

## 7. VARIATION TO BANKS PENINSULA PROPOSED DISTRICT PLAN

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<b>Officer responsible:</b>	City Plan Team Leader
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### PURPOSE OF REPORT

1. The purpose of this report is to seek direction from the Council about private requests for variations to the Proposed Banks Peninsula District Plan.

### EXECUTIVE SUMMARY

2. The Council has been approached to consider varying the Banks Peninsula Plan to enable a development in Akaroa to proceed by way of a rezoning. The application would be assessed for its impact on the environment including the impacts of increased density and traffic and the implications for the existing servicing infrastructure and the impact on landscape values and vegetation. It would also be subject to a section 32 report to evaluate the alternatives and benefits and costs of the proposed changes and assessment against the purpose of the Act.
3. If the Banks Peninsula Plan was operative this variation request would proceed as a plan change and the Council would be obliged under the Resource Management Act to process the request at the applicant's cost. However, there is no similar right to request a variation from a proposed plan.

### FINANCIAL IMPLICATIONS

4. Within City Plan Budget

#### **Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?**

5. Covered by existing unit budgets.

### LEGAL CONSIDERATIONS

6. No particular legal issues arise other than the standard RMA process for a plan variation.

#### **Have you considered the legal implications of the issue under consideration?**

7. As above.

### ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

8. Aligned with City Plan Activity Management Plan. Supports the LTCCP City Plan measure that 10 variations or plan changes be prepared and notified annually.

#### **Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?**

9. As above.

### ALIGNMENT WITH STRATEGIES

10. N/A

#### **Do the recommendations align with the Council's strategies?**

11. Yes

### STAFF RECOMMENDATION

It is recommended that the Council adopt the attached policy on private requests for variations to the Banks Peninsula Proposed District Plan and delegate to the Team Leader City Plan the power to allow private requests to vary the plan to be prepared in accordance with the policy, for consideration by the Council.

## BACKGROUND (THE ISSUES)

12. The Council has been approached to consider varying the Banks Peninsula District Plan (BPDP) to enable a development in Akaroa to proceed by way of a rezoning. The application would be assessed for its impact on the environment including the impacts of increased density and traffic and the implications for the existing servicing infrastructure and the impact on landscape values and vegetation. It would also be subject to a section 32 report to evaluate the alternatives and benefits and costs of the proposed changes and assessment against the purpose of the Act.
13. The BPDP has been in preparation since 1997 and has at least 12 months before it can be made operative in part. The expectation of the Resource Management Act is that people should be able to make applications to change a district plan. However this opportunity is not given until the plan becomes operative. Much of the BPDP has been beyond challenge for several years but has not been made operative because of several important issues which are going through the Environment Court. The Council itself can vary the proposed plan but other parties cannot apply for this until the plan is operative. The effect is that the RMA opportunity to apply for a plan change has not been available since 1997, even though some provisions have been completed for several years. This is not considered to be a particularly user-friendly situation.
14. The Council has previously considered the question of variations to a proposed plan when in 2003 the same issue arose due to approaches to the Council for variations to the Proposed Christchurch City Plan. At that time the Council adopted a policy for handling such requests. An adapted version of this policy is attached should the Council wish to adopt this course. Factors which could influence a Council policy on requests for variations are the same now as they were in 2003, they are:
  - The first consideration should be the impact on staff resources for making the Banks Peninsula Plan operative. This means completing existing appeals and variations. This should be the primary task of the City Plan team and related staff.
  - The second issue is time delays in making the plan operative. New variations may be controversial and give rise to references, thus delaying the ability to make that part of the plan operative.
  - The third issue is the desirability of being helpful to the community whenever possible. There are occasions when the plan could be more helpful to parties without compromising its overall role.
  - A fourth factor is the complexity in administering the Plan. If people cannot get the Plan varied they are likely to apply for resource consents instead and these applications may be much more complex and difficult than they would be if the Plan was less restrictive.
  - A fifth factor is cost. The plan changes are not of any great public interest or benefit, even though they may be suitable and appropriate for adoption under the Resource Management Act. In other words the benefits are largely private rather than public.
15. A technique which addresses most of these factors is for an applicant to prepare a potential variation itself, generally using consultants, in consultation with Council staff. This gives the Council input without demanding large amounts of time. Such proposals should be specific to a particular site, or perhaps a particular objective, policy, rule or zoning. A typical example would be a request to rezone a particular piece of land. This would have no impact on the rest of the Plan. The rest of the Plan could be made operative in part. Alternatively such proposals may be small-scale or have little potential for controversy, so that they can be completed in the time before the Plan is made operative.
16. It is likely that most of the Plan will be operative by late 2008. Therefore any policy would have a relatively short life and the number of applications is likely to be low. There will come a time, probably in late 2008, when all such requests should be declined to enable staff to get the Plan document corrected, formatted and made operative.

## **THE OPTIONS**

### **Option 1**

17. Reject the application for a variation to the Banks Peninsula Plan relating to rezoning land to enable private development.

### **Option 2**

18. Adopt the attached Council policy on private variations to the Banks Peninsula Proposed District Plan under which officers are able to deal with all such applications on a one-off basis as and when they arise.

### **Option 3**

19. Advise the applicant, Mrs Dunster, that if she prepares a draft variation and section 32 report, at their expense, the Council will consider it for possible adoption and public notification but can give no assurance at this stage as to its adoption or otherwise.

## **PREFERRED OPTION**

### **Option 2 & 3**

20. Adopt a policy on private variations to the Banks Peninsula Plan and advise applicant that they can prepare a draft variation for consideration by the Council.

## **PROPOSED POLICY**

### **Policy on Private Requests for Variations to the Banks Peninsula District Plan**

*That privately initiated requests for variations to the Banks Peninsula District Plan be considered on the following basis:*

1. That the requests are to be in relation to specific sites only by the owner of the fee simple of the land or any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, while the agreement remains in force, and shall not affect broadly applicable Banks Peninsula Plan provisions.
2. That the proposal is not contrary to any adopted strategy or area plan for the site in question.
3. That the proposal will not create a demand for additional infrastructure to be provide by the council, or deplete available capacity to service and supply appropriately zoned land.
4. That the requests will not be granted where applying for resource consents would be a practical alternative.
5. That such requests should not delay the Council's ability to make the majority of the Banks Peninsula District Plan operative in part.
6. That applicants shall agree to reimburse the Council for its actual and reasonable costs in processing the request and any subsequent variation, to the conclusion of the hearings phase.
7. That any such variations are to be prepared by the applicants, at their expense, in consultation with relevant Council staff.
8. That the Council will consider any such variation on its merits but gives no assurance that it would introduce it, or if introduced as to its eventual decision on it.
9. That the Council will reserve the right to withdraw any such variation at any stage if it became protracted to the point where it affected the ability to make important parts of the Banks Peninsula District Plan operative.
10. That the Team Leader City Plan be given delegated authority to decide on requests to prepare variations to the Banks Peninsula District Plan under this policy. All such variations, authorised to be prepared by the Team Leader City Plan, are to be considered by the Council.