

**PALMERSTON NORTH CITY COUNCIL
HEARINGS COMMITTEE**

**IN THE MATTER of Section 73 of
the Resource Management Act 1991
and the First Schedule.**

and

**IN THE MATTER of the Palmerston
North City Council proposed Plan
Change 42 to provide new
earthworks protective provisions in
Sections 4, 5, 6 7, 9, 10, 12A and 22 of
the Palmerston North City Council
District Plan.**

HEARING COMMITTEE:

**Councillors Gordon Cruden
(Chairperson),
Anne Podd and Annette Nixon.**

PLACE OF HEARING:

**Council Chambers
Civic Administration Building
The Square, Palmerston North.**

DATE OF HEARING:

12 and 13 February 2009.

DATE OF DECISION:

26 March 2009.

APPEARANCES:

**Mr Matthew Mackay for the
Palmerston North City Council.
Mrs Lynne Bishop, submitter
Mr Miles Rowe for Mighty River
Power, submitter.
Mrs Jenny Olsson, submitter**

DECISION

I. INTRODUCTION:

1. The Palmerston North City Council ("the Council") under Section 73 and pursuant to Clause 5 of the First Schedule of the Resource Management Act 1991 ("RMA"), after preliminary consultation, gave public notice on 19 June 2008 of proposed Plan Change 42 to the Palmerston North City District Plan ("District Plan"). The proposed plan change seeks to improve existing provisions in the District Plan relating to potential adverse effects associated with earthworks for subdivisions and otherwise. It is therefore not site specific but would apply to all land within the specified zones and areas of the City.
2. The proposed plan change was in part prepared in response to concern over the potential adverse effects associated with earthworks and the limitations of the existing provisions of the District Plan, to manage those effects. In the case of

many developments the District Plan does not provide for the potential adverse effects of earthworks to be assessed or controlled.

3. The proposed detailed changes may be summarised as follows:
 - (a) Section 6 – General: new earthworks provisions. These would include a new subsection containing generic earthworks rules for the Rural, Residential and North East Industrial zones, and the Midhurst Industrial Area of the Industrial Zone.
 - (b) Section 7 – Subdivision amendments: new performance conditions would be added to the subdivision rules for the Rural, Residential and North East Industrial zones and the Midhurst Street Industrial Area, linking to the new Section 6 provisions.
 - (c) Section 4 - Definitions amendments: a new definition for “*Earthworks*” “*Ground Level*”, “*Notional Site*” and other related definition changes including a new “*Height*” definition.
 - (d) Consequential Amendments: new notes at appropriate points in the existing section 9 Rural Zone, Section 10, Residential Zone and the Midhurst Industrial Area of the Industrial Zone, Section 12A North East Industrial Zone, and the Section 22 Natural Hazards provisions. The purpose of the notes is mainly to alert the public and plan users to the new Section 6 provisions.

II. THE LAW

4. Section 73(1A) RMA provides that a District Plan may be changed by Council in the manner set out in the First Schedule. These provisions apply to the present plan change application. They include preparation and consultation requirements.
5. These commenced when on 3 September 2007 the Council Environmental and Planning Well-being Committee considered a report on the earthworks provisions in the District Plan. Council adopted that report and on 8 October 2007 directed that a plan change be prepared to address the potential adverse effects associated with earthworks and directed initial targeted consultation. This resulted in a discussion document on current earthworks provisions and proposals for improvements.
6. During March 2008 the discussion document was sent to the relevant parties listed in the RMA Schedule 1, Clause 3(1) and (2). These included local iwi, Manawatu District Council, Tararua District Council, Horowhenua District Council, Horizons Regional Council, Ministry for the Environment and representatives of the local development and surveying community. A response was received from Horizons Regional Council in support of the proposed amendments and made some suggested changes.
7. After the completion of targeted consultation and following a reassessment of District Plan provisions, a proposed Plan Change was prepared for notification pursuant to the RMA Schedule 1, Clause 3. In compliance with the scheduled Clause 5, Council duly publicly notified the plan change on 19th June 2008 with submissions closing on 24th July 2008. Subsequently a summary of the eleven submissions was made and in compliance with Clause 7 publicly notified. This resulted in three further submissions being lodged by the closing date of 7

October 2008 as authorised by Clause 8 making a total of fourteen submissions requiring consideration.

8. We record that in the consideration of the application and those submissions we are obliged to have due regard to the relevant statutory requirements of the RMA including all the sections of Part II sections 31, 32, 74 and 75 and Horizons Regional Policy Statements. These comprise the current operative policy statement and the recently notified *One Plan*.

III. THE EVIDENCE

Council

Mr Mackay

9. Mr Matthew Murray Mackay, Bachelor of Resource and Environmental Planning (Honours), GMNZPI with five years planning experience with the Palmerston North City Council in both regulatory and policy roles, gave evidence for Council. He is at present a policy planner in the Council's City Future Unit.
10. Mr Mackay explained that earthworks, as an activity, with their associated potential adverse effects, present some unique planning considerations. Council recognised that earthworks are often an essential component of subdivision, land development, land use activities and building construction. It also accepted that earthworks do not necessarily always result in adverse effects. A sound planning approach needs to deal with these diverse factors.
11. The preparation of such a plan change is not necessarily a straightforward task. Earthworks can result in a range of adverse effects. They span the function of regional council and territorial authorities. They are subject not only to the RMA but also to the Building Act 2004 and a number of New Zealand Standards.
12. Council historically had only to a minimal extent managed the effects of general earthworks through the District Plan. However, over the last 10 years situations have arisen where the potential adverse effects of earthworks have been observed. The Council has responded incrementally to improve the management of earthworks activities. The proposed plan change represents the next major stage.
13. The proposed plan change builds on that history to establish a more comprehensive response to the potential and actual effects of larger scale earthworks including effect on sensitive land uses. The Council response is aimed at taking a targeted approach to assess earthworks where concern exists over the potential adverse effects while at the same time, recognising the importance of earthworks in land development.
14. Mr Mackay stated that the objective of the Plan Change was:
"...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".
15. A statement of evidence by Mr Anthony McGlynn, Council Subdivisions Engineer, with over 25 years civil engineering experience, was adopted by Mr Mackay and produced as an appendix to his Report. Mr McGlynn referred to the limited provisions in the existing District Plan, for managing earthworks and their

effects. In his opinion, the plan change proposals would ensure that in the future, adverse effects of earthworks are sufficiently avoided, remedied or mitigated.

16. Mr Mackay went on to consider the application of RMA statutory requirements to the particular provisions of the proposed plan change. He was satisfied it complied with Part II, RMA. As to section 31 he confirmed that the plan change proceeded only after a review of existing management of earthworks activities, particularly having regard to the performance of the District Plan objectives, policies. The plan change sought to establish and implement amended provisions to achieve integrated management of the effects of the use and development of land and associated natural and physical resources. The strengthening of Council's land use and subdivision controls regarding earthworks will assist in managing the effects of land use and subdivision. The plan change was therefore consistent with section 31 and wider RMA functions.
17. In his opinion the proposed plan change also satisfied the requirements of section 32. Before arriving at that conclusion he followed the guidelines set out in *Eldamos Investments Limited v Gisborne District Council* (W047-05). These included whether the proposed policies and rules are the most appropriate means of achieving the objectives, having regard to their efficiency and effectiveness relative to other means. Our attention was drawn to that judgment's findings that:

Efficiency – is the ratio of benefits to costs (the higher the ratio, the greater the efficiency), with all benefits and costs (non-monetary and monetary, intangible and tangible, long-term and short-term) included, and with no double counting of either benefits or costs.

Effectiveness – is a measure of how successful a policy or method would be in achieving an objective.

18. Applying those criteria, Mr Mackay's evaluation of the costs and benefits of the new objective and policies concluded that the proposed plan change was the most appropriate way to achieve the purpose of the RMA.
19. Mr Mackay pointed out that earthworks may be linked to a number of potential adverse effects. However, they are often an essential part of land development. The proposed plan change needed to take that into account. This had resulted in the proposed thresholds not applying across all zones. They are targeted to areas where earthworks issues have arisen. The thresholds have been set at a level to enable flexibility to undertake development in the majority of situations. He concluded that this approach would result in the proposed plan change promoting the sustainable management of the City's existing resources by avoiding, remedying, or mitigating the potential adverse effects of earthworks.
20. He pointed out the function of safeguarding the life supporting capacity of air, water, soil and ecosystems with respect to earthworks is the focus of the Regional Council. He then examined in detail the regional planning instruments and considered that the proposed plan change was consistent with relevant objectives and policies of those instruments. He also noted that Horizons had lodged a submission in general support.
21. After a similar analysis he reached the conclusion that the proposed plan change was also consistent with relevant objectives and policies of the District Plan. This conclusion extended to other relevant plans and strategies including:

- Palmerston North City Council Engineering Standards for Land

Development - including the Tonkin and Taylor policy;

- New Zealand Standards;
- Building Act and the Building Code.

22. Mr Mackay then dealt with the thirteen lodged submissions. He stated that those which opposed or only partly supported the proposed plan change, raised common threads which he grouped into the following four categories:

(1) The purpose of the plan change

(a) generic earthworks provisions:

The submission in opposition of Kevin O'Connor & Associates Ltd stated that earthworks provisions should only manage specific effects such as sensitive landscapes, instability, flooding risks. The submission asserted that establishing generic earthworks provisions without justification of specific issues would constitute exhaustive red tape.

Mr Mackay's response was that section 31 RMA generally applies and in particular sub-sections (1)(a) and (b). Council had observed the performance of the existing earthworks provisions over the last 10 years. They were last reviewed in 2001. Council concern was the established limitations of the current District Plan to assess the potential adverse effects of earthworks. A key issue dealt with was the development of land in anticipation of building or subdivision. A majority of earthworks development may occur at or before the subdivision stage. It would be inequitable to adopt a double-standard approach of permitting pre-subdivision earthworks and only carrying out assessment on the grant of a subdivision consent.

(b) on-site versus off-site effects:

Mighty River Power ("MRP") initially generally supported the proposed plan change if limited to where associated on-site earthworks migrated beyond a development site. The lodged submission view was that the role of developer was to ensure that any adverse effects resulting from earthworks activities can be adequately controlled within the development site. This submission was supported by TrustPower and Powerco. Later MRP decided not to pursue the objection, accepting that it was desirable for both on-site and off-site effects to be controlled.

Mr Mackay stated that recent occurrences have demonstrated that on-site adverse effects have resulted from earthworks activities. These have included visual effects, destruction or natural or cultural heritage and instability effects. Local examples include the significant changes to landforms as part of Aokautere development, the Napier Road terrace and stockpiling of earth and associated runoff in the North East Industrial Zone.

(c) policy validity:

MRP also objected to the Restricted Discretionary Policy 1.2 using the term "includes". It submitted that resulted in the list of effects which Council could take into account not being exhaustive. That was inappropriate for a discretionary restricted activity rule. The submission was based on the statutory scheme of the RMA under which for discretionary restricted activity consents, a District Plan requires to list all those parts of the Plan for which a discretion, whether to grant a consent, are expressly stated. The use of the word "includes" would result in the list not being exhaustive. This would in effect remove the present important distinction between

discretionary restricted and discretionary unrestricted consents. Council accepted that submission and also accepted the further submission on the unsatisfactory alignment of Policy 1.2 and Rule 6.3.71. It offered to explain the inter-relationship by a text explanation.

(d) effects on critical infrastructure:

Mr Mackay made a twofold response to power companies submission that the plan change should be extended to take into account potential adverse effects on their critical infrastructure. He pointed out the *National Policy Statement on Electricity Transmission* deals with both the effects of electricity transmission and the effects on electricity transmission. In opposing the first submission, we were informed that the issue will be addressed through the pending District Plan review, to ensure a consistent and rounded approach. As to the second submission, he stated the Utilities Section 23 of the District Plan, Rule 23.7.1 already permits the construction, maintenance and upgrading of utilities. On those bases no change was required.

(2) Threshold justification

The various zone thresholds recognised that while earthworks activities are often essential to development they can result in adverse effects. The Council needs discretionary power where a development crosses established thresholds. The proposed thresholds related to volume, location and height limits. On a zone basis these include the following thresholds:

(a) Residential Zone

A resource consent was initially sought for earthworks exceeding the 50 cubic metres threshold. This original proposed threshold was considered to reflect the more sensitive nature of the Zone, correspond with its purpose, objectives and policies and took into account other territorial authorities best practice. After considering submissions, Council recognised the proposed threshold might be less efficient and effective. The plan change was not intended to curb development or require every dwelling to obtain a resource consent for all earthworks. Council was now recommending a volume threshold of 500 square metres to an area threshold.

The proposed height threshold of 1.5m was to fit within the existing District Plan framework. Council had given further consideration to this threshold and noted that the District Plan excludes retaining walls less than 1.5m height as a “building” so they do not require setbacks from a boundary. By permitting earthworks up to 1.5m in height enables development to occur without unduly limiting property owners. In any event the Building Code and New Zealand standards still apply even when a structure does not require Building Consent. It was now proposed to exempt, in part, the construction of dwellings from the proposed height rule. This will provide greater flexibility in the construction of dwellings. Any potential effects are considered to be minor, and sufficiently managed by the Building Consent process. Nor is any separation distance threshold proposed for the Residential Zone.

(b) Industrial Zone

Mr Mackay in dealing with submissions questioning the proposed 1,000 cubic metres threshold for industrial development, stated this was based on a review of industrial building development from 1997-2007 including building footprints and lot sizes. The Council database of vacant industrial land provided further information on the location of available sites, topography and the proximity to sensitive land-uses. This

review supported the removal of Industrial Zone thresholds with the exception for the recently created Midhurst Street Industrial Area.

(c) North East Industrial Zone

Council considered the proposed 1,000 cubic metres threshold for industrial development in the North East Industrial Zone remained necessary. This was because the Zone comprised a large area involving major earthworks still under development. It was also considered that given the scale of land alteration necessary to develop the land in this Zone, the 1,000 cubic metres threshold, as to amount, was appropriate.

Mr Mackay pointed out that the District Plan definition of 'site' while applicable to other Zones was largely irrelevant for the majority of land within the North East Industrial Zone. This is because sites have been privately developed under private leases without the need for a conventional registered subdivision. The plan change proposes to meet this position by limiting earthworks to a notional boundary around particular active development. This would require the boundary requirement to be amended to refer to the notional boundary of such areas of land.

(d) Rural Zone

Mr Mackay considered the equity issues raised by some submitters in relation to the Rural Zone 1000 cubic metres and in particular its impact on a smaller property compared to a large farm. While recognising the submission had some validity, it was necessary to have regard to the desirable practical simplicity of the District Plan. A single threshold provides a simple and effective tool. The effects based RMA results, where earthworks of 1000 cubic metres are involved, in the risk of adverse effects, regardless of lot size. To meet in part the submissions it was now recommended for resource consent purposes, that the construction of dwellings be exempted, in part, from the height threshold. This would correspond with the new varied recommendation for the Residential Zone.

(3) Exemptions of Proposed Rule 6.3.6.2

This proposed Rule deals with exclusions from Earthworks Rule 6.3.6.1 and generated five submissions. In response Mr Mackay recommended (1) clarifying that earthworks undertaken as part of subdivision development are also subject to the exemptions of proposed rule 6.3.6.2; (2) inserting a note that subdivision rules subject to exemptions of Rule 6.3.6.2, were to ensure consistency in the application of earthworks rules are applied; (3) including in the Rule 6.3.6.2(i) exclusions, the harvesting of crops and the recognition that productive land is not necessarily constrained to Rural Zone land; (4) Rule 6.3.6.2(i) be amended so as not to unduly impact on rural land rezoned to residential purposes but remaining undeveloped and retaining its original productive land use. Mr Mackay recommended that the road construction and remaining submission be rejected.

(4) Clarifications and Technical Changes

Mr Mackay also dealt with five submissions seeking clarification and technical changes. In response he recommended a note be added at the end of the definitions to refer to the existence of exemptions under Rule 6.3.6.2(i). In his opinion the other concerns raised were already adequately provided for or addressed.

(5) Minor clarifications and corrections

Mr Mackay recommended two further amendments: (1) the “height” definition in Section 4 definitions be amended to remove a potential ambiguity; (2) in respect of the general earthworks provisions of the proposed plan change and the Natural Hazards Section 22, that the *Explanations* for Rules 10.8.1.7 and 22.9.2.1 be amended as set out in Appendix G in order to remove potential ambiguity. This would make it clear that an earthworks activity may require resource consent under the provisions of Sections 6 and 10 or 22.

23. The recommended amendments, many of which arose from submitters suggestions, were summarised by Mr Mackay as follows:

- (1) amendment of the permitted activity thresholds;
- (2) removal of the Industrial Zone proposals with the exception of the Midhurst Industrial Area;
- (3) clarifying Section 7 Subdivision Section changes that the exclusions apply at subdivision stage;
- (4) clarifying that when any threshold performance conditions is surpassed the activity defaults under Rule 6.3.7.1;
- (5) clarifying the earthworks proposals do not remove the existing specific Aokautere Development Area and Land Restructuring provisions;
- (6) minor amendments clarifying the wording of a number of policies, definitions, assessment criteria and explanations;
- (7) consequential relief to give effect to the above specific amendments

24. Mr Mackay finally submitted that the proposed plan change provisions were the result of a comprehensive review of how earthworks are undertaken by developers and managed by Council. The new provisions seek to strengthen existing provisions better to achieve the sustainable management of earthworks while ensuring potential adverse effects are sufficiently avoided remedied or mitigated. The section 32 analysis undertaken was comprehensive and meets all RMA requirements.

Submitters

Mr Tony and Mrs Lynne Bishop

25. Mr and Mrs Bishop’s lodged submission sought several amendments to protect residents properties. The amendments were that (1) Section 6.3.6(b)(i) for the Residential Zone be changed to 20 cubic metres (volume) and that the 1 metre be measured vertically; (2) a new (iii) be located closer than 3 metres from a boundary; (3) Section 6.3.7.1, Policy (a) be amended to read ‘To ensure that earthworks do not adversely affect the residential amenity of adjoining neighbours by asking their permission for the work to proceed. They submitted that the District Plan be amended in the foregoing terms to protect residents properties. Council opposed this submission on the general ground that the proposed plan change already adequately dealt with these concerns.

Proarch Architects Ltd

26. Proarch opposed the Residential Zone earthworks threshold of 50 cubic metres in any 12 month period observing that would require a consent for most new

building works. The Industrial Zone threshold was also opposed. Council accepted the Residential Zone provision would be inefficient and ineffective. They advanced an alternative volume threshold of 500 square metres. This was accepted by Council. The other objection was met by recommending that generally the earthworks provisions do not apply to the Industrial Zone.

Heritage Estates Ltd, Kingsgate Holdings Ltd, John Russell Farquhar and Eileen Maria Farquhar, Stuart Russell Farquhar Estate, Dolomite Holdings Ltd, Acquisition Properties Ltd, Balmoral Commercial Ltd and Pioneer Farms Ltd

27. The joint submission of these parties lodged on their behalf by Proarch Architects Ltd sought, with expanded details, the same two changes as in their architects prior submission. Council made the same response generally accepting the objections.

TrustPower Ltd

28. TrustPower supported the changes to Section 6 General. While generally also supporting the new performance condition for Section 7 Subdivision, it submitted that the land use provisions of Section 7 should not be more restrictive than the subdivision provisions. It was submitted that the plan change did not state or imply that the subdivision exemption in Rule 6.3.6.2 extended to earthworks. There was therefore no exemption for earthworks associated with rural uses, trenching, or backfilling ancillary to the installation of utilities and services when undertaking earthworks on land being subdivided. Trust Power sought an amendment expressly exempting such earthworks. Council accepted these submissions. TrustPower also lodged a further submission supporting in part the submission of Horticulture New Zealand in relation to further exclusions from Rule 6.3.6.2. The further submission also supported in part the submission of Mighty River Power Ltd in respect of Rule 6.3.3, Policies 1.1 and 1.2. and on the several other rules sought to be amended in the submission of Transpower New Zealand Ltd. Council considered these further submissions would be more appropriately dealt with during the pending District Plan review.

Mr Noel Olsson

29. Mr Olsson agreed in principle with the proposed plan change provisions. His specific concerns were that (1) a definition was required for the area of land subject to earthworks restrictions; (2) the definition of site boundary should expressly include a road frontage; (3) a note should be inserted referring to existing provisions for earthworks close to waterways; (4) storm water drain references should include both open piped drains and waterways; (5) conditions should make it clear that "disturbance" refers to creation and removal including the erection of stopbanks and bunds; (6) restrictions should be imposed on the disturbance of earth and vegetation of existing terraces and embankments. Council responded that most of his concerns were adequately met by the proposed plan change.

Horizons Regional Council

30. The Regional Council supported the proposed plan change in its entirety.

Horticulture New Zealand

31. Horticulture New Zealand supported the intent of the proposed plan change. Its major concern was that the wide definition of "earthworks" might capture horticultural activities on production land. The submission sought an exclusion of

harvesting of crops, especially root crops, not only in the Rural Zone but to other zoned land used for agricultural and horticultural activities. Further, that the definition of “earthworks” should list or note the exclusion. Council accepted this submission.

Kevin O’Connor & Associates

32. Several objections were raised in this submission. First, that the quantitative measures used to determine the status of an activity were on the merits not justified. No justification had been given for the 50 cubic metres threshold for the Residential Zone. Secondly, the proposed plan change will increase application processing and cause significant time delays for developments. In terms of avoiding, remedying and mitigating effects, they are unnecessary, prohibitive and unsubstantiated. Thirdly, the set of generic performance conditions appear to have been taken from other District Plans without reflecting on the reality of the particular Palmerston North City context. Fourthly, existing controlled activity subdivisions if including roading, will also require a discretionary restricted land use consent. In the submitter’s experience this would apply to almost 95% of subdivisions. Fifthly, these objections were not met by restricting Council discretion for these may be emotively or perception driven creating notification uncertainty. Council use of Sections 93 and 94 could unreasonably hold up resource consents. If the proposed plan change were to proceed more relevant suggested criteria should be added to Section 6 General and exemptions in earthworks rules for subdivisions.
33. Council’s accepted the criticism of the 50 cubic metres threshold also made by Proarch and by its clients. The other objections were rejected. Council pointed out that Section 31 analysis and observations over 10 years supported a generic approach. The exclusion of roading related earthworks would be contradictory to the proposed objectives.

Mighty River Power

34. Mighty River Power Ltd (“MRP”) lodged a submission which generally supported the intent of the plan change. However, it sought changes to Section 6.3.3 Policy 1.1 and Policy 1.2 better to reflect the purpose of the plan change and the proposed rules. MRP submitted that the role of the developer was to ensure that any adverse effects within a development site resulting from earthworks were adequately controlled. Council’s concern was where the adverse effects might migrate beyond the site. It sought to have that distinction reflected in Policy 1.1. MRP further submitted that Policy 1.2 is not well aligned with Rule 6.3.7.1 Districted Activities (Restricted). The concern was that the Policy listed effects may go beyond the Council rule restricted discretion. Policy 1.2 wrongly used the word “includes” indicating that the list was not exclusive. This was inappropriate for a restricted discretionary activity rule. The decision sought was to:
 - (a) Amend Section 6.3.3 Policy 1.1 to read: *To limit the location and scale of earthworks where offsite adverse effects may result*
 - (b) Amend Section 6.3.3 Policy 1.2 to read: *To avoid, remedy, or mitigate adverse effects on the environment from earthworks on:*
 - (i) *Landscape and visual amenity values;*
 - (ii) *Adjoining properties;*
 - (iii) *Natural hazards and processes.*

- (c) Retain all other parts of the proposed plan change without change.
 - (d) Make any necessary consequential amendments.
35. At the hearing Mr Miles Rowe, Bachelor of Science (Geology), Diploma of Applied Environmental Technology with over 12 years local body and private sector resource consent experience and an MRP environmental adviser gave evidence. He confirmed and expanded on the contents of the prior lodged written MRP submission. After referring to existing District Plan provisions which already to a degree controlled earthworks he stated that MRP supported the plan change on grounds of clarity, certainty and consistency.
 36. After further consideration he was now satisfied that there was a need for Council to control on-site effects including for land stability. MRP no longer wished to pursue Policy 1.1 being limited to off-site effects. He also noted that Council now accepted that the word “includes” required to be deleted from Policy 1.2 so that the discretionary list became exclusive.
 37. The remaining MRP concern was the policy reference to effects on “*Natural Land Form*” was a matter not listed in the rule nor defined in the District Plan. There was no Plan guidance on its meaning or application. Further, the term was included in the same bullet point as “*Landscape*” implying there was a connection between the two terms. In Mr Rowe’s opinion there was a difference. Earthworks necessarily change land forms. This is a different effect from effects on landscape. His recommended solution was simply to delete the reference to *Natural Land Form* on the ground that would not reduce Council’s proposed wider powers.
 38. Council during its reply agreed that “*landscape*” and “*natural land form*” dealt with different, if related, issues. It accepts that Policy 1.2 should be amended to provide for each term in separate bullet points. In response to a Committee enquiry to supply a definition of “*natural land form*” it has done so but submits its inclusion is unnecessary. MRP supports its exclusion.

Transpower New Zealand Ltd

39. Transpower is the State Owned Enterprise which controls the New Zealand wide network of high voltage transmission lines, substations, switchyards and control centre linked by a telecommunications network known as the “national grid.”
40. Transpower supported the main thrust and intent of the proposed objectives, policies and rules. The submission focussed on those issues it perceived as unduly restricting or limiting its existing and future operations. The amendments sought were both to protect the national grid from adverse effects associated with earthworks while not unreasonably or unnecessarily restricting the maintenance, removal, replacement and upgrading of existing transmission assets. We were referred to the ‘*National Policy Statement on Electricity Transmission*’ 13 March 2008 which deals with several matters relevant to this submission.
41. The submission sought amendments to Rules 6.3.1 or 6.3.6.2 and additional bullet points and in some cases explanation notes, to the proposed Section 6.3.2, 6.3.3, 6.3.4, 6.3.6.1(a), 6.3.7.1, 7.7.2.1(3), 7.9.2.1(1), 7.16.2.3(1)2. These were particularised in the schedule accompanying the submission.

42. To the extent that Council recognised the force of these submissions, it considered more appropriate to deal with them during the pending District Plan review.

Mrs Jenny Olsson

43. Mrs Olsson appreciated the reason for the proposed plan change and remarked that in her locality over the past 12 months the land had been re-contoured out of recognition. However, she considered there needed to be more clarity on site areas. It would also be desirable for developers to provide transparent overlays so that final earth movements can be better assessed. This would also enable bund size to be monitored and winter waterways observed to ensure they are not blocked. Council explained that options to achieve the submitter's concerns already administratively existed as part of officers discretion. Depending on the scale of a particular activity information requirements may differ. It was not considered necessary to impose mandatory requirements.

Powerco Ltd

44. Powerco lodged a submission in support of the submissions of TrustPower Ltd and Transpower. It sought to have Rule 6.3.3, Policy 1.1 amended. These were also matters which Council considered would be better dealt with during the pending District Plan review. The submission of Mr and Mrs Bishop was opposed.

IV. FINDINGS

42. We have considered all of the evidence relating to the application against the background of the Part 2 purpose and principles and other relevant provisions of the RMA, the Regional Policy Statement and the District Plan, before arriving at our findings.
43. We are satisfied that the proposed plan change promotes the sustainable management of natural and physical resources by enabling people to provide for their social and economic wellbeing and for their health and safety, while balancing the needs of future generations and the potential for adverse effects.
45. We accept the contents and conclusions of the lodged 32 RMA analysis. The analysis establishes that in terms of alternatives, benefits and costs, including having regard to efficiency and effectiveness, the proposed plan change accords with the purpose and principles of the RMA.
46. We are satisfied the plan change should include a reference to "*natural land form*." It is a distinct term and describes a different resource to "*landscape*." Policy 1.2 requires to be redrafted so that each resource is listed in a separate bullet point. After hearing further submissions we accept that it is not necessary for the District Plan to include a definition of "*natural land form*." However, an express definition may be an appropriate matter to consider in the pending District Plan review.
47. We also find that the proposed plan change, with one later specified limited exception, need not extend to the Industrial Zone. The reason for the exclusion not applying to the North East Industrial Zone is that zone is still in a state of development which involves major earthworks. A similar if lesser position exists for the Midhurst Industrial Area within the Industrial Zone. We will provide for the

proposed plan change to apply both to the North East Industrial Zone and the Midhurst Industrial Area.

48. The existing Section 4 definition of “*site*” applies in all zones and means an area of land capable of being disposed of separately. The definition applies to all freehold land and other land for which approved plans of registered surveyed lots, including all boundaries, have been deposited with Land Information New Zealand. The definition does not include those areas of the North East Industrial Zone where the freehold owner exceptionally has granted long term or other leases for privately designated lots within that land. We are satisfied that it is desirable that the proposed plan change should apply not only to Land Information New Zealand approved, surveyed and registered lots but also to other separate privately leased areas. Council proposes to deal with this uncommon position by limiting earthworks to a notional boundary around such particular active development. We agree this should be supported by a new Section 4 provision defining “*notional site*.” We find these changes an acceptable solution.
49. The decision by Council generally not to proceed with proposed amendments to the Industrial Zone resulted in our not having to consider submissions on the unaffected land in that Zone.
50. Many of submissions objecting to the originally proposed plan change have been accepted by Council. After consideration we adopt those acceptances in this Decision.
51. The principal objections not at this stage accepted by Council relate to utilities concerns of the electricity power companies who lodged submissions. We accept the Council submission that these matters are at present provided for at a higher national policy statement level. We also accept that the appropriate time to ensure that the District Plan provisions are overall consistent with the national policy statement, is during our pending District Plan review.
52. In relation to the remaining submissions we uphold the acceptances and rejections of Council, in whole or in part, as advanced in evidence.
53. The submissions of the eleven original submitters and the three further submissions appear at pages 111 to 174 of the Order Paper. We have considered each together with Council responses. In terms of Clause 10(1) of Schedule 1, RMA we have variously accepted or rejected those submissions in whole or in part for the foregoing reasons including under the relevant subject matter. In respect of the individual submitters we further particularise our reasons as follows:

Submitters	Lynne and Tony Bishop
Decision Requested	<i>Amend the Plan Change.</i>
Decision	Reject the submission
Reasons	The reasons include those outlined in paragraph 25 of this Decision.
Submitter	Proarch Architects Limited
Decision Requested	<i>Oppose these changes and appreciate a review of the earthworks quantity thresholds.</i>
Decision	Accept in part / reject in part the submission
Reasons	The reasons include those outlined in paragraph 26 of

	this Decision
Submitters	Heritage Estates Ltd, Kingsgate Holdings Ltd, J R Farquhar & E M Farquhar, S Russell Farquhar Estate, Dolomite Holdings Ltd, Acquisition Properties Holdings Ltd, Acquisition Properties NZ Ltd, Balmoral Commercial Ltd & Pioneer Farms Ltd
Decision Requested	<i>Oppose these changes and appreciate a review of the earthworks quantity thresholds.</i>
Decision	Accept in part / reject in part the submission
Reasons	The reasons include those outlined in paragraph 27 of this Decision.

Submitter	TrustPower Limited
Decision Requested	<p>1.(i) <i>Retain the exemptions R.6.3.6.2 (i) and (ii),</i> 1.(ii) <i>Any similar amendments to like effect.</i> 1.(iii) <i>Any consequential amendments that stem from the retention of Rule 6.3.6.2.</i> 2.(i) <i>Amend Rule R.7.16.1.2(g) to include an exemption for earthworks associated with the following activities (as provided in Rule 6.3.6.2(ii)) from complying with Permitted Activity standards, as follows:</i></p> <p><i>7.16.1.2(g) Earthworks</i> <i>Any earthworks undertaken on the land being subdivided shall comply with Rule 6.3.6.1(a) for Permitted Activity Standards</i></p> <p><i>Earthworks associated with the following activities shall be exempted from the requirements of R 6.3.6.1 of this Plan:</i> (i) <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 the Horticultural and Agricultural activities in the Rural zone.</i> (ii) <i>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.</i> 2.(ii) <i>Any similar amendments to like effect.</i> 2.(iii) <i>Any consequential amendments that stem from the amendment of Section 7 as proposed in this submission.</i></p>
Decision	Accept the submission
Reasons	The reasons include those outlined in paragraph 28 of this Decision.
Submitter	Noel Olsson
Decision Requested	<i>The submitter made a series of comments and questions on the suitability of the plan change request.</i>
Decision	Accept in part/reject in part the submission
Reasons	The reasons include those outlined in paragraph 29 of this Decision
Submitter	Name: Horizons Regional Council
Decision Requested	<i>That the provisions contained in the notified proposed Plan Change are maintained in the main.</i>
Decision	Accept the submission
Reasons	The reasons include those outlined in paragraph 30 of

	this Decision
Submitter	Horticulture New Zealand
Decision Requested	<p>Amend Exclusions Rule 6.3.6.1 as follows:</p> <p>“Earthworks associated with the maintenance of farm tracks, fences and fence lines, cultivation of land, <u>harvesting of crops</u>, and the clearing of drains as part of horticultural and agricultural activities <u>on production land in the Rural Zone</u>.”</p> <p>Add a note to the definition of earthworks as follows:</p> <p>Exclusions to the earthworks rules are listed in R 6.3.6.2. Or List the exclusions in R 6.3.6.2 in the Earthworks Definition.</p>
Decision	Accept the submission
Reasons	The reasons include those outlined in paragraph 31 of this Decision
Submission	Trustpower Ltd
Decision	Accept the submission
Reasons	The reasons include those outlined in paragraph 28 of this Decision.
Submitter	Name: Kevin O'Connor & Associates Ltd
Decision Requested	<p><i>Should the proposed plan change request be granted, more relevant performance conditions be placed in Section 6 for permitted activity performance conditions. These performance conditions should reflect the areas in which Council specifically wish to protect from the effects of earthworks, and justify the quantities set as a performance criteria.</i></p> <p><i>Should the proposed plan change request be granted, that exemptions be included in the earthworks rules for subdivision and land modification related to road construction.</i></p>
Decision	Accept in part / reject in part the submission
Reasons	The reasons include those outlined in paragraph 33 of this report.
Submissions	Mighty River Power
Decision Requested	<p>(a) <i>To amend 6.3.3 Policy 1.1 to read:</i></p> <p><i>To limit the location and scale of earthworks where offsite adverse effects may result.</i></p> <p>(b) <i>To amend 6.3.3 Policy 1.2 to read:</i></p> <p><i>To avoid, remedy, or mitigate adverse effects on the environment from earthworks on:</i></p> <ul style="list-style-type: none"> • <i>Landscape and Visual Amenity Values;</i> • <i>Adjoining Properties;</i> • <i>Natural Hazards and Processes.</i> <p>(c) <i>To retain all other parts of the Plan Change without change.</i></p> <p>(d) <i>Any consequential amendments that stem from this submission.</i></p>
Decision	Accept in part / reject in part the submission

Reasons	The reasons include those outlined in paragraph 34 of this Decision.
Further submission	Trustpower New Zealand Ltd.
Decision	Accept in part/reject in part the submission
Reasons	The reasons include those outlined in paragraph 29 of this Decision.
Submitter	Transpower New Zealand Ltd
Decision Requested	<p>The specific amendments sought below, and any additions, deletions or consequential amendments made necessary as a result of the matters raised in these submissions; and, any other such relief as to give effect to this submission.</p> <p>Amend the Plan Change as follows:</p> <p>(i) Include an additional bullet point to 6.3.2 Resource Management</p> <p>...</p> <ul style="list-style-type: none"> • Construction impacts including dust and noise effects; and • The impact of runoff and sedimentation, <i>and</i> • <i>Effects on Critical Infrastructure.</i> <p>ii) Include an additional bullet point to 6.3.3 Objectives and Policies (Policy 1.2):</p> <p>...</p> <ul style="list-style-type: none"> • Flooding Effects; <i>and</i> • <i>Effects on Critical Infrastructure</i> <p>are avoided, remedied, or mitigated.</p> <p>iii) Include an additional bullet point and explanation to 6.3.4 Method:</p> <p>...</p> <ul style="list-style-type: none"> • Building Act 2004 • <i>Industry Codes</i> <p>Explanation</p> <p>...</p> <p>It should also be noted that Horizons Regional Council also plays a role in managing earthworks effects with regard to air and water quality. <i>Network Utility operators often work within model industry codes and model standards, for example electricity transmission lines, with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001).</i></p> <p>iv) Include an additional bullet point to 6.3.5 Environmental Results Anticipated:</p> <p>...</p> <ul style="list-style-type: none"> • Earthworks construction is carried out in an appropriate manner for the surrounding area. • Significant adverse effects of development are avoided, remedied, or mitigated. • <i>Development that takes account of Critical Infrastructure.</i> <p>v) Include an additional bullet point to Rule 6.3.6.1(a)-(d) Performance conditions:</p> <p>...</p> <p>(a) Rural Zone</p> <p>...</p> <p>(iii) Be located closer than 3 metres to a site boundary;</p>

	<p><i>(iv) Be located closer than 6 metres to any transmission line support structure.</i></p> <p>(b) Residential Zone</p> <p>...</p> <p>(ii) Alter the existing ground level by more than 1.5 metres (measured vertically);</p> <p><i>(iv) Be located closer than 6 metres to any transmission line support structure.</i></p> <p>(c) Industrial Zone</p> <p>...</p> <p>(iii) Be located closer than 3 metres to a site boundary;</p> <p><i>(iv) Be located closer than 6 metres to any transmission line support structure.</i></p> <p>(d) North East Industrial Zone</p> <p>...</p> <p>(iii) Be located closer than 3 metres to a site boundary;</p> <p><i>(iv) Be located closer than 6 metres to any transmission line support structure.</i></p> <p>Explanation</p> <p>...</p> <p>Stability – earthworks can undermine the stability of the natural land form and accelerate the hazard risk. <i>Earthworks may also directly or indirectly undermine or affect the structural and system integrity of existing transmission line support structures, which can create safety hazards or result in a power outages to certain areas;</i></p> <p>...</p> <p>vi) Include an additional bullet point to 6.3.7.1 Rules: Discretionary Activities (Restricted):</p> <p>...</p> <ul style="list-style-type: none"> • Effects of erosion and sedimentation • Effects on overland flow paths • <i>Effects on Critical Infrastructure.</i> <p>Explanation</p> <p>...</p> <p>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 (<i>for example, the Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001)</i>). Council may require an earthworks management plan to be submitted in support of an application...</p> <p>vii) Include an additional bullet point to 7.7.2.1(3) Rules: Discretionary Activities (Restricted):</p> <p>...</p> <ul style="list-style-type: none"> • Effects of erosion and sedimentation • Effects on overland flow paths • <i>Effects on Critical Infrastructure</i> <p>viii) Include an additional bullet point to 7.9.2.1(1) Rules: Discretionary Activities (Restricted):</p> <p>...</p> <ul style="list-style-type: none"> • Effects of erosion and sedimentation • Effects on overland flow paths
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	<ul style="list-style-type: none"> • <i>Effects on Critical Infrastructure</i> <p>ix) Include an additional bullet point to 7.16.2.3(1) Rules: Discretionary Activities (Restricted):</p> <p>...</p> <ul style="list-style-type: none"> • Effects of erosion and sedimentation • Effects on overland flow paths • <i>Effects on Critical Infrastructure</i> • Those matters described in Sections 108 and 220 of the Resource Management Act 1991. <p>B Amend Rule 6.3.1 or Rule 6.3.6.2 to include provisions that permit earthworks in association with the maintenance (including replacement and removal) and upgrading of the existing transmission network, within reasonable environmental parameters, thus ensuring the ongoing operation, maintenance, upgrading, and development of the electricity transmission network is not compromised.</p> <p>There are several means of achieving this. The preferred option, would be to adopt the following changes:</p> <p>i) Include an additional bullet point and explanation to R6.3.6.2 – Exclusions from Earthworks Rule 6.3.6.1:</p> <p>...</p> <p>(v) Flood Protection works carried out or supervised by the Manawatu-Wanganui Regional Council.</p> <p>(vi) <i>Earthworks in association with the maintenance, removal, replacement and upgrading of National Grid Infrastructure.</i></p> <p>...</p> <p>Explanation</p> <p>Earthworks are in some cases considered a common aspect of landuse and development activity, such as tilling of soil for horticultural activities, the maintenance of farm tracks, or the laying of infrastructure services <i>and the maintenance and upgrading of the National Grid</i>. In these circumstances the associated effects 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.</p> <p>OR</p> <p>ii) Amend Rule 6.3.6.1(a)-(d) to only apply the specific volume thresholds (e.g. tower by tower basis, no site allocation) for Earthworks associated with the maintenance, removal, replacement and upgrading of National Grid structures.</p>
Decision	Accept in part / reject in part the submission
Reasons	The reasons include those outlined in paragraph 39 of this Decision
Further Submitter	Powerco Ltd

Decision	Accept in part/reject in part the submission
Reasons	The reasons include those outlined in paragraph 43
Submitter	Jenny Olsson
Decision Requested	<i>Implement the Proposed Plan Change</i>
Decision	Accept in part / reject in part the submission
Reasons	The reasons include those outlined in paragraph 44 of this Decision.

V. GRANT OF PLAN CHANGE 42

51. We hereby for the foregoing reasons approve Plan Change 42 in the terms more particularly set out in the Schedule hereto which forms part of this Decision.

DATED 26 March 2009

**(Cr. Gordon Cruden)
Chairperson**

**(Cr. Anne Podd)
Committee Member**

**(Cr Annette Nixon)
Committee Member**

THE SCHEDULE

The following amendments to the Palmerston North City District Plan granted under the foregoing Decision are identified in this Schedule by *italics* while 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 *earthworks or where a landuse consent has been approved for earthworks pursuant to Rule 6.3.6.1*, 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.

Note: The District Plan contains exclusions to the earthworks provisions of Rule 6.3.6.1. Refer to Section 6 of the District Plan.

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.

Notional Site means:

(With respect to earthworks provisions in the North East Industrial Zone)

the extent of land within which the development is contained, as identified on the site development plans required for any resource consent or building consent.

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:

...

- (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:

6.3	<i>Earthworks</i>	6-19
6.3.1	<i>Introduction</i>	6-19
6.3.2	<i>Resource Management Issues</i>	6-19
6.3.3	<i>Objectives and Policies</i>	6-20
6.3.4	<i>Methods</i>	6-20
6.3.5	<i>Anticipated Environmental Results</i>	6-21
6.3.6	<i>Rules: Permitted Activities</i>	6-21
	<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 avoid, remedy, or mitigate any adverse effects on the environment from earthworks on:*
 - *Natural Land Form;*
 - *Landscape Values;*
 - *Visual Amenity Values;*
 - *Adjoining Properties;*
 - *Natural Hazards and Processes.*

Explanation

The objective and policies take the approach that earthworks are often essential as part of land development. However, earthworks activity may also result in a range of adverse effects. The objective and policies identify that earthworks should be limited where potential exists for adverse effects to occur, to enable consideration of the relevant matters.

This section of the Plan is consistent with the provisions of the Subdivision Section, the Rural Zone, Residential Zone, North East Industrial Zone, Cultural and Natural Heritage Section, and Natural Hazards Section. This section of the plan links with these other sections to provide a comprehensive framework for managing the potential adverse effects of earthworks.

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 following standards apply to earthworks located on any site in the following zones:

(a) Rural Zone

In the Rural Zone, no earthworks shall:

- (i) *Result in the disturbance of more than 1000m³ (volume) of land in any 12 month period, or*

- (ii) *Result in the alteration of 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:

- (i) *Result in the disturbance of more than 500m² of land in any 12 month period, or*
- (ii) *Result in the alteration of the existing ground level by more than 1.5 metres (measured vertically).*

(c) North East Industrial Zone

In the North East Industrial Zone no earthworks shall:

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

(d) Midhurst Street Industrial Area

In the Midhurst Street Industrial Area 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. *An earthworks activity will default to Rule 6.3.7.1 if there is non-compliance with any threshold in the subject zone.*
2. *Provisions (a)(ii), (b)(ii), and (c)(ii) apply as a vertical distance above and below the existing ground level, and apply as a combined vertical measurement.*
3. *For the purposes of performance condition (d)(i) and (iii) the term Notional Site has the same meaning as "Development" as defined in Section 4. For the purposes of this rule, land being developed means the immediate area of land upon which the development work is being carried out.*
4. *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);*
5. *Earthworks completed as part of Land Restructuring in the Aokautere Development Area under Section 22.9 'Land Instability' are further subject to those rules.*
 6. *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, harvesting of crops, and the clearing of drains as part of Horticultural and Agricultural activities on production land.*
- (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.*
- (vi) With respect to Rule 6.3.6.1(a)(ii) and Rule 6.3.6.1(b)(ii) only, earthworks as part of foundations for a dwelling or a swimming pool are exempted from the 1.5 height restriction. This exemption applies only to a cut made below the existing ground level, and for a distance of 2m surrounding the foundation (when measured in plan view).*

Explanation

Earthworks are in some cases considered a common aspect of landuse 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.

With respect to paragraph (vi), exempting dwellings from the height threshold provides flexibility for the construction of foundations and basements below ground level. Alternatively this will enable the design of a dwelling to take into account any undulating ground, and provide for dwellings to be recessed into any slope. The major adverse effect in this situation is with respect to stability, which can be addressed through the Building Consent process.

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.*
- (c) *Avoid material increases in the susceptibility of the land or adjoining land to flooding.*
- (d) *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 Limited Access Road	7-47
R 7.16.2.2	Any Subdivision that seeks access to a Restricted Access Road	7-48
R 7.16.2.3	<i>Any Subdivision that does not comply with Controlled Activity Performance Condition R7.16.1.2 (g) Earthworks.</i>	7-XX

...insert a new Performance Condition:

7.7.1 Rules: Controlled Activities

...

® 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.

NOTE: The Exemptions of Rule 6.3.6.2 apply.

...amend Rule 7.7.2.1 as follows:

7.7.2 Rules: Discretionary Activities (Restricted)

® 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

In the North East Industrial Zone, any earthworks undertaken on the land being subdivided shall comply with Rule 6.3.6.1(c) for Permitted Activity standards.

NOTE: The Exemptions of Rule 6.3.6.2 apply.

...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 the North East Industrial Zone, with 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*

- **The Midhurst Street Industrial Area in addition to the matters above, the following.**

...

- (x) With regard to earthworks activities, 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 (h) 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.

NOTE: The Exemptions of Rule 6.3.6.2 apply.

...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 Rooding 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 Hoko-whitu 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 Hoko-whitu 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 involving Undevelopable Land are also subject to the Earthworks provisions of Section 6 (General Section) of this Plan.

SECTION 12 – INDUSTRIAL ZONE

...add a Note To Plan Users under Rule 12.6.1 as follows:

12.6 Rules: Permitted Activities

® R 12.6.1 Permitted Activities

...

(ix) Midhurst Street Industrial Area

...

NOTE TO PLAN USERS:

...

Also refer to Section 6 regarding Earthworks Rules for the Midhurst Industrial Area.

...add a Note To Plan Users under Rule 12.6.2 as follows:

® R 12.6.2 Construction, Alteration of, and Addition to Buildings and Structures

...

(ix) Midhurst Street Industrial Area

...

NOTE TO PLAN USERS:

...

Also refer to Section 6 regarding Earthworks Rules for the Midhurst Industrial Area.

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.
Earthworks activities are also subject to the provisions of Section 6.*

