Assessment of Christchurch City Council's Resource Management Planning and Consenting Delivery

New Zealand Government

Prepared for

The Minister for the Environment

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1 Executive summary

1.1 This report was prepared at the request of the Minister for the Environment to assess whether Christchurch City Council is sufficiently resourced and has suitably robust resource management processes in place to meet the pace of earthquake recovery.

1.2 We undertook an initial diagnostic assessment followed by a supplementary review of 50 resource consent applications and selected a sample of more complex applications, including notified applications and non-notified applications with a high proportion of suspend days.

1.3 In general, we think that the consent process is working well in regard to timeframes. However, there are elements of the processing system that could be improved to make meeting the timeframes more achievable, and improve the applicants' experience.

1.4 The Council has extended its use of pre-applications meetings over the past year, which applicants appreciate. These meetings can be just initial enquiries or for matters other than resource management issues (such as building or environmental health), and as such do not necessarily result in an application to Council.

1.5 Current delegations are cumbersome and should be reviewed. They raise timing, cost and possible procedural vulnerabilities for the Council.

1.6 The input of internal experts into the pre-application, application processing, and post consenting certification needs to be more directly managed to ensure that consistent advice is efficiently provided; that applicants for significant projects have a clear point of contact; that decisions once made are not later re-visited; and that timeframes are met. Significant applications should each have a project/case manager with sufficient authority to make decisions and hold contributing experts to account where required.

1.7 A little over 20 per cent of building consents are held up because a resource consent is required. The district plan rules that are triggering these should be examined to identify whether they are appropriate.

1.8 Urban design issues are a source of frustration to the development community. They can find the process and requirements daunting, and feel that issues of market demands and affordability should have greater recognition. Given the importance of good urban design during the rebuild, we suggest that a forum be established between the Council, the Urban Design Panel and the development community that could foster a closer understanding and working relationship between the parties.

1.9 Similarly, existing use rights are another source of frustration. The council has adopted a pragmatic approach to the 12-month limit on discontinuous use, but is requiring a level of proof that the land use lawfully pre-dates the relevant plan rule which many consider excessively onerous. The Council faces some difficult issues with the statutory requirement that the effects of the intended land use are the same or similar in

character to those that lawfully existed prior to the rule, especially where flood management or other requirements intercede. Again, we believe that an on-going dialogue between the Council and the development/rebuild community would be helpful.

1.10 The council actively forecasts likely future applications, and is able to adjust resourcing to match. One area where further resourcing is required is for additional subdivision engineers. Other than this, and the need for project/case managers referred to in paragraph 1.6, we accept the advice of Council staff that they have adequate resources to do their job.

1.11 The District Plan is overdue for major revision, and the earthquake recovery has given this greater significance and urgency. The Council initiated a full review of the Plan with earthquake recovery sections being intended to be reviewed by June 2014 using a truncated process. We endorse the need for urgent review, and for the use of a truncated process. We also believe that greater use should be made of the opportunity afforded by the Land Use Recovery Plan that has recently been submitted to the Minister of Earthquake Recovery to effect some more immediate streamlining of key plan provisions. This will reduce some regulatory impediments to recovery while the broader reviews of the plan are carried out.

1.12 Many people outside of the Council itself identified organisational culture issues that were affecting council performance. This matter extends beyond our scope and capacity to resolve, and it should be addressed in a broader context.

1.13 Following the initial exercise in July 2013, and again following the more focussed assessment covering the consenting function in September, the Ministry offered Christchurch City Council an opportunity to respond to the findings of the report and comment on any factual issues or omissions. Christchurch City Council’s correspondence dated 31 October 2013 together with comment from the authors appears as an Addendum to this report.

2 Introduction

2.1 This report is the result of a request by the Minister for the Environment for an assessment of Christchurch City Council's resource management planning and consent delivery. The assessment was undertaken in two parts, the second part being a follow-up supplementary assessment.

2.2 The terms of reference for the initial assessment and the supplementary assessment are set out in Appendix 1.

2.3 The purpose of the initial assessment was to "identify whether Christchurch City Council is sufficiently resourced and has suitably robust resource management processes in place to meet the expected requirements of the pace of earthquake recovery." The purpose of the supplementary assessment was to undertake a more comprehensive assessment of the full life cycle of Christchurch City Council resource consent processes by focusing on a selection of cases.

2.4 In undertaking the assessment we looked at the plan making and consenting functions of the Council and their relationship to the recovery of Christchurch. For the District Plan the focus was primarily on the perceived impediments in the plan to the recovery and similarly for the consent processing. We note that the consenting process for land development includes engineering approvals and certification notices under s223 and s224 of the Resource Management Act (RMA). The processing of these matters was also part of our assessment.

2.5 We conducted an on-site assessment from the 9 – 15 July 2013. We spoke to a number of Christchurch City Council staff and persons from external agencies and those in resource management practice and land development in Canterbury. For our supplementary assessment we returned to examine a sample of 22 pre-application meetings and 50 individual resource consent applications from start to finish. The consent file review took place from the 19 – 23 August 2013 on-site at the Council. We also spoke to consulting agents for 28 of the consent applications and all 22 parties in the pre-application sample. A list of the organisations/groups we spoke to are listed in Appendix 2. We record that the resource consents we reviewed were not a representative sample, but rather a selection of potentially more complex applications including notified (limited and full), as well as non-notified applications with a high number of days where the applications were on hold.

2.6 We would like to thank all the Council officers and other parties for their co-operation. In our view, all of our questions were answered in an open and honest manner. In particular we wish to thank Lorraine Howard of Christchurch City Council for her invaluable assistance in co-ordinating our initial on-site arrangements and for the Council staff and external parties that collated and provided information in a very short space of time. In regard to our supplementary assessment, we also wish to thank the Resource Consents team for providing the resources and assistance with navigating Council's electronic filing systems.

2.7 We were provided with a report, produced by Ken Lawn, in April 2012 of a review of resource consent processes commissioned by the Christchurch City Council, and we were able to meet with Ken. This was a particularly useful document that traversed most of the matters we were assessing in the consent processing area and his findings accord very closely with ours. Council staff provided us with an implementation progress report showing that some of his recommendations have been completed, and most being under action. We were also able to meet with Kim Seaton of Novo Group Limited who has been engaged by the Council to review progress in implementing the Lawn report. We commend the Council for taking the initiative to commission these reviews.

3 Current Resource Consenting Outputs

Pre-application meetings

3.1 We heard positive endorsement of the pre-application process from resource management practitioners, developers and Council staff. Over the 2012/13 year there has been a steady increase in the number of pre-application meetings, which is in part attributable to promotion of the service by Council and also due to the Rebuild Central service established in the CBD since Sept/Oct 2012. 'Rebuild Central' provides a multidisciplinary assistance service to guide property and business owners in the central city through the various regulatory processes.

	Jul 12	Aug 12	Sep 12	Oct 12	Nov 12	Dec 12	Jan 13	Feb 13	Mar 13	Apr 13	May 13	Jun 13
Number of RMA Pre Application Meeting Held	24	56	39	45	44	33	39	61	85	70	96	83
Number of Consent RMA Applications Received where a Pre app Meeting held	17	24	14	11	8	7	4	2	0	1	5	2

3.2 Somewhat surprisingly this increase in the number of pre-application meetings has not resulted in an increased number of consequential applications. Further research was conducted as to the possible reasons for the increasing number of pre-application meetings and the decreasing number of resultant applications.

3.3 The high number of pre-application meetings is in part due to the way in which the Council now deals with "in-person" enquires. The public are not able to walk up to the front counter at Council and speak to a "duty planner". Rather the Council has public advice officials who are not planners, that can answer simple questions, but if the person making the enquiry needs more expert advice then they must complete a pre-application request form, including requesting a convenient time for the meeting. As such, these are not necessarily meetings where the person making the request has a definite view on a proposal in mind, rather it may be more of an initial enquiry. In addition, the above table captures meetings that may have been building consent or environmental health focused, to which a member of planning staff attended in order cover any resource management issues that may have arisen. We also note that the Council has been promoting this service over the last 12 months and this may also have contributed to the larger number of pre-application meetings.

3.4 We reviewed 22 pre-application files and called the person requesting the meeting to ascertain their views on the usefulness of the meeting and establish whether or not they

had proceeded with their proposal. The selection chosen included three applications for which resource consent had been applied for and granted (on further research it turns out that five of the meetings reviewed resulted in consents being granted). In addition, as a result of the pre-application meeting four people amended their proposal so that resource consent was not required and proceeded with obtaining building consents. A further two people advised that they were progressing applications but had not yet lodged them (waiting on plans or soil testing). A further person had an application lodged and advised that it was soon to be granted.

3.5 In those cases where people had not progressed with a proposal, a variety of reasons were given. These include:

- not economically a good time to proceed
- difficulty with existing use rights (two cases)
- meeting was part of due diligence process, did not purchase land so did not proceed
- have other priorities at present
- client did not proceed for their own reasons
- person wanted 100 per cent certainty that consent would be granted (1 case)
- issues around grease trap requirements (environmental health issue)
- person considered that rules around additional dwelling/family flat were "ridiculous".

3.6 In our view, many of these are not resource management related. Those around existing use rights are resource management issues and we address those later in the report. That said in these cases it appears that there was a different interpretation of the existing use rights provisions between the applicant and the Council planners.

3.7 In 14 of the 22 cases, the people thought the meeting was useful and provided the information they needed.

Accepting applications and payments

3.8 In the year 2012/13 approximately 80 per cent of resource consent applications to the Council were lodged electronically. At present, Council's consent management system is unable to accept payments at the time the application is lodged. We were advised that on receipt of the application electronically, an officer emails an invoice to the applicant. The applicant can then pay the invoice by internet banking. Assuming that application is otherwise complete, the statutory clock starts ticking once the payment is made. Nonetheless the Council begins processing the application even if the payment has not been received. From reviewing consent examples in our supplementary assessment, most commonly there is a one or two day delay between the Council receiving the application electronically and then receiving the payment. It could be argued that the Council has an advantage during that period of delay between receipt and payment, however, as processing has started applicants are not being disadvantaged. The applicant does not always pay the deposit as soon as the invoice is received. For five of the consents reviewed, applicants took over a month to pay the deposit.

3.9 The gap between receipt and payment will be removed through the proposed payment system being added to the application receipt system. This may result in a one or two day increase in the processing time; requiring efficiency gains in order to meet statutory timeframes.

Processing timeframes 2012 – 2013

3.10 The Christchurch City Council processed 1684 resource consent applications, including applications to review existing consent conditions, during the 2012/13 period; 1654 of those within statutory timeframes (98 per cent). Of those applications 1654 were processed on a non-notified basis, 24 on a limited notified basis and six publicly notified (less than 2 per cent notified). The split was 1515 land use consents and 307 subdivision consents. Extension of timeframes under s37 of the RMA applied to 27 applications with the applicant's agreement and two under special circumstances.

3.11 We examined 25 land use consents and 25 subdivision consents in our supplementary assessment. This was not a random selection of all resource consents processed by Christchurch City Council. Rather, the selection focussed on more complex applications, with the land use consent sample containing three publicly notified applications, eight limited notified applications, eight non-notified 'significant' applications and six non-notified applications with a high proportion of suspended days. The subdivision consents sample included those with the highest number of lots which had been issued with s224(c) completion certificates for at least one stage. We record that sample period we reviewed was the 2011/12 and 2012/13 financial years. The purpose for selecting this period was in part to capture the post-consenting processes of engineering approvals, s223 and s224 applications, the latter of which occur post subdivision development. In the early part of this period, over-all timeliness was not as high as it was for the latter 12 – 18 months.

3.12 In our view the Resource Consents team takes statutory timeframes very seriously and the overall statistics are to be commended. The external consultants spoken to during the supplementary assessment were generally happy with their recent experience with the statutory timeframes of the resource consenting process.

3.13 We have reached the view that meeting those timeframes or indeed making a decision on aspects of an application, is not of the same importance in other parts of the Council. Findings on this are discussed below in 3.21 – 3.24.

3.14 In general, we think that consent processing is working well in regard to timeframes. However, there are particular crunch points within the processing system that we have identified throughout the report that would make meeting the timeframes more achievable.

3.15 For the consent sample examined in our supplementary assessment, 13 out of 50 applications exceeded statutory timeframes, seven of those applications by five days or less. There is an additional consent which the applicant's agent believed exceeded statutory timeframes, but we were unable to determine this from the information on file.

3.16 From our assessment of the files and interviews, the following reasons contributed to the sample consents exceeding statutory timeframes:

- Eleven of the exceeded timeframes could be partly or mostly attributed to Council internal processing), often in combination with a complex application, and once in combination with earthquake circumstances.
- One application was delayed while the hearings panel issued a minute and invited response from the applicant (in the circumstances this constituted good practice), but processing time was not formally suspended.
- Commissioner availability contributed to longer timeframes in one case, where the applicant was happy to wait for a certain commissioner to be available.

3.17 Within those consents which were processed on time, three s37 extensions of time were used, extending processing timeframes by three, 26 and 52 working days. The reasons for the extensions were:

- applicant agreed to extension due to complexity of application (three working days)
- delay in submitter availability for pre-hearing meeting (26 working days). Only 16 working days appeared to be attributable to this matter
- applicant agreed to extension due to complexity of application (52 working days).

3.18 The supplementary assessment also found seven instances where the consent timeframe had been incorrectly recorded in the Council's time recording system. One of these instances meant that the consent was actually over the statutory timeframe (reflected in the statistic given above). The disputed consent mentioned above is potentially an eighth error resulting in another consent exceeding the statutory timeframe. For the six remaining consents with recording errors, correcting those errors did not alter the compliance with the statutory timeframes.

3.19 The Council is changing its time recording system but implementation has been delayed. We do not know whether the new system will help prevent these recording errors, since they appear to be due to human error. We recommend that Council officers take care to ensure the suspension record is correct both during the processing of a consent application and when processing is complete.

3.20 Finally, our review of the sample of consents, did not give any reason to suggest that the statistics provided by the Council were erroneous or misleading. In the sample period 2011/12 and 2012/13 there has been a an improvement in the processing times which is shown in the tables in Appendix 3.

Input of experts

3.21 In the processing of resource consent applications, input by experts from within Council and external to Council occurs. This may be in the field of wastewater, stormwater, roading, parks and reserves. These are mostly from officers of Council with the "Asset & Network Planning Unit" of City Environment. The input from these officers for, say, subdivision consent would be in pre-application discussions, assessment of the application, through to s42A officers' report on applications, and ultimately reflected in

an issued consent in the form of conditions. Similarly there may be expert input into a consent by Urban Design or Natural Environment experts from the Strategy and Planning division.

3.22 The supplementary assessment examined the timeframes for feedback from expert officers when requested by the processing planner, however the Council record of when input was requested and received was usually incomplete. It was found that other departments of Council involved in the consenting process sometimes took two weeks or more to provide feedback when requested by a consents planner. Those that took the longer time were traffic planning/operations, parks and reserves, urban design, stormwater and geotechnical. The Council has explained that the stormwater and geotechnical departments in particular have been very busy with earthquake related work. Equally, we found many instances of very prompt responses from the Council officers, on the same day or the day after.

3.23 Response times from experts can affect the timeframe in which the processing planner is able to send out a s92 request or write a decision. At least three of the delays in consent processing within the sample appear to be attributable to awaiting feedback from experts. Outside of the statutory timeframe, expert input is also needed where post-consent approvals are required. This process is discussed later in 3.54.

3.24 Council staff also seek advice from Mahaanui Kurataiao Limited – the entity established by the local rūnanga to provide advice on behalf of the rūnanga and Ngāi Tahu. There is a service agreement between Christchurch City Council and Mahaanui Kurataiao Limited for this function. Consenting and planning staff both reported difficulties in obtaining timely input, so did the applicant's agent involved in one of the applications examined in the supplementary assessment (adjacent to a significant stream). Ngāi Tahu acknowledged this problem and advised that the iwi is actively reviewing the operation of Mahaanui Kurataiao to address it.

Requests for further information under section 92 of the RMA

3.25 The Council rejected 15 applications under section 88, and issued 655 s92 requests for further information and requests for written approvals from affected persons (39 per cent of all applications). This compares with a national average of 35 per cent for all local authorities in the 2010/11 year.[1]

3.26 While the number of requests for further information is not a lot higher than local authorities generally, we believe that the number is higher than it ought to be and that the greater use of s88 to reject incomplete applications at the outset is probably warranted. It may be the Council are adopting a more customer friendly stance by accepting inadequate applications. Equally it may be that post-earthquake there are an increased number of applications from people who are not familiar with RMA processes. There is an opportunity to enhance pre-application assistance so that applicants can be aware of the information needed when first preparing their application.

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[1] Ministry for the Environment 2011: *Resource Management Act: Survey of Local Authorities 2010/2011.*

3.27 We did not analyse the reasons for s92 requests. In our view this is something that the Council should do. There is a need to ensure that the information requested is truly within the scope of the RMA's consenting framework. For two of the 29 consents examined in the supplementary assessment that included s92 requests there was disagreement between the Council and the applicant's consultants over the extent of information sought by Council. The other consultants spoken to did not raise any concerns about the content of any s92 requests.

3.28 In one case a consultant told of an internal technical expert's questions being included directly into the s92 request without the processing planner exercising a judgement on whether the information sought was relevant. Consultants emphasised the importance of the processing planner's role in filtering the questions asked or changes requested by internal technical experts, if necessary. Although the final decision on the consent is made under the framework of the RMA, there are time and cost implications of responding to s92 requests.

3.29 There is potentially a process issue with the form of requests for further information. The supplementary assessment found that these are often questions sent via email, not mentioning s92 of the RMA, and in a couple of cases were not directly recorded on the file and assumed to be via phone call. It is understood that Council prefers to use this less formal approach as it is seen as more customer-friendly. Sometimes the processing planner sends through questions from internal experts as received, trying to be helpful, but resulting in 'drip feeding'. Consultants interviewed in the supplementary assessment spoke of needing to clarify with the Council whether an email is to be treated as a s92. For clarity of processing timelines, and to limit vulnerability, we recommend that a single request for further information is sent, referencing s92 of the RMA and always saved on the file.

3.30 Our consent sample for the supplementary assessment included several consent applications which were on 'suspend' for a long period of time. This was usually attributable to the time the applicant took to respond to s92 requests, or seek written approvals from affected parties (sometimes as part of a s92 request and sometimes not). Failure to obtain written approvals can result in an application being limited notified. Therefore most applicants are prepared to spend some time seeking approvals.

3.31 The other main reason for a long suspension time was a request from the applicant to put the application on hold, for example so they could change their plans, which is not related to s92.

3.32 S92 requests come at a cost. Reviewing the reasons for those requests and finding solutions to minimise the number issued (eg, change application form, target education for sector of applicants or issue, etc), would go some way to minimising this.

Delegations

3.33 The delegations for decisions under the Resource Management Act are set out in the Delegations Register Dec 2012.

3.34 To our mind there are number of aspects to the delegations that make it difficult for the consenting staff to meet statutory timeframes. Indeed we would go as far to say

that given those difficulties we find it surprising that the timeframes are met to the level they are.

3.35 The majority of decisions on whether or how to notify (s95) and substantive decisions (s104) are delegated to the Resource Management Officer Sub–Committee (RMOS) (of at least two officers), with the exception of applications that are of a "potentially controversial" nature, that are referred to a Hearings Panel "in all circumstances". A Panel being a combination of independent commissioners, councillors/community board members (three persons) or a commissioner sitting alone. This practice is set out in the internal Planning Administration Procedures Manual.

3.36 The list of "potentially controversial" applications includes any application which:

- is potentially controversial
- is for an unusual development or
- has generated an unusual degree of public interest
- is a large scale development, eg, an extension to a major suburban shopping centre, the establishment of or extension of a retirement village in a Living Zone.

The above matters would include the following:

- any development which breaches residential coherence rules
- any infringement of the residential site density critical standard
- elderly persons housing developments where the units exceed 100m²
- sale of liquor hours
- childcare centres
- probation centres
- any development within the Central City Zone which is over-height by more than one metre
- rural density non-compliance where recommendation is other than public notification
- rural subdivisions of more than three lots or residential subdivisions of more than 10 lots are not subject to the non-notification clause in the City Plan
- subdivision applications which anticipate urban development which do not meet PC1 or Area Plan requirements or staging or are in advance of plan changes required to the City Plan where the recommendation is other than public notification
- Central City applications
- heritage buildings.

3.37 The last two bullet points are understood to be a more recent addition to the list. The first issue in regard to this practice is that it encourages consideration of matters that are outside the proper consideration of potentially affected parties and notification tests set out in the RMA. In addition, some items on the list could be interpreted as pre determination of a decision in regard to notification. We also note that this practice is internal to the Council and is not a public policy included in the District Plan. We are

concerned that this practice along with the way the meetings are managed (as discussed in 3.45 below) may create a procedural vulnerability for the Council.

3.38 The second issue regarding this practice is its effect on timeframes. Availability of elected members and indeed rooms, were cited as reasons for delays in the convening of the Hearings Panel. We understand that officers have sought to work around this issue by directing potentially controversial applications to independent commissioners (sitting alone), in order to meet the statutory timeframes. This "work around" has evidently become more regular post earthquake as shown in the following tables.

Delegations – s95 Notification and s104 Decision			
2010 – 2011	**Number of Non-Notified Applications**	**Number of Limited-Notified Applications**	**Number of Fully Notified Applications**
Resource Management Officers Panel	1025	3	0
Hearings Panel – Commissioner & Elected Representative	21 – mixed panel 2 – elected reps panel	1 (mixed panel)	3 (mixed panel)
Commissioner	114	19	13
2011 – 2012	**Number of Non-Notified Applications**	**Number of Limited-Notified Applications**	**Number of Fully Notified Applications**
Resource Management Officers Panel	858	11	0
Hearings Panel – Commissioner & Elected Representative	41	4	3
Commissioner	145	10	3
2012 – 2013	**Number of Non-Notified Applications**	**Number of Limited-Notified Applications**	**Number of Fully Notified Applications**
Resource Management Officers Panel	1438	7	0
Hearings Panel – Commissioner & Elected Representative	34 (note – 10 of these were central city applications decided by the Joint Management Board)	6	2
Commissioner	182	11	4

3.39 The result of this practice in sending potentially controversial applications to a hearings panel, when it is a commissioner also adds costs to the process.

3.40 Eighteen out of 25 land use consent decisions examined in the supplementary assessment were referred to a Hearings Panel or independent commissioner (none of the subdivision consents were). Fourteen were sent to sole independent commissioners and four to Hearings Panels of a commissioner and elected representatives.

3.41 In eight cases this was due to a conflict of interest, and in two cases it was at the applicant's request (therefore fully publicly notified). The remaining 8 were referred to a Hearings Panel due to being 'potentially controversial'. The reasons were:

- heritage building (non-notified)
- large scale commercial development unanticipated in zone (non-notified)
- complexity, essentially plan change by way of resource consent (non-notified)
- elderly persons housing, contentious with neighbours (non-notified)
- commercial activity relocating into residential zone (limited notified)
- fully or limited notified application with submissions received.

3.42 Two of the above eight applications exceeded statutory timeframes. In one case the use of a Hearings Panel contributed to the delay, due to it issuing a minute on the first day it sat, inviting a response from the applicant. The application did not go on hold while the applicant was responding. The additional information gathered in this period enabled the applicant to avoid public notification, so the delay in processing time was of benefit to the applicant.

3.43 In our view applications where there is a potential conflict of interest issue are rightly sent to independent commissioners (eg, where the application is from a department of the Council), but not from the predetermined list. The governance role should be in setting the RMA policy whereas the quasi judicial role of decision making should be made in terms of that policy, and is more a resource management implementation role.

3.44 The principal instrument of RMA policy for this is the District Plan, and we were told that a reason for a greater involvement of councillors and community board members in what would normally be a delegated decision was that the plan was overdue for revision.

3.45 A related issue to the delegation to the RMOS is that the Council has determined that meetings of that sub-committee are required to operate under the Local Government Official Information and Meetings Act 1987 (LGOIMA). As such those meetings are required to be held in an advertised venue and amongst other things to have a pre-circulated agenda four days ahead of the meeting. This practice also applied to Hearings Panels meeting on notification decisions. Examples were cited to us of hearing panels at these meetings granting speaking rights to members of the public who felt they were a potentially affected party. We are unclear as to what standing in terms of an RMA decision on notification that such members of the public might have, but again we are concerned that this practice introduces a potential procedural vulnerability if it encourages members of the public to believe they have rights to participate when the RMA does not provide for this, and the Hearings Panel might be perceived as making decisions (eg, whether to notify an application) on grounds that are outside of those provided for in the Act.

3.46 The above processes, and the documentation and administration they entail, adds to the costs and time of processing an application.

3.47 In making our own enquires, we were not able to find any other local authority in New Zealand following this practice of making meetings for non-notified decisions subject to LGOIMA requirements.

3.48 Rather than delegating the decision to a sub-committee, as a matter of best practice the delegation should be to a single officer. This should address the issue of “sub-committee” and the need to follow the LGOIMA procedures. Internal peer review for making such decisions could be provided as a quality check prior to the decision.

3.49 We were also made aware of a delegation that required, for officer authority to participate in appeal mediation on a decision made by a commissioner on a notified resource consent application, a Hearings Panel is required to be appointed to effectively reappoint the Commissioner who heard the application in the first instance, who in turn gives the scope for mediation to the officer involved. We assume that this would be required to follow the LGOIMA procedures we noted above. This seems to be an unnecessarily tortuous and time-consuming process.

3.50 In our view the resource management delegations are in need of a thorough review, with a direction to provide delegation, within formal policy and statutory process, to the lowest competent level possible within the resource consents team in order to provide for efficiency of process and to maintain quality and consistency of decisions.

3.51 We believe that the staff’s skill and confidence in making such decisions can be enhanced if they have the clear authority and the confidence and support of senior management and councillors.

3.52 We recommend the practice using the list of “potentially controversial” application types should be reviewed and the delegations manual amended.

Draft conditions of consent

3.53 It is good practice to send draft conditions of consent to the applicant for review. The ability to ask for changes to conditions before the decision is finalised avoids the time, cost and formal process of the applicant contesting the conditions after the formal decision is made. From our supplementary assessment, Christchurch City Council regularly sends out draft conditions, and often the applicant had minor changes to suggest. On the whole this process appears to be working well. None of the timeframes reviewed were suspended for review of draft conditions, as it appears that the applicants were very prompt in responding.

Post consent approvals

3.54 In some cases, conditions of land use and subdivision consents require documentation to be sent to Council for approval after consent is granted, for example a landscaping plan. This forms a part of the overall timeline of the consenting and development process, though it is not captured in the statutory consenting timelines.

3.55 In general terms after the granting of a complex subdivision consent, according to conditions of consent, the applicant will submit engineering design plans, a design report and a Contract Quality Plan for engineering approval to the planner that processed the consent or directly to the subdivision engineer. The plans are sent out to the various asset teams by the subdivision engineer for review of the detailed design to ensure compliance with the conditions. Once all of those units respond an engineering letter of acceptance is sent to the applicant. There is no statutory timeframe for the Council to issue this post consent approval.

3.56 From our review of individual subdivision files during the supplementary assessment, only seven of the subdivision consents required engineering approval. Documentation regarding post consent approvals is not usually complete. Formal letters of approval or approved stamped plans are not always saved on the Council file.

3.57 The reason for this is recognised by the Council to be the heavy workload of the subdivision engineer. Given demands on time the focus is on giving the applicants the feedback or assurance they need. This may be in person, over the phone or via written notes on plans. A formal letter and a full documentation of all correspondence is not a priority. One external party spoken to who was familiar with the practices of Council said that when further details stop being sought by Council they take this as acceptance.

3.58 This is a procedural vulnerability. We recommend that post-consent acceptances be formally documented on files. In order to do so, it is likely that resourcing issues will need to be resolved as discussed in section 8.

3.59 Post-consent approvals required from Council officers other than the subdivision engineer, such as landscaping plans and lighting design, were better documented on the Council file, and response times ranged from the same day to a couple of weeks.

3.60 For a subdivision, once engineering acceptance is obtained the applicant proceeds to undertake the physical works on the site and on completion of those works, the subdivision engineer co-ordinates the certification of s224 sign off within Council.

3.61 The issue raised by a number of parties outside of Council in regard to this process was:

- the engineering approvals process being used as an opportunity by the Asset Units to re-litigate matters that have already been addressed in a Plan Change or subdivision consent
- asset units not making timely decisions
- conflicting requirements by different experts in Council (eg, narrow road widths recommended by Urban Design and wider road widths recommended by Asset and Network Planning)
- engineering approvals being used to seek assets for the city that are above and beyond the adverse effect that the consent condition was imposed to address
- no one person taking an overview from the perspective of the Council as a single entity and with the authority to make definitive decisions

- the process for obtaining engineering approval in some instances can take a long time, and involve many iterations (however the collaboration involved in this iterative process is seen by some as a positive thing).

3.62 In identifying these issues we wish to make it clear that these problems are in no way related to the performance of the subdivision engineer, in fact the subdivision engineer was often cited as a much needed and over-worked aid to resolving these issues.

3.63 It appears to us that experienced external consultants use their individual contacts and relationships with the Council to navigate through this post consent process. We think that the Council should engage project/case managers with experience in the subdivision/land development/engineering approvals processes to direct applicants through this process. Those project/case managers need to have the authority to makes calls on behalf of the Council that are binding on the post consent approvals and to hold internal specialists to account for the timeliness, consistency and quality of their advice.

3.64 We note that these matters were also raised by Council's own resource consent process review undertaken by Ken Lawn.[2]

3.65 We note that a Service Level Agreement (SLA) between Democracy Services and City Environment is in place. In addition there is a draft SLA between Democracy Services and Strategy and Planning that has not been signed off (has been draft for some time).

3.66 We recommend that these SLAs be revised to reflect the above matters and performance against KPIs in the agreement should be actively monitored.

Approval and deposit of survey plans (s223 and s224) timeframes

3.67 Under s223 and s224 of the RMA the Council certifies that the survey plan for a subdivision conforms with the subdivision consent, and that the pre-requisites for statutory lodgement of the survey plan have been met. The Council has internal KPIs for the processing of these certifications which are 10 working days for s223 (which reflects statutory requirements) and 20 working days for s224. For the year 2012/13 there were 146 s223 applications and 206 s224 applications. All except one were processed within the timeframes.

3.68 Within our sample of 25 subdivision consents (over a two year time period) for the supplementary assessment there were 3 s223 applications not processed within 10 working days, reaching 15 – 20 working days. One of these was due to staff transition and there was no documentation on file relating to the other two delays.

3.69 When applications for s224 certificates are lodged and there are matters that Council considers have not been completed, this is communicated to the applicant via phone call, email or sometimes on site. This is not always fully documented on Council files. In our view this is a procedural vulnerability and we recommend that documentation of s224 matters be improved, which is likely to require better resourcing as discussed in section 8. Section 224 applications within the sample for the supplementary assessment

[2] Lawn Report, June 2012 – Addendum

were processed promptly by the Council within its internal target time (20 working days).

3.70 Consultants interviewed said that the s223 and 224 process works satisfactorily for them. An element of trust has been developed between regular developers / consultants and Council's subdivision and geotechnical engineers, however consultants are aware that they will be found out if they do not follow through on what they say, and then that trust will be lost.

Interface with Building consents

3.71 The Building Act (in section 37) provides that if a material resource consent is outstanding for a proposed building or alteration the Council must issue a certificate preventing or limiting building work.

3.72 Of the 6,156 building consent applications applied for in the period 1 July 2012 to 24 May 2013, 834 (13.5 per cent) had s37 certificates issued. If the categories of building consents that are unlikely to trigger City Plan rules (eg, marquees and other temporary structures; residential plumbing and drainage applications; solar water heaters etc) are excluded from the list of building consent applications, the proportion of applications that were issued with s37 certificates is 21.9 per cent.

3.73 We were advised that the majority of these certificates will have been subsequently uplifted because the building plans were amended, or resource consent was obtained. However, we do not have information on how many remain outstanding.

3.74 The number of certificates issued indicates that an assessment of the district plan rule is called for to identify whether those which are triggering the s37 certificates are appropriate. A breakdown of a sample of consents showed the principal categories of non-compliance to be:

Residential:		
	26%	separation from neighbours
	22%	sunlight / recession planes
	18%	street scene (frontage)
	9%	outdoor living space / open space
Commercial:		
	33%	traffic / parking
	20%	street scene
	13%	heritage

4 Urban design

4.1 Urban design is clearly a source of tension between the Council and the development community.

4.2 Urban design provisions for various zones in the district plan are supported by guidance material. An Urban Design Panel provides independent professional advice to applicants and to the Council generally, but not only, at the pre-application stage. Council urban design staff also provide guidance to applicants, and provide advice on applications to the consent planners who assess and process the applications. Council urban design staff may draw on the Urban Design Panel when providing this advice. The Panel provides professional advice unfettered by statutory constraints, whereas Council urban design staff consider issues within the framework of the district plan and supporting documents The consents planners have the further task of providing an over-all assessment of the application where urban design is likely to be one of many matters that need to be weighed.

4.3 Developers can find the plan provisions, guidance and advice daunting. We were provided with a 12-page list of urban design, appearance and amenity specifications from the city plan for the Living 3, 4A, 4B and 4C zones as an example.

4.4 Urban design is an important component of making Christchurch more successful, especially now, when substantial rebuilding is under way that will shape the future design and operation of large parts of the city.

4.5 However, many in the development community feel that the requirements and the advice do not recognise the issues of affordability, commercial pressures and the market demands and preferences they face. The issues can be almost philosophical in areas which have many very subjective elements. Despite the Urban Design Panel being established to provide guidance and assistance, there is a feeling in the development community that the panel and Council's urban design staff take an excessively negative and critical approach to proposals that are put forward, and that the process for resolving the issues can be excessively tortuous. The resultant lack of certainty puts people off using the panel.

4.6 Consultants interviewed stated that inexperienced developers and laypeople do not understand the role of the Urban Design Panel within the statutory process and think that negative feedback means their application will be declined. This discourages development. Urban Design Panel feedback is not given within the RMA framework of the district plan. For example, changes made following the feedback may result in district plan non-compliances, or the feedback may be irrelevant under the district plan framework in which the consent is to be assessed. Nevertheless applicants can feel strongly compelled to redesign their proposal because of the feedback.

4.7 It is beyond our scope and ability in the time available to fully explore and resolve the issues described to us. However, it is clear that there would be great benefit from

fostering a closer understanding and working relationship between the Council, the Urban Design Panel and the development community. This might initially take the form of a workshop, and could usefully include a regular senior level on-going forum for dialogue between the parties.

4.8 We have also noted elsewhere (see paragraphs 3.63 and 8.2) the need and opportunity for consent planners to take a more active case management and interface role with the applicant and with providers of specialist advice within the Council. Urban design is one of the areas where this could be beneficial.

5 Existing use rights

5.1 The RMA (Sections 10 – 10B) provides that land uses that contravene district plan rules can continue if the use pre-dates the relevant plan rules and meets certain criteria. Under section 139A a council can issue existing use certificates. In the aftermath of the earthquake, these provisions have become particularly significant for rebuilding and recovery. Issues have arisen mainly in the areas of:

- the 12 month limit on discontinuous use
- the level of proof required that the land use was lawfully established prior to the introduction of a relevant rule
- determining whether the effects of the intended land use are the same or similar in character to those that lawfully existed prior to the rule
- the interface with other provisions (eg, flood management).

5.2 We address these in turn.

5.3 The statute provides that existing use rights do not apply if the use has been discontinued for a period of more than 12 months. The Council has (sensibly) adopted the approach that this 12-month period will not commence until the owner is in a position to resume the use. In practice, this means that any exclusion from the area has been uplifted; insurance settlements have been reached etc.[3] We commend this approach. However as these constraints are progressively removed we expect that further discretion is likely to be required in the form of extensions to the 12-month period because of the likely time required for architects, engineers, design and construction before the use can be resumed. The Council can grant extensions to this period, and we recommend that a liberal approach be taken to such extensions and that opportunities for global or class extensions are explored.

5.4 Several resource management practitioners and others reported that the level of evidence the Council was requiring in order to establish that the land use lawfully pre-dated the first introduction of the relevant rule in the plan was excessive and unreasonable. Affidavits from knowledgeable persons can be difficult to obtain for matters that may be many decades old and often the property or land use information is held (often archived) by the Christchurch City Council itself. As Council officers pointed out, building information (eg, photographs or plans) alone may not be sufficient if it is the activity rather than the structure that is in issue.

5.5 We think that there is an opportunity to accept a lower level of proof in many instances, and that the Council could be more proactive in sourcing relevant information. But we acknowledge that this needs to be tempered with a judgement when considering

[3] CCC Existing Use Rights Practice Note

whether the effects of the intended use are the same or similar in character, intensity and scale to that which preceded the relevant rule in the plan.

5.6 Many land uses will have altered since they were first established. This may be in the form of alterations to the building (for residential or commercial buildings), to the activities undertaken on the site, or to both. If these alterations occurred after the relevant rule was introduced, and they increase the degree of non-compliance with the relevant rule, then the existing use rights do not encompass the subsequent expansion of non-complying effects. This has led to resource consents being required to reinstate land uses where either:

- the proposed reinstatement differs materially from what was occurring pre-earthquake (eg, bigger and better houses, or fully functional second stories in commercial rebuilds that previously had ancillary residential or little-used 2nd stories above ground floor offices/shops – with additional attendant parking and other effects), or
- there had been material changes in land use (to the structure or the activity) between the time the existing use rights came into play (when the relevant rule was introduced) and the earthquakes – ie, a pre-earthquake contravention.

5.7 While the imperative to expedite earthquake recovery might encourage a liberal approach to allowing these matters, the change of land use may well have significant effects on the neighbours (eg, increased shading if a neighbouring repair or rebuild is higher or closer to the boundary); or to the community (eg, if shops, restaurants or officers are introduced to a second story of a commercial building that increase parking or traffic issues). We recognise that Council officers must at times need to make difficult judgements about whether the effects of the use are the same or similar in character, intensity and scale to that which preceded the relevant rule in the plan.

5.8 The Building Act has a 1 in 50-year flood frequency constraint on building. The District Plan has a 1 in 200-year constraint. If it is necessary when rebuilding to raise the ground and/or floor level of a building to meet these requirements, this may well cause the building to breach recession plane requirements, or affect storm water management on and around the site, thus invoking the need for a resource consent (and invoking a need for a neighbour's approval). We were told that there may be hundreds or thousands of properties where flood management issues arise, though it is likely that many will be able to rely on existing use rights.

5.9 We believe that the flood management issue is one that ought to be addressed on an area-wide basis by way of a change to the district plan (perhaps expedited by the use of Canterbury Earthquake Recovery Act powers) or by a global consent. Otherwise the matter will be subject to tortuous serial re-litigation on a property by property basis.

5.10 Existing use rights is an issue that has caused significant angst to property owner and to Council officers, and is likely to continue to do so. In addition to the recommendations made above, we recommend that the Council establish and maintain an active engagement with the development/rebuild community through an ongoing forum with key players so each side remains fully cognisant of the over-all circumstances; and be extending the information and guidance that is readily available to property owners and to the professionals they are likely to engage.

6 Future RM outputs

6.1 The Christchurch City Council resource consent department has a "Forecast demand and resources model" for estimating the number of consent applications and also the resources required to process that number of applications. The model is based on information provided by EQC and an assessment of the areas district plan likely to generate resource consents. Prior to the earthquake this model is updated on an annual basis. Since the earthquakes we understand that is done on a quarterly basis.

6.2 The model addresses land and subdivision applications, classifying them into levels of complexity and assessing resulting staffing requirements. In terms of current staffing numbers, opportunities for overtime and time in lieu, staff due to return from maternity leave, approval for additional staff and the use of external consultants, it is our assessment that the Council is well placed to deal with the anticipated increase in consent applications and processing through to the issuing of the consent and has in place mechanisms to forecast and manage future resource consent requirements.

6.3 However, in regard to subdivision consents, the engineering approvals and s224 requirement procedures that take place after the granting of the consent do not appear to be addressed in the model. The model only appears to only apply to planners. Furthermore, we understand that there are only two subdivision engineering officers currently employed at Council. One officer deals with the geotechnical aspects of the engineering approvals, while the other deals with all other engineering requirements.

6.4 This critical constraint and vulnerability was emphasised to us by many in the development community. We agree. This is a critical issue now, let alone any ramp up in the number of subdivision applications, and consequential engineering approvals and applications for 224. During the course of our assessments, the subdivision engineering officers were restructured back into the Resource Consents team, rather than in the Council's structure of the building consents team. We commend the Council for this. In our view, the next step is securing additional subdivision engineering resources.

7 District Plan

7.1 It was universally agreed within the Council and with the other parties we talked to, that the district plan needs significant revision. The Christchurch plan was one of the first to be produced, has been the subject of a large number of modifications since it was first drafted in the mid-90s, and the plan is not a modern planning instrument suited to facilitating a timely recovery.

7.2 The plans (there are two – the "City Plan" and the "Banks Peninsula District Plan") are large, cumbersome and difficult to navigate. The City plan is effects-based, while the Banks Peninsula plan is activities-based. There are a total of 109 different planning zones, each with varying provisions, which are a source of confusion and frustration to users of the plan and to Council staff.

7.3 We were given many suggestions as to changes that were needed (including a substantial list compiled by the Council's consents team that had been given to the planning team prior to the earthquake). Compiling a systematic or comprehensive inventory of these would be a substantial undertaking and beyond the capacity of this assessment, but we identified some frequent themes:

- over-all simplification and reduction in size
- rules requiring resource consents for too many activities (the threshold is too low – eg, for earthworks, traffic generation etc)
- excessive prescription of the nature of building allowed (including urban design)
- rationalising zones
- positive provisions to facilitate desired outcomes
- inadequate discretion to exclude truly minor matters from requiring a consent or, if consented, to be non-notified
- inclusion of more economic, affordability and development considerations
- various recovery-related matters (eg, flood-zone management, temporary activities).

7.4 Many of the issues pre-date the earthquake, but the imperatives of the rebuild have given them much greater significance and urgency. Ken Lawn's April 2012 review report usefully identified a number of matters in the plan where the rules were more restrictive than necessary.

7.5 The Council has initiated a full review of the district plan. It intends to have the review completed in 3 years, and seven sections that have been identified as being necessary for the recovery are to be completed by June 2014. This review has been addressed as part of the development of the Land Use Recovery Plan (LURP). The draft LURP that has been delivered to the Minister for Earthquake Recovery includes a statutory direction

that the Christchurch amends its district plan to give effect to the LURP, using a truncated process.

7.6 Council planning staff were adamant that special legislation was necessary to expedite the plan review process – that options for a truncated process under the Canterbury Earthquake Recovery (CER) Act were not acceptable to the Council as they involved the Minister having an approving function. The Council wishes to be in command of the plan review.

7.7 We agree that that the plan requires urgent review, and that the standard first schedule process of the RMA is inappropriate. Not only is a truncated process called for, but even a revision of the 'recovery chapters' by June 2014 will not deliver the improvements urgently required to expedite recovery in the meantime. We were advised that opportunities for more immediate fixes have been considered as part of the development of the draft LURP. The draft LURP includes a suite of changes to resource planning documents, including to the Christchurch City Plan, but the Council did not agree to a number of other changes to its plan to be effected in the LURP. We believe that this needs to be revisited to give more immediate effect to plan changes that will facilitate speedy and effective recovery.

7.8 We encountered some scepticism that the City Council was capable of producing a revised plan that would deliver the sought-after fundamental change in approach. This was in the context of comments on overall culture and approach (ref. section 9).

7.9 We note that Council officers are genuinely understood the need for substantial reform of the plan, but the degree of change required, compared to past/current practice, is very large. There have been two post-earthquake examples where the city's planning proposals have been found wanting by the Earthquake Recovery Authority or Minister:

- The Council produced a Recovery Plan for the central business district, as required by the CER Act. The regulatory provisions of the proposed plan were not accepted by the Minister for Earthquake Recovery who directed significant modifications to simplify and streamline them, and established the Christchurch Central Development Unit to deliver on the Plan.
- The Council was subsequently asked to review residential provisions of the CBD plan. The review delivered in March 2013 also needed to be revised as it didn't provide the enabling regulatory environment required for effective earthquake recovery.

7.10 Given these two examples we are not confident that the Council will, on its own, achieve the degree of change in approach to its district plan review that is called for. The plan must be owned by, and fully reflect the aspirations of, the Christchurch community. But we suggest that the review should be conducted in collaboration with others, and that CERA's planning resources would be more effectively deployed working alongside Council planning staff during the review, rather than being called on at the end to remedy a product that does not fully facilitate effective and timely recovery.

8 Resourcing

8.1 In section 6.3 and 6.4 we identify the need to augment the number of engineers devoted to the subdivision consents. This is the most critical resourcing priority, and is one that many of the development community identified as urgent.

8.2 We also identify in 3.63 and 4.8 the need to have case managers for a much wider range of applications. This is working for 'Rebuild Central' and is, in effect, part of the service that the consent planner officers provide for general applications. However, for significant applications we recommend that senior case managers be deployed who can provide an authoritative interface between the applicant and the various Council staff involved in the application. This person must have the authority to make commitments on the Council's behalf, and to ensure that they are delivered upon by staff and teams from across the Council.

8.3 Associated with the engineering approvals and s224 applications, we were not made aware of any resource limitations in the City Environment area where staff have a primary role in these processes.

8.4 Outside of these matters we accept the advice of the consents, planning and asset management people we spoke to that they have adequate resources to do their jobs.

9 Culture and relationships

9.1 Most of the other parties (ie, outside of the Christchurch City Council) identified issues of institutional culture and approach within the City Council as a whole which shaped both their experience with the Council, and the outcomes.

9.2 The themes were remarkably similar despite the somewhat different relationships and interactions each had with the Council. The principal perceived characteristics cited were:

- conservative, risk-averse – particularly with respect of exercising judgements
- defensive, rule-following rather than solution-finding
- inadequate communication, and a reluctance to collaborate or compromise to achieve joint outcomes
- a silo mentality with different parts operating independently
- insufficient understanding of the commercial pressures of business and the fiscal consequences of their actions on the applicant
- a 'business as usual' approach that did not adequately adjust to the post-earthquake paradigm.

9.3 Similar observations have been made in previous reports (eg, Ken Lawn's April review, and the Ministry of Business, Innovation and Employment's July 2013 review of the Council's building consent system).

9.4 These characteristics were ascribed to dealings with many parts of the Council (planning, regulatory, asset management), and many attributed the culture as being driven from senior management. Within this overall context many identified staff or groups that were particularly helpful (and some who were not).

9.5 The external parties interviewed in our supplementary assessment were largely happy with the way the resource consenting team is operating at present. Several in the development community noted that there had been a noticeably more positive approach from the resource consents team in recent times, citing an increase in the use of pre-hearing meetings, and receiving single rather than multiple requests for further information. The Council conducts customer surveys that indicate a majority of positive responses.

9.6 Relationships with other agencies are generally positive. There are the expected differences in views between organisations and between individuals within those organisations. However, there are clearly significant tensions between the Christchurch City Council and the Canterbury Earthquake Recovery Authority which are impacting on effective recovery. The impact of these tensions is exemplified by CERA staff being told they cannot interact with Council staff without going through a manager.

9.7 While these culture and relationship issues are clearly affecting the Council's resource management and consenting delivery, they are issues which extend well beyond our scope and capacity to resolve as part of this assessment. They should be addressed in a wider context.

10 Recommendations

#	Recommendation	Paragraph references
1	Christchurch City Council should put checks in place to ensure time recording for resource consents is complete and accurate.	3.19
2	Christchurch City Council should review its reasons for requesting further information with a view to identifying ways of minimising the need for them.	3.26 3.27
3	Christchurch City Council should improve identification and recording of requests for further information made under s92 of the RMA.	3.29
4	Christchurch City Council should review the practice of using a list of potentially controversial applications to direct decision-making to hearings panels, and the operation of those panels.	3.35 to 3.39, 3.43 and 3.52
5	Christchurch City Council should review its regulatory delegations to delegate to the lowest competent level in the consents team, and to specified officers rather than to a subcommittee of officers.	3.48 to 3.50
6	Christchurch City Council should issue formal post consent acceptances where required by conditions of consent, and keep full electronic documentation of these acceptances and s224 applications.	3.58 3.69
7	Christchurch City Council should extend its use of project/case managers who can provide an authoritative interface between the applicant and the various Council staff involved in the applications.	3.63 4.8 8.2
8	Christchurch City Council should review its service level agreements between the Regulation and Democracy Services Group, and the City Environment and Strategy and Planning Groups to: • provide for a case management approach for applications • give case managers the authority direct and co-ordinate services being provided from those Groups • ensure that KPIs reflect service imperatives, and • actively monitor performance against the agreements	3.63 to 3.66
9	Christchurch City Council should assess for appropriateness the plan rules are triggering certificates under s37 of the Building Act.	3.74
10	Christchurch City Council should clarify the role of Urban Design Panel. In addition it should provide enhanced mechanisms for fostering a closer understanding and working relationship between the Council, the Urban Design Panel and the development community on urban design matters.	4.7

11	Christchurch City Council should establish a generous approach to extensions to the 12-month limit on discontinuous use affecting exiting use rights.	5.3
12	Christchurch City Council should review the level of proof it requires from applicants as to whether a land use was lawfully established prior to a relevant rule coming in to force, and be more proactive in sourcing relevant information from Council records.	5.5
13	Christchurch City Council should explore ways of addressing the impact of flood management requirements on existing use rights on an area-wide basis.	5.9
14	Christchurch City Council should provide a forum with the development community to facilitate the understanding and management of existing use issues.	5.10
15	Changes to the district plan should be expedited through the use of truncated processes, and in conjunction with CERA and other agencies.	7.7 7.10
16	Christchurch City Council should augment the number of engineers devoted to subdivision consents.	8.1
17	Overall organisational culture and relationship issues should be addressed	9.7

Appendix 1 – Terms of Reference

Terms of Reference for an assessment of Christchurch City Council's Resource Management Planning and Consenting delivery.

1. *Purpose of Assessment*

The purpose of this assessment is to identify whether CCC is sufficiently resourced and has suitably robust RM processes in place to meet the expected requirements of the gathering pace of earthquake recovery.

2. *Scope of the Assessment*

The non statutory diagnostic assessment will cover the following factors:

i. **Statutory Plan Making:**

- The extent to which the current District Plan is fit for purpose in the context of earthquake recovery.
- The steps that CCC is taking for future planning. This includes the district plan review, implementation of the LURP and NERP and the review of other statutory plans, policies or strategies required to support its resource consent functions.

ii. **Relationships and partnerships with other agencies:**

- CCC perceptions on the similarities and differences between its resource management goals and expectations, and those of its key stakeholders such as CERA, NZTA, Ngāi Tahu, Waimakariri DC, Selwyn DC, ECan and other stakeholders.

iii. **Future RM outputs:**

- The number of resource consent applications CCC expects for 2013-14.
- The steps CCC have taken to anticipate the expected workload including identifying necessary resources and opportunities to maximise efficiency and streamline processes for decision making.

iv. Current resource consent processing outputs, reflecting questions in the RMA survey:

- The number of resource consent applications processed to a decision in 2012/13, of those, percentage processed within statutory timeframes.

- The systems, processes and procedures for processing consent applications efficiently and effectively, including:
  - Pre –application and post granting processes and use of extensions.
- Decision making. For example, percentage split between decisions made by elected members and those by delegated officers.

3. Methodology for the assessment

3.1. Inquiries will be undertaken by a Director from the Ministry for the Environment and an external consultant with RMA resource consent and planning experience. Project management and oversight of this work will be provided by the Monitoring Evaluation Review and Compliance Team at the Ministry for the Environment. Project support will be provided by the Resource Management Practice Team.

3.2. The assessors will spend time at the council undertaking discussion with council staff and assessing databases, file information and council administrative systems. Council staff that will need to be available will include the Planning Manager and officers, Consent Manager, Consent Officers, the Planning Administrator (if applicable) and Customer Services staff (if applicable). The assessors will also speak with other agencies and stakeholders as appropriate.

4. Reporting

4.1. The findings (including any recommendations) from the assessment will form the basis of a draft report to be provided to the council for comment before being finalised and presented to the Minister for the Environment. A copy of the final report will be provided to the council.

4.2. This review may result in recommendations being made on ways to improve performance.

5. Timings of the assessment

5.1. Information gathering and report writing is planned to take place between 8 July 2013 and 19 July 2013.

5.2. The findings from the assessment will be reported back to the Minister for the Environment by 19 July.

5.3. Any final recommendations on ways to improve council performance will be reported to the council following the report back to the Minister on council performance.

Terms of Reference for supplementary assessment of Christchurch City Council's Resource Consenting delivery.

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1. Purpose of Assessment

The Ministry recently completed a diagnostic assessment of CCC's resource management functions. It was beyond the scope of this initial assessment to comprehensively examine end-to-end consent processes with a view to understanding whether there are any significant time lags existing amongst statutory timeframes.

The Ministry is now undertaking a more comprehensive assessment in this particular area. This assessment will focus on a selection of representative cases to examine in detail, the full life cycle of CCC consent processes as experienced by applicants. The assessment will be expected to report on any systemic issues and recommend any options to enhance the utility of the CCC's consent processing.

2. Scope of the Assessment

The assessment will comprehensively examine a range of representative consents - examining the full life of each consent: from the pre application stage (with some examination of consents that did not proceed past this stage) through the application process and onto any post-decision approvals (if these were required).

Selection of cases must have careful regard to gathering any cases where the total elapsed time between pre application and post decision approvals adds a significant time-lag to the existing statutory timeframes.

The assessment will have particular regard to the following:

2.1. Selection of a representative group of consents

- Identifying for examination a representative group of consents over the last two years which includes:
    - non-notified,
    - limited notified, and
    - both notified consents for 2012/13.
    - A range of subdivision consents which required engineering approvals and went on to Section 223 and 224 certifications (with a focus on subdivisions greater than 10 lots)
    - Significant land use consents

2.2. Consent processing

- The assessment should detail the impact and effect, in terms of end to end processing times, for individual cases where CCC have:

    - extended timeframes,
    - requested further information, or
    - added other processes which add significant time to the overall process.

- The assessment should provide detailed analysis on any systemic lags amongst statutory timeframes and identify any functional arrangements which are consistently impeding end to end processing times.

2.3. Pre-application meetings and post decision approvals

- The assessment report must consider for each case:
    - the impact of the pre-application process on the overall processing of the consent.
    - The impact, where appropriate, any post decision approvals have had on the overall processing times for the consent.
- The assessment should also examine:
    - the broader impact that CCC's pre application process is having on consent processing – ascertaining why the increase in the number of pre-application meetings has not resulted in an increased number of consequential applications.
    - whether the pre application process is impacting on applicants' decisions to proceed with projects or is likely to result in large numbers of unanticipated applications in the future.
    - Whether any significant issues arise amongst any of the post decision approvals examined.

2.4. Other Matters

- The assessment team will be free to contact individual applicants or their representatives

.

3. *Methodology for the assessment*

3.1. It is intended that an external consultant be engaged to undertake the investigation. Project management and oversight of this work will be provided by the Monitoring Evaluation Review and Compliance Team at the Ministry for the Environment. Project support will be provided by the Resource Management Practice Team.

3.2. CCC will be asked to provide and prepare the information that will be required to undertake the investigation. The assessors will select from this long list a representative sample. It is intended that as part of the investigation up to 50 resource consent applications will be forensically analysed.

4. *Reporting*

4.1. The findings (including any recommendations) from the investigation will form the basis of a draft report to be presented to the Minister for the Environment.

4.2. The assessment report may result in recommendations being made on ways to improve performance.

5. *Timings of the assessment*

5.1. The investigation and report writing is expected to take place between 19 August 2013 and 13 September 2013.

5.2. The findings from the assessment will be reported back to the Minister for the Environment by mid-September.

5.3. Any final recommendations on ways to improve council performance will be reported to the council following the report back to the Minister on council performance.

Appendix 2 – Groups Interviewed

Christchurch City Council

Environment Canterbury staff

Selwyn District Council staff

Waimakariri District Council staff

Canterbury Earthquake Recovery staff

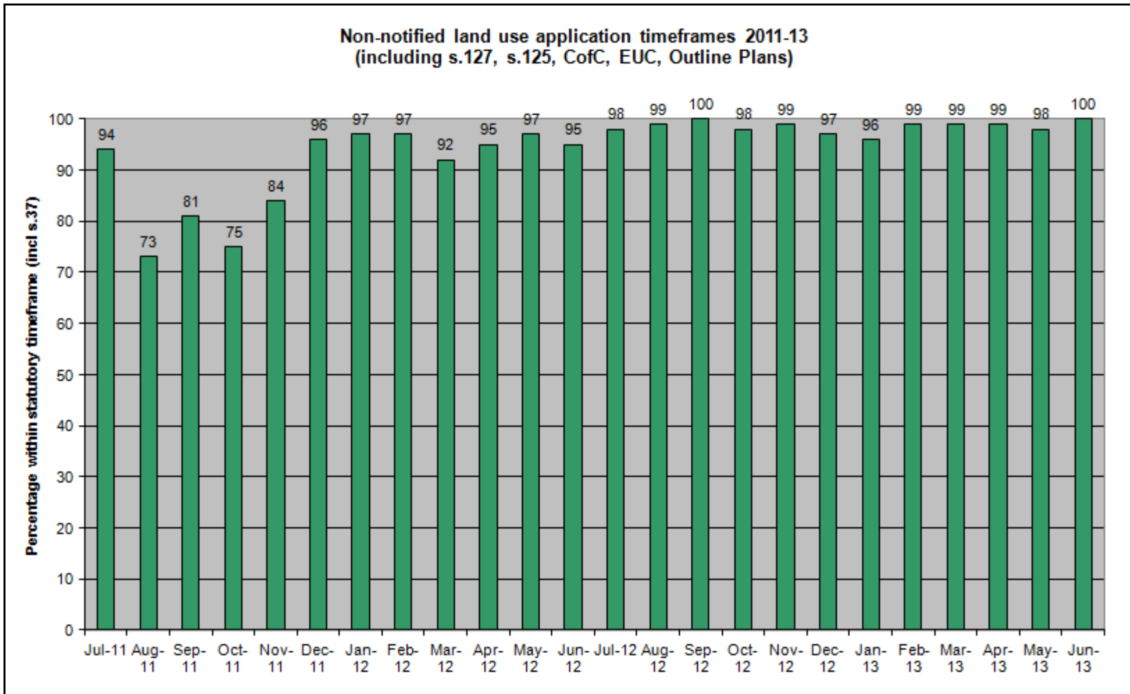
Resource Management Practitioners and Surveyors

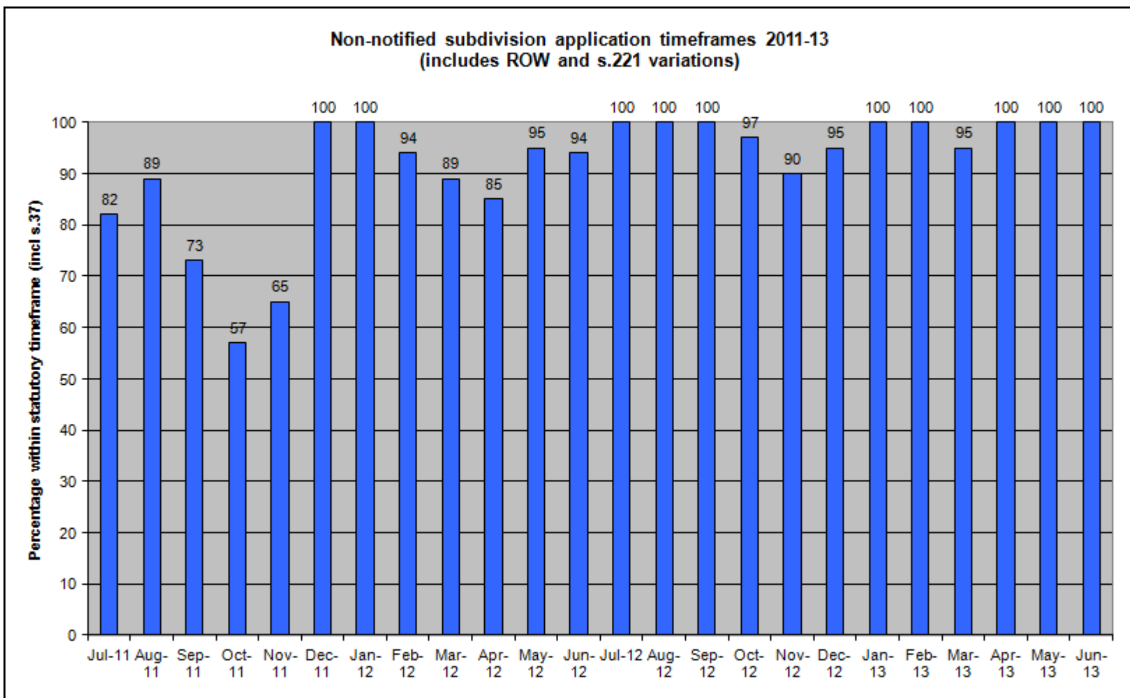
Groups of Land Developers

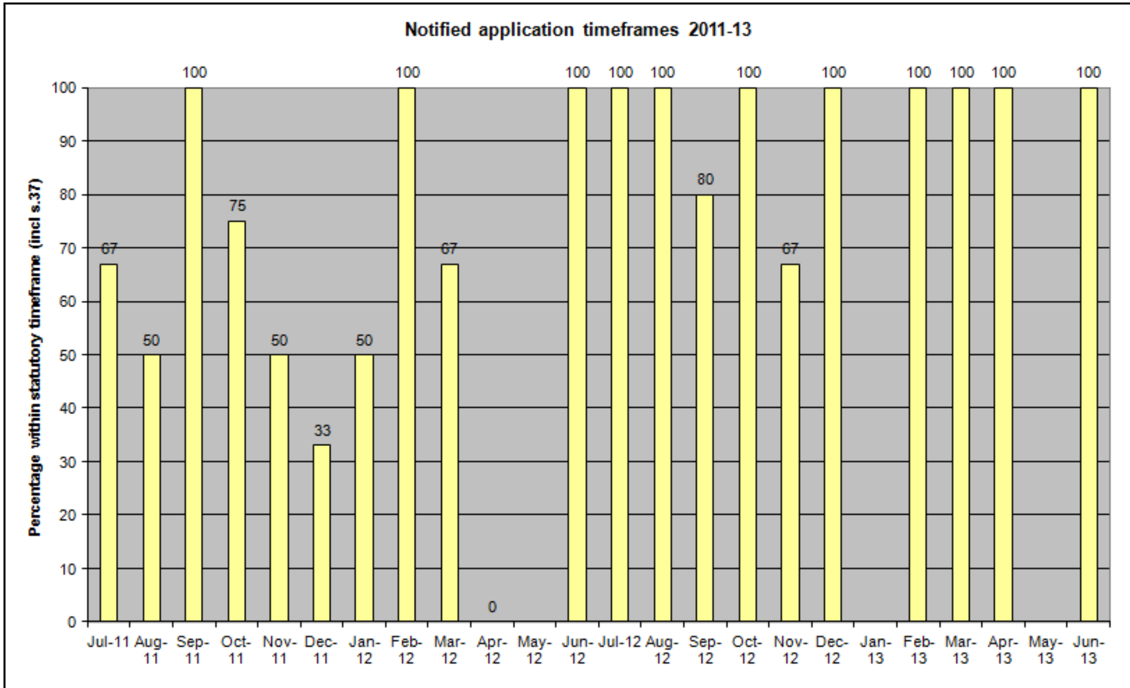
Ngāi Tahu

Persons attending pre-application meetings

Appendix 3 – Consent timeframes 2011-2013






Notified application timeframes 2011-13
Percentage within statutory timeframe (incl s.37)
67
50
100
75
50
33
50
100
67
0
100
100
100
80
100
67
100
100
100
100
100
Jul-11
Aug-11
Sep-11
Oct-11
Nov-11
Dec-11
Jan-12
Feb-12
Mar-12
Apr-12
May-12
Jun-12
Jul-12
Aug-12
Sep-12
Oct-12
Nov-12
Dec-12
Jan-13
Feb-13
Mar-13
Apr-13
May-13
Jun-13

ADDENDUM

Following the initial review in July 2013, and again following the more in-depth review of the consenting function in September, Christchurch City Council was given an opportunity to respond to any factual issues or omissions in the Report. Their correspondence to both invitations is detailed within this addendum, along with the Authors' response.

Christchurch City Council

Office of the Acting Chief Executive

14 August 2013

Guy Beatson
Deputy Secretary Policy
Ministry for the Environment
PO Box 10362
Wellington 6143

By email: Guy.Beatson@mfe.govt.nz

Dear Guy,

Last week Kevin Currie advised us that the Minister has asked for a "second and deeper level review of CCC consents".

Even although we got very little notice that the first report "Assessment of CCC's Resource Management and Consenting delivery" (July 2013) was happening and were given the impression that it was time critical and urgent, we now understand that there is no agreed timeline to complete or release this report.

At the outset of this project, as your staff have noted to you, the Christchurch City Council was helpful and co-operative in assisting your team. CCC was visited over a number of days, and subsequently given 24 hours to comment on factual matters. We were advised that we were not entitled to comment on the interpretation put on the information by MfE staff. You have been given our assurance that your team will receive the same level of co-operation with this latest exercise.

Notwithstanding, the further work now requested by the Minister immediately poses some concerns to myself and our elected members. Irrespective of the apparent leak of the draft of the July report (see my later comments) the Minister's decision to move from a diagnostic check to a more detailed analysis of our consents, without discussing the scope or rationale with Council, or without bringing the July diagnostic stage to a conclusion is concerning, particularly as on the surface the draft report prepared for you raised no substantive concerns that would justify this next step. If such an investigation had been shown to be necessary as a result of the first report, it would have been courteous and reasonable to expect that the Council would be included in that decision in a manner beyond a simple phone call or email instruction.

In the light of this, I am compelled to draw to your attention to the comments made in Section 7.0 of the draft report. In particular Section 7.1.8, and 7.1.9 comments on the City's capability and capacity are not justified and cannot be validated. Firstly, the Central City Plan prepared by the City did, as the report indicates, include changes to the District Plan. However, it is wrong to suggest that the redrafted provision required "significant modifications". Firstly the changes made by CERA were minor in nature, and in a number of instances have further been corrected because they were proven to be defective. Secondly the establishment of the Central City Development Unit (CCDU) was completely unrelated to the City Plan provisions; the CCDU reflected the Minister's desire to create a prescriptive programme, based on a blueprint, which in itself relied on processes and powers which only

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the Minister could wield. It is quite inappropriate to link that action to the District Plan changes.

Reference is also made to the inadequacy of the Central City Plan Living Zones review carried out over the September-January period last year by the city. This review which was a statutory direction, was conducted under haste, in full consultation with the affected community, and with the complete involvement of CCDU and its advisors. It has been with the Minister since 1 March 2013, and there has been no advice or reason why it has not been accepted, or released by the Minister. When confronted with this issue recently, CCDU staff admitted there was nothing wrong with the review undertaken by the Council, but that they wanted to incorporate a wider range of non regulatory recovery items (which clearly fell outside the scope given to Council). Given how secretive CCDU have been to date with this review, it is difficult to understand how MfE can have formed any view about the adequacy of the review or the accuracy of the comments.

What is of significant concern is that other Canterbury politicians have indicated that the Minister has already formed a view of the Council's planning capability based on these particular sections of the draft report. We therefore have the intolerable situation of a series of incorrect statements, to which the Council has never had the formal opportunity to respond, being seemingly advised to the Minister and being accepted by the Minister as the basis for questioning other aspects of the Council's performance capacity. I am certain you would not appreciate that approach being conducted in respect of your department, and it is not acceptable to this Council either. The two examples cited above give the impression that the Ministry is clearly seeking to undermine the credibility of the Council, and its capability, despite the work it has done to produce the multi-award winning Central City Plan, together with a raft of planning and policy initiatives to assist recovery. It should be noted that it was the Christchurch City Council that offered to comprehensively review its district plan, and subsequently has put a significant budget and staff resource in place to make this happen.

Finally I wish to comment on the matter of the so called leak of the draft report. Your office was quick to place the blame with Christchurch City Council. We took this very seriously and as soon as possible provided comprehensive details of the number of staff we interviewed and the outcome of the interviews. You were advised that our "IT Forensic" examination yielded nothing. Further, we confirmed that the leaked document was in a version of Word unsupported by CCC. You also confirmed that your internal auditor had conducted a formal investigation, including examination of document version and email records and you concluded with a high degree of confidence that the breach did not occur from MfE. Further conversations have suggested that MfE now wish to put the leak 'down to experience'.

As I have said to you previously, it is Council's reputation that has suffered, not MfE, so we request that both our organisations put our heads together to see what further investigations need to be done. In our view we need to confirm that there has been no leak by any consultant, or any Ministerial staff. The report while ostensibly still a draft has obviously been referred to the Minister and as noted above has led to a number of opinions being formed and actions being taken. It seems to us that this report is not being treated as a draft, it simply has not been released other than to the Minister's office, or permitted to be challenged by the subject party, the Council.

We consider that we have shown a willingness and agility to respond to the challenges of the earthquakes. We have fully co-operated with your requests, and are certainly keen to identify positive improvements. As I commented to Mr Currie and to you I find that the best results come when people work together, rather than the current approach which seems to be one of instruction in which one party has no say as to the terms of engagement, the reasonableness of the request, or the findings.

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So that we can agree how we can create a positive working environment that supports the city in this critical time. I think that the way forward is for you to meet with myself, the Chair of our Planning Committee and senior staff to fully explain the scope and objectives in the Crown's latest review.

Finally, the City Consent and District Plan processes, are not perfect, however we would challenge MfE or any party to find a perfect Council.

As it happens, I'll be in Wellington on Friday, so I would welcome, as a first step, the opportunity to discuss the contents of this letter face to face. Can you please let Katharine Louw (my EA) know your availability and I will try and make it fit with my schedule.

Yours sincerely,

Jane Parfitt
ACTING CHIEF EXECUTIVE

cc.: Mike Theelen
Mayor Parker
Cr Wells, Chair of Planning Committee
Benesia Smith, CERA

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Christchurch City Council

Office of the Acting Chief Executive

31 October 2013

Hon Amy Adams
Minister for the Environment
Private Bag 18041
Parliament Buildings
Wellington 6160
Wellington
Email: Amy.adams@parliament.govt.nz
cc: guy.beatson@mfe.govt.nz

Dear Minister,

Thank you for providing, in confidence for comment, the final draft report from the diagnostic review of Christchurch City Council's Resource Management Planning and Consenting functions (cover letter dated 1 October 2013). Comments on any factual errors, findings or omissions were invited along with an action plan detailing how the Council will address the matters raised in the report.

It is positive to note that the review did not identify any evidence of systemic failures within the Council's consenting function and that the matters identified in the report are minor and within the Council's capacity to resolve. We also note a number of supportive comments in the report regarding the Council's consenting function, the improvements already actioned, and expertise of staff. These comments align with positive feedback that the Council has been receiving in a number of areas.

For the purpose of developing an action plan, the recommendations contained on pages 28 and 29 have been responded to with actions and timeframes. We would be happy to clarify or discuss any matters contained in the attached action plan. We would wish to discuss with MfE staff the proposed monitoring of the plan's implementation. Given the scope of this review it should be noted that the action plan represents just a few of the actions being taken across Council as we seek continuous improvement in service delivery, respond to recovery plans, and represent community interests.

It is disappointing that several of the points in the first draft of the report have not been further amended or validated. We will not comment on all but rather highlight a few examples.

Regarding the District Plan Review, statements remain on page 24 regarding the Council's delivery of the Draft Central City Plan and the Central City residential zone review having been 'found wanting' yet those comments do not align with any correspondence or conversations we have had with CERA or CCDU. We consider that these comments undermines the credibility of Council, in particular where in contrast to the report the quality of the work completed on both these pieces of work has been complimented by CERA/CCDU, and further changes pursued have been either outside of the brief given to Council, or reflect the Crown's particular objectives or purposes. The evidence base for this criticism is therefore strongly questioned and we would request that such references be removed or validated.

Urban Design is an area which has not been the subject of detailed analysis, nor has benefit from a wider conversation. In this respect the tensions referred seems unjustified. The issue of design was a central theme in the Community's response to the urban renewal opportunities to emerge from the earthquakes. These have been a cornerstone of the Draft Central City Plan, and the Suburban

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Masterplanning programme. The Council's Urban Design Panel has had strong support from Council, and considerable success at positively shaping the rebuild. Similarly CERA's Central City Recovery

Plan, and the Draft Land Use Recovery Plan continues to highlight the need for a high quality urban environment, and the UDP and design advice provided by Council staff and consultants contribute actively to this. The Council acknowledges that there will at times be a tension as we seek to ensure the good design outcomes and our action plan notes continued initiatives in this area. Accordingly we consider that the draft comments unreasonably draw conclusions that are not justified by the review undertaken, and undermine the genuine efforts of Council to reflect the aspirations of the community.

The report acknowledges the cooperation of Council staff throughout the review, and I wish to reconfirm that while the Council is confident it its consenting processes it is always willing to improve its performance. We would welcome further dialogue with your officials, as noted in our Action Plan comments to ensure we are delivering best quality services to the community. We do however reiterate the need to ensure that the reviewers report does not unjustifiably create undeserved distrust in the Council's performance which will only continue to undermine our capacity to focus our responses on supporting the recovery of the City.

Finally while we acknowledge that the review has been commissioned by your office we suggest that there is a positive opportunity for the Council and the Government to release the outcome of this review together. The new Council is keen to be working closely with Government and a joint release would signal our joint commitment to ensuring an efficient and high quality consenting environment. I look forward to your feedback.

Yours faithfully,

Jane Parfitt
Chief Executive
CHRISTCHURCH CITY COUNCIL

cc.: Mike Theelen

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Authors' note

We have read the letter to Minister Adams from Christchurch City Council dated 31 October 2013 and we note the request to amend two areas of our report relating to the delivery of the Draft Central City Plan and the Urban Design Panel.

We are satisfied that the report is a fair reflection of our findings. We took some care to indicate in the report where we were reporting on the views expressed to us and where we were presenting findings from our own analysis of data. The points made in the Chief Executive's letter generally relate to the former category. We can only conclude from this that the views of Christchurch City Council on these matters was not universally shared within the organisations we consulted with.

In conclusion, we do not see any reason to change our report.

Mark St Clair and Kevin Currie

12 November 2013