

## 5. REVIEW OF POLICY ON PRIVATELY REQUESTED VARIATIONS TO THE CITY PLAN

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The purpose of this report is to review the policy on privately requested variations to the City Plan.

In June 2003 the Council adopted a policy on privately requested variations to the City Plan. This was to enable developers to put forward proposals to the Council that needed a change to the Plan, in recognition of the fact that the process of making the City Plan operative has been protracted. Once the plan is operative, then people have the right to apply for changes to the Plan. The Council adopted a number of criteria for privately requested variations, which are set out in the attached extract from the Council minutes attached.

To date three proposals are in preparation, but none of these has as yet been publicly notified. They are:

- Stonehurst Accommodation, Worcester Street, scheduling of four additional sites for transient accommodation. This has been prepared but is awaiting a Council review of its policy on speaking rights at Committee meetings where Plan changes and variations are being considered.
- Cashmere Lakes, a proposed rezoning of 4 ha of rural land to Living 1, adjacent to Westmoreland in Cashmere Road. This is close to completion in draft form. As yet there has been no public consultation.
- Clearwater and Isaac Wildlife Trust, a proposal to allow for the development of a regional park and further development of Clearwater. A draft variation has been prepared and commented on Council officers. It is currently being revised by the developers.

A fourth case has recently emerged, but is at a very early stage. The owner is aware that time may not permit this to be completed as a variation before the plan is made operative in part.

To date therefore there has not been much uptake of the private variations policy. The three existing cases are all keen to proceed if possible. The main reason for introducing the policy was to enable people to put forward proposals for consideration in view of the extended time required to make the City Plan operative. Once the plan is operative, the Resource Management Act allows people to make application for plan changes, which in most cases the Council is obliged to consider and publicly notify.

### **PRIVATELY REQUESTED VARIATIONS VS PRIVATE PLAN CHANGES**

Before a Plan is operative, amendments are referred to as variations. After it is operative they are called changes. Privately requested variations before a plan is operative differ from privately requested plan changes after the plan is operative. In effect, with a privately requested variation, the Council becomes the initiator of the variation. It has complete control of the process. It is not obliged to introduce any variation, and it may withdraw one during the process, and there is no right of appeal against such decisions. Council variations are processed under Part 1 of the 1<sup>st</sup> Schedule to the Resource Management Act. Private plan changes are processed under Part 2. One of the major differences between the two parts appears to be in the area of consultation. There is a limited duty of consultation with variations, but Council may consult anyone it wishes to. With private plan changes, there appears to be no obligation to consult at all prior to public notification. Prior consultation is generally regarded as good practice and has been required to date with the privately requested variations being developed. Another major difference is in the control of the variation.

### **EFFECT OF THE PRIVATE VARIATIONS POLICY ON MAKING THE CITY PLAN OPERATIVE IN PART**

In order to make the City Plan operative in part, the Council must apply to the Environment Court. It will be necessary at that time to specify which parts of the plan are not to be made operative. An application is currently being prepared and is expected to be put before the Court in June 2004. It will not be possible to accept any more privately requested variations under the policy after the application is made to the Court unless they are anticipated and allowed for in the application. Those matters which are known about can be included in the matters not to be made operative, even though the variation itself has not been completed and notified.

The reason this might be done is that there is likely to be a further gap between applying to the Court and actually making the Plan operative in part. This is to allow for receiving the decision of the Court, and preparing and publishing the final version of the Plan. At this stage it is anticipated that if application is made to the Court by the end of May 2004, it may be possible to make the Plan operative in part by December 2004. The Council elections may also affect the timing.

Because the application to the Court is imminent, there is very little possibility of any more privately requested variations that are not already known about to be introduced. However, there is no need to cancel the policy immediately as to do so would be unfair to existing applicants who have been involved with the process for some time and are relying on it.

**Staff**

**Recommendation:** That the policy on privately requested variations to the City Plan be revoked from the date on which the Council applies to the Environment Court to make the City Plan operative in part.

**Chairman's**

**Recommendation:** That the above recommendation be adopted.