

VARIATION 23A TO DISTRICT PLAN: HAURAKI GULF ISLANDS SECTION: PLAN MODIFICATION 23

SECTION 32 – CONSIDERATION OF ALTERNATIVES, COSTS AND BENEFITS

1. Land Unit 20 – Amendment of rule 8.5.6.5 “Protection of Significant Environmental Feature(s)” and Table 8.4 to include Land Unit 20

The reference to LU 20 in rule 8.5.4.2 “Protection of Significant Environmental Feature(s)” and Table 8 “Protection of Significant Environmental Features” of the operative plan was included in the notified version of proposed plan change 23. This provision provided for subdivision as a discretionary activity where there was protection of a Significant Environmental Feature (SEF). However the reference to Land Unit 20 was removed from Rule 8.5.6.5 “Protection of Significant Environmental Feature(s)” and Table 8.4 “Protection of Significant Environmental Features” in the decision version of the plan change. The result of the amendment in the decision version of the plan change is that subdivision in Land Unit 20 for the protection of a significant environmental feature has become a non-complying activity.

It was after a property owner in LU20 applied to subdivide under the SEF provisions that it was discovered that the amendment of the provision from discretionary to non-complying required correction due to the absence of a statement in the hearing panel's recommendations linking this amendment to a public submission. It is therefore recommended that the final version of plan change 23 be amended in order to revert to the provisions for subdivision in LU20 as contained in the publicly notified version of plan change 23. This provides for subdivision in Land Unit 20 as a discretionary activity where the protection of a Significant Environmental Feature can be secured. A copy of the proposed amendment is attached as Appendix 1.

In the operative district plan Rule 8.5.4.2 “Protection of Significant Environmental Features(s)” allows for subdivision in LU20 to create lots which will protect any significant environmental feature or features from development and adverse effects of land use activities. The subdivision proposal must achieve the protection in perpetuity of all of the significant environmental feature contained within the site to which the application relates. There is a similar rule in the proposed plan change under Rule 8.5.6.5 “Protection of Significant Environmental Feature(s). The council may consent to the subdivision of land to create lots which will protect any significant environmental feature (SEF). There is a definition of SEF in both the operative and the proposed plan change. These definitions are the same except in the proposed plan change the following words are added: “*archaeological feature or area of significance as identified by iwi, or any geological feature*”. The full definition is quoted below:

Significant Environmental Feature

means the whole of any discrete natural feature or landscape which makes a significant contribution to the quality of the local natural environment and amenity and includes any water system, habitat for indigenous species, association of indigenous vegetation, archaeological feature or area of significance as identified by iwi, or any geological feature, landform (including any significant ridgeline identified on the planning maps), ecological corridor or visually significant area or group of areas and includes any Site of Ecological Significance listed in Appendix C in the District Plan.

In the operative district plan the minimum lot size for subdivision for the protection of significant environmental features is 1.5ha, with a median of 2ha (see Table 8). These lot sizes were carried over into the notified version of plan change 23 (see Table 8.2). It is noted that there was a change from a “median” of 2ha in the operative plan to an “average” of 2ha in the notified version of the plan change. The use of an averaging system as opposed to using median lot sizes was supported by some submissions and was approved by council.

(a) Benefits in proceeding with the variation

- There will be the opportunity for landowners to apply for a subdivision consent which will result in the protection of further significant environmental features in Land Unit 20.
- A return to discretionary activity status will result in the application of the operative provisions of the district plan. This was requested by many submitters to plan change 23. The result of returning to the operative plan provisions will mean that any adverse effects will be no greater than if the operative plan provisions still applied.
- There was no basis in the Council's decision for the change of status of activity from discretionary to non-complying and this raises issues of procedural fairness. Reinstatement of the provision as a discretionary activity will ensure that the public process has been properly carried out.
- There are likely to be applications for subdivision based on the protection of significant environmental features rule in LU20. If the Council did not decide to amend the plan to rectify the inconsistency, it may affect the development rights of landowners. Therefore it is important to proceed with the variation at this time.
- The benefit of proceeding now with a variation rather than adding these changes to the HGI plan review process is that proposed amendment regarding subdivision in LU20 for SEF purposes can be notified relatively soon. If it were left to the review process this amendment would not be notified until August 2006 and this may disadvantage plan readers in the mean time seeking information about subdivision in LU20.

(b) Costs in proceeding with the variation

- The amendment to make SEF subdivision a discretionary activity rather than a non-complying activity may result in further subdivision in LU20, increasing the number of buildings in this Land Unit. However the minimum lot size control will ensure that the intensity of development will not exceed that envisaged in the operative district plan.
- The notifying of a variation will increase the time and financial cost to the council associated with the plan change because the variation will require public notification, a further submission period and a public hearing. There may be appeals associated with the variation.

(c) Cost of not proceeding with the variation

- The cost of not proceeding with the variation is the risk associated with members of the public being misled by the LU20 SEF provision as it now reads in the plan (ie as a non complying activity) rather than as a discretionary activity as it should be.

While the amendment to allow for SEF subdivision as a discretionary activity as opposed to a non-complying activity may result in more subdivision of this nature, the proposed amendment is will not be in any conflict with the objectives and policies for Land Unit 20. This is due to the limitation on further development which is imposed by the need to identify an SEF before subdivision can occur and also by the imposition of minimum lot sizes of 1.5ha with a 2ha average. The objective for the land unit is quoted below:

To provide for a diverse range of land use activities compatible with maintaining the special environmental amenity and open rural landscape of Land Unit 20, in order to secure its long term protection as a rural buffer area with potentially productive rural land use capability in some parts.

2. Amendment to Table 8.2 “Minimum Areas for Lots”

The reinstatement of Land Unit 7 in Table 8.2 “Minimum Areas For Lots” is proposed in order to make the notified plan change and the decision version consistent with the plan change operative plan provision. There was no intention of removing Land Unit 7 from this provision, and no submission requested this. The omission came about as a typographical error. The benefit of amending this error is that members of the public seeking subdivision information will not be mislead by a typing error.

3. Amendment to Table 8.4 “Protection of Significant Environmental Features”

The amendment in Table 8.4 to increase the average minimum lot size in LU 6-10 from 5ha to 7.5 ha is proposed in order to make the decision version of the plan change consistent with the notified version of the plan change provision. The change from 7.5ha in the operative plan to 5.0ha in the decisions version was not intended and no submission requested this. The change in area was the result of a typographical error. The benefit of amending this error is that members of the public seeking subdivision information will not be mislead by a typing error.

4. Other amendments

The other proposed amendments are the correction of typographical errors. These proposed amendments fall into the category of “minor” in that amending these will not change the meaning of the plan change content. While these could have been amended through the approval process delegated to the Manager, City Planning, it is considered more efficient to deal with all of the corrections in the same report at the same time.

5. Variation under Clause 16A of the Resource Management Act 1991 as opposed to amending under Clause 16 of the Act

Clause 16 provides the Council with the power to make an amendment without further formality to its proposed plan to alter any information where such an alteration is of minor effect, or may correct any minor errors. The test for the word “minor” is whether the amendment affects the rights of some members of the public or whether it is merely neutral.

Under Clause 16A the Council may initiate a variation to the final decision version of the plan change if the errors are considered to be more than minor.

While the majority of the corrections proposed in this variation are in response to minor errors, the error relating to subdivision in Land Unit 20 “Protection of Significant Environmental Features” is not considered to meet the test of “minor”. The change

from the notified version of the plan change which allowed this form of subdivision in LU20 as a discretionary activity, to the decision version in which the activity became a noncomplying activity substantively altered the subdivision provisions in LU20. The error has now been included in the decision version of the plan change since the Councils decision to approve the plan change in March 2004. Notifying for submissions will allow the involvement in the process of those members of the public who consider themselves affected by the proposed amendment. The amendment regarding LU20 is discussed in more detailed in 2. below.

The decision to notify a variation to plan change 23 involves the expense related to public notification and a likely public hearing. This is opposed to amending the plan change under Clause 16 which can be approved under delegated authority by the Manager, City Planning. It is considered that the additional expense is required because the error and subsequent proposed amendment with regard to Land Unit 20 is considered to be more than minor in terms of the rights of some members of the public.

While the other amendments could be dealt with through the Clause 16 process it is considered that it is more efficient to process all amendments at the same time.