



Briefing note: Response to Christchurch City Council decision on intensification

Date Submitted:	14 October 2022	MfE tracking #: BRF-2185	
Security Level	In-confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David PARKER, Minister for the Environment	Agree to a response to addressing non-compliance by Christchurch City Council on housing intensification	17 October
CC Hon Megan WOODS, Minister of Housing	N/A	
CC Hon Phil TWYFORD, Associate Minister for the Environment	N/A	

Actions for Minister's Office Staff	Forward this report to: Hon Nanaia Mahuta, Minister of Local Government Hon Kieran McAnulty, Associate Minister of Local Government Return the signed report to MfE.
Number of appendices and attachments: 2	Appendix 1: Members of the new Council and how re-elected councillors voted on notifying an intensification plan change Appendix 2: Options for candidates to lead an investigation

Key contacts

Position	Name	Cell phone	1st contact
Responsible Manager	Sarah McCarthy		
Director	Lesley Baddon	021 738 357	✓

Response to Christchurch City Council decision on intensification

Key Messages

1. Fifteen councils¹ were required by the Resource Management Act 1991 (RMA) to notify changes to their district plans by 20 August 2022 to enable intensification by giving effect to the National Policy Statement on Urban Development 2020 (NPS-UD) and implementing the medium density residential standards (MDRS).
2. Christchurch City Council (the Council) was the only council that voted not to notify an intensification plan change. The Council, via the former Mayor, has written to you to say the Council is aware that it is in breach of its statutory obligations and to request a bespoke solution for Christchurch.
3. Officials from the Ministry for the Environment (MfE) recommend responding to the previous Council's decision by, as a first step, initiating an investigation under section 24A of RMA into how the Council is performing its functions in relation to notifying an intensification plan change.
4. We recommend appointing an independent person to conduct the investigation with skills and the experience to work constructively with the Council. The investigation should be a process with the Council politicians and staff to understand the issues, including the councillors' concerns, and to understand where there could be a pathway forward.

Recommendations

We recommend that you:

- a. **Agree** to initiate an investigation under section 24A of the Resource Management Act 1991 into Christchurch City Council's performance of its functions, duties and powers in relation to section 80F of the same legislation
- b. **Agree** to appoint an appropriate person to lead an investigation under section 24A of the Resource Management Act 1991

Yes/No


Yes/No

¹ Auckland Council, Christchurch City Council, Hamilton City Council, Hutt City Council, Kāpiti Coast District Council, Porirua City Council, Rotorua District Council, Selwyn District Council, Tauranga City Council, Upper Hutt City Council, Waikato District Council, Waimakariri District Council, Waipā District Council, Wellington City Council, Western Bay of Plenty District Council.

- c. **Indicate** in Appendix 2 of this briefing a preference for a person to be appointed by the Ministry for the Environment to lead this investigation

Yes/No

Signature

Lesley Baddon Director - Urban and Infrastructure Policy Natural and Built Systems	
Hon David PARKER, Minister for the Environment	

Purpose

5. This briefing seeks your agreement to respond to the decision by the previous Christchurch City Council (the Council) not to notify an intensification plan change by initiating an investigation under section 24A of the RMA into how Council is performing its functions, duties and powers in relation to section 80F of the RMA.

Context

6. Fifteen councils² were required by the Resource Management Act 1991 (RMA) to notify changes to their district plans by 20 August 2022. These changes must enable intensification by giving effect to the National Policy Statement on Urban Development 2020 (NPS-UD) and implementing medium density residential standards (MDRS). The changes must be made operative using the Intensification Streamlined Planning Process.
7. Christchurch City Council (the Council) was the only council that voted not to notify an intensification plan change. The Council, via the former Mayor, has written to you to say the Council is aware that it is in breach of its statutory obligations and to request a bespoke solution for Christchurch.
8. The cost-benefit analysis conducted to inform the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021, which introduced the MDRS, found that by 2043 applying MDRS to Christchurch would reduce the median dwelling price by \$80,585 when compared to a scenario where the MDRS was not applied.³ Providing more housing capacity could also make Christchurch more climate resilient and reduce pressure from urban development on highly productive land.

Council staff have worked hard to prepare an intensification plan change for notification

9. Council staff worked hard to enable the Council to comply with the RMA, including ensuring councillors were fully informed of their obligations to notify an intensification plan change and the potential consequences of not doing so.
10. Council staff recommended an intensification plan change for notification at the Council meeting on 8 September 2022. Officials from MfE and Te Tūapapa Kura Kāinga – Ministry of Housing and Urban Development (HUD) are comfortable that the plan change would be appropriate to notify.
11. Council staff received feedback from Mahaanui Kurataiao (the resource management company with the mandate to represent the interests of the six Ngāi Tahu Papatipu Rūnanga in area of Canterbury north of the Ashburton River). Its feedback sought that sites and landscapes of cultural significance to Ngāi Tahu and waterways be recognised

² Auckland Council, Christchurch City Council, Hamilton City Council, Hutt City Council, Kāpiti Coast District Council, Porirua City Council, Rotorua District Council, Selwyn District Council, Tauranga City Council, Upper Hutt City Council, Waikato District Council, Waimakariri District Council, Waipā District Council, Wellington City Council, Western Bay of Plenty District Council.

³ PWC, Sense Partners. 2021. *Cost-Benefit Analysis of proposed Medium Density Residential Standards*. Prepared for the Ministry for the Environment. p 80.

and protected as qualifying matters. Mahaanui Kurataiao also expressed support for the objectives in the draft intensification plan change relating to housing capacity and choice and the objective on urban growth, form and design as they relate to the recognition and support for kāinga nohoanga/papakāinga generally within the urban area and on Māori Reserve land.

12. The following table provides a timeline of actions that lead up to the Council's decision not to notify:

Table 1: Timeline of actions prior to Christchurch City Council's decision to notify

Action	Date
Christchurch City Council consulted the public on a draft intensification plan change.	11 April to 13 May 2022
Christchurch City Council staff wrote to MfE officials about likely delay in notification due to staff sickness.	22 July 2022
MfE officials informed the Council that there was no option under the RMA to delay notification, that we appreciated the impact of COVID-19 and illnesses and expected the Council to notify an intensification plan change as soon as possible. No enforcement action taken.	26 July 2022
Following media attention and calls from local residents' associations Council staff asked HUD and MfE officials what would happen if the Council voted not to notify an intensification planning instrument.	17 August 2022
MfE officials responded outlining the likely course of action and noting that the Minister for the Environment had a number of tools under the RMA to ensure compliance with the legislation.	26 August 2022
Council staff presented a report recommending notification of their intensification plan change - Plan Change 14 Housing and Business Choice. Debate on the topic meant the vote was deferred until 13 September.	8 September 2022
The Council voted not to notify their intensification plan change. The vote was: 10 voting no, 5 voting yes, 1 abstained and 1 absent.	13 September 2022
Former Mayor Lianne Dalziel wrote to you to say the Council is aware it is in breach of its statutory obligations and to request that you work alongside the Council to find a bespoke solution for Christchurch.	20 September 2022

The Council sought a bespoke solution for intensification

13. The Council stated that their key concern is that the legislation and process do not take into account the unique situation in Christchurch. The former mayor cited the following conditions that the Council considered made the MDRS inappropriate for Christchurch in her letter.

- The MDRS will have the effect of reducing update of development opportunities in more accessible areas of the city and that it will result in an urban form that is expansive in all directions.
 - Extensive land-use changes were made post-earthquake, so Christchurch has already provided for housing supply and intensification more thoroughly than other centres and has sufficient development capacity in the short, medium and long-term.
 - Intensification will have a negative impact on the tree canopy and liveability due to Christchurch not having as many geographic limitations on development (such as valleys and gullies) as Auckland and Wellington.
14. The former Mayor did not specify what a bespoke solution for Christchurch would entail. However, she did signal that the Council is already working through the Greater Christchurch Partnership and Urban Growth Partnership with the Government, the Whakawhanake Kāinga Committee, to address housing affordability and availability by focusing intensification on centres and around key public transport routes.
15. It is worth noting that all the urban form scenarios proposed by the Whakawhanake Kāinga Committee assume the application of the MDRS and the implementation of the NPS-UD intensification policies across the Greater Christchurch urban area. The urban form directions are designed to identify key areas where levers could be pulled to encourage further growth.
- A number of councillors have been re-elected to the Council*
16. Local government elections were held on 8 October. Seven of the councillors who voted not to notify the plan change have been re-elected (results for the Innes Ward are unconfirmed). Appendix 1 includes a table showing councillors who have been re-elected and their position at the September vote on the intensification plan change. It also lists the new councillors.

Analysis and advice

17. The former Council was aware that it was taking action that would breach the RMA. However, a new Council has been elected and officials consider it is appropriate to understand the perspectives of the new Council and to ensure it has an opportunity to vote to notify an intensification plan change.
18. You have a range of options to respond to the decision by the Council including meeting with the councillors, using MfE officials to liaise the Council and using the powers the Minister for the Environment has under Part 4 of the RMA. These powers include requiring the Council to provide information, conducting an investigation, directing the preparation of plan change and apportioning a person to carry out the Council's functions.
19. Information about the previous Council's decision is publicly available, the Council have prepared an appropriate plan change and engagement by staff may not have sufficient influence. We therefore recommend using the powers of the Minister for the Environment under section 24A of the RMA to investigate Christchurch City Council's performance of its functions, duties and powers in relation to section 80F of the RMA.
20. The investigation should involve:

- working with the Council politicians and staff to understand the issues, including the councillors' concerns
 - understanding what is non-negotiable in terms of the intensification plan change and where there could be a pathway forward.
21. We recommend the investigation be led by someone with appropriate standing and experience in resource management decision-making in local government, who will be capable of navigating the political context in the Christchurch and has appropriate connection to the city. We have identified the following people as appropriate for this role: Rachel Reese, Bill Cashmore and Greg Pollock. Further details on these people are included in Appendix 2.
22. Our advice is that we need a person who has political skills and the ability to really work with the Council. Officials can provide additional support in terms of planning, legal or mediation support.
23. Section 24A of the RMA gives the Minister for the Environment powers to investigate and make recommendations as follows:
- The Minister for the Environment may—*
- (a) investigate the exercise or performance by a local authority of any of its functions, powers, or duties under this Act or regulations under this Act; and*
 - (b) make recommendations to the local authority on its exercise or performance of those functions, powers, or duties; and*
 - (c) investigate the failure or omission by a local authority to exercise or perform any of its functions, powers, or duties under this Act or regulations under this Act; and*
 - (d) make recommendations to the local authority on its failure or omission to exercise or perform those functions, powers, or duties; and*
 - (e) take action under section 25 or section 25A if the local authority's failure or omission to act on a recommendation gives the Minister grounds to take action under one or both of those sections.*
24. Investigations under section 24 have previously been conducted into Far North District Council (2009), Environment Canterbury (2014) and Otago Regional Council (2019).
25. If following the investigation, the Council has not notified an intensification plan change and has made no commitment to do so the Minister for the Environment has powers under section 25 of the RMA to delegate to a person the task of performing the relevant functions for the Council.
26. We will provide further advice on the use of section 25 if required. You also have the option to develop separate legislation to respond to the Council's decision. We will provide advice on this if required.

Other considerations

Consultation

27. The Department of Internal Affairs and HUD have been consulted on this briefing.
28. HUD agrees with the approach recommended in this briefing to appoint an investigator.

Risks and mitigations

29. There is a risk, that if the Council's decision is not responded to appropriately, other councils will follow suit and choose not to implement national direction or comply with other RMA requirements.
30. The Minister for the Environment may have a decision-making role in the last stage of the intensification plan change process if there is disagreement between the Council and Independent Hearings Panel on specific recommendations. This does not in any way limit the power of the Minister for the Environment under Part 4 of the RMA to ensure a council exercises its functions and duties under the RMA.

Legal issues

31. It is most consistent with earlier exercises of Ministerial intervention powers to use the least-interventionist power first. In this case providing an opportunity for the Council to remedy their non-compliance themselves either alone, or in conjunction with directly contacting the Mayor to discuss the issues.
32. As with any decision to exercise a statutory power, there is a risk that the Minister's use of the intervention powers is challenged by judicial review.
33. However, the Council is breaching clear legal requirements, and the video recording of their meeting, as well as the letter from former Mayor Dalziel, shows they are aware that government intervention may result from their decisions, and indeed, might welcome such intervention. Therefore, if due process is followed in carrying out the Ministerial intervention function, risk of any judicial review being successful is low.

Financial, regulatory and legislative implications

34. There are no financial, regulatory or legislative implications of this as the work. The investigation can be undertaken within the current implementation budget.

Next steps

35. If you agree to initiate an investigation under section 24A the first step will be to notify the Council of your decision. We will liaise with your office in the preparation of this letter.
36. We will initiate processes to appoint the preferred candidate. If the preferred person cannot be appointed (for example if there is a conflict of interest), we will be in touch with your office. The Ministry will act quickly to enable an appointment to avoid further delays to intensification in Christchurch.
37. Officials will work with Council staff to complete a detailed terms of reference and a project plan for the investigation.

Appendix 1: Members of the new Council and how re-elected councillors voted on notifying an intensification plan change

Council member	Re-elected /new	How they voted on 13 September 2022
Phil Mauger (Mayor)	Re-elected	No
Aaron Keown	Re-elected	No
Ali Jones	Pending election (results unconfirmed)	N/A
Andrei Moore	New	N/A
Celeste Donovan	Re-elected	Yes
Jake McLellan	Re-elected	No
James Gough	Re-elected	No
Kelly Barber	New	N/A
Mark Peters	New	N/A
Melanie Coker	Re-elected	No
Pauline Cotter	Pending re-election (results unconfirmed)	No
Sam MacDonald	Re-elected	No
Sara Templeton	Re-elected	Yes
Tim Scandrett	Re-elected	Abstained
Tyla Harrison-Hunt	New	N/A
Tyrone Fields	New	N/A
Victoria Henstock	New	N/A
Yani Johanson	Re-elected	No

Appendix 2: Possible candidates to lead an investigation

Candidates	Summary of relevant skills and experience (information from publicly available sources)	Minister's preference/ comments
Rachel Reese	<p>Mayor of Nelson City from 2013 to 2022 and served on the Nelson City Council for five terms. She is an accredited Resource Management Commissioner and has been LGNZ's representative on the Making Good Decisions Advisory Panel and the Environment Legal Assistance Panel.</p> <p>She is a member of Resource Management Law Association and is a qualified mediator and arbitrator.</p> <p>She was on the Three Waters Steering Group and the resource management reform Local Government Steering Group.</p> <p>She holds a Bachelor of Commerce and Administration and Graduate Diploma in Business Studies.</p>	
Bill Cashmore	<p>Is a Farmer. Former Deputy Mayor of Auckland. Represented the southern rural Franklin ward on Auckland Council from 2013 to 2022.</p> <p>In his capacity as Deputy Mayor, has worked with Central Government to deliver better housing and urban development outcomes for Auckland through the Auckland Housing and Urban Growth programme.</p> <p>He was on the resource management reform Local Government Steering Group.</p> <p>He has a reputation for being positive and constructive, gained from his leadership of Auckland Council's response to the NPS-UD and MDRS in particular in South Auckland.</p>	
Greg Pollock	<p>Greg Pollock has been the Managing Director of Transdev New Zealand, which operates train and bus services for Auckland Transport and the General Manager of Metlink which operates public transport services for Greater Wellington Regional Council.</p> <p>Previously Chief Executive of Fairway Resolution Ltd – a Crown owned conflict management company that offers mediation, arbitration and conflict coaching services.</p> <p>He has resource management experience as a previously practicing planner and a professional mediator. He runs his own business Pollock Consulting Limited and is based in Wellington.</p> <p>Greg Pollock has previously advised Environment Canterbury on public transport matters.</p>	