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MEMORANDUM

6 March, 2000
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To: Cr Gibson
Copy To: All Councillors
From: Wayne Hastie
Subject: Consultation on Variation 17

For Your:	Action	Comment	Information ✓
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At the Environment Committee meeting on 24th February you sought clarification about the legal requirements for consultation on a variation to a district plan, and advice on whether Wellington City Council had fulfilled its obligations when preparing Variation 17.

Legal requirements

The First Schedule to the Resource Management Act 1991 sets out the processes and procedures for the preparation and change of policy statements and plans by local authorities. Clause 16A of the schedule provides for a local authority to initiate a variation to a proposed policy statement or plan at any time before the approval of the policy statement or plan. The provisions of the First Schedule apply to every variation as if it were a change. [By way of clarification, a *variation* is an alteration of *aproposed* plan; a *change* is an alteration of an *operative* plan.]

Clause 3 of the First Schedule sets out the requirements for consultation during the preparation of a plan, which by virtue of Clauses 16A and 1(1) includes consultation on a variation to a proposed plan. Clause 3 requires that the local authority consult local authorities who may be affected.

My understanding of all of this is that Wellington City Council was required to consult with the Wellington Regional Council on Variation 17 before it was publicly notified.

Section 74 of the Act sets out the matters to be considered by a territorial authority when preparing or changing a district plan. Subsection (2) lists a number of documents that the territorial authority must have regard to. Wellington City Council would have been required to have regard to the Proposed Regional Coastal Plan and to the Regional Land Transport Strategy.

Under section 75 a district plan must not be inconsistent with the Regional Policy Statement.

Consultation on Variation 17

Richard Peterson and I met with Wellington City Council representatives on 26 August 1999 to discuss the proposed variation for Lambton Harbour. We were shown a draft of the variation, and the provisions were explained to us. Richard and I informed the representatives that our concerns related to transport matters and the way in which the variation referred to the coastal marine area. We did not go into the specifics of the transport concerns. Both were matters the Regional Council had raised in its submission on the previous variation on Lambton Harbour (Variation 2).

The reason why we confined our comments to these two areas was based on the decisions made by the Regional Council on the Proposed Regional Coastal Plan (RCP). The RCP recognises the Lambton Harbour Development Area and includes a policy stating that the Regional Council will vary or change the Plan if necessary to align it with the provisions in the district plan for activities and structures on wharves. Essentially the Regional Council decided to leave it to the City Council to determine the appropriate activities for wharf areas in Lambton Harbour. The Regional Council wished to provide a consistent set of provisions for the area.

Were statutory requirements met?

The Court of Appeal has identified some key elements of consultation:

If the party having the power to make a decision after consultation holds meetings with the parties it is required to consult, provides those parties with relevant information and with such further information as they request, enters the meetings with an open mind, takes due notice of what is said, and waits until they have had their say before making a decision, then the decision is properly described as having been made after consultation.

In my judgement, Wellington City Council met these tests when consulting with the Regional Council on Variation 17.

With respect to section 74, there are direct references in the Variation to the RCP – the City Council must have had regard to it. It is harder to judge the extent the City Council had regard to the Regional Land Transport Strategy. I contacted staff at the City Council and was advised that there is no documentation available on this matter. Apparently the extent and nature of parking within the Lambton Harbour Development Area was given considerable scrutiny in developing the concept plan.

In conclusion, I believe that the requirements for consultation with the Regional Council on Variation were met, but that there is some uncertainty as to the degree to which section 74 requirements were met with respect to the Regional Land Transport Strategy.

Further action

The Council has made a submission on Variation 17 and asked to be heard at the hearing. I believe that this is the appropriate path to follow, and that no additional or alternative action is necessary. Transport issues are a key factor in the submission, and will be fully canvassed at the hearing. Ultimately, if the Council is not satisfied with the decisions on its submission, it may appeal these to the Environment Court.



Wayne Hastie
Manager, Resource Policy