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# PREFERRED OPTIONS REPORT TO DISTRICT PLAN COMMITTEE

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**DATE:** 22 June 2018

**TOPIC NAME:** Residential

**SCOPE DESCRIPTION:** RE014 Family Flats

**TOPIC LEAD:** Jocelyn Lewes

**PREPARED BY:** Jocelyn Lewes

## EXECUTIVE SUMMARY

<i>Issue(s)</i>	<ul style="list-style-type: none"><li>• <i>Scale of development</i></li><li>• <i>Impact on amenity and character of surrounding properties</i></li><li>• <i>Provision of housing choice</i></li><li>• <i>Ease of administration and enforcement</i></li><li>• <i>Impact on density</i></li><li>• <i>Need to improve effectiveness of plan rules</i></li></ul>
<i>Preferred Option</i>	<i>Option 2: Remove occupancy restrictions</i> <i>Option 3: Amend and update provisions to improve clarity</i>
<i>DPC Decision</i>	<i>That the Committee endorses the Preferred Options for 'Family Flats' for further development and engagement.</i>



## 1.0 Introduction

The Operative District Plan makes provision in both the Living and Rural Zones for family flats. Family flats can, and do, take many forms in the District. They can be integrated fully into the design of the main dwelling, attached to the main dwelling or another building on the site, such as a garage, or a completely detached standalone structure.

Regardless of the building form, the definition of a family flat requires a dependency of occupation – that is, that the family flat must be occupied by a member of the same immediate family that occupies the main dwelling.

This report is a summary of the *Family Flats Baseline Report* (Baseline Report RE014), the purpose of which was to investigate if ‘family flats’ remain an effective and appropriate provision in the Proposed District Plan. This Preferred Options Report should be read in conjunction with the full Baseline Report RE014, which is attached as **Appendix 1**.

## 2.0 Statement of Operative District Plan Approach

### 2.1 Definitions

Both the Township and Rural Volumes of the District Plan define a **dwelling** as:

*“any building or buildings or any part of a building or buildings which is used as a self-contained area for accommodation or residence by one or more persons; where that area collectively contains: bathroom facilities, kitchen facilities and a sleeping/living area. The term dwelling includes a family flat up to 70m<sup>2</sup>, except where the Plan has separate provisions that apply specifically to family flats.*

Both volumes further define a **family flat** as:

*“any dwelling up to 70m<sup>2</sup> in gross floor area, excluding garaging, which is located on the same site as an existing dwelling and the family flat is occupied by a member of the same immediate family as a person residing in the main dwelling on the site. A family flat may be attached to either the dwelling or an accessory building, or be freestanding”.*

On the basis of the above definition, the key elements that define a family flat are:

- the floor area of the structure;
- the relationship of the occupants of the family flat to those occupying the main dwelling; and
- the amenities provided within the structure.

### 2.2 Objectives and Policies

The objectives and policies do not specifically address family flats for either Living or Rural Zones, however they do set out the expectations and approach to ensuring that the District is a pleasant place to live and work in (Objective B3.4.1 in both volumes).

The objectives and policies of the Township Volume seek to provide a variety of living environments and housing choices for residents. While choice of design of building is supported, consideration needs to be

given to the impact on the character and amenity of areas, including the spaciousness of those areas. The 'spacious' character of Living Zones is also the result of the overall density of an area and Policies B4.1.8 and B4.1.9 seek to limit either the number of sites with more than one dwelling in Living 1 or X Zones or, in the case of Living 2 and 3 zones, to avoid the erection of more than one dwelling altogether.

In the Rural Volume, the objectives and policies also seek to ensure that residential density is low enough to maintain the character of the area. Policy B4.1.1 discourages densities higher than 1 dwelling per 4 hectares in the Rural Zone, with this being the minimum area per dwelling in the Inner Plains area and increasing in the Outer Plains, Port Hills and High Country areas.

## 2.3 Rules

### Living Zones

In Living Zones, Rule 4.6.1 Buildings and Building Density provides for the erection on one allotment (other than at Castle Hill) of a dwelling and one family flat as a permitted activity. This provision is confusing as, by the nature of the definition, a dwelling includes a family flat. This rule could be read as allowing for a second family flat to be erected on the site. While this has never been tested within the District by way of a proposal for a second family flat on a site, clarification that only one family flat per site is permitted is needed.

In addition to the maximum floor area established by way of definition, additional rules within Chapter 4 of the Township Volume establish other bulk and location requirements for sites that are also applicable to family flats, including height, site coverage and setbacks, however these relate to the overall site boundaries. There are no provisions within the Township Volume that address the bulk and location of a family flat relative to the main dwelling on the site. Family flats are specifically identified in those rules which seek to protect sensitive uses against noise intrusion from major roads and State Highways. No additional car parking is required for family flats in Living Zones where they are under 70m<sup>2</sup> in floor area.

If a family flat is proposed in excess of 70m<sup>2</sup>, it is considered to be a second dwelling and assessed as either a restricted discretionary activity in most Living 1 zones (Rule 4.6.3) or a non-complying activity (Rule 4.6.6) in all other Living Zones<sup>1</sup>.

### Rural Zone

In the Rural Volume of the District Plan, no specific provision is made for a family flat to be erected in association with a dwelling, as in Rule 4.6.1 in Township Volume. Rather this is implied by the definition of 'dwelling'.

Like in the Township Volume, while permitted, a family flat needs to comply with the relevant bulk and location rules applicable to the zone. Again, there are no specific provisions that address the bulk and location of a family flat in relation to the main dwelling on the site. This can lead to the disbursement of family flats throughout the Rural Zone as land holdings are large. The Rural Volume requires an additional car parking space where a family flat is provided on site (Rule 4.6.1.2).

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<sup>1</sup> Living Z, 1A, 1A2, 1A3, 1A4, 1A6, 2, 2A and 3.

If a family flat is greater than the permitted 70m<sup>2</sup>, it is no longer deemed a family flat and is instead treated as a second dwelling, which is a non-complying activity unless the underlying allotment is more than twice the size of the minimum area required by the zone, in which case two dwellings would be permissible.

### Business Zones

As dwellings can be constructed within the various Businesses zones in the District, by extension, family flats could also be constructed within these zones. However, Council records do not show that any family flats have been constructed in any Business Zones.

## 3.0 Review of Consents Issued

Analysis of the number of family flats within the district is problematic due to the difficulty in sourcing accurate information from Council's building and resource consent databases.

### 3.1 Building Consents

If a family flat is less than 70m<sup>2</sup>, only building consent is required. Based on data extracted and analysed, between 2013 and 2017 building consents for development that are likely to be family flats have been located in the following areas:

RURAL ZONE			LIVING ZONE	
Inner Plains	Outer Plains	Other (EDA or Hills)	Living 1	Living 2
51	27	2	24	12
<b>Total Building Consents in Rural Zone – 80</b>			<b>Total Building Consents in Living Zone – 36</b>	

The current building consents system does not record if the family flat is located under the roof of the main dwelling, attached to another structure, or how far the flat may be from the main dwelling. It is noted that prior to 2013, building consent data did record some of this information.

### 3.2 Resource Consents

Since 2010, approximately 105 resource consent applications have been considered by Council for family flats. These resource consent applications have been located in the following areas:

RURAL ZONE			LIVING ZONE				
Inner Plains	Outer Plains	Other (EDA or Hills)	Living 1	Living 2	Living WM	Living 2	Living 3
50	24	4	14	2	3	7	1
<b>Total Resource Consents in Rural Zone – 78</b>			<b>Total Resource Consents in Living Zone – 27</b>				

As can be seen, the majority of resource consent applications for family flats have been received for development in the Rural Zone, with most of these being in the Inner Plains area.

The above applications have fallen into the following classes of activity:

CLASS OF ACTIVITY			
Controlled	Restricted Discretionary	Discretionary	Non-Complying
13	17	9	66

Controlled activity status applications relate to family flats of a complying size (being 70m<sup>2</sup> or less) that take the form of a relocated building. The discretionary applications have also been for family flats of a complying size but other matters, such as the siting of the family flat or the desire for a second vehicle crossing, have necessitated a resource consent. Of the 17 restricted discretionary applications, 11 of these are in the Living 1 zone and the remaining 6 in either Living 2 or Rural zones. Analysis of the applications indicates that they have either been for a family flat of a complying size that breaches another rule, such as a boundary setback, or for a family flat in excess of 70m<sup>2</sup>. The balance of applications for family flats have been non-complying.

NON-COMPLYING APPLICATIONS				
RURAL ZONE			LIVING ZONE	
Inner Plains	Outer Plains	Other (EDA or Hills)	Living 1	Living 2
35	20	4	2	5

Almost 90% of non-complying applications are in the Rural Zone, with the majority of these being in the Inner Plains area. Almost all of the applications have been for a family flat larger than 70m<sup>2</sup>, with the sizes ranging from 71m<sup>2</sup> to 125m<sup>2</sup>; the average being 90m<sup>2</sup>. Over 75% of these family flats are detached structures. Consent has been granted for these applications, subject to conditions limiting occupation of the family flat to either immediate family or to named family members and requiring that the removal or decommissioning of the family flat once it ceases to be occupied by family. By way of condition, the application may have also been required to enter into a bond with Council, registered on the Certificate of Title, to ensure that within three months of the family flat ceasing to be occupied by immediate or named family members that the kitchen facilities be removed.

No consents have been declined, however some may have been subject to alteration of the scale and/or location originally proposed following discussions with staff.

## 4.0 Summary of relevant statutory and/or policy context

### 4.1 Canterbury Regional Policy Statement (RPS)

The RPS does not specifically reference family flats, and instead addresses dwelling density at a more strategic level.

Chapter 6 *Recovery and Rebuilding of Greater Christchurch* establishes a maximum residential density of in the rural area of 1 household per 4 hectares, an average density of 2 households per hectare in rural residential areas (as defined in Council's Rural Residential Strategy 2014) and a density of more than 1 household per 4 hectares in urban areas. The RPS uses the term household but this is not defined further within the RPS. Selwyn District Plan is required to give effect to the RPS and the District Plan cannot establish densities which are beyond those set out in the RPS.

Chapter 5 *Land Use and Infrastructure* is applicable to the balance of the district and does not contain any reference to residential densities.

As the current definition of a dwelling in the District Plan includes a family flat, it is considered that the District Plan already envisages densities beyond those set out in the RPS. However, as the current definition of family flat requires that it be located on the same site as an existing dwelling, combined with relevant

rules within the District Plan related to building density and allotment sizes, it is not considered that family flats are likely to be of a scale or nature that would be inconsistent with the provisions of the RPS.

## 4.2 Mahaanui Iwi Management Plan.

The Mahaanui Iwi Management Plan provides a policy framework for the “protection and enhancement of Ngāi Tahu values, and for achieving outcomes that provide for the relationship of Ngāi Tahu with natural resources across Ngā Pākihi Whakatekateka o Waitaha and Te Pātaka o Rākaihautū.”

No specific policies relating to family flats were identified within the Iwi Management Plan.

## 5.0 Summary of Issues

In summary, the issues identified in Baseline Report RE014 are:

*Scale of Development* – Currently the maximum gross floor area of permitted family flats in the Selwyn District Plan is 70m<sup>2</sup> however, where resource consent has been required, the average floor area is 90m<sup>2</sup>. The majority of the oversize family flats consented were in the Rural (Inner Plains) Zone, which gives support to a larger floor area being considered within the Rural Zone.

*Impact on Amenity and Character* – Provisions within the District Plan that limit the size and scale of development, including family flats, are used to manage amenity effects on surrounding properties, such as visual amenity and character. There is the potential that stand alone family flats can increase the perception of an increase in density, by way of creating the visual impact of two dwellings on one site. However, if the family flat is significantly smaller and located in close proximity to the main dwelling, this would reduce that the impact on the amenity and character of the locality.

*Housing Choice* – Changing demographics in the district, including an aging population and an increase in smaller person households gives rise to the need to provide greater flexibility in the size and type of dwelling options available, across a range of locations. The current definition decreases the ability for family flats to be used for a wider range of people in need of a small dwelling. As such, the current provisions do not provide a range of housing choice for a variety of residents.

*Enforcement of Occupancy* – Enforcing the occupancy restriction of family flats is time consuming for staff and brings into question the efficiency of allowing a built form, but then either requiring its removal or alteration once no longer needed by family or, worse case, leaving it unoccupied. If the occupancy requirements were to be removed, consideration should need to be given to the adequacy of the amenity of the occupants of both the main dwelling and the minor residential unit.

*Density* – The District Plan currently specifies a minimum net site area for a dwelling across all zones in the district and the objectives and policies seek to manage the overall density of zones, be they residential or rural. As the current definition of dwelling in the Plan includes a family flat, it is clear that some additional density is anticipated, but only as an adjunct to the main dwelling and not as a stand-alone dwelling.

*Need to improve effectiveness of plan rules* – The inclusion of family flats in the definition of dwelling is confusing and requires clarification. It also contains metrics that are more appropriately located in standards. There are limited standards that apply specifically to family flats and there is discrepancy in standards between the two volumes of the current District Plan.

## 6.0 Summary of Approaches in Other Districts

The approaches of other districts, including the adjoining councils of Christchurch City and Waimakariri District, to providing for family flats was considered, as set out in Section 7 of Baseline Report RE014.

All of the district plans reviewed have retained the concept of providing for a minor residential unit, subservient to and on the same site as the main dwelling in both rural and residential zones.

The majority of plans have removed occupancy restrictions in relation to family flats. Dunedin was the only council that retained a restriction on who may occupy a minor residential unit, but even this is broader than family, in that it allows for someone who is employed by someone who lives in the main dwelling to occupy the unit.

The objectives of all the plans reviewed seek to encourage a diversity of housing types and sizes to meet the diverse and changing needs of the community. Only two plans included specific policies in relation to minor dwellings, which reinforce that the dwelling should be limited in size to minimise any adverse effects.

Plan provisions for minor residential units still limit the size of the units (typically 70m<sup>2</sup>, single storey nature) and require them to meet all other bulk and location standards, but do not restrict how they may be used or by whom. The purpose of limiting both the size and scale of a minor residential unit is to manage any amenity effects of surrounding properties, such as visual amenity and character, be that residential or rural.

The relevant provisions are summarised below:

Authority	Terminology	Floor Area		Standards Separation from principal dwelling	Occupation Requirement	Oversize?
		Urban	Rural			
Selwyn	Family Flat	<70m <sup>2</sup>	<70m <sup>2</sup>	Not specified	Immediate family	Non-complying
Christchurch	Minor residential unit	35-80	35-70	Must be detached but no distance specified	Not required	Restricted Discretionary
Waimakariri	Included in definition of dwellinghouse	75	75	Must be detached but within 30m	Not required	Restricted Discretionary
Dunedin	Family Flat	60	60	30m	Dependency required but does not have to be immediate family.	Restricted Discretionary
Queenstown	Residential flat	70	150	Not specified	Not required	Restricted Discretionary
Kapiti	Minor Flat	54	60	N/A	Not required	Restricted Discretionary

## 7.0 Draft National Planning Standards

As part of the 2017 amendments to the Resource Management Act 1991, the Ministry for the Environment (MfE) released the first set of draft National Planning Standards in June 2018. Within the draft definition standard, a minor residential unit has been defined as meaning “*a self-contained residential unit that is ancillary to the principal residential unit and is held in common ownership with the*

*principal residential unit on the same site, which can be attached to the principal building or be a detached stand-alone building”.*

This draft definition reinforces that dependence of a minor residential unit on the main dwelling should be tied to ownership rather than occupation, acknowledging that there is no sound resource management reason for requiring a family linkage and that to do so creates a significant monitoring and enforcement burden for councils. The draft definition also does not contain any metrics, leaving it to Council to determine an appropriate size and incorporate these into activity standards.

## 8.0 Options to address Issues

It is recommended that the Proposed District Plan continue to make provision for a form of minor residential development in association with the main dwelling in all zones. Based on the analysis above, it is considered that there are three options for managing family flats in the Proposed District Plan.

### 8.1 Option 1: Retain the status quo

This option involves no changes to current plan provisions for family flats.

**Effectiveness in Addressing Issue:** Continuation of the current provisions would not address the known issues in the Operative District Plan and is therefore considered ineffective.

**Risks:** Not addressing the identified issues with the current provisions would be a lost opportunity given the District Plan review is underway.

**Budget or Time Implications:** This option will be the most cost effective and require the least amount of time.

**Stakeholder and Community Interests:** All district residents.

**Recommendation:** This option is not recommended as it does not address the issues with the Operative District Plan.

### 8.2 Option 2: Remove occupancy restrictions

This option would see the removal of the occupancy element from the definition of family flat, thereby placing no limits on who may occupy the unit, or requiring that it be decommissioned once no longer required by family. This approach is consistent with the majority of the other plans reviewed in this report and with the definition in the draft National Planning Standards.

**Effectiveness in Addressing Issue:** Removing the restriction on who may occupy a minor unit would increase the range of housing choice available within the district, addresses current enforcement difficulties and is consistent with the direction of both the draft National Planning Standards and adjoining district plans.

**Risks:** Removing the limits on occupancy may result in a larger number of minor residential units being constructed thereby placing increased demand on infrastructure capacity and may also have a detrimental impact on the amenity and character of surrounding environments. However, these risks are able to

managed through standards related to bulk and location within the District Plan and other methods that sit outside the District Plan, such as development contributions and rating policies.

**Budget or Time Implications:** Implementation of this option would be by way of adopting the draft National Planning Standards and would therefore require limited input from Council.

**Stakeholder and Community Interests:** All district residents.

**Recommendation:** It is recommended that this option be carried forward.

### 8.3 Option 3: Amend and update the provisions to improve clarity

This option would amend and update the provisions related to minor residential units to ensure that the District Plan is clear and easy to administer. Recommendations that would form the basis of amendments are outlined below:

**Definitions** – A new ‘minor residential unit’ definition be developed, ensuring that it emphasises that it must be held in the same ownership as the main dwelling and the ancillary nature of the unit on the main dwelling, consistent with the draft National Planning Standards definition.

**Objectives and Policies** – Objectives continue to encourage housing choice at the same time as maintaining the character and visual amenity of the surrounding environment. Stand-alone policy be developed to provide clearer and more specific direction in relation to minor residential units. Particular matters that should be addressed in policy relating to family flats should include that it be of an appropriate scale and provide for suitable amenity both on-site and in relation to adjoining properties and public spaces.

**Activity Status** – Family flats that meet the relevant development standards should be permitted. Where a family flat fails to meet the permitted standards, the activity should then become either a restricted discretionary or discretionary activity. Consideration should be given to site area, access, car parking, private open space, and the building being designed in proximity to and to complement the main dwelling as well as effects on character and amenity values so as to ensure that minor residential unit is in character with locality.

**Rules/Development Standards** – Development standards for minor residential units should address the following:

- That a maximum of one minor unit be allowed per site;
- That the floor area, excluding garaging be limited, depending on the zone. In Living Zones it is recommended that the maximum floor area of 70m<sup>2</sup> be retained, while in the Rural Zone it is recommended that this be increased to 90m<sup>2</sup>;
- That a minor residential unit be located within a certain distance of the main dwelling, particularly within the Rural Zone;
- That additional car parking and open space area be provided for the use of the occupants of the minor residential unit;
- That the minor residential unit use the same accessway as the main dwelling;
- That the height be limited to single storey as well as a maximum height;
- That site complies with the relevant bulk and location standards applicable to the zone.

**Subdivision** – Subdividing a minor residential unit from the main dwelling be established as a non-complying activity if it were not able to meet the minimum net site area requirements for a stand-alone dwelling.

**Effectiveness in Addressing Issue:** Clear and specific provisions would address the known issues in the Operative District Plan.

**Risks:** Not addressing the identified issues with the current provisions would be a lost opportunity given the District Plan review is underway.

**Budget or Time Implications:** This option will require the drafting and testing of new provisions.

**Stakeholder and Community Interests:** All district residents.

**Recommendation:** It is recommended that this option be carried forward for further investigation.

## 9.0 Preferred Options for Further Engagement

The Project Team recommends that Option 2, removing the occupancy restriction and Option 3, amending the provisions to improve clarity, as outlined in Section 8 above, be endorsed by the Committee for further development.

## Appendix 1: Baseline Report RE014

Link to Baseline Report below:

[Family Flats \[PDF, 1065 KB\]](#) May 2018