

2. PLAN CHANGE 6 – RESIDENTIAL SITE DENSITY

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PURPOSE OF REPORT

1. The purpose of this report is to identify a plan change to the City Plan and recommend that the Council close a loophole that currently exists in the land use standards in parts of the Living 1A, HA and HB zones that allows the creation of house lots detached from the balance of the land in the allotment concerned.

EXECUTIVE SUMMARY

2. Variation 90 to the City Plan (made operative in 2006) closed a loophole in the plan that allowed the creation of house lots detached from the balance of the land in the allotment concerned. This enabled the creation of clusters of dwellings in a rural zone in a manner more like an urban area, with the balance of the rural allotment being held elsewhere. Variation 90 altered this situation from as of right status to one requiring resource consent.
3. A further change to the City Plan is required due to an omission from Variation 90. It applies in the rural zones but could equally have been applied to the low density living zones. The proposed plan change (**Attachment 1**), changes existing rules in those zones to make it consistent with the other changes introduced by Variation 90 that relate to the location of residential units on physically contiguous areas of land that meet the minimum area requirements for their respective zone.

FINANCIAL IMPLICATIONS

4. No particular legal issues arise other than the standard Resource Management Act 1991 (RMA) process for Plan Changes.

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

5. The costs of public notification are able to be covered by existing unit budgets.

LEGAL CONSIDERATIONS

6. Section 74 of the Resource Management Act allows the Council to change its Plan or Proposed Plan in accordance with its functions under section 31, having regard to the provisions of Part II and its duties under section 32. Clause 16A of the First Schedule to the Act specifically gives Council the ability to initiate changes to the Proposed Plan by way of variation. Section 32 of the RMA requires the Council to evaluate the proposed change or variation, to examine the extent to which each objective is the most appropriate way to achieve the purpose of the RMA; and whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

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

7. No particular legal issues arise other than the standard RMA process for Plan Changes.

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. Not applicable.

Do the recommendations align with the Council's strategies?

11. Yes.

CONSULTATION FULFILMENT

12. Consultation was undertaken as part of Variation 90 with survey firms who were considered to be in a good position to provide informed comments on the proposed plan change on their own behalf and for any clients that may have an interest in this matter. Proposed Plan Change 6 is effectively a follow up to the earlier Variation 90. Both Plan Changes intend to reduce the potential for clusters of residential units within zones that require larger site areas for residential units in order to (among other reasons) maintain character and amenity values.

STAFF RECOMMENDATION

It is recommended that the Regulatory and Planning Committee recommend that the Council:

- (a) Adopt the section 32 assessment for Plan Change 6.
- (b) Agree to publicly notify Plan Change 6 pursuant to Clause 16a of Schedule 1 to the Resource Management Act 1991.

COMMITTEE RECOMMENDATION

That the staff recommendation be adopted by the Council.

BACKGROUND TO CLUSTER HOUSING ISSUES

13. Variation 90 to the proposed City Plan was notified on 3 September 2004. This variation was intended to prevent the clustering of residential units in all low density living and rural zones in the City. While Variation 90 altered Living Zone critical standard 3.4.1 to ensure that clustering could not occur as of right in the low density living zones, clause (b) of this rule, which relates to the development of residential units in parts of the Living 1A, 1C, HA and HB zones, was inadvertently omitted from the changes introduced. The rule as amended by Variation 90 therefore is only partially achieving the outcomes sought for these low density living zones. Note that, unlike Variation 90, which dealt with Rural zones, and Variation 95 which dealt with the Living 1A zone, the Livings Hills A & B zone minimum lot size is a prohibited activity.

14. The existing wording within subclause (b) of critical standard 3.4.1 Residential Site Density may potentially allow clustering of residential units to occur, contrary to the intent of the Plan and for the other low density living zones as expressed through Variation 90. As Variation 90 has been completed and made operative, a further change to the Plan is necessary to ensure the intent of the original variation is carried through to all these living zones.

15. In 2007 Plan Change 6 had been partially completed in preparation of being presented to the Council when legal advice was sought from Anderson Lloyd Lawyers, with regard to whether Plan Change 6 satisfactorily addressed potential inconsistencies and loopholes in respect of the establishment of residential units within the Living 1A, HA, RS and HB zones. The legal advice confirmed that the proposed Plan Change closed the said loopholes and addressed inconsistencies (**Attachment 2**). However, the advice also recommended that Plan Change 6 should not proceed until Variation 95 / Plan Change 1 was declared operative:

“Given the Council’s intention to amend this particular provision (Critical Standard 3.4.1 (iii) in respect of the Living 1A zone) under Plan Change 6, we have advised that Plan change 6 should not proceed until the provisions of the plan subject to Variation 95/ Plan Change 1 are declared operative”.

16. Presenting Plan Change 6 to the Council was postponed until Variation Plan 95/Plan Change 1 became operative. Plan Change 1 was approved by the Council in December 2008 and became operative 2 February 2009.

THE OBJECTIVES

17. The purpose of this Plan Change is to bring about consistency with existing rules introduced by Variation 90, notified in September 2004. Variation 90 reduces the potential for cluster development in rural zones, in order to maintain amenity values and character, by ensuring that new residential dwellings are situated on physically contiguous land parcels that meet the minimum site area. This Plan Change (an omission to Variation 90) intends to close a loophole that potentially allows clusters of dwellings within low density living zones, namely 1A, HA and HB zones.

THE OPTIONS

18. The options are:
 - (a) to notify the Plan Change and therefore completely close the loophole that was originally intended to be closed via Variation 90. Submissions and further submissions can then be made on the Plan Change.
 - (b) to leave the subclause unchanged and therefore not prevent as-of-right clustering in the Living Hills and other low density living zones, with the associated adverse amenity effects.

PREFERRED OPTION

17. The preferred option is (a).

ASSESSMENT OF OPTIONS

18. See Section 32 Report (**Attachment 3**).