



PALMERSTON NORTH CITY DISTRICT PLAN

PROPOSED PLAN CHANGE 42: EARTHWORKS

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PART I

1. DESCRIPTION OF PROPOSED PLAN CHANGE 42

Proposed Plan Change 42 seeks to address the potential adverse effects associated with earthworks. Earthworks are generally completed in association with other activities, most likely being subdivision or site preparation for building development. Nevertheless, earthworks have the potential to result in adverse effects in their own right. While the District Plan manages subdivision, and other landuse activities, limited provisions exist specifically for earthworks. This Plan Change seeks to address shortfalls in the current District Plan policy framework with regard to the assessment of earthworks.

PART I

2. PROPOSED AMENDMENTS TO THE DISTRICT PLAN

The following amendments are proposed to the Palmerston North City District Plan (declared operative March 2005¹). Amendments to the District Plan are identified in *italics* and those items which are deleted are identified as ~~strikethrough text~~.

SECTION 4: DEFINITIONS

Amend the following Definitions in Section 4:

Height:

in relation to a building means the vertical distance between actual ground level and the highest part of the building above that point. For the purposes of calculating height:

- (a) Actual ground level will be the level of the ground after completion of all subdivisional *or landuse consent approved earthworks*, and before commencement of any subsequent earthworks for landscaping or erection of buildings on the site.

.....

...insert the following Definitions in Section 4:

Earthworks means

Any movement of earth, including the excavation or deposition of earth or cleanfill, that results in changes to the existing ground level.

This includes, but is not limited to, earth-movement associated with subdivision and siteworks as defined by the Building Act 2004.

Ground Level

In relation to earthworks means the original contour level of land prior to any modification, or

Where a subdivision or landuse consent for earthworks has been approved, the contour level following that development, as per the approved engineering plans.

SECTION 5 – INFORMATION REQUIREMENTS

Amend Section 5.4 – Land Use Consents by inserting the following information requirements for landuse consents applications:

5.4 Land Use Consents

...

(c) Proposed Development Information and Plans

Where relevant, the applicant must provide the following information and plans of the proposed development, including:

...

¹ The majority of the District Plan was made operative on 18 December 2000 apart from Section 7 – Subdivision and Section 8 – Financial Contributions

- (x) *Proposed areas of excavation and filling, including existing and proposed finished ground levels.*

SECTION 6 – GENERAL SECTION

Amend Section 6 (General Section) Table of Contents by insert the following text:

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6.3.1	<i>Introduction</i>	6-19
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6.3.3	<i>Objectives and Policies</i>	6-20
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	<i>R 6.3.6.1 Permitted Earthworks</i>	6-21
	<i>R 6.3.6.2 Exclusions from Earthworks Rule 6.3.6.1</i>	6-22
6.3.7	<i>Rules: Discretionary Activities (Restricted)</i>	6-23
	<i>R 6.3.7.1 Discretionary Activities (Restricted)</i>	6-23

Amend Section 6 (General Section) by inserting the following subsection:

6.3 *Earthworks*

6.3.1 *Introduction*

This part of the Plan sets out generic earthworks rules. Earthworks are often an ancillary but integral part of the subdivision or development of land, or the establishment of an activity or building work. Although often ancillary, earthworks are a land use activity that has the potential to cause significant adverse effects in their own right. The Council wishes to retain the discretion to evaluate earthworks proposals to ensure that the potential adverse effects are sufficiently avoided, remedied, or mitigated.

This part of the Plan should be read in conjunction with the specific rules provided in each Zone and the Subdivision Section of this Plan where relevant.

6.3.2 *Resource Management Issues*

Adverse effects commonly associated with earthworks include

- Landscape and visual effects;*
- Impact on amenity values of neighbouring residents;*
- Effects on land stability and accelerating natural hazards including flooding;*
- Construction impacts including dust and noise effects; and*
- The impact of runoff and sedimentation.*

The actual impact of earthworks effects can be highly variable, depending on whether the effect is short or long term, on the scale of the development, and how the development relates to the surrounding environment.

A primary concern in Palmerston North is the impact on landscape values and visual amenity effects from earthworks activities. Landscape and visual amenity effects may occur as part of greenfield or infill subdivision, or building development. A further issue is the potential for effects at a local level including impact on adjoining neighbours from earthworks that substantially change natural contours.

Some adverse effects of earthworks are managed through other parts of the District Plan, for example effects on land with Cultural and Natural heritage value in Section 17, and effects on Flood Protection zoned land and Natural Hazards in Section 22. The Subdivision Section (Section 7) contains Objectives and Policies regarding earthworks completed at subdivision stage. This earthworks section of the District Plan acts to complement existing earthworks provisions by ensuring that earthworks effects are considered in a comprehensive manner.

6.3.3 Objectives and Policies

Within the broad framework of the City View objectives, and the relevant objectives and policies of the relevant zone, the following specific objectives and policies were identified for Earthworks.

Objective 1:

To provide for earthworks activities where the associated adverse effects are able to be avoided, remedied, or mitigated.

Policies:

- 1.1 To limit the location and scale of earthworks where adverse effects may result.*
- 1.2 To ensure that any adverse effects on the environment from earthworks, including:*
 - Visual Effects;*
 - Effects on the Natural Land Form;*
 - Effects on Adjoining Properties;*
 - Land Stability;*
 - Flooding Effects;**are avoided, remedied, or mitigated.*

6.3.4 Methods

The following methods have been identified as being appropriate in controlling the effects of earthworks.

- District Plan Rules (Palmerston North City Council)*
- The Palmerston North City Council Engineering Standards for Land Development*
- Building Act 2004*

The community's desire for a high level of amenity means that a regulatory approach through the rules in this and other sections of the District Plan will be the most cost efficient and effective means of achieving the objectives and policies.

The Palmerston North City Council Engineering Standards for Land Development provides additional support to ensure earthworks are appropriately constructed and land stability issues managed. The 'site works' and natural hazards provisions of the Building Act 2004 also provide support in association with the construction of buildings.

It should also be noted that Horizons Regional Council also plays a role in managing earthworks effects with regard to air and water quality.

6.3.4 Environmental Results Anticipated

This section operates in conjunction with the Subdivision Section and the relevant zone of the District Plan. It is anticipated that the objectives, policies and methods in this section, in combination with the objectives, policies and methods of other relevant sections, will achieve the following results:

- *Development that contributes to a high quality environment for individuals and neighbourhoods.*
- *Development that takes account of, and is complementary to, the surrounding natural landforms.*
- *Natural hazards are not accelerated through inappropriate earthworks development or construction.*
- *Earthworks construction is carried out in an appropriate manner for the surrounding area.*
- *Significant adverse effects of development are avoided, remedied, or mitigated.*

6.3.6 Rules: Permitted Activities

® R 6.3.6.1 Permitted Activities for Earthworks

Earthworks are Permitted Activities within the City provided the following performance conditions for the relevant zone are met (unless exempted under R 6.3.6.2):

Performance Conditions:

The maximum amount of earthworks located on any site shall not exceed the following:

(a) Rural Zone

In the Rural Zone, no earthworks shall:

- (i) *Involve the disturbance of more than 1000m³ (volume) of land in any 12 month period, or*
- (ii) *Alter the existing ground level by more than 1.5 metres (measured vertically), or*
- (iii) *Be located closer than 3 metres to a site boundary.*

(b) Residential Zone

In the Residential Zone, no earthworks shall involve:

- (i) *The disturbance of more than 50m³ (volume) of land in any 12 month period, or*
- (ii) *Alter the existing ground level by more than 1.5 metres (measured vertically).*

(c) Industrial Zone

In the Industrial Zone no earthworks shall:

- (i) *Involve the disturbance of more than 1000m³ (volume) of land in any 12 month period, or*
- (ii) *Alter the existing ground level by more than 1.5 metres (measured vertically), or*
- (iii) *Be located closer than 3 metres to a site boundary.*

(d) North East Industrial Zone

In the North East Industrial Zone no earthworks shall:

- (i) *Involve the disturbance of more than 1000m³ (volume) of land in any 12 month period, or*
- (ii) *Alter the existing ground level by more than 1.5 metres (measured vertically), or*

- (iii) *Be located closer than 3 metres to a site boundary.*

Explanation

Earthworks can generate adverse effects depending on the scale and location of the development. Earthworks effects may be temporary or more permanent. Adverse effects may include:

Landscape and Visual amenity – earthworks can alter natural landscape features, and can create changes to natural ground contours. Development that does not take into account the surrounding landform and landuse may result in amenity effects on adjacent sites; and

Stability – earthworks can undermine the stability of the natural land form and accelerate the hazard risk;

Flooding – earthworks may accelerate the erosion of land and lead to sedimentation, or may result in localised flooding effects, or potentially impact on larger flood flows.

This performance condition places a limit on the scale of earthworks on a site where the adverse effects are considered to be significant.

NOTES TO PLAN USERS:

1. *Also refer to the following rules:*
 - R 10.7.6.1 Awatea Stream and Jensen Street Ponding Areas;*
 - R 10.7.6.2 River Terrace and Cliff Protection Lines;*
 - R 10.8.1.7 Undevelopable Land in the Aokautere Development Area;*
 - R 10.8.1.9 Structural Maintenance of Flood Protection Works by Manawatu Wanganui Regional Council;*
 - R 10.8.3.3 Construction, Development or Redevelopment of Flood Protection Works or Structures by Manawatu Wanganui Regional Council;*
 - R 17.9.1 Discretionary Activities (Unrestricted) for the specific requirements relating to excavation restrictions for Natural and Cultural Heritage sites (including Scheduled Trees);*
2. *Earthworks completed as part of Land Restructuring in the Aokautere Development Area under Section 22.9 'Land Instability' are further subject to those rules.*
3. *Earthworks may also require consent from the Manawatu Wanganui Regional Council.*

@ R 6.3.6.2 Exclusions from Earthworks Rule 6.3.6.1

Earthworks associated with the following activities shall be exempted from the requirements of R 6.3.6.1 of this Plan:

- (i) *Earthworks associated with the maintenance of farm tracks, fences and fence lines, the cultivation of land, and the clearing of drains as part of Horticultural and Agricultural activities in the Rural Zone.*
- (ii) *Trenching and backfilling ancillary to the installation of utilities and services, including effluent disposal fields, and water and effluent tanks, provided there is no change to the existing ground level.*
- (iii) *Earthworks undertaken as part of Quarrying or Extraction activities in Section 9 (Rural Zone) of this Plan.*
- (iv) *Earthworks in association with permitted 'Minor Temporary Military Training Activities' as per the definition in this Plan.*
- (v) *Flood Protection works carried out or supervised by the Manawatu-Wanganui Regional Council.*

Explanation

Earthworks are in some cases considered a common aspect of land use and development activity, such as tilling of soil for horticultural activities, the maintenance of farm tracks, or the laying of infrastructure services. In these circumstances the associated effects of earthworks are considered normal permitted activities resulting in less than minor effects. Alternatively, in the case of Quarrying and Extraction activities the effects are adequately assessed through other parts of this Plan.

6.3.7 Rules: Discretionary Activities (Restricted)

@ R 6.3.7.1 Discretionary Activities (Restricted)

Any earthworks that do not comply with the Permitted Activity Performance Conditions shall be Discretionary Activities (Restricted) with regard to:

- ***Landscape and visual impact***
- ***Effects on adjoining properties including amenity values***
- ***Impact on flood plains and flood flows***
- ***Increase in hazard risk and effects on land stability***
- ***Effects of erosion and sedimentation***
- ***Effects on overland flow paths***

In determining whether to grant consent and what conditions to impose, if any, Council will, in addition to the City View objectives in Section 2, the Earthworks objectives and policies (Section 6), and the objectives and policies of the relevant zone, assess any application in terms of the following further policies:

- (a) *To ensure that earthworks do not adversely affect the residential amenity of adjoining neighbours.*
- (b) *Avoid earthworks that materially impact on the landscape and visual values associated with the land in its surrounding context.*
- (d) *Avoid material increases in the susceptibility of the land or adjoining land to flooding.*
- (e) *Ensure that all earthworks are carried out in accordance with the relevant technical standards.*

Explanation

The type of adverse effects related to earthworks activities is limited to certain issues listed above. The Discretionary Activity (Restricted) category enables each application to be assessed on a case by case basis. The Council retains the ability to impose Conditions to ensure such effects are appropriately avoided, remedied, or mitigated.

Section 5 outlines the information required to be submitted with an application for earthworks Resource Consent. Reference should also be made to the Palmerston North Engineering Standards for Land Development, and relevant NZ Standards. Council may require an earthworks management plan to be submitted in support of an application. Where an application is approved, Conditions may be placed on the resource consent to ensure compliance with the proposed earthworks plan, and to ensure construction effects are sufficiently contained.

It should also be noted that consent from the Manawatu Wanganui Regional Council may also be required for some earthworks.

SECTION 7 – SUBDIVISION SECTION

Amend Section 7: Subdivision Table of Consents as follows:

7.16 Rural Zone

...

7.16.2 Rules: Discretionary Activities (Restricted) 7-47

- | | | |
|------------|---|--------------|
| R 7.16.2.1 | Any Subdivision that seeks access to a State Highway or Access Road | Limited 7-47 |
| R 7.16.2.2 | Any Subdivision that seeks access to a Restricted Access Road | 7-48 |
| R 7.16.2.3 | Any Subdivision that does not comply with Controlled Activity Performance Condition R7.16.1.2 (g) Earthworks. | 7-XX |

...insert a new Performance Condition:

7.7.1 Rules: Controlled Activities

...

® R 7.7.1.2 Performance Conditions for Controlled Activities

...

(i) Earthworks

Any earthworks undertaken on the land being subdivided shall comply with Rule 6.3.6.1(b) for Permitted Activity standards.

...amend Rule 7.7.2.1 as follows:

7.7.2 Rules: Discretionary Activities (Restricted)

® R 7.7.2.1 Discretionary Activities (Restricted)

- (3) Any subdivision which is not a Non-Complying Activity and which does not comply with the Controlled Activity Performance Conditions (Rule 7.7.1.2) for Existing Buildings, Minimum Lot Area, Shape Factor, ~~or~~ Access, or Earthworks;

are Discretionary Activities (Restricted) with regard to:

- The size, shape and arrangement of lots, cross lease and company lease areas, units and access.
- Those matters described in Sections 108 and 220 of the Resource Management Act 1991.
- In reference to earthworks, the potential effects on:
 - Landscape and visual impact
 - Effects on adjoining properties including amenity values
 - Impact on flood plains and flood flows
 - Increase in hazard risk and effects on land stability
 - Effects of erosion and sedimentation
 - Effects on overland flow paths

...

Non-Notification: (except for discretionary restricted activities that do not comply with Rule 7.7.1.2 (d)(iii) – width of shared access, and Rule 7.7.1.2 (i) – earthworks:

- (i) No such application shall be notified.
- (ii) Consents will not be required from any affected party.

Explanation

The exemption from the non-notification clause for discretionary restricted activities that do not comply with Rule 7.7.1.2(d)(iii) *and Rule 7.7.1.2 (i)* enables the Council to have the discretion to seek the involvement of affected parties where subdivision proposals do not comply with the standards for the width of shared access arrangements, *or earthworks provisions*. Where circumstances warrant, the input of affected parties ensures that any adverse effects on the environment are appropriately avoided, remedied or mitigated.

...insert an additional Performance Condition under Rule 7.9.1.2 as follows:

7.9.1 Rules: Controlled Activities

...

® R 7.9.1.2 Performance Conditions for Controlled Activities

...

(h) Earthworks

Any earthworks undertaken on the land being subdivided shall comply with Rule 6.3.6.1(c) for Permitted Activity standards.

...amend Rule 7.9.2.1 as follows:

7.9.2 Rules: Discretionary Activities (Restricted)

® R 7.9.2.1 Discretionary Activities (Restricted)

- (1) Any subdivision which does not comply with the Controlled Activity Conditions for Existing Buildings, Minimum Lot Area, Shape Factor, ~~or~~ Access, or earthworks, provided it complies with the standard in R7.9.2.2 below, or any subdivision in the Midhurst Street Industrial Area, is a Restricted Discretionary Activity with regard to:**

....

- *In reference to earthworks, the potential effects on:*
 - *Landscape and visual impact*
 - *Effects on adjoining properties including amenity values*
 - *Impact on flood plains and flood flows*
 - *Increase in hazard risk and effects on land stability*
 - *Effects of erosion and sedimentation*
 - *Effects on overland flow paths*

....

Non-Notification (except for discretionary restricted activities that do not comply with Rule 7.9.1.2 (i) earthworks):

- (i) No such application shall be notified.
- (ii) Consents will not be required from any affected party.

...amend Rule 7.16.1.2 as follows:

Rule 7.16.1: Controlled Activities

...

® R 7.16.1.2 Performance Conditions for Controlled Activities

...

(g) Earthworks

Any earthworks undertaken on the land being subdivided shall comply with Rule 6.3.6.1(a) for Permitted Activity standards.

...insert new Rule 7.16.2.3 as follows:

7.16.2 Rules: Discretionary Activities (Restricted)

...

® R 7.16.2.3 *Any Subdivision that does not comply with Controlled Activity Performance Condition R7.16.1.2 (g) Earthworks.*

(1) Any Subdivision in the Rural Zone that is not a Discretionary Activity (Unrestricted) or a Non-Complying Activity and that does not comply with Controlled Activity Performance Condition R7.16.1.2 (g) Earthworks, shall be a Discretionary Activity (Restricted) with regard to:

- *Landscape and visual impact*
- *Effects on adjoining properties including amenity values*
- *Impact on flood plains and flood flows*
- *Increase in hazard risk and effects on land stability*
- *Effects of erosion and sedimentation*
- *Effects on overland flow paths*
- *Those matters described in Sections 108 and 220 of the Resource Management Act 1991.*

NOTES TO PLAN USERS

1. *Where the subdivision is being assessed as a Discretionary Activity (Restricted) under R 7.16.2.3, and the subdivision seeks access to a road listed in Appendix 20A of the Transportation Section as a State Highway or a Limited Access Road, it shall also be assessed under the requirements of R 7.16.2.1 or R 7.16.2.2.*

SECTION 10 – RESIDENTIAL ZONE

...amend Note to Plan Users:

10.7.1 Rules: Permitted Activities

® R 10.7.1.1 Dwellings (excluding those prohibited by Rule 10.7.6.3).

Any dwelling will meet the Performance Policies below and will be a Permitted Activity where they comply with the Performance Conditions, detailed in Clauses (a) to (j)

NOTE TO PLAN USERS

Also refer to the following rules:

...

R 10.8.1.7 Undevelopable Land in the Aokautere Development Area;

R 6.3.6 Earthworks;

R 20.3.5.2 Roading Designations;

R17.6.1-17.9.1 Cultural and Natural Heritage.

...

...amend Rule 10.7.6.1 as follows:

10.7.6 Rules: Prohibited Activities

® **R 10.7.6.1 Awatea Stream and Jensen Street Ponding Areas.**

Within the shaded areas shown on Map 10.7.6.1(a) the Awatea Stream Ponding area and Map 10.7.6.1(b) the Jensen Street Ponding area:

- (a) the filling or raising of the level of any part of the land, excluding any siteworks associated with the construction of any building; or**
- (b) the depositing of materials, excluding any siteworks associated with the construction of any building, on any part of the land, provided that this shall not prohibit the cultivation and use of the land for gardens or planting of trees, or the erection of fences which are less than 2 metres in height outside of the Watercourse Channels;**

is a Prohibited Activity.

NOTE TO PLAN USERS

The erection, addition to, alteration or reconstruction of any building, as defined under the Building Act 1991, which occurs within the shaded areas identified on Maps 10.7.6.1(a) and 10.7.6.1(b) is subject to the provisions of Section 36 of the Building Act 1991. Section 36 of the Building Act 1991 specifies limitations and restrictions that shall apply to the issue of building consents for buildings on land subject to inundation.

It shall also be noted that the erection, alteration or reconstruction of any fence or wall within the Awatea Stream or Jensen Street watercourse channels shall be regulated by Section 511 of the Local Government Act 1974. Under Section 511 of the Local Government Act 1974, the Council can require the removal of any obstruction to the free flow of water within a watercourse.

Refer also to the Earthworks provision contained in Section 6: General of this Plan.

Explanation

The Awatea Stream links a series of meanders, now cut off, from the Manawatu River. The gradient of the stream bed is relatively flat, limiting its water carrying capacity, and consequently a marked rise in water surface level accompanies even moderate rainfalls.

Discharge is eventually to the Manawatu River, however flood levels in the river can rise above the Awatea bank level. On such occasions outflow ceases and all inflow must be stored within the catchment. An overflow pipeline now links the Awatea to the storage afforded by Hokowhitu Lagoon, however a prolonged rainfall at this time will result in water levels rising in the valley until flow from the catchment overland commences. Such a flood caused by this coincidence of events, last occurred in January 1953.

The Jensen Street Ponding Area is a part of the system draining Churchill Avenue and the surrounding catchment. The primary inflow is by the way of a pipeline within a series of meanders, now cut off from the Manawatu River. All of these meanders are now filled except for the one which is contained within this ponding area. The gradients of the most recent natural outlet into the Awatea Stream, and that of its present piped outlet to the Hokowhitu Lagoon limits the rate of outflow and consequently the pond level fluctuates, dependant upon inflow and the surrounding ground water table level. Consequently, in both cases it is

important that the flood waters expected can move across the land affected without being obstructed and that any dwelling is built above the potential flood levels. Hence the rules above.

...Add Note to Plan Users to Rule 10.7.6.2 as follows:

® **R 10.7.6.2 River Terrace and Cliff Protection Lines.**

In addition to Rules 10.7.1.1 and 10.7.1.2

- (1) Subject to paragraph (2) of this rule, within the area shown as shaded on Map 10.7.6.2, any building or structure, and any addition to or alteration of any building or structure (other than demolition or removal) are Prohibited Activities;**
- (2) Nothing in this rule applies to anything to which Rule 22.9.1.1 or Rule 22.9.3.1 applies (Section 22 Natural Hazards).**

Explanation

In the Aokautere area there is a particular hazard which arises from the combined effects of slope instability and the erosive effects of the Manawatu River. This results in the cliff in the vicinity of Anzac Park being unable to reach a stable angle due to the removal of debris from its base, by the river.

Consequently it is important that buildings are located a prudent distance from the edge of this cliff. The remnants of old river terraces which are now well removed from the river are also potentially unstable, though in this case the area excluded from building is much smaller. Further information on land stability in Aokautere is contained in Section 22 Natural Hazards.

Rule 22.9.1.1 provides for the possibility that works may be undertaken in the future to stabilise the cliffs and river terraces in the Aokautere area,, as Rule 10.7.6.2 does not take account of the mitigating effect that may be afforded by any such works (whether carried out by a local authority or by the Crown or otherwise).

It is acknowledged that if such works are constructed in the future, this may well trigger the need to review or change Rule 10.7.6.2 to permit appropriate development closer to the cliff and within some part of the area for which development is currently prohibited by the Rule.

NOTE TO PLAN USERS

Refer also to the Earthworks provision contained in Section 6: General of this Plan.

...add a Note To Plan Users under Rule 10.8.1.7 as follows:

10.8.1 Rules: Permitted Activities

® **R 10.8.1.7 Undevelopable Land in the Aokautere Development Area.**

The following are Permitted Activities on any land shown as undevelopable land in the Aokautere Development Area, as shown on Map 10.1, provided they comply with the following Performance Condition:

- (i) Landscape works.**
- (ii) Public reserves or reserves within the meaning of the Reserves Act 1977.**
- (iii) Drainage and water supply works.**

Performance Condition

(a) Stability

- (i)** No works associated with any Permitted Activity shall involve the removal of more than 10 m³ of soil, except that no works associated with any Permitted Activity shall involve the removal of any soil within those areas shown shaded on Map 10.7.6.2 or along any terrace edge abutting Class VI, VII, or VIII land (as defined on the NWASCO Land Resource Inventory Worksheets).

- (ii) No works associated with any Permitted Activity shall involve any modification of an existing slope.
- (iii) Neither (i) or (ii) shall preclude the temporary removal of soil or disturbance of a slope to plant trees or other plants.

NOTE TO PLAN USERS

Earthworks on Undevelopable Land are further subject to the Earthworks provisions of Section 6 (General Section) of this Plan. Rule 10.8.1.7 however, overrules any rule of Section 6, being specific to the Aokautere Development Area.

SECTION 12 – INDUSTRIAL ZONE

...amend Note To Plan Users under Rule 12.6.1 as follows:

12.6 Rules: Permitted Activities

® R 12.6.1.1 Permitted Activities

Any Activity which Meets the Following Performance Conditions shall be a Permitted Activity:

NOTE TO PLAN USERS:

Permitted Activities shall also comply with the requirements of Rule 12.12.1 Noise and Rule 12.7.1 Servicing and Loading Hours, *and Rule 6.3.6.1(c) Earthworks.*

SECTION 12A – NORTH EAST INDUSTRIAL ZONE

...add a Note To Plan Users under Rule 12A.6.1 as follows:

12A.6 Rules: Permitted Activities

® R 12A.6.1 Permitted Activities

Unless otherwise specified as a controlled activity, the following are permitted activities provided that they comply with the relevant performance conditions:

...

NOTE TO PLAN USERS:

- For the purposes of this rule any activity includes buildings and structures.
- Refer to Rule 12A.8.3 for any activities that seek to alter the volume of the stormwater detention area (as shown on Map 12A.8.3).
- Please check with the Regional Council for any additional requirements contained in their Regional Plans.
- *Refer to Section 6 regarding Earthworks Rules.*

...

...add a Note To Plan Users under Rule 12A.8.3 as follows:

12A.8 Rules: Discretionary Activities (Restricted)

...

® R 12A.8.3 Stormwater Detention Area

The construction of any building, structure, or the filling and raising of the level of the land within the shaded area shown on Map 12A.8.3 (North East Industrial Stormwater Detention Area) is a Discretionary Activity (Restricted) with regard to:

- **Effects on the storage capacity of the stormwater detention area**

This rule does not apply to flood protection and soil conservation activities of any local authority, the cultivation and use of the land for gardens or planting of trees, or erection of fences which are less than 2 metres in height outside of the watercourse.

Non-notification

- (i) Such applications (Rule 12A.8.3) need not be publicly notified.
- (ii) Notice of applications for restricted discretionary activities (Rule 12A.8.3) need not be served on any persons who, in the Council's opinion, may be adversely affected by the activity.

In determining whether to grant consent and what conditions, if any, to impose, Council will, in addition to the City View Objectives in section 2 and the North East Industrial Zone Objectives and Policies, assess any application in terms of the following:

- (a) Avoiding, remedying or mitigating adverse effects on the surrounding environment of a change in the net volume of the stormwater detention storage area.

Explanation

The stormwater detention area, as specified in Map 12A.8.3, plays an important role in managing the discharge of stormwater from activities within the North East Industrial Zone. Where proposals seek to modify the volume of the storage area, the Council will need to assess the effects on the surrounding environment of a change in volume of the storage area to ensure that the integrity of the stormwater detention area is not compromised.

NOTE TO PLAN USERS:

The erection, addition to, alteration or reconstruction of any building, as defined under the Building Act 1991, which occurs within the shaded areas identified on Map 12A.8.3 is subject to the provisions of Section 36 of the Building Act 1991. Section 36 of the Building Act 1991 specifies limitations and restrictions that shall apply to the issue of building consents for buildings on land subject to inundation.

It shall also be noted that the erection, alteration or reconstruction of any fence or wall within the North East Industrial stormwater detention channels shall be regulated by Section 511 of the Local Government Act 1974. Under Section 511 of the Local Government Act 1974, the Council can require the removal of any obstruction to the free flow of water within a watercourse.

Also refer to Section 6 of this Plan regarding Earthworks provisions.

SECTION 22 – NATURAL HAZARDS SECTION

...add a Note To Plan Users under Rule 22.9.2.1 as follows:

Rule 22.9.2: Discretionary Activities (Restricted)

® **R 22.9.2.1 Restructuring of Land in Aokautere**

Restructuring of land through earthworks or other works to create land with improved slope and soil stability, in the Aokautere Development Area, shall be a Discretionary Activity (Restricted) in respect of:

- **The Avoidance or Mitigation of any Natural Hazard.**

provided it complies with the following Performance Conditions:

Performance Condition

- (a) **Timing of Application and Undertaking of Works**

- (i) Any application to restructure land in the Aokautere Development Area shall be made at the same time as any application is made for a subdivision consent for the same land.
- (ii) Any works associated with the restructuring must be carried out at the same time as any other works associated with the approved subdivisional consent.

In determining whether to grant consent and what conditions to impose, if any, Council will, in addition to the City View objectives in section 2 and the Natural Hazard Section objectives and policies, assess any application in terms of the following further policies:

- (a) To avoid, remedy or mitigate any adverse environmental effects arising from the proposed restructuring works.
- (b) To ensure that the proposed restructuring works avoid, remedy or mitigate the land instability hazard.

Explanation

While some of the land in Aokautere is naturally unstable, it is possible to undertake carefully designed earthworks to remodel land and to improve its stability. It is important however that such works are carried out with other subdivisional works to ensure that they are undertaken with appropriate technical supervision.

This rule however does not refer to any earthworks or other works associated with building or development on an existing site. These works will be controlled under the provisions of the Building Act 1991 having regard to the definitions of "building work" and "sitework" contained in that Act, *and under the provisions of the Earthworks Section (Section 6) of this Plan.*

NOTE TO PLAN USERS:

The provisions of Sections 91 and 92 of the Resource Management Act 1991 would be used to ensure that all consent for any application are heard together.

Also refer to the provisions of Section 6 of this Plan with respect to earthworks rules. When interpreting the relationship between the provisions of Rule 22.9.2.1 (Restructuring of Land in Aokautere) and those of Section 6, the provisions of Rule 22.9.2.1 prevail.

PART II SECTION 32 REPORT

1. INTRODUCTION

- 1.1 This report has been prepared in fulfilment of the requirements of Section 32(5) of the Resource Management Act 1991 (RMA) which requires local authorities to prepare a report summarising the evaluation of the alternatives, benefits and costs of the proposed plan change, and giving reasons for that evaluation. Pursuant to Section 32(3) of the RMA this evaluation details the appropriateness of the objective(s) in achieving the purpose of the RMA, and whether, having regard to their efficiency and effectiveness, the policies, rules and other methods proposed, are the most appropriate for achieving the objectives.

2. DESCRIPTION

- 2.1 Earthworks are often an essential component of subdivision, land development, land use activities, and building construction. Earthworks may be associated with an intensification of land use, for example levelling a greenfield site to increase the overall allotment yield. Furthermore, earthworks may result in alterations to the existing land form, for example reducing the land slope to minimise the cost of building on sloping ground. Although they are usually only a component of other activities, earthworks have the potential to result in a range of adverse environmental effects in their own right.
- 2.2 In its role managing the effects of development, Palmerston North City Council currently has limited discretion to manage the potential adverse effects of earthworks. The Palmerston North City District Plan contains limited provisions for considering the potential adverse effects of earthworks, and in the majority of situations earthworks are permitted as of right. Not all earthworks necessarily result in adverse effects, however, the community and Council are increasingly raising concerns over the lack of discretion held by Council in managing earthworks.

3. PLAN CHANGE OBJECTIVE

The objective of this Proposed Plan Change is 'that the District Plan contains an appropriate policy framework to ensure that earthworks are carried out in a sustainable manner and that the potential adverse effects of earthworks are sufficiently avoided, remedied, or mitigated'.

4. REASON FOR THE PROPOSED PLAN CHANGE

4.1 Resource Management Issues

- 4.2 The objective of the Proposed Plan Change arises from a dual problem, being:
1. earthworks associated with subdivision and building development can result in adverse effects, and
 2. in the majority of situations Palmerston North City Council is currently limited in its ability to manage any potential adverse earthworks effects.
- 4.3 Earthworks are predominantly completed in association with subdivision and building development, and may lead to the following adverse effects:
- 4.4 Subdivision Development:
- The creation of lots, building platforms, and roads as part of subdivision development can involve a variety of adverse effects. Effects may be temporary, while construction is ongoing, or more permanent.
 - In subdivision of greenfields sites, earthworks can have adverse effects on amenity values, landscape character, land stability, the overland flow of water, runoff and sedimentation, and impact on flood flows.
 - For infill subdivision issues are similar to greenfield sites, although the issues and effects are likely to be of a smaller scale.

4.5 Building Development

- Earthworks approved as part of a greenfields subdivision development are designed to ensure that stormwater runoff is appropriately drained. Changes to the ground levels after subdivision in association with building development may undermine subdivision earthworks and in some cases result in localised flooding.
- Greenfields industrial development is often associated with large site areas and extended project timeframes. Extensive areas of earth may be exposed as part of earthworks recontouring preparatory to building development. These exposed sites can generate large quantities of runoff that may result in sedimentation of waterways. Visual amenity effects may also arise for those properties located in close proximity to the earthworks.

4.6 **The Existing Earthworks Framework**

4.7 The Council currently has only limited ability to assess the potential adverse effects of earthworks. This ability is exercised through a variety of tools including:

4.8 The Resource Management Act 1991

4.9 Council has a statutory duty under the RMA to ensure that the purpose and principles of that Act are carried out. Council is required to ensure sustainable management of resources, and to consider effects within the context of development to ensure effects are avoided, remedied, or mitigated. The RMA provides the key legislative context.

4.10 A key aspect of earthworks effects is that they are the responsibility of both territorial and regional authorities. Although separate effects are managed, the situation creates an overlap of responsibility.

4.11 The District Plan

4.12 The District Plan is the primary tool for managing earthworks effects, and is mandated to this task under the RMA, as a responsibility of territorial authorities. The current District Plan addresses specific earthworks effects ancillary to anticipated situations and activities, as follows:

- **General Subdivision Objectives and Policies** – The Subdivision Section (Section 7) of the District Plan includes Objectives and Policies with regard to earthworks. Some consideration of land stability effects is made, and linked to minimum lot size (including flat land) requirements, however (aside from stability concerns) there is no clear discretion to consider earthworks effects as part of resource consent decision making for subdivision applications.
- **Land Stability and Natural Hazards effects** (Section 10 - Residential Zone, and Section 22 - Natural Hazards) – The District Plan identifies the *Aokautere Development Area* which contains specific development provisions due to the undulating ground levels and soil conditions (Rules 10.8.1.7). Resource Consent is required if performance conditions relating to cubic measurement or changes to ground contours are exceeded. Where subdivision in the *Aokautere Development Area* involves restructuring of land, Rule 22.9.2.1 requires additional resource consent to be granted to ensure natural hazards are avoided or mitigated.
- **Natural and Cultural Heritage effects** (Section 17) – In order to assess the potential adverse impacts of earthworks on Natural and Cultural Heritage sites, Resource Consent is required for excavation on 'any scheduled site or object of cultural and natural heritage value to tangata whenua' specifically identified in the District Plan. Furthermore, all subdivision consents approved by Council also include an archaeological note referring the consent holder to their responsibilities under the Historic Places Act 1993.
- **Specified Ponding Areas** (Section 10 - Residential Zone) – Some building and filling is restricted in the *Awatea Stream* and *Jensen Street* Ponding Areas (Rule 10.7.6.1).

4.13 Resource Consent Conditions– Landuse and Subdivision activities

4.14 In processing Resource Consent applications Conditions may be placed on Landuse and Subdivision consents to manage potential adverse effects (Sections 106, 108, 220 RMA). Conditions must however be fair and reasonable, and related to the application. Section 104 identifies further limitations on conditions depending on the activity status of the application. Under the current District Plan framework there is limited identification of earthworks issues, therefore restricting ability to impose conditions on earthworks. As there are no general earthworks provisions, the plan permits earthworks, and inhibits consideration of earthworks effects and, the setting of conditions.

4.15 The Palmerston North City Council Subdivision Engineering Standards

4.16 "The Engineering Standards for Land Development ensure compliance with the objectives and policies set out in Section 7 of the Palmerston North City Council's District Plan." (Page 1-1, Part 1 General Requirements). The standards include *mandatory*, *advisory*, and *permissive* standards.

4.17 Tonkin and Taylor Policy Document

4.18 The Tonkin and Taylor Policy Document on the Development of *Land which is, or is likely to be, subject to inundation of slippage* (dated August 2005). The main purpose of the policy is to provide clear guidelines with respect to building consents and subdivision approvals. Focus is for use in the Aokautere Development Area, but it is applied further afield. The Policy Document is attached to District Plan Volume 2 and also in the Palmerston North City Council Subdivision Engineering Standards.

4.19 Other Legislation

4.20 The Building Act 2004 provides the requirements for building works. Overlap exists with earthworks considerations with respect to the definition of 'Site Works' in the Building Act:

- **sitework** means work on a building site, including earthworks, preparatory to, or associated with, the construction, alteration, demolition, or removal of a building

4.21 Section 71 of that Act 'Building on land subject to natural hazards' is also of relevance:

71 Building on land subject to natural hazards

- (1) A building consent authority must refuse to grant a building consent for construction of a building, or major alterations to a building, if—
 - (a) the land on which the building work is to be carried out is subject or is likely to be subject to 1 or more natural hazards; or
 - (b) the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.
- (2) Subsection (1) does not apply if the building consent authority is satisfied that adequate provision has been or will be made to—
 - (a) protect the land, building work, or other property referred to in that subsection from the natural hazard or hazards; or
 - (b) restore any damage to that land or other property as a result of the building work.
- (3) In this section and sections 72 to 74, natural hazard means any of the following:
 - (a) erosion (including coastal erosion, bank erosion, and sheet erosion);
 - (b) falling debris (including soil, rock, snow, and ice);
 - (c) subsidence;
 - (d) inundation (including flooding, overland flow, storm surge, tidal effects, and ponding);
 - (e) slippage.

4.22 The Clause E1 ('Surface Water') Compliance Document for the New Zealand Building Code also provides for consideration of the effects of completing earthworks. Compliance Documents are prepared by the *Department of Building and Housing* in accordance with section 22 of the Building Act 2004. A Compliance Document is for use in establishing compliance with the New Zealand Building Code. Clause E1's Objective is: E1.1 ...*(a) Safeguard people from injury or illness, and other property from damage, caused by surface water, and (b) Protect the outfalls of drainage systems.* The management of surface water effects between neighbours is a civil matter.

4.23 Other Agencies

4.24 Amongst other functions, Horizons Regional Council (Horizons) has responsibility for managing water and air quality. They are therefore concerned with the potential sedimentation, erosion and dust adverse effects of earthworks. Horizons *Proposed One Plan* states that earthworks over 1000m³ are 'Permitted' activities subject to performance conditions including effective erosion and sediment control measures.

4.25 Adverse Effects of Earthworks

4.26 Earthworks effects can be short-term or have a more permanent effect. The magnitude of the effects also varies depending on the scale of the development, the context of the development, and the surrounding environment. The potential adverse effects of earthworks are described as follows:

- **Effects on landscape values and visual amenity** – Earthworks can substantially change natural contours and affect the value of the natural landscape. Furthermore earthworks can

affect visual amenity of adjoining properties. This is a potential effect at both subdivision and landuse stage, and may occur for both infill and greenfield development.

- **Effects on the physical stability of land** – Earthworks can undermine the physical stability of land, particularly when earthworks are undertaken on or adjacent to sloping sites.
- **Impact on flood flows and the overland flowpath of water** – Removal of topsoil, stockpiling of earth, and changes to the natural ground contours may result in increased sedimentation downstream. Alterations to the natural ground levels may also influence floodwater flows. At a smaller scale such changes may result in localised ponding.
- **Effects on Cultural and Historical Heritage** – Earthworks can have adverse effects on the cultural value of land to tangata whenua, and can impact on the historical significance of an area, if archaeological sites are disturbed.
- **Construction Effects** – The earthworks construction phase can generate adverse noise, dust, runoff and sedimentation effects.

4.27 Not all earthworks necessarily result in adverse effects. However, where potential exists for adverse effects to arise, these are best considered on a case by case basis. Currently Council has limited ability to manage and address the situation where adverse earthworks effects arise. Section 31 of the RMA requires *"Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district: ... (b) the control of any actual or potential effects of the use, development, or protection of land, ..."*.

4.28 This limited ability in the District Plan policy framework needs alteration to ensure that where adverse effects are arising from earthworks activities, Council has the ability to address the effects.

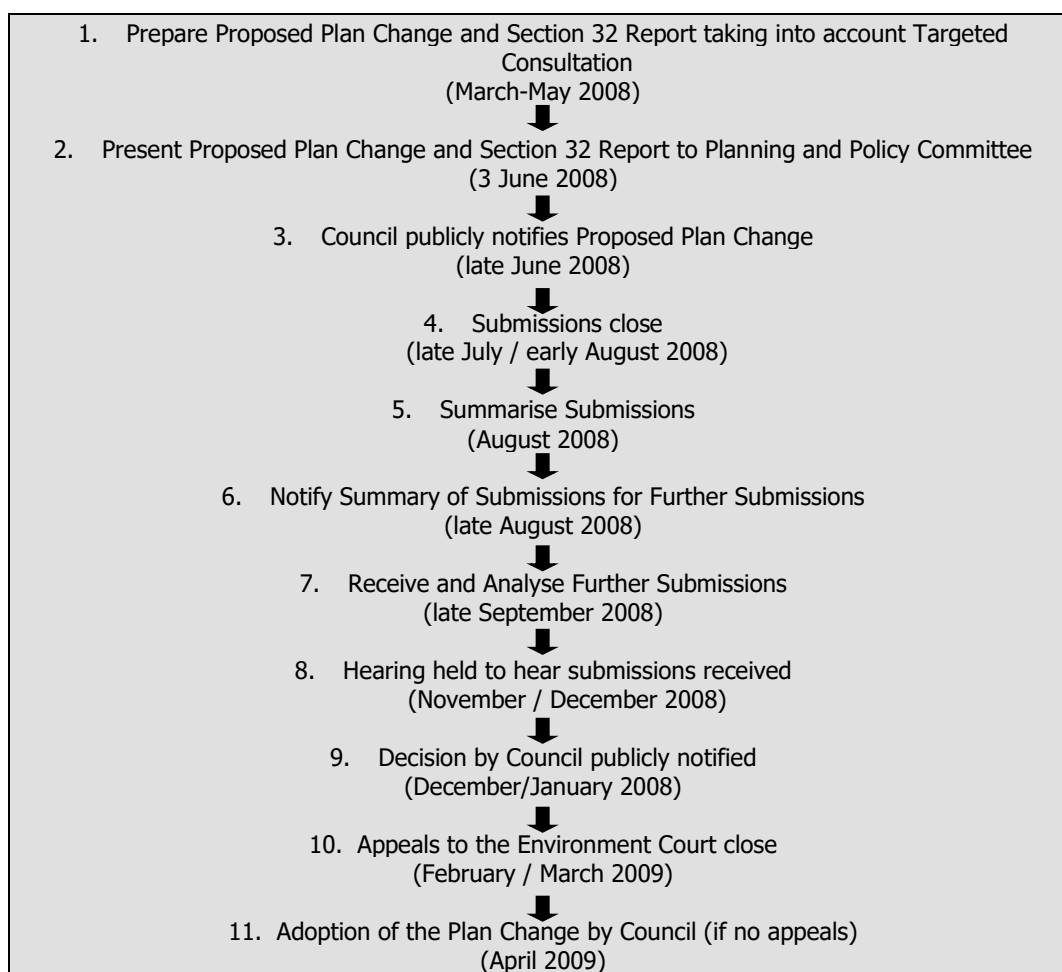
4.29 Chronology

4.30 A brief chronology of actions taken to date in relation to this Proposed Plan Change is as follows:

3 September 2007	<p>A report was presented to the Environmental and Planning Well-being Committee on Earthworks Issues. The Council resolved (8 October 2007 / <i>Resolution 47-07</i>):</p> <ul style="list-style-type: none">• <i>That the Council authorise the Chief Executive to prepare a Proposed Plan Change to the Palmerston North District Plan which seeks to address the potential adverse effects associated with earthworks in Palmerston North City.</i>• <i>That the Council note that the Proposed Plan Change on earthworks in the District Plan would be reported back to the Committee following targeted consultation.</i>
March-April 2008	<p>Targeted consultation undertaken on the Draft Plan Change with those parties identified in Clause 3 of the First Schedule of the Resource Management Act.</p>
May 2008	<p>Comments from consultation incorporated into Plan Change Document.</p>
3 June 2008	<p>Proposed Plan Change to be reported to the Planning and Policy Committee to seek approval to notify under the RMA.</p>

4.31 An Indicative Timetable of the Plan Change Process

4.32 An indicative timetable of the plan change process is illustrated below:



5. CONSULTATION

5.1 Before proceeding to notify the proposed plan change, targeted consultation was undertaken on a discussion document which outlined the issues, the potential adverse effects of earthworks, and suggested some possible District Plan earthworks provisions. The Discussion Document (including draft District Plan provisions) was sent to members of the local development community, including surveyors, planners, and developers. The Discussion Document was also sent out to those parties identified in Clause 3 of the First Schedule of the RMA, including iwi, the Ministry for the Environment, Horizons, and adjacent territorial authorities.

6. STATUTORY REQUIREMENTS

6.1 Before a plan change is publicly notified, the Council must undertake the following duties under Section 32 of the RMA:

"32 Consideration of alternatives, benefits, and costs –

- (1) In achieving the purpose of this Act, before a proposed plan, proposed policy statement, change, or variation is publicly notified, a national policy statement or New Zealand coastal policy statement is notified under section 48, or a regulation is made, an evaluation must be carried out by–
...
(c) the local authority, for a policy statement or plan ...
- (2) A further evaluation must also be made by–
 - (a) a local authority before making a decision under clause 10 or clause 29(4) of the Schedule 1; ...

- (3) An 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.
- (4) For the purposes of the examinations referred to in subsections (3) and (3A), an evaluation must take into account–
 - (a) the benefits and costs of policies, rules, or other methods; and
 - (b) 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.
- (5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.
- (6) The report must be available for public inspection at the same time as the document to which the report relates to is publicly notified or the regulation is made.”

6.2 The purpose of the RMA is the baseline against which these statutory steps are to be carried out. Section 5 of the RMA sets out the purpose of that Act. The following sections are relevant:

“5 Purpose

- (1) The purpose of this Act is to promote the sustainable management of nature and physical resources.
- (2) In this Act, “sustainable management” means 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”** (emphasis added)

6.3 Other sections of relevance in Part II of the Act are as follows:

“6 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:

...

- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:

“7 Other Matters

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 have particular regard to-

...

- (b) the efficient use and development of natural and physical resources:
- (c) the maintenance and enhancement of amenity values:

...

- (f) maintenance and enhancement of the quality of the environment:
- (g) any finite characteristics of natural and physical resources:

...”

6.4 The relevant functions of the Council in this instance are set out in sections 31 (1) (a), (b) and (d), and (2) as follows:

“31 Functions of territorial authorities under this Act

- (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:
 - (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
 - (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of
 - (i) the avoidance or mitigation of natural hazards; and
 - (ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
 - (iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:
 - (iii) the maintenance of indigenous biological diversity:
 - (d) the control of the emission of noise and the mitigation of the effects of noise:
 - (e) the control of any or potential effects of activities in relation to the surface of water in rivers and lakes:
 - (f) any other functions specified in this Act.
- (2) The methods used to carry out any functions under subsection (1) may include the control of subdivision."

6.5 To achieve the purpose of the RMA in accordance with the stated functions, any proposed District Plan provisions must be the most appropriate method of providing a policy framework to ensure that earthworks are carried out in a sustainable manner whilst avoiding, remedying or mitigating the potential adverse effects on the environment.

7. ASSESSMENT OF PLAN CHANGE OBJECTIVES

7.1 Existing District Plan

7.2 The existing Objectives in the District Plan have been assessed in terms of their appropriateness taking into consideration the Plan Change Objective and the identified potential adverse effects. The existing District Plan Objectives include some references to earthworks effects, and support exists for the Plan Change Objective through the City View Objectives and the Subdivision Section Objectives and Policies (in situations where a subdivision is taking place). However this support is only considered to provide 'umbrella endorsement' at the macro level. It is considered that on the whole the existing framework is not appropriate to achieve the Plan Change Objective. A new policy framework specifically relating to earthworks effects is proposed.

7.3 Proposed Plan Objective

7.4 The Plan Change seeks to insert an objective into the District Plan to provide part of the policy framework for managing earthworks. The following sections include an assessment of the objective and how it fits within the District Plan.

7.5 The following Objective is proposed to be inserted into the District Plan:

Objective 1:
To provide for earthworks activities where the associated adverse effects are able to be avoided, remedied, or mitigated.

7.6 The objective is designed to acknowledge the need for earthworks, but also the need to address negative effects associated with earthworks activities. Earthworks are an essential activity as part of development, but are also an activity that can result in adverse effects. The objective *provide(s) for earthworks* to reinforce that earthworks are a necessary element of development, and the District Plan needs to acknowledge this fact. The term *provide* also enables consideration to be made of the positive effects (in particular follow-on effects) associated with earthworks, for example, a potentially more efficient land yield, and a possible reduction of building costs associated with sloping land. However, the second half of the Objective identifies that where there are potential adverse effects of earthworks, these need to be managed. In some scenarios this may mean avoiding some earthworks development, alternatively, it may mean a change in design, or mitigation during construction to ensure adverse effects

do not arise. In summary, earthworks require a typical balancing between the positive and negative effects.

7.7 Fit with City View Objectives (Section 2 District Plan)

7.8 The existing City View Objectives (and Policies) of District Plan Section 2 provide an overarching context for the District Plan. It is considered that the City View Objectives affords general support to the proposed Objective 1. Particularly support is provided with regard to the Healthy Community, the Working Community, the Heritage Community and the Attractive Community Objectives:

The Healthy Community

- *To avoid, remedy or mitigate the adverse effects of natural hazards.*

The Working Community

- *To provide the conditions to ensure the physical resources of the City are managed and developed while avoiding, remedying, or mitigating adverse environmental effects.*

The Heritage Community

- *To preserve and enhance the natural heritage features of the City, including lake and river margins, significant areas of indigenous vegetation and habitats, and important natural features and landscapes.*

The Attractive Community

- *To maintain and enhance the visual appeal of the City.*
- *To recognise the distinctive rural and urban character of the City.*
- *To manage the adverse effects of activities on the environment.*

7.9 Fit with Existing District Plan

7.10 Objectives in the Subdivision Section (Section 7), the Cultural and Natural Heritage Section (Section 17), and Natural Hazards Section (Section 22) of the District Plan refer directly and indirectly to earthworks. These objectives refer to particular earthworks activities (for example earthworks undertaken during subdivision), and form an integral part of the policy framework managing the effects of subdivision activities and Natural Hazards. It is not possible to solely rely on these existing Objectives as they do not apply to earthworks generally. Relying on these existing Objectives in the District Plan is not considered appropriate for providing a comprehensive policy framework for dealing with the effects associated with earthworks. Building a comprehensive policy framework requires a new general earthworks Objective, supported by, and consistent with, the existing Objectives.

7.11 Appropriateness

7.12 By building on the existing District Plan objectives, and establishing a new generic earthworks objective is therefore considered the most appropriate way to achieve the purpose of the RMA.

8. ASSESSMENT OF POLICIES AND METHODS OF IMPLEMENTATION

8.1 In order to achieve the proposed Objective (and the existing Objectives in the District Plan) three alternatives were identified as possible mechanisms for achieving the overall Plan Change Objective. Each of these alternatives are described below, including consideration of the reasons for and against adopting each alternative, and comment on the efficiency and effectiveness of that approach.

8.2 The focus of this Section 32 report is on District Plan solutions, as the District Plan is the primary tool of the current policy framework for guiding development. It should however, also be noted that non District Plan methods were also identified. Such methods include:

- the use of non-regulatory approaches (for example best practice guidance), reliance on using notes on LIMs/PIMs (*Land Information Memorandum and Project Information Memorandum*),
- relying on the Regional Council to address Earthworks,
- introducing an Earthworks Bylaw,

These methods were not further investigated, because they either introduced an additional regulatory framework (for example Bylaws), or they were not solutions in-themselves. Non-regulatory methods for example would not provide any greater certainty to District Plan users and the Community with respect to addressing potential earthworks effects. Nevertheless, it may be that some guidance material and notes can supplement the preferred alternative.

8.3 POLICIES

- 8.4 Two Policies are proposed to be inserted into the District Plan to ensure that there is a comprehensive policy framework established, and they are outlined as follows:

Policies:

- 1.1 To limit the location and scale of earthworks where adverse effects may result.**
- 1.2 To ensure that any adverse effects on the environment from earthworks, including effects on:**
- **Visual Effects;**
 - **Effects on the Natural Land Form;**
 - **Effects on Adjoining Properties;**
 - **Land Stability;**
 - **Flooding Effects;**
- are avoided, remedied, or mitigated.**

- 8.5 The first policy operates as a broad overarching policy position that the scale and location of earthworks are closely linked with the likelihood of adverse effects occurring. The term '*limit*' identifies that in some scenarios it is possible to place a restriction on earthworks. The reference to '*where adverse effects may result*' identifies that adverse effects do not always arise from earthworks developments. The location and scale of earthworks may be limited to manage the potential adverse effects. Location and scale are terms describing the physical extent of the earthworks relative to the site and development, and relative to the immediate surroundings (including zoning and physical characteristics).
- 8.6 The second policy provides guidance on the term '*adverse effects*' by highlighting particular issues that are of concern. The purpose of this policy is to clarify the types of potential effects that may arise. The use of the term '*including*' identifies the list as not being exclusive to the issues raised, but mentions the common likely effects.

8.7 OTHER METHODS

- 8.8 In assessing each alternative the following assessment focuses on the proposed framework, not the individual rules proposed.

8.9 OPTION 1: STATUS QUO (DO NOTHING)

8.10 Option 1 involves:

This option requires no action to be taken in the form of a plan change, leaving the existing District Plan provisions with regard to specific earthworks effects in limited situations. Management of earthworks effects would continue primarily through the Subdivision Section, the non-regulatory documents (e.g. the Subdivision Engineering Standards), and using the definition of 'siteworks' under the Building Act 2004.

8.11 Reasons for and against Option 1 are listed below:

FOR:

- i. This option requires no changes to the District Plan, and any costs of continuing to prepare a Plan Change are therefore avoided.
- ii. The potential additional resource consent costs to applicants of complying with earthworks rules, and administration costs to Council, are avoided.

AGAINST:

- i. Most earthworks will continue to be permitted under the District Plan and reliance to address earthworks effects will continue on the limited Subdivision Objectives and Policies and other existing controls.
- ii. Council will continue to have limited ability to manage the adverse effects from earthworks.
- iii. This option is not consistent with the Plan Change Objective, or Council's functions under the Section 31 or Part 2 of the RMA.

- iv. This option does not provide a comprehensive policy approach.

8.12 Statement on Efficiency and Effectiveness:

This option is not considered efficient, as earthworks issues will be able to continue without the ability to appropriately avoid, remedy, or mitigate the adverse effects. This option is also not considered effective, as it relies on the existing framework which is considered inadequate to deal with the identified resource management issues.

8.13 OPTION 2: INTRODUCE SUBDIVISION EARTHWORKS RULES

8.14 The second possible option is to introduce earthworks rules targeted at the subdivision stage only.

8.15 Option 2:

Land subdivision is often the first point of development, and may result in significant earthworks, and adverse earthworks effects. It is therefore a potential opportunity for Council to manage earthworks. By controlling earthworks at the subdivision stage, a number of the potential scenarios for adverse earthworks effects to occur will be limited. This option would involve the following components:

- Introduction of earthworks rules into the Controlled Activity Performance Conditions of the Subdivision Section (Section 7.0).
- Application of the above rules to the Rural Zone, Residential Zone, and Industrial Zones, as these locations are where most earthworks activities are occurring.
- Inclusion of Discretionary (Restricted) Activity rules for subdivision applications that do not comply with the relevant Controlled Activity Performance Conditions.

8.16 Reasons for and against Option 2 are listed below:

FOR:

- i. Subdivision is an existing point of contact for applicants (landowners and developers) with Council through the resource consent process. Additional earthworks requirements could be assessed as part of the existing subdivision process, creating a simplified solution to address earthworks effects.
- ii. Objectives and Policies relating to earthworks effects exist in Section 7 (Subdivision Section) of the District Plan, providing the policy framework basis for this option.
- iii. This Option enables affected parties to be identified where potential adverse effects will arise.

AGAINST:

- i. There will be costs associated with developing the Plan Change. A Plan Change would be required to strengthen the Subdivision Section provisions, and create additional rules.
- ii. Earthworks provisions under this option would only apply at subdivision stage. Earthworks provisions would not apply where earthworks were being undertaken either preparatory to a subdivision consent being lodged, or for earthworks in association with other landuse or building development. This option would therefore create inequality in how similar effects are assessed.
- iii. This approach does not provide a comprehensive policy package for addressing earthworks in Palmerston North City.

8.17 Statement on Efficiency and Effectiveness:

This option is efficient in achieving the Objective only with respect to addressing subdivision related earthworks issues. It is substantially supported by the existing Subdivision Section (Section 7) District Plan Objectives and Policies. However, this option is not considered efficient as earthworks issues are not solely related to the subdivision process, and therefore the adverse effects would not be adequately addressed, and this option would not achieve the proposed Objective.

With regard to the effectiveness of this Option, this Option is not considered effective, given that it does not adequately address all situations where earthworks can occur.

8.18 OPTION 3: INTRODUCE GENERIC EARTHWORKS RULES

8.19 Option 3 would introduce generic earthworks rules covering both subdivision and landuse activities into the District Plan.

8.20 Option 3 involves:

This option involves:

- Introducing earthworks into the District Plan as a 'Permitted' activity, subject to 'Cubic Measure', 'Height' (Cut and Fill), and 'Boundary Separation Distance' thresholds for specific zones where earthworks issues have arisen.
 - Cubic Measure: The cubic measure threshold relates to the direct correlation between the scale of an earthworks activity and the potential for adverse effects to arise. This threshold ensures that where the volume of earthworks is over the threshold, the potential adverse effects may be assessed. The cubic measure performance condition would apply in the:
 - Rural Zone
 - Residential Zone
 - Industrial Zone
 - North East Industrial Zone
 - Height Measure: Height (including cut and fill height) is primarily aimed at the potential adverse visual effects the earthworks may result in, and the potential for earthworks to impact on adjacent properties. It is also linked to protecting the natural ground contours, and land stability issues. The height measure performance condition would apply in the:
 - Rural Zone
 - Residential Zone
 - Industrial Zone
 - North East Industrial Zone
 - Boundary Separation Distance Measure: Separation Distance is primarily linked to the potential adverse visual effects of earthworks, and the potential for earthworks to impact on adjacent properties. The separation distance measure performance condition would apply in the:
 - Rural Zone
 - Industrial Zone
 - North East Industrial Zone
- Rules would establish levels of permitted activity around the three performance conditions. Surpassing the thresholds will require resource consent to be approved.
- Resource Consent would be required for a Discretionary (Restricted) Activity, where the Matters of Discretion are restricted to:
 - Landscape and visual impact
 - Effects on adjoining properties including amenity values
 - Impact on flood plains and flood flows
 - Increase in hazard risk and effects on land stability
 - Effects of erosion and sedimentation
 - Effects on overland flow paths
- The Rules would apply to general landuse and subdivision activities for the above zones.

8.21 Reasons for and against –Option 3- are as follows:

FOR:

- i. This option provides a comprehensive policy package that targets earthworks associated with both landuse and subdivision.

- ii. Earthworks completed prior to an applicant lodging subdivision consent would still require an earthworks resource consent if thresholds were exceeded. Similar earthworks activities would therefore be treated consistently.
- iii. This option provides a structure for dealing with earthworks issues that arise following the approval and construction of subdivision earthworks.
- iv. By providing a framework based on thresholds, many minor earthworks activities will be unaffected and only earthworks exceeding those thresholds, and therefore have the potential to create adverse effects would require resource consent.
- v. The rules framework is targeted only on those areas where earthworks issues have been identified as occurring.
- vi. Where a proposal does not meet the performance conditions this gives Council the ability to set conditions or decline applications in situations where the adverse effects cannot be avoided, remedied, or mitigated.
- vii. By using the Discretionary (Restricted) Activity status for earthworks that exceed the Permitted activity thresholds, certainty is provided to District Plan users as to the resource management issues of concern.
- viii. Enables affected parties to be involved where adverse effects will potential arise.

AGAINST:

- i. The costs associated with developing a plan change.
- ii. Additional costs may arise for applicants (e.g. landowners and developers) in the form of additional resource consent fees.
- iii. By not establishing earthworks rules in all zones (for example the Business zones, Recreational zones, and the Institutional Zone), earthworks could occur in these zones as of right.

8.22 Statement on Efficiency and Effectiveness:

This option is considered efficient in that it provides a comprehensive package of provisions in the zones where most earthworks issues are prevalent. By not proposing blanket provisions across all zones, this option seeks to ensure that Resource Consents are only required in locations where potentially significant adverse effects may occur. This option is effective because it sets realistic and reasonable thresholds to avoid the situation where any earthworks activity would require a resource consent, but provides certainty that where thresholds cannot be met, Council has the ability to assess the earthworks on a case by case basis against set issues.

8.23 PREFERRED ALTERNATIVE

8.24 The preferred alternative is to introduce generic earthworks rules into the District Plan (Option 3 above). The Proposed Plan Change as presented has been drafted on the basis of this alternative.

8.25 This option is preferred over the other alternatives for the reasons that:

- 1. Adverse earthworks effects may occur regardless of whether an activity is associated with subdivision, building development or other landuse activity; earthworks are usually a precursor to any form of land development. A policy framework that responds to only one earthworks activity (e.g. subdivision) is not considered appropriate because it is vital that the policy framework applies across the range of possible development scenarios. Option 3 is therefore preferred over Option 2.
- 2. Option 2 creates a scenario where the same earthworks activity could be subject to different rules depending on whether an application for subdivision resource consent has been applied for. This could also create the situation where earthworks are undertaken prior to any subdivision application to avoid having to comply with the District Plan rules. By restricting earthworks only at the subdivision stage, inconsistent clauses appear in the Plan.

3. Option 3 ensures that in the zones where there are significant earthworks activities, and where there is the potential for adverse effects arising from earthworks, that the adverse effects of earthworks will be avoided, remedied, or mitigated.
4. Council over the last 10 years has reviewed the policy approach toward earthworks. The last review amended Objectives and established Policies in the Subdivision Section (Section 7) to address visual amenity effects of earthworks associated with residential development. Consideration of Option 1 (Do Nothing) is inconsistent with previous Council decisions and community concerns of how earthworks are currently managed
5. Having regard to Section 32(3) of the RMA, the objective, policies and rules in the Proposed Plan Change, reinforced by the existing District Plan provisions remain the most appropriate way to achieve the purpose of the RMA.

9. EVALUATION OF COSTS

- 9.1 Option 1 'Do Nothing' will not involve any change in costs of developing a Plan Change or increased administration costs for Council and applicants.
- 9.2 Both Options 2 and 3 will result in costs to the Council of developing a Plan Change and additional costs for District Plan users. With respect to the Plan Changes costs, this cost will be similar for both alternatives, despite the differences in between each option as identified above.
- 9.3 Option 2 limits the Council's ability to consider earthworks to the Subdivision Consent process. In order to subdivide land approval is already required from Council through the resource consent process. Additional costs to the applicant, the Council, and affected neighbours (if an application goes before a Hearing) will occur where a subdivision application also requires resource consent for earthworks. There may also be some additional costs of completing the physical earthworks, depending on any additional mitigation measures required.
- 9.4 Under Option 3, the costs to the community will vary. The Proposed Plan Change identifies some earthworks activities (of limited scale and effect) will be Permitted, and there will therefore be no change in costs for applicants, the Council, or the community. Where Resource Consent is required for an earthworks proposal there will be some additional costs to the applicant, the Council, and to affected neighbours (if an application goes before a Hearing). However, Option 3 enables affected parties to be involved if there are potentially significant effects on their properties.
- 9.5 However, it is considered that in the majority of cases any Resource Consent for earthworks will not be completed in isolation, but rather will be processed simultaneously with the corresponding subdivision or other landuse resource consent. Where applicants apply for a subdivision and landuse Resource Consent together there will be some absorption of the costs compared to processing a separate application for earthworks. It is envisaged there will be some change in the cost of completing the physical earthworks, depending on any additional mitigation measures required.
- 9.6 Option 3 will require additional costs for Council in terms having additional resource consents to process. However, the approach taken in Option 3 ensures that only those earthworks activities that do not meet the permitted performance conditions require resource consent, to avoid unnecessary resource consent applications. The benefits of the Council retaining discretion over the potentially significant effects of earthworks outweigh the costs of this option.

10. CONCLUSION

- 10.1 A review of the District Plan (Objectives, Policies and other Methods) has identified shortcomings in the ability of the existing policy framework to address the potential adverse effects of earthworks.
- 10.2 A Plan Change is therefore required to insert earthworks provisions in the District Plan and to give certainty to District Plan users and the community that the potential adverse effects of earthworks can be addressed.
- 10.3 By establishing threshold performance conditions it is possible to manage earthworks where potential adverse effects may arise, while ensuring small scale earthworks that are unlikely to create any adverse effects are not required to unnecessarily apply for a Resource Consent.
- 10.4 The Council is satisfied that the Proposed Objective to be inserted in the District Plan is the most appropriate way to achieve the purpose of the RMA. The Proposed Objective is furthermore supported by the existing District Plan City View (Section 2) Objectives and Policies, and the Objectives and Policies of the Subdivision Section (Section 7), the Cultural and Natural Heritage Section (Section 17), and the Natural Hazards Section (Section 22), providing a comprehensive policy framework.
- 10.5 The Council is satisfied that the proposed Policies and Rules are the most effective and efficient way for achieving the existing and proposed Objectives.