

Waimakariri District Council Best Practice Example III

Plan Variation – Waimakariri District Council

Source of further information

Richard Johnson, Waimakariri District Council - rjohnson@wmk.govt.nz

Source of Example

Sue Robson – Robson Garland Ltd, Christchurch

Description of Best Practice Example

In this case the applicant (J. Scott) sought the rezoning of rural land to rural residential by way of a private plan change request to the Transitional Plan. During the plan change process the Council notified a Proposed District Plan. While the plan change request to the Transitional Plan was approved by the Waimakariri District Council it was appealed to the Environment Court by the Canterbury Regional Council. The Environment Court refused to hear the appeal until the Proposed Plan had reached the same procedural stage because the land in question had a rural zoning in the Proposed Plan (although subject to submissions).

To avoid the appeal being held up by “review paralysis” (See Kennedys Bush Road Neighbourhood Association v CCC, W063/97) the District Council took the initiative to promote a Variation to the Proposed Plan to bring the zoning of the land in question into line with the decision it had made on the plan change request to the Transitional Plan.

Method

In preparing the Variation to the Proposed Plan the Council had to adapt the provisions that were to be inserted into the Transitional Plan (in accordance with the Council’s decision on the plan change request) to fit the format of the Proposed Plan which was quite different. The key issue in this process was to ensure that the content of the controls included in the Proposed Plan provided for the same development rights and environmental outcomes that the plan change achieved. This is a common issue where a Variation to a Proposed Plan follows a plan change to a Transitional Plan.

Once the format of the Variation had been decided on the Council then undertook all necessary consultation prior to notification and completed a supporting S32 analysis. The Variation was then able to be publicly notified and was processed in accordance with the provisions of the RMA.

The Council reached a decision on the Variation consistent with the one it reached on the plan change request and the Regional Council appealed the decision as it did with the plan change decision. Once the appeal had been filed the Environment Court was then in a position to hear both appeals together so as to avoid two separate hearings (one for the Transitional Plan and one for the Proposed Plan).

Lessons Learned

That through a commitment of the Council to give effect to a decision it had made in respect of the zoning of an area of land it is possible through the example given above to avoid, at least in part, the significant delays and associated costs that would have been experienced had a Variation to the Proposed Plan not been initiated.

Benefits

The applicant was able to have the appeal to the plan change decision heard earlier than would have otherwise been the case had he had to wait for the plan review process. Four years had already lapsed by the time the Environment Court heard the appeals from the time the plan change request was made. It is likely that the process would have taken a further 2 years had it been left for the plan review process to run its course.

A significant benefit to the Council arose from the very process of determining the changes needed to the Proposed Plan and being able to draft provisions that ensured internal consistency of terms, philosophy and style of plan writing.

Costs

The costs of promoting and processing the Variation were additional to waiting for the plan review process to run its course. These costs, mostly in the form of staff time, were not significant given the material available from the plan change process. To facilitate the process the Council bore the bulk of the costs of the Variation.

Other comments

The above is an example of a Council taking a pro-active approach to resolving the zoning of an area of land that had been in dispute for a number of years. While almost all local authorities are well through the plan review process such a practice could be adopted during second generation RMA plan reviews.