

## **Section 32 Report:**

### **Proposed District Plan Change 28: Non-notification Statements in the District Plan**

#### **1. Introduction**

Section 32 of the Resource Management Act stipulates a requirement to consider alternatives and evaluate the appropriateness of adopting any objective, policy, rule, or method in the District Plan. Under section 32(3) the evaluation must examine:

- (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act: and*
- (b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*

And under section 32(4) the evaluation must take into account:

- (a) *the benefits and costs of policies, rules, or other methods:*

#### **2. Process & Consultation**

##### ***Key documents***

- € **Resource Management Amendment Act 2003**, Date of Assent – 19 May 2003
- € **Environment Court Declaration – Section 94D of the Resource Management Act 1991** (An application by Wellington City Council to the Environment Court), dated 11 August 2003: Prepared by Phillips Fox
- € **Decision No. W70/2003 of the Environment Court**: 6 November 2003

##### ***Key discussions/briefings***

- € **23 and 30 August 2003**: Public notice published in Dominion Post advising that Wellington City Council has filed a notice in the Environment Court and inviting submissions to the Court process.

##### ***Consultation, in accordance with the First Schedule of the RMA 1991***

Due to the urgent need for the proposed plan change, officers have not yet consulted with statutory authorities. The following statutory authorities will be consulted prior to notification.

- € Ministry for the Environment

- € Greater Wellington Regional Council
- € Wellington Tenth Trust
- € Te Runanga O Toa Rangatira Inc
- € Other Territorial Local Authorities (as appropriate)

It is not anticipated that there will be any consultation process with the development industry or the public, besides the formal notification of the proposed plan change.

### **3. Appropriateness of Objectives**

The purpose of the Resource Management Act 1991 (the Act) is to promote the sustainable management of natural and physical resources. Sustainable management includes managing the use and development of natural and physical resources to enable people to provide for their social, economic and cultural well being, including their health and safety. Wellington City achieves its responsibilities under the Act through the provisions of the District Plan.

It is not proposed to change any of the objectives in the District Plan under this plan change. The current objectives remain relevant and are considered the most appropriate means of achieving the purpose of the Act in relation to the management of the effects of land use and development throughout the city.

The recent amendment to the Act has created a technical anomaly that prevents the Plan operating in the manner that it was originally intended. The change to all the 'Non-notification' statements is intended to restore the earlier functioning of specific rules in relation to the legislation of the Act that govern the requirements for written approvals and notification. Put another way, the notification processes for resource consent applications will work in exactly in the same way as they did prior to the Amendment Act coming into effect.

### **4. Appropriateness of Policies, Rules and Other Methods**

**Analysis** The following table assesses the efficiency, effectiveness and appropriateness of the proposed plan change.

**‘Non-notification’ statements provide that applications do not need to be served on affected persons**

	<p><b>OPTION 1:</b> Do Nothing – rely on the assessment of individual applications under the Resource Management Act as amended</p>	<p><b>OPTION 2:</b> Seek a Declaration and other legal remedy from the Environment Court</p>	<p><b>OPTION 3:</b> Change the District Plan <i>This is the preferred option</i></p>
<p><b>Effectiveness and efficiency in achieving the District Plan objectives:</b></p>	<p>Low. The District Plan was written and approved on the basis that certain rules would be automatically (except in the exceptional cases) assessed on a non-notified basis without the need for written approvals from neighbours or other affected persons. It is not efficient or effective to require written approvals for these rules or to take the application through a limited notification process that may require a commissioner hearing (it is assumed that the objectives of the Plan would be better served by the original notification rules that were written to support them).</p>	<p>This option has been tried but it was not successful. The Environment Court had declared that the existing ‘Non-notified statements’ cannot be used as they were originally written to avoid written approvals and notification. The Court has also declined to use its other powers to amend the District Plan. 150</p>	<p>High. A plan change is now the most efficient and effective way to return the workings of the District Plan their original form, which was designed to meet the objectives of the Plan.  The plan change can also be said to offer the opportunity to test the effectiveness of the ‘Non-notification’ statements, to meet the objectives of the Plan, through the submission processes.</p>
<p><b>Costs:</b></p>	<p>High. Greater cost in time and fees for applicants. Increased workloads for the Resource Consent Team, including the need for additional hearings. A number of resource consent applications are currently on hold until this plan change is notified.  Rules that are frequently used and particularly important to the smooth functioning of the District Plan are:</p> <ul style="list-style-type: none"> <li>€ 5.2.5 &amp; 5.4.5 – Residential subdivisions</li> <li>€ 5.3.1 – Residential buildings</li> <li>€ 5.3.4 – multi-unit housing in Residential Areas</li> <li>€ 5.3.5 – structures and buildings on legal road in Residential Areas</li> <li>€ 13.2.1 – design of Central Area buildings</li> </ul>	<p>Not applicable at this stage</p>	<p>Low (legal advice is that the plan change removes the need for limited notification from the date it is notified). The delay would be a cost to the current operation of the Plan. At the quickest the change will take several months: its notification would be delayed to January to coincide with the next rates mail out. There would be further delays in the submission and hearing processes and Council’s decision may be appealed.</p>

<p><b>Costs (continued):</b></p>	<p>€ 13.2.2 – company lease, cross lease and unit title subdivisions in the Central Area</p> <p>€ 21.2.2 – additions and alterations to Heritage buildings</p>		
<p><b>Benefits:</b></p>	<p>Low. Could act as a 'holding pattern' until the Government makes further amendments to the Act (this could be many months).</p>	<p>No potential for benefit at this stage</p>	<p>High (legal advice is that the plan change removes the need for limited notification from the date it is notified).</p>
<p><b>Appropriateness in achieving the District Plan objectives:</b></p>	<p>Low. It is assumed that the changes introduced by the Amendment Act are less appropriate to meeting the objectives of the District Plan.</p>	<p>Not applicable at this stage</p>	<p>High. It is assumed that the original 'Non-notification' mechanisms are the most appropriate to meeting the objectives of the District Plan.</p>

## **Summary**

The recent amendment to the Act has created a technical anomaly that prevents the 'Non-notification' statements of the Plan from operating in the way they were originally intended. Council made a Declaration application to the Environment Court but it was unsuccessful. It now has the option to 'do nothing' and continue to assess applications in the modified environment created by the Resource Amendment Act. This however, would continue to frustrate the original provisions of the Plan and increase compliance costs for applicants.

The proposed plan change would not change any of the objectives of the District Plan. Analysis of its efficiency, effectiveness, benefit and costs indicate it is the most appropriate method to achieve the existing objectives of the Plan.

## **5. Recommended Proposed Plan Change 28**

It is recommended that Council notify the following district plan change:

- § **Insert the phrase: 'notice of applications need not be served on affected persons' to existing 'Non-notification' statements in the Operative District Plan, to restore the original non-notification processes.**
- § **Insert the same phrase to 'Non-notification' statements in those proposed district plan variations / changes that are currently underway, to make them consistent with the Operative District Plan.**

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