

PROPOSED DISTRICT PLAN VARIATION 6 - SECTION 32 REPORT

**Amendments to Proposed District Plan
Change 33 (Ridgelines and Hilltops
[Visual Amenity] and Rural Area)**

Earthworks

26 July 2008

SECTION 32 REPORT

Proposed District Plan Variation 6 Amendments to Proposed District Plan Change 33 (Ridgelines and Hilltops [Visual Amenity] and Rural Area) - Earthworks

Introduction

Before a proposed District Plan variation is publicly notified the Council is required under section 32 of the Resource Management Act 1991 (the Act) to carry out an evaluation of the proposed variation and prepare a report. As prescribed in section 32 of the Act:

An evaluation must examine:

- (a) the extent to which each objective is the most appropriate way to achieve the purpose of the Act; and*
- (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*

An evaluation must also take into account:

- (a) the benefits and costs of policies, rules, or other methods; and*
- (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.*

Benefits and costs are defined as including benefits and costs of any kind, whether monetary or non-monetary.

A report must be prepared summarising the evaluation and giving reasons for the evaluation. The report must be available for public inspection at the time the proposed change is publicly notified.

Background

New objectives, policies and rules for earthworks in the District Plan were approved by the Strategy and Policy Committee of 13 March 2008. They were subsequently notified as Proposed District Plan Change 65. The need for variations to a number of existing proposed plan changes was also anticipated and delegated authority was granted to the Portfolio Spokesperson to authorise the variations.

Evaluations

Appropriateness of objective to achieve the purpose of the Act

As required, an evaluation under section 32 must examine the extent to which each objective is the most appropriate way to achieve the purpose of the Act.

In respect of Variation 6 no change is proposed to any objectives of the Residential, Rural, Open Space or Conservation Site areas, so no evaluation need be made.

Efficiency/effectiveness – benefits/costs of policies, rules or other methods

In considering whether having regard to their efficiency and effectiveness, the rule amendments under proposed Variation 6 are the most appropriate for achieving the objectives of the Plan, the Council evaluated two options. These were

Option 1. – Do nothing, retain existing Plan Change 33 provisions.

Option 2. – Delete or amend relevant provisions in Plan Change 33.

Option 1 – Do Nothing

Explanation

Plan Change 33 changed the District Plan in two ways. It introduced a new structure and new provisions for the Rural Area. It also redefined ridgeline and hilltop areas by identifying them on planning maps and introduced new provisions to protect their amenity in the Residential, Rural, Open Space and Conservation Site areas.

Plan Change 65 introduced new earthworks provisions to the District Plan. These provisions apply throughout the city. The earthworks provisions have been removed from the Area based chapters and located in a stand-alone chapter.

Under the “do nothing” option earthworks provisions are set out in different ways under the two plan changes. In Plan Change 33, permitted activity and discretionary activity rules for earthworks is a feature of the Residential, Rural, Open Space and Conservation Site chapters. In Plan Change 65 the earthworks rules have been deleted from these chapters in the Operative District Plan. This deletion includes all the earthworks rules in the Plan Change 33 chapters, where these rules weren’t changed from those in the operative plan.

Efficiency and Effectiveness

The retention of the existing wording in Plan Change 33 would affect the efficiency and effectiveness of the Plan.

Having two sets of objectives, policies and rules should not affect the intended outcomes of the two plan changes. While Plan Change 33 was a review of the Rural Area chapter the only changes it made to the earthworks provisions were changes to the provisions for earthworks in identified ridgeline and hilltop areas. Plan Change 65 doesn’t include these changes so there is no conflict in the use of the two plan changes.

On this basis it can be said that the “do nothing” option would be effective because the outcomes of both plan changes could be achieved (unless the totally different structures provided a basis for a challenge on interpretation).

The situation wouldn’t be efficient. A person reading the provisions would have to understand two quite different structures, and how they interrelate, before they could use the provisions.

The “do nothing” option is not therefore an efficient (and possibly not effective) method for achieving the objectives of either Plan Change 33 or 65.

Benefits and costs

Under Option 1 the key benefits and costs may be summarized as follows:

Benefits

- Avoids possible delays in resolving Plan Change 33 that would result from submissions on Variation 6.
- A short term benefit of minimal administrative costs by not notifying a variation.

Costs

- Challenging interpretation and administrative confusion with the different structures, resulting in errors by advisors, applicants and Council planners
- While the plan changes are not considered to be in conflict, the different structures increases the risk of legal challenge
- Time and cost involved in resolving conflicts via a plan change at some future date.

Option 2 – Amend relevant aspects of DPC 33

Explanation

Under Option 2 the objectives, policies and rules in Plan Change 33 would be amended to align them with the Earthworks Plan Change (DPC 65).

The variation amends 18 section of text. It deletes all policies and rules for earthworks that don't affect identified ridgelines and hilltops. It retains all the provisions for earthworks in ridgelines and hilltops, either without modification, or with the minimum amount of modification to restore the structure of the policy or rule after the deletion of the general earthworks provisions.

In the Rural, Open Space and Conservation Site areas, permitted and discretionary activity rules are retained that address just earthworks in identified and ridgelines and hilltops. In the Residential Area it was necessary to relocate the assessment criteria for discretionary activities into the relevant policy. This was because Plan Change 33 only addressed the ridgeline and hilltop issue through the rule for discretionary earthworks.

Efficiency and Effectiveness

The amended earthworks provisions, under Variation 6, would be both clearer and easier to use alongside the new earthworks provisions, under Plan Change 65. By reducing the time and effort required by advisors, applicants and Council planners it would be a more efficient means for achieving the objectives of both plan changes.

The amendments would ensure the effectiveness of the plan changes through aligning the provisions in the different chapters of the Plan. This would reduce the risk of challenge to the interpretation of the provisions, which could be argued from the different structures of Plan Change 33 and 65.

Benefits and Costs

Under Option 2 the key benefits and costs may be summarized as follows:

Benefits

- Easier interpretation of all the earthworks provisions. Fewer errors by advisors, applicants and Council planners
- Reduced risk of challenge based on interpretation of the different provisions for earthworks generally and in identified ridgelines and hilltops
- Time and cost involved in resolving conflicts via a plan change at some future date.

Costs

- Possible delays in resolving Plan Change 33, due to submissions on Variation 6.
- Short term cost of resolving conflicting provisions through the initiation of a variation to the District Plan.

The Risk of Acting or Not Acting

The evaluation under section 32 must consider the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the proposed variation. In this case, it is considered that there is sufficient and certain information available on the variation. The focus is the resolution of confusing plan change provisions and the issues are clear. It is considered that there is a very low risk of any untoward outcomes resulting from the adoption of the variation.

Conclusion

Variation 6 involves amendments to align the Ridgelines and Hilltops and the Rural Area provisions under Proposed Plan Changes 33 with the earthworks provisions under Proposed Plan Changes 65. The amendments are necessary to make the general earthworks provisions and the ones for earthworks in identified ridgelines and hilltops, workable.