

SECTION 32 REPORT

PROPOSED DISTRICT PLAN VARIATION 7

**Amendments to Proposed District
Plan Change 43 (Heritage Provisions)**

Earthworks

26 July 2008

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Proposed District Plan Variation 7 Amendments to Proposed District Change 43 (Heritage Provisions)

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

The need for variations to proposed district plan changes was anticipated in the report to the Strategy and Policy Committee, of 13 March 2008. The report put forward for approval new objectives, policies and rules for earthworks, subsequently notified as Proposed Plan Change 65.

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 7 no change is proposed to any objectives 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 7 are the most appropriate for achieving the objectives of the Plan, the Council evaluated two main options. These were

Option 1. – Do nothing, retain existing Plan Change 43 provisions.

Option 2. – Delete or amend relevant provisions in Plan Change 43.

Option 1 – Do Nothing

Explanation

Under Option 1, statements would be added to each rule chapter that would have the effect that the earthworks rules in that chapter, including the new earthworks chapter introduced under Plan Change 65, would not apply. This would mean in a Heritage Area the new objectives and policies introduced under Plan Change 65, which were intended to apply to earthworks throughout the whole city, would not be used. Of particular concern are the rules that regulate the stability of earthworks (which replaced the Earthworks Bylaw consent process) and the ones that control dust and sediment runoff from a development site.

The only rules that would apply to earthworks would be 21B.1.3 (Permitted Activity) and 21.2.3 (Discretionary Activity), which are only concerned with the potential enhancement or loss of heritage values.

Efficiency and Effectiveness

The retention of the existing wording in Plan Change 43 would not permit the administration of the objectives of the Earthworks Chapter or other chapters that have earthworks rules e.g. within identified ridgelines and hilltops in the

Rural Area. The city wide earthworks rules and any relevant would have zero effectiveness.

Benefits and costs

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

Benefits

- A short term benefit of minimising administrative costs by not notifying a variation.

Costs

- Conflicting provisions under Plan Change 43 and Plan Change 48 open to legal challenge.
- Time and cost involved in resolving conflicts via a plan change at some future date.
- Administrative confusion and uncertainty with overlapping provisions.
- The attainment of heritage area outcomes hindered.

Option 2 – Amend relevant aspects of DPC 43

Explanation

Under Option 2 the wording of the heritage area provisions under Plan Change 43 and Plan Change 48 would be aligned to exclude non-heritage buildings and structures from the controls in respect of demolition or removal.

Efficiency and Effectiveness

The alignment of the heritage area provisions would promote the efficient and effective administration of the District Plan by ensuring that the Heritage and Central Area Chapters would work in tandem to promote the desired management of heritage areas.

Benefits and Costs

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

Benefits

- Conflicts arising from different provisions under Plan Change 43 and Plan Change 48 would not arise
- No administrative confusion or uncertainty
- Management of heritage areas facilitated.

Costs

- 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 conflicting plan change provisions and the issues are clear. It is believed that there is a very low risk of any untoward outcomes resulting from the adoption of the variation.

Conclusion

Variation 4 involves minor amendments to align the heritage area provisions under Proposed District Plan Changes 43 and 48. The amendments are necessary to make the heritage area provisions workable.