

Residential Unit Overlay District Plan Changes

Proposal to exercise power under section 71 of the Greater Christchurch Regeneration Act 2016

Proposal to amend the Christchurch District Plan to provide policy support for the Residential Unit Overlay and broaden the application of an existing rule which permits replacement of existing houses

November 2018

1. Issue

- 1.1. The Christchurch District Plan identifies and regulates activities in the High Flood Hazard Management Area. This approach is considered necessary due to the high risk to people and property in a very large flood event. The Residential Unit Overlay applies to the part of the High Flood Hazard Management Area where the predominant flooding influence is from future sea level rise, rather than from rainfall and river flooding. There are 1486 sites in total within the Residential Unit Overlay, which applies to parts of New Brighton, South New Brighton, Southshore and Redcliffs.
- 1.2. The Residential Unit Overlay has a more enabling rule than the remainder of the High Flood Hazard Management Area, which provides a pathway for residential units to be rebuilt and constructed where matters such as floor levels, building design, flood effects, intensification, safe access and egress, and reducing the risk are considered. However, a lack of specific policy direction to support the Residential Unit Overlay has created confusion and uncertainty for people seeking resource consent, particularly where the intention is to erect a permanent building on a currently vacant site in this area. There are 74 vacant sites within the Residential Unit Overlay.¹ Most of these vacant sites are in Southshore and Redcliffs, areas which suffered significant damage in the earthquakes.
- 1.3. There are also a number of properties where houses have been demolished due to earthquake damage which are unable to use a rule which provides for the replacement of existing buildings as a permitted activity, similar to existing use rights. This is due to the demolition occurring before the rule gained legal effect, which has resulted in these properties being required to seek resource consent for a new house. This has created a fairness and equity issue. The Council has record of 32 demolitions in the area between 2011 and 2017, which is the approximate number of sites which may be affected.

2. Solution

- 2.1. To resolve this issue, an amendment to the High Flood Hazard Management Area policy is proposed, to support the Residential Unit Overlay. A draft policy that was provided to the Independent Hearings Panel during their consideration of the natural hazards chapter of the District Plan was used as a starting point. Further changes were made to ensure the geographic scope was appropriately restricted to areas where the flood risk is predominantly affected by sea level rise, and to qualify the purpose of any “appropriate mitigation” to protect people’s safety, well-being and property from “unacceptable risk”.
- 2.2. An additional rule amendment was also developed to broaden the application of the existing rule providing for the replacement of buildings as a permitted activity. The intent of the proposed rule change is to address the fairness issue described in paragraph 1.3 above by permitting replacement houses on sites within the Residential Unit Overlay which had a house on them prior to the earthquakes, where the house is to be rebuilt in a similar scale, size and position on the site.

¹ As at the time last calculated by Council as part of a desktop exercise to provide information requested in a Minute of commissioners in relation to information sought and procedural issues (dated 22 May 2018) for hearing of the resource consent application at 153 Main Road, Redcliffs (RMA/2017/1413). Sites where the Residential Unit Overlay area is less than 0.5% of the total site have been excluded.

3. Intended outcomes

[What is the exercise of power intended to achieve (section 65(2)(a))]

- 3.1. The exercise of power under section 71 of the Greater Christchurch Regeneration Act would facilitate a timely resolution of this matter, provide greater certainty to communities rebuilding in earthquake damaged areas, and allow a number of earthquake damaged houses to be rebuilt without the need for resource consent.
- 3.2. The changes proposed will allow for different levels of assessment of resource consent applications in the High Flood Hazard Management Area based on the immediacy of risk, appropriateness of mitigation, and pre-earthquake use of a site. These different levels of assessment are not available under the existing policy and rule framework in the District Plan.
- 3.3. These amendments are consistent with the overarching approach in the District Plan, and are targeted to the areas affected within the Residential Unit Overlay, and some areas in the broader High Flood Hazard Management Area which are also predominantly influenced by sea level rise, but not originally captured in the Residential Unit Overlay.
- 3.4. With regard to the change to the permitted activity rule, resource consent will still be required, if the site was vacant prior to the earthquakes, if there is a change in the ground floor size, scale and location of any replacement, or the property is located outside the Residential Unit Overlay.
- 3.5. With regard to the proposed change to the policy, resource consent may be granted where the future risk from coastal flooding is able to be appropriately mitigated to an acceptable level through measures such as acceptable floor levels, foundation design, ability to relocate, safe access and egress, and limits on the duration of the consent based on either years or extent of sea level rise.
- 3.6. The proposed amendments will not change the current situation for vacant sites within the remainder of the High Flood Hazard Management Area where flooding risk is not predominantly influenced by sea level rise. For these sites the existing 'avoid' policy will still apply, which is appropriate as in these locations there is already a high hazard risk from river and rainfall flooding.

4. Proposed Amendments to the Christchurch District Plan

[Which instruments will the exercise of the power apply to and for how long (section 65(2)(b))]

- 4.1. The instrument that the exercise of the power will apply to is the Christchurch District Plan, limited to one rule and one policy in Chapter 5 Natural Hazards, (and consequential amendments to rule numbers and cross-references) and will apply unless and until those District Plan provisions are subsequently changed by lawful process.
- 4.2. This proposal relates to the areas within the Residential Unit Overlay, which is a subset of the areas within the High Flood Hazard Management Area in the Christchurch District Plan (**Appendix A**). The policy change will also apply to some areas within the broader High Flood Hazard Management Area which are also predominantly influenced by sea level rise, but were not originally captured in the Residential Unit Overlay.

4.3. Through the Minister’s exercise of powers under section 71, the proponent is seeking to:

- Amend Natural Hazards Policy 5.2.2.2.1(b); and
- Add a new permitted activity rule 5.4.6.1 P2 in the Christchurch District Plan, along with any consequential amendments to the rule numbering and cross referencing in other provisions in order to make this change.

4.4. The specific amendments proposed are outlined below:

5.2.2.2.1 Policy – Flooding

- a. ...
- b. **In the High Flood Hazard Management Areas:**
 - i. **provide for development ~~for~~ of a residential unit on residentially zoned land where the flooding risk is predominantly influenced by sea-level rise and where appropriate mitigation can be provided that protects people’s safety, well-being and property from unacceptable risk; and**
 - ii. **in all other cases, a**Avoid subdivision, use or development in the High Flood Hazard Management Area where it will increase the potential risk to people’s safety, well-being and property.
- c. ...

5.4.6.1 Permitted activities

Activity	Activity specific standards
P1	...
P2	<p><u>The replacement and repair of residential units existing as at 4 September 2010 on sites in the Residential Unit Overlay identified in Appendix 5.8.2.</u></p> <p><u>a. The ground floor area of the replaced or repaired residential unit is not greater than the ground floor area of the residential unit that existed as at 4 September 2010.</u></p> <p><u>b. The replaced or repaired residential unit is located in the same or similar position on the site as the residential unit that existed as at 4 September 2010.</u></p>
P3- P9	...

And minor changes to rule numbers and cross-referencing consequential to the above changes.

5. Alignment with the purposes of the Greater Christchurch Regeneration Act

[How the exercise of the power will meet one or more purpose/s of the GCR Act (section 65(2)(c))]

Enabling a focused and expedited regeneration process (section 3(1)(a))

5.1. The current policy and rule framework is restricting ongoing rebuilding and regeneration in the Residential Unit Overlay areas, which were significantly affected by the earthquakes. Amending the policy as proposed will provide greater clarity and certainty for some owners rebuilding on sites as a result of earthquake damage, about what they can and cannot do in these areas.

5.2. This proposal will also assist in improving the future resilience of communities by ensuring the “unacceptable risk” of flooding in the future in the Residential Unit Overlay area as a result of sea level rise is appropriately mitigated.

Enabling community input into decision on the exercise of powers under section 71 (section 3(1)(c))

5.3. Early engagement with affected residents has enabled input in decision making on this issue. Representatives of affected community boards, Residents’ Associations, and the Christchurch Coastal Residents United were invited to a workshop during the drafting process in order to discuss the proposed changes and the potential implications, and provide an opportunity for feedback.

5.4. If the Minister decides to proceed with the proposal, after considering the views of strategic partners, the Section 71 process enables wider community input by allowing the public to provide written comments which the Minister must take into account before making the final decision on exercising the power.

Recognising local leadership and providing them a role in local decision making (section 3(1)(d))

5.5. The Christchurch City Council, as statutory administrators of the Christchurch District Plan have recognised there is an issue with the provisions relating application of the Residential Unit Overlay provisions, and have developed a proposal to exercise power under section 71 of the Greater Christchurch Regeneration Act 2016 to resolve this. Accepting this proposal would recognise and support the local leadership of the Christchurch City Council on this issue.

6. Necessity and consideration of alternatives

[Why the exercise of the power is necessary and preferable to any alternatives (section 65(2)(d))]

6.1. The necessity for the proposed amendments to the District Plan arises from:

- The lack of specific policy support for the Residential Unit Overlay rule, which has created confusion and uncertainty for people seeking resource consent to build on within that area, particularly on vacant sites; and
- Issues of fairness and equity for owners of houses which have been demolished as a result of earthquake damage where some are permitted by the District Plan to rebuild without the need for resource consent, while others are not.

6.2. Council considers it would be beneficial to introduce a specific policy in the District Plan to clarify the outcomes anticipated for the Residential Unit Overlay area and broaden the application of the existing rule, which provides for the replacement of buildings that were demolished following the earthquakes as a permitted activity within the Residential Unit Overlay. This will enable regeneration outcomes noted in section 5 above.

Consideration of alternatives

6.3. The Council has considered a number of alternatives to using the section 71 process and none are able to achieve a resolution to this issue with the same efficiency and certainty. As the only changes sought in this case are a discrete policy amendment and a discrete rule addition, a

section 71 proposal provides more control of, and certainty of scope. This is due to the Minister only being able to accept or decline the proposal following public comment, and the decision being made by the Minister rather than, for example, a hearing panel.

6.4. Due to the continued existence and effect of the Canterbury Earthquake (Christchurch Replacement District Plan) Order in Council 2014, the Council cannot notify a proposed plan change under the RMA process while the order is in effect. This Order in Council constrains all plan change processes under the Resource Management Act 1991, including streamlined and private plan change processes. In January 2018, the Council asked the Minister to revoke the Order in Council, primarily to allow the Council to undertake plan changes.

6.5. Some of the alternatives such as continuing with the status quo or seeking an Environment Court declaration as to the correct interpretation of the policy in respect of the Residential Unit Overlay rule, would fail to change the current situation for the community and would not resolve issues of fairness, equity, and uncertainty.

6.6. The following table outlines and evaluates the alternatives considered:

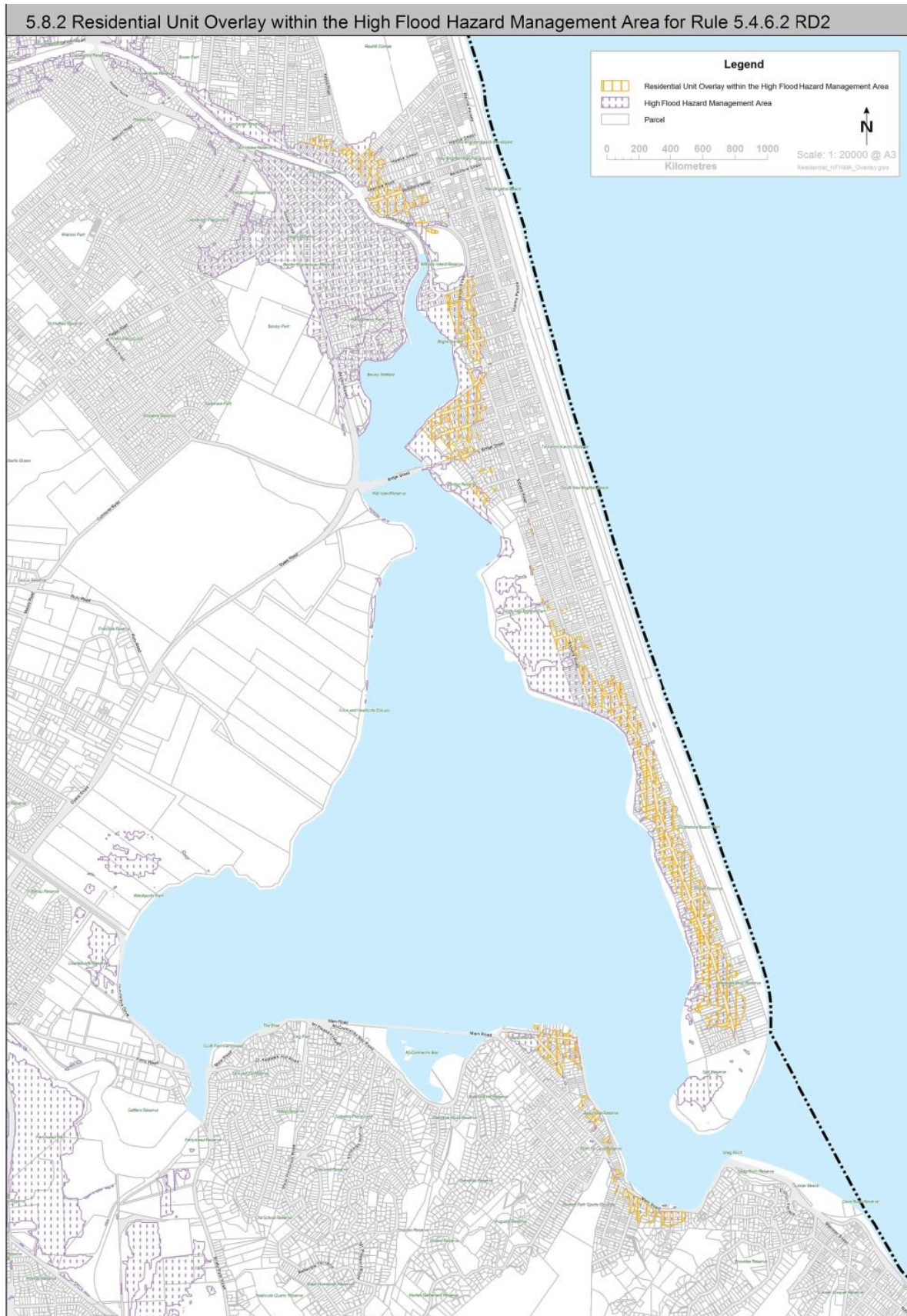
Process option	Description and evaluation of alternative
No change	<p>Council staff would continue advising applicants, on a site by site basis, on the likely way that the policy will be applied to proposals for dwellings in the Residential Unit Overlay. Resource consent applications would continue to be assessed under the policy that was determined by the IHP in Decision 53.</p> <p>This would continue to pose issues of fairness and equity, and prolong uncertainty.</p>
Environment Court declaration	<p>Council could apply to the Environment Court for a declaration as to the correct interpretation of the planning provisions for RUO sites based on the existing objectives and policies.</p> <p>This would require identifying a willing applicant to agree to a referral to the Environment Court. It could ultimately result in interpretation that creates the same issues of fairness, equity, and uncertainty.</p>
Plan change	<p>Several variants of plan changes to the District Plan under the Resource Management Act would normally be possible to address this issue. These are a standard plan change process; a streamlined plan change process; and a private plan change process.</p> <p>None of these options are currently available, due to the continued existence of the Order in Council which restricts notification of plan changes. Even if the Order in Council is revoked, a Section 71 process would be more efficient and effective process to resolve this issue as it is more streamlined, thereby providing certainty sooner, while also enabling the public to be involved.</p>
Seek a change to the Order in Council to reassemble the Independent Hearings Panel	<p>The Council could ask the Minister for Greater Christchurch Regeneration to seek changes to the Order in Council to reassemble the Independent Hearings Panel members who issued Decision 53.</p> <p>However, this requires amendments to legislation which is likely to take considerable time and would restrict the ability to amend the Order in Council during this time.</p>

Including the policy wording as part of existing Regeneration Plans	The Ōtākaro Avon River Corridor Regeneration Plan led by Regenerate Christchurch is limited in geographic scope by the approved outline which does not apply to any of the areas within the Residential Unit Overlay.
Amendment to the Land Use Recovery Plan	An amendment to the Land Use Recovery Plan is a more complex process better suited to a bigger package of changes. This primary focus of the Land Use Recovery Plan is in relation to urban growth in response to the earthquakes and is not relevant to this issue.
Local Bill	<p>Council could promote a Local Bill through Parliament to amend the District Plan. This would be an unusual method of amending the Plan. The Council would be responsible for drafting the Bill, with assistance from the Parliamentary Counsel Office.</p> <p>Timeframes and likelihood of getting a new statute through Parliament are uncertain. Even with cross-party support, local bills can take one to two years before they are enacted.</p>

7. Draft of Public Notices to be published if the Minister approves the proposal

- 7.1. A draft of the public notice that would be published under section 68, should the Minister decide to proceed with the proposal, is set out in **Appendix B**.
- 7.2. A draft of the public notice that would be published under section 71, should the Minister approve the proposal, is set out in **Appendix C**.

Appendix A – Map of Residential Unit Overlay



Public Notice:

OPEN FOR WRITTEN COMMENT

RESIDENTIAL UNIT OVERLAY DISTRICT PLAN CHANGES: PROPOSAL TO EXERCISE THE POWER UNDER SECTION 71 OF THE GREATER CHRISTCHURCH REGENERATION ACT 2016 TO AMEND THE CHRISTCHURCH DISTRICT PLAN

This proposal applies to the areas within the Residential Unit Overlay, which is a subset of the areas within the High Flood Hazard Management Area in the Christchurch District Plan, and some areas within the broader High Flood Hazard Management Area which are also predominantly influenced by sea level rise.

Pursuant to section 68 of the Greater Christchurch Regeneration Act 2016 (GCR Act) the Minister for Greater Christchurch Regeneration, invites written comment on the Proposal to exercise section 71 of the GCR Act to amend the Christchurch District Plan to:

- Amend Natural Hazards Policy 5.2.2.2.1(b) to provide policy support for the Residential Unit Overlay, and permitted activity rule 5.4.6.1 P2 to broaden the application of an existing rule which permits replacement of existing houses, in Chapter 5 Natural Hazards in the Christchurch District Plan, and make consequential minor amendments to rule numbering and cross-references arising from those changes.

The Proposal may be inspected on the Department of the Prime Minister and Cabinet's website at [\[website\]](#) and copies are available for inspection at: [\[Location\]](#)

Written comments on the Proposal may be made to the Greater Christchurch Group of the Department of the Prime Minister and Cabinet by no later than [\[date\]](#).

Written comments may be made online at [\[website\]](#)

Or emailed to [\[email address\]](#)

Or posted to [\[address\]](#)

Dated this [\[day\]](#) the day of [\[month\]](#) 2018.

HON [\[XX\]](#), Minister for Greater Christchurch Regeneration.

Gazette Notice:

DECISION ON RESIDENTIAL UNIT OVERLAY DISTRICT PLAN CHANGES: PROPOSAL TO EXERCISE THE POWER UNDER SECTION 71 OF THE GREATER CHRISTCHURCH REGENERATION ACT 2016 TO AMEND THE CHRISTCHURCH DISTRICT PLAN

This proposal applies to the areas within the Residential Unit Overlay, which is a subset of the areas within the High Flood Hazard Management Area in the Christchurch District Plan, and some areas within the broader High Flood Hazard Management Area which are also predominantly influenced by sea level rise.

Pursuant to section 69 of the Greater Christchurch Regeneration Act 2016 (GCR Act) the Minister for Greater Christchurch Regeneration has approved the Proposal to exercise section 71 of the GCR Act to amend the Christchurch District Plan to:

- Amend Natural Hazards Policy 5.2.2.2.1(b) to provide policy support for the Residential Unit Overlay, and permitted activity rule 5.4.6.1 P2 to broaden the application of an existing rule which permits replacement of existing houses, in Chapter 5 Natural Hazards in the Christchurch District Plan, and to make consequential changes to rule numbering and cross-references arising from the above changes.

The exercise of the section 71 power takes effect on **xxth day of [month] 201x**

Dated n this xxth day of [month] 201x

HON [XX], Minister for Greater Christchurch Regeneration.