



PROPOSED INVERCARGILL CITY DISTRICT PLAN

Report No. 4

Relocated Buildings

**5 May 2014, 9.00am
COUNCIL CHAMBERS
CIVIC ADMINISTRATION BUILDING**

**Reporting Officer: Joanna Shirley
POLICY PLANNER**

**Peer Reviewed by: John Edmonds and Dan Wells
JOHN EDMONDS AND ASSOCIATES LIMITED**

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1. EXECUTIVE SUMMARY

The Proposed District Plan provides opportunity for the relocation of buildings, but recognises that the process of relocation, in particular adherence to reasonable timeframes, needs to be carefully managed in order to minimise adverse effects on neighbouring properties.

The changes notified as part of the Proposed District Plan from what was included in the Operative District Plan included a strengthening of the policies and being more explicit in terms of the matters over which the Council can exercise its discretion.

There are no specific issues or objectives relating to relocated buildings. However the general objectives and issues relating to Amenity Values are relevant to relocation activities. In the Zone specific section of the Issues, Objectives and Policies there are policies focused on managing the adverse effects of relocation activities to ensure that a suitable standard of amenity is achieved, and that the relocation of buildings is properly managed and completed in a timely manner.

As in the Operative District Plan, the Proposed District Plan includes a District Wide Rule on Relocated Buildings (Section 3.15). The rule aims to manage the relocation of previously used buildings intended for use as a residence, by setting performance standards which need to be achieved as part of the relocation process.

Two submissions in support of the Relocated Buildings Rule were received.

The Relocated Buildings provisions set out in the Proposed District Plan meet the requirements of the Resource Management Act 1991 and should remain as notified.

In this report:

- Part 2 considers several key procedural issues.
- Part 3 provides background information on the Relocated Buildings provisions.
- Part 4 summarises the various statutory provisions that apply to the consideration of the Proposed District Plan.
- Part 5 assesses the relevant issues raised by the submitters.
- Part 6 provides a discussion on the Section 32 matters.
- Part 7 sets out the overall conclusions.
- Appendix 1 sets out the recommendations on each of the submission points.
- Appendix 2 sets out the recommended changes to the text of the Proposed District Plan.

2. INTRODUCTION

2.1 Report Author

My name is Joanna Louise Shirley. I am a Policy Planner at the Invercargill City Council, a position I have held since February 2014. I hold a Bachelor of Environmental Management and am an associate member of the New Zealand Planning Institute. I have five years experience in the planning field as a Resource Management Officer, which has involved implementing the District Plan and producing various planning documents.

2.2 Peer Review

This report has been peer reviewed by Dan Wells and John Edmonds, from John Edmonds and Associates Ltd. Both John Edmonds and Dan Wells are practising resource management planners with a variety of experience throughout the plan change preparation process. Dan Wells has a Bachelor of Resource and Environmental Planning (Hons) and a Post Graduate Diploma in Development Studies, both from Massey University. John has a Bachelor of Regional Planning from Massey University.

2.3 How to Read this Report

This report is structured as follows:

- Interpretation (an explanation of some of the terms used).
- A summary of the hearing process.
- Background to the Relocated Buildings topic, and the provisions of the Proposed Invercargill City District Plan 2013.
- Description of the statutory framework within which the proposed provisions have been developed.
- Analysis of the submissions.
- Discussion of Section 32 matters.
- Concluding comments.
- Tracked changes of the Proposed District Plan provisions relating to relocated buildings.
- Recommendations on individual submissions.

To see my recommendation on an individual submission please refer to the table in Appendix 1. The table sets out the name and relevant submission number of those that submitted on the relocated buildings provisions; a brief summary of their submission and decisions requested, followed by my recommendation and the reasons for it.

2.4 Interpretation

In this report, the following meanings apply:

“Council” means the Invercargill City Council

“Hearing Committee” means the District Plan Hearing Committee

“Operative District Plan” means the Invercargill City District Plan 2005

“Proposed District Plan” means the Proposed Invercargill City District Plan 2013
“Provisions” is a term used to collectively describe Objectives, Policies and Rules.
“RMA” means the Resource Management Act 1991

2.5 The Hearing Process

A number of hearings are to be held to consider the submissions lodged to the Proposed Invercargill City District Plan 2013. The hearings have been divided up to ensure that submissions on similar issues have been grouped together and to enable the District Plan Hearing Committee to make decisions on the provisions relating to those issues. This report applies to the Relocated Building provisions of the Proposed District Plan.

The Hearings Committee comprises of accredited Invercargill City Councillors, with the assistance of an Independent Hearing Commissioner. This Committee is to consider the Proposed Plan and the submissions and further submissions lodged. The Hearings Committee has full delegation to issue a decision on these matters.

This report is prepared pursuant to Section 42A of the Resource Management Act 1991 (the “RMA”). Section 42A provides for a report to be prepared prior to a hearing, setting out matters to which regard should be had in considering a Proposed District Plan and the submissions lodged to it. This report highlights those matters that are considered appropriate by the author for the Hearings Committee to consider in making decisions on the submissions lodged. This report has been prepared on the basis of information available prior to the hearing.

While the Hearings Committee is required to have regard to this report, regard must also be given to the matters raised in submissions, and presentations made at the hearing. The comments and recommendations contained in this report are not binding on the Hearings Committee and it should not be assumed that the Hearings Committee will reach the same conclusions set out in the report having heard from the submitters and Council advisers.

The hearing is open to the public, and any person may attend any part of the hearing. Those persons who lodged a submission have a right to speak at the hearing. They may appear in person, or have someone speak on their behalf. They may also call evidence from other persons in support of the points they are addressing.

At any time during or after the hearing, the Hearings Committee may request the preparation of additional reports. If that is done, adequate time must be provided to the submitters, to assess and comment on the report. The Hearing Committee may determine that:

- the hearing should be reconvened to allow responses to any report prepared, or
- any responses be submitted in writing within a specified timeframe.

At the conclusion of the hearing process, the Hearings Committee will prepare a written decision. The decision is sent to all persons who lodged a submission. If not satisfied with the decision the submitters have a right of appeal to the Environment Court. If an appeal is lodged, the RMA requires a copy to be served on all submitters with an interest in that matter. Any submitter served may, if they wish, become a party to the appeal either in support or opposition to it.

If there is an appeal, the Environment Court will provide an opportunity for mediation between the parties. If mediation is not accepted, or does not resolve the issues, a further hearing will take place before a Judge and Court appointed Commissioners.

Except on points of law, the decision of the Environment Court is final.

3. BACKGROUND

In 2008 the Council undertook a Plan Change to include rules in the District Plan on relocated buildings. The Plan Change occurred as a result of complaints from members of the public who raised concerns over buildings being relocated onto sites and left in disrepair. In determining the best way to manage the use of relocated buildings, several different approaches were considered by the Hearing Committee. After considering all options it was decided that the best approach was to include a rule in the District Plan which had an activity status of permitted, with performance standards. They considered that this approach would not increase the degree of difficulty for applicants relocating dwellings, but would allow the Council to manage the adverse effects of relocation activities on amenity values. Prior to the Plan Change there had been no rules in the District Plan controlling relocated buildings.

This report relates to the provisions in the Proposed District Plan with regard to Relocated Buildings. This includes:

- Section 2.2, which contains the issues relating to Amenity Values of the District;
- Sections 2.19 to 2.43, containing the issues, objectives, policies and methods of implementation for each of the Zones;
- Section 3.15, which contains the District Wide Rules for Relocated Buildings;

The changes notified as part of the Proposed District Plan from what was included in the Operative District Plan included a strengthening of the policies and being more explicit in terms of the matters over which the Council can exercise its discretion.

3.1 Proposed Issues, Objectives and Policies

There are no specific objectives and policies in the District Wide Section of the Proposed District Plan relating to relocated buildings. However, there is a discussion in the issues at a District-wide section and the general objectives relating to Amenity Values are relevant to relocation activities.

In the Zone Specific Issues Objectives and Policies Section of the Plan, there are policies for the Business 5, Residential 1, Residential 1A, Residential 2, Residential 3, Rural 1, Rural 2 and Otatara Zones. The policies are focused on managing the adverse effects of relocation activities to ensure that a suitable standard of amenity is achieved, and that the relocation of buildings is properly managed and completed in a timely manner.

3.2 Proposed Rule

As in the Operative District Plan, the Proposed District Plan includes a District Wide Rule on Relocated Buildings (Section 3.15). The rule aims to manage the relocation of previously used buildings intended for use as a residence, by setting performance standards which need to be achieved as part of the relocation process.

Where the performance standards cannot be achieved the activity is a restricted discretionary activity. This is the same activity status imposed under the Operative District Plan but the matters over which the Council exercises its discretion are more detailed in the Proposed District Plan.

Points (E), (G) and (H) of Rule 3.15.5, set out below, are the matters that have been amended and added in the review process:

“3.15.5 The matters over which the Council shall exercise its discretion are:

- (E) The timing of site rehabilitation*
- (G) The imposition of a bond (if required) to ensure the completion of the relocation. The value of the bond shall be calculated at up to 1.5 times the value of the work required to complete the relocation.*
- (H) Any heritage values of the receiving site and/or any adjoining site.”*

These matters have been included to enable the Council to manage the adverse effects of relocation activities on amenity values and to ensure the protection of heritage values.

4. STATUTORY CONTEXT / LEGISLATIVE REQUIREMENTS

4.1 Resource Management Act 1991

In reviewing the District Plan, Council must follow the process outlined in Schedule 1 of the RMA.

The First Schedule procedure includes notification for submissions (clause 5) and further submissions (clause 8), holding a hearing into submissions (clause 8(b)), and determining whether those submissions are accepted or rejected and giving reasons for the decisions (clause 10).

Clause 29(4) of the First Schedule to the RMA states that after considering a plan the local authority may decline, approve, or approve with modifications, the plan change, and shall give reasons for its decisions.

Under s74 of the RMA, in relation to changes to the District Plan, Council must consider Part 2 of the Act (purposes and principles), s32 (alternatives, benefits and costs), and relevant regional and district planning documents.

4.1.1 Part 2 of the RMA

Part 2 of the RMA (ss5-8) sets out its purpose and principles of the RMA.

The purpose of the RMA is set out in s5. I confirm that the provisions for relocated buildings fall within the purpose of the RMA. In particular the provisions are designed to provide for sustainable re-use of buildings whilst avoiding, remedying and mitigating the adverse effects on the environment. This is in accordance with section 5(1) and 5(2) of the RMA.

Section 6 of the RMA sets out the matters of national importance which must be recognised and provided for. None of these are especially relevant to the issue of relocated buildings, but it is noted that the following may be relevant in some instances

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development; and*
- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development;*
- (f) *the protection of historic heritage from inappropriate subdivision, use, and development.*

It is considered that the provisions as notified appropriately manage these issues by ensuring that any relocated dwelling is placed on permanent foundations and reinstated to a reasonable state of repair within a limited timeframe. If resource consent is required, one of the matters Council exercise its discretion is the effect of the activity on heritage values.

Section 7 of the RMA sets out “other matters” for which particular regard shall be had. It is considered that the most relevant matters are:

- (b) *The efficient use and development of natural and physical resources;*

- (c) *The maintenance and enhancement of amenity values;*
- (f) *Maintenance and enhancement of the quality of the environment.*

It is considered that the provisions relating to relocated buildings in the Proposed District Plan demonstrate particular regard to these matters.

Section 8 of the RMA obliges persons exercising functions and powers under the RMA to take account of the principles of the Treaty of Waitangi. Representatives from Te Ao Marama Inc have been part of the Plan Review process as members of the Council's Plan Group that worked on developing the Proposed District Plan. Consultation with Iwi has also occurred. This subject was not identified as an issue of particular significance.

4.1.2 Functions of Territorial Authorities under the RMA

Section 31 of the RMA states the functions of a territorial authority under that Act. To give effect to the RMA, s31 of that Act requires a territorial authority to have functions including, s31(1)(a):

"The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district."

Under Section 31(1) (b) of the RMA a territorial authority is required to "... control ... any actual or potential effects of the use, development, or protection of land..."

The provisions in the Proposed District Plan relating to relocated buildings include policies, and methods intended to manage the actual or potential effects of relocation activities on the environment.

4.1.3 Consideration of alternatives, benefits, and costs

Section 32 of the RMA states the Council's obligations in assessing the alternatives, benefits and costs.

Whilst a Section 32 report was released at the time of notification of the Proposed District Plan, the Council is required to carry out a further evaluation of any amendments made through the hearing, consideration and deliberation process before making its decision on the Plan Change. A discussion on the Section 32 matters are set out in Section 6 of this report.

4.2. Relevant Planning Policy Documents

The RMA specifies a number of documents that need to be considered in a decision on a Proposed District Plan and the weight that should be given to these. These are addressed in the following section.

4.2.1 New Zealand Coastal Policy Statement

Section 75 of the RMA requires that a District Plan must give effect to any New Zealand coastal policy statement. There are no relevant matters identified.

4.2.2 National Policy Statements and National Environmental Standards

In accordance with Section 75 of the RMA, a District Plan must give effect to National Policy Statements.

Section 44A of the RMA prescribes how District Plans must be amended if a rule conflicts with a National Environmental Standard.

There are no National Policy Statements or National Environmental Standards that directly relate to relocated buildings.

4.2.3 Regional Policy Statement

Under Section 75 of the RMA, a District Plan must give effect to an operative Regional Policy Statement.

The policies and objectives from the Southland Regional Policy Statement (1997) specifically relevant to the relocated buildings provisions are set out below:

Built Environment:

Objective 10.1 - To achieve the sustainable management of the built environment in such a way that the needs of future generations are met.

Objective 10.2 - To maintain and enhance the environmental quality of the Region's built environment.

Objective 10.3 - To protect heritage values and archaeological sites of regional significance.

Objective 10.5 - To minimise the adverse effects of the built environment on natural and physical resources.

Policy 10.5 - Protect buildings, structures, places, features or areas that have heritage, cultural or traditional value.

The Relocated Building provisions give effect to the above objectives and policies by providing for the sustainable re-use of buildings, whilst managing the adverse effects on the environment. The Relocated Building Rule seeks to maintain amenity values by providing performance standards which need to be met as part of a relocation activity. Where an activity cannot meet the specified standards resource consent is required as a restricted discretionary activity. This enables the Council to fully consider the effects on the environment, including any effects on heritage values.

4.2.4 Proposed Regional Policy Statement

In accordance with Section 74, regard needs to be given to any proposed Regional Policy Statement. The Proposed Southland Regional Policy Statement was notified in May 2012. The following policies are relevant to the issue of relocated buildings.

Rural Land/Soils

Policy RURAL.2 – Manage subdivision, land use change and land development activities in rural areas of Southland, in a way that maintains or enhances existing amenity values and rural character.

Historic Heritage:

Objective HH.1 – Historic heritage values are identified and protected from inappropriate subdivision, use and development.

Policy HH.2 –Protect historic heritage values from inappropriate subdivision, use and development.

Urban:

Objective URB.1 – Urban (including industrial) development occurs in an integrated, sustainable and well-planned manner which provides for positive environmental, social, economic and cultural outcomes.

Policy URB.1 – The adverse effects of urban development on the environment should be appropriately avoided, remedied or mitigated.

Policy URB.6 –Provide for housing choice, both in terms of type and lot sizes, within urban areas.

The objectives and policies of the Proposed RPS are similar to the Operative RPS. Appropriate regard has been given to these.

4.2.5 Regional Plans

In accordance with Section 74 of the RMA, a District Plan must not be inconsistent with a Regional Plan. There are no regional plans of direct relevance to relocated buildings.

4.2.6 Iwi Management Plans

Section 74 of the RMA requires that a local authority must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority

Ngai Tahu have lodged an Iwi Management Plan with the Council. The relevant document is the *Ngai Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 – The Cry of the People - Te Tangi a Taurira*.

One of the issues raised in Te Tangi a Taurira is the visual effects of building design. The relocated building provisions give regard to this issue by ensuring that the adverse visual effects of relocation activities are avoided or mitigated.

4.2.7 Management Plans and Strategies Prepared under Other Acts

A District Plan is required to have regard to management plans and strategies prepared under different Acts. For the District Plan review, the Invercargill City Centre Action Plan and the Big Picture (both prepared under the Local Government Act) are considered relevant. However, there are not considered to be any relevant matters arising from these documents with respect to relocated buildings.

4.3 Summary

It is considered that the purpose and principles of the RMA are met by the relocated building provisions set out in the Proposed District Plan. The proposed provisions fall within the functions of local authorities. The requirements of Section 32 of the Act have been met through the evaluations carried out prior to notification. The various documents required to be considered have been appropriately addressed in the preparation of provisions relating to relocated buildings.

5. ANALYSIS OF SUBMISSION

Two submissions in support of Relocated Building provisions were received. The House Movers Section of New Zealand Heavy Haulage Association has commented that the rule reflects the purpose and intentions of the RMA and is consistent with the Environment Court decision *NZ Heavy Haulage Association Inc v Central Otago District Council* (Environment Court, C45/2004, Thompson EJ presiding). The New Zealand Historic Places Trust support the inclusion of heritage values as a matter of discretion, commenting that it provides the Council with an opportunity to consider heritage values which are not otherwise identified in the District Plan.

It is recommended that the submissions be accepted and that the provisions remain as notified.

6. DISCUSSION OF SECTION 32 MATTERS

Section 32 of the RMA establishes the framework for assessing objectives, policies and rules proposed in a Plan. This requires the preparation of an Evaluation Report. This Section of the RMA was recently amended (since the notification of the proposed District Plan) and the following summarises the current requirements of this section.

The first step of Section 32 requires that objectives are assessed to determine whether they are the most appropriate way to achieve the purpose of the RMA (as defined in Section 5).

The second step is for policies and rules to be examined to determine whether they are the most appropriate way to achieve the objectives. In this instance, the objectives are those proposed by the District Plan. This assessment includes requirements to:

- Identify the costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions (including effects on employment and economic growth)
- identify other reasonably practicable options for achieving the objectives; and
- assess the efficiency and effectiveness of the provisions in achieving the objectives.

An Evaluation Report was released at the time of notification of the Proposed Plan.

Section 32AA of the RMA requires a further evaluation to be released with decisions outlining the costs and benefits of any amendments made after the Proposed Plan was notified. Relocated Buildings is considered in the Amenity section of the s32 Report. No amendments to the objectives, policies or rules are recommended and therefore further evaluation under Section 32AA is not required.

7. CONCLUDING COMMENTS

The relocated buildings provisions set out in the Proposed District Plan are focused on managing the adverse effects of relocation activities on the environment, to ensure that amenity values are maintained and that the activity is completed in a timely manner.

I consider that the relocated buildings provisions meet the requirements of the Resource Management Act 1991 and should remain as notified.

APPENDIX 1: RECOMMENDATIONS IN RESPONSE TO SUBMISSIONS

Submission No. and Point / Submitter Name	Summary of Submission	Recommendation
3.15.5 RULE RELOCATED BUILDINGS		
66.1 House Movers Section of New Zealand Heavy Haulage Association (Inc)	<p>Support. The submitter supports the rules as they reflect the <i>NZ Heavy Haulage Association Inc v Central Otago District Council</i> (Environment Court, C45/2004, Thompson EJ presiding) case.</p> <p>DECISION SOUGHT Retain rule.</p>	<p>Accept</p>
115.1 New Zealand Historic Places Trust	<p>The submitter supports these provisions.</p> <p>The submitter notes the Council's obligations under the RMA, in particular s6(f).</p> <p>The submitter notes that in addition to the specific heritage provisions, the consideration of heritage values is embedded throughout the Plan.</p> <p>The submitter considers the approach recognises that not all important heritage values are listed in the District Plan Heritage Record or covered by the heritage rules of the Plan. The submitter believes it is appropriate that the Council has the opportunity to consider effects on heritage values even where such values are not particularly identified for protection in Appendix II.</p> <p>DECISION SOUGHT Adopt these provisions as they relate to heritage values: 3.15.5(H).</p>	<p>Accept</p>

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APPENDIX 2 - RECOMMENDED CHANGES TO THE PROPOSED DISTRICT PLAN

(underline indicates recommended additions, strikethrough indicate recommended deletions).

SECTION TWO – ISSUES, OBJECTIVES AND POLICIES

2.26 Business 5 (Rural Service) Zone

2.26.3 Policies

Policy 13 Demolition or removal activities and relocation of buildings (*pg 2 - 103*) - No change

Explanation: No change

2.34 Otatara Zone

2.34.3 Policies

Policy 13 Relocation activities (*pg 2 – 136*) – No change

Explanation – No change

2.36 Residential 1 Zone

2.36.3 Policies

Policy 18 Relocation activities (*pg 2 – 146*) – No change

Explanation – No change

2.37 Residential 1A (Medium Density) Zone

2.37.3 Policies

Policy 18 Relocation activities (*pg 2 – 146*) – No change

Explanation – No change

2.38 Residential 2 (Bluff and Omaui) Zone

2.38.3 Policies

Policy 18 Relocation activities (*pg 2 – 146*) – No change

Explanation – No change

2.39 Residential 3 (Large Lot) Zone

2.39.3 Policies

Policy 18 Relocation activities (*pg 2 – 161*) – No change

Explanation – No change

2.40 Rural 1 Zone

2.40.3 Policies

Policy 17 Relocation activities (*pg 2 – 166*) – No change

Explanation – No change

2.41 Rural 2 (Rural Transition) Zone

2.41.3 Policies

Policy 16 Relocation activities (*pg 2 – 172*) – No change

Explanation – No change

SECTION THREE - RULES

Rule 3.15 Relocated Buildings (*pg 3-25*) – No change