in BCAs. They passed regulations and amended the Building Act, Schedule 1 in 2007 to exempt more building work and make PIMs voluntary in 2007.
24. 2008 - Council Officers participated in a Metro Sector Group which commenced working closely with the DBH on developing a further package of initiatives to provide better regulation of building work, develop a more targeted risk-based approach, reduce the building industry reliance on BCAs to ensure work complied with the building code and for Licensed Building Practitioners (LBP) to take a greater responsibility for the work they carried out.
25. The Government decided to allow owners to undertake limited building works (including restricted building works) on their own homes and resolved to amend the legislation to allow this to happen.
26. 2010 - The Department of Building and Housing released a discussion document "Cost effective quality: Next generation building control in New Zealand". Council submitted an extensive response to the matters raised and supported the concepts of a streamlined, risk based approach to consent and inspection processes, building practitioners increasingly responsible for their work and lower risk consents and greater protection for customers through warranties, guarantees and contracts. Specifically, the Submissions Panel resolved on 16 April as follows:

"The panel directed staff to make the following amendments to the draft submission:

- *Submission to be signed by the Mayor and Chief Executive, not the Chairperson of the Submissions Panel.*
- *There are alternatives to the proposal which would achieve the same goals. For example territorial authorities could take a more risk-based approach if the DBH issued standards, such as the recent Simple House Compliance document.*
- *Submission 1: accepted but staff asked to moderate it a little.*

4 Cont'd

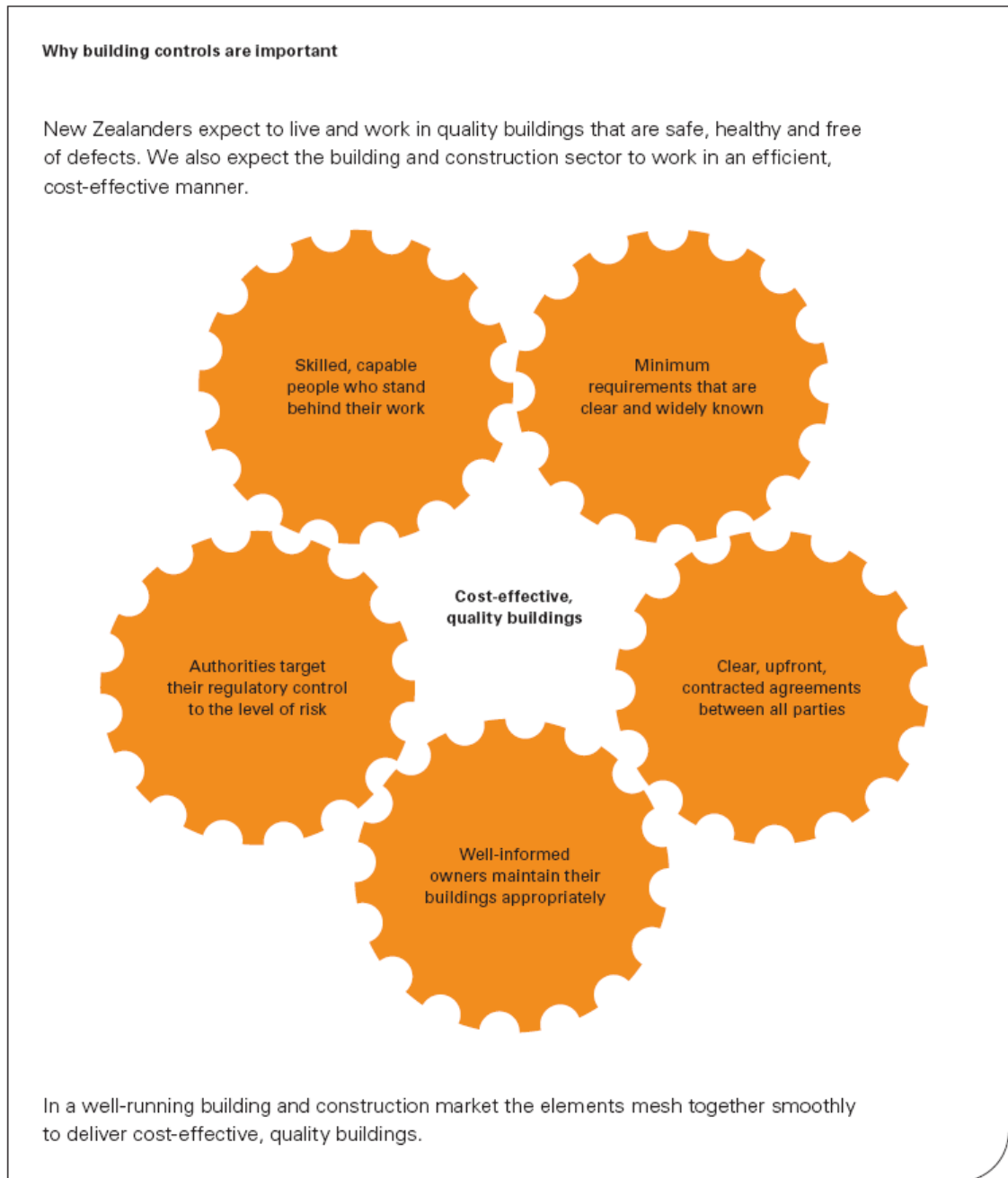
- *Submission 11 paragraph 4 needed to be more strongly expressed. The complexity of the forms are a barrier; cost of subscription to the standards is a barrier to small building firms. In this section also mention quality of housing and quality of licensing of the LBP.*
- *Submission 14: comment on Property records needs to be emphasised as it is really important. The history of a building is vital to homebuyers and the territorial authorities need knowledge of changes to the infrastructure, for example sewer connections.*
- *Submission 15: the Panel does not support the further potential exemptions listed in Table B. The Council needs an understanding of the load on its sewerage network and charges a connection fee. Solar water heaters are integral to the plumbing system and also penetrate the roof with weathertightness implications.*
- *Submission 18: this point is really important and needs more emphasis. An example is that the proposed new requirement of 1 metre from the boundary is in conflict with this Council's City Plan which requires 1.8 metres.*
- *Submission 78: include suggestion that consultation with the Insurance Council be carried out. Explain more clearly why costs to homeowners will go up.*
- *In general: the proposal will not make it easier to build, simply make it necessary for building practitioners to gain a qualification that may be beyond their reach. Refer to the Canadian system which uses a rigorous home building warranty system. Include a statement that the Christchurch City Council issues the greatest number of building permits in New Zealand and provide economic data.*

The panel agreed that staff make the amendments as directed and that these be e-mailed to members for approval before sending to the Department of Building and Housing."

27. The review of the Building Act found that there is still a heavy reliance by the general public on building consent authorities for building quality. It also noted the concerns that were raised during the review raised about the costs, complexity, and delays in building consent processes. The Government determined that change was needed to give incentives to building professionals and trades-people to take responsibility for the quality of their work and to stand behind it. The current system is unbalanced because of the unduly heavy reliance on building consent authorities (who are mostly Councils) to identify and fix inadequacies in building design and construction. As a result building consent authorities have tended to be more cautious, and this has led to a level of checking and inspection that may be higher than necessary, particularly when low-risk building work is involved.
28. The release of the Building Amendment Bill 2010 is the first of two Bills in response to the review. It addresses building consent and inspection requirements, building design and construction requirements, the Licensed Building Practitioners regime and the law related to DIY projects. However there were a number of other matters raised in the review which should be developed as part of the package. Each of the interdependent processes (outlined in an excerpt from the discussion paper below) relies on the other processes to deliver their part and the adoption of discrete parts will not deliver the intended benefits.

4 Cont'd

The ideal scenario



29. Next Steps - The Department of Building and Housing is presently looking to develop the regulations to support the Building Amendment Act (No 3) and the next Bill to implement the outcome of the Building Act review, concluded next year. The indications are that they intend to seek to achieve greater national consistency and standardisation of building regulatory requirements. This would be achieved by a more regionalised approach for building consent authorities and more use of private entities as BCAs - leading to improved sector productivity.

5. PROPOSED PRIVATE PLAN CHANGE 59 – REZONING OF 21A - 23 BECKFORD ROAD AND 22 WADES AVENUE, ST MARTINS, FROM LIVING 1 TO BUSINESS 2P

General Manager responsible:	Mike Theelen, General Manager, Strategy and Planning DDI 941-8281
Officer responsible:	Brigitte de Ronde, Programme Manager, District Planning
Author:	Anita Hansbury, Assistant Planner, District Planning

PURPOSE OF REPORT

1. This report describes a request to the Council for a private Plan Change (PC59) to rezone 21A - 23 Beckford Road and 22 Wades Avenue, St Martins, from Living 1 to Business 2P, and recommends the process for dealing with the request in terms of the Resource Management Act 1991 (RMA) provisions. A decision is sought from the Council, pursuant to clause 25 of Schedule 1 of the RMA, on whether the proposed plan change should be publicly notified, and under what status.

EXECUTIVE SUMMARY

2. The request seeks to rezone approximately 2950 metres squared of land located at 21A - 23 Beckford Road and 22 Wades Avenue (the site) from Living 1 (L1) to Business 2P (B2P). The site is adjacent to the existing Business 2 (B2) zone which contains the St Martins district shopping centre comprising the New World supermarket, a smaller retail complex and a separate lawyer's office. Refer to the attached Planning Map 47A (**Attachment 1**) for the location and extent of the rezoning.
3. The three land parcels comprising the site proposed to be rezoned are owned by Foodstuffs (South Island) Ltd (Foodstuffs) and currently contain a single residential dwelling each. While rezoning the sites to B2P would lead to the loss of three houses in this predominantly suburban residential environment, the B2P (District Centre – Parking) zone has been designed to accommodate car parking requirements associated with adjacent suburban shopping centres, and to act as a buffer zone between business and residential activities.
4. Plan Change 59, however, does propose some site specific amendments to the current B2P rules. An Outline Development Plan showing the areas subject to additional landscaping requirements, the existing landscaping to be retained, the location of staff car parking and site access restrictions is also proposed to be inserted into the City Plan. Refer to the proposed text changes and Appendix 18 in the Plan Change document (**Attachment 2**).
5. The purpose of this report is not to consider the requested plan change on its merits. Rather, it is to recommend which of the options under clause 25(2)-(4) of Schedule 1 of the RMA is to apply to the processing the plan change application. Consideration of merits of the application will occur after submissions have been received, as a part of the decision making process by the hearings panel.
6. The process options available to the Committee are set out in Schedule 1, clause 25, subclauses (2), (3) and (4) and clause 24 of the RMA, and are summarised below. The Committee may recommend to the Council that the requested private Plan Change 59 (St Martins) be either:
 - (a) Rejected in whole or in part on one of the limited grounds set out in the Act;
 - (b) Dealt with as if it were an application for a resource consent (in which case the provisions of Part 6 of the Act would apply accordingly);
 - (c) Modified with the agreement of the person who made the request;
 - (d) Adopted in whole or in part, as if it were a plan change made by the Council itself (this means accepting the responsibility and costs of processing it);
 - (e) Accepted, in whole or in part, and that the Council proceed to notify the request, or part of the request, under clause 26, at the cost of the applicant.

5 Cont'd

7. The implications of the options under clauses 24 and 25 of the first schedule of the Act are discussed below.

Option 1 – Resolve to reject Private Plan Change 59

8. There are very limited grounds in the Act for rejecting an application. A Plan change can be rejected if:
- (a) It is frivolous or vexatious;
 - (b) The substance of the change has been dealt with by the Council or the Environment Court in the last two years;
 - (c) The change is not in accordance with sound resource management practice;
 - (d) The change would make the District Plan inconsistent with Part 5 of the Act (other policies or plans, such as Regional Policy Statement or Plan); or
 - (e) The District Plan has not been operative for more than two years.
9. Plan Change 59 cannot be said to be frivolous or vexatious. The applicants have invested significant time and financial resources in preparing the plan change and have made a case for the plan change that warrants consideration in the plan change process. The substance of the plan change has not been considered in the last two years and the relevant parts of the City Plan have been operative since November 2005. Both Council officers and external consultants have been involved in assessing various aspects of the proposal. No significant or fundamental issues have been raised that would suggest that the proposed change is so inappropriate that it could be considered not in accordance with sound resource management practice.

Option 2 - Resolve to deal with Private Plan Change 59 as if it were an application for resource consent

10. Under this option the Plan Change is converted to a resource consent application and is processed by the Council as such. The applicant bears all of the associated costs. Resource consent could provide for the establishment of car parking with one approved car parking layout. Any proposals to expand development in the adjacent B2 zone and utilise car parks not contained in the same zone, or any alterations to the car park layout would require further resource consents. Such an alternative is not considered efficient and it does not allow for consideration of consistency with the City Plan objectives and policies or the benefits of other options.
11. In this case a change of zoning to more closely reflect the future use of the site may assist the Council in meeting its obligations to achieve integrated management of effects of activities under s31 of the Act. It also gives certainty to adjacent land owners. It is considered that it remains appropriate for the Council to continue processing the plan change request, rather than place reliance on the resource consent process.

Option 3 - Resolve to modify Private Plan Change 59 with the agreement of the person who made the request

12. The Council may, within 30 working days of the receipt of the plan change request, as a result of further or additional information, commissioned reports, or other relevant matters, with the agreement of the person who made the request, modify the request. In this case the 30 working days have expired and it is not an option open to the Council. Officers considered the inclusion of an outline development plan in the proposed rules as adding to the complexity of the City Plan unnecessarily and the matter was discussed with the applicant at the pre-application stage. The applicant viewed the outline plan as a crucial part of the proposed rules and was not willing to amend the proposed changes. In light of the applicant's position no formal modification was sought by the Council.

Option 4 - Resolve to adopt Private Plan Change 59 and publicly notify it as if it were the Council's own plan change

13. Under this option Private Plan Change 59 becomes a Council plan change. It would be notified, heard and decided in the same way as a plan change prepared by the Council, that is, the Council bears all of the associated costs. Adopting the plan change would mean that:

5 Cont'd

- (a) The Council is indicating that the plan change has merit and that it generally supports the proposal; and
 - (b) The Council bears the costs of managing and processing the plan change.
14. Adoption of a private plan change application would generally only occur where there is a wider public good flowing from the plan change. A plan change promoting wider public good would normally be one that addressed an existing city wide or multiple zone-wide adverse environmental effect, for example, a change to a bulk and location control that had lead to unexpected adverse outcomes. This private plan change application creates a zone that facilitates a private development with most economic benefit flowing to the applicant.

Option 5 - Resolve to accept Private Plan Change 59 and the Section 32 Assessment for public notification

15. Under this option Private Plan Change 59 would be notified in its current form as prepared by Aurecon (NZ) Ltd for Foodstuffs. Accepting the Plan Change means:
- (a) Foodstuffs determine the nature of the plan change that is notified;
 - (b) The Council remains neutral as to its position on the proposal but is satisfied that the Change includes sufficient information to be publicly notified; and
 - (c) Foodstuffs bear the cost of the complete plan change process up until the point of any appeals.

Note that all reasonable associated costs will be borne by the applicant.

16. Any concerns the Council may have regarding the Plan Change, such as the format of the amendments to the City Plan, can be raised through the officer's Section 42A Report.
17. The officer recommendation based on the analysis in the aforementioned options is to accept private Plan Change 59 – Rezoning L1 to B2P, St Martins, for notification.

FINANCIAL IMPLICATIONS

18. Should the Council resolve to notify the plan change there are legal processes which must be followed in accordance with the First Schedule of the RMA. This is a standard process that all plan changes must follow and if the processes are correctly followed, no particular financial risks are foreseen.
19. There would be costs arising at various stages of the plan change process relating to the preparation of officer reports and a hearing in response to submissions. The scale of costs would depend on the level of complexity of the submissions received. As this is a private plan change, these costs are largely recoverable from the applicant. Costs associated with responding to any Environment Court appeals received are not recoverable, except in instances where the court may award costs.
20. Should the Council resolve to adopt the plan change as its own, it will need to absorb all the processing costs.

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

21. Yes. The 2010/11 budget for the District Planning work programme, adopted by the Council and provided for in the LTCCP, includes funding for processing this plan change. As this is a private plan change request, these costs are largely recoverable.

LEGAL CONSIDERATIONS

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

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

5 Cont'd

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

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

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

24. Yes. While Plan Change 59 is aimed primarily at expanding the car parking provision for the St Martins shopping centre, the proposal is consistent with:

- The Greater Christchurch Travel Demand Management Strategy accepted by the Urban Development Strategy Implementation Committee by providing a greater variety of goods and services on the St Martins supermarket site, and potentially reducing the current number of vehicle trips made by the local customers to buy goods;
- The Council's Pedestrian Strategy for Christchurch City by providing an opportunity to improve the pedestrian links through the site,
- The Cycle Strategy for Christchurch City by providing an opportunity to improve and increase the cycle parking facilities on site; and
- The Parking Strategy for Christchurch City by meeting the minimum City Plan requirements for on-site car parking, reducing the risk of on-street parking, providing adequate disabled persons parking, and maintaining a high level of amenity without compromising the pedestrian or road safety, and without leading to significant effects on the surrounding road network.

CONSULTATION FULFILMENT

25. The applicant has directly contacted the owners of properties in the vicinity of the site by way of a letter. Two responses were received expressing concern relating to noise, visual effects, traffic, lighting and the extent of on-street parking. Preliminary consultation was also undertaken with some of the statutory bodies prescribed by the RMA but no feedback was received. Further feedback through submissions will be sought when the plan change is publicly notified.

26. A memo outlining the proposal has also been sent to the Spreydon-Heathcote Community Board for information and feedback in December 2010. No questions or feedback were received.

STAFF RECOMMENDATION

27. It is recommended that the Committee recommends to the Council that it:

- (a) Accept the attached Section 32 assessment for public notification.
- (b) Accept Private Plan Change 59 – Rezoning Living 1 land to Business 2P, St Martins pursuant to Schedule 1, Clause 25(2)(b) of the Resource Management Act 1991 for public notification.
- (c) Note that in accordance with Council policy, the cost of processing the private plan change are to be borne by the applicant.

5 Cont'd

BACKGROUND & DISCUSSION

The Private Plan Change Request

28. Private Plan Change 59 (refer **Attachment 2**) is requested by Foodstuffs and seeks to rezone approximately 2950 metres squared of land located at 21A - 23 Beckford Road and 22 Wades Avenue (the site) from Living 1 (L1) to Business 2P (B2P). The site is adjacent to the existing Business 2 (B2) zone which contains the St Martins district shopping centre comprising the New World supermarket, a smaller retail complex of several shops and a bank, and a separate lawyer's office. Refer to the attached Planning Map 47A (**Attachment 1**) for the location and extent of the rezoning.
29. The Living 1 (Outer Suburban) zone provides principally for low density and low height permanent living accommodation in most suburban environments. It is characterised by high level of amenity, generous open space, and ample landscape and garden plantings. Some non-residential activities are anticipated in the zone but are subject to standards ensuring that they are compatible with the character, scale and amenities of low density outer suburban living.
30. The Business 2P (District Centre – Parking) is a specialist zone used in association with adjacent suburban shopping/business centres (predominantly zoned B2) where there is insufficient space to provide the required number of car parks on site. It is designed to provide for ground level car parking, in keeping with the scale of the surrounding residential development, and to act as a buffer between business and residential areas. The rules applicable to B2P zone are those which apply to Living 2 (Inner Suburban) zone (L2), except that all of the B2P zone may be used for car parking associated with the adjoining district centre.
31. The rezoning is required to facilitate a planned expansion of the existing New World supermarket in the adjacent B2 St Martins shopping centre.

Description of the Site and the Proposal

32. Foodstuffs wish to develop the land subject to the plan change for car parking in order to support their future plans to expand the existing supermarket and provide a wider range of specialised food and grocery products. The planned supermarket ground floor extension would require additional car parking to be provided on site in compliance with the City Plan parking requirements. The additional car parking could not be accommodated within the boundaries of the existing B2 zone without the need to demolish the smaller retails shops or constructing a rooftop or underground car park. This type of expansion, involving the creation of B2P zone for car parks, is anticipated by the City Plan and is addressed by a number of policies relating to business activities and their effects on adjoining residential activities.
33. The proposed B2P zone can accommodate 75-80 car parking spaces and would facilitate a supermarket building extension of approximately 1600 metres squared (based on retail parking rate of 5.1 parking spaces per 100 metres squared GLFA). In reality such an expansion would result in significant loss of existing ground level parking or to avoid that, would need to be established partly on a second storey. Foodstuffs preliminary plans are for a single storey extension of approximately 1000 metres squared which will result in the loss of about 30 existing car parks out of 218 currently provided on site as per the City Plan requirements. With a 1000 metres squared extension, the total car parking numbers required for the B2 zone development would be approximately 270. The proposed B2P zone would facilitate meeting these parking requirements and reduce any adverse amenity effects arising from excessive on-street car parking or any two storey commercial development in this predominantly single storey residential environment.
34. The three L1 sites proposed to be rezoned are owned by Foodstuffs and currently contain a single residential dwelling each. The current L1 zoning of the subject land does not permit the development of car parking associated with the adjacent B2 zone district centre activities. Rezoning the sites to B2P would lead to the loss of three houses in this predominantly suburban residential environment.

5 Cont'd

35. The proposed B2P (District Centre – Parking) zone has been designed to accommodate car parking requirements associated with adjacent suburban shopping centres and act as a buffer zone. The parking can be provided at ground level only and requires landscaping between business and residential activities. Such specialist zone is therefore considered suitable in the St Martins environment. Should the car parking not be required, the land can be developed for the traditional L2 residential activities under the B2P zoning.
36. The current landscaping rules applicable to B2P are deficient in that they do not refer to Volume 3, Part 3, Rule 3.4.3(b), which requires additional landscaping and/or fencing along the site's boundary with a living zone. In recognition of that error, the applicant proposes to insert additional rules for the proposed St Martins B2P zone, which require visual and acoustic screening along the B2P/L1 interface by way of a fence and amenity landscaping along the entire boundary.
37. Some minor amendments are proposed to the B2P zone description and rules by adding references to St Martins as an area in which B2P zone is located. Additional amendments provide for acoustic screening and amenity landscaping along the L1 boundary and limit the B2P car park entry points to the existing district centre driveways. An Outline Development Plan showing the areas subject to additional landscaping requirements, the existing landscaping to be retained, the location of staff car parking and the site access restrictions, is also proposed. Refer to Appendix 18 in the Plan Change (**Attachment 2**).

Description of Alternatives and Issues

38. The Section 32 Analysis (**Attachment 3 separately circulated**), including an Assessment of Environmental Effects, provides a detailed discussion of the proposal, the subject site, its surrounding environment, the potential effects of the proposal, and a costs/benefits analysis of different alternatives. These alternatives are summarised below:
39. Do nothing (status quo) – while retention of the three subject residential properties would be of benefit to residential coherence of the area, this option significantly limits the expansion options for the adjoining B2 district centre site.
40. Resource consent – could provide for the establishment of car parks with one approved car parking layout. Any proposals to expand development in the adjacent B2 zone and utilise car parks not contained in the same zone, or alterations to the car park layout would require further resource consents. Such alternative is not considered efficient and does not allow for consideration of consistency with the City Plan objectives and policies or the costs/benefits of other options.
41. Rezoning the site to Business 2 – would achieve the desired outcome in terms of car parking provision but has potential for greater adverse effects through allowing other business activities and buildings to establish on the subject site. It could potentially lead to greater loss of residential coherence, character and amenity by not providing a buffer zone between L1 and B2 zones.
42. Redevelopment within the existing B2 zone – would require the demolition of the existing supermarket and/or the smaller retail stores, and provision of rooftop or underground car parking. This option is not considered economically viable or desirable from the amenity and environmental perspective as it could give rise to noise, glare and loss of privacy and visual amenity issues. Alternatively a resource consent could be obtained for reduced car parking requirements for a supermarket extension within the existing B2 zone, which could result in increased on-street parking and loss of residential amenity.
43. The Section 32 assessment analyses the above options as well as the option promoted by this plan change in further detail. It includes the costs/benefits and the efficiency/effectiveness comparison of all options. The report concludes that the proposed rezoning of the subject site to B2P is the most appropriate option.

5 Cont'd

44. An analysis of potential adverse effects of the B2P rezoning on the adjacent environment is carried out in terms of loss of residential amenity and the possible traffic effects resulting from an increased number of vehicle trips generated by the commercial floor extension. The Transportation Assessment analyses the effects of increased traffic generation on the performance of the nearby intersections and roads. It concludes that such potential increase will have no more than minor effects on the environment and can be accommodated at an acceptable level of service (refer Appendix E to the Section 32 report in **Attachment 3** for further details – attached separately). A survey and analysis of parking demand concludes that the current City Plan parking requirements are appropriate for the shopping centre. Please note that pursuant to clause 23 of the first schedule of the RMA, further information/clarification was requested on transportation issues and subsequently provided by the applicant.
45. The Landscape Impact Assessment (refer to Appendix F in **Attachment 3** attached separately) discusses the potential effect of the future development of car parking on the landscape character, amenity and outlook of the site and the surrounding area. St Martins district centre, being an existing feature within the neighbourhood, already affects the environmental qualities of the surrounding living zone to some extent. The zoning sought will prevent built commercial development from occurring beyond the current B2 zone limits and incorporates sufficient controls, many site specific, to minimise potential adverse effects of the extended car park. The Landscape Assessment concludes that the proposal is likely to result in minor adverse effects in some places and some significant improvements in others.
46. Taking into account the proposed mitigation methods, the overall adverse effects of the rezoning, including the traffic and landscape effects, are considered to be no more than minor. The Section 32 report concludes that the proposed B2P zoning is consistent with the City Plan objectives. The applicant considers that by enabling an expansion, which is anticipated in the Plan objectives and policies, the plan change will better achieve the purpose of the Resource Management Act 1991.

OPTIONS

47. In order for the Council to decide whether to notify the plan change and with what status the committee is directed to Schedule 1, Clause 25, subclauses (2), (3) and (4) of the RMA as set out below:

25. Local authority to consider request

- (2) *The local authority may either—*
- (a) *adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself (...); or*
 - (b) *accept the request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26.(...)*
- (3) *The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of Part 6 shall apply accordingly.*
- (4) *The local authority may reject the request in whole or in part, but only on the grounds that—*
- (a) *the request or part of the request is frivolous or vexatious; or*
 - (b) *the substance of the request or part of the request has been considered and given effect to or rejected by the local authority or Environment Court within the last 2 years; or*
 - (c) *the request or part of the request is not in accordance with sound resource management practice; or*
 - (d) *the request or part of the request would make the policy statement or plan inconsistent with Part 5; or*
 - (e) *in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.(...)*

48. **Option 1**

Resolve to reject Plan Change 59 request pursuant to Clause 25(4) of the first schedule of the Resource Management Act 1991.

49. **Option 2**

Resolve to deal with Plan Change 59 request as if it were an application for resource consent pursuant to Clause 25(3) of the first schedule of the Resource Management Act 1991.

5 Cont'd

50. **Option 3**

Option no longer available (Resolve to modify Plan Change 59 request with the agreement of the person who made the request pursuant to Clause 24 of the first schedule of the Resource Management Act 1991).

51. **Option 4**

Resolve to adopt Plan Change 59 request and publicly notify it as if it were the Council's own plan change pursuant to Clause 25(2)(a) of the first schedule of the Resource Management Act 1991.

52. **Option 5**

Resolve to accept Plan Change 59 request and the Section 32 Assessment for public notification pursuant to Clause 25(2)(b) of the first schedule of the Resource Management Act 1991.

53. The options were discussed in detail in paragraphs 6 - 17 above. Having considered all the relevant matters, it is recommended that the Council accept the request in whole and proceed to notification.

THE PREFERRED OPTION

54. The preferred option is **Option 5** - accept Plan Change 59 (Rezoning L1 to B2P, St Martins) and its associated Section 32 Assessment in whole pursuant to Clause 25(2)(b) of Schedule 1 of the Resource Management Act 1991 and proceed to publicly notify it.

6. S35 REPORT – EFFECTIVENESS AND EFFICIENCY OF THE CURRENT CITY PLAN AND BANKS PENINSULA DISTRICT PLAN

General Manager responsible:	General Manager Strategy and Planning Group, DDI 941-8281
Officer responsible:	Programme Manager District Planning
Author:	Brigitte de Ronde, Programme Manager District Planning

PURPOSE OF REPORT

1. To present to the Committee an overview of the contents of the Section 35 report (under section 35 (2) (b) of the Resource Management Act 1991) on the efficiency and effectiveness of the two current District Plans : the Christchurch City Council City Plan and the Banks Peninsula District Plan.

EXECUTIVE SUMMARY

2. In February 2010 the consultant firm Response Planning was awarded a contract to complete a report on the efficiency and effectiveness of the Christchurch City Plan (know as a section 35(2)(b) report under the Resource Management Act 1999) by the end of November 2010. Then in April 2010 the extent of the S35 report was widened to include four major aspects of the Banks Peninsula District Plan also. The s35 report was an LTCCP level of service required to be undertaken in 2010.
3. The s35 report has been completed (and has been separately circulated). An Executive Summary of the Report is attached. Msrms Jeff Page and Sean Elvines, and Ms Jane Whyte, the authors of the s35 report will be giving a full presentation on the contents of the report and the recommendations given in the report.
4. The purpose of the report s35 report is to understand what areas of the current District Plans are working well and which are not in achieving the objectives of each Plan. This information will inform the issues to be addressed as part of the District Plan Review which is to commence 1 July this year. The report contains recommendations from the authors (each of whom are experienced policy planners) as to what needs to happen in order to achieve the objectives of each chapter and also what further monitoring would be useful into the future in order to achieve more satisfactory information regarding efficiency of District Plan rules.

FINANCIAL IMPLICATIONS

5. None.

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

5. Yes the delivery of this report was a requirement under the LTCCP budget.

LEGAL CONSIDERATIONS

6. None.

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

7. Yes. There are none.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

8. The expectation and delivery of this report aligns with the LTCCP and the Activity Management Plan.

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

9. Yes in that the recommendations of the s35 report will inform the issues to be resolved through the District Plan Review project.

6 Cont'd

ALIGNMENT WITH STRATEGIES

10. Not applicable.

Do the recommendations align with the Council's strategies?

11. Not applicable.

CONSULTATION FULFILMENT

12. Consultation included workshops with Council staff from planning policy and consents, and drainage engineers.

STAFF RECOMMENDATION

It is recommended that the committee receive this report.

7. NORTH WEST REVIEW AREA – PROJECT OUTLINE AND PROPOSED CONSULTATION PROCESS

General Manager responsible:	Michael Theelen, General Manager Strategy & Planning DDI 941-8281
Officer responsible:	Jenny Ridgen, Programme Manager, Healthy Environment
Author:	Mark Rushworth, Senior Planner, District Planning

PURPOSE OF REPORT

1. To provide the Regulatory and Planning Committee with an outline of the process being used to undertake the North West Review Area (NWRA) project and seek endorsement of proposed public consultation.

EXECUTIVE SUMMARY

2. This report outlines the process being utilised to undertake the NWRA study. The study area is shown on the map at **Attachment 1**.
3. The principal goal of the study is to determine the future land use/development potential of the NWRA. The study will consider the suitability for future land uses bearing in mind the constraints of the 50 dBA noise contour from the airport and ground water recharge zone. In the light of submissions to PC 1, it will consider the scope for rural residential activities. The Urban Development Strategy (UDS) partners have also indicated that the study may result in up to 100 ha of greenfields business land being identified. It will also take into account and provide input to the New Zealand Transport Agency's Roads of National Significance (RoNS) Western Corridor projects.
4. The NWRA is a strategically significant area that forms part of the gateway to Christchurch and provides key linkages to the CBD, international airport and State Highway network. It comprises approximately 880 ha of land situated between the airport / State Highway 1 and the city's urban edge. It stretches for about 10 kilometres from Yaldhurst Road in the south to Johns Road adjacent to The Groynes/Clearwater in the north. It is typically about one kilometre wide. The majority of the area is zoned Rural 5 – Airport Influences. Agriculture and horticulture are the dominant land use activities. However, urban activities have increasingly started to influence the character of the area – these include the airport, lifestyle living and small amounts of commercial activity.
5. The decision on Proposed Change 1 (PC 1) to the Canterbury Regional Policy Statement included the NWRA within the Metropolitan Urban Limits for Christchurch, and identified it as a Special Treatment Area (STA 1). Policy 12 addresses the STA's. In relation to the NWRA it states:

Specific analysis and planning shall be undertaken to achieve the sustainable management of the natural and physical resources of the following areas and to meet the stated expectation:

a) In Northwest Christchurch (STA1) to determine the medium and long term sustainable future of the area affected by airport noise.

6. The Council and its UDS partners' appeal on Plan Change 1 (PC 1) has acknowledged the need to undertake a review of the STA 1 area (NWRA), as did the Commissioners decision by calling it an STA.
7. The NWRA project has four main stages:
 1. Resource Evaluation – identifying the areas key natural and physical resources. This includes: Environmental values, Infrastructure, Amenity, Development & activities, Hazards and Cultural values. Mahaanui Kurataiao Limited (MKT) has been commissioned to undertake a Cultural Assessment of the area.
 2. Policy Framework – identifying the planning provisions that guide land use and urban growth, including: the Resource Management Act; the City Plan; Regional Policy Statement and Natural Resource Regional Plan; the Greater Christchurch Urban Development Strategy; Council Strategies and previous planning studies such as the Memorial/Russley/Hawthornden, Upper Styx/Harewood and Belfast Area Plans.

7 Cont'd

3. Consultation – preliminary information gathering exercise engaging with the community and stakeholders to identify their issues and aspirations, and to help establish a Vision for the NWRA. This will include distribution of a project leaflet within the study area, a drop in session where Council staff will be available to meet and discuss the project with individuals and stakeholders, briefing Community Boards (Fendalton/Waimairi & Shirley/Papanui), and the use of 'Have Your Say' on Council's web site to facilitate feedback.
4. Options Evaluation – developing and testing land use scenarios and making recommendations on future land use and infrastructure for the area. This will draw on the information obtained in stages 1-3, and will include rural residential and business activities, which have been indicated through the PC 1 process. It will also take into account the RoNS Western Corridor projects that are being prepared by the New Zealand Transport Agency (NZTA).
8. Stages 1 and 2 are underway. These are largely being undertaken within the Council. Stage 3 is scheduled to take place in the first quarter of 2011. This will include public consultation during February which will contribute to establishing a complete picture of the area. Stage 4 will then draw on the information gathered in the first three stages and seek to reach conclusions by the end of June 2011.
9. The findings of the study will inform decisions on future land use and infrastructure networks for the area, and any re-zoning will be undertaken as part of the District Plan review. In particular the study will contribute to the Council's ongoing Environment Court Appeals on PC 1, the City Plan review and NZTA's Western Corridor projects. This study will also enable an integrated approach to be taken with future land use options for the airport. This will assist in achieving an integrated approach to planning the city's western edge.

FINANCIAL IMPLICATIONS

10. The study will require technical assessments and consultation to be undertaken, which will incur some limited expenditure. There are no other direct financial implications arising from this non statutory study. However, it will contribute to other statutory processes, specifically Environment Court Appeals on PC 1 to the Regional Policy Statement and the District Plan review. This study will help to mitigate expenditure elsewhere. No particular financial risks are foreseen with this project.

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

11. Yes. The 2010/11 budget for the District Planning work programme, adopted by the Council and provided for in the LTCCP, includes funding for this project.

LEGAL CONSIDERATIONS

12. This is a non statutory project that is being undertaken under the provisions of the Local Government Act 2002.

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

13. This study will not have any direct policy, regulatory or financial implications for the Council or land owners. There are no formal rights for any submissions to be heard, or for any appeals to be made.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

14. This project is part of the district planning levels of service in the LTCCP.

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

15. Yes.

7 Cont'd

ALIGNMENT WITH STRATEGIES

16. The principal Strategy related to this project is the Urban Development Strategy. Other related Strategies include Public Open Space, Biodiversity, Surface Water and Water Supply.

Do the recommendations align with the Council's strategies?

17. Yes. The Policy Framework stage of the project is designed to identify the relevant Strategies that will potentially relate to the study.

CONSULTATION FULFILMENT

18. Consultation is proposed for February 2011. This will include land owners, residents, businesses and other stakeholders (including: ECan, NZTA, Christchurch International Airport Limited (CIAL) and Ngāi Tahu) in and around the study area. An information leaflet will be distributed outlining the background and purpose of the study, and seeking preliminary views from the community. At this stage the primary purpose of consultation is to gather information in respect of any issues and priorities for land use and development in the area. This will be used to inform the development of options that can then be tested. Based on the findings of this study, further consultation will then be able to take place with the community on more specific proposals for the area.

STAFF RECOMMENDATION

That the Committee:

- (a) Note the progress being made on the North West Review Area project.
- (b) Endorse the consultation stage.

8. EXPLORING NEW HOUSING CHOICES FOR CHANGING LIFESTYLES

General Manager responsible:	Mike Theelen General Manager, Strategy & Planning, DDI 941-8281
Authors:	Hugh Nicholson, Principal Adviser Urban Design

PURPOSE OF REPORT

1. To brief the Committee on a Council study entitled *Exploring New Housing Choices for Changing Lifestyles* which describes a range of housing types that would meet the density targets in the Greater Christchurch Urban Development Strategy (UDS). The study is aimed at better informing developers, architects and the general public of the wide range of potential housing types that could be used in areas where higher density housing is anticipated under the UDS.
2. The Council is a partner in the Greater Christchurch Urban Development Strategy (UDS) which seeks to establish a more compact form for Greater Christchurch. The UDS identifies a range of housing densities across the region including higher density housing in the City Centre and key suburban centres. The UDS and subsequently Plan Change 1 to the Canterbury Regional Policy Statement require new developments to achieve minimum densities of 50 households per hectare in the central city and 30 households per hectare in suburban centres.
3. This study (**Attachment 1** separately circulated) is aimed at helping the public and professionals to better visualise what these density targets might look like in new developments, and to describe a range of possible housing types which would provide attractive and liveable living environments.
4. The study covers a range of medium density housing types and includes:
 - Description of each house type and how it can fit onto typical Christchurch sections, and an analysis of the benefits for residents and neighbourhoods.
 - Three dimensional sketches and photos illustrating typical site layouts, internal plans, outdoor spaces, street frontage and vehicle access for each house type.
 - Analysis of key success factors and potential garden spaces, sustainability features, access, and privacy and outlook.
5. The study also responds to the poor quality of many existing medium density developments. It provides alternative solutions to medium density housing types using typical Christchurch plot sizes and architectural features.
6. This study will assist Council staff to work with developers and landowners around the city to promote high quality residential development. It is intended this study can help stakeholders become aware of the diverse range of choices available for medium density development.
7. It is anticipated that the study will be available on the Council and the UDS websites. It will also be distributed to professional institutes and bodies including the Property Council and the Developers Liaison Forum, and staff will offer to make presentations to these groups. If the Living 3 Living 4 Plan Change (Plan Change 53) is adopted this study would be released at the same time as the decision as a guide to the kinds of solutions that may be appropriate.

FINANCIAL IMPLICATIONS

8. There are no financial implications arising from the study.

LEGAL CONSIDERATIONS

9. There are no legal considerations arising from the study.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

10. Aligns with 2009-2019 LTCCP page 190 and 191, City and Community Long Term Policy and Planning measures and targets and the City Development Activity Management Plan.

8 Cont'd

ALIGNMENT WITH STRATEGIES

11. By increasing awareness of the range of medium density housing options that would meet the density targets in the Greater Christchurch Urban Development Strategy (UDS) the study aligns with the UDS by promoting better outcomes for development in the City in places where higher density living is anticipated.
12. The study also aligns with strategies and projects developed to implement the UDS including the Central City Revitalisation Strategy, the Central City South Masterplan and A City for People Action Plan. The designs in the study generally meet the proposed requirements in the Living 3 Living 4 Plan Change (Plan Change 53).

CONSULTATION FULFILMENT

13. Consultation is not required.

STAFF RECOMMENDATION

It is recommended that the Committee receives the study entitled *Exploring New Housing Choices for Changing Lifestyles* for information.

2. 2. 2011

9. BRIEFING ON SYDENHAM TOWN WORK POST EARTHQUAKE

Staff will provide a presentation on Sydenham Town Work post earthquake.

10. BRIEFING ON BUILDING CONSENTS AND TIMELINESS

Report to be separately circulated.

11. ELECTION OF DEPUTY CHAIRPERSON

12. PROPOSED TERMS OF REFERENCE

General Manager responsible:	General Manager, Strategy and Planning Group, DDI 941-8281
Officer responsible:	General Manager, Strategy and Planning Group
Author:	Mike Theelen, General Manager, Strategy and Planning Group

PURPOSE OF REPORT

1. The purpose of this report is to present the proposed Terms of Reference for the Regulatory and Planning committee and to recommend their adoption to Council.

EXECUTIVE SUMMARY

2. The format of each Committee follows a standard approach. It is the intention of Council that the Committee's are largely policy focussed, within the agreed strategy and policy framework adopted by Council.

The Regulatory and Planning Committee has responsibility for a number of bylaws, and for the management of the overall bylaw programme on behalf of Council, to ensure that these are monitored, reviewed and updated as part of a comprehensive programme.

3. The Committee also has responsibility for a number of other delegated bodies, notably council Hearings Panels, and the Submissions Panel. The Regulatory and Planning Committee will need to provide oversight to these, and be the conduit for these to report to Council.
4. There are a number of additional specific delegates which the Committee has, which Council has already resolved upon. While not urgent it is desirable that these be reviewed at some time during the term of the Committee to ensure they remain relevant and up to date.

STAFF RECOMMENDATION

That the Committee recommend to the Council that it adopt the proposed Regulatory and Planning Committee 2010-2013 Terms of Reference.

13. PROPOSED DRAFT FOR AN ORDER IN COUNCIL FOR HERITAGE

General Manager responsible:	Mike Theelen General Manager
Officer responsible:	Carolyn Ingles, Liveable City Manager
Author:	Neil Carrie, Principal Advisor Heritage

PURPOSE OF REPORT

1. The purpose of this report is to provide a summary of proposed changes to the Resource Management Act, through an Order in Council for Heritage, consistent with the Canterbury Earthquake Response and Recovery Act (2010).

EXECUTIVE SUMMARY

2. Based on the assessments undertaken by Christchurch City Council approximately 400 heritage buildings are estimated to have damage of some form within Christchurch City and Banks Peninsula. Recent aftershocks have continued to cause damage to heritage buildings. Selwyn District Council have identified approximately 45 damaged heritage buildings, and Waimakariri District Council approximately 62 heritage buildings. The majority of these will require resource consents for repair, alteration or demolition.
3. A number of the current statutory processes under the Resource Management Act 1991 (RMA) do not adequately recognise the circumstances resulting from the Canterbury earthquake event. In response the Council resolved at the meeting of 6 October 2010 to:

“Approve that officers work with the relevant government departments to seek an Order in Council from the Government to address the streamlining of the resource consent process for heritage buildings, as outlined in paragraph 46 of this report” with one further detailed amendment outlined in the Background section of this report.

4. A more timely and effective response is required for the processing of resource consents for listed/scheduled heritage buildings which are a result of the earthquake on 4 September 2010 and subsequent aftershocks. It is crucial that local Districts and communities affected by the earthquake and subsequent aftershocks recover quickly economically and socially. The streamlining of planning processes will support recovery, while still ensuring equitable and appropriate outcomes for the affected communities.
5. The proposed Order in Council (OIC) for Heritage) has focussed on the outcomes anticipated by the Canterbury Earthquake Response and Recovery Act 2010 (CERRA) which can be achieved through specific changes to the RMA. Internal and non-regulatory approaches to achieve improved processes do need to be considered as well as statutory and regulatory planning consent processes. The Council report of 6 October 2010 introduced measures achievable through both approaches. Where internal or existing powers may be appropriately used, it is proposed that these be dealt with outside the provisions of an OIC for Heritage. External measures include taking a pro-active approach with building owners for heritage retention, and consideration for Grant Funding assistance from the Canterbury Earthquake Heritage Fund. Internal measures could include the streamlining of consent procedures which are within the existing scope of Council authority.
6. An OIC for Heritage provides a statutory regulation consistent with the purpose of CERRA. An OIC for Heritage applies for a fixed period of time, applies only to affected Councils and may relate only to issues which arise in this instance because of the Canterbury earthquake.
7. The Territorial Authorities to which this OIC for Heritage would apply are the Christchurch City, Selwyn District and Waimakariri District Councils. In this instance the OIC for Heritage would apply to heritage buildings which are listed or scheduled in District Plans in the afore mentioned districts that have been affected by the earthquake of 4 September 2010 and the subsequent aftershocks. The time period that this proposed OIC for Heritage will be in force is until 1 April 2012.
8. The following changes to the RMA are proposed for an OIC for Heritage under CERRA in response to the Council resolution of 6 October 2010,

13 Cont'd

9. When the Council passed the resolution on 6 October 2010 a list of possible OIC provisions were noted. Discussions with staff from the relevant ministry, legal counsel, and further reflection by Council staff, has led to a smaller list being recommended for incorporation into an OIC and are noted in paragraph 10. The reasons for not including some previously identified provisions is outlined in the Background section of this report.
10. The proposed changes to the RMA provisions through an OIC for Heritage are summarised as follows:
 - (a) Rights of Appeal: appeals to be limited to the High Court on matters or points of law.
 - (b) Assessment of the effects on the environment for decisions on public notification: recognition of the adverse effects resulting from the earthquake and aftershocks.
 - (c) Planning Activity Standards for heritage: removal of controlled activities from heritage District Plan provisions and replacement with a restricted discretionary activity status.
 - (d) Scope of Discretion for Restricted Discretionary Activities: increase the scope of discretion to include recognition of the effects of the Canterbury earthquake.

Consultation has continued with the MfE, and Selwyn District and Waimakariri District Councils and broad agreement has been reached on the proposed scope of the draft OIC for Heritage. Consultation has been carried out with the NZHPT in relation to an earlier draft OIC proposal. The proposal before Council now addresses the major points raised by the NZHPT in relation to earlier draft proposals.

Explanation of proposed changes

11. The benefits of the proposed changes sought through the proposed OIC for Heritage include a range of more specific provisions than are currently provided for in the RMA. Whilst robust internal processes for assessing applications could deal with the matters identified in (b) and (d) the risk of appeal is greatly increased in these circumstances through the lack of testing through the Courts. The specific inclusion of statutory provisions through an OIC for Heritage will therefore increase the certainty and significantly reduce the risk of appeals, which may otherwise extend the time for planning processes. The matters identified in (c) and (d) could be addressed through changes to district plan provisions, however this would require a plan change by each local authority and would follow first schedule RMA processes for district plan changes and would not be certain or quick.

(a) Rights of Appeal

Appeals on publicly notified decisions will be limited to Declarations or Appeals to the High Court. These appeals will therefore be on points of law or legal process. Other RMA processes on notified heritage planning consent applications will be maintained including submissions on notified applications which will recognise and provide for the continuing opportunity for public input to notified planning processes.

Appeals to the Environment Court on substantive planning decisions can extend decision time frames to two years or more. It is considered that this aspect of the planning process may not facilitate or achieve optimal planning outcomes where effective and timely planning decisions are essential for meeting community and financial needs. The risk of legal challenge and any consequential extension of time frames for decisions is anticipated to be significantly reduced.

The proposed OIC for Heritage could achieve this through an amendment to Part 11 of the RMA which provides for Environment Court proceedings.

(b) Assessment of the Environment for decisions on public notification

13 Cont'd

The RMA assessment for adverse effects should recognise the change to the state of the environment as a consequence of the Canterbury earthquake. The RMA provides for public notification of an application if an assessment of the adverse effects of the activity are more than minor. The RMA through this process does not provide for assessments where there has been a substantive adverse effect on the environment other than those which may have been anticipated by a District Plan. The earthquake event of 4 September 2010 and subsequent aftershocks has in some cases damaged buildings to the extent that they are so compromised that the building would no longer have the heritage values that would support continued listing in the district plan. In these circumstances the assessment of adverse effects on the environment with respect to damaged heritage buildings is the additional adverse effects of demolition on heritage fabric and values.

It is not intended that adverse effects on heritage buildings should be exempted from notification where heritage fabric and values are largely recoverable, or where loss of fabric may be from other causes.

Public notification is a more extended planning process where decisions can be of 70 days working days or more in comparison with the 20 working days for non-notified applications. The earthquake and aftershocks have created circumstances where heritage buildings may be deemed to be unrecoverable to the extent that there may not be any continuing relevance in their inclusion in District Plan heritage listings and planning provisions. Where this circumstance arises these additional adverse effects should be regarded as minor or less than minor. The test for whether the adverse effects are not more than minor should recognise the consequence of the earthquake and aftershocks on heritage buildings in weighing up any lack of public and individual benefit from a notified planning process.

The proposed OIC for Heritage could achieve this through recognition in sections 95A – 95E RMA of the consequential adverse effects of the Canterbury earthquake on heritage buildings.

(c) Planning Activity Standards for Heritage

Heritage is a Matter of National Importance under section 6 of the RMA and controlled planning activity status could be removed through the OIC for Heritage and replaced with a restricted discretionary status to more appropriately reflect the recognition provided for heritage by the RMA.

The RMA when initially promulgated recognised heritage as “Matters to have regard” under s7 of Part II of the Act. Subsequently the status of heritage was recognised through the Resource Management Amendment Act (2003) as a section 6(f) “Matters of National Importance”.

Planning consent applications for controlled activities cannot be declined, but may only have conditions applied. District Plan Objectives, Policies and Rules for heritage retention do not anticipate the substantial scale of adverse effects on heritage buildings where these may be as severely compromised as a result of the Canterbury earthquake. Given the potential scale of adverse effects it is not considered appropriate that provision should be made for controlled heritage planning activities.

The Christchurch City Plan currently has a controlled activity status for alterations and partial demolition of Group 4 listed buildings.

The proposed OIC for Heritage could achieve the removal of controlled activities, in relation to heritage activities arising from the Canterbury earthquake, through an amendment to section 77A of the RMA. Controlled activities could then be dealt with as restricted discretionary activities under the provisions of the RMA.

(d) Scope of Discretion for Restricted Discretionary Activities

It is proposed to increase the scope of discretion to include recognition of the effects of the Canterbury earthquake when assessing restricted discretionary activities.

13 Cont'd

The scope of discretion provided through rules in District Plans relating to heritage does explicitly acknowledge the consequences of an event such as the Canterbury earthquake on heritage buildings. There is a need to make specific reference through the RMA to a wider discretion than may otherwise have effect through the District Plan rules to recognise the adverse effects of the earthquake on heritage buildings. Such a reference will provide greater certainty when assessing applications and consequently reduce the risk of legal challenge.

The proposed OIC for Heritage could achieve this through an amendment to section 77B of the RMA.

FINANCIAL IMPLICATIONS

12. There are no direct financial implications arising from the adoption of a OIC for Heritage. The resources necessary to deal with the consequences of the earthquake, which will include an increase in resource consent applications, are anticipated to be reduced overall if streamlined and improved processes are achieved.

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

13. The Canterbury Earthquake was not anticipated by the 2009-19 LTCCP, however, there are no direct financial impacts from this proposed OIC for Heritage. Staff time in preparing and consulting on the OIC for Heritage proposal will be within existing LTCCP budgets.

LEGAL CONSIDERATIONS

14. The CERRA enables the Governor-General, by Order in Council made on the recommendation of the Minister, to make any legislative change to the listed statutes as is reasonably necessary or expedient for the purpose of CERRA. The purpose of CERRA includes to facilitate the response to the Canterbury earthquake, and relaxing or suspending statutory provisions that are not reasonably capable of being complied with, or complied with fully, owing to circumstances resulting from the Canterbury earthquake. It is for the Minister to decide whether to promulgate an OIC for Heritage..

Officers consider that the request for an OIC for Heritage to streamline the process for resource consent applications for listed/scheduled heritage buildings damaged as a result of the earthquake and aftershocks is consistent with the purposes of CERRA.

The options for the changes to the legislative framework to seek in an OIC for Heritage are numerous. The OIC for Heritage process is one in which the legislative change result from a process including Canterbury Earthquake Recovery Commission input, Ministry for the Environment (MfE) officer input, Parliamentary Counsel Office drafting and Ministerial views, and may be quite different from the OIC for Heritage sought by the Council. The full details of the OIC for Heritage drafting will be the responsibility of the Parliamentary Counsel Office acting under the guidance of the MfE, and are not discussed in this report

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

15. Yes.

13 Cont'd

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

16. The earthquake was not anticipated and therefore there is no specific provision for this initiative. Related Community Outcomes are *'An attractive and well-designed City'* (LTCCP 2009-19, page 50). 'Community Outcome 9. Development' provides for, among other things, ensuring *"our lifestyles and heritage are enhanced by our urban environment"* (page 54). One of the success measure is that *"Our heritage is protected for future generations"* (page 54). *"Progress will be measured using these headline indicators ... number of heritage buildings, sites and objects."* (page 54). Within the 'Activities and Services' section of the LTCCP, is 'City planning and development' which aims to help improve Christchurch's urban environment, among other things. One of the activities included in 'City planning and development' is 'Heritage protection'. *"A city's heritage helps to sustain a sense of community identity, provides links to the past, and helps to attract visitors. The Council is committed to protecting the heritage of our city and works with developers, landowners and other stakeholders to conserve heritage buildings, areas and other items"* (page 187).

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

17. No.

ALIGNMENT WITH STRATEGIES

18. The proposed OIC for Heritage to the extent that this achieves heritage protection, is aligned with the following strategies and policies:
- Heritage Conservation Policy, which in turn is relevant to:
 - Greater Christchurch Urban Development Strategy (UDS)
 - Central City Revitalisation Strategy
 - New Zealand Urban Design Protocol

Do the recommendations align with the Council's strategies?

19. Yes, see above.

CONSULTATION FULFILMENT

20. Consultation with regard to the draft OIC for Heritage has been carried out with other affected Local Authorities (Selwyn and Waimakariri District Councils). These Councils are supportive of the scope of the proposed OIC for Heritage.

Consultation with Central Government agencies has been continuing principally with the MfE as lead agency. The MfE are in general agreement with the approach proposed for the OIC for Heritage and wish to progress the provisions of this OIC.

The New Zealand Historic Places Trust (NZHPT) were also consulted with on a previous draft OIC for Heritage which covered:

1. Amending the RMA to consider exceptional circumstances
2. New Assessment Matter for District Plans which considers the effect of the earthquake
3. Improved protection for Group 4 buildings
4. Reduced time periods for processing notified consent applications
5. Reduced appeal rights

The NZHPT provided detailed comments. Their concerns were that the scale of the problem did not necessarily justify an OIC for Heritage, and that in their view OIC's should focus on changes to legislation, in this case the RMA rather than District Plan Changes. The NZHPT's comments have been reviewed and the present draft OIC for Heritage provisions addresses items 1, 2, and 4. Further discussion is continuing with regard to items 3 and 5.

13 Cont'd

Following consideration by this Council the proposal will be used as the basis for drafting the OIC for Heritage which the Canterbury Earthquake Commission will be formally requested to advise on. Cabinet and the Executive will be required to recommend the OIC for Heritage to the Governor General for approval and gazettal.

Consultation has also occurred regarding the OIC for Heritage with Council's legal external advisors Simpson Grierson, Legal Services and the MfE's Senior Legal Advisor.

STAFF RECOMMENDATION

That the Committee recommend to the Council that it:

- (a) Endorses this report as the basis for pursuing a Order in Council for Heritage to facilitate the processing of resource consents for earthquake related activities on listed/scheduled heritage buildings through amendments to the Resource Management Act.
- (b) Instructs Council staff to:
 - (i) forward this report to the Ministry of the Environment so that the process of developing an Order in Council for Heritage can progress, and;
 - (ii) contribute advice and coordinate a timely response to the Ministry of the Environment as requested once the Order in Council for Heritage has been drafted by Parliamentary Counsel Office and is available for comment.
- (c) Consider the draft OIC once completed prior to making any recommendation on it to the Canterbury Earthquake Recovery Commission.

13 Cont'd

BACKGROUND

Scale of Impact

21. The Canterbury earthquake is regarded as the largest natural disaster in recent New Zealand history. This has resulted in significant and widespread damage throughout the region, including ground, infrastructure and building damage. This damage has had a significant negative impact on the functioning and well-being of local communities in the Canterbury region and in particular for greater Christchurch.
22. The Christchurch City Council has undertaken assessments of both heritage and other buildings in the commercial zones and assigned red, yellow, and green placards which indicate the scale of the damage. The placards were applied during an initial visual assessment on buildings within the City. Buildings assessed focussed on the central city and the main city thoroughfares and did not include all buildings potentially affected by the earthquake.
23. There are approximately 916 heritage items listed in the Christchurch City Plan and the Banks Peninsula District Plan. Based on the assessments undertaken approximately 400 heritage buildings were estimated to have damage of some form, approximately 40% of listed buildings. Additional damage continues to arise with frequent aftershocks. The majority of these will require resource consents for repair, alteration or demolition. Selwyn District Council have identified approximately 45 damaged heritage buildings, and Waimakariri District Council approximately 62 heritage buildings. However, it is not just the numbers of potential affected buildings but also the adverse effects on the heritage values of listed heritage buildings which need to be taken into account. It is considered that the 40% or greater of damaged heritage buildings in Christchurch constitutes a major threat to the heritage resource of the City.
24. Where buildings are considered to be an "immediate danger" to public safety a demolition warrant can be issued under section 129 of the Building Act for immediate demolition without resource consent. Only two such warrants have been issued to date by Christchurch City Council. The Councils have been mindful of not acting in haste where heritage buildings may have been substantially damaged, and applying section 129 of the Building Act only in exceptional circumstances for specific buildings. Where a damaged heritage building does not meet section 129 criteria a standard resource consent process would be required for any demolition, partial demolition or alteration.
25. Five listed heritage buildings have been demolished since 4 September 2010 (two were issued section 129 warrants due to the immediate danger they presented, one resource consent granted for demolition, and two demolished immediately following the earthquake). No other listed heritage buildings currently have consent for demolition although staff are currently processing consent applications. A number of character buildings have been demolished and these contribute to our sense of built 'heritage' although they have no protection through the Christchurch City Plan or Banks Peninsula District Plan.
26. To date the Christchurch City Council has received 24 applications for resource consents for heritage buildings related to demolition/partial demolition or alteration. These represent a very small proportion of expected applications based on the damage sustained and the number of pre-application discussions with building owners. It is expected that resource consent applications due to earthquake damage will be spread over a considerable time period and are expected to peak over the coming three to six months as owners work with their insurers and assessors to resolve claims.

13 Cont'd

Council Resolution of 6 October 2010

27. As noted above the Council considered a report on 6.10.2010 with respect to pursuing an OIC for Heritage.

The Staff Recommendation for this meeting requested:-

"... Council approval for seeking an OIC in accordance with the following broad framework:

1. *Enabling the Council to establish an independent panel of experts to decide all matters concerning resource consent applications for change to heritage buildings resulting from earthquake damage.*
2. *If the Panel decides to notify an application, the submission period is considerably shortened from the current minimum 20 working days required by the RMA.*
3. *Only the applicant has a right of appeal. The Canterbury Earthquake (Historic Places Act) Order (2010) provided that the right of appeal against a decision concerning disturbance of an archaeological site is restricted to the applicant. This Order in Council would seek a similar provision.*
4. *For demolition of Group 1 or 2 heritage buildings listed in the City Plan that cannot feasibly be saved, alter the activity status from non-complying to discretionary. Reason: the non-complying activity threshold test in the RMA may mean that resource consent for demolition cannot be granted.*
5. *For restoration and reinstatement of Group 1-3 heritage buildings listed in the City Plan, alter the activity status from discretionary to controlled.*
6. *Insert new assessment criteria in the relevant parts of the City Plan so that the decision making criteria include the impact of the earthquake on heritage buildings.*

These recommendations were approved but in addition the Council agreed that paragraph 46.1 of the staff report should be amended to read:

"Enabling the Council to establish an independent panel of experts/Councillors/Commissioners to decide all matters concerning resource consent applications for change to heritage buildings resulting from earthquake damage".

28. The following points have been considered in relation to this broad framework proposed in the report and the Council recommendations.

1. *Enabling the Council to establish an independent panel of experts to decide all matters concerning resource consent applications for change to heritage buildings resulting from earthquake damage.*

The Council already has the power to appoint appropriate Commissioners, and/or Hearings Panels for this purpose and no further statutory authority is required to respond to these requirements through an OIC for Heritage.

2. *If the Panel decides to notify an application, the submission period is considerably shortened from the current minimum 20 working days required by the RMA*

There are current limits in the RMA on time periods for planning decision processes. Consideration of these individual time periods reflect a minimum workable time frame to adequately address information requests, assessments, submission periods, reporting and decision making. It is therefore not proposed to further limit the existing times periods as further restrictions would have very limited overall benefits and significant dis-benefits in ensuring appropriate planning outcomes.

13 Cont'd

3. *Only the applicant has a right of appeal. The Canterbury Earthquake (Historic Places Act) Order 2010 provided that the right of appeal against a decision concerning disturbance of an archaeological site is restricted to the applicant. This Order in Council would seek a similar provision.*

The rights of appeal have been extensively discussed with the MfE Senior Legal Advisor, LSU and the NZHPT. The consensus is that there should be no rights of appeal to the Environment Court on substantive matters. There is a statutory right for appeal to the High Court, which is proposed to remain.

4. *For demolition of Group 1 or 2 heritage buildings listed in the City Plan that cannot feasibly be saved, alter the activity status from non-complying to discretionary. Reason: the non-complying activity threshold test in the RMA may mean that resource consent for demolition cannot be granted*

Non-complying activities may in particular circumstances be contemplated for approval as established through current case law. These circumstances are:

- that approval would not constitute an undermining of the Objectives and Policies of the Plan
- that there would not be a wider precedent created by the approval

It is considered that a non-complying activities are otherwise an appropriate status reflecting the intent of the Plan. It is not considered that these circumstance will generally arise.

5. *For restoration and reinstatement of Group 1-3 heritage buildings listed in the City Plan, alter the activity status from discretionary to controlled.*

Restoration and re-instatement are matters which require to be consistent with good heritage conservation practice such as promoted through the ICOMOS (NZ) Charter which is the nationally recognised Heritage Conservation Charter. Controlled activities are those which cannot be declined and are therefore contemplated as acceptable to a District Plan. Heritage retention as a Matter of National Importance under the RMA is seen to be inconsistent with this planning activity status if the application is inconsistent with good conservation practice. Further definitions would be required in District Plans and would still pose difficulties for appropriate management of controlled activities. Both 4) and 5) are also not recommended by the NZHPT.

6. *Insert new assessment criteria in the relevant parts of the City Plan so that the decision making criteria include the impact of the earthquake on heritage buildings.*

The provision of an assessment matter relating specifically to the effects of the Canterbury earthquake for heritage activities is proposed for the OIC for Heritage.

Process for Developing an Order in Council

29. Once the Council have endorsed this report outlining the components of an OIC for Heritage this will be forward to the Ministry of the Environment who are the lead central government agency on this matter. The Ministry for the Environment will the have the responsibility of briefing the Minister for the Environment who will consider whether the proposal requires Cabinet approval for the drafting of the OIC. The OIC for Heritage will be drafted by the Parliamentary Counsel Office (PCO) acting upon drafting instructions issued by the Ministry for the Environment.
30. Once a drafted OIC is available, there will be an opportunity for affected local authorities to comment on the draft and then advice will be formally sought from the Canterbury Earthquake Recovery Commission consistent with s. 10(a)(i) CERRA.

13 Cont'd

31. The draft OIC, a regulatory impact statement and accompanying Cabinet Paper will be considered by the Officials Cabinet Committee, before being endorsed by the Ad-hoc Committee for the Earthquake who authorise the item for consideration by Cabinet.
32. The Minister for the Environment recommends the OIC to Cabinet/Executive Counsel who in turn advise and consent that the Governor General act in accordance with the recommendation. The Governor General then formally makes the OIC and has it gazetted (which appears in the Gazette 28 days later). In practise the Governor General actions occur at the same time as the meeting of Cabinet/Executive Counsel.

2. 2. 2011

14. RESOLUTION TO EXCLUDE THE PUBLIC

(Attached)

16. COUNCIL HEARINGS PANEL AND RMA TRAINING

Report to be separately circulated.

2. 2. 2011

REGULATORY AND PLANNING COMMITTEE

RESOLUTION TO EXCLUDE THE PUBLIC

Section 48, Local Government Official Information and Meetings Act 1987.

I move that the public be excluded from the following parts of the proceedings of this meeting, namely item 15.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

	GENERAL SUBJECT OF EACH MATTER TO BE CONSIDERED	REASON FOR PASSING THIS RESOLUTION IN RELATION TO EACH MATTER	GROUND(S) UNDER SECTION 48(1) FOR THE PASSING OF THIS RESOLUTION
PART A	15. BELFAST SECTION 293 – LEGAL UPDATE) GOOD REASON TO) WITHHOLD EXISTS) UNDER SECTION 7	SECTION 48(1)(a)

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public are as follows:

Item 15. Maintain legal professional privilege (Section 7(2)(g))

Chairman's Recommendation: That the foregoing motion be adopted.

Note

Section 48(4) of the Local Government Official Information and Meetings Act 1987 provides as follows:

- “(4) Every resolution to exclude the public shall be put at a time when the meeting is open to the public, and the text of that resolution (or copies thereof):
- (a) Shall be available to any member of the public who is present; and
 - (b) Shall form part of the minutes of the local authority.”