

NOTICE OF DECISION – RESOURCE CONSENT
Application Details:

| | |
|-------------------------|---|
| THE APPLICANT: | WOODGATE LIMITED (LU 7013) |
| LOCATION: | 131 PACIFIC DRIVE, PALMERSTON NORTH (LOT 1003 DP 490091) (RT: 706789) |
| ZONING: | RESIDENTIAL INCLUDING LIMITED DEVELOPABLE LAND IN THE AOKAUTERE DEVELOPMENT AREA (OPERATIVE DISTRICT PLAN) RESIDENTIAL, LOCAL BUSINESS, RECREATION, CONSERVATION AND AMENITY IN THE AOKAUTERE DEVELOPMENT AREA (PROPOSED PLAN CHANGE G) |
| ACTIVITY STATUS: | NON-COMPLYING |
| PROPOSAL: | TO UNDERTAKE EARTHWORKS, INCLUDING ON LIMITED DEVELOPABLE LAND, FOR THE PURPOSE OF FORMING A BUILDING PLATFORM FOR A FUTURE RETIREMENT VILLAGE |
| APPLICATION: | LU 7013 |

Pursuant to Sections 104, 104B, 104D and 108 of the Resource Management Act 1991 ('the Act') the Palmerston North City Council ('the Council') **grants** resource consent to the proposal to undertake earthworks, including on limited developable land, in the Aokautere Development Area, for the purpose of forming a building platform for a future retirement village at 131 Pacific Drive, Palmerston North (being LOT 1003 DP 490091) (RT: 706789), subject to the following conditions:

CONDITIONS:
GENERAL ACCORDANCE

1. The proposal must be in general accordance with the information provided with Application LU 7013 dated 31 August 2022 and the plans prepared by Pirie Consulting Limited, Earthworks for Retirement Village CTS Investments LLC referenced 2043-221, Revision B and dated August 2021, and;
 - i. the Erosion and Sediment Control Plan prepared by Enviroprac Ltd, Version 3 dated 11 June 2022 attached as Appendix D of the application;
 - ii. further information received **21st September 2022** via email being a partial response to the s92 request dated 16th September 2022;
 - iii. further information received **12th October 2022** via email being provision of the draft Earthworks Management Plan prepared by Thomas Planning Limited and the Geotechnical Review and Earthworks Methodology prepared by Land Development & Engineering, Project Reference: 23018P, dated 10th October 2022;

- iv. further information received **28th November 2022** via email being provision of ground contour plans prepared by Pirie Consultants Limited, Earthworks for Retirement Village CTS Investments LLC referenced 2043-221 Revision C and dated November 2022.

EARTHWORKS MANAGEMENT PLAN

2. The Consent holder shall submit to Palmerston North City Council's Monitoring and Enforcement Officer a copy of the final Earthworks Management Plan (EMP) for certification. The purpose of the EMP is to establish the detailed methodology and geotechnical supervision of the earthworks, and must include at least the following:
 - i. Details to demonstrate how conditions 8, 9, 10 and 11 will be complied with;
 - ii. Details of how construction traffic to and from the site will be managed;
 - iii. Details of how stormwater from the upstream residential catchment will be managed within the site during earthworks;
 - iv. A copy of the Erosion and Sediment Control Plan certified by Horizons Regional Council as required by the conditions of the regional consent **ATH-2022205153.00**;

*NOTE: For the purpose of clarification, the upstream residential catchment referred to in condition 2iii is the area defined in the map attached as **Appendix A** and forming part of this consent.*

3. Where Council withholds certification of the EMP on the basis that it does not address matters contained within Condition 2, the Council will advise the Consent Holder in writing, outlining the reasons why certification has been withheld. The Consent Holder must then submit the revised EMP for certification.
4. The Consent Holder shall not commence the earthworks until the EMP has been certified by Palmerston North City Council.
5. Any proposed amendments to the certified EMP must be confirmed in writing by the Consent Holder and must be certified in writing by the Palmerston North City Council prior to the commencement of any works to which the amended EMP relate.
6. The consent holder shall ensure that a copy of the final certified EMP, including any certified amendments, is kept onsite and is updated within five working days of any amendments being certified under condition 5 above.
7. The Consent Holder and appointed contractors must undertake all earthworks authorised by this consent in accordance with the certified EMP at all times until the completion of the activity.

CONSTRUCTION NOISE

8. The consent holder shall ensure that noise from earthworks and associated machinery movements complies with the applicable noise standards within Table 2 of NZS 6803:1999 Acoustics - Construction Noise or adopt the best practicable option at all times to ensure that the emission of noise does not exceed a reasonable level in accordance with Section 16 of the Resource Management Act.

DUST NUISANCE

9. The consent holder shall ensure the land disturbed by earthworks is regularly sprayed with water as necessary to ensure that dust nuisance is contained within the work site boundaries.

MATERIAL ON ROAD

10. The consent holder must ensure that all vehicles and earthmoving machinery exiting the site do not carry earthwork materials onto the surrounding roading network. In the event material is tracked onto the road, the consent holder must be responsible for cleaning and repairing the road back to its original condition.

REVEGETATION OF EXPOSED SURFACES

11. The Consent Holder shall ensure that at the completion of the authorised earthworks, any newly established or disturbed surface are revegetated.

HOURS OF OPERATION

12. The consent holder must ensure that any operation of machinery on the site associated with the authorised earthworks or transportation of fill to the site occurs between the hours of 7.30am and 6pm Monday to Saturday only. No works may be carried out on Sundays or Public Holidays.

HISTORIC EARTHWORKS

13. Prior to commencement of earthworks on the site, an Earthwork Completion Report (ECR) with a Schedule 2A certificate must be submitted to Council's Monitoring and Enforcement Officer for certification of the historical earthworks. The report must comply with NZS4404:2010, NZS4431:1989 and Council's Engineering Standards for Land Development 2021 (ESLD). The report must be certified by Council prior to Council reviewing a design report and earthwork drawings for the proposed earthworks.

NOTE: It is Council's expectation that an engineer not involved in the historic work will carry out their own verification testing of the historic earthworks rather than rely on the test results provided and anecdotal evidence.

ENGINEERING PLANS

14. Prior to the commencement of earthworks on the site, the Consent Holder must submit a earthworks design report with earthwork plans to Council's Monitoring and Enforcement Officer for certification. The earthworks design report and earthwork plans must comply with NZS4404:2010, NZS4431:2022 and Council's Engineering Standards for Land Development (ESLD) 2021. No earthworks are to commence until the design earthwork report and earthwork plans have been certified by Council.

NOTE: It is Council's expectation that the earthworks design report is to include clear drawings, a specification, construction methodology, silt and erosion control plans, monitoring point locations and survey pin details, and including any retaining walls required along the boundary with adjacent residential properties.

15. Prior to the commencement of earthworks on the site, the Consent Holder must submit a Settlement Monitoring Plan (SMP) to Council's Monitoring and Enforcement Officer for certification. The SMP must detail how ground movement will be monitored in accordance with NZS4404:2010, NZS4431:2022 and Council's Engineering Standards for Land Development (ESLD) 2021 after earthworks are complete.

16. The Consent Holder must appoint a Technical Representative approved by the Council, being a Chartered Professional Engineering with either geotechnical, engineering geologist or civil as their practice field,) to monitor the construction of all approved works in accordance with level CM 3 of IPENZ construction monitoring set out in Council's ESLD 2021.

GEOTECHINICAL

17. A Geotechnical Completion Report with a Schedule 2A Certificate must be supplied to Council's Monitoring and Enforcement Officer for review and approval once earthworks are complete. The report must comply with NZS4404:2010, NZS4431:2022 and Council's ESLD 2021.
18. On completion of the earthworks, the Consent Holder must submit a Settlement Monitoring Report (SMR) to Council's Monitoring and Enforcement Officer for certification. The SMR must detail all surveyed levels taken over the monitoring period and the location of survey marks.

ENGINEERING WORKS COMPLETED

19. Upon completion of the earthworks, the Consent Holder must provide a written statement from the approved Technical Representative certifying that the physical works have been carried out in accordance with the engineering plans approved under condition 14.

ACCIDENTIAL DISCOVERY PROTOCOL

20. If Taonga (treasured or prized possessions, including Maori artefacts) or archaeological sites are discovered in any area being earth-worked, the Consent Holder shall cease work within a 100m radius of the discovery immediately and contact relevant iwi, the Heritage New Zealand Pouhere Taonga (HNZPT) and the Palmerston North City Council. Works shall not recommence in that area until a site inspection is carried out by Tanenuiarangi Manawatu Incorporated representatives, Palmerston North City Council staff and staff of the HNZPT (if they consider it necessary); the appropriate action has been carried out to remove the Taonga and record the site, or alternative action has been taken; and approval to continue work is given by the Palmerston North City Council. The site inspection shall occur within three working days of the discovery being made.

EXCAVATION OF KOIWI TANGATA REMAINS

21. If during construction activities, any Koiwi (skeletal remains) or similar materials are uncovered, works are to cease within a 100m radius of the discovery immediately, and the Consent Holder shall notify the New Zealand Police, Tanenuiarangi Manawatu Incorporated, HNZPT and Palmerston North City Council. Works shall not recommence in that area until a site inspection is carried out by relevant iwi representatives, Council staff, and staff from the HNZPT and the New Zealand Police (if they consider it necessary); the appropriate ceremony has been conducted by relevant iwi (if necessary); the materials discovered have been removed by the iwi responsible for the tikanga appropriate to their removal and preservation or re-interment, or alternative action (e.g. works are relocated) has been taken; and approval to continue work is given by Palmerston North City Council.

LAPSE PERIOD

22. This resource consent will lapse on the expiry of five years after the date of commencement of this consent unless this consent is given effect to or other approval to extend the lapse period pursuant to Section 125 of the Resource Management Act 1991 has been approved.

MONITORING

23. The Consent Holder shall pay a monitoring fee of \$369 (GST incl.) at the time the resource consent is granted for the monitoring associated with the development. Upon completion of the works required by these conditions, the consent holder shall give written notice to the Monitoring and Enforcement Officer that the conditions have been complied with. On receipt of this notice, the Monitoring and Enforcement Officer or nominee shall carry out an inspection to ensure all conditions have been complied with.

The fees will be payable by the consent holder for any subsequent monitoring of the conditions of this consent. This fee is set in accordance with Section 36(1) (c) of the Resource Management Act 1991.

A fee will be payable by the consent holder if any non-compliance with the conditions of this consent are discovered as a result of monitoring. This fee is set in accordance with Section 36(1)(c) of the Resource Management Act 1991 and Section 690A of the Local Government Act 1974.

Note: The current fee for monitoring is set at \$181 per hour. This amount may alter in the future if fees are reviewed. The monitoring fee charged will be the fee applicable at the time of monitoring and will be charged on each additional inspection or hour of work undertaken until full compliance with consent conditions is achieved.

REASONS FOR DECISION:

The consent is granted for the following primary reasons:

1. Pursuant to section 95A of the Act, and no circumstances require public notification.
2. Pursuant to section 95B of the Act, no circumstances require limited notification and no parties are considered to be adversely affected.
3. Pursuant to section 104 of the Act, the effects of the proposal on the environment will be acceptable.
4. The proposal is overall generally consistent with the relevant objectives, policies and assessment criteria of the Operative District Plan, Proposed Plan Change G and Part 2 of the Act.
5. Consent conditions have been imposed that will ensure any adverse effects are avoided, remedied or mitigated.

Report prepared by Phil Hindrup

Dated this 25th January 2023



Simon Mori
PRINCIPAL PLANNER

Palmerston North City Council

Advice Notes:

1. Rights of objection to the conditions specified above may be exercised by the consent holder pursuant to section 357A of the Act. Any objection shall be made in writing, setting out the reasons for the objection within 15 working days of this notification or within such extended period as the Council in any special case may allow.
2. **This resource consent is not a consent to build. A building consent may be required under the Building Act 2004 prior to commencement of construction.**
3. No buildings, vehicles, materials or debris associated with construction may be kept on Council land, including the road, without prior approval from the Council.
4. It is possible that archaeological sites may be affected by the proposed work. Evidence of archaeological sites may include burnt and fire cracked stones, charcoal, rubbish heaps including shell, bone and/or glass and crockery, ditches, banks, pits, old building foundations, artefacts of Maori and European origin or human burials. The applicant is advised to contact Heritage New Zealand if the presence of an archaeological site is suspected. Work affecting archaeological sites is subject to a consent process under the Heritage New Zealand Pouhere Taonga Act 2014. If any activity associated with this proposal, such as building modification or demolition, earthworks, fencing or landscaping, may modify, damage or destroy any archaeological site(s), an authority (consent) from Heritage New Zealand must be obtained for the work to proceed lawfully. The Heritage New Zealand Pouhere Taonga Act 2014 contains penalties for unauthorised site damage.

DECISION REPORT

1. BACKGROUND AND HISTORY:

This application is for consent to undertake further earthworks to enable the future development of a retirement village at 131 Pacific Drive Palmerston North, and includes retrospective consent to authorise works that were undertaken on the site between 2007 and 2012. The proposed development is located in the existing residential growth area of Aokautere which is south east of Palmerston North. The site is north of Pacific Drive and east of Johnstone Drive.

The site is currently bare rural land which is part of a 48 hectare title. A similar earthworks proposal was previously consented under RM 2553. Those works were partially completed but ceased because of issues associated with a regional land use consent and associated erosion and sediment control measures. After various court proceedings, the company owning the land then went into liquidation resulting in extensive delay in progressing development of the land. The current applicant wishes to complete the earthworks.

RM 2553 has lapsed, and the works authorised by it have not been given effect. Accordingly, the earth deposited in the gully in partial fulfilment of RM 2553 is not authorised by a resource consent or a rule in a district plan and requires retrospective consent.

A resource consent application for construction and operation of the retirement village (and completion of the earthworks) was recently lodged. This was returned as deficient pursuant to s88 of the Act due to a lack of information. This application is for earthworks only. The site is currently zoned Residential and is also within the area that is covered by proposed Plan Change G.

2. SITE DESCRIPTION:

The applicant has provided a detailed description of the site and its immediate surroundings in Section 3 of their Assessment of Environmental Effects ('AEE'). I consider that this description is generally accurate, and it should be read in conjunction with this report.

The land relating to this proposal is Lot 1003 DP 490091 having an area of 48.1554 hectares and being located in the Residential Zone (Operative Plan) and Residential, Local Business, Recreation and Conservation and Amenity Zones (Proposed Plan Change G). The site is generally flat land other than a shallow depression gully running from south to north through the middle of the site into Johnstone Drive Gully.

The area to the north is currently a mixture of flat pastureland used for grazing intersected by a series of natural gullies that meander north towards the Manawatū River. To the south is Pacific Drive which contains standard residential dwellings. To the west of the site lies Johnstone Drive which contains recently established residential dwellings.

To the east of the site is recently completed residential Greenfields development consisting of standard dwellings on single allotments. Stormwater generated from this catchment currently discharges onto the southern corner of the site from the adjacent Monaco Grove stormwater system which drains an area of approximately 60 dwellings. This water is detained at this point in such a way that the water level is raised above the pipe level. This enables overflow from the detention area to informally drain across land to a gully trap in Pacific Drive. The detention of the water at this location has previously been the subject of legal proceedings and has resulted from works undertaken by a previous landowner.

Figure 1 shows an aerial view of the site property and surrounding properties.



Figure 1: Location of the site

The site has been the subject of historical earthworks carried out under RM 2553 being a land use consent granted in 2007 for restructuring of land, including the filling of gullies. These earthworks were not completed, being discontinued at or around 2012 due to issues with the adequacy of erosion and sediment control measures required by Horizons Regional Council. A copy of RM 2553 is attached as Appendix B of the application.

The site contains areas of limited developable land as defined in the Palmerston North City District Plan (District Plan) and as shown by the red hatched areas in **Figure 2** below.



Figure 2: Residential Zoning under the Operative District Plan showing areas of Limited Developable Land (red hatched areas)

These areas are the gully systems that run through the site (some of which have been filled or partially filled under RM 2553). This is relevant to the application as the District Plan contains specific provisions relating to “Limited Developable Land” which are discussed further in this report.

The site is accessed via 131 Pacific Drive which is a local road with a speed limit of 50km/hr. There are no known Tangata Whenua sites, notable trees or heritage sites located on the site.

3. APPLICATION

The proposal is described in section 2 of the AEE and should be read in conjunction with this report. In summary the proposal is to undertake earthworks to create a mostly flat building platform for the future development of a retirement village. The earthworks will cover an 8ha area (approx.) as shown in **Figure 3** below.



Figure 3: Extent of proposed earthworks within the site

The earthworks will consist of cut and fill to fill the existing 2m deep depression running south to north through the centre which is the remnant of the previous earthworks that filled the former gully. The area of cut is 4.4 ha (area shown in red in Figure 3) and the area of fill is 4 ha (area shown in green). The quantity of fill to be placed on top of this historic earthworks is estimated to be 37,400m³. Some of the stockpiled topsoil along the western edge of the top of the former gully will be re used. The maximum depth of fill is 4.4m and maximum depth of cut is 4.9m.

Application for regional resource consent to undertake these earthworks has been granted by Horizons Regional Council. That consent is referenced APP-2022203764, a copy of which has been included as Appendix C of the application. This consent includes an Erosion and Sediment Control Plan detailing how sediment will be managed including via the construction of sediment retention ponds, details of which are shown in **Figure 4** below:



Figure 4: Proposed Erosion and Sediment Control including Sediment Retention Ponds

The proposal includes the management of stormwater that is discharged to the southern corner of the site from the adjacent Monaco Grove stormwater system (see Figure 5 below):



Figure 5: Stormwater Catchment discharging onto southern corner of the site

The applicant proposes to manage this through the site during earthworks via a temporary diversion of this water around the working areas with it being discharged to the gully below with a constructed outfall.

The applicant has provided a draft Earthworks Management Plan (EMP) which details how the earthworks will be managed, operational hours, management of construction traffic,

management of dust and noise. This was provided as further information dated 12th October 2022.

4. ACTIVITY STATUS:

4.1. Operative Palmerston North City District Plan:

The proposed earthworks are a **Restricted Discretionary Activity** in accordance with Rule 6.3.7.1 as there is not compliance with Performance Standards R6.3.6.1 (b). Specifically, the permitted area threshold of 500m² and permitted vertical height of 1.5m will be exceeded. Council restricts its discretion to the consideration of the following matters:

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

The application notes that land within the Aokautere Development Area is also subject to additional provisions. Specifically, activities within areas identified as Limited Developable Land in Map 10.1 are managed by Rule 10.7.1.6.

The application sets out that the proposed earthworks are not able to comply with performance standard (a) of Rule 10.7.1.6 which restricts the volume of earthworks on land identified as Limited Developable Land to 10m³ and therefore the proposal falls for consideration as Non-Complying Activity under rule 10.7.5.1.¹ I concur with this assessment.

In accordance with the bundling principal, the most restrictive activity status for the proposed earthworks will be applied. As such the proposal is a **Non-Complying Activity** under the Operative District Plan.

4.2 Proposed Palmerston North City District Plan (PLAN CHANGE G)

Under Proposed Plan Change G which has legal effect, the majority extent of earthworks is situated over the Residential Zone. However small areas of earthworks will also be situated over small areas of Local Business Zone, Recreational Zone and Conservation and Amenity Zone as shown by **Figure 6** below.

¹ Applicants Assessment of Environmental Effects, Pg 17

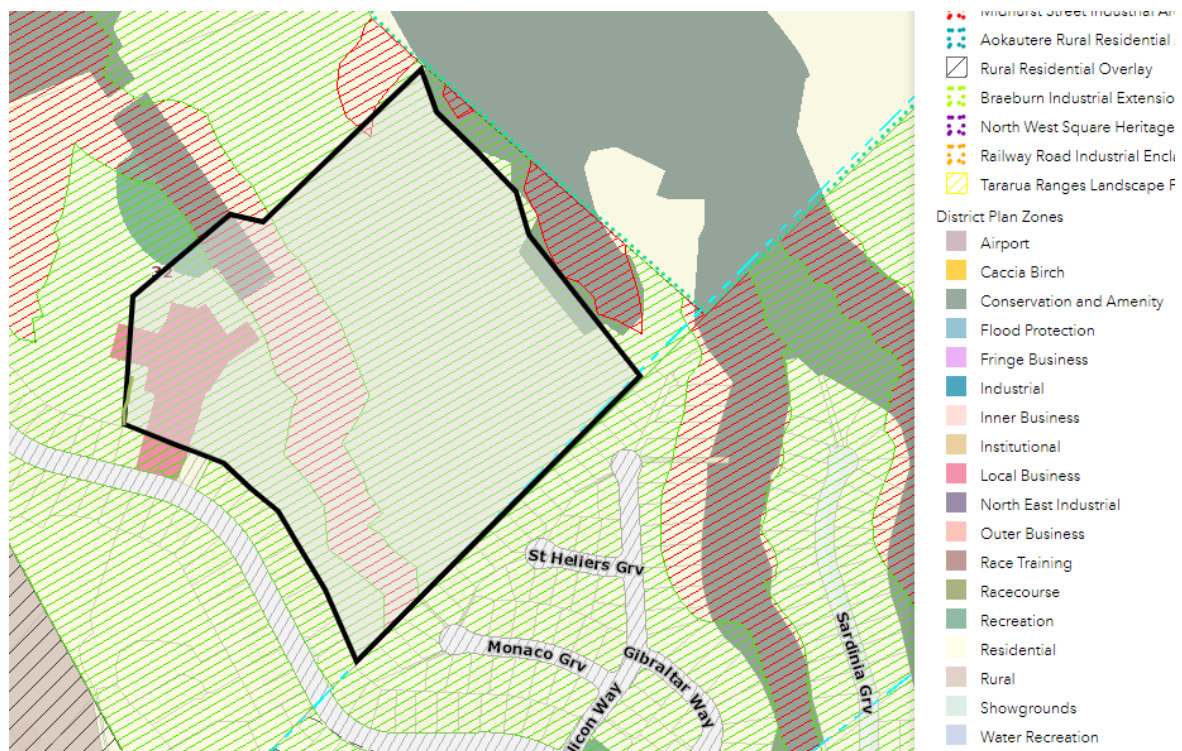


Figure 6: Proposed Plan Change G zoning overlain with approximate extent of earthworks (area defined by black polygon)

The proposed earthworks are a **Restricted Discretionary Activity** in accordance with Rule 6.3.7.1 as there is not compliance with Performance Standards R6.3.6.1 (b). Specifically, the permitted area threshold of 500m² and permitted vertical height of 1.5m will be exceeded. Council restricts its discretion to the consideration of the following matters:

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

There are no earthworks rules for the Local Business Zone of the Recreational Zone therefore earthworks within these areas are permitted by Section 9 of the RMA.

With respect to the Conservation and Amenity Zone, any earthworks that are not associated with Roding or Essential Services within the Aokautere Structure Plan area fall as a Non-complying Activity under Rule 15.5.6.1.

In accordance with the bundling principal, the most restrictive activity status for the proposed earthworks will be applied. As such the proposal is a **Non-Complying Activity** under the relevant provisions of Proposed Plan Change G.

4.3 Overall Activity Status

The proposal is a **Non-Complying Activity** under both the Operative District Plan and Proposed Plan Change G.

5. SECTION 95 ANALYSIS:

The Council must follow the steps outlined under Section 95A, in order to determine whether to publicly notify an application for resource consent.

| Step 1: Mandatory Public Notification in certain circumstances: | YES | NO |
|---|-----|----|
| Has the applicant requested public notification? | | x |
| Is Public Notification required under s95C? | | x |
| Is the application made jointly with an application to exchange recreation reserve land under s15AA of the Reserves Act 1977? | | x |

| Step 2: Public Notification precluded in certain circumstances: | YES | NO |
|--|-----|----|
| Does a rule or NES preclude public notification of the application? | | x |
| Is the application for 1 or more of the following but no other activities? | | |
| - A controlled activity; and/or | | x |
| - Restricted-discretionary or discretionary activities for: | | |
| i. A boundary activity | | x |

| Step 3: Public Notification required in certain circumstances: | YES | NO |
|---|-----|----|
| Does a rule or NES require public notification of the application? | | x |
| Are adverse effects on the environment more than minor? | | x |

The applicant has proposed a number of conditions which form part of the proposal and have been relied on for the purpose of the assessment below.

Increase on hazard risk and effects on land stability

As the previous earthworks were not completed and certified, the applicant has undertaken investigations to determine the suitability of the fill areas for the form of development proposed. NZET Limited has assessed the geotechnical suitability of the historical earthworks and undertaken site investigations as part of that assessment. The site investigations included cone penetration testing at 13 locations and windrow sampling at two of those locations. The assessment found that the soil types vary from clayey silts to sands. No groundwater was encountered and as a result liquefaction risk is considered to be low. The soils were described as firm and suitable for foundations for commercial scale buildings.

The NZET report was then peer reviewed by ENGEO Ltd. This peer review recommended that further documentation of the previous filling in accordance with MBIE Module 2 is required. The applicant then commissioned Land Development & Engineering Limited (LDE) to address the matters raised in Council's further information request dated 16 September 2022, in particular confirmation that the finished land (previously completed earthworks) is suitable for the future intended residential development.

The Geotechnical review undertaken by LDE titled "Geotechnical Review: Aokautere Subdivision – 153 Pacific Drive Proposed Retirement Village, Palmerston North, dated 10/10/2022" concluded the following:

“The following works should be carried out in parallel with the consenting process and the enabling works following the site mobilisation and should be in place prior to the commencement of bulk fill activities.

- 1. A series of test pits within the proposed cut areas to obtain samples from the proposed fill source materials for laboratory testing and determination of the fill compaction criteria for the project.*
- 2. A detailed review of the existing CPT data to determine the settlement monitoring regime for the development.*
- 3. The above should be supplemented by additional subsurface testing as considered necessary by the certifying engineer.”*

Having considered the above, and as noted in point 3 of the LDE assessment, I consider that further testing is required in accordance with the geotechnical review to confirm that the completed earthworks are suitable for residential development and are suitable for additional fill material to be placed on top. This follows the ENGEO Ltd assessment which requested to see further documentation pertaining to the works that have been completed. Or put another way, confirmation of the methodology of how they were undertaken, exact locations and testing results is required.

Given the request by ENGEO was unable to be met by the applicant, and the LDE assessment required additional subsurface testing, combined with the scale and depth of earthworks that had occurred as is proposed, Council requested a peer review of the LDE report and findings which was undertaken by Mr Hamish Peters of Geocivil Consulting Engineers Limited².

The peer review confirmed that the proposed earthworks would be suitable provided a earthworks completion report with a PNCC Schedule 2A certificate was prepared by a Chartered Professional Engineering with either geotechnical, engineering geologist or civil as a practice field. The review also recommended that a full set of engineering plans be provided which is a standard requirement for a project of this scale and is a proposed condition by the applicant.

Having relied on the technical expert recommendations and having accepted the applicant's proposed conditions which set out a robust process to demonstrate that the ground conditions will be suitable for residential development, I consider effects of hazard risk from land instability to be no more than minor.

I understand based on discussions with Mr Peters that the additional testing required from the conditions may be extensive. I have taken this into account but conclude that such a condition is nevertheless reasonably necessary and appropriate to mitigate the risk of natural hazard on the site, in particular erosion and land instability that might arise should development occur on a base that is not sufficiently stable. I consider the conditions I recommend in consultation with Mr Peters are proportionate to this risk.

Effects on Landscape and Visual Amenity

The site is within the Aokautere Development Area and has not been identified as an Outstanding Natural Feature (ONF), Outstanding Natural Landscape (ONL) or as a Significant Amenity Landscape in the PNCC District Plan. However, the area of the old gully is shown on Map 10.1 Aokautere Development Area as part of the local network of gullies

² Geocivil Consulting Engineers Ltd, Regulatory Review 2 – LU7013 Geotechnical Review, 28 November 2022

where development is restricted and the partially completed earthworks has been carried out under Section 2553.

The applicant commissioned an Assessment of Landscape and Visual Effects report by Angela McArthur of Eco-Landscapes & Design Limited contained in Appendix H of the application. While the assessment focuses mostly on a future proposed retirement village which is not subject of this application, it does provide some useful assessment of the environment and the impact of the proposed earthworks.

"The extent and degree to which the site is visible from the surrounding area has been considered and will range from full open views, partial views through to glimpses. The assessment finds that the visual catchment of the site is relatively restricted due to the flat topography and foreground fencing and vegetation within neighbouring properties. The viewing audiences include: Public Locations:

- *Partial to restricted views of the Site for road users along Pacific Drive. Private Locations:*
- *Open to Partial view from the rear of properties adjoining Site along Pacific Drive, Monaco Grove, St Heliers Grove and Silicon Way.*

*Other views into the Site for residents include are from Johnstone Drive where the separation distance from the Site is approximately 200m. Views towards the Site from these residents will form a small component of the overall view. In summary the Site is reasonably discrete, visible at the street entrances and for residents within properties adjoining the site along Pacific Drive, Monaco Grove, St Heliers Grove and Silicon Way from the northern aspect only."*³

In summarising the landscape effects of the earthworks, Ms McArthur makes the following comments:

"The Site is currently open grass and rough ground areas. The earthworks proposed will make changes to existing site contours to enable development of the new road and the retirement village. Overall levels across the site will be reduced by up to 4m in some locations. Earthworks will create a consistent downward slope to the west and north across the Site.

Initially landscape effects will be moderate due to effects of earthworks and construction effects. However, with appropriate landscaping and planting as proposed the development will in time integrate with the landscape setting. As planting establishes the new public road and the retirement village will appear as an extension to the growing urban form in the area. Overall, adverse landscape effects will be low."

Having considered the assessment by Ms McArthur, it is my view that the gully through the site is highly modified by the existing unconsented earthworks that have taken place in partial completion of RM 2553. I note also that under Plan Change G, the site is mostly zoned as residential which indicates that completion of the fill works in the gully is largely anticipated by the Council for this site. The earthworks will retain the now generally flat site but will remove existing bumps and hollows and reduce the slope to the northwest by cut and fill. As a result, the development platform will be set below the adjacent residential properties to the southeast and will not further restrict or make worse any views from those properties.

The site has no vegetation of significance to be protected and the earthworks will involve the removal of existing pest weeds such as gorse on parts of the site improving the visual

³ Assessment of Landscape and Visual Effects report by Eco-Landscapes & Design Limited, 12 July 2022, Revision 2, Section 5.3

amenity. Given the local landscape context and existing residential development in the area, the earthworks will not change the broader landscape characteristics of the area. In terms of the visual amenity of the neighbourhood, the assessment finds that while initially there will be adverse construction effects, any adverse visual intrusion effects and loss of visual amenity for the surrounding residential neighbourhood will be less than minor.

Construction Effects

Potential construction effects include construction traffic, site management, noise, dust and erosion and sediment control. Construction access will be from 131 Pacific Drive. The existing completed flat area adjacent to that access will be used for any compound and plant storage for the earthworks. There is potential for noise effects on residential neighbours to the south. The risk is less for Pacific Drive neighbours where earthworks are partially complete. Dust is a potential issue and completed areas of earthworks will be established with grass until the stage of development in that location proceeds. Proven dust control measures will be applied during all earthwork activities.

A consent condition requiring the preparation and certification of an Earthworks Management Plan (EMP) to include noise management has been proposed with a draft EMP having been submitted to address a request for further information.

The EMP has been assessed as being sufficient to address day to day management of all earthworks related activities including traffic control, plant management, hours of work, noise management, dust management, monitoring, complaints processes and other requirements. With appropriate management the effects on neighbouring residents and the environment in general will be less than minor.

Erosion and Sedimentation Effects

The principal natural values issues relate to potential effects on the ephemeral stream in Johnson Gully from sediment associated with the earthworks activity. An Erosion and Sediment Control Plan (ESCP) has been prepared and submitted with the application. This ESCP has been approved by Horizons for regional earthworks consent. This will ensure that earthworks management does not result in sedimentation of the downstream water course thereby ensuring that any adverse erosion and sedimentation effects will be less than minor.

Overland flow paths

The proposal includes the management of stormwater that is discharged to the southern corner of the site from the adjacent Monaco Grove stormwater system. The applicant proposes to manage this through the site during earthworks via a temporary diversion of this water around the working areas and discharge to the gully to the north of where the earthworks will be taking place.

I consider this approach to be suitable while earthworks are being undertaken. The temporary diversion will be required to be managed in accordance with the ESCP submitted with the application. On completion of the earthworks the engineering plans that have been proposed by way of condition will need to show how the stormwater will be managed into the future until such time as a land development proposal is advanced, consented and completed.

Conclusion

Having considered the above overall the adverse effects of the proposed earthworks will be no more than minor.

| Step 4: Public notification required in special circumstances: | YES | NO |
|---|-----|----|
| Do special circumstances apply that warrant public notification? | | x |

I do not consider there to be any special or unique circumstances to this application that meet the parameters of what constitutes a special circumstance. Public notification under this step is therefore not required.

Public notification conclusion

Public notification of the land use application is not required as any adverse effects will be no more than minor.

6. SECTION 95B – LIMITED NOTIFICATION ANALYSIS:

The Council must follow the steps outlined under Section 95B, in order, to determine whether to publicly notify or limited notify an application for resource consent.

| Step 1: Certain affected groups and affected persons must be notified: | YES | NO |
|--|-----|----|
| Are there any affected protected customary rights groups? | | x |
| Is the activity on, adjacent to or likely to affect a statutory acknowledgement area? And; would you consider the person(s) for whom the statutory acknowledgement is made to be affected? | | x |

| Step 2: Limited Notification precluded in certain circumstances:: | YES | NO |
|--|-----|----|
| Does a rule or NES preclude limited notification of the application? | | x |
| Is the land use consent a controlled activity but no other activities that require consent under the District Plan (except subdivision)? | | x |

| Step 3: Certain other affected persons must be notified: | YES | NO |
|--|-----|----|
| Boundary activities – is the owner of an infringed boundary considered to be adversely affected? | | x |
| Are adverse effects on any person are minor or more than minor? | | x |

Effects upon adjoining properties including amenity values.

The largest visual impact of the proposed works will be during construction given the alteration to the existing/natural landform. However, it is noted that construction works will be temporary only, will be broken up into separate sections, and they are not anticipated to take longer than one earthworks season to complete (subject to the timing of when earthworks were to commence).

In my view the earthworks will have a less than minor effect on the amenity values of neighbouring properties. This is partly because the land is zoned residential and so is earmarked for development. The earthworks will not create visual obstruction to the views from existing dwellings along Pacific Drive or along the south eastern boundary. For the most part the proposal is to lower the land thereby enhancing views to the north from these properties.

The engineering plans that the applicant will provide by way of condition will address the change in elevation along the neighbouring residential properties, in particular the properties along the south eastern boundary. There will be up to a 4 metre reduction in ground level (the properties between St Heliers Grove and Silicon Way) and so it will be necessary to detail if retaining structures will be required, which will then need to be

certified, thereby ensuring that the earthworks will not cause instability of neighbouring properties land. Having discussed this matter with the Mr Peters from Geocivil Consulting Engineers Ltd, I am satisfied that such matters will be adequately addressed through the engineering plan certification process.

With regards to noise and dust nuisance, the applicant has prepared a draft earthworks management plan to ensure these matters are sufficiently mitigated, It is not anticipated that noise will exceed the district plan allowable limits at the boundary. Hours of operation will be restricted (7.30am and 6pm Monday to Saturday only) so as to not adversely disrupt neighbouring properties.

Any additional adverse effects as experienced by owners/occupiers on any other adjoining sites in the surrounding area are considered to be less than minor.

Statutory Acknowledgement

The site is located within the Rangitāne o Manawatu statutory acknowledgement area and is an area of interest as it contains a gully system that is a tributary of the Manawatu River.

Rangitāne were sent a summary of the resource consent application on 21st December 2022 in accordance with the requirements set out in the Rangitāne o Manawatu Claims Settlement Act 2016 and were invited to engage with Council officers and the applicant to enable a better understanding of their views towards the proposal and how it may relate to the further development of the site for a retirement village (referred to as Stage 2 for the purposes of this report).

A site visit was undertaken on 12th January 2023 with members of Rangitāne, the applicant and Council officers. The site visit consisted of viewing the already completed works, stormwater diversion in place for the proposed earthworks, and discussion of the proposed works and key issues of relevance to Rangitāne, Stage 2 being the proposed retirement village and the opportunity for Rangitāne input into cultural interpretation, and existing and proposed and erosion and sediment controls.

A meeting was also held between Council and Alana Nuku of Rangitāne on 24th January 2023 to further discuss matters of relevance to Rangitāne.

In summary, Rangitāne have indicated their main areas of interest are:

- Completion of a Cultural Impact Assessment (CIA) ahead of the Stage 2 consent application being lodged;
- The inclusion of Tikanga matters as part of Stage 2 eg. Opening/closing ceremonies, 'finds' protocol including induction.
- A form of any 'offset package'/design inclusions which address their high level concerns around stormwater management – particularly water quality and related wetland design at this tributary;
- Any related operational type agreements of the nature (following onsite discussions with the retirement village developer Anna Blackwell) such as employing Rangitāne workers and running Rangitāne related programmes etc.

The applicant has since confirmed in (via email) that they are committed to working in good faith with Rangitāne to address these matters, in particular commencing engagement for the purposes of completing a CIA for stage 2.

I also note that the applicant has proposed a number of conditions to address accidental discovery protocols. These conditions form part of the proposal and I consider that they are appropriate to recognise and provide for the relationship of Rangitāne and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

Having considered the above and being part of the discussions between Rangitāne and the applicant, and because the applicant has confirmed in writing their agreement to further engage with Rangitāne on the stage 2 development, I am satisfied that the concerns raised will be better addressed as part of the Stage 2 consent process and that adverse effects from the proposed activity on Rangitāne will be less than minor.

Limited notification conclusion

Limited notification of the land use application is not required as any adverse effects on any person will be less than minor.

| Step 4: Limited notification required in special circumstances: | YES | NO |
|--|-----|----|
| Do special circumstances apply? | | x |

I do not consider there to be any special or unique circumstances to this application that meet the parameters of what constitutes a special circumstance. Limited notification under this step is therefore not required.

Conclusion of Notification:

The application will be assessed on a non - notified basis.

6. SECTION 104 ASSESSMENT:

6.1. Consideration of Environmental Effects

I adopt the section 95 and 95B assessments under section 5 of this report for the purpose of assessing the environmental effects as required under section 104(1)(a) of the Act. Those assessments have concluded that the proposal's adverse effects on the environment will be minor and less than minor on any other person.

Consent Conditions:

In addition to that assessment, I have recommended a number of consent conditions, with the purpose of ensuring the proposal is undertaken as applied for, and to further mitigate any potential adverse effects. Conditions have been imposed requiring the following:

- Provision of and certification of an Earthworks Management Plan to construct potential nuisance effects during earthworks;
- Avoidance and mitigation of nuisance effects such as dust generation, noise, construction traffic and materials on the roading network;
- Provision of and certification of a full set of Engineering Plans prior to commencement of works on site which are to include an earthworks design report is to include clear drawings, a specification, construction methodology, silt and erosion control plans, monitoring point locations and survey pin details.
- Provision and certification of Schedule 2A certificates for the historical earthworks and completion of the proposed earthworks.

- Standard conditions around accidental discovery.

It is my view that the imposition of these conditions will further contribute to ensuring potential adverse effects are no more than minor.

Positive Effects:

This proposal will result in the construction of a suitable building platform to enable future residential development (be it a retirement village, a number of residential dwellings or both). It is considered that the provision of future housing capacity for the city of Palmerston North will have positive effects through providing for the communities social, cultural and economic well-being.

Conclusion

It is my opinion that the effects of the proposal are acceptable.

6.2. Section 104(1)(b) - Relevant Planning Provisions:

In considering this application the Council has had regard to provisions of the following planning documents.

- National Environmental Standards
- National Policy Statement on Urban Development Capacity
- The New Zealand Coastal Policy Statement
- The Regional Policy Statement (One Plan)
- The Palmerston North City District Plan

It is my opinion that there are no other National Environmental Standards directly relevant to this proposal. Similarly, the New Zealand Coastal Policy Statement is not relevant. The National Policy Statement for Urban Development Capacity, Regional Policy Statement and the Regional Plan, and the District Plan have been considered below.

National Policy Statement on Urban Development

I have had regard to the provision of the National Policy Statement on Urban Development, 2020 (NPSUD). It is of some relevance as the proposed earthworks are to create suitable building platform for urban development which is in accord with the strategic direction of the NPS.

Policy 2 requires the Council to provide sufficient development capacity for short medium and long term and the proposed earthworks will result in a development ready site capable of contributing to development capacity. Any further subdivision or land use consents required for unlocking urban development will require consideration of the NPS at the appropriate time.

Regional Policy Statement and Regional Plan (One Plan)

The proposal is consistent with the Regional Policy Statement (RPS) and the Regional Plan. The applicant has obtained the necessary resource consents from the Regional Council to commission the proposal.

Operative District Plan: (Note: No new objectives or policies have been introduced as part of Plan Change G)

City View Objectives

City View objectives (Section 2.5 of the District Plan) set out the broad outcomes that the District Plan seeks to achieve for the City. I have had regard to all of the City View objectives but those of particular relevance to the proposal include objectives 2, 5, 10, 15, 19 and 23. I consider that the proposal is consistent with these objectives to the extent that these objectives are relevant to the assessment of the application.

Operative District Plan - Section 6 General Rules

The relevant objectives and policies of the General Rules section (Earthworks) to this proposal include the following:

Objective 1 Policies 1.1, 1.2, 1.4

Objective 1, Policy 1.1, 1.2 and 1.4 of Chapter 6 (earthworks) address the effects of earthworks on the environment. The provision set out to provide for earthworks on the basis that adverse effects are able to be avoided, remedied or mitigated. They specifically require the consideration of amenity values, landscape values, effects on adjoining neighbours and the potential exacerbation of natural hazards. The assessment of effects under sections 5 and 6 of this report have carefully considered these matters and it has been shown that the earthworks can be undertaken in accordance with a complete set of conditions that will avoid, remedy or mitigate adverse effects. The proposal is consistent with these provisions.

Operative District Plan - Section 10 Residential

The relevant objectives and policies of the Residential Zone to this proposal include the following:

Objective 1 Policies 1.1, 1.3

The proposed development will help to provide a variety of accommodation needs for different housing typologies and densities in the Palmerston North urban area (Policy 1.1) and will promote the efficient use of the physical resource being the land that has previously been zoned for residential purposes (Policy 1.3). Overall the proposal is consistent with the Residential Zone objectives and policies.

Operative District Plan - Section 20 Land Transport

The relevant objectives and policies of the Land Transport section to this proposal include the following:

Objective 2 Policies 2.1, 2.2.

Objective 3 Policies 3.1, 3.3, 3.4, 3.5.

I consider Objective 2 and Policies 2.1, 2.2, and 2.4 of Chapter 20 to be directly relevant to this proposal. This Objective and accompanying policies promote a roading network (and consequently traffic generated) which avoids adverse effects on the surrounding

environment. The proposal will have all vehicle movements mostly contained within the site as the cut and fill operation will not require the importing of fill onto the site or carting it off-site. There is ample room for machinery and plant to be located on site when not being used. It is anticipated the proposal will result in very little adverse effect on the road network and I am therefore satisfied the proposal is consistent with the relevant Land Transport provisions.

Operative District Plan - Section 22 Natural Hazards

The relevant objectives and policies of the Natural Hazards Chapter to this proposal include the following:

Objective 2 Policies 2.1, 2.2, 2.5, 2.7.

The relevant provisions clearly set out that development is to be avoided where there are not appropriate controls to avoid, remedy or mitigate adverse effects of natural hazards. There has been much contention about this issue with this proposal and so input from suitably qualified technical experts has been sought to confirm that the site is suitable for earthworks and that post earthworks the land will be suitable for residential development.

The technical input and recommended conditions are critical to demonstrate that the proposal will be consistent with the above objective and supporting policies. Not imposing the recommended conditions would result in the proposal being contrary to these provisions.

Proposed Plan Change G

Although Proposed Plan Change G did not introduce any new objectives or policies to the District Plan, it has resulted in an area of the site being rezoned conservation and amenity. As such an area of the earthworks will be undertaken within this zone and some consideration of the relevant objectives and policies is required.

Section 15 – Conservation and Amenity Zone

Objective 1 Policies 1.1, 1.2, 1.3

This objective and its supporting policies set out to protect the city's conservation and amenity areas which have high scenic, scientific, heritage conservation and amenity values from activities and development. Although the development will have some impact on the Aokautere Gully system, the landscape assessment by McArthur associates has concluded that this part of the gully system is in a modified state due to the partially completed earthworks, with the natural gully character within the site and any contribution to local amenity having long been removed. I therefore consider that the proposal will not be inconsistent with this objective and its supporting policies.

Irrespective of that assessment, the proposed plan change is in the early phase of the 1st schedule process and in my view little weight should be placed on these provision as it is only through the plan change rezoning process that they require consideration.

Overall Objectives and Policies Conclusion

It is my opinion that the proposal will overall be consistent with the Objectives and policies of the District Plan.

6.3. Section 104(1)(c) - Other Matters:

There are no other matters relevant to the proposal.

7. SECTION 104D GATEWAY TEST

As the proposal is for a Non-Complying Activity the gateway test of section 104D must be fulfilled, namely that either the effects are minor or that the proposal is not contrary to the objectives and policies of the Palmerston North City District Plan, before the application can be considered pursuant to section 104B of the Act.

Overall, it is considered that the actual or potential adverse effects of the proposed activity would be less than minor, and the proposed activity is consistent with the objectives and policies of the relevant planning documents. Accordingly, the proposal passes through both limbs of the "gateway tests" and is eligible for granting of consent.

8. PART 2 MATTERS:

I do not consider there to be any invalidity, incomplete coverage or uncertainty of meaning in the planning provisions relevant to the application which would necessitate a Part 2 assessment in this case. For the avoidance of doubt however[1], I have considered Part 2 insofar as it relates to matters over which the Council has discretion.

Aside from the general purpose of sustainable management set out in Section 5, Part 2 requires the Council to recognise and provide for matters of national importance (section 6); have particular regard to other matters (section 7); and to take into account the principles of the Treaty of Waitangi (section 8).

For the purposes of this application, I have had particular regard to the relationship of Maori and their culture and traditions (Section 6(e)), the management of significant risks of natural hazards (Section 6(h)), and the maintenance and enhancement of amenity values (Section 7(c)). Overall, I am of the view that the proposal has had appropriate regard to these sub-sections in all the circumstances.

Overall, I conclude that the proposal achieves the 'sustainable management' purpose of the Resource Management Act 1991.

9. CONCLUSION:

The effects of this proposal are acceptable, and the proposal is consistent with the objectives and policies of the Operative District Plan and Proposed Plan Change G. Having considered the matters set out in section 104 of the Act, and subject to Part 2, I am of the opinion that resource consent can be granted subject to appropriate conditions.

10. RECOMMENDATION:

It is my recommendation that this resource consent application be granted subject to conditions imposed under Sections 108 of the Resource Management Act 1991.



Phil Hindrup
SENIOR PLANNING OFFICER
Palmerston North City Council