

22. Implementation of Greater Christchurch Partnership - Joint Housing Action Plan - Action 7 - Extending Ōtautahi Community Housing Trust Area of Operations

Reference Te Tohutoro: 24/1322596

Responsible Officer(s) Te Pou Matua: Bruce Rendall, Head of City Growth and Property

Accountable ELT Member Pouwhakarae: Lynn McClelland, General Manager Corporate Services

[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

1. Purpose and Origin of the Report Te Pūtake Pūrongo

- 1.1 The purpose of this report is to obtain the Council's support for changes to the Ōtautahi Community Housing Trust's (OCHT) Purpose (as that is defined in the Trust Deed) and associated approval for changes to the Council's financing documents.
- 1.2 Staff have initiated the report in response to actions within the Council-endorsed Greater Christchurch Joint Housing Action Plan, OCHT's request and Mayoral correspondence with the Minister of Housing.
- 1.3 Separately, the Government has announced policy and funding changes for new social housing. [Redacted]

- 1.4 The change allows OCHT to operate outside the Christchurch City boundaries. The Council's approval is required as the terms of its financing agreements restrict OCHT's ability to materially change its business or materially alter the Trust Deed.

2. Officer Recommendations Ngā Tūtohu

That the Council:

1. Receives the information in the Implementation of Greater Christchurch Partnership - Joint Housing Action Plan - Action 7 - Extending Ōtautahi Community Housing Trust Area of Operations Report.
2. Notes that the decision in this report is assessed as low significance based on the Christchurch City Council's Significance and Engagement Policy.
3. Notes that the Ōtautahi Community Housing Trust wishes to change the Purpose in its Trust Deed to allow it to operate outside the Christchurch City Council's boundaries.
4. Requests the General Manager, Corporate Services to write to the Ōtautahi Community Housing Trust expressing the Council's interest in ensuring that any change to their operations does not impact on service delivery or ability to meet loan commitments.
5. Approves, as required by the terms of the Financing Agreements, a material change to the Ōtautahi Community Housing Trust's Trust Deed, being the removal of the geographic restriction on operations, expanding the definition of 'affordable' to allow for ownership products, and increasing the focus to be on all those with low incomes that are currently contained in the Purpose of the Trust Deed.
6. Notes that the mechanism for the change to the Trust Deed's Purpose is an Ōtautahi Community Housing Trust initiated Private Bill.
7. Approves, as required under the terms of the Financing Agreements, a material change to Ōtautahi Community Housing Trust's business to allow it to:
 - a. provide tenancy management services, lease or own property, and/or to develop social and affordable housing other than in Christchurch and Banks Peninsula with the prior written agreement of Council in its role as lender, such agreement not to be unreasonably withheld; and
 - b. provide paid advice and professional development services elsewhere.
8. Delegates authority to give the approvals as per the Financing Agreements (and any subsequent changes to the Financing Agreements) consistent with the direction in Recommendations 5 and 7 above to the General Manager, Finance, Risk & Performance / CFO.

3. Executive Summary Te Whakarāpopoto Matua

- 3.1 In 2015 and 2016, the Council set up the Ōtautahi Community Housing Trust (OCHT) to manage its social housing portfolio.
- 3.2 OCHT has been successful and there has been interest in the model from other local authorities.
- 3.3 Recognizing the interest from Selwyn and Waimakariri District Councils, the Greater Christchurch Joint Housing Action Plan (adopted by Council on 6 March 2024) included an action to "Investigate expanding the Ōtautahi Community Housing Trust model" (Action7).
- 3.4 OCHT is currently restricted from operating outside a defined geographical area due to the wording of the current Purpose as set out in Trust Deed. The means to allow OCHT to operate outside the area as currently defined is to vary the Purpose.
- 3.5 To facilitate development, the Council resolved in 2018, 2020 and 2022 to lend OCHT \$55,670,000 for social and community housing development. These loans are managed by a suite of financing documents (the Financing Agreements).

- 3.6 Because of the terms of the Financing Agreements, the Council must agree to the change in Purpose before such a change can be adopted by OCHT. It will also need to authorise consequential alterations to the Financing Agreements, being changes to the existing negative covenants to enable the Council to retain oversight of any matters that might affect the value of its securities.
- 3.7 Staff recommend that the Council support a change to OCHT's Purpose given that the likely advantages outweigh the disadvantages.
- 3.8 Taking a financial risk management perspective, staff recommend that the consent to a change to OCHT's Purpose be conditional upon OCHT agreeing to amended/additional negative covenants being included in the Financing Agreements. The conditions would allow the Council to have oversight and control of any expansion activities that could impact on the ability of OCHT to service loans and repay debt. The initial conditions approval would aim to allow OCHT to:
 - 3.8.1 provide tenancy management services, lease or own property, and/or to develop social and affordable housing other than in Christchurch and Banks Peninsula with the prior written agreement of Council in its role as lender, such agreement not to be unreasonably withheld; and
 - 3.8.2 provide paid advice and professional development services elsewhere.

4. Background/Context Te Horopaki

Background

- 4.1 In 2015 and 2016, the Council set up OCHT to manage its social housing portfolio. Under Council and Government policies at the time, management of the portfolio by Council was not financially sustainable. Transferring responsibility for the management of the portfolio to a community housing provider, such as OCHT, meant that more revenue was available, improving the financial viability of the portfolio.
- 4.2 OCHT performance has been successful as evidenced by:
 - 4.2.1 Improved tenant satisfaction with service;
 - 4.2.2 Increased revenue allowing for investment in updates (e.g. Healthy Homes compliance) and increased maintenance, as reflected in improved tenant satisfaction with the quality of their unit;
 - 4.2.3 The development of award-winning replacement and new homes; and
 - 4.2.4 Sector leadership.
- 4.3 Given OCHT's success there has been interest from other local authorities in the model. This includes interest from other Greater Christchurch councils who would like to explore having the OCHT developing and operating community housing in their areas.
- 4.4 Recognizing the interest from Selwyn and Waimakariri District Councils, the Greater Christchurch Joint Housing Action Plan (adopted by Council on 6 March 2024) contains an action to 'Action 7 - Investigate expanding the Ōtautahi Community Housing Trust model.' This report has been prepared in response to the Greater Christchurch Joint Housing Action Plan.

4.5 Councils in other areas are also interested in getting advice from OCHT. There is anecdote that those wanting access to social housing are moving from surrounding districts into Christchurch to get homes. If there were more options in their local districts, then this movement may not occur.

4.6 Separately the Government has announced policy and funding changes for new social housing.



4.7 The Government's current Public Housing Plan does not prioritise Christchurch or Canterbury for additional Social Housing (Figure 1) despite there being nearly 2000 people currently on the waiting list (Figure 2).



Delivery ranges

For the additional 3,000 public housing places.

The 2024-2025 supply intentions are presented as delivery ranges. These ranges are not targets nor limits, and they will vary on what is delivered due to the wider housing and construction sector's capacity to bring on supply.

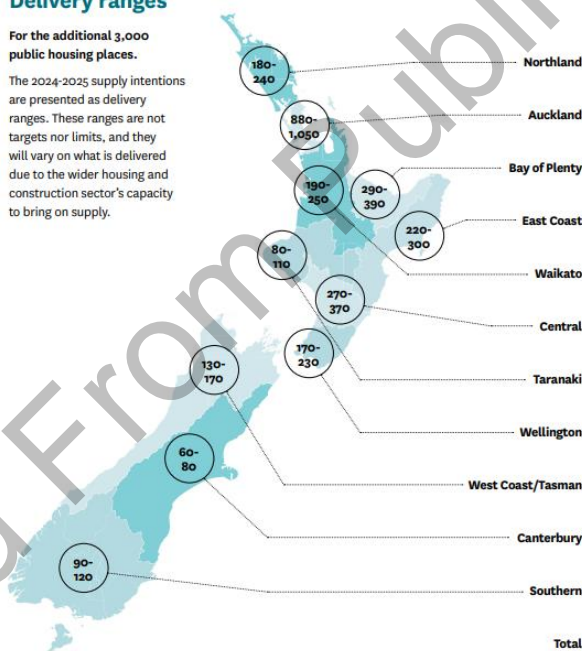


Figure 1 Extract from Updated Public Housing Plan

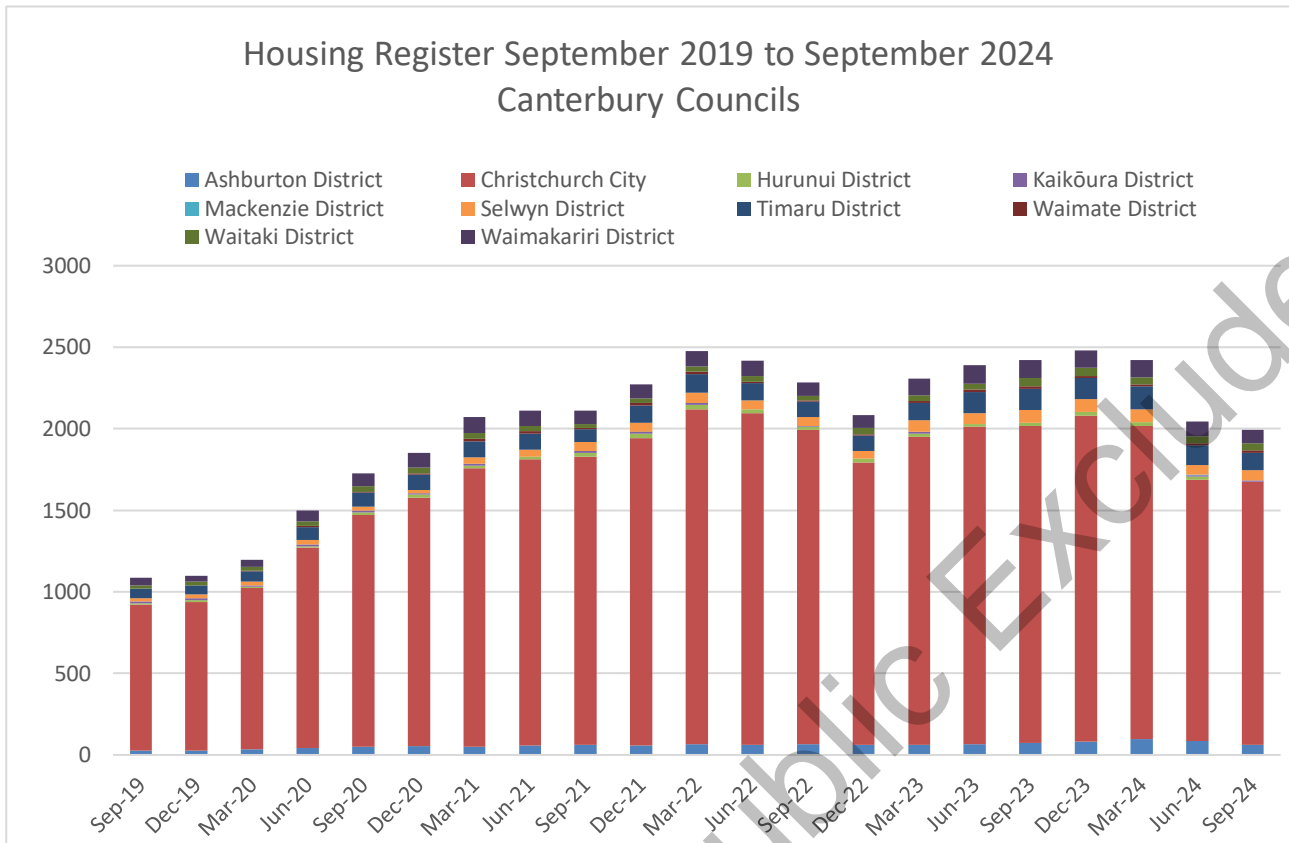


Figure 2 Housing Register for Canterbury Councils (September 2019 to September 2024)

- 4.8 OCHT has expressed an interest in working more widely. The benefits of doing this for OCHT include using OCHT's skills and expertise to help deliver services, additional revenue streams, and the [REDACTED]
- 4.9 For the Council, the benefits of OCHT working more widely are the [REDACTED] when opportunities are limited in Christchurch [REDACTED]
- 4.10 OCHT is currently restricted from operating elsewhere due to the current Purpose as set out in the Trust Deed. The Purpose is defined in clause 4.1 of the Trust deed as being "to provide Social and Affordable Rental Housing and associated services in Christchurch and Banks Peninsula for the relief of Social Housing Tenants, for the benefit of such tenants and the wider community...". This wording restricts activities to being in Christchurch and Banks Peninsula only.
- 4.11 OCHT would prefer that there was no geographic restriction within the Purpose. Additionally, they would like the restriction on rental housing removed to allow for other affordable home products such as those based on ground leasehold and progressive home ownership models.
- 4.12 Changes to the Purpose of a charitable trust are difficult to achieve. Once a charitable trust has been established, the law operates to uphold the original terms except in exceptional circumstances, meaning that the normal process of updating Trust rules do not apply. Four paths to change have been explored:
- 4.12.1 Make changes to the Trust Deed via normal processes – given that this is a charitable trust this option is not viable. Specialist legal advice for both the Council and OCHT is that none of the requisite “exceptional circumstances” are applicable in this instance;
 - 4.12.2 Seek to change the Purpose via the High Court – this option is expensive and not guaranteed of success even with settlor agreement;

- 4.12.3 Workaround (e.g. set up a sister Trust) – expensive and inefficient; and
- 4.12.4 Statutory Changes (e.g. Private Members Bill, Private Bill, Local Bill).
- 4.13 OCHT, with Council staff assistance and feedback from MHUD, believe that the statutory route is the best mechanism to amend the Purpose.

Financial Documents Restrictions

- 4.14 One of the Council’s objectives in setting OCHT up was to develop new community housing. Attractive funding mechanisms were available through the Government, however, OCHT had limited ability to secure commercial financing for developments due to the size of their balance sheet. The Council was also not prepared to approve security against the revenue stream for the total portfolio.
- 4.15 To facilitate development, the Council resolved in 2018, 2020 and 2022 to lend OCHT a total amount of \$55,670,000 for social and community housing development. These loans are managed by a suite of financing and security documents (the Financing Agreements).
- 4.16 To help mitigate financial risk, the Financing Agreements contain several restrictions referred to as negative covenants on OCHT’s activity including:
 - 4.16.1 Making material changes to the scope or nature of its core business, or
 - 4.16.2 Making material changes to the Trust Deed.
- 4.17 A change to the Purpose is a ‘material change’, which is not able to be done without Council’s consent. There would also be consequential changes to the Financing Agreements.

Proposal

- 4.18 Staff recommend that the Council support a change to OCHT’s Purpose given that the likely advantages outweigh the disadvantages (refer to section 0).
- 4.19 The preferred way to change the Purpose is through a statutory process, specifically a Private Bill. OCHT would lead and fund the process, reflecting its independence from the Council and to reinforce its separation for the purposes of the Public and Community Housing Management (Community Housing Provider) Regulations 2014. The Greater Christchurch Partnership would support the Private Bill process.
- 4.20 The proposed legislation (via a Private Bill) to amend the Purpose is a mechanism that is likely to be able to be used only once, and amendments to legislation introduced by such means would likely be difficult and therefore the Bill should reflect OCHT’s final preferred Purpose. It is not a mechanism that should be used for interim steps.
- 4.21 On this basis OCHT are considering changes to the Purpose such as “provide Social and Affordable Housing and associated services for the relief of Social Housing Tenants and those on low incomes, *for the benefit of such tenants and the wider community*”. Final wording would be drafted by OCHT’s legal advisors.
- 4.22 Given the negative covenants in the Financing Agreements, the Council could make its consent to the amendment of the Purpose conditional on it approving the final wording of the Bill.
- 4.23 The following related information session/workshops have taken place for the members of the meeting:

Date	Subject
23 July 2024	Implementation of Greater Christchurch Partnership – Joint Housing Action Plan - Action 7

Options Considered Ngā Kōwhiringa Whaiwhakaaro

4.24 The following reasonably practicable options were considered and are assessed in this report:

- 4.24.1 Conditionally agree to a change to OCHT's Purpose (Preferred option).
- 4.24.2 Unconditionally agree to a change to OCHT's Purpose.
- 4.24.3 Do not agree to a change to OCHT's Purpose.

Options Descriptions Ngā Kōwhiringa

4.25 **Preferred Option:** Conditionally agree to a change to OCHT's Purpose

4.25.1 **Option Description:** In its role as lender, the Council could agree to allow OCHT to seek a change to the Purpose. Taking a financial risk management perspective, it could make this agreement conditional, through changes to the Financing Agreements. The purpose of the conditions is to allow for minimisation of risks that could impact on the ability of OCHT to service loans and repay debt to the Council (these current terms include protections which would continue) ensuring that assets held by OCHT pursuant to its arrangements with the Council would not be used by OCHT to provide security for developments in any extended regions. The initial approval would aim to:

- Allow OCHT to provide tenancy management services, lease or own property, and/or to develop social and affordable housing other than in Christchurch and Banks Peninsula with the prior written agreement of Council in its role as lender, such agreement not to be unreasonably withheld; and
- Allow OCHT to provide paid advice and professional development services elsewhere.

The wording of the initial approval will be prepared by the Council's lawyers and be consistent with the direction set in in this section. Approval for these changes should be delegated to the General Manager, Finance, Risk & Performance / CFO consistent with the Council's other financial delegations for debt management.

There are some minor other changes to the purpose section that could also be undertaken at the same time. This includes expanding the definition of 'affordable' to allow for ownership products. At present this is limited to rentals, however, there are other forms of affordable housing that OCHT could provide. This includes secure home ownership, where the buyer owns the house, but OCHT owns the land. The purpose also focuses on "Social Housing Tenants" and OCHT would like to increase this focus to be on all those with low incomes. These changes are minor and do not impact on the Council's financial risk profile

4.25.2 **Option Advantages**

- Maintains protection of the Council's financial and service delivery interest and allows it to consider the impacts of proposals on OCHT's financial position as it relates to the Financing Agreements.
- Allows for OCHT to provide tenancy management services, lease or own property, or to develop housing, and to advise and assist councils and others beyond Christchurch City.
- Allows for a staged approach to grow operations and requires OCHT to approach the Council as a lender if it wishes to operate beyond the conditions/negative covenants set out in the Financing Agreements.
- Meets the Council's policy objectives.

- Results in one Bill that will allow flexibility and ease of future changes via amendments to the Financing Agreements and other agreements, whilst balancing this with managing the Council's financial risk.

4.25.3 Option Disadvantages

- The Council could be perceived as trying to control OCHT, which is inconsistent with the Public and Community Housing Management (Community Housing Provider) Regulations 2014. This is mitigated by the Council's focus on the conditions being used to manage its financial risk as a lender. The Council does not wish to control OCHT – it is solely interested in protecting its financial risk.

4.26 Unconditionally agree to a change to OCHT's Purpose.

4.26.1 Option Description: In its role as lender the Council could agree to allow OCHT to seek a change to its Purpose to remove the restriction on where it could operate. The Council would not put any conditions on this. The Financing Agreements would be updated to reflect that the Council had approved a material change to scope or nature of its core business, and the Trust Deed.

4.26.2 Option Advantages

- Allows for OCHT to provide tenancy management services, lease or own property, or to develop housing in locations other than Christchurch.
- Allows for OCHT to advise and assist councils and others beyond Christchurch City.
- Meets the Council's policy objectives.
- Results in one Bill that will allow flexibility and ease of future changes.
- Reinforces OCHT's independence, which is required under the Public and Community Housing Management (Community Housing Provider) Regulations 2014 to remain eligible for the Income Related Rent Subsidy (IRRS).

4.26.3 Option Disadvantages

- Reduces the Council's ability to influence OCHT's decision making as it relates to financial viability including ability to service loans and repay debt. The Council will still have controls and visibility through the other requirements in the Financing Agreements such as financial covenants.

4.27 Do not agree to a change to OCHT's Purpose.

4.27.1 Option Description: the Council could decide not to agree to a change in purpose

4.27.2 Option Advantages

- Maintains protection of the Council's financial and service delivery interest.

4.27.3 Option Disadvantages

- Is inconsistent with the Council's policy position.
- Does not allow expansion of OCHT's activities into Greater Christchurch or other areas.
- Restricts OCHT's ability to earn revenue from advisory services.

- 

Analysis Criteria Ngā Paearu Wetekina

- 4.28 The primary criteria for the decision in this report is “will the proposed change impact on the Council’s financial risk associated with its lending to OCHT?”.
- 4.29 Secondary criteria are:
- 4.29.1 Policy compliance, including implementation of the Greater Christchurch Joint Housing Action Plan - Action 7;
 - 4.29.2 Relationship considerations; and
 - 4.29.3 Operational risk associated with the Council’s lease and including impact on tenants and rent.

5. Financial Implications Ngā Hīraunga Rauemi

Capex/Opex Ngā Utu Whakahaere

	Recommended Option	Option 2 - Unconditional Agreement	Option 3 -Do not Agree
Cost to Implement	Estimated at around \$5,000 Note this is for changing the Financing Agreements only. Others will be responsible for the costs of the Private Bill		Nil
Maintenance/Ongoing Costs	NA		N/A
Funding Source	Existing budgets for Housing / Legal Services activities		N/A
Funding Availability	Available		N/A
Impact on Rates	Nil – any costs are borne from the rates neutral Housing Fund or are already rated for		N/A

6. Considerations Ngā Whai Whakaaro

Risks and Mitigations Ngā Mōrearea me ngā Whakamātautau

- 6.1 The main risk from a decision to change OCHT’s Purpose to allow it to work in other areas is potential overreach and loss of focus on Christchurch. This risk is already mitigated by other tools such as the Financing Agreements, lease and governance oversight.
- 6.1.1 The controls in the preferred option provide additional oversight to help manage any financial and operational risk associated with rapid or unsupported growth while also allowing flexibility when needed.
 - 6.1.2 The Financing Agreements already contains clauses that ensure that the Council has visibility of additional borrowing by OCHT and sufficient security to protect its position as fully as it is able under the law in the event of a wind-up of OCHT; and
 - 6.1.3 The Council would not allow its loans to be use for financing development outside the Christchurch City boundaries.
- 6.2 There is a risk that the change to OCHT’s Purpose will not help achieve community housing outcomes in the short term. The current model works because of Government subsidies that

increase OCHT's revenue to a level that allows for the financial sustainability of the housing portfolio. At present there is uncertainty about Government policy relating to the availability of these subsidies in the Greater Christchurch area. Based on announcements to date, the South Island is a lower priority of additional investment than other areas. Given these announcements it is unlikely that there will be opportunities for OCHT to develop new social housing at scale soon.

Legal Considerations Ngā Hiraunga ā-Ture

6.3 Statutory and/or delegated authority to undertake proposals in the report:

6.3.1 The Council has the statutory authority to undertake the proposals in the report. While authority to approve the Financing Agreements has been delegated to staff or staff and the Chair of Finance and Performance Committee, staff believe that this matter is significant enough to justify the Council's consideration.

6.4 Other Legal Implications:

6.4.1 To enable OCHT to achieve its objectives will require amending the Purpose. Staff, OCHT and lawyers for both parties with specialist skills in this area have worked together and identified that a Private Bill is the best mechanism.

6.4.2 A second, significant, consideration is how best to protect the Council's position as lender and the integrity of the Council's securities if OCHT was to expand the current area of its operations. Consideration has already been given to the best means to protect the Council; it is not practical to do so via the wording of the Bill as it would make the Bill and resultant Act too cumbersome and inflexible. Rather, Council has greater flexibility to protect its interests (which will change over time) by amending the wording of the current Financing Agreements and entering into new agreements if and when required. This approach allows Council to look at each request for a change on a case-by-case basis, which is more suitable. Staff have considered that this approach might be seen by OCHT as Council being a "handbrake" on the speed and way in which OCHT is able to achieve its much wider aims, but a cautious expansion is essential to properly protect the Council's position as lender. While it remains a lender, the Council, realistically, must retain the ability to require OCHT to pause operations outside the Christchurch and Banks Peninsula areas if it has reasonable concerns about the integrity and value of its security agreements. This is a reasonable approach that a commercial lender would also be expected to take if it were in Council's position as primary lender, or even if a commercial lender were a secondary or mezzanine lender.

Strategy and Policy Considerations Te Whai Kaupapa here

6.5 The required decision:

6.5.1 Aligns with the [Christchurch City Council's Strategic Framework](#). The relevant section relates to managing ratepayers' money wisely.

6.5.2 Is assessed as low significance based on the Christchurch City Council's Significance and Engagement Policy. The level of significance was determined by consideration of the possible risks to the Council, ratepayers and the wider community.

6.5.3 Is consistent with the Council's Plans and Policies.

6.6 This report supports the [Council's Long Term Plan \(2024 - 2034\)](#):

6.7 Strategic Planning and Policy

6.7.1 Activity: City Growth and Property

- Level of Service: 17.0.44 Work with our neighbours and other partners to provide regional housing advice - Report annually to Council on progress towards the implementation of the Greater Christchurch Partnership Housing Plan and Canterbury Mayoral Forum Housing Plan

6.8 The specific policy considerations are:

6.8.1 The Greater Christchurch Joint Housing Action Plan (adopted by the Council on 6 March 2024) contains an action to ‘Investigate expanding the Ōtautahi Community Housing Trust model.’

6.8.2 The Housing Policy 2016 contains a commitment to “Support the capacity and capability of community housing providers to more easily undertake housing developments or initiatives”.

6.8.3 The Community Housing Strategy 2016 contains an action to “identify partnerships and models that support delivery of community housing”.

Community Impacts and Views Ngā Mariu ā-Hāpori

6.9 There are no direct community impacts of the decision in this report.

6.10 The decision affects the following wards/Community Board areas:

6.10.1 Nil.

Impact on Mana Whenua Ngā Whai Take Mana Whenua

6.11 The report does not involve a significant decision in relation to ancestral land, a body of water or other elements of intrinsic value, therefore this decision does not specifically impact Mana Whenua, their culture, and traditions.

6.12 The decision involves a matter of interest to Mana Whenua but will not impact on our agreed partnership priorities with Ngā Papatipu Rūnanga.

6.13 Māori are over-represented among social housing tenants in New Zealand and more Māori than other New Zealanders are affected by overcrowding or live in substandard housing. Statistics show Māori have lower levels of home ownership, limited housing choices and the need for government assistance with their housing (He Whare Āhuru He Oranga Tāngata – The Māori Housing Strategy, 2014).

6.14 OCHT is increasingly working with Mana Whenua to provide housing opportunities to help address some of the matters set out in Clause 0.

6.15 Mana whenua is represented on the Greater Christchurch Partnership through Te Rūnanga o Ngāi Tahu appointed committee members.

Climate Change Impact Considerations Ngā Whai Whakaaro mā te Āhuarangi

6.16 The proposals in this report are unlikely to contribute significantly to adaptation to the impacts of climate change or emissions reductions.

6.17 The decisions primarily relate to changes to security documents.

7. Next Steps Ngā Mahinga ā-muri

7.1 If the recommendations are adopted, then the Council will assist OCHT to prepare the Private Bill. Staff will also negotiate changes to the Financing Agreements to put in place the approved conditions.

Attachments Ngā Tāpirihanga

There are no attachments to this report.

In addition to the attached documents, the following background information is available:

Document Name - Location / File Link
Not applicable

Signatories Ngā Kaiwaitohu

Authors	Elizabeth Neazor - Manager Legal Service Delivery Bruce Rendall - Head of Facilities & Property
Approved By	Lynn McClelland - General Manager Corporate Services

Released From Public Excluded