

Regulatory Impact Statement

Streamlined process for the review of Christchurch City's District Plans

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Canterbury Earthquake Recovery Authority (CERA) with the Ministry for the Environment (MfE).

It provides an analysis of options to deliver a streamlined district plan review process for the review of the Christchurch City Council's (CCC) District Plans (including both the City Plan and the Banks Peninsula District Plan).

Analysis of the regulatory options for amendments to the Resource Management Act 1991 (RMA) District Plan review process is constrained by limitations in knowledge about how investors, developers, and the community might react to this process and the changes to rules and methods in the District Plan. The assumptions made in designing amendments to the RMA Schedule 1 process to undertake a District Plan review have been informed by written submissions made on the draft Christchurch Central Recovery Plan and the draft Land Use Recovery Plan, and the recent review by the MfE on CCCs' RMA function delivery. Gaps in understanding have been filled from experiences in the development of a similar process for the preparation of the first Auckland Unitary Plan.

The urgency and sensitivity of the issue has required the CERA to limit consultation on the streamlined process to the CCC and the strategic partners to the review of CCC's district plans; Environment Canterbury, Te Rūnanga o Ngāi Tahu, Waimakariri District Council, Selwyn District Council and the New Zealand Transport Authority. Government departments have also been consulted.

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Date:

Context

1. Recovery from the Canterbury earthquake sequence that began in September 2010 is estimated to cost \$40 billion¹. In order to recover from the devastating impacts of the earthquakes significant rebuild and repair is required. In this context many resource management decisions are required.
2. The Resource Management Act (**RMA**) sets up the district plan as the main mechanism for approving land use developments needed during the recovery.
3. The Canterbury Earthquake Recovery Act (**CER Act**) requires the development of a Recovery Strategy for Greater Christchurch (the Recovery Strategy) and gives the Minister for Canterbury Earthquake Recovery the ability to establish recovery plans to provide statutory direction and a basis for decision making to give effect to the Recovery Strategy. Those with existing powers and functions under the RMA must not make decisions that are inconsistent with the Recovery Plan. These functions and powers include decisions on resource consents, and reviewing or changing a district plan. The Recovery Plan can also require that specific objectives, policies and methods are included in or removed from a district plan. If there is an inconsistency, the Recovery Plan prevails.
4. The CER Act also provides powers, via Order in Council, to require a local authority to take any action necessary or to stop taking any action contrary to achieving the purpose of the CER Act and the Minister for Canterbury Earthquake Authority can 'call up' and exercise any functions, rights or responsibilities of any local authority when this is considered necessary to achieve the purpose of the CER Act. The CER Act expires on 18 April 2016. Any actions initiated under the CER Act, such as an Order in Council, must be executed by this date. Any appeals of process to the Court can however still be outstanding.

Status quo statutory context

5. Based on the statutory context above the following instruments provide direction for the recovery response in Christchurch:

Christchurch City Council District Plan

6. The use and development of land is managed by the provisions of the Christchurch City Council's (**CCC**) District Plans (including both what is commonly known as the 'City Plan' and the Banks Peninsula District Plan). The District Plans were developed in the mid 1990's, and have been amended in an incremental manner many times since.

The Greater Christchurch Recovery Strategy

7. The Recovery Strategy provides a vision, goals and a road map for ensuring the success of greater Christchurch for recovery and future leadership in earthquake resilience.
8. The CER Act requires the Recovery Strategy to be read together with and form part of the CCC District Plans. Where there are inconsistencies, the Recovery Strategy prevails.

¹ <http://www.beehive.govt.nz/release/additional-21b-christchurch%E2%80%99s-recovery>

The District Plans cannot be interpreted or applied in a way that is inconsistent with the Recovery Strategy (sections 15 and 26 CER Act). However, the Recovery Strategy does not change the CCC District Plans.

Christchurch Central Recovery Plan

9. Under the CER Act a recovery plan must be developed for the Christchurch central business district (CBD), and the Christchurch Central Recovery Plan was adopted by the Minister for Canterbury Earthquake Recovery on 30 July 2012. Changes to the CCC District Plans through the Christchurch Central Recovery Plan are limited to the CBD.
10. The Recovery Plan directed the CCC to make a series of changes to the City Plan and review the CBD Living Zone provisions to ensure the objectives of the Recovery Plan were met. With exception of implementing the reviewed Living Zone provisions, these amendments have been given effect to.
11. Building on the CCC's work, the Minister for Canterbury Earthquake Recovery has recently instructed CERA to review the residential recovery response for central Christchurch with the intention of amending the CCC District Plans CBD Living Zone provisions to address issues of recovery.

Land Use Recovery Plan

12. The Minister for Canterbury Earthquake Recovery is considering a draft Recovery Plan, to address land use planning and related transport and infrastructure issues for the greater Christchurch area – the Land Use Recovery Plan (**LURP**).
13. Changes to the CCC's District Plan through the Christchurch Central Recovery Plan are not limited to the CBD.
14. The LURP (as in the Minister's direction to Environment Canterbury to prepare a draft) specifies the following:
 - a. Identifies the location, type and mix of residential and business activities within specific geographic areas necessary for earthquake recovery over the next 10-15 years;
 - b. Changes necessary for earthquake recovery to residential and business land use policy and planning provisions, and related funding instruments;
 - c. Makes changes or identify a programme of further work to provide for intensification and comprehensive development on Brownfield land and support the network of centres of activity;
 - d. In making the changes above, considers avoiding or mitigating the changed or heightened risk of natural hazards.
15. The draft LURP proposes a number of immediate actions to be implemented through review/change of the CCC District Plans. It also proposes further review of the CCC District Plans - but with the intent being that this review is conducted under a shortened process than normal RMA reviews. Matters to be covered by this review include completing the remaining zoning of priority greenfield residential and industrial areas and additional enabling of housing choice, intensification, and revitalisation of centres. In many cases they are matters for which there is insufficient information to make a

reasonable judgement around them now or matters that are not immediately essential for the recovery and/or would benefit from more analysis and/or community engagement.

16. The LURP is therefore constrained in what it can achieve to change in the CCC District Plans and will not provide for a comprehensive review of the plans.

Housing Accords

17. No housing accord is proposed at this stage for greater Christchurch under the Housing Accords and Special Housing Areas (**HASHA**) Act.

Status quo district plan review

18. Under the status quo, it has been proposed that the CCC District Plan will be reviewed in a two stage process, with urgent priority matters being dealt with first followed by the remainder of the plan. The only option available under statute at present is using a mixture of the Minister for Canterbury Earthquake Recovery's statutory direction under the CER Act for those matters associated with earthquake recovery associated with the LURP, and the district plan preparation process in Schedule 1 of the RMA for the remainder of the plan.
19. The LURP offers a limited opportunity to make changes to the CCC District Plan. The Minister for Canterbury Earthquake Recovery may make amendments pursuant to section 27 of the CER Act to support the changes and variations required by the LURP.

RMA schedule 1 review

20. Under the RMA Schedule 1 process, CCC would need to complete the following tasks:
 - Pre-notification plan preparation including consultation and cost benefit evaluation (s32 RMA);
 - Plan notification, submissions, summary of submissions, further submissions, and prehearing activity;
 - Hearings (potentially by independent commissioners);
 - Decisions by Council within two years of notification; and
 - Appeals to the Environment Court on merit to be heard anew (*de novo*).
21. A district plan only has immediate legal effect if the rule protects or relates to the natural environmental or historic heritage, or if the Environment Court gives such an order. In that case both the operative and proposed district plans are assessed for compliance. The operative district plan must be had regard to until such time as the new (reviewed) district plan has been made operative (this includes resolution of appeals). The current City Plan took four years from notification to council decision and another five years for appeals to be resolved.

Problem definition

22. The CCC's District Plans were never designed to cope with the amount of repair and rebuild necessary to recover from the earthquakes – commonly regarded as first generation district plans.
23. In order to respond to the requirements of the LURP and the wider earthquake recovery effort the CCC needs to review and replace the existing operative District Plans. This is

in part recognition of the consenting decisions that will be needed in coming years. For 2012/13 CCC issued 1,850 resource consents and are forecasting that to increase to 2,500 to 3,000 consents for 2013/14. Current insurance forecasts identify mid-2014 as the beginning of the consenting peak for the residential rebuild. The current plan requires many of these consents to be publicly notified. It also potentially sets the threshold for needing consenting too low with too much discretion retained by the CCC. Without amendment, the District Plans will hamper the rebuild and new development, and risks capital flight of development activity being pushed out of Christchurch City.

24. The need for the review is urgent. At present CCC is operating under two first generation RMA district plans (the City Plan and the Banks Peninsula District Plan) which do not fit together and have been changed many times. This build-up of complexities was illustrated in the review undertaken by the CCC of the Living 4 and 5 zones in the CBD and the overlay of the Special Amenity Area provisions. The number of changes identified in the draft LURP to the CCC District Plans, compared to the Selwyn or Waimakariri District Plans, also illustrates the needs for simplification and improvement.
25. A recent report prepared by the Ministry for the Environment (**MfE**) on the RMA functions of the CCC confirms this position. The report concludes:
 - a. the district plan is overly restrictive, with some rule thresholds set too low, meaning consents are required for activities that should be permitted, and thereby slowing down progress on the rebuild;
 - b. the district plan does not currently provide for sufficient development capacity to cater to the forecast growth in housing, commercial and industrial development;
 - c. the complexity and prescriptiveness of the district plan (including 190 zones) sets up a difficult regulatory regime for developers and applicants to navigate, causing uncertainty; and
 - d. the hazard provisions do not provide adequately for managing risks posed by environmental hazards in the city.
26. All stakeholders including CCC have agreed the CCC District Plans need significant revision in order for it to be fit for purpose. The CCC recognises that the existing plan is not a modern planning instrument suited to enabling and facilitating a timely recovery. The CCC commenced a full review of their District Plans in July 2013.
27. CCC have stated the review should be completed and a plan operative within 3 years. The CCC programme sees the 'recovery chapters' or urgent recovery components of the priority district plan review completed by 30 September 2014 according to the draft LURP that has gone to the Minister for Canterbury Earthquake Recovery for consultation and approval. The remaining chapters which are not directly related to less urgent recovery are proposed to be adopted by the council before the local body elections in 2016. Under the standard RMA Schedule 1 process this timeframe is not likely to be achieved.
28. An analysis of a typical RMA process shows the process would realistically take up to 2017 to achieve final decisions from a council hearings panel, followed by another 3 to 5

years to process Environment Court appeals and finally another 2 years to complete High Court appeals. A process of up to 10 years for the plan to become operative.

29. The draft LURP identifies a number of distinct, yet significant, amendments necessary for earthquake recovery. Some of these can be addressed before the Minister for Canterbury Earthquake Recovery adopts the LURP. Others would facilitate recovery and assist in addressing the key challenges that have been identified, particularly to address the Minister's direction.
30. Notwithstanding these changes both Christchurch City District Plans need to be reviewed in their entirety and rewritten in a new structure that is modern, less complex, and more user friendly, and that is enabling of earthquake recovery and rebuilding.
31. The status quo has the following flaws:
 - a. Different legislative purposes: The two stage process sees a district plan being reviewed for two purposes – the CER Act and the RMA. A district plan in the long term should meet the purpose and principles of the RMA. The CER Act only provides for recovery – through implementation of the LURP through to 2028.
 - b. Confusing process: The two stage process risks also being extremely confusing for the community and stakeholders. A two stage process does not produce efficient decision making and will add to costs – it requires a breakdown of the district plan dealing with provisions deemed by CCC to be “recovery” and “non-recovery” or less urgent recovery.
 - c. Increases complexity: If change is made in a piece meal way to only parts of the operative district plans the situation will become more complex. There will be requirement that the new provision is read together with the old provision– potentially also with new and old planning maps and zoning in play.
 - d. Takes too long: The current legislative arrangements do not support an entire plan review being completed quickly to meet the resource consenting peak and provide for expedient recovery.
 - e. Cost: The funding required for a 10 year process is significant, in particular the funding of the Environment Court appeal process, both to Councils and submitters.

Objectives

32. The objective is to provide a mechanism and process to provide a new CCC District Plan that provides a streamlined process by:
 - a. achieving a clear process for engagement that the community and developers understand and can take part in;
 - b. producing efficiencies in time,
 - c. providing certainty for the community, developers and the council;
 - d. expediting Canterbury earthquake recovery;

- e. prioritising the sections of the plan that should be given priority in the review process;
- f. ensuring integrity of the district plan; and
- g. avoiding a piecemeal approach.

33. And provides a final plan that:

- a. is completed within the period of the CER Act;
- b. provides for a resilient future;
- c. is a quality district plan document and a holistic solution;
- d. is aligned with the purpose and principles of the RMA;
- e. achieves alignment with other territorial plans;
- f. creates an integrated whole district plan document; and
- g. generates minimal transitional periods between the current and new plan.

Assessment Criteria

34. The options proposed have been assessed against the need to provide benefits of the preferred option not only exceeding the costs but in it delivering the highest level of benefit. A positive option should reduce compliance costs for all parties and improve incentives to invest in the future of Christchurch. The option should also not impair private property rights, or business innovation while not overriding common law principles or market competition.

35. The following criteria, and the option that should be adopted is that which best achieves the following:

- a. A timely decision making process that minimises delay;
- b. An integrated and implementable new district plan;
- c. Clearly allocates roles and accountability between central and local government;
- d. Minimises transaction costs;
- e. Provides a robust process and will withstand scrutiny by others ;
- f. Provides an appropriate balance of rights between affected parties, including the right to make submissions and be heard on those submissions;
- g. Provides an appropriate balance of requirements under the RMA;
- h. The opportunity to be heard for people affected by a submission or proposal is not lost; and
- i. Provides clear direction to minimise uncertainty for users, including interpretation and implementation.

36. These criteria demonstrate the necessary balance between due process and timeliness. As demonstrated in the above sections, the current regime will inevitably lead to delays,

and for this reason, an expedited process is one of the most important elements in considering any options, followed by a plan that is sustainable and provides a robust process.

37. The trade-off for implementing an expeditious process is that there is time and resources available to give everybody the full opportunity to make their case. It is considered necessary in this case to accept this to address the future issues of the Christchurch City and surrounding regions.

Approach to analysis

38. The following approach assesses the mechanisms that could be used to deliver a streamlined district plan review process. An analysis of the process is then undertaken for the preferred mechanism.
39. An impact analysis has been undertaken for each policy mechanism and each process option – for which the costs, benefits and risks are identified and measured qualitatively, and quantitatively, where possible.
40. The assessment criteria are used to analyse the policy mechanisms and then again for each process option identified. This has been undertaken by scoring each mechanism or process option against the status quo. Ticks (✓✓✓, ✓✓, ✓) means the option was better at achieving the criteria than the status quo; a dash (-) means no change compared to status quo; and crosses (×××, ××, ×) worse than status quo. The greater the scoring is the better or worse the option is than the status quo. For example in relation to “The opportunity to be heard for people affected by a submission or proposal is not lost”, a consultation process that reduces public input by giving less time for submissions would be ×; a process that removed the further submission process would be ××; and a process that had no right to be heard would be ×××.

Policy Mechanisms

41. Table 1 below outlines possible mechanisms put forward to achieve a streamlined district plan review process.

Table 1: Practical Policy Mechanisms

Mechanism	Key Features
1. Order in Council under the CER Act	<p>A special process designed to streamline the district plan review process. This will require an amendment to the RMA to shorten the timeframe to deliver the district plan review.</p> <p>An Order in Council will need to align with the principles of the CER Act</p> <p>The process, baring appeals, will need to be completed by 18 April 2016 – the expiry of the CER Act.</p>
2. Recovery Plan under CER Act	<p>Minister directs new recovery plan – annexed to it will be district plan changes</p> <p>CCC review district plan and prepare new recovery plan in accordance with the CER Act.</p> <p>Minister receives recovery plan, calls for written comments and then makes changes to the district plan – in this case replacing it with a new district plan.</p> <p>The process, baring appeals, will need to be completed by 18 April 2016 – the expiry of the CER Act.</p>

3. Streamlined process for priority recovery matters (either one of above options) and a standard RMA process for remainder – i.e. a two stage process

A two stage process, using one of the above options for the urgent priority recovery matters, with the remainder of the district plan to proceed through a standard RMA Schedule 1 process taking up to ten years to complete.

42. Other mechanisms have also been considered as an alternative district plan review process; however they were considered, and discounted. They are identified in the Table 2 below.

Table 2: Discounted mechanisms

Mechanisms	Reason mechanism considered unviable
s 27 under CER Act – Ministerial Direction	Significant legal process risk ² .
Powers to direct a plan change and call-in to EPA process (Board of Inquiry (BOI))	This mechanism will apply to only part of the plan. Under section 25A(2) of the RMA the Minister for the Environment may only direct a territorial authority to prepare a change to district plan that addresses a resource management issue relating to a function in section 31 of the RMA. The Minister has the powers under section 142(2) to call in that matter. These powers do not extend to an entire district plan review. As identified above, the priority areas identify areas of immediate action; however the benefit of reviewing the entire district plan will be to ensure efficiency and consistency of the entire district plan.
Special legislation under the RMA (like the Auckland Unitary Plan)	This process is provided for under the CER Act via an Order in Council and it is therefore unnecessary to have primary legislation to provide the mechanism for implementation. The Statute, unless progressed under urgency would require 3 months – 1 year to pass legislation. Further the costs of special legislation are not warranted at approximately \$3.3 million verse \$0.5 million for a regulatory response. ³ The advantage of special legislation however is that the process can extend beyond the life of the CER Act – i.e. beyond 18 April 2016.
Housing Accords and Special Housing Areas Act (HASHA Act)	Although the HASHA Act would give early legal effect to new residential provisions. This Act only addresses residential issues, and not form and function of the district plan.

43. Due to the particular circumstances under which the district plan reviews are being undertaken in each Christchurch and Auckland there are a number of differences from the Auckland Unitary Plan process. These differences include:

- a. Removal of the section 32 analysis audit as the new RMA legislation is now in place;

² Court of Appeal in Canterbury Regional Council v Independent Fisheries Limited and Others COA CA 438/2012 [20 December 2012] and related cases

³ Wilson N, Nghiem N, Foster R, Cobiac L, Blakely T. Estimating the cost of new public health legislation. [8 May 2012]. <http://www.otago.ac.nz/wellington/otago034147.pdf>

- b. Shorter timeframes for the Christchurch district review as it does not include a review of the regional policy statement or regional rules, and there are fewer district plans being reviewed and the scale is smaller;
- c. A changed further submission process to give greater speed; and
- d. The Hearings Panel making the final decisions in the Christchurch case to quicken decisions.

Analysis of practicable policy mechanisms

44. Table 3 below evaluates the impact of the three practicable policy mechanisms to achieve a streamlined district plan review process.

Table 3: Evaluating the impact of the practicable mechanisms

Impact	Incidence	Magnitude and comment
Mechanism 1: Amend the RMA Schedule 1 process via an Order in Council (OIC)		
Costs		
Cost of regulation making	Central government	Approximately \$0.5 million.
Costs of adopting a new process	CCC	Low.
Costs of lack of input into plan development	General public and private sector	Medium – reduced input from general public and private sector.
Benefits		
Clear single process, including public participation	CCC, general public and submitters	Magnitude unknown, but potentially high and will provide greater certainty than Mechanism 2 – new recovery plan - process will follow similar lines to that for Schedule 1 of the RMA hearings.
Purpose aligned to RMA	Hearings panel	High degree of certainty provided for hearings panel to apply statutory purpose against one legal test – the RMA.
Reduced time and costs for preparing the District Plan	General public and CCC	Minimises transaction costs.
Reduced consenting costs and time delays from an up to date coherent planning framework	General public, business and CCC	Unknown, but potentially high (e.g. 590 building consents were held up by Building Act S37 notices).
Reduced appeal costs to environment court	General public, CCC	Potentially in the order of \$5m based on similar district plan appeal processes.
Narrow focus possible	CCC	High can potentially restrict nature of consideration to just Objectives, Policies and Rules.
Risks		

Judicial Review	CCC, Central Government	Subject to the Canterbury Earthquake Recovery Review Panel recommendations and potential review of Regulations Review Committee. Potential cross-party parliamentary forum consultation required – although not determinative. Legal advice is that there is a moderate level of judicial review risk, mitigated by ensuring robust public consultation processes (submissions and hearings).
Timing	CCC, Central Government	Potentially up to 3-4 months to establish OIC process and gain cabinet approval. 1-2 years to undertake process of review, but could be a staged process to cater for priority changes first. Will need to be complete by April 2016, which is when the CER Act and any OIC expires. Appeals can be outstanding however.
Accountability	CCC, Central Government	Moderate to High degree of Ministerial accountability, but process established by OIC will determine degree of on-going involvement and CCC autonomy. Minister for the Environment responsible for the making of the OIC.

Net Impact: Some cost in preparing regulation. Provides for clear decision making through a potentially staged process, thereby enabling early progress on recovery matters. Purpose of the District Plan is aligned to the RMA purpose. Reduces transaction costs and provides for a single process and consultation with the public. Reduced rights to appeal but no different to those of the recovery plan process. Will enable quick implementation. Potentially more timely in delivery. Has medium potential judicial review risk. Overall will result in net benefits.

Mechanism 2: A new recovery plan		
Costs		
Cost of process	Central Government	Low – process already provided for, just requires direction and gazettal.
Cost of Recovery Plan	CCC	Moderate additional costs on top of preparing district plan changes.
Costs of lack of input into plan development	General public and private sector	Medium – reduced input from general public and private sector.
Benefits		
Can happen without statute or OIC	Central Government	High, avoids need for statutory or regulatory processes.
Narrow focus	CCC	High restricts consideration to just Objectives, Policies and Methods.
Risks		
Potential for judicial review challenge	CCC, Central Government	Medium/High, needs to comply with the requirements of the CER Act and the RMA. Legal advice is that there is a moderate level of judicial review risk, mitigated by ensuring robust public consultation processes (submissions and hearings).

Focus on CER Act v RMA	Hearings panel	High, concern that the focus will be confused. Function of district plan should align to RMA not CER Act.
Confusion of process for stakeholders	Submitters	High, in order to provide for a staged release of the recovery plan significant risks of what was operative and not operative could occur. Dissimilar to usual RMA one stage decision-making process would involve hearing and decisions, then written comments to Minister of Canterbury Earthquake Recovery and then final decisions.
Timing	CCC, Central Government	Up to 2 months to establish process. 1-2 years to prepare recovery plan. 1-3 months for the Minister to consult and approve recovery plan. Would have a maximum of 2 years to fit within CER Act, but could be a staged process. Appeals can be outstanding however.
Accountability	CCC, Central Government	High degree of Ministerial accountability. CCC to submit recommended plan for Ministerial consideration. Minister for Canterbury Earthquake Recovery is responsible for the recovery plan.

Net Impact: Requires a formal consultation stage followed by written submissions. Many transaction costs. Clearly articulates accountability between central and local government. Public participation can be incorporated through public hearings. Significant concern about a potentially a confusing process with regard to be had to both the CER Act and RMA during the preparation of the District Plan. Process confusion for the public and key stakeholders. Would allow certainty in implementation and avoid need for undue process. Has medium potential judicial review risk. Overall considered to be potential net costs.

Mechanism 3: Two stage process – either an OIC or a recovery plan for Stage 1 priority matters, with Stage 2 matters considered under the traditional RMA schedule 1 provisions

(the following outlines additional considerations to those addressed above in mechanism 1 and 2 which also apply)

Costs		
Cost of process	Central Government	Low – process already provided for. However, CCC may need to invest in additional robust consultation, and potential for legal risk/cost.
Elongated process	CCC	High - requires additional costs for running two processes that will potentially mean the existing district plan is operative for longer than desirable to achieve recovery. Doesn't allow for the existing district plan to be superseded quickly and will potentially require consideration of both the current (operative) and the new district plan for a longer time.
Costs of lack of input into plan development and elongated process	General public and private sector	High –confusion over the different processes and what happens where and in the length of time to become fully operative.
Benefits		
Narrow focus	CCC	Enables focus on priority recovery issues first.

Risks		
Potential for judicial review challenge	CCC, Central Government	Potentially needs to comply with the requirements of the CER Act and the RMA. Legal advice is that there is a moderate level of judicial review risk, mitigated by ensuring robust public consultation processes (submissions and hearings).
Focus on CER Act v RMA	Hearings panel	Very high concern that the focus will be confused. Two processes to achieve the same outcome.
Confusion of process for stakeholders	submitters	High, in order to provide for a staged release of the recovery plan significant risks of what was operative and not operative could occur.
Timing	CCC, Central Government	Would mean policy direction in District Plan recovery only of part of the plan by 2015 with the potential for the entire district plan to take till 2023 to be operative.
Accountability	CCC, Central Government	Low degree of Ministerial accountability. Process left to CCC to deliver in a timely manner.

Net Impact: Significant concern about a potentially confusing process for the public and key stakeholders. Many transaction costs. Overall considered to be potential net costs. Presents little advantage over the status quo. On balance status quo considered to be probably better, noting though that the standard RMA schedule 1 process could take up to ten years to complete.

45. Table 4 below assesses the three practicable mechanisms against the assessment criteria (using the system identified in paragraph 40 above).

Table 4: Assessment of mechanism against assessment criteria

A timely decision making process that minimises delay	Integrated and implementable new district plan	Allocates roles and accountability between central and local government	Minimises transaction costs	Provides robust process	Provides appropriate balance of rights between affected parties	Opportunity to be heard for submitters	Clear direction / minimises uncertainty.	Overall weighted score
Mechanism 1: Amend the Schedule 1 of the RMA process via an Order in Council (OIC)								
✓✓✓	✓	✓	-	✓	x	x	✓	✓
Mechanism 2: A new recovery plan								
✓✓✓	✓	x	x	-	x	x	✓	x
Mechanism 3: Two stage process – either an OIC or a recovery plan (as above) for urgent recovery matters, with remainder of the plan considered under the traditional RMA schedule 1 provisions								
✓	x	✓	xxx	x	x	x	xx	xx

46. On the basis of the above assessment, the preferred option is the amendment to the RMA process through an OIC under the CER Act. The significant benefit of the OIC

mechanism is that the process can be expedited under the CER Act, but the district plan is prepared having regard to the purpose and principles of the RMA

47. An OIC can be made if it is reasonably necessary or expedient for the section 3 (a) to (g) purposes of the CER Act. This is a different test to the section 10 CER Act tests that apply to directing and approving a recovery plan.
48. The OIC mechanism will be clearer for the public to follow as it can provide a process akin to the RMA Schedule 1 process. Appropriate levels of public participation can be provided for and there is also a single clear decision-making body in the hearing panel. Also the district plan is able to contain more than just objectives, policies and methods should that be found to be desirable.
49. In using the OIC the relevant Minister (in this case the Minister for the Environment) must be satisfied that the provisions of the OIC are reasonably necessary or expedient for any or all of the purposes of the Canterbury Earthquake Recovery Act 2011 (CER Act) before making a recommendation to make the OIC. Crown Law advise that that decision cannot be made until the OIC is drafted and advice is received from the Canterbury Earthquake Recovery Review Panel. However, Crown Law has indicated that successful judicial review of a recommendation for an OIC to be made is relatively unlikely. An Order would be reasonably necessary or simply expedient for the purposes of the CER Act if the Minister for the Environment considers that a focused, timely and expedited recovery cannot occur unless the whole of the district plans are reviewed and improved and that the timing necessitates a truncated process.
50. No mechanism adopted is without some risk of legal challenge. To minimise the risks of the Ministers' decision, it should be clearly stated what the new district plan is required, and why creating a new district plan serves the purposes of the CER Act.
51. The CER Act expires five years after the day it commenced, on 19 April 2016. All mechanisms adopted under the CER Act will also cease to have effect on that date. A plan to transition beyond that date will be created with strategic partners by April 2015 to ensure continuity of the recovery process.

Process Options

52. Within this OIC mechanism, there are a number of different process options at each key component/milestone of the district plan development/review process. These are several separable and independent choices (a la carte) that can be chosen to achieve the objective. There is some inter-linkage between the choices and this is identified. The key questions to decide on are:
 - a. Who leads the review of the District Plan?
 - b. Should a draft District Plan be mandatorily required?
 - c. Are there any Ministerial or other directions prior to public notification? And who decides on public notification of the Proposed District Plan?
 - d. Should the parts of the District Plan relating to priority recovery issues be reviewed first?
 - e. What submissions are called for?

- f. Who appoints the hearing panel and who makes the final decisions?
- g. What if any appeals are afforded (merit/points of law) and to which Court?

53. Where appropriate these questions have process options identified, the impacts of the process options assessed and the options assessed against the criteria. Where no clear alternatives exist commentary is made about the costs, benefits and risks of the preferred way forward.

Who leads the review of the District Plan?

54. There are three options as to who should lead the review of the CCC district plan review outlined in Table 5. Table 6 evaluates the impact of these options. Table 7 assesses the options against the assessment criteria.

Table 5: Options on who leads the CCC district plan review

Options	Key Features
1. CCC (status quo)	This is the status quo. At this stage CCC is running a process to review the district plan – CCC have the existing legislative mandate. Under CCC’s structure, stakeholders (including Urban Development Strategy strategic partners, being ECan, Ngāi Tahu, Selwyn District Council, Waimakariri District Council and NZ Transport Agency) are engaged early on, but final decisions are made by CCC alone.
2. Strategic partnership approach	This would see CCC and strategic partners (CERA, ECan, Ngāi Tahu and possibly NZ Transport Agency) using a collaborative approach for the preparation of the district plan review in a manner similar to the preparation of the draft LURP. CCC would be the administering authority and final approving body (for notification), but a more formal approach for governance and collaboration set out in an agreed Terms of Reference would be shared across agencies. MfE and possibly other central government agencies would have a technical/policy support role.
3. Minister for Canterbury Earthquake Recovery	This would see the project management governed by CERA.

Table 6: Evaluating the impact of who leads

Impact	Incidence	Magnitude and comment
1: CCC		
Costs		
Costs of adopting a new process	General Public and CCC	Low.
Business interests not being heard	CCC, business interests	Medium, MfE review of CCC RMA functions has concluded that there is stakeholder scepticism CCC has the capability by itself of producing a revised district plan that will deliver the fundamental changes required to support the rebuild.
Benefits		

CCC has autonomy over its own processes	CCC	High, with the downside being little if any Central Government input.
Costs borne by CCC	CCC, Central Government	Medium, potentially outweighed by lack of consideration of viewpoints.
Risks		
Places all the autonomy with CCC, which may not meet needs of the Recovery Strategy	CCC	The section 32 requirement, although incentivising a better quality product, may not be timely to produce an audit.
Potential incentives to conduct a process that excludes strategic partners	CCC and strategic partners	Unknown, but potential for judicial review higher. No certainty over consideration of Central Government viewpoints given level of investment in Christchurch.

Net Impact: CCC retains high degree of autonomy although risks potential for poor outcomes not agreed to by key stakeholders. Potential for slow process in preparing the section 32 evaluation to ensure robust planning. It could result in poor engagement with stakeholders, particularly reflection of business concerns. Potentially poor outcomes with insufficient upfront and managed engagement with strategic partners.

2: Strategic partnership approach

Costs		
Costs of for strategic partners to be involved in the district plan development	Strategic partners	Low compared to benefits. Strategic partners required to dedicate resource to this process.
Potential loss of CCC autonomy over process	CCC	Perception is high.
Benefits		
Gains buy in and greater stakeholder confidence in outcomes	Strategic partners	High buy-in into outcomes and proposed changes.
Integration in the regulatory environment	Strategic partners	High, a joint approach to developing the district plan will significantly assist integration decisions, and deliver on the findings of the CCC review of RMA functions.
Not all decisions made	Strategic partners	High, the collaborative approach recognises CCC has started its district plan review process and is resourced to undertake district planning, but that governance decisions are yet to be made.
Risks		
CCC / Ministers, if final decision making departs from recommendations of hearings panel, leading to dissatisfaction and legal risks	CCC, Central Government, general public, private section, iwi	Unable to quantify, although potentially high, could be mitigated by having final decision maker as the hearings panel (like a board of inquiry).
Conflict between strategic partners in preparation of plan results in delays	Strategic Partners, general public	Unable able to quantify, although potentially high. Onus will be on Ministers to use powers to resolve. Ability for Minister for Canterbury Earthquake Recovery to make directions prior to notification of the proposed plan could mitigate the risk for the significant level of Government re-investment in Christchurch.

Net Impact: retains high degree of autonomy for CCC through a governance structure. Maintains involvement of key stakeholders and an agreed Terms of Reference on the outcomes sought through the review. Potential for some delays if Strategic Partners cannot agree on outcomes of review. Overall would result in a net benefit. Greater degree of rigour through a strategic alliance would speed up the process and help ensure quality outcomes.

3: Minister for Canterbury Earthquake Recovery		
Costs		
Disenfranchises CCC and potentially results in no buy-in from local residents	CCC, general public	Unknown, but experience from the development of the Christchurch Central Recovery Plan suggests the public wish to have CCC in a leading role. Survey results would support.
Costs to CERA for process and potential delay	Central Government	CERA would need to “gear up”, potentially high costs. The cost is likely to at least be equivalent to that budgeted by CCC less than \$4m.
Benefits		
Potential for greater business confidence in decisions	Business interests	Unknown, potentially high with a fresh approach and inputs to the district plan process.
Risks		
CERA doesn’t have resources to deliver a review by itself	Central Government	Potentially high.
Process fails to deliver on time	General public, CCC, private sector, iwi	Unable to quantify, although potentially medium.
Potential for process to result in decisions CCC cannot implement or agree to	CCC	Unable to quantify, although potentially medium.

Net Impact: Central Government assumes control of process. Likely to have a net benefit through operation of new plan, neutral to slightly negative preparation cost, but would lose buy-in of CCC into the process. Central Government is also not resourced to have such control over the process.

Table 7: Assessment of who leads against assessment criteria

A timely decision making process that minimises delay	Integrated and implementable new district plan	Allocates roles and accountability between central and local government	Minimises transaction costs	Provides robust process	Provides appropriate balance of rights between affected parties	Opportunity to be heard for submitters	Clear direction / minimises uncertainty	Overall weighted score
1. CCC (status quo)								
-	-	-	-	-	-	-	-	-
2. Strategic Partnership Approach								
x	✓✓✓	✓✓	x	✓	-	-	✓	✓
3. Minister for Canterbury Earthquake Recovery Authority								
✓✓	x	x	-	-	x	-	-	x

55. The key advantage of CCC leading is ownership of the review process for the district plan they will need to implement for many years. CCC has done substantial work to date on the review. Any departure from this process would place central government into the heart of what is a key local government process. The district plan is one of the significant ways that any council would influence and shape its local environment, and this is currently one of the major roles that local government plays in implementing local views about how its city operates and develops.
56. A key concern with remaining with the status quo is the ability to achieve the necessary changes in a short time frame, especially given the incoming council may take time to come up to speed with the planning issues. This would ensure a more robust decisions and buy-in from key stakeholders without litigation. The process should be supplemented with additional support and cooperation from Central Government agencies. A full collaborative approach between strategic partners would take the same or longer.
57. Overall a collaborative approach is favoured as having advantages over the status quo. These include those with the greatest direct interest in the district plan working together upfront in the critical early drafting stages and will increase stakeholder confidence in the end product. The key challenge will be designing an efficient process which allows the various parties to reach agreement in time for the first stage of the proposed district plan to be notified by March 2014. An agreed Terms of Reference that clearly establishes expectations for what is to be achieved through the review will resolve issues about how cooperation should be implemented, while at the same time as getting on with the task of preparing a revised District Plan.

Should a draft district plan be mandatorily required?

58. The CCC has started the review of the district plan. There is an opportunity for anyone to send in comments to CCC’s generic consultation email address. Under the status quo there is no requirement to prepare a draft district plan as part of the consultation required under Clause 3 of Schedule 1 of the RMA. The CCC has not indicated that it will issue a draft plan for comment at this stage. A lot of councils however choose this option as a means to get written comment before notifying a proposed Plan – for example, the draft Auckland Unitary Plan. An option is to mandate the requirement for a draft district plan. The draft plan for the Auckland Unitary plan enabled a lot of issues to be resolved prior to notification of the proposed plan. The draft plan was seen as a means to provide greater up front input in a process that reduced public participation rights.

Table 8: Options for public consultation before notification

Options	Key Features
1. Status quo – informal comments	Not a structure process. Would have an opportunity to comment. Currently through attending pre-notification workshops and emailing the CCC comments.
2. draft district plan	A draft plan is issued prior to the proposed plan for public comment. Provides a means for addressing issues outside the formal legal process subsequent to notification.

Table 9: Evaluating the impact of public consultation options before notification

Impact	Incidence	Magnitude and comment
1: Informal comment – Status quo		
Costs		
Lack of knowledge on district plan provisions	CCC and strategic partners	High, no understanding of proposed changes within community prior to notification.
Increased costs in long term	CCC, business interests	Medium, issues can be resolved outside of the formal legal process.
Benefits		
Speed and reduced cost to prepare plan	CCC	High, issuing any statutory document will delay public notification of the proposed district plan.
Risks		
Lack of constructive feedback	CCC	Medium, disregard for significant investment required in the rebuild of Christchurch.
New council needs to approve without consultation	CCC	High, with local body elections and a change of Mayor and Planning Committee Chairperson, the new council is required to adopt the proposed plan without knowledge of how it will be received.
Net Impact: Risks of proposed plan being prepared without sufficient consultation prior to notification. No Councillor buy-in. No up-skilling of the community.		
2: Draft District Plan		
Costs		
Could slow process	CCC	Medium, timely decision could be impaired due to needing to release proposed plan. Could be avoided by releasing plan on 30 November and still meeting a March notification date.
Benefits		
Obtain Councillor buy-in	Strategic partners	High, will provide greater buy-in into outcomes and proposed changes given timing and result of local body elections.
Potential for greater business confidence in decisions	Business interests	Unknown, potentially high with opportunity for greater inputs to the district plan process.
Risks		
Reduce legal risk	CCC, Central Government, general public, private section, iwi	Unable able to quantify, although potentially high as issues, errors and inappropriate rules dealt with outside legal process.

Net Impact: Potential for upfront time delays. Councillor buy-in. Up-skilling of the community. May have some benefits in reducing costs in the over the long term if done well - is important that the draft plan has the level of detail necessary for constructive feedback. Potentially provides greater public confidence in process.

Table 10: Assessment of public consultations options before notification

A timely decision making process that minimises delay	Integrated and implementable new district plan	Allocates roles and accountability between central and local government	Minimises transaction costs	Provides robust process	Provides appropriate balance of rights between affected parties	Opportunity to be heard for submitters	Clear direction / minimises uncertainty	Overall weighted score
1. Informal comment								
-	-	-	-	-	-	-	-	-
2. Draft District Plan								
xx	✓✓	✓✓	xx	✓✓✓	✓✓✓	✓	✓	✓✓

59. There are positive benefits from a draft district plan being issued pre-notification as a consultative draft plan. However the disadvantages of mandatorily requiring it add another step into the process and add potential delay. Should CCC decide a draft plan is necessary (as Auckland Council did with the Auckland Unitary Plan) then that should be encouraged if it fits within the statutory timelines. At this point however, a mandatory requirement for a draft district plan is not favoured.

Are there any Ministerial or other directions prior to public notification? And who decides on public notification of the Proposed District Plan?

60. There are several provisions of the RMA which have a potential influence on a district plan’s treatment prior to notification:

- a. Clause 3 of Schedule 1 of the RMA requires consultation with the Minister for the Environment and other Minister’s affected. Consultation must be undertaken in accordance with section 82 of the Local Government Act 2002.
- b. Section 149P states that a board of inquiry considering a proposal of national significance must have regard to the Minister for the Environment’s reasons for making a direction in relation to the matter.
- c. Section 86B(3) outlines the provisions that may have legal effect at the time of notification. This primarily relates to natural resources and heritage. Under Section 86D the Environment Court may order a rule to have legal effect.

61. Under the status quo the CCC is responsible for deciding on notification following consultation in accordance with Clause 3 of schedule 1 of the RMA. The Resource Management Reforms 2013 processes have highlighted an alternative process where the Minister for the Environment (or the Minister for Canterbury Earthquake Recovery) would decide to notify the district plan. A third alternative is for the collective agencies involved in the strategic partnership to decide (this option is however quickly discounted as it doesn’t meet the assessment criteria or legal tests for an entity to decide on notification).

62. It is questioned whether the status quo is sufficient or whether gains in efficiency can be made to the process by formalising the role for Minister(s). The alternative is to rely on a collaborative process between the strategic partners outlined above.

63. Consideration is also taken on ensuring CCC sufficiently 'owns' the final district plan after the review. Ministerial comment at the pre-notification stage of the district plan review could be seen as an inappropriate level of intervention to local government democracy. It also could potentially lengthen timeframes with Minister and Council agreement being sort.

64. Four options are outlined below in Table 11. Options discounted are outlined in Table 12. Evaluation of the impact of the three options is outlined in Table 13 and evaluation against the assessment criteria is shown in Table 14.

Table 11: Options for Ministerial directions prior to notification

Options	Key Features
1. Input via Strategic partnership	As already outlined a collaborative approach to consultation greater than the status quo.
2. Minister(s) to set objectives for the review	Minister(s) would set objectives for the review of the District Plan by setting ministerial expectations drawn from existing legislative parameters. This could be in the OIC or as an agreed Terms of Reference for the collaborative approach setting out expectations for the review.
3. Minister makes formal comment on plan	Requires consideration of Ministerial written comment prior to notification. Recommendations to the Minister include that the scope of comments from the Minister for Canterbury Earthquake Recovery is confined to recovery matters, and that the comments from the Minister for the Environment are not confined. CCC would be required to have particular regard to any comments provided by the Minister for Canterbury Earthquake Recovery and Minister for the Environment.
4. Minister decides what provisions have legal weight at notification	Rather than a comment, the Minister(s) would decide on which matters are given legal effect/ weight. This would be at the time of notification of the proposed district plan provisions.
5. Minister decides on notification	Would see Minister(s) making the decision on whether to notify after being referred the proposed District Plan by the CCC (through the cooperating on the development of the District Plan). There would potentially be an opportunity for the Minister(s) to vary the district plan prior to notification. (Similarly the Minister(s) could decide if the district plan could carry legal weight as part of this decision to notify).

Table 12: Discounted for Ministerial directions prior to notification

Options	Key Features
1. Automatically giving full legal weight to all District Plan provisions at notification	Would mean the district plan would be in effect and operative before consideration of submissions and public views were heard. Considered to offend natural justice and was discounted for the purposes of the notification of the Auckland Unitary Plan.

Table 13: Evaluating the impact of options for Ministerial directions prior to notification

Impact	Incidence	Magnitude and comment
1: Strategic partnership approach		
Costs		
Potential to slow process as collaborative solutions designed	CCC and strategic partners	High.
Business interests not being heard	CCC, business interests	Medium, MfE review of CCC RMA functions has concluded that there is scepticism CCC has the capability by itself to produce a revised district plan that will deliver the fundamental changes required to support the rebuild.
Costs of for strategic partners to be involved in the district plan development	Strategic partners	Low compared to benefits. This is similar to previous processes for the Regional Policy Statement and the Land Use Recovery Plan, where strong collaborative input was provided up front.
Potential loss of CCC autonomy over process	CCC	Perception is high.
Benefits		
CCC has autonomy over its own processes	CCC	High, with the downside being targeted Central Government input via agencies.
Costs borne by CCC	CCC, Central Government	Medium, potentially outweighed by lack of consideration of viewpoints. This provides for decision making at arm's length from Ministers and would be consistent with the decisions made by Cabinet regarding intervention powers in the Resource Management Reforms 2013. These decisions identified that commissioners could write plan content but the Minister could not.
Risks		
No weighting on Minister's views	CCC	Medium, disregard for significant government investment in the rebuild of Christchurch.
Conflict between strategic partners in preparation of plan results in delays	Strategic Partners, general public	Unable to quantify, although potentially medium.
Net Impact: Potential for some delays if Strategic Partners cannot agree on outcomes of review. Requires significantly rigid governance structures to gain decisions		
2: Minister(s) set objectives for the review		
Costs		
Could slow process	Central Government	Medium, although could be set up as part of OIC, in terms of reference for a collaborative partnership or alongside review.
Benefits		
CCC has autonomy over its own	CCC	High, with the downside being targeted Central

processes		Government input via agencies.
Formal recognition of Government priorities	Strategic partners	High, buy-in into outcomes and proposed changes and recognises significance of government investment in the rebuild and recovery.
CCC required to reflect on comment	Central Government	High, significant weight to be given to objectives.
Risks		
Adds further layer of complexity	Central Government	High, the recovery strategy, recovery plans, national policy statements and the Canterbury regional policy statement already contain guidance on matters to address for the recovery and set national and regional direction.

Net Impact: Provides clear scope and purpose for review from Central Government's perspective in an agreed Terms of Reference. This could unnecessarily duplicate other instruments such as the recovery strategy and recovery plans under the CER Act and national policy statements and regional policy statements under the RMA.

3: Minister makes formal comment on plan

Costs		
Could slow process	Central Government	Medium, timely decision could be impaired due to timing of notification and other government priorities. Would more than likely require Cabinet consideration prior to submitting views. May be better addressed through an All of Government Submission.
Benefits		
Formal recognition of Government priorities	Strategic partners	High buy-in into outcomes and proposed changes and recognises significance of government investment in the rebuild and recovery.
Potential for greater business confidence in decisions	Business interests	Unknown, potentially high with a fresh approach and inputs to the district plan process.
Risks		
If CCC deciding on plan notification they could simply ignore comment	CCC, Central Government, general public, private section, iwi	Unable able to quantify, although potentially high, could be mitigated by having final decision maker as the hearings panel.
Giving effect to the Ministerial comment could open up concern about fairness	Central Government	Medium concern about the level of Ministerial influence and time delay in the process. However the requirement to have particular regard to Ministerial comments from the Minister of Canterbury Earthquake Recovery and Minister for the Environment is akin to the provisions afforded to the Ministers under the CER Act for recovery plans and the RMA for sustainable management.

Net Impact: Retains high degree of autonomy for CCC through a governance structure. Could slow the process, where the views could be ignored anyway. Providing comment poses a degree of risk of community concern about Ministerial intervention, and the potential for the Council to delay notification of the plan if the comments are significant. This can be managed by providing clear scope and purpose for Ministerial comment. Alternatives of an all of government submission may achieve the same outcome in front of independent hearings panel.

4: Minister decides what provisions have legal weight at notification

Costs		
Requires an assessment of the regulatory costs of compliance	CCC, general public	Unknown, but unlikely to be more than currently required under section 32 of the RMA as recently amended by the Resource Management Amendment Act 2013.
Could slow process	Central Government	Medium, the Ministers deciding on what has weight in the proposed district plan for notification could result in time delays.
Potentially some perverse outcomes	Central Government	Medium, costs of new rules, if not properly thought out or justified could be worse than the status quo.
Lack of public comment prior to issues weighting by RMA Decision Makers	Public, private sector	Medium, although some rules have potential to apply now (s86(3) of the RMA) could have some fettering of private property rights.
Benefits		
Speeds up recovery by allowing adoption of newer/more appropriate rules	Business interests	Unknown, potentially high with a fresh approach and inputs given to the district plan process and likely reduced compliance costs with less need for resource consents.
Risks		
Relies on their being robust information to decide if weight should be applied	Central Government	Potentially high, would be akin to an audit of the district plan for suitability.
Process fails to deliver on time	General public, CCC, private sector, iwi	Unable to quantify, although potentially medium.
Business and community backlash	General Public and private sector	High, potential for concern that new rules need testing through public process before applying.

Net Impact: Central Government assumes control of process in terms of what rule has weight and what doesn't. An advancement on the status quo in that inappropriate operative District Plan rules can be quickly superseded. Likely to have a net benefit through reduced compliance costs for the private sector. Central Government is not resourced to have such control over the process.

5: Minister(s) decides if District Plan should be notified

Costs		
As above for option 3		
Loss of CCC ownership	CCC	High, CCC would lose autonomy over the District Plan and may lose faith in their ability to implement it.
Benefits		

As above for option 3

Greater Central Government control and certainty over the district plan contents prior to notification	Central Government	High, but comes at cost of impact on local democracy and loss of the principle of subsidiary. Ministerial oversight is necessary to ensure a fit for purpose plan.
Risks		

As above for option 3

Business and community backlash	General Public and private sector	High, already significant public concern and disquiet with too much government intervention into local processes.
Precedent	Central Government	There is precedent for Regional Coastal Plans where the Minister of Conservation approves plans (although noted that this is because the Crown is the owner of the CMA).

Net Impact: As above for Option 3, but higher degree of concern and disquiet over Central Government role in a local government processes.

Table 14: Assessment of Ministerial directions prior to notification against assessment criteria

A timely decision making process that minimises delay	Integrated and implementable new district plan	Allocates roles and accountability between central and local government	Minimises transaction costs	Provides robust process	Provides appropriate balance of rights between affected parties	Opportunity to be heard for submitters	Clear direction / minimises uncertainty	Overall weighted score
1. Strategic partnership approach								
xx	✓	✓✓✓	x	✓	✓	-	x	✓
2. Minister(s) set objectives for review								
✓	✓✓	✓✓	x	✓	-	-	✓	✓✓
3. Minister makes formal comment on plan								
✓	✓✓	✓✓	x	✓	-	-	✓	✓✓
4. Minister decides what provisions have legal weight at notification								
✓✓✓	✓✓✓	x	✓	-	x	x	✓	✓
5. Minister decides if proposed District Plan should be notified								
✓✓✓	✓✓✓	xxx	✓	-	xx	x	✓	-

65. All five options are finely weighted. Faster and greater impact of decisions is afforded by Option 4 with the Minister deciding what provisions have legal weight at notification, and could go further than the other options to achieving the overall objective of recovery from the earthquakes. If none of the options are adopted it puts greater reliance on central Government having its views expressed through submission(s) on the District Plan.

66. The preferred option is for decision-making before notification and for CCC to provide a draft of the district plan changes to the Minister for Canterbury Earthquake Recovery and Minister for the Environment and the Ministers to provide comment back to CCC. CCC would be required to have particular regard to the comments of the Ministers. This reflects the critical nature of government's investment and interest in the recovery and rebuilding of Christchurch. Public participation is maintained, as any changes directed by the Ministers will still be part of the submission and hearing process. To complement this ability to comment, it is proposed that a Terms of Reference for the review is agreed between the CCC, Ministers and Strategic Partners. This would establish expectations for what is to be achieved through the review and would guide the collaborative partnership approach.
67. There are options for how CCC responds to Ministerial comments. The highest test, or requirement, is to "give effect to" the comments. Other options for how Ministerial directions are implemented by CCC are lower tests of "having regard to" or "take into account". A common approach in the CER Act and the RMA is for the comments to be given "particular regard" to and this is recommended. The "particular regard" option allows the Ministers to raise any significant issues that should be addressed prior to notification on recovery and other matters so they can be submitted on and debated through the public process. The CCC would be required to give reasons for not acting on matters made in the Ministerial comments.

Should the parts of the District Plan relating to priority recovery issues be reviewed first?

68. As part of the consideration of the mechanism options consideration was given to the staging of an OIC or a recovery plan for urgent recovery matters, with remainder of the plan considered under the traditional RMA schedule 1 provisions.
69. At this stage the CCC has decided it needs to break up the review of the District Plan into two tranches. The alternative (which is the normal process for replacing a district plan) is for a complete District Plan to be undertaken in one step. It is considered that practical requirements to achieve the required timeframes allowed for, oblige the use of the OIC mechanism with a staged process for implementation. There is therefore no need to consider an analysis of the two options in detail. It will be up to the collaborative partnership to decide what provisions should be included in first and second tranches.

What submissions are called for?

70. A comprehensive public consultation and hearing process is required which affords those affected with the ability to input into the contents of the replacement district plan.
71. The status quo process provides for the CCC to summarise submissions and call for further submissions in support or opposition of an original submission. Clause 8 of Schedule 1 of the RMA limits those who can make further submissions.
72. Written submissions on the proposed district plan are required; however there are alternatives to consider in relation to further submissions. These options are outlined below in Table 15. Evaluation of the impact of the three options is outlined in Table 16 and evaluation against the assessment criteria is shown in Table 17.

Table 15: Options for further submissions

Options	Key Features
1. Further submissions	Status quo – normal further submission process which takes 1 -2 months plus to complete.
2. Further submissions but no requirement for summary of submissions	Further submissions would still be provided for but the process of preparing summary of submissions by the Council and notifying that summary would not be required. Instead submissions would be made available soon after receipt and parties with an interest greater than the public generally could make further submissions in accordance with clause 8 of RMA Schedule 1.
3. Limit further submissions in accordance s274 RMA	Amend the normal RMA Schedule 1 process by removing further submissions and substituting a process similar to section 274 of the RMA, where: <ul style="list-style-type: none"> ▪ CCC must publish copies of all submissions within five working days of the close of submissions; ▪ Parties affected by a submission can give notice within a specified (to be determined) timeframe of whether they wish to be heard in relation to that issue, including whether they support or oppose any submission; and ▪ The chairperson has the power to determine whether or not an affected party will be heard, based on whether they have an interest that is greater than that of the public generally.
4. No further submissions	There would be no requirement to summarise submissions or call for further submissions. Reduces process by at least 1-2 months.

Table 16: Evaluating the impact of options for further submissions

Impact	Incidence	Magnitude and comment
1: Further Submissions		
Costs		
Potential to slow process – as changes proposed are significant and thousands of submissions could be received	All parties	High - further submissions require the notification of a summary of submissions and calling for further submissions, which will further delay the process by at least a month or more depending on the number of original submissions received. The notification of the submissions cannot take place until the decision requested in each submission is logged and summarised. A time limit on summary process would be ineffectual and potentially ignored – due to legal risks of not doing this step correctly.
Benefits		
Provide for rights of public	CCC	High, further submissions give affected persons the right to respond to matters raised in another party's submission that may affect their land, or have other implications for them. For instance, a submitter may seek to establish a significant height restriction on a neighbour's property. If that neighbour has not made a submission, without the ability to make a further submission, he or she would not be able to participate in the hearing.
Risks		

Frustrated process through delays and additional compliance requirements	All parties	Unknown.
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Net Impact: Potential for some delays although dependent on number of original submissions received and time taken to summarise them

3: Further but no requirement for notifying a summary of submissions		
Costs		
Could slow process	Central Government	Medium, would notify availability of copies of all of the submissions, and allow the public to determine whether they are affected.
Potential greater compliance cost from additional time for parties to review the adverse effects of submissions on them	Business interests	Medium, especially if significant submissions made. But would be mitigated by an appropriate online submissions tool which would enable easy searching of submissions.
Benefits		
Limits need for further submissions and summary of submissions	All Parties	High, together with an ability for the hearing panel to consider matters outside of the scope of submissions. Does not bind the timing of the hearing to the process of summarising submissions
Risks		
Judicial review	CCC, Central Government, general public, private section, iwi	Unable able to quantify, although potentially high if people feel their submission or issues are not addressed.

Net Impact: reduces delays associated with summarising submissions, may mean costs are born by business interests.

3: Further limit further submissions in accordance s274 RMA or similar process		
Costs		
Could slow process	Central Government	Medium, would notify availability of copies of all of the submissions, and allow the public to determine whether they are affected, and if so, seek leave to appear at the hearing on that matter. However, this process can be run in parallel with the preparation of hearing reports by the Council.
Potential greater compliance cost	Business interests	Unknown, may require greater legal representation to gain standing.
Benefits		
Limits need for further submissions and summary of submissions	All Parties	High, this is likely to reduce the number of cross submissions, and does not bind the timing of the hearing to the process of summarising submissions.
Risks		
Judicial review	CCC, Central Government, general public, private section, iwi	Unable able to quantify, although potentially high if people feel their submission or issues are not addressed.

Net Impact: Reduces the number of cross submissions, and does not bind the timing of the hearing to the process of summarising submissions, but may cause confusion and delay in other ways

4: No further submissions		
Costs		
Detrimental impact on natural justice	CCC, general public	Unknown, further submissions give affected persons the right to respond to matters raised in another party's submission that may affect their land, or have other implications for them.
Benefits		
Reduced time to get to hearing and speeds up the district plan's adoption	Business interests	Unknown, potentially high with a fresh approach given to the district plan process and likely reduced compliance costs with less need for resource consents.
Risks		
Judicial review	CCC, Central Government	Potentially high, if rights of natural justice are fettered and may overall take longer to resolve appeals.

Net Impact: Potential reduction in the rights of natural justice may overall take longer to resolve appeals

Table 17: Assessment of what submissions against assessment criteria

A timely decision making process that minimises delay	Integrated and implementable new district plan	Allocates roles and accountability between central and local government	Minimises transaction costs	Provides robust process	Provides appropriate balance of rights between affected parties	Opportunity to be heard for submitters	Clear direction / minimises uncertainty	Overall weighted score
1. Further submissions – status quo								
-	-	-	-	-	-	-	-	-
2. Further submissions but no required to notify a summary of submissions								
✓	-	-	✓✓	-	✓	x	-	✓
3. Further limit further submissions in accordance s274 RMA								
✓	-	-	✓✓	-	✓	x	-	✓
4. No further submissions								
✓✓✓	-	-	✓✓✓	x	x	x	-	x

73. Overall it is finely balanced as to whether the no requirement of notifying a summary of submissions or the new s274 RMA type process would be an advantage over the status quo. It very much depends on how long the normal further submissions process would have taken if provided. Reports on the time it takes to summarise submissions and call

for further submission vary greatly from 1 to 6 months. If the potential for a large number of original submissions being received is high then the role of the further submissions should be somewhat diminished. It may be possible to put a time limit on the further submission process – but it would be questionable whether or not the sanction could be applied should the timeline not be met.

74. As identified above, the risk for potential delay centres around the length of time and quality of the summary of submissions document. With the potential for this time to vary from 1-6 months, a process component in this amended option could be to:

- a. Not require a summary of submissions and instead require the Council to make available submissions online and in the Council offices;
- b. Any further submissions to be filed within 10 working days of public notice being given.

75. In terms of the options on further submissions, officials recommend an amended further submissions process, with components as outlined above.

Who appoints the hearing panel and who makes the final decisions?

76. All parties agree an independent hearings panel should be appointed to hear submissions. The workload for the hearings panel is likely to be significant and complex. The panel should meet the accreditation requirements of s39A of the RMA. Independence avoids any actual or perceived conflicts of interest or perceptions of bias.

77. In setting up an independent panel, a further consideration is who decides on the final district plan provisions? There are three alternatives to consider as outlined in Table 18 and the impact of those options is outlined in Table 19.

Table 18: Options for who makes the final decision

Options	Key Features
1. CCC makes the final decisions (status quo)	This is the status quo under the RMA. The RMA prevents a council delegating final approval of the district plan to anyone else. It can however appoint a hearings committee of independent commissioners to consider submissions and make a recommendation. The Council cannot practically overturn this recommendation as it has not heard the submissions.
2. Hearing panel with full delegations appointed by Ministers	This option removes the final decision making from CCC (as is provided for under standard processes) but retains a role for CCC in the appointment of the hearings panel – Minister’s would consult with CCC over appointments to the Panel. Given the powers to be provided to the Panel it is appropriate Ministers have the final say on appointments.
3. Ministers	Minister for Canterbury Earthquake Recovery and/or the Minister for the Environment.

Table 19: Evaluating the impact of options for makes the final decision

Impact	Incidence	Magnitude and comment
1: CCC		
Costs		
Potential to slow process	CCC	Low/medium – another step in the process where the Council must give consideration to the recommendations of the hearings panel.
Limited ability to make changes to the recommendations of the hearings panel	CCC	High – CCC’s ability to make changes to a plan after receiving recommendations from a hearing panel is limited, as they may not have heard the evidence – refer to the High Court’s decision on the Whangamata Marina which related to the ability of the Minister of Conservation to set aside decisions being relatively confined.
Benefits		
Local democracy in decision making	CCC	High - providing for someone other than CCC to approve the final content of the district plan will be seen by some as reducing local democracy.
Gives buy-in to the outcome of the decisions and sets up CCC as respondent	CCC	High – a sense of ownership of outcome.
Risks		
Judicial review	CCC, Central Government, general public, private section, iwi	Unknown, potentially medium, for CCC to be reviewed on their process in decisions.

Net Impact: Potential for some delays and limited ability to make changes to the recommendations mean the status quo position is weak. However, it retains aspects of local democracy.

2: Hearing Panel with full delegations appointed by Ministers		
Costs		
Lack of local input into decisions	CCC, Central Government, iwi	Low –iwi, CCC and Ministers have limited ability to change the decision of the hearings panel and would be unable to set aside any decisions it didn’t agree with, without starting afresh or referring matters back to the Hearings Panel for their consideration.
Benefits		
Speed of decisions	All Parties	High, timely decision making process without an extra step.
Avoids perception of a conflict	CCC, Central	High an independent panel making decisions gives

of interest	Government, iwi	the ability for the CCC to advocate a position through submission in a manner that avoids perception of conflict.
Neutral appointment of hearings panel	CCC, Central Government, iwi	Medium - CCC, iwi would be consulted in the selection of hearing panel members and therefore maintain some control over the process. (Depends on nature of appointment process however).
Risks		
Judicial review	All parties	Low, Unable able to quantify, although potentially high if people feel their submission or issues are not addressed.

Net Impact: Reduces transactions and additional steps. Significant time savings for a process that has limited ability to change outcomes should anyone other the independent hearings panel make the decision.

3: Ministers		
Costs		
Lessens local democracy – counter to the principle of subsidiarity	CCC, general public	High, significant concern about Ministerial interface and loss of autonomy for local community.
Time delays	Central Government	Medium/High, likelihood of time delays between recommendation of Hearings Panel and Minister's decision.
Benefits		
Representation of Government investment interests	Central Government	Medium, other avenues available such as submissions give Ministers greater ability to advocate a position. Similar in process to Regional Coastal Plan where Minister's interests represented.
Risks		
Judicial review	CCC, Central Government	Potentially high, in the same way as if this was council making decisions at variance from the recommendations of the Hearings Panel.

Net Impact: Potential for some delays and limited ability to make changes to the recommendations mean no advancement over the status quo.

Table 20: Assessment of options for who makes the final decision

A timely decision making process that minimises delay	Integrated and implementable new district plan	Allocates roles and accountability between central and local government	Minimises transaction costs	Provides robust process	Provides appropriate balance of rights between affected parties	Opportunity to be heard for submitters	Clear direction / minimises uncertainty	Overall weighted score
1. CCC – status quo								
-	-	-	-	-	-	-	-	-
2. Hearing panel appointed Ministers								
✓✓✓	✓	-	✓	✓	-	-	✓	✓
3. Ministers								
xx	✓	-	✓	x	xxx	x	✓	x

78. Retaining the final decisions with the Council has benefits of recognising the Council's ownership of the Plan and its important role as the democratically-elected body responsible for making local planning decisions. CCC is accountable to the local community for their decisions, actions and services. Elected local government representatives are also accountable to the local community for the way they behave in carrying out their local government responsibilities. This is an underlying principle that is carried through to the RMA - that decision-making is best left to those directly affected by the results of those decisions. The costs of having CCC make final decisions are related to timeliness – one to two months could be added while matters were put before council committees and full council for approval. The ability for the CCC to make a decision to the contrary of the hearings panel is very restricted – it would need to either rehear the matter or send it back for reconsideration.

79. Anything other than the independent hearings panel making the final decision puts future delivery of the district plan at risk under current statutory arrangements. If the hearing panel makes the final decision on the plan, this will reduce the time required to get to a decision. An independent panel making decisions gives the ability for the CCC to advocate a position through submission in a manner that avoids perceptions of conflict.

80. Ministerial decisions and input, while rated highly prior to notification, are considered to be rated lower in the final decision making process primarily because of the potential to override the autonomy of CCC and the likelihood of time delays in making a Ministerial decision.

81. There is limited ability for Ministers to give direction at this point in the decision making process. Additional oversight by ministers is not needed to support high quality decisions. The hearings panel (appointed by Ministers) will already be working within parameters established by the RMA, Recovery Strategy and recovery plans. Additional

Ministerial intervention steps could increase timeframes and judicial review risks and are not recommended unless tightly constrained to instances where the Council has deviated from the recommendations of the panel.

82. If a process is adopted where there is Ministerial intervention prior to, or in place of, final decisions this would need to be limited. If the Council is the final decision-maker, Ministers should only be able to direct changes on the draft decision within the scope of expectations set prior to the review of the district plans; but only where the Council has deviated from the recommendations of the hearings panel; and that those directions can only be challenged on points of law
83. In terms of the final decision making, officials recommend a hearing panel with powers similar to a Board of Inquiry for Nationally Significant Proposals (although there would be no involvement of the EPA). Ministers in consulting with the CCC over the appointment of the hearings panel would enable CCC to contribute to the selection of hearing panel members and maintain some influence over the process.

What if any appeals are afforded (merit/points of law) and to which Court?

84. The status quo has appeals on plans prepared under the RMA to the Environment Court on merit – a hearing a new (de novo). De novo appeals have the potential to slow down the time in making the reviewed District Plan operative. Appeals on the City Plan took 5 years to resolve and do not meet the objective of enabling recovery. The status quo will not provide the speed of resolution required to have an operative new district plan.
85. Alternative options are outlined below in Table 21. The Impact of the options is outlined in Table 22.

Table 21: Options for resolving appeals

Options	Key Features
1. Limited merit appeals to Environment Court	If the Council was the final decision making, then as for the Auckland Unitary Plan and the RMA Reforms – allow parties to appeal any final decisions of the Council that are at variance with the recommendation of the hearings panel to the Environment Court. Note: if the recommendations of the previous section of this analysis are adopted then this option becomes discounted from further consideration.
2. Appeals on points of law only to the Environment Court	This option would see only points of law being allowed to take on appeal to the Environment Court (i.e. not merit appeals). This consistent with the general approach of the RM Reform.
3. Appeals on points of law only to High Court	This option would see only points of law being allowed to take on appeal to the High Court and is akin to the process for appeals on a Board of Inquiry for nationally significant proposals.
4. No appeals	No appeal process would be provided, but judicial review would remain - Judicature Amendment Act 1972. There is potential for a variation of this, such as that adopted under the HASHA Act.

Table 22: Impact of options for resolving appeals

Impact	Incidence	Magnitude and comment
1: Limited merit appeals to Environment Court		
Costs		
Restricts rights of natural justice	All parties	Low – unable to quantify, however a rigorous first instance process is being provided with cross examination at the first instance hearing which will mitigate limitation of rights. Further rights of a hearing ‘anew’ are set up.
Speed of process to get final decisions	All parties	High – getting quickly to a new operative plan is imperative. Allowing a hearing ‘anew’ in the Environment Court could significantly delay the operative date of the district plan provisions.
Benefits		
Environment Court is a specialised court	All parties	Low – all courts can consider points of law matters. The High Court contains judicial experience in the RMA.
Allows for Environmental Legal Aid to apply	NGOs	High – a change in the environmental legal assistance criteria could be applied for this process if necessary.
Allows for Council to make decisions contrary to the determination of the hearing panel	CCC	Low – CCC has limited ability to find contrary to the hearing panel without referring the matter back to the panel for reconsideration. Refer to the High Court’s decision on the Whangamata Marina which related to the ability of the Minister of Conservation to set aside decisions being relatively confined.
Risks		
Judicial review	All parties	Low, Unable to quantify, although potentially high if people feel their submission or issues are not address.
Net Impact: Environment Court specialist with ability to consider planning matters, but potential for some additional delays and additional steps. Ability for CCC to make decisions beyond those of the hearing panel is limited. Requirement to have speedy decisions is not achieved.		
2: Appeals on points of law only to the Environment Court		
Costs		
Restricts rights of natural justice	All parties	Medium – unable to quantify, however a rigorous first instance process is being provided with cross examination at the first instance hearing which will mitigate limitation of rights.
Sets up additional Appeal stages	All parties	High – further delay likely.
Benefits		
Environment Court is a specialised court	All parties	Low – all courts can consider points of law matters. The High Court contains judicial experience in the

		RMA.
Allows for Environmental Legal Aid to apply	NGOs	High – a change in the environmental legal assistance criteria could be applied for this process if necessary.
Risks		
Judicial review	All parties	Medium, Unable to quantify, although potentially high if people feel their submission or issues are not address.

Net Impact: Environment Court specialist with ability to consider planning matters, but potential for some additional delays and additional steps (with appeals on points of law to environment court, high court, court of appeal, supreme court). Would only be a viable step if one or many of these further appeal processes were removed such as contained for national significant proposals.

3: Appeals on points of law only to High Court

Costs		
Restricts rights of natural justice	All parties	Medium – unable to quantify, however a rigorous first instance process is being provided with cross examination at the first instance hearing which will mitigate limitation of rights.
Benefits		
Speed of decisions	All parties	High, timely decision making process without an extra step. There is already precedent in the legislation for appeals on points of law to the High Court.
Risks		
Judicial review	All parties	Medium, Unable to quantify, although potentially high if people feel their submission or issues are not address.

Net Impact: There are safeguards that the “hearing panel” is in effect of the calibre of an “environment court” – both in terms of expertise and process available to them for rigorous testing of evidence and decision-making. Reduces transactions and additional steps. There is already significant precedent for the approach: (1) Appeals on matters of national significant have appeals on points of law only to the High Court (with a further streamlined process beyond); (2) Process is the same as that proposed for Auckland Unitary Plan; (3) the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 provides for such a process.

4: No appeals

Costs		
Restricts rights of natural justice	All parties	Medium – unable to quantify.
Benefits		
Speed of decisions	All parties	High, timely decision making process without an extra step.
Risks		
Judicial review	All parties	High, this would be the only course of action should parties be aggrieved with outcomes

Net Impact: Lack of natural justice process. Poorly defined process. Restrictions on rights (particularly property rights).

Table 23: Assessment of options for appeals evaluated against assessment criteria

A timely decision making process that minimises delay	Integrated and implementable new district plan	Allocates roles and accountability between central and local government	Minimises transaction costs	Provides robust process	Provides appropriate balance of rights between affected parties	Opportunity to be heard for submitters	Clear direction / minimises uncertainty	Overall weighted score
1. Limited merit appeals to Environment Court								
-	✓	-	-	✓✓✓	-	-	x	✓
2. Appeals on points of law only to the Environment Court								
-	✓	-	-	✓	-	-	x	-
3. Appeals on points of law only to High Court								
✓✓✓	✓	-	✓	✓	x	-	✓	✓
4. No appeals								
✓✓✓	✓	-	✓	x	xxx	x	✓	x

86. Where possible, given the need for urgent decisions, appeals should be restricted to points of law to the High Court. As previously recommended the hearing panel will make the final decisions and as such appeals should be limited on points of law only to the High Court. This process will expedite proceedings.

87. The implication of reducing appeals is the need for a robust first hearing process to be provided – including allowing cross examination. This can be only achieved by a process that gives a hearing panel with powers similar to a Board of Inquiry for Nationally Significant Proposals (although there would be no involvement of the EPA).

88. Other powers need to be added to the first hearing process if there is only one hearing on merit issues. For example: a hearing panel is limited in the way it can make a decision on a plan change – the hearing panel should be able to make changes outside matters raised through the district plan or submissions. It is recommended the processes set out in s293 of the RMA be applied.

Consultation

89. In preparing this paper the CERA has consulted with the following ministries/agencies on an early version of the paper: Ministry for the Environment, The Treasury; Ministry of Business, Innovation and Employment, Te Puni Kokiri; Ministry of Transport; Department of Internal Affairs; Ministry of Social Development; NZ Transport Agency; Ministry of Health, Ministry of Justice and Ministry of Education. The Department of the Prime Minister and Cabinet was informed. Departments have been provided with a final copy of the paper.

90. Ministry of Justice has submitted that appeals on a point of law should be heard in the Environment Court (not the High Court), as the Court has the expertise in interpreting the RMA law. The appeals on point of law would be heard by a judge alone so can be heard in a timely manner. While this change in policy has been approved, the Auckland Unitary Plan, Environment Canterbury and CER Act legislation for RMA appeals on points of law all go only to the High Court. To introduce this new policy to an expedited process is risky to a timely conclusion of the district plan review. It is therefore considered that the High Court is the most appropriate Court for appeals on the proposed Christchurch District Plan.
91. The Department of Internal Affairs (DIA) considers that the proposal provides central government with significant input into the district plan process which is a major role of local government and a means of implementing local views on how the city operates and develops. DIA considered greater clarity on the local government decision making role and the acceptance of CCC in this proposed process is required.
92. The Ministry of Business, Innovation and Employment (MBIE) support the purpose of the paper however they have concerns over the reduced submission period of 20 days and how CCC and Central Government input into the decision-making process. MBIE consider there could be increased public scepticism over the validity of the process which may lead to judicial review, or legal challenge of the hearing panel decisions with the proposed 20 day submission period. In respect to decision making processes MBIE consider CCC could be given a formal process to provide opinions on the matters raised in submissions to the hearing panel to reduce the risk of future plan changes by CCC. And MBIE consider it important that there is a method where Ministers where can provide input into the objectives of the District Plan Review.
93. The Treasury also considers there is a need to clarify how central government provides CCC with our objectives e.g. housing affordability and how CCC has regard to these. Setting these out in the Terms of Reference on ways of working with CCC on the District Plan Review and the lead government agency could clarify these objectives.
94. Ministry of Transport has voiced concerns on the outstanding policy decision for decision-making for designations. It considers clarity is required on who would be responsible for designation decision-making in the district plan review and how appeals would be considered. The Ministry of Transport supports the Auckland Unitary Plan process, where the hearing panel makes recommendations and the requiring authority makes decisions and if these are inconsistent with the hearing panel recommendations, they are appealable. It considers if the hearing panel is to make the final decision on designations with no rights of appeal in a streamlined process, the panel membership requires the necessary expertise on designations.
95. NZ Transport Agency voice similar concerns to the Ministry of Transport on decision-making for designations and suggest ideally, as with standard practice, the requiring authority would make the final decision based on recommendations rather than a decision from the hearing panel. As noted, these issues are yet to be resolved.
96. Officials from MfE and CERA have also engaged with officials from CCC, Environment Canterbury, Te Rūnanga o Ngāi Tahu, Selwyn District Council and Waimakariri District Council.

97. CCC staff provided comment on the proposed process during its development and Minister for Canterbury Earthquake Recovery has spoken with the CCC and the Mayor of Christchurch. CCC staff support an expedited and more collaborative process for the production of the district plan including an accelerated decision-making process to review the city's district plans. The CCC's only remaining issue is the proposed appointment process for the hearing panel. CCC would prefer that the hearing panel is appointed jointly with Ministers, rather than in consultation with the Council
98. Te Rūnanga o Ngāi Tahu is supportive of the process.
99. Environment Canterbury broadly agrees that an expedited review of the Christchurch District Plan is necessary to support the recovery of Christchurch and give effect to the Recovery Strategy and recovery plans. Environment Canterbury considers it important that the District Plan appropriately reflect the community's aspirations for the district and that the community are provided the opportunity to contribute through an appropriate consultation process. Environment Canterbury consider that the district plan is ultimately a Christchurch City Council document. Environment Canterbury supports the hearing panel having powers similar to section 293 of the RMA, to aid the delivery of an integrated plan. Environment Canterbury also supports the need to limit the ability to seek declarations to the Environment Court. Environment Canterbury does not currently support the removal of the requirement to notify a summary of submissions.
100. Selwyn District Council have outlined support for the process and believe it is very important for earthquake recovery reasons the review of the City Plan, which is being used as a vehicle for much of the actions in the LURP, is done relatively quickly. They consider a full schedule 1, RMA process would inevitably get bogged down in lengthy litigation creating uncertainty, delays and unnecessary expense. They support a process that truncates the full appeal process will go a long way to addressing these problems.
101. Waimakariri District Council staff have not expressed any concerns on the proposal, noting their input into the collaborative process for drafting the plan will be appropriate to the cross boundary issues that affect their district.
102. Consultation has not occurred with wider community about the policy options considered. During the preparation of the draft LURP, CERA and Environment Canterbury noted there was a genuine frustration with the current District Plans and desire to replace them.

Conclusions and recommendations

103. We have assessed the preferred approach against the evaluation criteria for success identified and consider it meets the criteria.
104. It is considered that the following solutions will provide the highest level of net benefits over the status quo when taken as a whole compared to the other feasible options considered. Compared to the status quo, the options proposed are likely to reduce compliance costs for all parties and improve incentives to invest in the future of Christchurch. They are also not likely to impair private property rights, impair incentives for businesses to innovate, override fundamental common law principles, or impact on market competition. This is because the status quo is a litigious process with lengthy and complex steps.

105. An Order in Council under the CER Act will deliver an appropriate mechanism for the process (as outlined in paragraph 47), over the use of a recovery plan or a two stage process. In particular, the mechanism is timely while allowing for adequate public input.
106. Based on evaluation of the impacts of the options to deliver a streamlined process, the preferred process to utilise is summarised (similar to that adopted for the Auckland Unitary Plan) as follows:
- a. CCC leads the development of the district plan under a collaborative partnership with strategic partners, with a Terms of Reference agreed that clearly establish expectations for what is to be achieved through the review;
 - b. The urgent recovery issues are addressed in the first phase, followed by the release of the remainder of the district plan;
 - c. The draft district plan is submitted to the Ministers for Canterbury Earthquake Recovery and Minister for the Environment for comment before it is notified;
 - d. CCC have particular regard to those comments/directions of the Minister for Canterbury Earthquake Recovery and Minister for the Environment;
 - e. Require CCC to prepare an evaluation undertaken under section 32 of the RMA to be released with the notified plan;
 - f. The CCC notifies the proposed District Plan;
 - g. A specified 30 day submissions period;
 - h. Amend the normal RMA Schedule 1 process limiting the need for summarising submissions and notifying for further submissions;
 - i. Establish a hearing panel appointed by the Minister for Canterbury Earthquake Recovery and the Minister for the Environment to hear submissions with suitable terms of reference in relationship to membership and experience e.g. understanding of tikanga Māori and the perspectives of Ngāi Tahu. The hearing panel would have additional powers reflecting section 293 of the RMA;
 - j. Panel can split into two if necessary in order to deal with the business of the Hearings Panel within the specified period;
 - k. Ministers to consult with CCC on the membership and remuneration of the Hearings Panel;
 - l. A process for the Hearings Panel which provides a degree of flexibility to the Chair to design a process which is capable of delivering decisions within the specified time, but which directs key elements such as the ability to direct parties to undertake alternative dispute resolutions, cross examination, consider matters outside submissions, etc;
 - m. The hearing panel to make final decisions on the plan (with the exception of designations and heritage orders to be confirmed);
 - n. Require notification of urgent priority provisions in May 2014 and decisions to be issued on such by December 2014. Decisions by the CCC on remaining provisions to be made before the CER Act lapses; and

- o. Appeals on points of law only to the High Court to ensure timely resolution of outstanding matters.

107. Overall, the process adopted for the District Plan Review is assessed as being more efficient than the status quo given the circumstances associated with the need to respond in a timely manner. A replacement district plan is needed as soon as possible to reduce compliance costs. The actual incidence of these costs will vary dependent on the sort of development attempted. CCC will be able to assist in keeping compliance costs as low as possible by ensuring that the regulatory implications of the proposed District Plan are well understood by those affected.

Implementation

108. The process by which these amendments are to be made need to be signalled early by Ministers because of the implications for implementation of the LURP.

Timeline implications

109. As the mechanism for implementing the review will occur under the CER Act, all processes must be completed, barring any appeals, by April 2016 – which is the expiry of the CER Act and any OIC made under it. Therefore, a district plan process must have decisions from the hearing committee by February 2016.

Private Plan Change Requests

110. Private Plan Change Requests have the potential to frustrate and slow the process of the District Plan review. Clause 25(4) Schedule 1 RMA gives the ability for the CCC to reject a change to the plan. This should be clarified so that this applies from the date the OIC is gazetted.

111. All existing plan changes should be left to run their natural processes and may be put on hold by the CCC if it considers it appropriate. All Plan Changes before the Courts should run their natural process.

Designations, declarations, variations, and limitation on timeframe extensions

112. Issues around final decisions on designations, the process for potential variations to the proposed district plan, and limitations on extensions to timeframes under section 37 of the RMA are still being finalised.

Implementation of the District Plan by CCC

113. Once the District Plan review process is completed it will be up to CCC to implement the plan to achieve continued recovery. To mitigate this risk, there will be a need for continued work with CCC to develop an agreed process and communication strategy and continued integral roles for CCC in the process.

Monitoring and Review

114. MfE, in consultation with CERA and the Office of Auditor General, will monitor the implementation of the OIC, investigate performance and take actions to remedy poor implementation in accordance with the functions and power of the Minister for the Environment currently set out in the RMA. Table 24 below identifies timelines that will be looked at by MfE to ensure progress is on track.

Table 24: Timeframes to monitor

Task	Completion Date (Stage 1 - Priority Chapters)	Completion Date (State 2 - Remainder of changes)
Issue of Draft District Plan for written Comment from Ministers	<i>April 2014</i>	To be determined
Proposed District Plan notified	May 2014	To be determined
<i>Hearings commence</i>	<i>Mid July – end of September 2014</i>	<i>February – early April 2015</i>
Hearing panel issues decisions	December 2014	28 February 2016

115. MfE will also monitor the following other matters:

- a. The degree of iwi participation in the district plan preparation process;
- b. The level of public discourse in the media about the district plan review process; and
- c. Whether the actions specified in the LURP are being given effect to during the district plan review.

116. Monitoring will also occur through the two-yearly RMA survey conducted by MfE. The next survey is planned for 1 July 2014 to 30 June 2015.

117. MfE will advise the Minister for the Environment and (through CERA) the Minister for Canterbury Earthquake Recovery on a regular basis of progress of the district plan review. Reports will be provided to Cabinet as necessary on issues arising.