

AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY, ON TUESDAY, 11 JULY 2006 COMMENCING AT 11.00 AM.

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1 APOLOGIES



2 PROPOSED PLAN CHANGE 20: BOUNDARY ADJUSTMENT SUBDIVISION CONTROLS IN THE DISTRICT PLAN

1.0 INTRODUCTION

This report addresses the submissions on Proposed Plan Change 20. The Proposed Plan Change seeks to amend the provisions of the current District Plan (the Plan) including rules, for boundary adjustment subdivision.

This report sets out the background to the Proposed Plan Change, the various statutory requirements and policy framework, as well as matters relating to Section 32 of the Resource Management Act 1991 (the Act) and provides an analysis of the submissions that were received.

2.0 SUMMARY

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Council's Planning and Regulatory Committee approved Proposed Plan Change 20 for notification on 14 January 2006. The Proposed Plan Change was publicly notified on 3 March 2006 and 4 submissions were received. A summary of submissions was notified on 21 April 2006, and one further submission was received. Copies of the submissions are attached in Appendix A at pages A1 to A17 of this report.

Two of the submissions received opposed the Proposed Plan Change and requested a more permissive approach to the regulation of boundary adjustment subdivision. One submission requested a modification to the Proposed Plan Change. Another submission supported the Proposed Plan Change.

Having considered the Proposed Plan Change:

- **against the relevant statutory criteria of the Resource Management Act 1991, the Auckland Regional Policy Statement and the Waitakere City Operative District Plan;**
- **and having regard to the submissions received;**

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it is recommended, subject to any contrary or additional evidence submitted at the hearing, that the Proposed Plan Change be approved with some amendments as set out in Appendix B at pages A18 to A22 of this report.

3.0 LAND AFFECTED BY THE PROPOSED PLAN CHANGE

This change would apply to all boundary adjustment subdivision throughout the district. It would not affect other types of subdivision.

4.0 BACKGROUND INFORMATION

A boundary adjustment is a type of subdivision where the existing location of boundaries between two or more lots is altered, but where the number of lots does not change. The Plan currently controls boundary adjustments through the Subdivision Rules. The boundary adjustment rules apply on a City-wide basis to all of the Human Environments and Special Areas of the Plan.

The District Plan was made operative in March 2003. Since then the Resource Consents staff have raised concerns regarding the implementation and administration of the operative boundary adjustment rules.

The rules did not provide effective control over boundary adjustments, particularly by enabling boundary adjustment as a permitted activity, and because of the absence of policies that clarify the expected environmental outcomes where boundary adjustment takes place. There was no regulatory ability to control boundary adjustment subdivisions that could have adverse effects.

5.0 STRATEGIC CONTEXT

5.1 Auckland Regional Policy Statement

The Auckland Regional Policy Statement (ARPS) seeks to maintain a quality environment for the Auckland Region and at the same time, maintain and enhance opportunities for the region's future growth. The Auckland Regional Policy Statement comprises four parts: Regional Overview and Strategic Direction; Resource Management Matters of Significance to Iwi; Transport and Energy; and Environmental Protection. Each part identifies issues, objectives, policies, methods, reasons and the environmental results anticipated as a result of implementation of the Auckland Regional Policy Statement. It is considered that the Proposed Plan Change will give effect to the Auckland Regional Policy Statement.

It is considered that the Proposed Plan Change is generally consistent with the objectives of the Auckland Regional Policy Statement and the Auckland regional plans. It is considered that the Proposed Plan Change is also consistent with the Proposed Change 6 to the Auckland Regional Policy Statement, which seeks changes to the Auckland Regional Policy Statement in accordance with the Local Government (Auckland) Amendment Act 2004.

6.0 STATUTORY REQUIREMENTS AND PLANNING FRAMEWORK

6.1 Resource Management Act 1991

The purpose of the Act as outlined in Part II thereof is the sustainable management of natural and physical resources. Part II also outlines the matters, including those of national importance, to which Council must have regard to and provide for in achieving that purpose. The purpose of a district plan as outlined in section 72 of the Act is to assist Council to carry out its functions. Councils' functions are outlined in Section 31 of the Act as the control of actual and potential effects of the use, development or protection of land and associated natural and physical resources in order to achieve the purpose of the Act. Council is to establish, implement and review the objectives, policies and methods to achieve this and can also include rules, which prohibit, regulate or allow activities.

The Act provides a statutory framework for the management of natural and physical resources. The purpose of the Resource Management Act 1991 is:

to promote the sustainable management of natural and physical resources.

Section 5 (2) of the Act defines sustainable management as:

...managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

- (b) *Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

Section 6 of the Act outlines Matters of National Importance that must be recognised and provided for:

Matters of National Importance –

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:*
- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development:*
- (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers:*
- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, site, waahi tapu and other taonga:*
- (f) *The protection of historic heritage from inappropriate subdivision, use and development.”*

Section 7 of the Act sets out Other Matters that must be given particular regard.

Section 8 of the Act requires that managing the use, development and protection of natural and physical resources, takes into account the principles of the Treaty of Waitangi.

Part IV of the Act relates to functions, powers and duties of Central and Local Government.

Section 31 of the Act sets out functions of territorial local authorities for giving effect to the Act within its boundaries. These functions include the integrated management of the natural and physical resources of the district and the control of the effects of the use or development of land.

Section 32 of the Act imposes a statutory responsibility to evaluate the options available to achieve the Council's particular objectives or policies.

Part V of the Act relates to Standards, Policy Statements and Plans. Section 73 of the Act provides for changes to District Plans. The First Schedule of the Act sets out the process that must be followed for plan changes.

Section 74 of the Act states the matter Council must have regard to when changing its District Plan and includes its functions under the act and any Regional Policy Statements. Under section 75 of the Act, a District Plan must not be inconsistent with a Regional Policy Statement.

Section 76 of the Act requires that when making a rule that Council must have regard to the actual or potential effect on the environment including adverse effects of that rule.

Section 35 of the Act requires that a local authority monitor the suitability and effectiveness of its plan in managing the City's environment. Council therefore has a duty and care to ensure that its District Plan remains relevant in order to achieve integrated management of its natural and physical resources.

6.2 Auckland Regional Policy Statement

Section 75(3) of the Resource Management Act 1991 requires that a district plan give effect to a regional policy statement. The Auckland Regional Policy Statement (ARPS) provides a resource management framework for managing environmental effects within the Auckland region. Chapter 2 of the ARPS provides the 'Regional Overview and Strategic Direction' for the Auckland Region and in Clause 2.5.1 lists nine Strategic Objectives.

The objectives collectively seek the efficient use of land whilst maintaining the natural and amenity values of the physical environment. It is considered that the Proposed Plan Change is entirely consistent with strategic objectives of the Auckland Regional Policy Statement as the Proposed Plan Change will ensure the protection of natural and physical resources and the efficient use and management of the public open space in the City.

6.3 District Plan Provisions

Prior to Proposed Plan Change 20, Rule 2.1 General Subdivisions, of the Plan, read as follows:

2.1 Permitted Activities

- (a) *Subdivisions meeting the following Performance Standards are permitted activities (other subdivision rules do not need to be complied with):*
 - (i) *boundary adjustments where any existing on-site connection to infrastructure is not affected or is replaced with a new connection and no existing site is adjusted in site area by more than 10%;.....*

These District Plan provisions allowed for certain boundary adjustments to occur as a permitted activity, where they did not involve more than a 10% increase or decrease in the size of the properties involved.

There may be circumstances where the environment may be affected by boundary adjustments but the Plan did not include any controls to avoid, remedy or mitigate these effects. This means that the Council cannot impose conditions on such proposals, even if such proposals would result in actual or potential adverse effects on the environment. It was considered that the current District Plan provisions contain controls that are too flexible.

An example of this is where an existing dwelling has been built over two titles, comprising two long narrow sections, and the existing dwelling is located at the front of the two sites. An issue can arise where the owner seeks to re-orientate the common boundary by 90 degrees, thereby creating a lot at the front of the site, and a lot at the rear. In certain circumstances, the new lot at the rear of the site is covered in bush or located on a sensitive ridgeline and future buildings or development has the potential to result in adverse effects on the environment.

By allowing the creation of a new “rear lot” there is an expectation that a new dwelling will be able to be constructed on the new rear lot. Such a situation may give rise to adverse effects. This may include issues such as a loss of visual amenity, land instability and inadequate vehicular access. In a standard subdivision, it is considered appropriate to impose conditions on such proposals in order to confirm that suitable engineering is available and that a suitable a building platform could be obtained. Under the permitted activity rule, these effects can not be managed.

If a proposal failed to meet Rule 2.1 (i.e. the boundary adjustment is greater than 10%) then the proposal became a Discretionary Activity. This rule read as follows:

2.3 Discretionary Activities

Activities meeting the following Performance Standard are Discretionary Activities:

...(c) *boundary adjustments not meeting the standards in Rule 2.1(a)(i).*

Discretionary Activity applications will be assessed in accordance with Assessment Criteria 2(a), 2(m) and 2(n) and any other matters that are considered relevant under section 104 of the Act.

The definition of Boundary Adjustment read as follows:

Means a subdivision which is intended for the adjustment of site boundaries only and does not result in the increase in buildable sites.”

Buildable Sites were defined as:

Means a site on which a building could be erected under the Plan

The previous definitions did not clearly take into account that a boundary adjustment is meant to retain the same number of certificates of title and in certain circumstances may, at a later date, enable the opportunity for further subdivision or development as anticipated by the Plan. The distinction between boundary adjustments and general subdivision rules relates to the creation of additional sites. If a boundary adjustment creates the opportunity to enable further subdivision, then any such subdivision would be assessed at the time of that application against the respective Human Environment zoning.

Given that the issues associated with boundary adjustments can only be controlled through the District Plan, and the fact that such adjustments generally relate to private land, it was considered that the use of rules within the District Plan to control boundary adjustments is the most suitable method of addressing this resource management issue.

In seeking to amend the previous regulatory framework, provision was made to ensure that the new regulatory framework is suitable and does not overly restrict boundary adjustment where that would accord with the underlying values of the District Plan. In particular, it is not intended that boundary adjustment trigger prohibited status requirements under the Human Environment rules. This can be avoided by making express rules for boundary adjustment subdivisions, distinct from other subdivision rules.

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Accordingly Proposed Change 20 made boundary adjustment subdivision a limited discretionary or discretionary activity. The rules under Proposed Plan Change 20 are set out in Appendix B at pages A18 to A22 of this report. The proposed changes are consistent with the objectives and policies of the District Plan that seek to manage adverse effects.

6.4 Section 32 Considerations

Section 32 of the Act requires an evaluation to be undertaken by a local authority before any objective, policy, rule or other method is adopted.

Council's obligations under Section 32(3) of the Act are divided into five parts that comprise the following:

- examining the extent to which each objective is the most appropriate way to achieve the purpose of the Act;
- examining whether, having regard to efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives;
- taking into account the benefits and costs of the policies, rules or other methods;
- taking into account 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; and
- summarising the evaluation and providing reasons for that evaluation.

The Section 32 analysis undertaken prior to notification of the Proposed Plan Change identified that the proposed plan change was necessary and the most efficient and effective means of achieving the purpose of the Act. The Section 32 analysis has been updated in this report where recommendations are made in response to submissions that would amend the Proposed Plan Change (refer to section 7.3).

7.0 ANALYSIS OF SUBMISSIONS

A1-A17

A total of 4 submissions and 1 further submission were received on Plan Change 20. A full copy of the submissions is attached at pages A1 to A17 of this report. Given the relatively small number of submissions, each submission is discussed individually below except for submissions which have identical points and are considered together.

7.1 Submission from Transit New Zealand (Submission 20/1/-)

The submitter supports the plan change and seeks that the Plan Change be adopted as notified. The proposed changes provide a regulatory mechanism by which boundary adjustments with the potential for effects on the state highway network can be assessed. Submission 20/1/- is opposed by a further submission from Housing New Zealand Corporation (submission 20/3/-1).

Discussion

This submission's support for the Proposed Plan Change is acknowledged for the reasons given by the submitter. Some changes to the rules are recommended in response to other submissions, but these changes are relatively minor and should not adversely affect the state highway network.

It is recommended that:

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Submission 20/1/- is **accepted in part** subject to amendments recommended in response to submissions as set out in Appendix B at pages A18 to A22 of this report.

The further submission of Housing New Zealand Corporation (submission 20/3/-1) is **accepted in part**.

7.2 Submissions from Babbage Consultants Ltd (Submission 20/2-) and Housing New Zealand Corporation (Submission 20/3/-)

These two submissions are identical and are addressed together. The submitters seek that the Council either decline the Proposed Plan change, or alternatively amend it so that boundary adjustments remain permitted activities in the “general Living Environment zone” and a limited discretionary activity “in sensitive natural environments”.

The submitter’s views are:

...that other controls are able to more appropriately manage impacts of residential development on amenity values, in particular the following development controls

- Density*
- Site Coverage*
- Height in Relation to Boundary*

Provided boundary adjustment and resubdivision complies with these controls, Babbage is of the view that another layer of regulatory control is unjustified.

However, as Council’s concern appears to predominantly relate to boundary adjustments occurring in sensitive natural environments, and the resulting environmental impact, Babbage would support a revision of the plan change which would make boundary adjustments restricted discretionary activities in those sensitive areas. However we do not believe this rule should apply to the general Living Environment zone, where boundary adjustments should remain a permitted activity.

It is not entirely clear which Human Environments and Natural Areas the submitters are referring to but it is assumed that the submitters are requesting that boundary adjustments remain a permitted activity in that part of the Living Environment that overlaps with the General Natural Area, while accepting some regulation when the other Natural Areas overlap the Human Environment.

Discussion

Boundary adjustments may potentially cause a variety of effects including effects on the Human Environment as well as Natural Areas. Therefore it is appropriate to retain control over boundary adjustment within the Living Environment.

The option of not having express rules on boundary adjustments in the District Plan was considered during development of the Proposed Plan Change and is discussed in section 4.1.2 of the Section 32 report “Proposed Plan Change 20: Provisions Relating To Boundary Adjustments in the District Plan” dated 27 January 2006. This option would have an effect similar to that requested by the submitter, with boundary adjustments being subject to all subdivision rules. The Section 32 report made the following assessment of this option:

It was recognised that given the precise nature of boundary adjustments (as a means of subdivision), placement within the respective Human Environment Zoning with no distinction offered would result in applications ranging from restricted discretionary to Prohibited Activities, on an overall basis. Boundary Adjustments are undertaken for various reasons; including, remedying situations where buildings are built across site boundaries, providing more appropriate building sites or improving access to sites. To prohibit such actions would be inappropriate and preclude opportunities to provide for the sustainable management of natural and physical resources in the city... This [the proposed rules] will also provide greater certainty to District Plan users.

This conclusion remains valid. Therefore it would be inappropriate to adopt the submitters request.

It is recommended that:

The submission of Babbage Consultants Limited (Submission 20/2-) and Housing New Zealand Corporation (submission 20/3/-) are **rejected**.

7.3 Submission from Cato Bolam Consultants (Submission 20/4-)

The submitter seeks that the Council amend the Proposed Plan Change by deleting the first bullet from rule 2.3(a)(i) and inserting an additional matter for assessment being:

The timeframe between successive boundary adjustments on the same property.

The submitters reasons are:

It is understood that this clause has been introduced to avoid incremental boundary adjustments that may have an adverse effect on the environment. However, by changing the activity status from permitted to Limited Discretionary, council now has control over potential adverse effects. As a limited discretionary activity, any adverse effects that may arise are required to be identified and may be addressed as conditions of consent, or consent may be refused. Limits of discretion include matters of access, design of sites, landscape treatment, protection of natural features, and location of infrastructure. Boundary adjustments can result in positive effects under each of these matters, and these potential benefits are not limited to titles that have existed for more than ten years. The introduction of this clause does not recognise that it may be favourable, with regard to environmental effects and the objectives and policies of the District Plan, to grant a boundary adjustment for titles less than ten years old.

Submission 20/4/- is opposed by a further submission from Housing New Zealand Corporation (submission 20/3/-2). Housing New Zealand Corporation made an original submission opposing the plan change, and their further submission therefore opposes Cato Bolam Consultants partial support of the plan change. However, Housing New Zealand Corporation is amenable to the Council accepting the amendment proposed by Cato Bolam Consultants, in the event that the Council decides to decline the original submission of Housing New Zealand Corporation.

Discussion

This clause was included in the Proposed Plan Change because of a concern that successive boundary adjustments could give rise to land development that resulted in cumulative adverse effects. Therefore the proposed rules required that boundary adjustments within 10 years of the previous boundary adjustment be processed as a discretionary activity under rule 2.4. However, as noted by the submitter, these effects can be taken into account within a limited discretionary consent process provided that the cumulative effects of successive boundary adjustments are included within the list of matters which Council is limiting its discretion to. For the purposes of Section 32 of the Act it is marginally more efficient to treat all successive boundary adjustments as a limited discretionary activity, and should not alter the effectiveness of implementation of the District Plans objectives and policies.

It is recommended that:

Submission (20/4/-) is **accepted in part** by deleting the first bullet from rule 2.3(a)(i) and inserting a new bullet in the matters for assessment to read as follows:

cumulative effects that arise from successive boundary adjustments to the same property.

The further submission of Housing New Zealand (submission 20/3/-2) **is accepted in part.**

8.0 RECOMMENDED CHANGES TO THE PLAN CHANGE

A18-A22 Changes to the text of Proposed Plan Change 20 recommended in response to submissions are included in Appendix B at pages A18 to A22 of this report.

9.0 CONCLUSION

This report sets out the background, issues and Section 32 considerations for Proposed Plan Change 20. Further, the report considers issues raised in submissions and further submissions on the Proposed Plan Change, and recommends changes to the Proposed Plan Change where the submissions have merit under the Resource Management Act 1991.

RECOMMENDATIONS

- A18-22
1. That pursuant to Clauses 10 and 16 of the First Schedule of the Resource Management Act 1991, Proposed Plan Change 20: To Amend the Policy and Rules Relating to Boundary Adjustment Subdivision, is adopted, with the amendments as described in Sections 7.0 and 8.0 of this report and listed at pages attached at A18 to A22 of this report.
 2. That pursuant to Clause 10(1) of the First Schedule to the Resource Management Act 1991, the relief sought by the submitters is rejected, or accepted as set out below for the reasons outlined in the discussions relating to each submission in the body of this report.
 - (a) That the submission of Transit New Zealand (submission 20/1/-) supporting the plan change as notified be accepted in part subject to changes recommended in response to other submissions.
 - (b) That the submissions of Babbage Consultants Ltd (submission 20/2/-) and Housing New Zealand Corporation (submission 20/3/-) be rejected.
 - A18-A22 (c) That the submission of Cato Bolam Consultants (submission 20/4/-) be accepted in part with amendments made as set out in section 7.3 and in pages attached at A18 to 22 of this report.
 - (d). That the further submissions of the Housing New Zealand Corporation (submissions 20/3/-1 and 20/3/-2) be accepted in part.
 - A18-A22 3. That pursuant to Clause 30 of the First Schedule to the Resource Management Amendment Act 2005, the documents named and dated in pages attached at A18 to A22 to this report shall be confirmed and certified as incorporated by reference into the District Plan, and are intended to have legal effect as part of the District Plan.

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