

**BEFORE THE INDEPENDENT HEARINGS PANEL**

**IN THE MATTER OF:** An application for a Notice of Requirement for roading purposes to establish a link road connecting Abby Road to Johnstone Drive

**AND**

**IN THE MATTER OF:** A hearing by Palmerston North City Council

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**SECTION 42A REPORT OF RYAN O'LEARY – PLANNING**

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Dated 09 March 2021

## Executive Summary

1. Palmerston North City Council ('the Requiring Authority') has given notice, pursuant to Section 168 of the Resource Management Act 1991 ('RMA') of its requirement for the extension of Abby Road between Pacific Drive and Johnstone Drive, Palmerston North. The Notice of a Requirement ('NOR') is for "Roading Purposes".
2. The land subject to the NOR is known as 52 Johnstone Drive and is held in one Record of Title, legally described as Lot 2 DP 484516 Lot 694 DP 500578 Lot 695 DP 509873 Lot 1102 DP 519561. This land is presently owned by Aokautere Land Holdings Ltd, a party that is independent to the applicant for this NOR (being PNCC).
3. The stated purpose of the NOR in Section 1.4.1 of the application is:  
  
*"to secure the potential to extend Abby Road so that it joins up with Johnstone Drive for the purpose of:*
  - *Preserving and providing an efficient and logical connection between Abby Road and Johnstone Drive.*
  - *Preserving and providing an efficient and logical access to the eastern side of the Adderstone Reserve from Abby Road, to enable recreational opportunities".*
4. The proposed NOR will facilitate the future construction of two-lane 'link road' with a length of approximately 230m, connecting Abby Road and Johnstone Drive. As outlined in Section 1.4.2 and 1.4.3 of the application, a general and conceptual design of the proposal has been submitted in support of the NoR.
5. This report is provided pursuant to s42A(1) of the RMA. Its primary purpose is to assist the Hearing Commissioner in evaluating the proposal and its role of deciding on the NoR in accordance with Section 168A of the Act.
6. In accordance with Section 168A(3) I have carefully considered the requirement and submission received on it. In doing so, I have also considered, subject to Part 2 of the Act, the effects on the environment (both positive and adverse). I consider that the adverse effects of the proposal will be no more than minor and can be appropriately mitigated to an acceptable level. In reaching this conclusion, I rely on the evidence of Mr Hudson and Mr Thornton, and the peer reviews undertaken by Mr Bray and Mrs Fraser, respectively. I also rely on the expert

advice from Mr Arseneau with respect to stormwater matters. The proposal will also result in notable positive effects.

7. In considering the effects of the proposal, I have had particular regard to the matters in Section 168A (3) (a) to (d), and conclude that:
  - a. Having examined the relevant planning framework, that the proposal's will 'fit' with the relevant policy framework.
  - b. The consideration of alternative sites, routes or methods has been adequate having regard to the extent of the land affected by the designation; the nature of the proposal; and, its geographical setting which limits the range of alternative options available.
  - c. The works and designation are reasonably necessary for achieving the objectives of the requiring authority for this designation area which relate to preserving and providing a connection from Abby Road to Johnstone Drive; and, providing an efficient and logical access to the eastern side of Adderstone Reserve for Abby Road, to enable recreational opportunities. I consider that these objectives will be met; and,
  - d. I have had regard to any other matter reasonably necessary to make a decision on the requirement.
8. Having carefully considered the notice of requirement in accordance with the relevant statutory framework, I recommend to the Hearings Commissioner that, in accordance with Section 168A(4) they decide to **confirm the requirement**; and, **impose conditions**.
9. To assist the Hearings Commissioner, I have included draft conditions on the designation for consideration in **Appendix 1**. These have been circulated to the Requiring Authority.

## **1.0 Introduction**

- 1.1 My full name is Ryan Arthur O'Leary. I hold the position of Planning Manager (Central Region) at *The Property Group Ltd*, a Planning and Property Consultancy. I am based in Palmerston North.
- 1.2 I have prepared this evidence on behalf of the Palmerston North City Council ("Territorial Authority") to provide independent planning and resource management expertise related to the Notice of Requirement Application to extend Abby Road and construct a 'T intersection' where Abby Road connects to Johnstone Drive. The Requiring Authority on this application is also Palmerston North City Council.
- 1.3 I hold a Bachelor of Resource Management and Environmental Planning (Hons) from Massey University. I am also member of the New Zealand Planning Institute.
- 1.4 I have achieved panel certification, having completed the Ministry for the Environment's *Making Good Decisions* Foundations Course.
- 1.5 I joined The Property Group Ltd in June 2018, having previously been employed as a Senior Planner at Palmerston North City Council ('**PNCC**' or '**the Council**') between Jan 2016 and June 2018. Before this I held the role of Senior Planner at Wellington City Council, where I began my professional career in 2008. I have over 12 years resource management experience.
- 1.6 My experience has involved both processing for Councils and the acquisition of a variety of resource consents and notice of requirements sought under the Resource Management Act 1991 ('the Act').

### **Expert Witnesses – Code Of Conduct**

- 1.7 I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that except where I state I am relying on information provided by another party, the content of this evidence is within my area of expertise.

## Purpose of this Report

- 1.8 This report is provided pursuant to s42A(1) of the RMA. The primary purpose of the report is to assist the Hearing Commissioner in evaluating the proposal and its role in deciding the notice of requirement in accordance with Section 168A of the Act.
- 1.9 I note that this report is not a final decision on the proposal under Section 168A of the RMA. That decision ultimately resides with the Hearings Commissioner, under delegation from the Council.
- 1.10 The report has been structured as follows:
- a. **Section 2** sets the scene for this report, providing further contextual information and an outline of relevant statutory matters;
  - b. **Section 3** summarises the notification process and the submissions received; and
  - c. **Section 4** contains an evaluation of key issues and a summary of the recommendations on those issues.
- 1.11 Attached to the report are the following appendices:
- a. **Appendix 1** contains draft recommended conditions, should the Commissioners be minded to grant consent;
  - b. **Appendix 2** contains an index of relevant objectives and policies in the Plan;
  - c. **Appendix 3** contains the approved resource consent from Horizons Regional Council (Horizons Reference No: ATH-2016200752.00);
  - d. **Appendix 4** contains the decision by PNCC to decline the land use consent (Reference No: LU 4085); and,
  - e. **Appendix 5** contains the decision by PNCC to decline the subdivision consent (Reference No: SUB 5031).

## **Background**

1.12 I was engaged by Palmerston North City Council to assist with the processing of this Notice of Requirement application at the time it was lodged on 10 September 2020. This engagement followed my previous involvement in the processing of a similar Notice of Requirement lodged in December 2019 and subsequently withdrawn by the Requiring Authority<sup>1</sup>. This notice of requirement effectively replaces, with modification, that former notice of requirement application.

## **Reports and material considered**

1.13 As part of preparing this statement of evidence, I have read the following reports and documents:

- a. The Applicant's Assessment of Environmental Effects (prepared by Mrs Samantha Dowse) and its associated appendices;
- b. The Further information received by the applicant on 20 October 2020 (see Appendix 3);
- c. The submissions received in relation to this application #1 to #4 (as set out in Section 3 of this report);
- d. The technical assessments and evidence of Council Experts, including:
  - i. Harriet Fraser – Transport (Harriet Fraser Traffic Engineering & Transportation Planning)
  - ii. Shannon Bray – Landscape (Wayfinder Landscape strategy & Planning Ltd)
  - iii. David Arseneau – Stormwater (GHD Ltd)

## **Site visit**

1.14 I can confirm I have visited the site on several occasions, 17 January 2020, 28th September 2020 and most recently on 08 March 2021.

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<sup>1</sup> Memorandum of Counsel to the Commissioners, dated 30 October 2020.

## Section 2 - Setting the Scene

2.1 This section of the report presents a factual overview of the proposal and the relevant matters to be considered for determining the NoR under Section 168A of the Act. The discussion here summarises:

- a. the proposal;
- b. the site and existing environment;
- c. the statutory framework for consideration of the proposal.

### The Notice of Requirement

2.2 Palmerston North City Council ('the Requiring Authority') has given notice, pursuant to Section 168 of the Resource Management Act 1991 ('RMA') of its requirement for the extension of Abby Road between Pacific Drive and Johnstone Drive, Palmerston North. The Notice of a Requirement ('NOR') is for "Roading Purposes".

2.3 The land subject to the NOR is shown in Figure 1 below. It is known as 52 Johnstone Drive and is held in one Record of Title, legally described as Lot 2 DP 484516 Lot 694 DP 500578 Lot 695 DP 509873 Lot 1102 DP 519561. This land is presently owned by Aokautere Land Holdings Ltd, a party that is independent to the applicant for this NOR (being PNCC).

2.4 The stated purpose of the NOR in Section 1.4.1 of the application is:

*"to secure the potential to extend Abby Road so that it joins up with Johnstone Drive for the purpose of:*

- *Preserving and providing an efficient and logical connection between Abby Road and Johnstone Drive.*
- *Preserving and providing an efficient and logical access to the eastern side of the Adderstone Reserve from Abby Road, to enable recreational opportunities".*

2.5 The proposed NOR will facilitate the future construction of two-lane 'link road' with a length of approximately 230m, connecting Abby Road and Johnstone Drive. As outlined in Section 1.4.2 and 1.4.3 of the application, a general and conceptual design of the proposal has been submitted in support of the requirement.

2.6 The applicant anticipates that specific design details will be confirmed at a later stage by requiring authority through an Outline Plan of Works (Section 176A of the RMA). However, the draft conditions of consent have been framed in a manner in which relies more heavily on the preparation and implementation of various management plans, which are to be certified by Council (as Territorial Authority) prior to construction commencing. On the basis that these management plans are met, the requirements of an outline plan could potentially be waived by the Council (pursuant to Section 176(2)(c) of the Act).

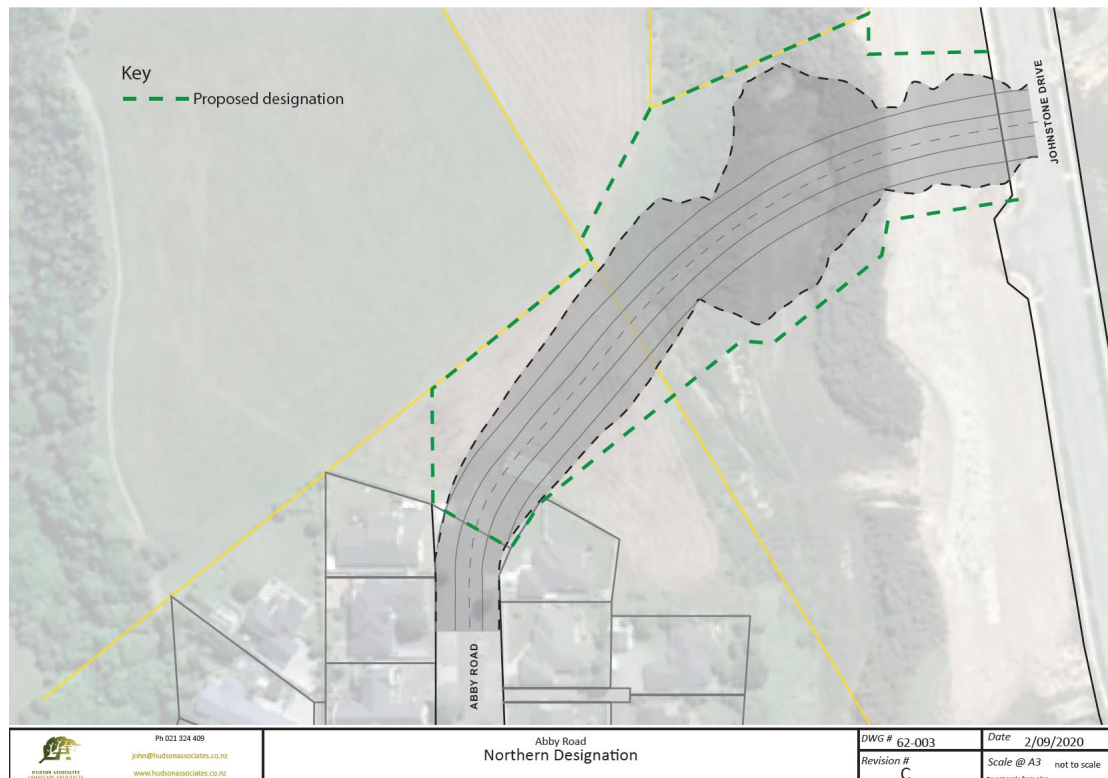


Figure 1: Location of the Notice of Requirement (excerpt from Appendix A of the application)

2.7 The physical works associated with the NOR are described in Section 1.4.2 of the application. In summary, these include:

- a. Earthworks (cuts and fill) associated with the formation of the road.
- b. The installation of a culvert from the head of the gully to convey stormwater the road;
- c. The construction of a 'T-intersection' with Johnstone Drive;
- d. The construction of the road carriageway; and
- e. The removal of vegetation associated with the construction works and replanting of the supporting embankments, once constructed.



2.8 Section 1.3.1 of the application describes helpfully describes that:

*“The proposed road would cross the base of the gully, with proposed batters adjacent to the Manga o Tane Reserve, before ascending the eastern slope of the gully and connecting with Johnstone Drive in a T intersection. The gully area covered by the NoR and to the south is a highly modified gully system with vegetated sides”.*

2.9 The NOR application has been prepared by Mrs Samantha Dowse from WSP Global Consultants on behalf of Palmerston North City Council (as applicant/ Requiring Authority). The Territorial Authority (‘Council’) processing this application received this NOR on the 10<sup>th</sup> September 2020.

### **The site and existing environment**

2.10 A detailed description of the site and the surrounding environment is provided in the documents submitted with the application (Section 1.3); and, within the assessment of Mr Hudson in paragraphs 32 to 49. I do not repeat the description contained within these reports here but consider these assessments to be accurate and therefore adopt these descriptions.

### **The Relevant Provisions of the District Plan**

2.11 The land subject to the NOR is zoned ‘Residential’ in the Palmerston North City District Plan. The extent of this zoning is shown ‘yellow’ in Figure 2 below. To the north of Abby Road is a section of land denoted as ‘light green’ containing the Adderstone Reserve, zoned ‘Recreation’, adjoined by land to the west coloured ‘dark green’ which denotes the Conservation and Amenity Zone. To the north/north-east of the proposed link road is the Manga o Tane Reserve, also zoned Conservation and Amenity in the District Plan.



Figure 2: Excerpt from PNCC District Plan (online) maps

- 2.12 As shown in Figure 2 above, Johnstone Drive is subject to a Designation (Designation Reference No: 80) for Roading Purposes. It is noted that the existing formed road along Johnstone Drive does not strictly follow the alignment of the existing designation. It is also noted that in December 2020 the section of Johnstone Drive that would connect its northern and southern portions (i.e. “the missing link”) was vested with Council. As a result, Johnstone Drive is a complete formed road, vested in Council. It provides a legal and physical connection between Aokautere Drive (State Highway 57) and Pacific Drive.
- 2.13 The application site is also subject to an overlay which identifies portions of the land ‘Developable’ and ‘Limited Developable’, as shown in District Plan Map 10.1 Aokautere Development Area. An excerpt of this map is shown in Figure 4 below. the ‘primary purpose’

of the division between the Limited Development Land and Developable Land is to establish stability controls for housing development<sup>2</sup>.

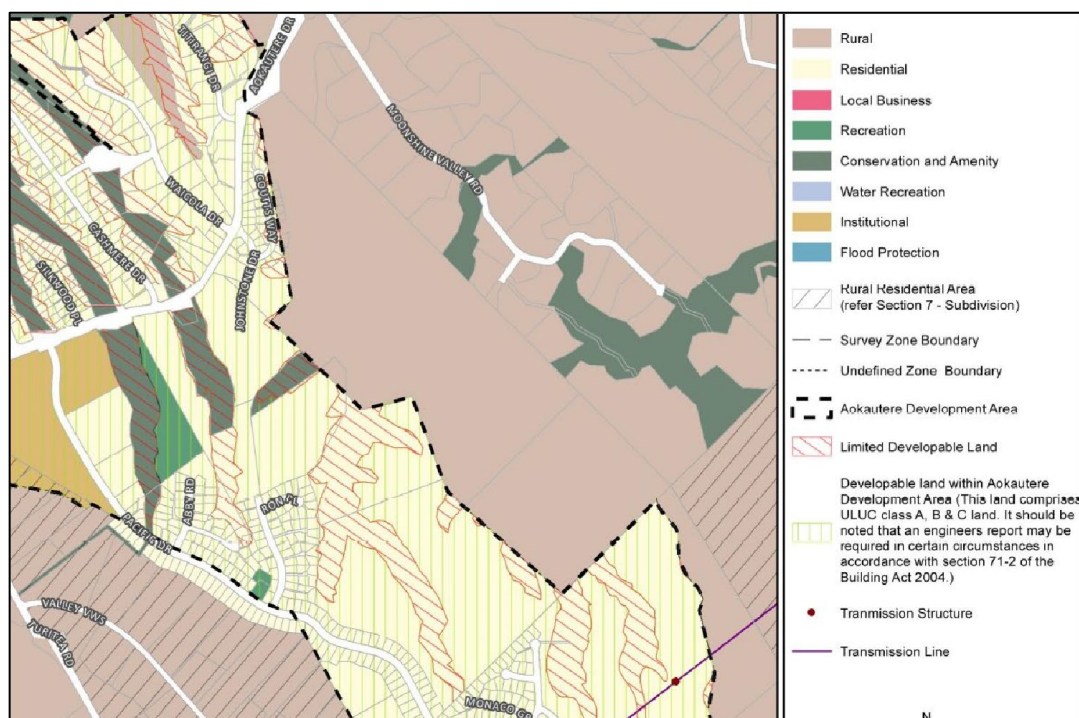


Figure 3: Excerpt from PNCC District Plan Map 10.1: Aokautere Development Area

2.14 In the Council's Roading Hierarchy in the District Plan, the following streets have been assigned the classification(s) below:

Road Name	Classification
Johnstone Drive	Collector Road
Pacific Drive	Minor Arterial
Aokautere Drive	State Highway
Abby Road	Local Road
Woodgate Court	Local Road

<sup>2</sup> The explanation under Rule 10.7.1.1(f) also signals that these limitations (e.g. the terrain) have also shaped the nature of housing development and the character of the Aokautere area.

## **Additional Consents Required**

2.15 To enable the proposed construction works, additional consents may be required from Manawatu-Whanganui Regional Council (Horizons). These consents would likely include:

- a. Large-scale land disturbance including earthworks (Rule 13-2) and the deposit of cleanfill (Rule 14-21), land use consent required under Section 9 of the RMA.
- b. Resource consent may be required under Rule 17-23 which relates to activities that do not comply with one or more permitted activity rules within chapter 17 of the Regional Plan. A non-compliance with the permitted activity rules would be assessed as a Discretionary Activity. The physical works are yet to be confirmed but the permitted activities of relevance are outlined in Rule 17-10. Specifically:
  - i. Rule 17-10(c)(v) requires the culvert, associated fill and culvert placement to be a minimum depth below the bed of the river (stream) of 20% of the culvert width.
  - ii. 17-10(d) requires the culvert to be positioned so its alignment and gradient are the same as the river (stream).
  - iii. 17-10(f) requires the culvert inlet to be protected against erosion.

2.16 It is also possible that resource consent is required under the National Environmental Standard for Freshwater Management 2020 (NES-FM). Resource consent may be required under Section 13 of the RMA, depending on the nature of the physical works.

2.17 There are no matters in this application relating to sections 11, 12, 13, 14 or 15 of the RMA.

2.18 For completeness, it is noted that had this Notice of Requirement not been pursued:

- a. land use consent would be required under Rule 6.3.7.1 of the District Plan for earthworks which exceed a fill depth of 1.5m and an area of 500m<sup>2</sup> within a 12-month period; and,
- b. the construction of a road in the Residential Zone which is to be vested with Council would be a permitted activity under Rule 20.4.2, subject to compliance with the permitted activity performance standards (a) to (h).

## **Consent History**

2.19 Horizons Regional Council granted Aokautere Land Holdings Ltd (ALHL) with a land use consent in 2016 to undertake earthworks to establish a public network road and infill the Abby Road



Gully (Horizons Reference No: ATH-2016200752.00). These works were associated with residential development at Johnstone Drive and Abby Road, Aokautere. A copy of this decision is included in **Appendix 3** of this report.

2.20 A companion resource consent application was also sought from PNCC by ALHL (Council Reference No: LU 4085). It involved the filling of virtually all of Abby Road gully up to Manga o Tane Reserve, as shown in Figure 4 below. This application was limited notified and the decision was declined by an Independent Hearings Commissioner, a copy of this decision is included in **Appendix 4** of this report. The principal reasons for declining this consent are outlined in paragraph 114 of that decision are as follows:

1. *The proposed earthworks within the extent of the Abby Road gully are considered to have more than minor effects on the natural landform.*
2. *The proposed earthworks within the extent of the Abby Road gully are considered to have more than minor effects on the Landscape Values of the environment.*
3. *The proposed earthworks within the extent of the Abby Road gully are considered to have more than minor effects on the Visual Amenity Values of the environment.*
4. *The proposal is inconsistent with the Objectives and Policies of Chapter 6 pertaining to earthworks.*

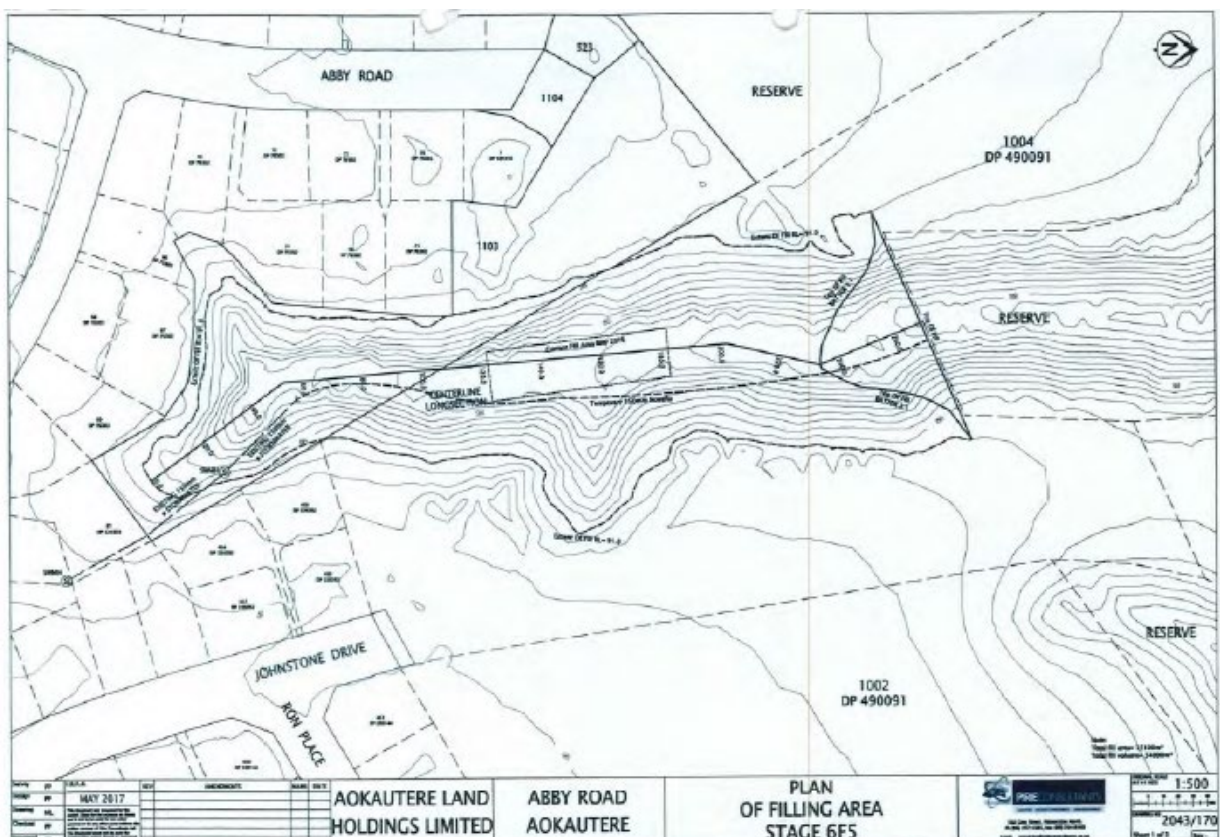


Figure 4: Extent of earthworks (filling of Abby Road gully) sought under LU 4085

2.21 A further subdivision consent and land use consent was lodged by ALHL to PNCC on 1 April 2019 (Reference No: SUB 5031) in respect of the land located at 30 Abby Road (Legal Description Lot 2 DP 484516). ALHL sought subdivision consent to enable the creation of six new residential allotments, one Right of Way and one balance allotment (Lot 100) that is to be amalgamated with an adjacent property (Lot 1102 DP 519561). A copy of the proposed scheme plan is included in Figure 5 below.



Figure 5: Subdivision application sought by ALHL from PNCC (SUB 5031)

2.22 The application was processed on a limited notified basis with the owner of 41 Abby Road being considered an affected party and making a submission in opposition to the proposal. The Hearings Panel appointed to determine the subdivision identified that, as the current Notice of Requirement had been publicly notified at the time at the time of making its decision, meaning it had interim legal effect. Although the Hearings Panel did not determine the merits of the application as a whole, it declined the resource consent application as a result of the

NoR having legal effect. The Hearings Panel outlined the impact of the NoR on that proposal as follows<sup>3</sup>:

*it must clearly follow that it's mere existence within the statutory framework is an absolute impediment to our consideration of the substantive Resource Consent Application. In fact, we form the view, that do to so within the current context would be improper in law.*

- 2.23 As explained in paragraph 1.12 above, that NoR application has since been withdrawn and replaced with this NoR application.

### **The statutory framework for consideration of the Notice of Requirement**

- 2.24 The decision-making framework for the proposal is contained in s168A of the RMA. This section specifically applies where the notice of requirement is made by the territorial authority. The relevant aspects of s168A for this application are as follows:

#### **168A Notice of requirement by territorial authority**

- (1) *This section applies if a territorial authority decides to issue a notice of requirement for a designation—*
- (a) *for a public work within its district and for which it has financial responsibility;*
  - ...
- (1A) *When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.*
- ...
- (3) *When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—*
- (a) *any relevant provisions of—*
    - (i) *a national policy statement;*
    - (ii) *a New Zealand coastal policy statement;*
    - (iii) *a regional policy statement or proposed regional policy statement;*
    - (iv) *a plan or proposed plan; and*

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<sup>3</sup> Decision on SUB 5031, dated 28<sup>th</sup> March 2020, paragraph 51

- (b) *whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—*
    - (i) *the requiring authority does not have an interest in the land sufficient for undertaking the work; or*
    - (ii) *it is likely that the work will have a significant adverse effect on the environment; and*
  - (c) *whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*
  - (d) *any other matter the territorial authority considers reasonably necessary in order to make a decision on the requirement.*
- (3A) *The effects to be considered under subsection (3) may include any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the requirement, as long as those effects result from measures proposed or agreed to by the requiring authority.*
- (4) *The territorial authority may decide to—*
  - (a) *confirm the requirement:*
  - (b) *modify the requirement:*
  - (c) *impose conditions:*
  - (d) *withdraw the requirement.*



### Section 3 – Further Information Request(s) and the Notification Process

#### Further Information Request(s)

- 3.1 Further Information was requested of the applicant on 7<sup>th</sup> October 2020. A response to this request was received 20<sup>th</sup> October 2020.

#### Notification and Submissions

- 3.2 A decision to publicly notify the application was made by Council under delegated authority on 23<sup>rd</sup> October 2020. The public notice was advertised in the Manawatu Standard on the 4<sup>th</sup> November 2020. The notice was also advertised on the Council's website where information on the Notice of Requirement has remained.
- 3.3 At the close of submissions on 2<sup>nd</sup> December 2020, a total of 3 submissions were received. A late submission was subsequently received on 10<sup>th</sup> December 2020 by Lynne Bishop. The applicant (PNCC as Requiring Authority) advised that they took no issue with its acceptance and that no prejudice would arise. The Territorial Authority therefore extended the timeframes on the submission period under Section 37 of the Act and Mrs Bishop's submission has been accepted.
- 3.4 A total of 4 submissions were received, 3 in opposition and 1 neutral. I have had regard to these submissions in this s42A report.

Sub No:	Name	General position of submission
1	Bo Yu	Oppose
2	Powerco Ltd	Neutral
3	Aokautere Landholdings Ltd	Oppose
4	Lynne Bishop	Oppose

- 3.5 Powerco Ltd take a neutral position with respect to this proposal. They seek to ensure its existing underground gas assets within the designation area, as shown in Figure 6 below, are appropriately protected during the site works anticipated by the Notice of Requirement. The purpose of this is for Powerco Ltd to continue to operate, maintain and access its assets both during and post construction. Its submission identified specific relief sought through a consent condition to that effect.



Figure 6: Location of existing Powerco underground assets (excerpt from Submission No: 2)

- 3.6 Bo Yu and Lynne Bishop are both residents located in close proximity to the designation area and have raised similar concerns in opposition to the notice of requirement. Both submitters refer to the previous land use consent sought by Aokautere Land Holdings Ltd (ALHL) to PNCC for the filling of Abby Road gully (LU 4085). Both Mr Yu and Mrs Bishop raise their concern that if this Notice of Application is approved, there will be further application for filling the gully by ALHL at a later date.
- 3.7 Mr Yu raises the following specific concerns:
- What the purpose of the new road
  - Whether there is any (traffic) surveys or data to support the road extension;
  - Who is going to pay for the road;
  - whether there is any environmental impact research for the application; and,
  - that it will change the nature of the gully by cutting the gully into two separate parts.
- 3.8 Mrs Bishop raises the following specific concerns:
- That the proposed earthworks will cause significant adverse effects. Her primary concern is the potential landscape and visual amenity effects from earthworks and the associated impact on their amenity values (and other neighbouring residents).

- b. That their current view of the gully, Manga o Tane Reserve and all the way up Fitzherbert East Road would be significantly affected.
- c. That the uniqueness of the contours of Abby Road gully will be disrupted.
- d. That the proposal is not consistent with earthworks related Objectives and Policies in Section 6.3.3 of the District Plan or the Assessment Criteria under Rule 6.3.7.

3.9 Aokautere Land Holdings Ltd (ALHL) has made the following comments in their submission:

- a. The NoR will preclude the subdivision development contemplated by ALHL (SUB 5031) and subsume most of its developable land in Lot 2 DP 484516;
- b. The NoR would “open the door” to the residential development of its own land at the expense of ALHL;
- c. There would be nominal difference in travel duration and risk profile for residents of Abby Road and Woodgate Court exiting via Pacific Drive to Aokautere Drive, rather than via Johnstone Drive;
- d. The area proposed to be designated is some 37m in width and 3340m<sup>2</sup> in area where the width of road is required to be only 17.2m in the Council’s Engineering Standards for Land Development. The over-width nature and alignment of the land to be designated appears to be driven by a commercial/development opportunity and to curtail competitive development from ALHL. The use of designation powers in this manner is improper;
- e. The Council’s land is not landlocked as it has available to it alternative access from Pacific Drive or from State Highway 57;
- f. The costs entailed in the creation of the link road is not commensurate with the traffic movement/utilisation requirements for the proximate and anticipated road users. It will not afford significant utility but will come at great expense to the ratepayer base and at the financial detriment to ALHL; and
- g. The NoR has negative traffic efficiency consequences (without intersection improvements); negative safety considerations; and, a perceived moderate enhancement in accessibility.

## Section 4 – Evaluation and Recommendations

### Introduction to Evaluation

- 4.1 In this section of my report I address the relevant requirements of s168A of the Act. I have adopted an audit approach and focused on the areas of contention arising from Council technical expert assessment, submissions, and my own evaluation of the proposal.
- 4.2 The statutory framework and expectation of Section 168A is one where the Territorial Authority is required to consider the environmental effects of the NoR, subject to Part 2, and having particular regard to the matters set out under Section 168A(3) (a) to (d). This assessment is provided below.
- 4.3 In have focussed below on key issues in contention as relevant to the matters in s168A and organised my discussion below on the following matters:
- a. Landscape, natural character and visual amenity effects;
  - b. Effects on the land transport network;
  - c. Effects on amenity values
  - d. Construction effects, including earthworks;
  - e. Archaeology, historic heritage and cultural effects;
  - f. Stormwater and natural hazards;
  - g. Positive Effects;
  - h. Matters in Section 168(3)(a) to (d); and,
  - i. Part 2 of the RMA.
- 4.4 Rather than consider the District Plan and One Plan's objectives and policies separately to effects, the relevant provisions are referred to at intervals under the applicable topics. For completeness, however, I have attached a copy of all objectives and policies in the Plan I consider to have relevance to the proposal (at **Appendix 2**). This is then followed by an assessment of other relevant higher order documents which are more broadly cast.
- 4.5 Following this assessment, I will then provide a recommendation to the Hearings Commissioner who will decide the application under Section 168A(4) of the Act.

- 4.6 At this juncture, I also confirm that when considering this requirement and the submissions received, I have not had regard to any trade competition or the effects of trade competition, as per Section 168A (2A) of the Act.

#### **Landscape, natural character and visual amenity effects**

- 4.7 A detailed assessment of the landscape, natural character and visual amenity effects of the proposal has been undertaken by Mr John Hudson (Hudson Associates Ltd), included in Appendix D of the Application. Mr Bray has undertaken a technical peer review of this assessment.
- 4.8 It is noted that as part of his analysis, Mr Hudson has compared the proposed PNCC road alignment (which he refers to as 'Option 1' or the 'Northern Alignment') with a comparative alignment that has been put forward by Mr Phil Pirie (Mr Hudson refers to this as 'Option 2' or the 'Southern Alignment'). The assessment of effects of Option 1 are the focus of this assessment below, noting that the effects of Option 2 is of particular relevance to an assessment of alternatives under Section 171(1)(b) of the Act. This is addressed later in this report.
- 4.9 In paragraphs 32 to 49 of his assessment, Mr Hudson includes: a description of the project site; the localised vicinity; and, the wider environment. Mr Bray considers that this description is accurate and an adequate base from which to determine the effects of the proposal.
- 4.10 In assessing the significance of effects of the proposal Mr Hudson has used a seven-point scale (see Table 1.1, 2.0, 4.0 and 5.0 of his assessment) the has been utilised by Mr Bray. Mr Bray helpfully explains that that this scale deliberately avoids the use of the RMA terminology , but for the purposes of translation, it is largely accepted that *moderate-low* on the scale is equivalent to *minor* (as is commonly referred to in RMA terminology).
- 4.11 Following form the methodology of Mr Hudson and Mr Bray, the conclusions reached below initially consider the proposal without mitigation. The proposal is then consider with mitigation, the significance of these mitigation measures are summarised below and are to be reinforced by conditions on the designation.

### *Landscape effects*

- 4.12 Mr Hudson acknowledged in his assessment<sup>4</sup> that the gully is a natural landform and feature which contributes to the landscape values of the site and surrounds. The introduction of the road will undoubtedly change the character of the gully. He notes that when viewed from its north-south axis, the road will interrupt the flow of the valley's character in a manner not reflective of natural patterns of the area. Mr Bray summarises that<sup>5</sup>:

Although vegetation and the presence of a waterway within the gully give the appearance of a natural feature, the reality is that the Abby Road Gully has been highly modified over time. Re-planting and regeneration within Manga O Tane Reserve is underway, although this is below the proposal site. The top of the gully is still in relatively poor condition, no doubt still recovering from historical agricultural land-uses prior to the development of residential housing, as well as not being managed in the same way as the reserve or flatter terrace areas.

Having said this, the proposal will (as identified in the Hudson Report) provide a somewhat "unnatural" crossing of the gully that is generally at odds with the overall patterns of the surrounding landform (noting that this landform has been modified over time).

I therefore consider the potential landscape effects align with the description of ***moderate***, that being the "alteration of one key element or feature/attribute – the composition/pattern [of the landscape] partially changed"...

- 4.13 Both Mr Hudson and Mr Bray agree that given the highly modified nature of the site, the proposal will not result in the adverse loss of habitat. Both experts agree that there will be a *moderate* adverse effect on the biophysical attributes; *low* effects on vegetation, habitat and the stream bed; and overall *moderate* effects on landscape character.

### *Natural Character Effects*

- 4.14 Table 5.0 of Mr Hudson's assessment outlines his opinion on the existing level of natural character. He considers abiotic, biotic and perceptual attributes of natural character, which Mr Bray confirms is consistent with current best practice assessment. Taking into account the landscape as it is today, Mr Bray agrees with Mr Hudson that the adverse effects of the proposal on natural character will be ***low***.

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<sup>4</sup> Assessment by Mr Hudson, Appendix D of the Application, page 2, para [64].

<sup>5</sup> Assessment of Mr Bray, pg 3-4

### Visual amenity effects

- 4.15 Mr Bray surmises that Mr Hudson’s assessment of visual amenity effects focusses in particular on visual coherence and the visual intrusion of the proposal on the amenity of the gully. He concludes that, overall, visual amenity effects of the proposal will be *moderate*. Mr Hudson does not identify any potentially affected parties, other to acknowledge that there is a “*minor* effect on adjacent parties and the wider public”<sup>6</sup>.
- 4.16 Mr Bray has provided a more detailed assessment utilising the seven-point scale of effects adopted by the Hudson Report<sup>7</sup>. For convenience, Mr Bray’s tabled assessment has been reproduced below<sup>8</sup>. To summarise Mr Bray’s assessment four properties are likely to experience a ***moderate*** level of visual effects, and six properties a ***moderate-low*** level of visual effects.

Address	Location	Brief Evaluation	Rating
14 Abby Road	Rear section, single storey dwelling located middle of Abby Road, eastern side.	Property is largely screened from the proposal by neighbouring dwellings, although some oblique views might be possible from the end of the garden.	Low
20 Abby Road	Single storey dwelling located middle of Abby Road, eastern side.	Property is largely screened from the proposal by neighbouring dwellings.	Low
22 Abby Road	Rear section, single storey dwelling located towards end of Abby Road, eastern side.	Property is tucked behind the neighbouring dwelling (24 Abby Road) and is unlikely to have any clear views towards the proposal. Some fleeting views might be possible from driveway area and from end of the garden.	Low
24 Abby Road	Rear section, single storey dwelling located near end of Abby Road, eastern side.	Difficult to clearly ascertain views from this property, but likely that due to its elevated position above the gully that views of the eastern portion of the proposal will be possible, including construction activity. Likely to see and be affected by streetlights.	Moderate-Low
26 Abby Road	Single storey dwelling located near end of Abby Road, eastern side.	Views to proposal from rear of property are restricted by boundary fences, including fence along adjacent driveway, and neighbouring dwelling. However, elevation above gully may result in some oblique views of proposal between neighbouring	Moderate-Low

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<sup>6</sup> Landscape Assessment of Mr Hudson, Appendix D of Application, page 29, para [93]

<sup>7</sup> Mr Bray notes that his assessment considers the potential effects of streetlights, both as visible elements during the day and as additional light sources at night.

<sup>8</sup> Assessment of Shannon Bray, Section 42A Report, pages 5-6.

		dwelling. Likely to see and be affected by streetlights.	
28 Abby Road	Single storey dwelling located end of Abby Road, eastern side.	Directly adjacent to proposal area, although rear and side of property has 1.8m high paling fence. Would be affected by any construction to north side, but is elevated above gully and would have views across the proposal from rear. May be affected by streetlights.	Moderate-Low
35 Abby Road	Single storey dwelling located in middle of Abby Road, western side.	Semi-open front yard with mature trees on boundary, house set back from road. Limited views to proposal as a result of neighbouring and opposite dwellings.	Very-Low
37 Abby Road	Single storey dwelling located towards end of Abby Road, western side.	Open front yard, but views restricted by neighbouring and opposite dwellings. May have limited oblique views across to part of the proposal and construction.	Very-Low
39 Abby Road	Single storey dwelling located near end of Abby Road, western side.	Open front yard, but views somewhat restricted by neighbouring dwelling. May have oblique views across to proposal and construction. Likely to see streetlights.	Moderate-Low
41 Abby Road	Single storey dwelling located end of Abby Road, western side	Open front yard and driveway, some views towards proposal. Likely to see whole of proposal and construction works, including streetlights.	Moderate
25 Johnstone Drive	Single storey dwelling near to end of built development on Johnstone Drive, western side.	Property is largely screened from the proposal by neighbouring dwellings.	Very-Low
27 Johnstone Drive	Rear section, single storey dwelling, near to end of built development on Johnstone Drive, western side.	Orientation of rear boundary looks away from proposal, and views to side restricted by neighbouring dwelling. May be some oblique views from end of garden.	Very-Low
29 Johnstone Drive	Rear section, single storey dwelling, at end of built development on Johnstone Drive, western side.	Difficult to ascertain whether property is fenced on side boundary, but even so it is likely to have views over much of the proposal and see streetlights.	Moderate
31 Johnstone Drive	Single storey dwelling at end of built development on Johnston Drive, western side.	Difficult to ascertain whether property is fenced on side boundary, but even so it is likely to have views over much of the proposal including streetlights.	Moderate
48 Johnstone Drive	Single storey dwelling on the northeast	Some oblique views towards the proposal, although these are restricted by boundary fences and vegetation.	Low



	corner of Johnstone Drive and Ron Place.		
3 Ron Place	Single storey dwelling at end of Ron Place, northern side.	Some oblique views towards the proposal although these are restricted by boundary fences, the neighbouring dwelling and new plantings around the school.	Very-Low
3 Woodgate Court	Single storey dwelling on northern side of Woodgate Court	Some oblique views towards the proposal down the gully, but restricted by rear section dwellings on Abby Road.	Low
5 Woodgate Court	Rear section, single storey dwelling on northern side of Woodgate Court	Located at head of the gully system, and potential for views towards proposal, although it is difficult to ascertain to what degree boundary and garden vegetation provides screening. Located some distance from the proposal, more likely to be affected by construction movement and night lights.	Moderate-Low
9 Woodgate Court	Single storey dwelling on northern side of Woodgate Court.	Property is largely screened from the proposal by neighbouring dwellings.	Very-Low
11 Woodgate Court	Single storey dwelling, with dormer attic, on northern side of Woodgate Court.	Orientated on an oblique angle to the gully, with views partially screened by neighbouring property and potentially vegetation. However, some views possible from dormer windows. Located some distance from the proposal.	Moderate-Low
17 Woodgate Court	Single storey dwelling near to turning circle on northern side of Woodgate Court.	May have some oblique views down gully towards proposal, but appear to be heavily restricted by vegetation on neighbouring property.	Low
19 Woodgate Court	Single storey dwelling off turning circle, northeastern end of Woodgate Court.	Appears to have relatively open views down gully towards proposal. Although some distance away is likely to see most of the construction works and completed road. Night lighting likely to be visible.	Moderate

4.17 In considering the adverse visual amenity effects of the proposal (without mitigation), Mr Bray concludes that these effects will be generally **low**, however there will be some immediately adjacent properties whereby visual effects will be as high as **moderate**. He agrees with Mr Hudson that the overall visual effects rating of the proposal should be considered as **moderate**.

### *Effects of the proposal with mitigation*

4.18 At paragraph 81 of Mr Hudson's assessment he recommends the following measures to mitigate adverse effects:

- a. Ensure the land area between the proposed road and the Manga o Tane Reserve is revegetated to match the native species within the Reserve.
- b. Plant all road embankments within the designation.
- c. Ensure pedestrian access is provided for along the road to add further amenity value and connectivity.
- d. Facilitates the opportunity for a walkway connection to be created through to Manga o Tane Reserve.

4.19 These measures have been adopted by the Requiring Authority and are intended to be reinforced as conditions on the Designation.

4.20 Mr Bray supports these recommended mitigation measures. In particular, he notes<sup>9</sup>:

*Planting the road embankment on the lower side would allow for increased control over the sequence of vegetation between the proposal and the reserve and would help to disguise and integrate the landform modifications associated with the road. This would effectively speed up the natural regeneration process, with the road providing a more rational endpoint to the gully system than a non-defined legal boundary. In turn, this would further enhance the visual amenity experienced by future users of the road. Planting the road embankment on the upper side of the gully provide some level of mitigation of visual effects, lessening the dominance of the road infrastructure and enhancing the connection to the reserve for viewers uphill of the proposal. It will also provide a start to enhancement of the natural qualities of the upper gully...*

4.21 Pedestrian access along the new section of road will be provided with footpaths on either side of the road in accordance with the Council's ESLD. Public access to the Manga o Tane Reserve will also be secured (within the designation boundaries) through a condition of the designation. Landscaping and public access outcomes to the Manga o Tane Reserve will be achieved through a condition that requires a *Landscape and Public Access Plan*. This plan will demonstrate the full extent to which the existing landscape will be modified; how the soft landscape works will be implemented and maintained; and, how public access from Abby Road to Manga o Tane Reserve will be provided and maintained in future.

4.22 Mr Bray recommends a further condition be included to show how LED street lamps will be used with directional lighting to reduce light spill beyond the boundaries of the designation

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<sup>9</sup> Assessment of Mr Bray, page 7-8.

area. I accept Mr Bray's recommendation and have included this as a condition on the designation.

*Conclusion on landscape, natural character and visual amenity effects:*

- 4.23 Both Mr Bray and Mr Hudson generally concur that the landscape, natural character and visual amenity effects from some residential properties (without mitigation), will be ***moderate*** - translating to *more than minor* adverse effects. With mitigation as set out above, Mr Bray considers that the landscape and natural character effects of the proposal will reduce to ***low***. Visual effects will still be experienced by some close-neighbouring properties. I accept Mr Bray's conclusion that the adverse effects in this regard will be minor, but acceptable with mitigation.
- 4.24 I consider that the proposal is consistent with the relevant objectives, policies and assessment criteria of the District Plan relevant to landscape character and visual amenity considerations, including:
- a. Policy 1.2 (Chapter 6) which seeks to avoid, remedy, or mitigate any adverse effects on the environment on the natural land form; landscape values; visual amenity values; and adjoining properties;
  - b. The further policies under Rule 6.3.7.1 which seeks to avoid earthworks that 'materially impact' on the landscape and visual values associated with the land in its surrounding context. Based on the advice of Mr Bray and Mr Hudson, I consider that the impact on landscape and visual values will be minor; and,
  - c. Policy 2.6 (Chapter 7) which seeks to avoid, remedy or mitigate the adverse effects caused by alterations to the natural landform; and, to enhance the amenities of the natural and built environment by requiring (among other things) earthworks to be designed, built and landscaped to avoid and/or mitigate adverse effects on the amenities of existing or potential residentially zoned area.

**Effects on the land transport network**

- 4.25 The Council, as Requiring Authority, has provided an assessment of the effects on the local roading network, included in the Transportation Assessment, prepared by Sam Thornton from WSP Opus (see Appendix C of the application). These have been reviewed by the Council's Traffic Expert, Mrs Harriet Fraser.

- 4.26 The assessment by Mr Thornton considers: the District Plan Roading Hierarchy; posted speed limits; local traffic flows; crash records; walking, cycling and public transport networks. Taking account the predicted transport demands<sup>10</sup>, Mr Thornton draws the following conclusions:
- a. the effects of the proposal on the efficiency of the Abby Road and Pacific Drive intersection will be negligible; with the performance of the Abby Road intersection with Johnstone Drive being very good;
  - b. the change to the performance of the intersection of Abby Road with Pacific Drive will be negligible and the new intersection of Abby Road and Johnstone Drive will be designed and constructed to an appropriate standard. Mr Thornton has assessed the overall effects on safety to be negligible;
  - c. The link road provides improved access and route choice for the surrounding area, resulting in a minor positive effect on accessibility; and,
  - d. The link will result in a minor positive improvement in resilience as the link will provide some route redundancy.
- 4.27 Mrs Fraser agrees with these conclusions, as outlined in paragraphs 19 to 23 of her evidence. She notes that the Level of Service on the Abby Road approach will change from grade A to C as a result of the link road, a change which she considers would be noticeable for residents who will experience increased delays at the intersection and queuing. However, Mrs Fraser considers that this change in the level of service will ultimately be acceptable. I accept Mrs Fraser's advice in this regard.
- 4.28 The exact configuration of the proposed road will be confirmed through detailed design and be subject to an independent Road Safety Audit. However, Mr Thornton describes that the indicative alignment has been designed to the minimum requirements of a 50km/ph design speed and includes the transportation features outlined below<sup>11</sup>.
- a. Maximum vertical grade of 6%;
  - b. Minimum horizontal curve radius of 50m;
  - c. Approximately 6m depth of fill required in the middle of the gully at the centre of the alignment;
  - d. Cut slopes of 2 horizontal to 1 vertical and fill slopes of 3 horizontal to 1 vertical; and
  - e. 9m width of corridor (includes carriageway, berms, footpaths).

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<sup>10</sup> it is noted that the assessment by Mr Thornton pre-dated the vesting of Johnstone Drive which has since occurred in December 2020.

<sup>11</sup> Transportation Assessment – Appendix C of Application, page 17

- 4.29 Based on the assessment of Mr Thornton and Mrs Fraser, I consider that the adverse effects of the proposal on the land transport network will be no more than minor and acceptable.
- 4.30 I have had regard to the transport related objectives and policies, in particular those contained within Chapter 20 of the District Plan. I consider that the proposal is consistent with:
- a. Policies 1.1 to 1.8 (Chapter 20) and its overarching objective. In particular, the proposed road will function as a local road in accordance with the local roading hierarchy (Policies 1.1 and 1.2); it will be designed and constructed to meet the relevant performance standards (Policy 1.5); and, will support people to use active modes of transport (Policy 1.6).
  - b. Policies 1.3 and 1.4 (Chapter 10) in promoting the efficient use of urban (roading) infrastructure and supporting residential development and intensification.
  - c. Policy 2.3 (Chapter 7) in ensuring the safe, convenient and efficient movement of people, vehicles and goods, whilst minimising adverse effects on the environment. I note that this policy sets out that the layout of the transport network will link to, provide for, and be compatible with the existing and future transport networks, integrating with surrounding development. It will connect two roads and provide for a choice of routes for multiple transport modes.
  - d. Regional Policy Statement Objective 3.1 and 3.3, The provision of roading infrastructure will be strategically integrated with the surrounding land use.

#### **Effects on Amenity Values**

- 4.31 The Act defines amenity values as those: *“natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”*. In my opinion, the primary effects of the proposal on amenity values can be distinguished between the effects during the construction period; and, effects following the operation of the road. Construction related effects are assessed later in this report. This assessment focuses on the effects for surrounding properties once the link road is operational.
- 4.32 Mr Hudson and Mr Bray have both identified that the proposal will introduce new traffic movements in the area, and this will be an effect on visual amenity. Both Mr Bray and Mr Hudson consider this effect to be acceptable. Mrs Fraser has also identified that properties on Abby Road will experience effects from increased traffic volumes. Abby Road will be converted

from a 'no-exit' road to through-road connection between Pacific Drive and Johnstone Drive. She states:

*Table 4 in the [Transport Assessment included in Appendix C of the Application] includes a potential forecast increase in traffic on Abby Road from 315 vehicle movements per day to 2,025 vehicle movements per day. While the increase in traffic flows is large the daily traffic flow remains at a level anticipated for a local road. I consider that the main traffic effects associated with the NOR will be for the existing users and residents of Abby Road.*

- 4.33 Overall, I consider that those parties with frontage to Abby Road will experience a minor adverse effect, but I consider this effects to be acceptable. I accept Mrs Fraser's advice that this is consistent with a local road in this regard.
- 4.34 I have had regard to Policies 2.1, 2.2 and 2.4 (Chapter 20). Although the proposal will result in an increase to the through movement of traffic, it will remain consistent with a local road (Policy 2.1). In accordance with Objective 2, the use of the land transport network will remain safe, convenient and efficient while avoiding, remedying or mitigating adverse effects in a way which maintain the amenity values and character of the City's environment.

**Construction effects, including earthworks;**

- 4.35 Mrs Dowse has identified potential construction effects associated with the NOR which might include: earthworks (dust, silt and sediment); construction noise; traffic movements associated with construction vehicles and machinery; and, general construction activity. Dust will be managed through water sprinklers, should they become necessary during dry conditions. The applicant assesses that these effects will be temporary in nature and can be avoided or mitigated through routine site management measures.
- 4.36 Mrs Dowse also refers to proposed designation conditions that would require construction noise to comply with the New Zealand Standard 6803:1999 Acoustics - Construction Noise. I support such a condition and I have included this as a draft condition in Appendix 2.
- 4.37 It is specifically noted that Powerco Ltd have identified an underground asset (a gas line) which occupies a portion of the designation corridor. In their submission, Powerco have requested a condition on the designation which enables ongoing operation, maintenance and access to this infrastructure. I accept Powerco's submission in this respect.<sup>12</sup>

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<sup>12</sup> I note that Powerco Ltd have identified the specific wording of the conditions they wish to include. For convenience, I have included this condition in the Construction Management Plan condition in such a manner which I consider achieves the intent of Powerco's suggested condition.

- 4.38 I consider that construction related effects will be limited in duration, localised, and will be temporary in nature. I also consider that construction related effects can be appropriately mitigated through conditions on the designation. Overall, I agree with Mrs Dowse that such effects will be less than minor for any party.
- 4.39 The proposal will achieve consistency with several primary objectives and policies, including:
- a. Policy 2.5 (Chapter 7) by ensuring that earthworks, do not result in a dust nuisance; migrate material to waterways or adjoining properties, or, result in damage to property from stormwater runoff; and,
  - b. Objective 1 (Chapter 6) and the associated policies by avoiding, remedying or mitigating the associated adverse effect of earthworks.
  - c. Objective 4.2 of the Regional Policy Statement and Objective 13-1 of the Regional Plan which each seek to regulate potential causes of accelerated erosion (such as land disturbance) and avoid increased sedimentation into water bodies from human activity as far as reasonably practicable. The use of on-site mitigation measures within the E&SCP will achieve these objectives.

#### **Archaeology, historic heritage and cultural effects**

- 4.40 The site has been previously modified by earthworks activities (a predominance of fill works rather than earthwork cuts). I have no reason to consider that there will be potential adverse effects on historic heritage. I have also had regard to the specific effects on cultural values.
- 4.41 The ephemeral stream running through the gully flows through to the Manawatu River. Its tributaries (and the river itself) has Statutory Acknowledgement under the Rangitane o Manawatu Claims Settlement Act 2016. The requiring authority has consulted with Rangitane o Manawatu who have expressed an interest in the biodiversity and stormwater of the gully. Notice was served on Rangitane o Manawatu who did not make a submission on this application. There are no known items of cultural significance.
- 4.42 In case of any accidental discoveries, I recommend conditions attached to the proposed designation that requires the adoption of an Accidental Discovery Protocol during construction activities (and site investigations). Advice notes are also included which refer to obligations under the HNZPT Act 2014 in relation to any archaeological site. Potential effects on archaeology, historic heritage and cultural effects are anticipated to be less than minor, bolstered by conditions of consent which relate to the potential for accidental discoveries.

- 4.43 I also consider that the proposal is consistent with the relevant objectives and policies of the District Plan and Regional Plan, including:
- a. City View Objective 15 which seeks active engagement from tangata whenua;
  - b. Objectives 2.1 to 2.3 (Chapter 3) of the District Plan as the requiring authority engaged early in the process with Rangitane o Manawatu; identified if there were any urupa, waahi tapu, wahi tupuna or other sites; and, enabled ongoing consultation and communication in the biodiversity and stormwater of the gully, being an area of expressed interest from Rangitane.
  - c. One Plan Objective 2.1 and 2.3 has been given effect to through having regard to the relationship of iwi with water (the ephemeral stream of the gully), reinforced through a condition on the designation.

#### **Natural hazards and stormwater effects**

- 4.44 It is anticipated that the proposed earthworks will improve ongoing stability of the gully through the construction of the road and associated batter slopes required to be constructed in accordance with the Engineering Standards for Land Development.
- 4.45 Mr Arseneau has also assessed the stormwater-related effects of the proposal, such as the potential for increased runoff to the gully and increased stormwater contamination. Mr Arseneau explains that<sup>13</sup>:

Several sensitive areas are located downstream of the proposed road extension site, including the Manga o Tane Reserve which is a focus of local restoration and native revegetation efforts. Increased stormwater volume and contamination could adversely impact these areas if not mitigated. As well, increased runoff can result in increased erosion throughout the downstream gully system, creating potential slope stability hazards and impacting aquatic habitat.

Placement of the road through the gully will impact the flow of stormwater from upstream areas, which is acknowledged in the NOR. Mitigation is recommended with the installation of a culvert under the road. However, considering the local topography and relatively small upstream catchment area, there is not a high risk of flood impacts to upstream areas associated with the proposed road. Rather, there is a significant opportunity to use the portion of gully south/upstream of the proposed road as a stormwater detention and treatment area prior to discharge into the sensitive downstream areas. This would also serve to treat stormwater discharge from the existing residential areas.

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<sup>13</sup> Evidence of Mr Arseneau, para [17] to [18].



- 4.46 I accept Mr Arseneau's advice and consider that the potential adverse effects on the proposal with respect to natural hazards and stormwater will be no more than minor and acceptable. I reach this conclusion subject to conditions on the designation which require the final details of the stormwater design to be confirmed and appropriately sized for its stormwater management purpose.
- 4.47 The objectives and policies of the One Plan and District Plan that are relevant to the assessment of natural hazards are:

*District Plan*

- a. City View Objective 19 that seeks to avoid or mitigate natural hazards, taking into account the significant social disruption caused by natural hazard events.
- b. Objective 2 (Chapter 22) which seeks to control the type of development on land which is or might be affected by natural hazards; and, is supported by Policy 2.2 which is to establish appropriate controls to avoid, remedy or mitigate the effects of natural hazards.
- c. Policy 1.4 (Chapter 6) which states that earthworks should not increase the risk posed by natural hazards;
- d. Policy 2.4 (Chapter 7) which seeks to improve land utilization and to safeguard people and property from the adverse effects of unstable land; and, require the restructuring of land to be specifically designed by a registered engineer in soil mechanics or geotechnical matters.
- e. The layout, functioning and design of the stormwater drainage system being consistent with Policy 2.5 of the (Chapter 7);
- f. Objective 2 and Policies 2.1, 2.2 and 2.5 (Chapter 22 – Natural Hazards) which seeks to control development on land which is affected by natural hazards.

*Manawatu-Whanagnui One Plan*

- a. Objective 5 – which seeks to manage beds of rivers in a manner which, sustains their life-supporting capacity and provides for infrastructure and flood mitigation purposes.
- b. Objective 9.1 and Policy 9.4 collectively seek to ensure that the adverse effects of natural hazards on people, property, infrastructure and the well-being of communities are avoided where practicable or mitigated where the risk cannot be practically avoided.

## **Positive Effects**

4.48 When assessing the effects of an activity, there can be a tendency to focus on the negative or adverse effects. However, effects on the environment include positive effects. I recognise the following positive effects that are of particular relevance:

- a. The proposed link road will improve access to Johnstone Drive for residents and users of Abby Road;
- b. It will provide efficient access to Pacific Drive for future residents within the residentially zoned properties to the north and east;
- c. It will improve access to Adderstone Reserve for all modes of transport; and will provide a new pedestrian pathway connection to Manga o Tane reserve (consistent with Policy 2.11 (Chapter 7 of the District Plan));
- d. Mr Hudson and Mr Bray agree that there are likely to be some positive outcomes in terms of the appreciation of the gully (and Manga o Tane reserve) through the creation of the road. The proposal will result in the replanting of the embankments on both sides of the proposed road; and,
- e. Additional on-street parking will be provided and the link road will result in a minor improvement minor positive improvement in resilience as the link will provide some route redundancy.

### **Section 168A(3)(a) Consideration of any other relevant provision**

4.49 In this section I briefly discuss higher order direction from the Manawatu-Whanganui Regional Policy Statement (the One Plan); the National Policy Statement for Urban Development 2020; the National Policy Statement on Freshwater Management 2020; and, the Palmerston North City District Plan. In my view, there are no other national policy instruments or national environmental standards relevant to the proposal. I note that that Mrs Dowse has addressed the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011, concluding that the NES-CS does not apply to the proposed activity. I accept this conclusion.

*National Policy Statement - Urban Development 2020*

- 4.50 The National Policy Statement on Urban Development (2020) is relevant to this proposal and directs decision making under the Act. The NPS-UD recognises the national significance of having well-functioning urban environments that enables people and communities to provide for their social, economic and cultural well-being, and for their health and safety, now and into the future; and, providing sufficient development capacity to meet the different needs of people and communities. Palmerston North City is considered to be a medium-growth (Tier 2) urban area in terms of the NPS-UD.
- 4.51 Objective 1 seeks to provide well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future. Objective 4 identifies that urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations. Objective 6 requires Local authority decisions on urban development that affect urban environments are to be integrated with infrastructure planning and funding decisions; and strategic over the medium term and long term; and responsive, particularly in relation to proposals that would supply significant development capacity.
- 4.52 The above objectives are broadly cast. However, I consider that the proposal is consistent with these matters to the extent that they are relevant. The notice of requirement seeks to enable the roading infrastructure in the manner shown in the *Draft Aokautere Structure Plan* (discussed further below).
- 4.53 Policy 1(c) states that planning decisions should contribute to well-functioning urban environments which, as a minimum: have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport. The new link road will improve accessibility for people between housing, open space and natural spaces.
- 4.54 I consider that the proposal will not offend any objective or policy the NPS-UD and/or otherwise consistent with it.

*National Policy Statement for Freshwater Management, 2020*

- 4.55 The relevant provisions for the NPS for Freshwater Management (NPS-FM) have been outlined in Appendix 2 of this report. The objective of the NPS-FM 2020 is to ensure natural and physical resources are managed in a way that prioritises: first, the health and well-being of water bodies and freshwater ecosystems; second, the health needs of people (such as drinking water); and third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.
- 4.56 I agree with the Mrs Dowse's assessment that the installation of a proposed culvert to allow for stormwater to pass under the road will likely be able to be carried out with appropriate control methods in place and the proposal is consistent with the objective of the NPS-FM. Any water from the ephemeral stream would feed into the amenity area to the north west of the site. Freshwater will be managed in an integrated way. I consider that the proposal is consistent with the provisions of the NPS-FM, and these have been outlined in Appendix 2 of this report.

*National Environmental Standard for Freshwater, 2020*

- 4.57 I note that a designation does not override a National Environmental Standard and therefore, the future physical works will still be regulated by the NES. The ongoing use of culverts would be required to comply with Regulations 70 and 71 at the time of construction. I have had regard to the NES and note that there are no accompanying objectives or policies in the NES or applicable provisions.

*Manawatu-Whanganui Regional Council One Plan*

- 4.58 The One Plan is a combined Regional Policy Statement; Regional Plan; and, Coastal Plan. It defines how the natural and physical resources of the Region will be cared for and managed by the Regional Council in partnership with Territorial Authorities and the community. Part 1 of the One Plan is the RPS which sets out regionally significant resource management issues, and outlines objectives, policies and methods that will address them. Part 2 contains the Regional Plan and associated objectives, policies and rules.

- 4.59 I have identified the relevant objectives and policies of the One Plan in Appendix 2 and addressed the objectives and policies that are primary relevance to the application in the evaluation above.
- 4.60 I consider that the proposal is consistent with the relevant objectives and policies of the One Plan.

*Palmerston North City District Plan*

- 4.61 I have set out the full text of the objectives, policies and assessment criteria in Appendix 2 of this report and assessed the provision of primary relevance in the evaluation above. Council's expert reviewers have also undertaken assessments of the proposal in respect to their areas of expertise. I have not repeated these assessments. Rather, I have reviewed and adopted them and concur that the proposal is generally consistent with these provisions.

**Section 168A(3)(b) Adequate consideration of alternative sites, route or methods**

- 4.62 The requiring authority does not have an interest in the land sufficient for undertaking the work. As such, an assessment of alternative site, routes or methods has been undertaken by the requiring authority.
- 4.63 Three alternatives have been identified by the applicant, with being:
- a. Do nothing;
  - b. Extend Abby Road to intersect with Aokautere Drive (see Figure 7); and,
  - c. Extend Abby Road to intersect with Johnstone Drive, being a sub-option with a Northern and Southern alignment (see Figure 8 below).
- 4.64 The 'do nothing' option would retain the status quo. It would not provide the road connectivity desired (for a variety of different transport nodes) nor improve the access to Adderstone Reserve. Both Mr Thornton and Mrs Fraser agree that the current roading pattern provides limited opportunities of passing between the collector roads without taking longer routes. Conversely, the 'do nothing' option will not result in any adverse landscape effects.
- 4.65 I agree with Mrs Dowse's conclusions in Section 1.5.2 of the application as it relates to extending Abby Road to intersect with Aokautere Drive. In this section she has summarised

the conclusions of the Transport Assessment included in Appendix B of the application. Mrs Fraser has reviewed this assessment and agrees with Mr Thornton that there would be safety and efficiency issues with an additional intersection section onto State Highway 57. In addition, I note that this option would avoid adverse landscape and visual effects to the gully, with a roading layout that would generally follow the contour of the plateau.



Figure 7: Option to extend Abby Road to intersect with Aokautere Drive (SH57) - Excerpt from Appendix B

- 4.66 In addition to the preferred option, the requiring authority has considered a sub-option (the Southern alignment) which connects Abby Road to Johnstone Drive. Mrs Dowse identifies that the Northern alignment is preferred over the Southern alignment because it provides for: better road gradients; better connection and integration with the Manga o Tane Reserve; sufficient space for the proposed landscaping mitigations; and, its expansion of the NoR area allows for the predicted fill works to be undertaken within its boundaries.

4.67 In addition to the matters above, I also note that:

- a. Mr Hudson considers that both options have effects of a similar character, but that the northern alignment is more sympathetic to the landform of the gully as it is longer and therefore has more length to dip down in the middle of the road, reducing the amount of fill required, and therefore the height of the road;
- b. Mr Bray considers that the southern alignment would 'sever' a portion of land between the proposed road and the Manga o Tane reserve; and
- c. The southern alignment would be closer to residential properties on Abby Road to the south.

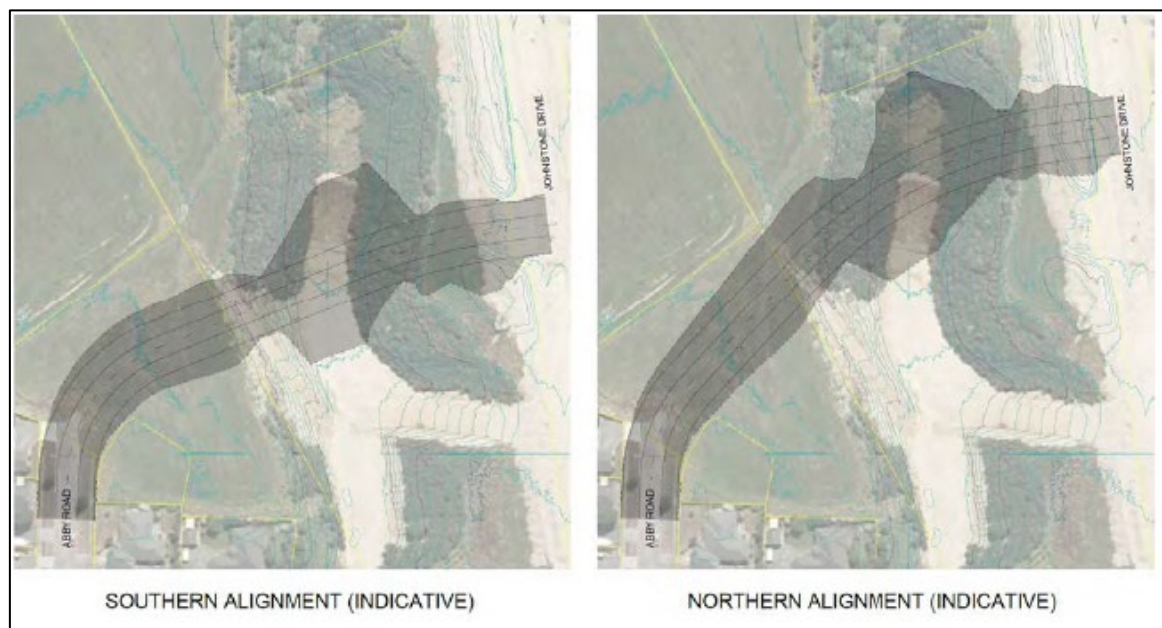


Figure 8: Sub-Options (Southern and Northern Alignment) for connecting Abby Road to Johnstone Drive

4.68 I consider that the requiring authority has adequately considered alternatives in this context, having regard to the extent of the land affected by the designation; and, the nature of the proposal and its geographical setting which limits the range of alternative options available.

**Section 168A(3)(c) Whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought**

4.69 The stated purpose of the NOR in Section 1.4.1 of the application is:

*“to secure the potential to extend Abby Road so that it joins up with Johnstone Drive for the purpose of:*

- Preserving and providing an efficient and logical connection between Abby Road and Johnstone Drive.*
- Preserving and providing an efficient and logical access to the eastern side of the Adderstone Reserve from Abby Road, to enable recreational opportunities”.*

4.70 I am satisfied that the extent of work and the designation area is reasonably necessary to achieve the above outcomes of the designation. The configuration and alignment of the designation corridor will preserve and provide an efficient and logical connection: a) between Abby Road and Johnstone Drive; and, b) to the eastern side of Adderstone Reserve.

4.71 The northern and southern extent of the designation corridor will ensure appropriate area, slope and gradient for fill batter slopes. The designation corridor appropriately abuts the Manga o Tane reserve which will enable the revegetation of exposed earthworks areas to be planted in a manner which integrates with the reserve, and will avoid a situation where a portion of residual private land physically and legally separates the proposed road from connecting to the reserve.

**Section 168A(3)(d) Any other matter the territorial authority considers reasonably necessary in order to make a decision on the requirement.**

4.72 I consider that the following other matters are reasonably necessary in order to make a decision on the requirement, which are briefly addressed below.

- a. Horizons Regional Land Transport Plan 2015-2025
- b. The Palmerston North City Strategic Transport Plan 2018;
- c. Palmerston North City Development Strategy 2018
- d. The Palmerston North City Housing and Future Development Plan 2018;



- e. The Aokautere Draft Structure Plan; and,
- f. Rangitāne o Manawatu Claims Settlement Act 2016.

*Horizons Regional Land Transport Plan 2015-2025*

4.73 The Horizons Regional Land Transport Plan (RLTP) sets out the strategic direction and priorities of the region from 2015-2025. Mrs Dowse has addressed this in Section 1.7.6 of the application. I generally agree with her assessment. Specially, I note that the RLTP recognises improving connectivity as a strategic priority. Objective 4A is for: “[a] reliable multi-modal transport system with less modal conflict, including walking and cycling, that mitigates potential environmental effects and improves environmental outcomes”; and Strategic Priority 5.4 is for: “an integrated walking and cycling network”. I consider that the proposal will contribute to achieving this objective and policy at a localised level.

*The Palmerston North City Strategic Transport Plan 2018*

4.74 The Strategic Transport Plan was adopted by Council in 2018. Its purpose is to provide infrastructure to enable growth and a transport system that links people and opportunities, and provides amenity, safety, interconnectivity, accessibility, resilience and reliability. It is a non-statutory document which sets out the Council’s Goals as an organisation. I consider that the proposal is consistent with the City Strategic Transport Plan to the extent relevant.

*Palmerston North City Development Strategy 2018*

4.75 The City Development Strategy is also a relevant non-statutory document. It sets out the Council’s Goals as an organisation to be an innovate and growing City. The Strategy sets out two priorities, being: 1) Create and enable opportunities for employment and growth; and, 2) Provide infrastructure to enable growth and a transport system that links people and opportunities.

4.76 The Strategy identifies Council's main role to make sure land and infrastructure are available to accommodate growth<sup>14</sup> and, in relation to housing in Aokautere the strategy states<sup>15</sup>:

Substantial greenfield housing capacity remains at Aokautere, but plans for developing the remaining residential land are unclear. Council will develop a structure plan with the major landowners to guide future development.

4.77 I consider that the proposal is consistent with the City Development Strategy to the extent relevant.

*The Palmerston North City Housing and Future Development Plan 2018;*

4.78 In a similar manner as the City Development Strategy, the Council's Housing and Development Plan is a Council-led strategy where its purpose is to create and enable opportunities for employment and growth<sup>16</sup>. This plan identifies Council's desire for housing development to continue at Aokautere, guided by a Structure Plan, and signals the intention to rezone land and review the relevant District Plan provisions<sup>17</sup>. I consider that the proposal is consistent with the City Development Strategy to the extent relevant.

*Draft Aokautere Structure Plan and the resource consent history of the site*

4.79 The above strategies refer to future development within Aokautere being guided by a structure plan. In the past, the development of the greenfield residential areas of Aokautere has occurred on a somewhat ad-hoc basis. As the Draft Structure Plan puts it<sup>18</sup>:

To date the Aokautere area has emerged as a series of individual development applications without the benefit of an overall plan for the suburb. As a result there are missed opportunities to create coherency, sense of place and to apply best practice land use planning techniques.

The Draft Aokautere Structure Plan, as shown in Figure 9 below, has been released for public consultation. It has no statutory weight. It considers Aokautere as a suburb as a whole, taking

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<sup>14</sup> *Palmerston North City Development Strategy 2018, pg 9*

<sup>15</sup> *Palmerston North City Development Strategy 2018, pg 12*

<sup>16</sup> *Palmerston North City Housing and Future Development Plan, pg 4*

<sup>17</sup> *Housing and Future Development Plan 2018, pg 6*

<sup>18</sup> *Aokautere Structure Plan, pg 1*

account of the various component layers such as: the street network; public transport network; the open space network; and, density and character.

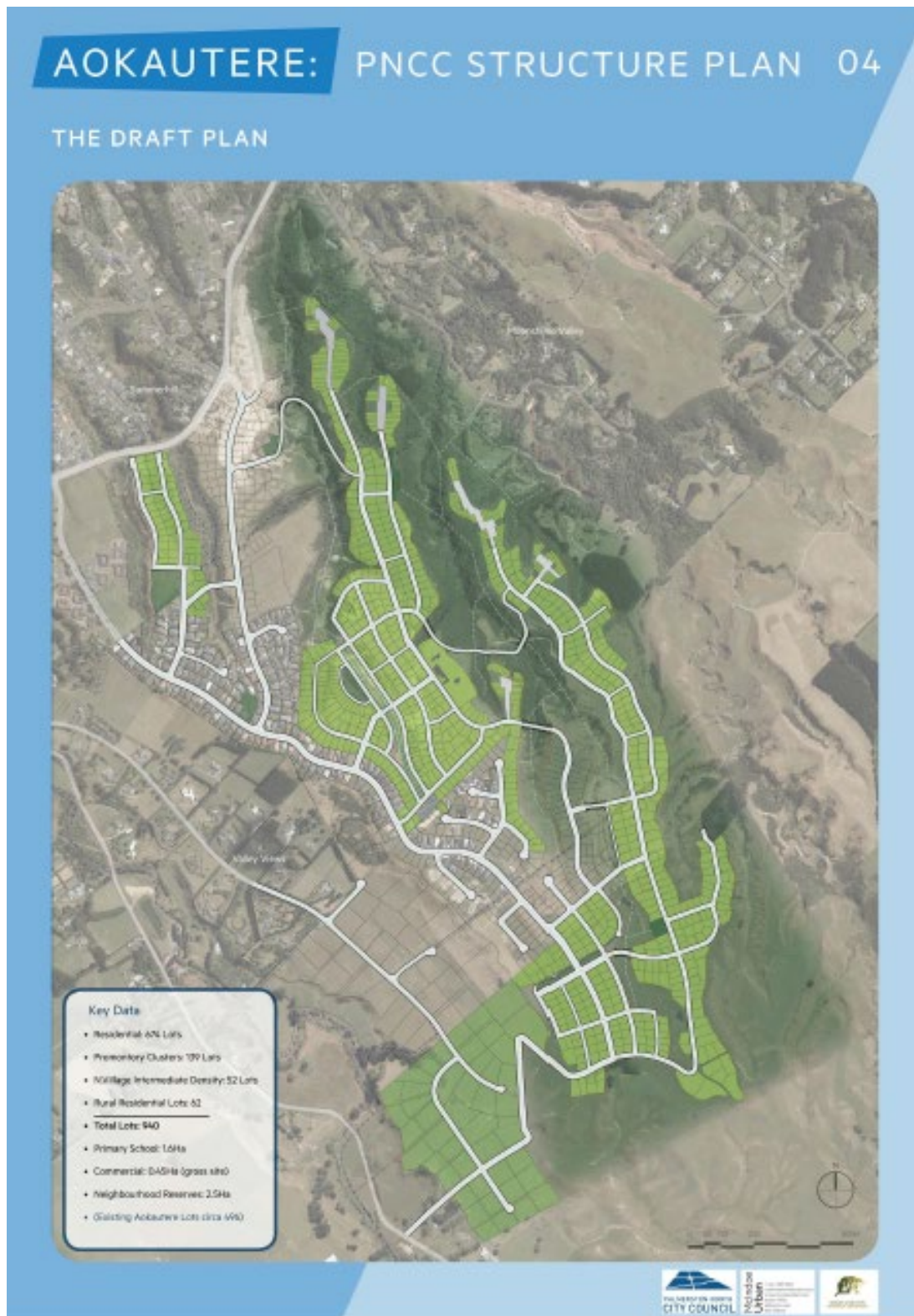


Figure 9: Excerpt from Draft Aokautere Structure Plan

4.80 I note that the proposed road (or a near version of it) is shown in the Draft Aokautere Structure Plan to provide a link between Abby Road and Johnstone Drive. In the face of subdivision applications on behalf of the landowner (which might inhibit the future possibility of this link road) the Draft Aokautere Structure Plan supports the Requiring Authority's objectives to preserve and provide an efficient and logical connection between Abby Road and Johnstone Drive; and, access to the eastern side of the Adderstone Reserve from Abby Road, to enable recreational opportunities.

*Rangitāne o Manawatu Claims Settlement Act 2016*

4.81 The Rangitāne o Manawatu Claims Settlement Act 2016 took effect on 1 September 2017. The Settlement Act identifies Manawatu River and its tributaries as being subject to Statutory Acknowledgement. The ephemeral stream within the gully eventually reaches the Manawatu River. Tanenuiarangi o Manawatu (TMI) were served notice in relation to the application and did not make a submission on the application. Notwithstanding this, the applicant has consulted with TMI who confirmed an ongoing interest in the biodiversity and stormwater of the gully.

**Part 2 of the RMA**

4.82 The decision on this Notice of Requirement under Section 168A of the Act is 'subject to Part 2' of the Act. I have therefore considered the proposal against the Act's sustainable management purpose, and in my view the proposal is consistent with Part 2 of the Act. In reaching that conclusion, I consider that:

- a. the proposal has recognised and provided for the management of significant risks from natural hazards associated with land stability and inundation consistent with section 6(h);
- b. the proposal will be consistent with the efficient use and development of the land resource;
- c. the matters at s7(c) and 7(f) relating to the maintenance and enhancement of amenity values and of the quality of the environment (respectively) will be achieved;

- d. the principles of the Treaty of Waitangi have been taken into account, in particular the principle of consultation, which the applicant has carried out with Rangitane o Manawatu; and,
- e. The social and cultural well-being will be enabled by the proposal, whilst providing for people's health and safety through the proposed public road connection. Adverse effects of the proposal will be either avoided, remedied or adequately mitigated.

4.83 I consider that the proposal is consistent with Section 5, the purpose and principles of the Act, and, Part 2 of the Act mor generally.

#### **Conclusions on Section 168A Analysis**

4.84 In accordance with Section 168A(3) I have carefully considered the notice of requirement and submissions received on it. In doing so, I have considered, subject to Part 2 of the Act, the effects on the environment (both positive and adverse). I consider that the adverse effects of the proposal will be no more than minor and can be appropriately mitigated to an acceptable level. In reaching this conclusion, I rely on the evidence of Mr Hudson and Mr Thornton, and the peer reviews undertaken by Mr Bray and Mrs Fraser, respectively. I also rely on the expert advice from Mr Arseneau with respect to stormwater matters. The proposal will also generate notable positive effects.

4.85 In considering these effects, I have had particular regard to the matters in Section 168A (3) (a) to (d), an conclude that:

- a. Having examined the relevant planning framework I consider that the proposal's will 'fit' with the relevant statutory framework and relevant provisions.
- b. The consideration of alternative sites, route or methods has been adequate having regard to the extent of the land affected by the designation; and, the nature of the proposal and its geographical setting which limits the range of alternative options available.
- c. The works and designation are reasonably necessary for achieving the objectives of the requiring authority for this designation which relate to preserving and providing a connection from Abby Road to Johnstone Drive; and, providing an efficient and logical access to the eastern side of Adderstone Reserve for Abby Road, to enable recreational opportunities. I consider that these objectives will be met; and,

- d. I have had regard to any other matter reasonably necessary to make a decision on the requirement.

**Recommendation under Section 168A(4)**

4.86 Having carefully considered the notice of requirement application, I recommend to the Hearings Commissioner that, in accordance with Section 168A(4) they decide to:

(a) **Confirm the requirement;** and

(c) **Impose conditions.**

4.87 I have included draft conditions on the designation for consideration in **Appendix 1**. These have been circulated to the Requiring Authority.

4.88 I would be happy to participate in Joint Witness Conferencing on conditions and any other matter relevant to my expertise.



**Ryan O'Leary**

9 March 2021

## Appendix 1 - Draft Designation Conditions

### Schedule 1

The acronyms and abbreviations used in the conditions below have the associated meaning:

Abbreviation	Means...
"the Act" or "RMA"	Resource Management Act 1991
"the AEE"	The applicant's assessment of environmental effects
"the Requiring Authority"	Palmerston North City Council
"the Council"	Palmerston North City Council (as Territorial Authority)
"E&SCP"	Erosion and Sediment Control Plan
"District Plan"	Operative Palmerston North District Plan
"the Designation"	The land affected by the designation is all that is shown and scheduled on the Designation Plan being Appendix A of the document titled: "Abby Road Notice of Requirement", Prepared by WSP; 7 September 2020. The plan is prepared by Hudson Associates Landscape Architects, titled: "Abby Road Northern Designation", DWG No. 62-003, Revision C, dated 2/09/2020.
"TMP"	Traffic Management Plan
"ESLD"	Council's Engineering Standards for Land Development 2019
"CI&SMP"	Comprehensive Infrastructure and Streetscape Management Plan
"CNVMP"	Construction Noise and Vibration Management Plan
"LP&S"	Landscape Plans and Specifications
"CMP"	Construction Management Plan
"SMP"	Stormwater Management Plan
"LPAP"	Landscape and Public Access Plan
"Site Investigations"	Include geotechnical investigations, surveys and monitoring activities

#### Interpretation:

Where there is any inconsistency between the Notice of Requirement documentation and the designation conditions, the designation conditions shall prevail.

#### Duration:

Pursuant to Section 184A(2)(c) of the RMA, the designation shall not lapse for a period of five (5) years after it is included in the Operative Palmerston North City District Plan.

#### Outline Plan of Works or Outline Waiver

The Designation conditions below require management plans to be prepared and implemented by the Requiring Authority, following their submission to Council for technical certification. It is anticipated that should these management plans be certified by Council, the Council may waive the requirements for an Outline Plan of Works pursuant to section 176A(2)(c) of the Resource Management Act 1991 ("RMA"). Notwithstanding the above, the Requiring Authority may apply for an Outline Plan of Works, should it wish to do so.

## CONDITIONS

### Construction Management Plan

1. At least **20 working days** prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations), the Requiring Authority shall submit to the Territorial Authority for technical certification a **CMP**. The purpose of the **CMP** is to ensure that appropriate measures are in place to avoid, remedy or mitigate potential adverse effects associated with the construction activities.
2. The **CMP** shall be prepared by a suitably qualified and experienced person and shall contain, but is not necessarily limited to, the following matters:
  - a) anticipated date of commencement of works
  - b) a description of the proposed works;
  - c) a programme of works, including sequencing of works, hours of operation and anticipated duration of works;
  - d) contact details for site manager, including their phone number, email address and address for service;
  - e) a list of key personnel and communications protocols;
  - f) procedures to ensure compliance with the conditions of the relevant consents and permits;
  - g) site compound location shown on a plan (including areas for site offices and site parking);
  - h) details of any measures to control mud and detritus from the site onto the road, including any on-site wheel washing and off site road sweeping, to be undertaken in conjunction with and in consideration of the Erosion & Sediment Control Plan;
  - i) swept path analysis of delivery trucks through the access;
  - j) The location of any site-office and portable toilet facilities
  - k) An accurate location of all existing underground network utilities and identify, using physical indicators placed on the ground, showing specific surveyed locations of the existing network utilities and measures to ensure all personnel are made aware of these utilities;
  - l) Measures to ensure ongoing access is available to all utility operators for the use and maintenance during the entire construction period, including a communication procedure with those utility operators;
  - m) complaints procedures and register;
  - n) monitoring, audit and review programme;
  - o) signage at the site informing of construction works and complaints procedure
3. Should the Requiring Authority refuse to certify the **CMP**, the Requiring Authority shall submit a revised **CMP** to the Territorial Authority for written technical certification. The certification process shall follow the same procedure and requirements as outlined in Conditions 1 and 2.

**ADVICE NOTE:** Certification from Council (or withholding of certification) shall be based on its assessment of whether the matters being considered achieve the purpose and objectives of condition and contain the specified information. Should the Territorial Authority refuse to certify the **CMP**, then the Territorial Authority will provide a letter outlining why certification is refused based on the parameters contained in this condition.

4. The Consent Holder shall not initiate works associated with construction until such time as the **CMP** has been certified in writing by the Territorial Authority.
5. The Consent Holder shall comply with the certified **CMP** at all times.
6. The **CMP** may be amended at any time by the Requiring Authority. Any amendments to the **CMP** shall be submitted by the Requiring Authority to the Territorial Authority for written technical



certification. If the amended **CMP** is certified, then it becomes the certified **CMP** for the purposes of Condition 5. Any amendments to the **CMP** shall be:

- a) for the purposes of improving the measures outlined in the **CMP** for achieving the purpose (see Condition 1); and
  - b) be prepared by an appropriately qualified person.
7. All construction works, including all off-loading or materials onto the subject site, shall be restricted to the hours between 7.30am to 6pm Monday to Saturday. Quiet setting up of site (not including running of plant or machinery) may start at 6:30am. No work shall occur on a Sunday or Public Holiday.

#### Public access to Adderstone Reserve

8. The Requiring Authority shall not unnecessarily restrict public access to and from Adderstone Reserve, except during period of construction works where required to provide for the health and safety of the public and until such time as the road is open to the public.

#### Construction Noise and Vibration Management Plan

9. At least **20 working days** prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations), the Requiring Authority shall submit a **CNVMP** to the Territorial Authority for technical certification. The **CNVMP** shall be prepared by a suitably qualified and experienced person. The purpose of the **CNVMP** is to identify the noise and vibration performance standards that will, where practicable, be complied with and sets the framework for the development and implementation of particular noise and vibration management and control methodologies to minimise adverse effects on the health and safety of nearby residents (or other sensitive land uses) and to minimise any exceedance of the criteria set out in Conditions 10 and 11 below.
10. The **CNVMP** shall be in accordance with NZS 6803:1999 *Acoustics - Construction Noise* (NZS 6803:1999), and include the procedures, methods and measures for the control of noise associated with all relevant construction works authorized by this designation, which shall be formulated to comply, as far as practicable, with noise criteria developed with regards to Table 2 of NZS 6803:1999.

Time of week	Time Period	“Long-term” duration construction (dBA)	
		L <sub>Aeq</sub>	L <sub>AFmax</sub>
Noise criteria at residential buildings			
Weekdays	0630-0730	55	75
	0730-1800	70	85
	1800-2000	65	80
	2000-0630	45	75
Saturdays	0630-0730	45	75
	0730-1800	70	85
	1800-2000	45	75
	2000-0630	45	75
Sundays and public holidays	0630-0730	45	75
	0730-1800	55	85
	1800-2000	45	75
	2000-0630	45	75

**ADVICE NOTE:** There may be occasions when it is not practicable for construction activity to achieve the guideline criteria in the standard. In such circumstances, mitigation that is consistent with the best practicable option shall be adopted.

11. The **CNVMP** shall include specific details relating to methods for the control of ground vibrations associated with all relevant Project construction works, which shall be formulated to comply with German Standard DIN 4150-3:1999 *Structural vibration - Effects of vibration on structures*.

12. The **CNVMP** shall include, but is not necessarily limited to, the following information:

- a) Description of the works, laydown areas, anticipated equipment/processes and their scheduled durations;
- b) Hours of operation including times and days when construction activities causing noise and/or vibration would occur;
- c) The construction noise and vibration criteria for the project;
- d) Identification of affected dwellings and other sensitive activities where noise and vibration criteria apply;
- e) Mitigation options, including alternative strategies where full compliance with the relevant noise and/or vibration criteria cannot be achieved;
- f) Requirements for management schedules containing site specific information. Specific management schedules shall include:
  - i. Construction vehicles delivery speeds and restrictions on routes and times for deliveries; and
  - ii. Notification to neighbouring residents.
- g) Methods and frequency for monitoring and reporting on construction noise and vibration;
- h) Procedures and methods for maintaining contact with stakeholders, notifying of proposed construction activities and handling noise and vibration complaints;
- i) Construction equipment operator training procedures and expected construction site behaviours;
- j) Contact numbers for key staff, staff responsible for noise and vibration assessment and Council officers;
- k) Undertake a pre-construction building condition survey of buildings if at-risk from construction vibration;
- l) Communicate and consult with affected residents regarding construction noise and vibration effects, including a letter-drop prior to the commencement of works;
- m) Complaints procedures and register; and
- n) Monitoring, audit and review programme.

13. Should the Requiring Authority refuse to certify the **CNVMP**, the Requiring Authority shall submit a revised **CMP** to the Territorial Authority for written technical certification. The certification process shall follow the same procedure and requirements as outlined in Conditions 9 to 12.

**ADVICE NOTE:** Certification from Council (or withholding of certification) shall be based on its assessment of whether the matters being considered achieve the purpose and objectives of condition and contain the specified information. Should the Territorial Authority refuse to certify the **CNVMP**, then the Territorial Authority will provide a letter outlining why certification is refused based on the parameters contained in this condition.

14. The Consent Holder shall not initiate works associated with construction until such time as the **CNVMP** has been certified in writing by the Territorial Authority.

15. The Consent Holder shall comply with the certified **CNVMP** at all times.

16. The **CMP** may be amended at any time by the Requiring Authority. Any amendments to the **CNVMP** shall be submitted by the Requiring Authority to the Territorial Authority for written technical certification. If the amended **CNVMP** is certified, then it becomes the certified **CNVMP** for the purposes of Condition 15. Any amendments to the **CNVMP** shall be:
- a) for the purposes of improving the measures outlined in the **CNVMP** for achieving the purpose (see Condition 9); and
  - b) be prepared by an appropriately qualified person.

### **Erosion and Sediment Control Plan**

17. At least **20 working days** prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations), the Requiring Authority shall submit for certification an **E&SCP** to the Territorial Authority. The purpose of the **E&SCP** shall be to minimise sediment discharge from the site to the extent practicable.
18. The **E&SCP** shall as a minimum be based upon and incorporate those specific principles and practices which are appropriate for the activity authorised by this consent and contained within the document titled *"Erosion and Sediment Control – Guidelines for the Wellington Region, dated June 2006"*, and shall include at least the following:
- a. details of all principles, procedures and practices that will be implemented to undertake erosion and sediment control to minimise the potential for sediment discharge from the site;
  - b. the design criteria, supporting calculations, dimensions and contributing catchments of all key erosion and sediment control structures, including (but not limited to) diversion bunds/channels and decanting structures (if any).
  - c. a site contour plan of a suitable scale to identify;
    - i. the extent of soil disturbance and vegetation removal;
    - ii. areas of cut and fill;
    - iii. locations of topsoil stockpiles;
    - iv. all key erosion and sediment control structures;
    - v. the boundaries and area of catchments contributing to all erosion and sediment control devices;
    - vi. the locations of all specific points of discharge to the environment; and
    - vii. any other relevant site information.
  - d. Construction timetable for the erosion and sediment control works and the earthworks proposed;
  - e. Specific design and construction details (including erosion and sediment controls) for all earthworks;
  - f. Timetable and nature of progressive site rehabilitation and re-vegetation proposed;
  - g. Maintenance, monitoring and reporting procedures;
  - h. Rainfall response and contingency measures including procedures to minimise adverse effects in the event of extreme rainfall events and/or the failure of any key erosion and sediment control structures;
  - i. Procedures and timing for review and/or amendment to the **E&SCP**; and

- j. Identification and contact details of personnel responsible for the operation and maintenance of all key erosion and sediment control structures.
19. The **E&SCP** shall be certified in writing by the Territorial Authority acting in a technical certification capacity prior to any earthworks activities commencing (excluding site investigations).
20. All earthworks shall be undertaken in accordance with the certified **E&SCP**. Should the Council refuse to certify the **E&SCP**, the consent holder shall submit a revised **E&SCP** to Council for certification and shall follow the same procedure and requirements as outlined in condition 17.
- ADVICE NOTE:** Certification from Council (or withholding of certification) shall be based on its assessment of whether the matters being considered achieve the objective of minimising sediment discharges from the site to the extent practicable. Should the Territorial Authority refuse to certify the **E&SCP**, then the Territorial Authority will provide a letter outlining why certification is refused based on the parameters contained in this condition.
21. Any changes proposed to the **E&SCP** shall be confirmed in writing by the requiring authority and certified in writing by the Territorial Authority acting in a technical certification capacity, prior to the implementation of any changes proposed.
22. The consent holder shall ensure that a copy of the **E&SCP**, including any certified amendments, is kept onsite and this copy is updated within **5 working days** of any amendments being certified.
23. The Requiring Authority shall ensure that all erosion and sediment controls are inspected and in good working order at least once per week and within 24 hours of each rainstorm event. The Requiring Authority shall further ensure that all erosion and sediment controls are maintained such that optimal sediment capture efficiency is achieved at all times.
24. The Requiring Authority shall ensure those areas of the site where earthworks have been completed shall be stabilised against erosion as soon as practically possible and within a period not exceeding 14 days after completion of any works authorised by this consent. Stabilisation shall be undertaken by providing adequate measures (vegetative and/or structural) that will minimise sediment runoff and erosion to the satisfaction of the Territorial Authority acting in a technical certification capacity. The consent holder shall monitor and maintain the site until vegetation is established to such an extent that it prevents erosion and prevents sediment from entering any water body or the Council's stormwater network.

#### **Dust Control**

25. All operations on the site shall, as far as reasonably practicable, be carried out in such a manner as to avoid the generation of objectionable or offensive dust arising from construction works going beyond the boundary of designation area. The Requiring Authority must ensure that dust sources are regularly wetted during the construction period.

#### **Landscape and Public Access Plan**

26. At least 20 working days prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations), the Requiring Authority shall submit a detailed LPAP to the Territorial Authority for written technical certification. The purpose of the LPAP is to demonstrate how the existing landscape will be modified; and, the soft landscape works are to be implemented and maintained; and, how public access from Abby Road to Manga o Tane Reserve will be provided and maintained. In particular, the LPAP is to achieve the following outcomes:

- a) That the land formation undertake to construct the road is designed to integrate with the existing contour of the gully;
  - b) Ensure that the land between the proposed road and Manga o Tane Reserve will be re-vegetated with native species that will match those within the Manga o Tane Reserve;
  - c) That all road embankments either side of the road are re-vegetated (where located within the designation boundary); and,
  - d) That public pedestrian access is provided within the proposed road corridor with public pedestrian access provided to the Manga o Tane Reserve (within the boundaries of the designation).
27. The LPAP must be prepared by a suitably experienced Landscape Architect and shall be in general accordance with the plan prepared by Hudson Associates Landscape Architects, titled: "Abby Road Northern Designation", DWG No. 62-003, Revision C, dated 2/09/2020. The LPAP must include, but is not necessarily limited to:
- a) Existing contours of the area of land affected;
  - b) All areas of proposed earthworks cuts and fills, including area and volumes;
  - c) The final contours proposed following the completion of earthworks;
  - d) Vegetation that is to be retained within the designation boundaries and any protection this vegetation is to be afforded during construction;
  - e) the species, grade, spacing/location, and anticipated maximum height of all vegetation to be planted;
  - f) how the land between the proposed road and Manga o Tane Reserve will be re-vegetated with native species;
  - g) Details of any consultation and the views of Tanenuiarangi o Manawatu, and the extent to which this has been incorporated into the LPAP.
  - h) specifications for any other landscape works treatments, such as mulching and tree-staking as appropriate, including the progressive surfacing, top soiling and re-vegetation immediately following completion of each stage of the works (if required);
  - i) any specific vegetation maintenance procedures to be followed and the length of time that these will be undertaken;
  - j) procedures for the inspection of vegetation health and replacement of dead or dying species (where required) during the 18 month establishment period; and,
  - k) the extent to which condition 41 will be achieved with LED street lamps minimising light-spill away from the boundaries of the designation.
  - l) the location, width and grade of any footpaths with the road and the public pedestrian access to Manga o Tane Reserve.
28. Should the Requiring Authority refuse to certify the **LPAP**, the Requiring Authority shall submit a revised **LPAP** to the Territorial Authority for written technical certification. The certification process shall follow the same procedure and requirements as outlined in Conditions 26 and 27.
- ADVICE NOTE:** Certification from Council (or withholding of certification) shall be based on its assessment of whether the matters being considered achieve the purpose and objectives of condition and contain the specified information. Should the Territorial Authority refuse to certify the LPAP, then the Territorial Authority will provide a letter outlining why certification is refused based on the parameters contained in this condition.
29. The Consent Holder shall not initiate works associated with construction until such time as the **LPAP** has been certified in writing by the Territorial Authority.
30. The Consent Holder shall comply with the certified **LPAP** at all times.
31. The **LPAP** may be amended at any time by the Requiring Authority. Any amendments to the **LPAP** shall be submitted by the Requiring Authority to the Territorial Authority for written, technical

certification. If the amended **LPAP** is certified, then it becomes the certified **LPAP** for the purposes of Condition 26. Any amendments to the **LPAP** shall be:

- a) for the purposes of improving the measures outlined in the **LPAP** for achieving the **LPAP** purpose (see Condition 26); and
- c) be prepared by an appropriately qualified person.

32. The works identified in the **LPAP**, certified under Condition 30 above, must be completed by the Requiring Authority within **12 months** of completion of construction. The plantings must be monitored for **18 months** from the time of planting in order to allow for plant establishment to the satisfaction of the Territorial Authority. This includes the removal of weeds within the vicinity of the plantings and the replacement of plants that die or are removed unlawfully within this period in the same location, with the same species and sized plants. Any plants that fail must be replaced at the expense of the Requiring Authority.

#### **Traffic Management Plan (Construction)**

33. No less than **20 working days** prior to the commencement of any works on the site, a **TMP** prepared by a suitably qualified and experienced practitioner to the Territorial Authority (in liaison with the Roding Manager) for written, technical certification. The purpose of the certified **TMP** is to set out how the effects of traffic on the surrounding road network are to be minimised during construction using reasonably practicable measures and the methods to be used to achieve these effects.

34. The certified **TMP** must include, but not be limited to, the following information, methods, measures and techniques to the achieve its purpose:

- a. Purpose and scope of the plan;
- b. Relationship with other management plans;
- c. Hours of construction traffic activity;
- d. Estimated numbers and sizes of construction vehicles;
- e. Controlled internal and external access routes;
- f. Parking locations for construction staff;
- g. How safety risks on the land transport network can be minimized.
- h. Access and delivery locations, including swept path analysis for largest vehicles;
- i. Likely construction access routes to and from the site;
- j. Management of oversize loads;
- k. Wheel cleaning and covering of loads; and
- l. Management of any complaints.

35. The Requiring Authority shall comply with the certified **TMP** at all times.

36. The **TMP** may be amended at any time by the Requiring Authority. Any amendments to the **TMP** shall be submitted by the Requiring Authority to the Territorial Authority for written, technical certification. If the amended **TMP** is certified, then it becomes the certified **TMP** for the purposes of Condition 33. Any amendments to the **TMP** shall be:

- a) achieve the purpose of the **TMP** (see Condition 33);
- b) be consistent with the conditions of this designation; and
- c) be prepared by an appropriately qualified person.

37. Should the Territorial Authority refuse to certify the **TMP**, the consent holder shall submit a revised **TMP** to the Territorial Authority for certification. The certification process shall follow the same procedure and requirements as outlined in conditions 33 and 34.

**ADVICE NOTE:** Certification from Council (or withholding of certification) shall be based on its assessment of whether the matters being considered achieve the objective of minimising the effects of traffic from on the surrounding road network during construction to the extent practicable.

38. No construction or earthworks activities (excluding site investigations) shall commence on the site prior to the **TMP** being certified. All construction and other heavy vehicles accessing the site during construction shall do so in general accordance with the certified **TMP**.

#### **Accidental Discovery**

39. Prior to the commencement of works (including site investigations which disturb the soil), the Requiring Authority shall develop and have in place a procedure that is to be followed in the event that any urupā, taonga (significant artefacts), kōiwi (human remains) or archaeological sites (whether recorded or unrecorded) are disturbed and/ or discovered during site works, including:

- a. works in the location of any accidental discovery immediately cease; and
- b. the area is to be secured in a way that ensures any remains or artefacts are untouched.

40. In the event of an archaeological site, waahi tapu or koiwi being discovered or disturbed during the activities authorised by this consent, the consent holder shall immediately cease further work and inform:

- a. the relevant local iwi;
- b. the Territorial Authority (Council's Compliance Monitoring Officer); and
- c. Heritage New Zealand Pouhere Taonga.

Further work at the site shall be suspended while iwi carry out their procedures for removal of taonga. The Council's Compliance Monitoring Officer will advise the consent holder when work at the site may recommence.

**ADVICE NOTE:** In the event that human remains are found the police should be contacted immediately and all works shall cease until advice is given that works can recommence.

**ADVICE NOTE:** The Requiring Authority is advised to contact the Heritage New Zealand Pouhere Taonga (HNZPT) 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 earthworks, fencing or landscaping, may modify, damage or destroy any archaeological site(s), an authority (consent) from HNZPT must be obtained for the work to proceed lawfully. Heritage New Zealand Pouhere Taonga 2014 contains penalties for unauthorised site damage.

#### **Infrastructure & Streetscape Management Plan**

41. At least **20 working days** prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations) the Requiring Authority shall submit to the Territorial Authority a **I&SMP** for written, technical certification. The purpose of the I&SMP is to demonstrate:

- a) how the proposed roading design, infrastructure and streetscape works are to be designed and constructed in accordance with the Council's ESLD; and,
- b) to demonstrate the location, design of any LED street lamps will minimise light-spill beyond the boundaries of the designation.

**ADVICE NOTE:** In considering certification of the **I&SMP**, the Council's Senior Planner will consult with Council's Subdivisions Engineer; Roading Manager; and, Stormwater Engineer.

42. The **I&SMP** must include, but be not limited to demonstrating the following:

- a) Its relationship with other management plans, including integration with the **SMP** required under condition 54;
- b) Engineering Plans (detailed design) required by condition 43 below;
- c) Location, spatial allocation and dimensions of all: footpaths, formed road width(s) proposed vehicle access crossings (if any), berms and any other street infrastructure;
- d) The location and heights (where relevant) of all kerb and channel, vehicle crossings, intersections, on-street parking, road carriageways and street lighting.
- e) A spatial layout of the roading network; including connections to Johnstone Drive, Abby Road and connections to Adderstone Reserve.
- f) the location and capacity of all services;
- g) the location of any secondary flow path for stormwater;
- h) final site contours for the site;
- i) the location, design and specifications of any LED street lamps designed to minimise light-spill beyond the boundaries of the designation;
- j) identify a Technical Representative (being a Professional Surveyor or Chartered Professional Engineer) to monitor the construction of all approved works in accordance with level CM 4 of IPENZ construction monitoring set out in Council's ESLD.

43. The Engineering Plans (detailed design) required by condition 42 b) must be prepared by a Chartered Professional Engineer or Professional Surveyor with appropriate qualifications acceptable to Council. The Territorial Authority will commission a road safety audit of the Abby Road extension and the new intersection with Johnstone Drive by suitably qualified person(s) at the Detailed Design Stage.

44. All works by the Requiring Authority shall comply with the certified **I&SMP** and shall take into account the findings of the road safety audit report in Condition 43 above. No physical works (excluding site investigations) shall be carried out until the **I&SMP** has been certified by the Territorial Authority.

45. The **I&SMP** may be amended at any time by the Requiring Authority. Any amendments to the **I&SMP** shall be submitted by the Requiring Authority to the Territorial Authority for written, technical certification. If the amended **I&SMP** is certified, then it becomes the certified **I&SMP** for the purposes of Condition 41. Any amendments to the **I&SMP** shall be:

- a) achieve the purpose of the **I&SMP** (see Condition 41);
- b) be consistent with the conditions of this designation; and
- c) be prepared by an appropriately qualified person.

46. Should the Territorial Authority refuse to certify the **TMP**, the consent holder shall submit a revised **I&SMP** to the Territorial Authority for certification. The certification process shall follow the same procedure and requirements as outlined in conditions 41, 42 and 43.

**ADVICE NOTE:** Certification from Council (or withholding of certification) shall be based on its assessment of whether the matters being considered achieve the purpose and objectives of condition and contain the specified information. Should the Territorial Authority refuse to certify the **I&SMP**, then the Territorial Authority will provide a letter outlining why certification is refused based on the parameters contained in this condition.



47. No construction or earthworks activities (excluding site investigations) shall commence on the site prior to the **I&SMP** being certified.
48. The Territorial Authority will commission a road safety audit of the Abby Road extension and the new intersection with Johnstone Drive by suitably qualified person(s) at the Post-Construction Stage: If there are any adverse safety issues raised by the safety audit, recommendations shall be included in the report for necessary corrections and remedial works. The required remedial works must be completed to the satisfaction of the Territorial Authority. The Requiring Authority shall advise the Territorial Authority in writing, upon completion of any improvements or remedial work when it has been carried out in accordance with the recommendations of the report.

*Note: The consent holders attention is drawn to the New Zealand Transport Authority's "Road Safety Audit Procedures for Project Guidelines". Adopting the appropriate procedures from this publication is a means of compliance with this condition.*

## Geotechnical Supervision

49. The Requiring Authority must appoint and have approved by Council a Technical Representative (being Chartered Professional Engineer experienced in the field of geotechnical assessment) to monitor the construction of all approved earthworks in accordance with level CM 4 of IPENZ construction monitoring set out in Council's ESLD.
50. The requiring Authority shall, at least **20 working days** prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations), submit to the Territorial Authority a **Geotechnical Report** which assesses the design of all earthworks to be undertaken within the designation boundaries and provides a professional opinion and recommendations with respect to any ongoing risks of land instability

## Stormwater Management Plan

51. Prior to the certification of the **I&SMP** and at least **20 working days** prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations) the Requiring Authority shall submit to the Territorial Authority a **SMP** for written technical certification. The **SMP** must be prepared by a suitably qualified and experienced stormwater professional and be designed to:
- a. Comply with the Council's ESLD;
  - b. Mitigate "post-development" flow to "pre-development" levels for the 2-year through 100-year Annual Return Interval design storm;
  - c. Achieve effective treatment of stormwater runoff up to the 90% percentile rainfall event (15 mm depth) in an appropriate stormwater treatment facility; and,
52. The certified **SMP** must include, but is not limited to, the following:
- a) Comprehensive details of the engineering calculations of both pre-development and post-development stormwater runoff flows from all hardstand areas associated with the road extension;
  - b) Identification of the location, sizing, placement and configuration of stormwater quantity and quality controls;
  - c) Confirmation of the locations of secondary flow paths;
  - d) Details of how any stormwater infrastructure will connect to the surrounding network;
  - e) Details of any consultation and the views of Tanenuiarangi o Manawatu, and the extent to which this has been incorporated into the SMP;
  - f) An explanation of how the SMP will meet the requirements of the ESLD.
53. All works by the Requiring Authority shall comply with the certified **SMP**. No physical works (excluding site investigations) shall be carried out until the **SMP** has been certified by the Territorial Authority.
54. The **SMP** may be amended at any time by the Requiring Authority. Any amendments to the **SMP** shall be submitted by the Requiring Authority to the Territorial Authority for written, technical certification. If the amended **SMP** is certified, then it becomes the certified **SMP** for the purposes of Condition 51. Any amendments to the **SMP** shall:
- a) achieve the purpose of the **SMP** (see Condition 51);
  - b) be consistent with the conditions of this designation; and
  - c) be prepared by an appropriately qualified person.

55. Should the Territorial Authority refuse to certify the **SMP**, the consent holder shall submit a revised **SMP** to the Territorial Authority for certification. The certification process shall follow the same procedure and requirements as outlined in conditions 51 and 52.

**ADVICE NOTE:** Certification from Council (or withholding of certification) shall be based on its assessment of whether the matters being considered achieve the purpose and objectives of condition and contain the specified information. Should the Territorial Authority refuse to certify the **SMP**, then the Territorial Authority will provide a letter outlining why certification is refused based on the parameters contained in this condition.

56. No construction or earthworks activities (excluding site investigations) shall commence on the site prior to the **SMP** being certified.

## Appendix 2 – Relevant Statutory Provisions

### City View Objectives

#### Introduction

The City View objectives reflect the resource management issues for the City and represent the broad outcomes this Plan seeks to achieve.

1. Planning for residential, industrial, commercial and rural-residential growth sustains a compact, orderly and connected urban form which avoids the adverse environmental effects of uncontained urban expansion into the rural zone.
2. The provision of infrastructure, particularly within identified growth areas, shall be efficient, timely, environmentally sensitive and economically sustainable.
3. The integrated and efficient provision of, and access to, infrastructure, network utilities and local services is facilitated for all residents.
9. Subdivisions, buildings and infrastructure are designed and constructed to promote a coordinated, healthy and safe environment.
10. The visual appeal of the City is enhanced.
11. The principles of good urban design are given effect to for all new subdivisions, urban intensification and major building developments, particularly those located within the City Centre or fronting key transportation routes.
15. Active engagement from tangata whenua within resource management decisions.
16. The historic heritage of the City is researched, identified and preserved within the context of sustainable management.
19. The effects of natural hazards are avoided or mitigated taking into account the effects of climate change and the significant social disruption caused by natural hazard events.
21. A broad range of recreation and leisure opportunities are provided for in the City which contribute towards an enhanced quality of life.
22. Appropriate noise standards are in place to protect noise sensitive activities.
23. Infrastructure operates in a safe and efficient manner, and the effects of activities which could impact on the safe and efficient operation of this infrastructure are avoided, remedied or mitigated.
24. All forms of transport, including public transport, walking, cycling and private vehicles are adequately provided for to assist with sustainable energy use and a healthy lifestyle.
25. Infrastructure and physical resources of regional or national importance are recognised and provided for by enabling their establishment, operation, maintenance, upgrading and protection from the effects of other activities.

## Section 3 – Tangata Whenua

### OBJECTIVE 1

**To acknowledge Rangitane o Manawatu as Tangata Whenua within Palmerston North City.**

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#### POLICIES

- 1.1 To inform Tangata Whenua of all notified Discretionary and Non-Complying resource consent applications.
- 1.3 To make provision for submissions to be made in te reo Maori in accordance with tikanga Maori.
- 1.4 To follow Rangitanenuiarawa in resource management processes which Rangitane o Manawatu are involved in.

### OBJECTIVE 2

**To ensure that consultation is undertaken with Tangata Whenua on resource management issues.**

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#### POLICIES

- 2.1 To consult early on with Tangata Whenua, including Rangitane o Manawatu, in resource management processes.
- 2.2 To consult Tangata Whenua with regard to the identification of and appropriate protection of urupa, wahi tapu, wahi tupuna and other sites.
- 2.3 To ensure ongoing consultation and communication is maintained with regard to resource management issues of particular concern to Tangata Whenua.

## Section 6 – Earthworks

### OBJECTIVE 1

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

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### 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;
- 1.3 To manage earthworks activities so that:
  - a) Adverse effects of earthworks on the National Grid are avoided; and
  - b) The operation, maintenance and upgrade of the National Grid is not comprised by earthworks.
- 1.4 Earthworks should not increase the risk posed by natural hazards.

### RULE 6.3.7.1

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 and natural hazards objectives and policies (Section 6 and Section 22), 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.

## Section 10 – Residential Zone

### OBJECTIVE 1

**To enable the sustainable use and development of the Residential Zone to provide for the City's current and future housing needs.**

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- 1.3 To promote the efficient use of the urban infrastructure and other physical resources.
- 1.4 To ensure network infrastructure and services are available to support residential development and intensification.

## Section 7 – Subdivision

### OBJECTIVE 2

**To ensure that subdivision is carried out in a manner which recognises and gives due regard to the natural and physical characteristics of the land and its future use and development, and avoids, remedies or mitigates any adverse effects on the environment.**

---

### POLICIES

- 2.3 To ensure safe, convenient and efficient movement of people, vehicles and goods in a high quality environment with minimum adverse effects by providing that:
  - 1. The layout of the transport network shall, as appropriate for their position in the roading hierarchy, ensure that people, vehicles and goods can move safely, efficiently and effectively, minimise any adverse effect on the environment, make provision for network utility systems and make provision for amenity values. The layout of the transport network shall:
    - provide adequate vehicular access to each lot;
    - link to, and provide for, and be compatible with the existing and future transport networks, taking into account orderly and integrated patterns of development and adjoining developments;
    - connect to all adjoining roads, providing for choice of routes where practicable;
    - identify significant destinations and provide for safe and convenient access to these by all modes;

- encourage multi-modal street links, providing pedestrian links; and
  - provide adequate access for emergency vehicles.
2. The development provides for a high quality public realm considering;
    - the potential for the street to be a place for recreational walking and cycling;
    - the outlook from dwellings as well as a functional place for movement;
    - the provision of street trees and other street landscaping in a coherent layout;
    - the continuity of or relationship to street landscape design of adjacent streets;
    - the integration of Water Sensitive Design principles;
    - the safety and visibility of pedestrians; and
    - the provision of any local park spaces as required by Council's public space policy and their integration into the layout.
  3. The road network stormwater control system shall protect the road, road users and adjoining land from the adverse effects of water and minimise any adverse effect on the environment.
  4. The structure of a road shall:
    - have a design life of at least 25 years based on Equivalent Design Axle, or equivalent design methods;
    - be constructed from materials suitable for the intended use;
    - maintain adequate surface smoothness; and
    - be protected from the adverse effects of surface and ground water.
  5. The road network stormwater control system shall:
    - have a design life of at least 80 years;
    - adequately convey water to an approved discharge point;
    - avoid the likelihood of leakage and infiltration and the penetration of roots;
    - avoid the likelihood of blockages; and
    - provide reasonable access for maintenance.
  6. Urban roads are to be well lit by specifically designed street lighting, are to be constructed to such standards and in such materials as will result in minimum maintenance having regard to the anticipated levels and types of traffic.

2.4 To improve land utilisation, to safeguard people, property and the environment from the adverse effects of unstable land by ensuring that:

1. Disturbance to the natural land form, existing vegetation (e.g. trees, groups of trees, notable and protected trees, vegetation or habitats), natural drainage and significant natural features is minimised and historic and cultural features are protected commensurate with achieving an efficient and aesthetically pleasing subdivision design and site layout.



2. Earthworks withstand and remain stable under anticipated loads.
  5. Earthworks are to be designed and constructed to:
    - provide safe and adequate building platforms and foundation for roads and services;
    - provide for the adequate control of stormwater;
    - avoid the likelihood of erosion and instability;
    - not unnecessarily alter the natural landscape;
    - remain safe and stable for the duration of the intended land use;
    - not unnecessarily rely on artificial or human-built structures for stability; and where such structures are employed these shall remain safe and stable for the duration of the intended land use;
    - cater for the natural groundwater flows and be geotechnically sound;
    - avoid contamination of ground water;
    - avoid lowering ground water levels;
    - avoid or mitigate the diversion of ground water flows.
  5. In Aokautere, earthworks, and in particular the restructuring of land, are to be the subject of specific design by a registered engineer experienced in soil mechanics or geotechnical matters and shall take into account the predicted improvements to soil slope and stability which will be achieved and the impact on existing vegetation and landscape values.
- 2.5 To avoid, remedy or mitigate the adverse effects of land development by ensuring as far as possible that the carrying out of land clearance, earthworks and other construction activity does not result in:
- a dust nuisance or the discharge of other contaminants to the air;
  - the migration of silt, soil and roading material to waterways or adjoining properties;
  - damage to property from stormwater runoff.
- 2.6 To avoid, remedy and/or mitigate the adverse effects caused by alterations to the natural land form and removal of vegetation (e.g. trees, groups of trees, notable and protected trees, vegetation or habitats) and to enhance the amenities of the natural and built environment by requiring that:
- ...
3. Earthworks are designed, built, and landscaped to avoid and/or mitigate adverse effects on the amenities of adjoining existing or potential residentially zoned areas.
- 2.9 To safeguard people, property and the environment from the adverse effects of surface water by ensuring that:
1. The layout and functioning of the stormwater drainage system:

- adequately services its catchment;
- incorporates Water Sensitive Design principles wherever appropriate;
- adequately services each lot, road area or other land area falling to the point of entry into the drainage system;
- caters for a 1% annual exceedance probability rainfall event (100 year flood) using a system appropriate for the intended land use;
- ensures gravity operation;
- links with the existing stormwater drainage network;
- does not unduly restrict the location of any future building; and
- ensures that stormwater disposal from the subdivision would not increase the risk of inundation in urban areas.

2. The structure of the stormwater drainage system:

- has a design life of at least 80 years;
- is constructed from materials suitable for the intended use;
- incorporates Water Sensitive Design principles wherever appropriate;
- ensures safety in operation;
- avoids the likelihood of leakage and infiltration and the penetration of roots;
- avoids the likelihood of blockages;
- if in pipes or lined channels, avoids the likelihood of penetration by roots or the unintended entry of groundwater.

2.11 To ensure that sufficient land for public open space and reserves is set aside in convenient locations and is of a quality to meet the needs of the community by ensuring that:

1. Reserves have sufficient road frontage so that users are visible to the general public for safety reasons.
2. Reserves are located so that they are easily accessible to the general public and to those with special needs.
3. Reserves have a terrain and are of a type and size that is useable for a number of recreation activities.

## Section 22 – Natural Hazards

### OBJECTIVE 1

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**To recognise the existence of natural hazards within Palmerston North City.**

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#### POLICIES

- 1.1 To identify any land subject to the effects of a natural hazard.
- 1.2 To educate the community with regard to the existence, nature and risks posed by natural hazards and ways to avoid or minimise such risk.

### OBJECTIVE 2

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**To control development on land which is or might be adversely affected by natural hazards.**

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#### POLICIES

- 2.1 To exclude development on hazard-prone land where the effects of the hazard cannot be effectively avoided, remedied or mitigated.
- 2.2 To establish appropriate controls to avoid, remedy or mitigate the effects of natural hazards.
- 2.5 To avoid built development on unstable land unless it can be demonstrated by a suitably qualified and experienced practitioner that the hazard can be avoided, remedied or mitigated.

## Section 20 – Land Transport Network

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**The City's land transport networks are maintained and developed to ensure that people and goods move safely and efficiently through and within the City.**

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### POLICIES

- 1.1 Identify and apply the roading hierarchy to ensure the function of each road in the City is recognized and protected in the management of land use, development and the subdivision of land.
- 1.2 All roads in the City have function and design characteristics consistent with their place in the roading hierarchy.
- 1.3 Maintain and upgrade the existing roads in the City and provide for new roads to meet the current and future needs of the City.
- 1.4 The road network stormwater control system shall protect the road, road users and adjoining land from the adverse effects of water from roads and minimise any adverse effect on the environment.
- 1.5 Require all new public roads, private roads and vehicle accesses to be designed and constructed to meet performance standards relating to the safety and efficiency of vehicle movement, and to ensure the safe use of the road transport network for all users, particularly in respect of:
  - (a) Road width and alignment which should be sufficient for two vehicle lanes except where traffic volumes are insufficient;
  - (b) The formation and surface sealing of all roads and vehicle accesses to standards appropriate to the volume of traffic expected to be carried;
  - (c) Provision for necessary network utility facilities within roads; and
  - (d) Safe design and construction of roads, road access points and intersections, including alignment, gradient, vehicle parking, manoeuvring and turning requirements.
- 1.6 Encourage the development of safe and accessible pedestrian paths and cycleways, as well as convenient and accessible cycle parking, to support the opportunity for people to use active and non-vehicular modes of transport throughout the City.

- 1.7 To support and encourage the provision of public transport and its use throughout the City as an integral part of the transportation system.
- 1.8 Convenient, safe and accessible car parking, loading and manoeuvring facilities are available for residents, staff, visitors and customers for all activities without creating congestion or conflicts with moving vehicles, pedestrians or cyclists on adjacent roads.

## OBJECTIVE 2

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**The land transport network is safe, convenient and efficient while avoiding, remedying or mitigating adverse effects in a way that maintains the health and safety of people and communities, and the amenity values and character of the City's environment.**

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## POLICIES

- 2.1 To restrict the through movement of traffic where the movement has adverse visual, noise and safety effects on adjoining areas by using the roading hierarchy to direct higher volume and heavy traffic movements on identified arterial routes and discouraging this traffic from other areas, such as residential areas.
- 2.2 To avoid, remedy or mitigate the impact of roads and parking areas on visual amenity values of the community by requiring the provision of landscaping.
- 2.4 Avoid adverse effects on amenity and character by ensuring that new roads are well designed and visually complement the character of the surrounding areas.

## OBJECTIVE 3

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**The safety and efficiency of the land transport network is protected from the adverse effects of land use, development and subdivision activities.**

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## POLICIES

- 3.2 Require vehicle crossing places and vehicle entrances from public roads to be located, constructed, and maintained to standards appropriate to the expected traffic volume, pedestrian movement and speed environment of each road.

- 3.3 Ensure that buildings and activities do not compromise land transport network safety, including maintaining the necessary clear sight lines for road vehicles at level crossings and road intersections.

**Objective 2-1: Resource management**

- (a) To have regard to the mauri of natural and physical resources to enable hapū and iwi to provide for their social, economic and cultural wellbeing.*
- (b) Kaitiakitanga must be given particular regard and the relationship of hapū and iwi with their ancestral lands, water, sites, wāhi tapu and other taonga (including wāhi tūpuna) must be recognised and provided for through resource management processes.*

**Policy 2-1:**

*Hapū and iwi involvement in resource management. The Regional Council must enable and foster kaitiakitanga and the relationship between hapū and iwi and their ancestral lands water sites, wāhi tapu and other taonga (including wāhi tūpuna) through increased involvement of hapū and iwi in resource management processes including:*

- (a) memoranda of partnership between the Regional Council and hapū or iwi which set clear relationship and communication parameters to address resource management objectives.*
- (b) recognition of existing arrangements and agreements between resource users, local authorities and hapū or iwi,*
- (c) development of catchment-based forums, involving the Regional Council, hapū, iwi, and other interested groups including resource users, for information sharing, planning and research,*
- (d) development, where appropriate, of hapū and iwi cultural indicator monitoring programmes by the Regional Council,*
- (h) involvement of hapū or iwi in resource consent decision-making and planning processes in the ways agreed in the memoranda of partnership and joint management agreements developed under (a) and (f) above, and*
- (i) the Regional Council advising and encouraging resource consent applicants to consult directly with hapū or iwi where it is necessary to identify:*
  - (i) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga (including wāhi tūpuna), and*
  - (ii) the actual and potential adverse effects of proposed activities on those relationships.*

*Policy 2-2: Wāhi tapu, wāhi tūpuna and other sites of significance*

*(a) Wāhi tapu, wāhi tūpuna and other sites of significance to Māori identified:*

*(i) In the Regional Coastal Plan and district plans,*

*(ii) as historic reserves under the Reserves Act 1977,*

*(iii) as Māori reserves under the Te Ture Whenua Māori Act 1993,*

*(iv) as sites recorded in the New Zealand Archaeological Association's Site Recording Scheme,  
and*

*(v) as registered sites under the Historic Places Act 1993 must be protected from inappropriate subdivision, use or development that would cause adverse effects on the qualities and features which contribute to the values of these sites.*

*(b) The Regional Council must facilitate hapū and iwi recording the locations of wāhi tapu, wāhi tūpuna and other sites of significance to Māori in an appropriate publicly-available database.*

*(c) Potential damage or disturbance (including that caused by inappropriate subdivision, use or development) to wāhi tapu, wāhi tūpuna and other sites of significance to Māori not identified (for confidentiality and sensitivity reasons) by hapū or iwi under (a), above, must be minimised by the Regional Council facilitating the compilation of databases by hapū and iwi to record locations which need to remain confidential.*

*(d) The Regional Council must ensure that resource users and contractors have clear procedures in the event wāhi tapu or wāhi tūpuna are discovered.*

*Policy 2-3: The mauri of water*

*(a) The Regional Council must have regard to the mauri of water by implementing Policy 2-1 (a) to (i) above and by restricting and suspending water takes in times of minimum flow consistent with Policy 5-18 in Chapter 5.*



## CHAPTER 3: INFRASTRUCTURE, ENERGY, WASTE, HAZARDOUS SUBSTANCES AND CONTAMINATED LAND

### **Objective 3-1: Infrastructure and other physical resources of regional or national importance**

*Have regard to the benefits of infrastructure and other physical resources of regional or national importance by recognising and providing for their establishment, operation, maintenance and upgrading.*

### **Objective 3-3: The strategic integration of infrastructure with land use**

*Urban development occurs in a strategically planned manner which allows for the adequate and timely supply of land and associated infrastructure.*

*Policy 3-2: Adverse effects of other activities on infrastructure and other physical resources of regional or national importance*

*The Regional Council and Territorial Authorities must ensure that adverse effects on infrastructure and other physical resources of regional or national importance from other activities are avoided as far as reasonably practicable, including by using the following mechanisms:*

- a. ensuring that current infrastructure, infrastructure corridors and other physical resources of regional or national importance, are identified and had regard to in all resource management decision- making, and any development that would adversely affect the operation, maintenance or upgrading of those activities is avoided as far as reasonably practicable,*
- b. ensuring that any new activities that would adversely affect the operation, maintenance or upgrading of infrastructure and other physical resources of regional or national importance are not located near existing such resources or such resources allowed by unimplemented resource consents or other RMA authorisations,*
- c. ensuring that there is no change to existing activities that increases their incompatibility with existing infrastructure and other physical resources of regional or national importance, or such resources allowed by unimplemented resource consents or other RMA authorisations,*
- d. notifying the owners or managers of infrastructure and other physical resources of regional or national importance of consent applications that may adversely affect the resources that they own or manage,*

*[...]*

*ensuring effective integration of transport and land use planning and protecting the function of the strategic road and rail network as mapped in the Regional Land Transport Strategy.*

## **Chapter 4 – Land**

### **Objective 4-2: Regulating potential causes of accelerated erosion**

*Land is used in a manner that ensures:*

- a. accelerated erosion and increased sedimentation in water bodies (with resultant adverse effects on people, buildings and infrastructure) caused by vegetation clearance, land disturbance, forestry, or cultivation are avoided as far as reasonably practicable, or otherwise remedied or mitigated, and*
- b. sediment loads entering water bodies as a result of accelerated erosion are reduced to the extent required to be consistent with the water management objectives and policies for water quality set out in Chapter 5 of this Plan.*

## **Chapter 5 – Water**

### **Objective 5-4: Beds of rivers and lakes**

*The beds of rivers and lakes will be managed in a manner which:*

- a. sustains their life supporting capacity*
- b. provides for the instream morphological components of natural character*
- c. recognises and provides for the Schedule B Values*
- d. provides for infrastructure and flood mitigation purposes.*

*The land adjacent to the bed of reaches with a Schedule B Value of Flood Control and Drainage will be managed in a manner which provides for flood mitigation purposes.*

## **Chapter 9 – Natural Hazards**

### **Objective 9-1: Effects of natural hazard events**

*The adverse effects of natural hazard events on people, property, infrastructure and the wellbeing of communities are avoided or mitigated.*

#### **Policy 9-4: Other types of natural hazards**

*The Regional Council and Territorial Authorities must manage future development and activities in areas susceptible to natural hazard events (excluding flooding) in a manner which:*

- a. ensures that any increase in risk to human life, property or infrastructure from natural hazard events is avoided where practicable, or mitigated where the risk cannot be practicably avoided,*
- b. is unlikely to reduce the effectiveness of existing works, structures, natural landforms or other measures which serve to mitigate the effects of natural hazard events, and*

c. *is unlikely to cause a significant increase in the scale or intensity of natural hazard events.*

## **REGIONAL PLAN**

*The objectives from the Regional Plan considered relevant to the NoR are contained in the following table.*

### **Objective 13-1: accelerated erosion – regulation of vegetation clearance, land disturbance, forestry and cultivation**

*The regulation of vegetation clearance, land disturbance, forestry and cultivation in a manner that ensures:*

- A. Accelerated erosion and any associated damage to people, buildings and infrastructure and other physical resources of regional or national importance are avoided as far as reasonably practicable or otherwise remedied or mitigated, and*
- B. Increased sedimentation in water bodies as a result of human activity is avoided as far as reasonably practicable, or otherwise mitigated.*

*The Regional Council must:*

- a. regulate vegetation clearance, land disturbance, forestry and cultivation through regional rules in accordance with Objectives 12-1, 12-2 and 13-1 and Policies 12-1 to 12-8, and*
- b. manage the effects of vegetation clearance, land disturbance and cultivation by requiring resource consents for those activities:*
  - i. adjacent to some water bodies,*
  - iii. involving land disturbance and cultivation in Hill Country Erosion Management Areas,*
  - iv. involving large-scale land disturbance*

### **Objective 17-1: Regulation of structures and activities in artificial watercourses and in the beds or rivers and lakes, and damming**

*The regulation of structures and activities in artificial watercourses and in the beds of rivers and lakes, and damming, in a manner that:*

- a. safeguards life supporting capacity, and recognises and provides for the Values and management objectives in Schedule B, and*
- b. has regard to the objectives and policies of Chapter 5 that relate to structures and activities in artificial watercourses and in the beds of rivers and lakes, and damming.*

## **National Policy Statement on Urban Development (2020)**

**Objective 1:** *New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.*

**Objective 2:** *Planning decisions improve housing affordability by supporting competitive land and development markets.*

**Objective 4:** *New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.*

**Objective 5:** *Planning decisions relating to urban environments, and FDSs, take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).*

**Objective 6:** *Local authority decisions on urban development that affect urban environments are: integrated with infrastructure planning and funding decisions; and strategic over the medium term and long term; and responsive, particularly in relation to proposals that would supply significant development capacity.*

**Policy 1:** *Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:*

- (a) have or enable a variety of homes that:*
  - (i) meet the needs, in terms of type, price, and location, of different households; and*
  - (ii) enable Māori to express their cultural traditions and norms; and*
- (b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*
- (c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and*
- (d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*
- (e) support reductions in greenhouse gas emissions; and are resilient to the likely current and future effects of climate change.*

**Policy 6:** *When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:*

- (f) the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement*
- (g) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:*
- (h) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and*
- (i) are not, of themselves, an adverse effect*
- (j) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)*
- (k) any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity*
- (l) the likely current and future effects of climate change.*

**Policy 9:** *Local authorities, in taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in relation to urban environments, must:*

- (a) involve hapū and iwi in the preparation of RMA planning documents and any FDSs by undertaking effective consultation that is early, meaningful and, as far as practicable, in accordance with tikanga Māori; and*
- (b) when preparing RMA planning documents and FDSs, take into account the values and aspirations of hapū and iwi for urban development; and*
- (c) provide opportunities in appropriate circumstances for Māori involvement in decision-making on resource consents, designations, heritage orders, and water conservation orders, including in relation to sites of significance to Māori and issues of cultural significance; and*
- (d) operate in a way that is consistent with iwi participation legislation.*

**Policy 10:** *Tier 1, 2, and 3 local authorities:*

- (a) that share jurisdiction over urban environments work together when implementing this National Policy Statement; and*
- (b) engage with providers of development infrastructure and additional infrastructure to achieve integrated land use and infrastructure planning; and*
- (c) engage with the development sector to identify significant opportunities for urban development.*

## National Policy Statement for Freshwater Management 2020

### Objective

*(1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:*

*(a) first, the health and well-being of water bodies and freshwater ecosystems*

*(b) second, the health needs of people (such as drinking water)*

*(c) third, the ability of people and communities to provide for their social, economic, and cultural well being, now and in the future.*

### 2.2 Policies

*Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.*

*Policy 2: Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.*

*Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*

*Policy 4: Freshwater is managed as part of New Zealand's integrated response to climate change.*

*Policy 5: Freshwater is managed through a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.*

*Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.*

*Policy 7: The loss of river extent and values is avoided to the extent practicable.*

*Policy 8: The significant values of outstanding water bodies are protected.*

*Policy 9: The habitats of indigenous freshwater species are protected.*

*Policy 10: The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.*

- Policy 11: Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.*
- Policy 12: The national target (as set out in Appendix 3) for water quality improvement is achieved.*
- Policy 13: The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.*
- Policy 14: Information (including monitoring data) about the state of water bodies and freshwater ecosystems, and the challenges to their health and well-being, is regularly reported on and published.*
- Policy 15: Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.*



RESOURCE CONSENT

## Aokautere Land Holdings Limited

Decision on an application to **undertake earthworks related to the creation of a road and to infill a gully associated with a residential development** at Johnstone Drive, Palmerston North.

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Application Reference:	APP-2016200681.00
Granted Date:	24 May 2016
Review Date:	July 2017, July 2019 and July 2023
Expiry Date:	1 July 2026

# 1. Application

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## 1.1 Background

The applicant, Aokautere Land Holdings Ltd, has applied to undertake earthworks for a subdivision located off Johnstone Drive, Aokautere, Palmerston North. This application also requires a subdivision and land use consent from Palmerston North City Council.

In addition to this resource consent which is required under the One Plan 2014, additional consents are required from the Palmerston North City Council. The applicant will not be able to commence physical works as authorised by this consent, until the relevant consents have been granted by the City Council.

A site visit with Pita Kinaston, Compliance Monitoring Team Leader, Stuart Standen, Compliance Monitoring Officer, and Fiona Morton, Consultant Planner was undertaken in late March 2016.

## 1.2 Application Description

On 1 March 2016, Pirie Consultants Ltd, on behalf of the applicant, Aokautere Land Holdings Ltd applied for a Land Use Consent, to undertake earthworks (land disturbance) exceeding 2,500m<sup>3</sup> on the Johnstone Drive subdivision site to complete a cut and fill sequence. The 'cut' component of the works will result in the continuing formation of the Johnstone Drive road, with the 'fill' component occurring in the nearby Abby Road gully.

Section 6.1 of the application clearly states that it is not intended that there will be any fill material imported to the site. However an email received on 14 May 2016 identified that other sources of fill may be obtained the adjoining properties of Lot 1 DP 464570, Lot 98 DP 330144, Lot 1003 DP 490091 and Lot 1021 DP 494066.

No term was sought in the application, but on 14 April 2016, the applicant modified the application and sought a ten year term.

## 1.3 Activity Summary

The following summarises the activities associated with this resource consent. The decision section details the individual activity details.

Activity Description	Relevant Rules and Activity Status	Authorisation Number
<b>Land Use, Land,</b> to undertake large-scale earthworks	<b>Controlled Activity Rule 13-2</b> Large-scale land disturbance, including earthworks	ATH-2016200752.00

## 1.4 Location

The cut and fill works will take place on two sites near Abby Road, and Johnstone Drive on land legally described as Lot 2 DP 484516 and Lot 1004 DP 490091.

## 2. Assessment

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### 2.1 *Section 104(1)(a) Environmental Effects*

Section 104(1)(a) of the Resource Management Act states that when considering an application for a resource consent the consent authority shall have regard to any actual and potential effects on the environment of allowing the activity. The following actual and potential adverse effects have been considered:

- Location, nature, scale and timing of the activity;
- erosion and sediment effects,
- soil conservation and stability; and
- potential adverse effects on watercourses.

While the application states all runoff will comply with the visual clarity standards of Schedule E of the One Plan, it does not elaborate on how this is to be achieved. The application states that any adverse effects will be temporary and limited to within the property boundaries.

When the application was first lodged in March 2016, no E&SCP draft or otherwise was included. A section 92 request was made on 16 March 2016, which in particular, requested that an Erosion and Sediment Control Plan was prepared to Greater Wellington guideline standard and provided to the Regional Council. A draft E&SCP was received on 7 April 2016. This was reviewed by Stuart Standen, who considered that plan did not meet the Greater Wellington guidelines. Consequently a revised E&SCP was received on 10 May 2016. This draft was reviewed again by Mr Standen. Mr Standen has indicated that version 2 of the Draft E&SCP also does not meet the Wellington Guidelines because the sediment retention ponds (SRP's) have been proposed to be sized at 0.5 percent and batch dosed, rather than having floc blocks permanently installed on the SRP. Section 5.2 (g) of the Wellington Guidelines states that only SRP's with permanent floc blocks installed can be sized down to 0.5 percent of the contributing catchment.

While the draft E&SCP v2 does not meet the Wellington Guidelines, a final E&SCP will need to be submitted for certification as part of the recommended conditions of consent. On-site management of erosion and sediment effects and potential adverse effects on watercourses will then be managed through the implementation of certified Erosion and Sediment Control Plan (E&SCP). It is anticipated that the applicant will build on the draft document submitted as part of the s92 request and amend as required in order to manage the effects associated with this application.

In addition to the controls and measures undertaken in the (E&SCP), the applicant will need to regrass and stabilise areas of bare earth as soon as possible following the completion of each sequence of works i.e. at the end of each construction season. As long as the works are undertaken in accordance to design standard, in accordance with a certified Erosion and Sediment Control Plan (ESCP), and in accordance

with the recommended conditions of consent the overall site stability should improve as a result of the works.

## 2.2 Section 104(1)(b) Relevant Planning Provisions

Any relevant provisions under section 104(1)(b) of the RMA 1991, including a national environment standard, a national policy statement, regional policy statement and other regulations have been considered below.

### 2.2.1 Section 104(1)(b)(iii) Regional Policy Statement – One Plan 2015

The most relevant objectives and policies of the Plan in respect to the assessment of this application are considered to be:

Objective	Policy
Objective 4-2: Regulating potential causes of <i>accelerated erosion</i>	Policy 4-2: Regulation of <i>land</i> use activities

Chapter 4 of the One Plan seeks to ensure that the potential for adverse effects associated with accelerated erosion, which can be exacerbated by activities such as vegetation clearance, land disturbance, forestry and cultivation are managed. This is achieved by Objective 4-2 and Policy 4-2.

If undertaken in accordance with the recommended conditions of consent, which include a certified E&SCP, the activity should not give rise to any increase of accelerated erosion at that site.

### 2.2.2 Section 104(1)(b)(iv) Regional Plan – One Plan 2015

Objective	Policy	Rule
Objective 13-1: Accelerated erosion - regulation of vegetation clearance, land disturbance, forestry and cultivation	<p>Policy 13-1: Regional rules for vegetation clearance, land disturbance, forestry and cultivation</p> <p>Policy 13-2: Consent decision-making for vegetation clearance, land disturbance, forestry and cultivation</p>	<p>Rule 13-2</p> <p>Large-scale land disturbance, including earthworks</p>

Objective 13-1 seeks to ensure that structures and activities are undertaken in a manner that ensures that accelerated erosion and the resultant increased sedimentation in water bodies is avoided as far as reasonably practicable

Policy 13-1 is a directive policy which directs the Regional Council to have a regulatory framework in place to manage these types of activities. The Regional Council has given effect to this Policy via Rule 13-2. Policy 13-2 provides decision making guidance when making a recommendation on whether consent should be granted, and what mitigation should be imposed.

Rule 13-2 is a controlled activity rule. Control is reserved over the following matters:

- (a) the location, nature, scale, timing and duration of the activity;
- (b) Additional content of and the standard to which the Erosion and Sediment Control Plan must be prepared, the implementation of the plan, and the timing of when it must be prepared and submitted;
- (c) the effects of the activity and associated sediment run-off on soil conservation, surface water quality and aquatic ecology and the methods to be taken to avoid, remedy or mitigate them;
- (d) the provision of greater setback distances from water bodies than those specified under conditions (d) and (e) to provide greater protection to a water body if required;
- (e) duration of consent;
- (f) review of consent conditions; and
- (g) compliance monitoring.

I have recommended conditions be imposed which fall within the matters that control is reserved over.

Overall I consider that the application is consistent with the above objectives and policies of the One Plan (2014).

### 2.3 *Term*

Objective/Policy/Rule	Policy
Objective 12-2: Consent duration, review and enforcement	Policy 12-5: Consent durations
	Policy 12-6: Consent review

No term was sought in the application. On 14 April 2016, the applicant modified the application and sought a ten year term. Subject to the provision of periodic consent reviews, I consider that this term is appropriate.

### 2.4 *Part II Assessment*

Part II of the RMA 1991 outlines the purpose and principles of the Act that Manawatu-Wanganui Regional Council must have regard for when assessing resource consent applications. Section 104 of the Act is subject to Part II.

The matters contained in Part II of the Act have been taken into account in the assessment of this application. The activity is not considered to be inconsistent with these matters.

### 3. Notification Details

This application has been assessed under sections 95 to 95G of the Resource Management Act in terms of notification requirements.

#### 3.1 *Public Notification Assessment*

This application has been assessed against the following matters:

MATTER	YES	NO
Are adverse effects more than minor? [s95A(2)(a)]		<b>x</b>
Has the applicant requested public notification? [s95A(2)(b)]		<b>x</b>
Does a rule or NES require public notification? [s95A(2)(c)]		<b>x</b>
Does a rule or NES preclude public notification? [s95A(3)]	<b>x</b>	
Do special circumstances apply? [s95A(4)]		<b>x</b>

Based on the above assessment the application does not require public notification.

#### 3.2 *Limited notification Assessment – Where limited notification is not required*

MATTER	YES	NO	N/A
Does a rule or NES preclude limited notification of the application? [s95B(2)]	<b>x</b>		

#### 3.3 *Affected party assessment*

MATTER	YES	NO	N/A
Are adverse effects on any person minor or more than minor? [s95E(1)]		<b>x</b>	
Are there any affected protected customary rights groups? [s95F]		<b>x</b>	
Are there any affected customary marine title groups? [s95G]		<b>x</b>	
Has the person or group provided written approval?			<b>x</b>

### 3.4 *Notification Recommendation*

Effects on the environment are considered to be less than minor and no persons have been identified as being affected in a minor or more than minor way by the proposal. As such, I recommend that the application be decided on a non-notified basis.

## 4. Recommendation

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It is recommended that the resource consent application by **Aokautere Land Holdings Ltd** for the activities identified in the activity summary be granted, subject to the conditions outlined in the applicable condition schedule for the following reasons:

- a. the effects of the activity have been reviewed by Stuart Standen, Manawatu-Wanganui Regional Council's Consents Monitoring Officer. Based on Mr Standen's review, I am satisfied the actual and potential adverse effects of the activity will be less than minor;
- b. the activity is consistent with the relevant Objectives and Policies of the One Plan 2014; and
- c. the activity is consistent with the purpose and principles of the Resource Management Act 1991.



Fiona Morton

**CONSULTANT PLANNER**

## 5. Decision

The Manawatu-Wanganui Regional Council's Regulatory Manager (pursuant to delegated authority), grants resource consent for the reasons stated in the recommendation, to **Aokautere Land Holdings Ltd** under sections 104, 104A and 108 of the Resource Management Act 1991 to:

Activity Summary	Related Authorisation
<b>Land Use, Land</b> , to undertake large-scale earthworks at Johnstone Drive, Aokautere, Palmerston North	ATH-2016200752.00

For a term expiring on 1 July 2026, subject to the attached condition schedule.



Greg Bevin

**REGULATORY MANAGER**

**24 May 2016**



## 6. Land Use Consent

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### 6.1 *Authorisation details*

Authorisation number	ATH-2016200752.00
Activity Type	Land Use, Land
Activity Class	Controlled Activity
Primary Activity Purpose	Land Disturbance, Recontouring, Urban Expansion

### 6.2 *Location*

The following summarises the authorised location for the consented activity.

Activity Location Description	Johnstone Drive, Aokautere, Palmerston North
Valuation Number	14700/123.59 and 14700/123.62
Legal Description	Lot 2 DP 484516 and Lot 1004 DP 490091
Approximate Map Reference	NZTopo50 BM34:245-256 / Easting: 1824575 Northing: 5525621
IRIS Location ID	LOC-2016316600

### 6.3 *Classifications*

The following summarises the classifications associated with the application activity.

Water Management Zone	Manawatu Catchment, Middle Manawatu, Middle Manawatu
Associated River	MANAWATU RIVER

## *Condition Schedule – ATH-2016200752.00*

### *Descriptive Specification*

1. This land use consent authorises the following activities:
  - a. Retrospective land disturbance including road establishment and cut and fill associated with the infilling of a large ephemeral gully; and
  - b. Future land disturbance including road establishment and cut and fill associated with the infilling of a large ephemeral gully

Such works shall be undertaken on the property legally described as Lot 2 DP 484516 and Lot 1004 DP 490091 near Johnstone Drive, Aokautere, Palmerston North at approximate map reference NZTopo50 BM34:245-256 / Easting: 1824575 Northing: 5525621 (hereafter referred to as the property).

2. The consent holder must undertake the activity in general accordance with the consent application including all accompanying plans and documents first lodged with the Manawatu-Wanganui Regional Council on **1 March 2016** including:
  - a. Further information received on **14 April 2016** via email, modifying the term; and
  - b. Further information received on **10 May 2016** via email, being a revised draft Erosion and Sediment Control Plan.

**Advice Note:** Where there may be inconsistencies between information provided by the applicant and conditions of the resource consent, the conditions of the resource consent will apply.

**Advice Note:** Any variance from the location, design concepts and parameters, implementation and or operation may require a new resource consent or a change of consent conditions pursuant to section 127 of the Resource Management Act 1991.

3. No physical works authorised by **ATH-2016200752.00** shall commence until all consents required from Palmerston North City Council have been granted.

### *Pre-Development Assurance*

4. The consent holder shall be responsible for all contracted operations related to the exercise of this resource consent, and shall ensure contractors are made aware of the conditions of this resource consent and ensure compliance with those conditions.
5. A copy of this consent shall be kept onsite at all times that physical works authorised by this resource consent are being undertaken and shall be produced without unreasonable delay upon request from a servant or agent of the Manawatu-Wanganui Regional Council.

**Advice Note:** An electronic version on a smartphone or tablet is acceptable.

6. Prior to activities commencing as authorised by this resource consent, the consent holder shall appoint a representative(s) who shall be the Manawatu-Wanganui Council's principal contact person(s) in regard to matters relating to this resource consent. The consent holder shall inform the Manawatu-Wanganui Regional Council of the representative's name and how they can be contacted, **5 working days prior** to the resource consent being exercised. Should that person(s) change during the term of this resource consent, the consent holder shall immediately inform the Manawatu-Wanganui Regional Council and shall also give written notice to the Manawatu-Wanganui Regional Council of the new representative's name and how they can be contacted.
7. The consent holder shall arrange and conduct a pre-construction site meeting and invite the Manawatu-Wanganui Regional Council Consents Monitoring Officer, the site representative(s) nominated under condition 5 of this consent, the contractor, and any other party representing the consent holder **prior to any** work authorised by this consent commencing on site.

**Advice Note:** In the case that any of the invited parties, other than the site representative does not attend this meeting, the consent holder will have complied with this condition, provided the invitation requirement is met.

8. The consent holder shall provide the Manawatu-Wanganui Regional Council's Regulatory Manager with a revised and updated "Erosion and Sediment Control Plan" (E&SCP) **20 working days** prior to the commencement of activities authorised by this resource consent. The E&SCP shall be based upon and include, specific principles and practices which are appropriate for the activities authorised by this consent and contained within the Greater Wellington Regional Council document titled "Erosion & Sediment Control – Guidelines for the Wellington Region dated September 2002 & Reprint 2006". The updated E&SCP shall address the following aspects relating to the works:
  - a. Details of all principles, procedures and practices that will be implemented to undertake erosion and sediment control to minimise the potential for sediment discharge from the site, including flocculation;
  - b. The design criteria and dimensions of all key erosion and sediment control structures;
  - c. A site contour plan of a suitable scale to identify;
    - i. The locations of waterways;
    - ii. The extent of soil disturbance and vegetation removal;
    - iii. Any "no go" and/or buffer areas to be maintained undisturbed adjacent to watercourses;
    - iv. Areas of cut and fill;
    - v. Locations of topsoil stockpiles;
    - vi. All key erosion and sediment control structures;

- vii. The boundaries and area of catchments contributing to all stormwater impoundment structures;
    - viii. The locations of all specific points of discharge to the environment; and
    - ix. Any other relevant site information
  - d. Construction timetable for the erosion and sediment control works and the bulk earthworks proposed;
  - e. Timetable and nature of progressive site rehabilitation and re-vegetation proposed;
  - f. Maintenance, monitoring and reporting procedures;
  - g. Rainfall response and contingency measures including procedures to minimise adverse effects in the event of extreme rainfall events and/or the failure of any key erosion and sediment control structures;
  - h. Procedures and timing for review and/or amendment to the E&SCP; and
  - i. Identification and contact details of personnel responsible for the operation and maintenance of all key erosion and sediment control structures.
9. The E&SCP required by condition **8** shall be certified in writing by the Manawatu-Wanganui Regional Council's Regulatory Manager or his agent acting in a technical certification capacity prior to any activities authorised by this resource consent commencing.
10. The consent holder shall undertake all earthworks authorised by this consent in accordance with the certified E&SCP.

**Advice Note:** Several conditions require technical certification from the Manawatu-Wanganui Regional Council. That certification (or withholding of certification) shall be based on the Manawatu-Wanganui Regional Council's assessment of whether the matters being considered achieve the objective of minimising sediment discharges from the site to the extent practicable.

11. Any changes proposed to the E&SCP required by condition **8** shall be confirmed in writing by the consent holder and certified in writing by the Manawatu-Wanganui Regional Council's Regulatory Manager or his agent acting in a technical certification capacity, prior to the implementation of any changes proposed.
12. The consent holder shall ensure that a copy of the certified E&SCP, including any certified amendments, is kept onsite and this copy is updated within **5 working days** of any amendments being certified.
13. The consent holder shall contact the Manawatu-Wanganui Regional Council's Regulatory Team **5 working days** prior to the commencement of the construction, installation and disturbance works authorised by this consent and on completion of the works each year (**by 30 April**).

**Advice Note:** The Regulatory Team can be contacted on 0508 800 800, -OR- [compliance.shared@horizons.govt.nz](mailto:compliance.shared@horizons.govt.nz).

14. The consent holder shall, prior to bulk earthworks commencing, provide a completed 'As Built Certification' from a suitably qualified person that all sediment control structures have been constructed in accordance with the certified Erosion and Sediment Control Plan. The certification statement shall be provided to the Manawatu-Wanganui Regional Council's Regulatory Manager within **5 working days** of completion of the structures concerned. Information contained in the certification statement shall include at least the following information;
- a. Conformation of the contributing catchment areas;
  - b. The location, capacity and design of each structure;
  - c. Position of inlets and outlets;
  - d. Stability of the structures;
  - e. Measures to control erosion; and
  - f. Any other relevant matter.

**Advice Note:** Bulk earthworks includes cut and fill operations required to re-grade an area. It also applies to larger scale earthworks such as for building excavations, construction of temporary access tracks and earthworks associated with the construction of bridges, culverts and other similar structures.

15. **Twenty (20) working days** prior to activities commencing as authorised by this resource consent, the consent holder shall provide the Manawatu-Wanganui Regional Council with a draft Flocculation Management Plan (FMP) for technical certification by the Manawatu-Wanganui Regional Council. The FMP shall include as a minimum:
- a. Specific design details of the flocculation system;
  - b. Monitoring, maintenance (including post-storm) and including a record system;
  - c. Details of optimum dosage (including assumptions);
  - d. Results of any initial flocculation trial;
  - e. A spill contingency plan;
  - f. Contact details of the person responsible for the operation and maintenance of the flocculation treatment system and the organisational structure to which this person shall report.
16. The Flocculation Management Plan required by condition **15** shall be certified in writing by the Manawatu-Wanganui Regional Council acting in a technical certification capacity prior to any works authorised by this consent commencing.

17. Any changes proposed to the Flocculation Management Plan required by condition **15** shall be confirmed in writing by the consent holder and certified in writing by the Manawatu-Wanganui Regional Council acting in a technical certification capacity, prior to the implementation of any changes proposed.
18. Unless otherwise certified in writing by the Manawatu-Wanganui Regional Council acting in a technical certification capacity, the consent holder shall chemically treat all sediment retention ponds or decanting earthbunds for the purpose of reducing sediment discharges from the site and shall ensure that the Flocculation Management Plan required by condition **15** of this resource consent is implemented.

#### *Environmental Standards*

19. The consent holder shall ensure that the soluble aluminium concentration of any discharge from a sediment retention pond or decanting earth bund that is treated with an aluminium based flocculent shall not exceed 0.2 grams per cubic metre.
20. The consent holder shall ensure that the pH of any discharge from and sediment control structure treated with any flocculent shall be no less than 5.5 or greater than 8.5 pH units.
21. The consent holder shall ensure that the suspended solids concentration of any discharge from any sediment control device, including but not limited to sediment retention ponds, decanting earth bunds does not exceed 150 grams per cubic metre.

**Advice Note:** The above suspended solids consent limit does not apply during storm events where silt laden stormwater is discharging over the emergency spillway.

22. The consent holder shall ensure that sediment losses discharged from the site during storm events greater than the 5 per cent AEP are minimised by adhering to the E&SCP and FMP.
23. The consent holder shall ensure that all cleanfill material deposited at the site is free of pest plants identified in the Manawatu-Wanganui Regional Council Pest Plant Strategy, combustible, putrescible (except that cleanfill material may contain up to 5% by weight putrescible matter), degradable or leachable components, hazardous substances products or materials derived from hazardous waste treatment, hazardous waste stabilisation or hazardous waste disposal practices, materials that may present a risk to human health, or liquid waste.
24. The consent holder shall ensure that sediment losses to surface water arising from the exercise of this resource consent are minimised during the duration of the works and during the term of this consent. In this regard, erosion and sediment control measures shall be established and

maintained in accordance with the document titled *“Erosion and Sediment Control – Guidelines for the Wellington Region, dated September 2002*, and the certified E&SCP.

25. All earthmoving machinery, pumps, generators and ancillary equipment shall be operated in a manner, which ensures spillages of fuel, oil and similar contaminants are prevented, particularly during refuelling and machinery servicing and maintenance. Refuelling and lubrication activities shall be carried out away from any water body, ephemeral water body, or overland flow path, such that any spillage can be contained so that it does not enter surface water.
26. The consent holder shall ensure that, as far as practicable, all clean water run-off from stabilised surfaces including catchment areas above the site shall be diverted away from the exposed areas via a stabilised system to prevent erosion. The consent holder shall also ensure the outfall(s) of these systems are protected against erosion.
27. The consent holder shall ensure that all sediment laden run-off from the site is treated by sediment retention structures. These structures are to be fully operational before bulk earthworks commence and shall be maintained to perform at least at 80% of their operational capacity and be designed in accordance with the certified E&SCP and the Greater Wellington Guidelines.
28. The consent holder shall ensure that all erosion and sediment control structures are inspected on a weekly basis and within 24 hours of each rainstorm event that is likely to impair the function or performance of the controls.
29. The consent holder shall carry out monitoring and maintenance of erosion and sediment controls in accordance with the conditions of these resource consents and shall maintain records detailing:
  - a. The date, time and results of the monitoring undertaken; and
  - b. The erosion and sediment controls that required maintenance; and
  - c. The date and time when the maintenance was completed.

These records shall be provided to the Manawatu-Wanganui Regional Council at all reasonable times and within 72 hours of a written request to do so.

30. Earthworks shall not be conducted during the period **1 May to 30 September** inclusive during any year that this resource consent is current, apart from necessary maintenance works, unless certified in writing by the Manawatu-Wanganui Regional Council.

**Advice Note:** Maintenance is defined in the One Plan 2014.

31. Requests to undertake earthworks during the period **1 May to 30 September** inclusive, for any year that these resource consents are current, shall be submitted in writing to the Manawatu-Wanganui Regional Council by **1 April** and shall be in the form of amendments to the certified E&SCP in accordance with condition **8** of this consent.

**Advice Note:** In considering a request for the continuation of winter earthworks, the Manawatu-Wanganui Regional Council will consider a number of factors; including:

- The nature of the site and the winter soil disturbance works proposed;
- The quality of the existing/proposed erosion and sediment controls;
- The compliance history of the site/operator;
- Seasonal/local soil and weather conditions;
- Sensitivity of the receiving environment; and
- Any other relevant factor.

***Post-development assurance***

32. Notwithstanding condition **36**, the consent holder shall ensure those areas of the site where earthworks have been completed shall be stabilised against erosion as soon as practically possible and within a period not exceeding **14** days after completion of any works authorised by this resource consent. Stabilisation shall be undertaken by providing adequate measures (vegetative and/or structural) that will minimise sediment runoff and erosion to the satisfaction of the Manawatu-Wanganui Regional Council acting in a technical certification capacity. The consent holder shall monitor and maintain the site until vegetation is established to such an extent that it prevents erosion and prevents sediment from entering any water body.
33. The removal of any erosion and sediment control measures from any area where soil has been disturbed as a result of the exercise of this resource consent shall only occur after consultation and written approval has been obtained from the Manawatu-Wanganui Regional Council acting in a technical certification capacity. In this respect, the main issues that will be considered by the Manawatu-Wanganui Regional Council include:
- a. The quality of the soil stabilisation and/or covering vegetation;
  - b. The quality of the water discharged from the rehabilitated land; and
  - c. The quality of the receiving water.
34. Re-vegetation and/or stabilisation of all disturbed areas is to be completed in accordance with the measures detailed in the document titled *“Erosion and Sediment Control – Guidelines for the Wellington Region, dated September 2002*) and the certified E&SCP.



35. The works shall remain the responsibility of the consent holder and shall be maintained so that any erosion, scour or instability of the works that is attributable to the works carried out as part of this consent is remedied by the consent holder within ten (10) working days.
36. The consent holder shall ensure that the site is appropriately stabilised by **30 April** of each year unless otherwise certified in writing by the Manawatu-Wanganui Regional Council. Stabilisation shall be undertaken by providing adequate measures (vegetative and/or structural and including, pavement, metalling, hydro-seeding, re-vegetation and mulching) that will minimise erosion of exposed soil to the extent practical.

#### *Review*

37. The Manawatu-Wanganui Regional Council, under s128 of the Resource Management Act, may, in **July 2017, July 2019 and July 2023** serve notice of its intention to review all conditions of this resource consent for the purpose of reviewing the effectiveness of these conditions in avoiding and mitigating any adverse effects on the environment. The review of conditions shall allow for:
- a. deletion or amendments to any conditions of this resource consent to ensure adverse effects are appropriately mitigated; and / -OR-
  - b. addition of new conditions as necessary, to avoid, remedy or mitigate any unforeseen adverse effects on the environment; and / -OR-
  - c. if necessary and appropriate, the adoption of the best practicable options to avoid, remedy or mitigate any adverse effects on the environment.

#### *Duration*

38. This resource consent will expire on **1 July 2026**.

**DECISION OF HEARING COMMISSIONER UNDER THE RESOURCE MANAGEMENT ACT 1991**

**Proposal:**

Consent is sought to undertake earthworks to develop land at Johnstone Drive, and to fill a gully at Abby Road, Palmerston North.

This resource consent application is **DECLINED**. The reasons for this decision are set out below.

<b>Application Number:</b>	LU 4085
<b>Site Address:</b>	Abby Road and Johnstone Drive, Palmerston North
<b>Legal Description:</b>	Lot 2 DP 484516; Lot 1004 DP 490091; Lot 694 DP 500578
<b>Applicant:</b>	Aokautere Land Holdings Limited
<b>Hearing Commenced:</b>	2 May 2018
<b>Hearing Panel:</b>	Angela Jones
<b>Appearances:</b>	<p><u>For the Applicant:</u>  Philip Pirie- Surveyor  Angela McArthur- Landscape Architect  Kaleb Houlihan-Fugle - Aokautere Land Holdings Ltd  Gregor Woollaston - Legal Counsel</p> <p><u>For Council:</u>  Andrew Sowersby- Reporting Planner  John Hudson- Landscape Architect  Hamish Peters- Geotechnical Engineer  Nicholas Jessen - Legal Counsel</p> <p><u>Submitters:</u>  Jenny Parry  Mr &amp; Mrs Astle  Peter &amp; Alison White  Ann Ainscough  Lynne &amp; Tony Bishop  Bo Yu Hu  Jim &amp; Marie Henderson  George &amp; Sharon Campbell</p>
<b>Hearing Adjourned:</b>	3 May 2018
<b>Commissioners' Site Visit:</b>	3 May 2018
<b>Hearing Closed:</b>	9 May 2018 (via Commissioner Minute #2 dated 10 May)

## **Summary of Decision**

1. I, the Independent Resource Consents Hearing Commissioner, acting under delegated authority from the Palmerston North City Council ("the Council"), pursuant to section 104D of the Resource Management Act 1991 ("the RMA"), and under the provisions of the Palmerston North District Plan ("District Plan"), decline resource consent for the reasons outlined in this decision report.

## **Appointment**

2. I, Angela Jones, an independent hearing commissioner was appointed by the Palmerston North City Council in terms of s34A of the RMA to hear the Applicant, Submitters, and the Reporting Officer for the Council, and to make a decision on the application.

## **Time Period for Decision**

3. At the close of the hearing (via Commissioner Minute #2) it was stated that it was anticipated that the 15 working days to release the decision would be met as required by the Act.

## **Proposal**

4. Aokautere Land Holdings Limited ("the applicant") lodged a resource consent application with the Palmerston North City Council (received 20 July 2017) to undertake earthworks to develop the land at Johnstone Drive, and to fill in a gully at Abby Road, Palmerston North.
5. The proposal involves two interrelated elements, being cutting and filling earthworks as described below:
  - Cutting- approximately 34,200m<sup>3</sup> of earthworks at Johnstone Drive to create a formed road linking two ends of Johnstone Drive, which are already formed; and earthworks either side of the road to contour the land for a future residential subdivision, resulting in a lowered ground level.
  - Filling- depositing approximately 54,000m<sup>3</sup> of soil excavated from the Johnstone Drive cutting works and from stockpiles, into a gully at the terminating point of Abby Road (adjacent to the Manga o Tane Reserve), to fill the gully up to a level that is consistent with the adjoining residential properties at the top of the gully.

## **Site and Locality**

6. The site is located south-east of Palmerston North City, in an area known as Aokautere. The land in the surrounding area largely consists of built residential development, up to the current extent of the formed roads. The land beyond these roads, is undeveloped or is in the process of being developed

for residential use. The site where the cut and fill works are proposed is in an area that is largely undeveloped and adjoins existing residential properties.

7. In the area of Johnstone Drive, where cutting works are to be undertaken, some earthworks have previously been undertaken with some soil stockpiled.
8. The Abby Road gully is currently undeveloped in rough pasture and some scrub and gorse, with a small area of previous fill earthworks being undertaken at the base of the gully. The current head of the gully is adjacent to existing residential development on Abby Road, Woodgate Court and Johnstone Drive.
9. The northern half of the Abby Road gully is a Council owned reserve known as Manga o Tane reserve, which contains a small pond and extensive native tree plantings. This reserve is accessible to the public, but there are no formed access tracks.

## **Background**

10. There is an extensive history, which includes many consent applications and consents, for development within the wider Aokautere area. Some of this background is outlined in the evidence of Mr Houlihan-Fugle and Mr Pirie, as well as in the legal submission of Mr Jessen. This background provides a useful 'backdrop' to this application although the current application has been considered on its own merits. Notwithstanding this, the most notable of this consenting history, that has direct relevance to this application, is resource consent (RM 2466) granted in 2007 for earthworks to fill the subject gully. This consent lapsed in 2012 with a s125 a time extension application being unsuccessful. Prior to this consent lapsing, some fill material was deposited into the gully, however the consent lapsed prior to the consent being given effect to. Further unconsented works were undertaken on the gully in December 2016-February 2017. This background is discussed in more detail in the statement of evidence of Mr Pirie and legal submission of Mr Jessen.
11. By way of background to the District Plan framework applying to the application area, the site is zoned Residential and is within the Aokautere Development Area overlay. The Plan Change that created the Aokautere Development Area became operative around 1996 and paved the way for former farmland to be used for greenfield residential development. The Aokautere Development Area is defined on Planning Map 10.1 under Chapter 10 of the District Plan. The map identifies a number of areas that are subject to the "Limited Developable Land" overlay, which indicates that the land is likely to be subject to land instability hazards, due to the natural contour. The District Plan includes rules that control subdivision, earthworks and development within these identified Limited Developable Areas to ensure that appropriate engineering investigations and landscape considerations are taken into account.
12. Resource Consents have been granted by Horizons Regional Council to undertake the proposed earthworks (Consent Number 106967 and 2016200681.00). These consents cover the same extent of work as proposed by this application. Conditions of consent relate to erosion and sediment control; seasonal timing of works; monitoring during construction; and certificate of as-built sediment controls.

## Activity Status

13. The site is located within the Aokautere Development Area, where it is zoned Residential, and the part of the site which is identified as Abby Road gully, is subject to the Limited Developable Land overlay.
14. The section 42A report completed by Mr Sowersby, considers the application to be a Non-Complying Activity for the reasons outlined below.
15. Rule 6.3.6.1 provides for earthworks within the Residential Zone as a permitted activity subject to compliance with the performance conditions set out under 6.3.6.1 (b) and (e). These performance conditions state that earthworks shall not disturb more than 500m<sup>2</sup> of land in any 12-month period; result in the alteration of the existing ground level by more than 1.5m (measured vertically); and be clear of the National Grid Yard. The proposed earthworks exceed the permitted threshold and therefore cannot be considered a permitted activity.
16. Any earthworks in the Residential Zone that do not comply with the permitted activity performance conditions, are required to be considered under Rule 6.3.7.1 as a Restricted Discretionary Activity. Discretion is restricted to the following matters:
  - 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 on erosion and sedimentation; and
  - Effects on overland flow paths.
17. As the proposal seeks to restructure land within the Aokautere Development Area, the application is also subject to the Rule of Chapter 22, pertaining to Natural Hazards. Rule 22.9.2.1 states that the 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 Restricted Discretionary Activity subject to compliance with performance conditions. These performance conditions require that any application to restructure the land shall be made at the same time as any application for a subdivision consent for the same land.
18. The application presented is for a land use consent to undertake earthworks only and has not sought subdivision consent. The proposal therefore does not meet the performance condition required to be considered as a Restricted Discretionary Activity under Rule 22.9.2.1.
19. The proposed activity is not provided for under any other rule in Chapter 22, and therefore elevates to a Non-Complying Activity pursuant to Rule 22.9.4.1.
20. Overall the application is required to be considered as a **Non-Complying Activity**, in which Council must consider any relevant actual or potential adverse effects.

21. It is noted that the applicant questions the activity status of the proposal. This is therefore discussed later in this decision report.

### **Notification and Submissions**

22. Pursuant to s95 of the Act, the application was processed on a limited notified basis. Notification of the application was served on 13 parties.

23. A total of 12 submissions were received. The cover letter stated that the notification period closed on the 13/02/2018, however, the submission form stated that the notification period closed Monday 18/02/2018 (note: the 18/02/2018 was a Sunday). Two of these submissions were received between 13/02/2018-19/02/2018. In accordance with the s42A report, these submissions were accepted, as it is not considered that the applicant is unfairly impacted by this administrative error.

24. All 12 submissions opposed the application.

25. The s42A report identifies the following matters as the key issues raised by the submitters:

- Loss of views of the gully, the farmland and distant hills;
- Negative change to the existing character and landscape;
- Loss of amenity and aesthetic values;
- Loss of gully trees; open space; and natural landscape;
- Loss of privacy and restfulness;
- Filling of gully would not produce and reflect a high-quality environment;
- Negative Dust; noise and vibration effects;
- Long workdays during the summer period;
- Concern over substandard level of hazard analysis;
- Concern over impact on flood flows, erosion, seismic activity; and geotechnical risk to properties;
- Concern that engineering standards won't be followed;
- More geotechnical testing required now not as a condition of consent;
- Houses were purchased with the understanding that the gully was to be a reserve;
- Should be made into a reserve;
- Loss of wildlife;
- Loss of property values;
- Alternative options (cul-de-sac, or follow gully contour);
- Concern over maintenance of drainage; and
- Concern over competency of developer.

### **Summary of Hearing**

26. The hearing, held pursuant to section 100 of the RMA, was held in Palmerton North and evidence was heard over 2 days, being the 2<sup>nd</sup> and 3<sup>rd</sup> May 2018.

27. The hearing was opened at 10am on the 2<sup>nd</sup> May 2018 and after initial introductions and procedural matters, the hearing commenced with the presentation by the applicant's legal counsel. The submitter presentations were heard in the afternoon of 2<sup>nd</sup> May 2018. The morning of the second day commenced with presentations by the Reporting Planner who gave supplementary evidence followed by the start of the applicant's right of reply. The hearing was then adjourned following the agreement between the Applicant and the Reporting Planner and Legal Counsel to allow the Applicant to provide a supplementary legal submission to be received by 5pm on 8<sup>th</sup> May 2018.
28. A site visit to the gully and to a number of the Submitters properties was undertaken in the afternoon of 3<sup>rd</sup> May 2018.
29. The Supplementary Submission of the Counsel for the Applicant was received on 8<sup>th</sup> May and the hearing was closed on 9<sup>th</sup> May 2018 via Commissioner Minute #2 dated 10<sup>th</sup> May 2018.
30. During the hearing proceedings I exercised my right to question all persons presenting.
31. During the proceedings evidence was heard from the Applicant, their Legal Counsel and Witnesses; from Submitters; and from Council Reporting Planner and Council's Legal Counsel. I also took my own notes of the verbal presentations and answers to their questions. The hearing was also recorded. The written evidence and reports tabled and presented by these parties are held on file at the Council.
32. For the above reasons, I do not intend to record that material in full detail in this decision report. However, specific issues raised in the material are referred to as appropriate in the Evaluation section of this decision report. The following is a summary of the hearing sequence and presentations.

#### Applicant

##### Mr Gregor Woollaston – Legal Counsel

33. For the applicant, I heard from their legal counsel, Mr Gregor Woollaston, Mr Houlihan-Fugle, Ms McArthur and Mr Pirie. Mr Woollaston introduced the proposal, set the statutory scene, and gave the context of the surrounding environment which in his view was a modified landform and outlined that the residential zoning provided the expectation for future residential development. A synopsis summary was tabled by Mr Woollaston.

##### Mr Kaleb Houlihan-Fugle – Aokautere Land-Holdings Limited

34. The statement of evidence of Kaleb Houlihan-Fugle was taken as read. The main points in Mr Houlihan-Fugle's evidence include:
- Outlining his disagreement with Mr Hudson's landscape conclusions and questions the 42A officer's reliance on Mr Hudson's views.
  - The Abby Road gully is a significantly modified, non-natural landform in its present condition.
  - Outlines the history of Limited Developable Land.
35. In response to questions Mr Houlihan-Fugle:

- Confirmed that reference to 'C1085' (on page 3 of her evidence) was in fact an error and that this should have read "LU4085".
- Confirmed he would provide a copy of the initial resource consent RM2466 for reference.

Ms Angela McArthur – Eco-Landscapes & Design Ltd

36. Ms McArthur read her statement of evidence in full. The main points of Ms McArthur's evidence include:

- Describes the landscape and visual character of the site and surrounds.
- With respect to landscape, mentions that within the proposal site the gully "appears badly degraded due to past earthworks and stripping of vegetation."
- The visual character being predominantly recently established and emerging residential while the lower section of the gully is being replanted and is now a Council reserve.
- Outlines the methodology of assessment used and outlines the distinction between landscape effects and visual effects.
- Assessment of landscape and visual effects concluding that overall the landscape effects will be moderate and the magnitude of visual effects experienced by neighbouring residential properties will range between low to very low.
- Provides an assessment and consideration of the statutory planning matters relevant to landscape and visual effects.
- Outlines the reasons for disagreement between her own assessment and that of Mr Hudson with particular mention that Mr Hudson's report focuses on the wider landscape character, that in her view little of the gully's natural shape or vegetation remained and a difference in opinion that future development will reduce the sense of diversity and visual amenity.
- Considers the submitters concerns, however notes that the land is zoned for residential development and that there is no expectation within the residential zone that views will be protected.
- Concludes that the earthworks can be absorbed within the local area and further development will be consistent with the local urban form.

37. In response to questions Ms McArthur:

- Stated that originally the top of the gully would have gone beyond the top end of Woodgate Court.
- Confirmed she had not visited the neighbouring properties, although she had visited the gully and gully edge.
- The seven-point scale described in her evidence to categorise the scale of potential landscape and visual effects is the same as used in the Auckland Unitary Plan.
- Confirmed the mitigation planting on the batter slope alongside the reserve can occur at the first planting season after the earthworks as no earth settlement is required.
- The mitigation planting should become reasonably established within one year of planting.



38. Mr Pirie read his statement of evidence in full. The main points of Mr Pirie's evidence include:

- Outlines his 37 years' experience in the fields of surveying, resource management, land development and civil engineering.
- Describes previous earthworks that filled neighbouring gullies.
- In his view the application should be processed as a Discretionary Activity.
- The District Plan anticipates earthworks and the residential development of the site.
- The earthworks effects will be less than minor and mitigated by construction methodology.
- The landscape form has already been modified by the 2007/2008 earthworks undertaken within the jurisdiction of the initial resource consent.
- Is unaware of enquiries or complaints made by any neighbours about prior earthworks that occurred in 2007/2008 and many of the submitters owned their properties at that time.
- The Abby Road gully has never been or intended to be a reserve.
- Property values should not be a consideration.
- Outlined the benefits of the Abby Road connection.
- The earthworks will not create any land stability issues.
- The Horizons Regional Council earthworks consent imposes conditions which will be complied with.
- Earthworks will not create runoff or stormwater issues for neighbours.
- Outlines the possible conditions in Mr Sowersby's report that in his view are not necessary.
- Presents a table outlining when the submitters purchased their properties.
- Presented photos and played some short videos taken from the gully.

39. In response to questions Mr Pirie:

- Confirmed that the photos that were presented were taken in 2008 while the resource consent RM2466 was still live and that subsequent earthworks were undertaken in 2016 after this initial resource consent (RM2466) had lapsed in 2012.
- Stated that he understood that the time extension application for the initial earthworks consent (RM2466) as not granted because of a change in Council policy regarding earthworks and the additional consideration for landscape.
- Outlined the difference between the 2007/2008 earthworks and the 2015/2016 earthworks, using the cross sections at the rear of his evidence as reference.
- Outlined that other resource consent applications were at various stages of processing by the Council, one of which sought consent for the earthworks required to construct Johnstone Drive, however did not include earthworks in the gully.
- Questions were raised regarding the activity status of the application as Mr Pirie's evidence was in agreement with the Council Reporting Planner that Rule 10.8.1.7 did not apply. Mr Pirie's evidence however did not respond to the Council Reporting Planners assessment that the application was elevated to a Non-Complying Activity status through Rule 22.9.4 because there is no subdivision application sought alongside the land use consent for the earthworks. Mr Pirie did not agree that Rule 22.9.4. was applicable. Mr Pirie was asked to address this further in the applicant's right of reply.

- Confirmed that in his view the 40dBA noise limited for construction noise is achievable - even given the close proximity to neighbouring residential properties.
- Earthworks would commence at the bottom of the gully and move up. The earthworks at the top of the gully, in close proximity to the neighbouring properties, should only take a few days.
- Confirmed that the Structure Plan that is included in the application was the developers Structure Plan and did not form part of the District Plan and therefore had no statutory weight.

#### Submitters

40. Five of the submitters who requested speaking rights attended the hearing as follows:

- Jenny Parry (5 Woodgate Court)
- Mr and Mrs Astle (24 Abby Road)
- Peter and Alison White (22 Abby Road)
- George and Sharon Campbell (3 Woodgate Court)
- Lynne and Tony Bishop (11 Woodgate Court)
- Mr Henderson (17 Woodgate Court)

41. All of the submitters opposed the application and their concerns had some common themes. A summary of their presentations is outlined below:

#### Jenny Parry (5 Woodgate Court)

- Has spoken to real estate agents who are of the view that their property value will be affected. She believes she should not have to take a financial loss for someone else's financial gain.
- There is a large hedge at the rear of their property which is toward the end of its life and will be removed in the future. This will open views from her property toward the gully.
- Expressed a distrust toward Mr Fugle as she understood he had previously done works without consent.
- She wants the gully to remain as it is or be beautified.
- In response to questions Ms Parry confirmed she purchased the property in December 1999 and was not aware of the 2007/2008 consent for earthworks.

#### Mr and Mrs Astle (24 Abby Road)

Mr White spoke on behalf of Mr and Mrs Astle:

- Raised concern with the integrity of the developer.
- Has environmental concerns with the development

#### Peter and Alison White (22 Abby Road)

Mr White spoke on their behalf:

- This proposal does not protect the environment – this is their main concern.
- Does not agree that the effects of the proposal are less than minor.

- Does not agree that the noise from the machinery can be managed as machinery noise is very loud when it is 50m away from their house.
- The current state of the gully should not be considered because if the gully was restored it would be beautiful. It is not too late to restore the gully.
- Does not want houses on their fence line.
- The dust from the earthworks will be significant.
- Doesn't want to see an extension to Abby Road as there is no need for a through road here.
- Acknowledges the 2007/2008 earthworks and the further works in 2016.
- Property values will be affected.
- They enjoy the outlook to the gully. They cannot see the floor of the gully but about half way down.

George and Sharon Campbell (3 Woodgate Court)

Mr Campbell spoke on their behalf:

- The assessments of the proposal have not been robust, and the residents will be the ones who bear the brunt of the development.
- The proposal should have included the subdivision aspect of the final development
- The proposal demonstrates bravado on the part of the applicant.
- The current state of the gully is not relevant.
- They enjoy space and privacy that they do not want to lose.
- The applicant has gone to great lengths to demonstrate the gully has been modified – this should not be relevant.

Lynne and Tony Bishop (11 Woodgate Court)

Ms Bishop spoke on their behalf and included a power point presentation. Ms Bishop also tabled a written copy of their presentation. The main points in her presentation include:

- The gully can be restored.
- Applicant's reports/information is misleading and not impartial.
- Disputes the effects are only minor.
- The gully was advertised as being a reserve.
- They raised concerns regarding the previous earthworks.
- They have views over and into the gully which they value.
- The earthworks will result in the loss of a natural landform.
- Disputes Ms McArthur's landscape assessment.
- The adjoining roads can be built without building up the land – the example of Cashmere Drive and Waicola Drive demonstrates this.
- The effects are more than minor.

Mr Henderson (17 Woodgate Court)

- His property is lower than the neighbouring properties and has experienced issues with flooding. He has concerns that development in this area will make this worse.

- He relies on others to do the right thing.
- Mr Henderson acknowledges that he did know about the 2007/2008 earthworks consent.

#### Council

42. For the Council, Mr Andrew Sowersby was the section 42A Reporting Planner; Mr Hamish Peters presented engineering evidence; Mr John Hudson presented landscape evidence; and Mr Nicholas Jessen is the Council's Legal Counsel. A summary of the Council response includes:

#### Mr Andrew Sowersby – Section 42A Reporting Planner

43. A section 42A report was prepared by an independent planning consultant, Mr Andrew Sowersby, on behalf of the Council, and was pre-circulated to all parties and taken as read. This report evaluates the proposal against the relevant statutory criteria, including the effects on the environment, the policy framework of the District Plan and the Regional Policy Statement.

44. It was Mr Sowersby's view that overall the effects of the proposal were more than minor and was contrary to the objectives and policies of the District Plan. For this reason, the proposal did not pass either of the threshold tests of section 104D. Mr Sowersby's recommendation is therefore that the application is declined pursuant to section 104D of the RMA.

45. At the hearing Mr Sowersby's tabled summary response statement includes:

- Confirmation of his view that the proposal is a Non-Complying Activity because the earthworks do not comply with Rule 22.9.2.1, which requires that applications for earthworks must be submitted alongside applications for subdivision consent.
- Based on the evidence of Mr Hudson, his assessment of the proposal will have more than minor adverse landscape and visual amenity effects.
- The proposal does not satisfy either of the threshold tests of section 104D of the RMA and therefore has the view the consent authority is not able to grant the resource consent. His recommendation has therefore not changed from that outlined in the section 42A report.
- Responds to Mr Pirie's objections to possible conditions should consent be granted.

#### Mr Hamish Peters – Engineer

46. The statement of evidence of Mr Hamish Peters was taken as read. The main points in Mr Peters evidence include:

- Outlines his review of the application documents.
- Outlines his recommended conditions that would deal with the geotechnical matters.

47. In his oral presentation Mr Peters outlined the difficulty he has with applicants using the correct/appropriate methodology.

48. In response to questions Mr Peters confirmed that his concerns could be dealt with via the engineering conditions outlined in Mr Sowersby response.

Mr John Hudson – Landscape Architect

49. Mr Hudson's statement of evidence was taken as read. In addition to this Mr Hudson tabled, and spoke to, a reply that responds to the matters heard that includes the following points:

- That he and Ms McArthur do agree on many facts fundamental to the hearing, quoting passages in Ms McArthur's evidence with reference to landscape character.
- Finds the effects definition table in Ms McArthur's evidence unhelpful.
- Notes that Ms McArthur's evidence makes no mention of cumulative effects.
- Ms McArthur's evidence appears to confuse "landscape," "visual" and "amenity."
- Argues that landscape and visual should not be considered in terms of viewpoints. It is appropriate for amenity to do this, but visual relates to character, and character exists irrespective of specific viewpoints.
- Potential landscape values can develop over a short number of years.
- Landscape character does not have to be seen to be appreciated.
- Outlines policy 6.3.7.1 and notes the unequivocal language used where it states that earthworks that materially impact on the landscape values associated with the land in its surrounding context must be avoided. Mr Hudson relates this language back to the Supreme Court's decision on King Salmon (*Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*) which states that avoid means avoid. In his view, the earthworks are not avoided, remedied, and would be inadequately mitigated.
- Describes submitters concerns with the proposed earthworks and notes that many of their concerns reference the wider landscape character of the natural landscape of Aokautere.
- Mr Hudson concludes that in his view the effects are more than minor for the reasons he outlines.

50. In response to questions, Mr Hudson confirms that the aerial photo in Figure 1 of his evidence was taken on 27 March 2012.

Nicolas Jessen – Legal Counsel

51. Mr Jessen tabled, and spoke to, a legal submission. The main points including:

- Mr Pirie has no qualifications as a planner, landscape architect nor is he a chartered professional engineer. Therefore, when opinion clashes, expert statement should be preferred.
- The Non-Complying Activity status is a "black and white" application to a rule.
- Mr Pirie does not acknowledge or assess the relevance or application of Chapter 6 policies and objectives.
- The applicant is materially misrepresenting the timeline of earthworks within the gully and notes significant quantities of earthworks unlawfully deposited in the gully in December 2015-February 2016.
- Council does not accept that modification of the landform is irreversible.

- There is no such thing as a partially implemented consent therefore the modifications of the partially implemented RM2466 and the 2015-2106 modifications do not provide the environment against which effects of the proposal should be assessed against.
- Council maintains its reliance on the evidence of Mr Hudson with respect to landscape.
- The initial consent (RM2466) was granted prior to the City Council's plan change that introduced the entire subsection of 6.3 earthworks.
- The s125 time extension application for (RM2466) was declined by the Council because the applicant had not demonstrated substantial progress; and the changes to the District Plan provided new considerations relevant to the consent, namely the amendments to Chapter 6.
- Describes some background to earthworks in the gullies in the Aokautere area.
- The avoidance policy has not yet been tested on a gully filling application.
- Response to Mr Pirie's reliance on Ms Marr's notification assessment.
- Outlines the meaning of the term 'minor' in the context of the s104D(1)(a) gateway, noting that 'minor' effects are a narrow gateway that only truly exceptional cases pass through.
- The applicant does not rely on any adequate planning assessment with respect to policy.
- The most relevant policies are those within 6.3.7.1 which the application is directly contrary to.
- Reference to the King Salmon caselaw with respect to the meaning of 'avoid'.
- The application cannot pass the second gateway.
- District Plan integrity and precedent effects are legitimate considerations. Particularly in this case where consent is sought on a Non-Complying Activity in direct conflict with a policy that directs avoidance.

#### Applicant Right of Reply

52. The applicant's right of reply was presented by the applicant's legal counsel, Mr Woollaston. Mr Pirie did also respond to some questions of clarification. It is noted that Ms McArthur was not present on day 2 of the hearing and was therefore not present to hear Mr Hudson's landscape response nor present a right of reply with respect to landscape.

53. Mr Woollaston made the following points in his oral right of reply:

- Much of the submitters evidence is not relevant for the following reasons:
  - Property values are not a relevant consideration;
  - The site has not been, nor is it intended to be, set aside as reserve;
  - If consent is declined it should not be expected that the gully will be restored as it could be cleared as of right;
  - The underlying zoning is residential even in light of section 6 earthworks rules in the District Plan;
  - The applicant has demonstrated it can deal with geotechnical matters so there is an expectation that the site can be developed;
  - The expectation matrix is that the site will be developed in the fullness of time;
  - Residential rules contemplate building up to 9m, so this should be factored into what the neighbours expect;
  - Neighbours have 'borrowed amenity' from the openness of the existing gully.

- No enforcement orders have been served on the applicant of this application, so they should not be held to account for the previous enforcement history.
  - Any wildlife comes from the nearby Council reserve and not the subject gully.
54. As a point of clarification, Mr Pirie was able to confirm his view that the proposal is a Discretionary Activity as Rule 22.9.3.1 allows earthworks for the purpose of avoiding or mitigating a land stability hazard. His reasoning is that the site cannot be developed until the slip hazard is addressed and only then can the site be subdivided.
55. The hearing was adjourned to allow Mr Woollaston to respond to legal matters via a written response. Mr Woollaston's Supplementary Submissions of Counsel for the Applicant was received within the agreed timeframe prior the close of the hearing. Mr Woollaston's submission is limited to issues arising in reply from the submissions of Mr Jessen on behalf of the Council:
- Mr Pirie's extensive experience in matters including planning allow that Mr Pirie's evidence can be accepted.
  - Reiterates that the Applicant's view is that the earthworks are regulated by Rule 29.2.3.1 as the earthworks are for the purpose of 'avoiding or mitigating any land instability hazard'. The proposal therefore falls with the Discretionary Activity status of Rule 22.9.3.
  - The interim enforcement order tabled by Mr Jessen is not relevant as it is unrelated to those involved in this application.
  - This application must be determined on facts and that determination need to be undertaken devoid of inaccurate conduct of unrelated entities.
  - Ms Marr's notification assessment was prepared under a different statutory framework.
  - The gully was never intended to be a reserve.
  - Does not believe granting of consent would create a precedent.

### **Findings of the Principle Issues in Contention**

56. After analysing the application and evidence; undertaking a site visit; reviewing the s42A report; reviewing the submissions; and reviewing the right of reply; the proposal raises a number of principle issues in contention. These matters are concerned with;
- The activity status of the application
  - The existing environment
  - Construction effects
  - Earthworks effects
  - Landscape and visual effects
  - Neighbour amenity effects
  - Property value effects
  - Reserve status of the gully
  - Mistrust of the applicant's development practices
  - Flooding and stormwater effects
  - Mr Pirie's experience and expert status

57. It is noted that the earthworks to construct Johnstone Drive road and contour the land either side of the road, is not a matter of contention and therefore is not discussed in detail.

#### Activity Status

58. The Non-Complying Activity status of the application in the s42A report has been questioned by the applicant. In Mr Sowersby's view, the proposal is a Non-Complying Activity pursuant to Rule 22.9.4.1, as it fails to meet the Restricted Discretionary Activity Performance Conditions under Rule 21.9.2.1, which requires that applications for earthworks must be submitted alongside applications for subdivision consent. Mr Pirie however, is of the view that the application should go no further than to be considered as a Discretionary Activity under Chapter 22; and under Rule 10.8.1.7 for non-residential activities. This argument for this view rests on Rule 22.9.3.1 that allows earthworks for the purpose of avoiding or mitigating a land stability hazard. His reasoning is that the site cannot be developed until the slip hazard is addressed and only then can the site be subdivided.
59. I am of the view that Mr Pirie's argument in this regard is a stretch at best. The application has clearly demonstrated that the purpose of the earthworks is to facilitate future residential development. The application even includes an indicative subdivision layout to demonstrate this. Although the site is located within the Limited Development Area, whereby the District Plan indicates the land is likely to be subject to moderate to high risk of erosion or slippage due to the existing slope (based on land use classification), the application has not identified a specific land stability hazard which they are seeking to avoid or mitigate. Rather, they wish to provide an appropriate land contour for future residential development. It is also important to note that much of the proposed earthworks are to recontour the land to provide for the extension of Johnstone Drive, which is not identified as being prone to Hazard and not located within the Limited Developable Area.
60. I therefore concur with the Non-Complying Activity status as outlined in the s42A report.

#### Existing Environment

61. Throughout the hearing there was a difference in opinion on what is the baseline environment from which this proposal is assessed. The applicant and his respective experts argue that the gully has already been highly modified through previous fill earthworks which were undertaken in accordance with resource consent (RM 2466) in 2007/2008.
62. The Council considers that reference to this previous consent is misleading as the works consented under RM2466 were only partially implemented, and following the lapsing of this consent, significant quantities of material were unlawfully deposited into the gully between December 2015-February 2016.
63. Given the previous consent was not fully implemented prior to the consent lapsing, and no time extension was granted, this application seeks retrospective consent for all previous work in the gully, in addition to the additional earthworks to complete the filling of the gully.



64. Given this application encompasses the earthworks proposed to be carried out, and those works which have previously been carried out; the existing environment from which this proposal is assessed shall be considered to be the gully in its natural state prior to RM2466 being granted.

#### Construction Effects

65. Noise and vibration effects have been identified as a key concern by many of the submitters, who are of the opinion that the proposed works will fail to comply with the construction acoustic and vibration standards, and that the hours of work are unreasonable.
66. Due to the proximity of the site to adjacent residential properties, the Reporting Planner has suggested in the s42A report, that a condition of consent be imposed (if consent were to be granted) requiring a noise management plan and vibration management plan to be submitted and complied with.
67. The Applicant considers that such conditions (if consent were to be granted) are unnecessary and unreasonable, stating that compliance with NZS 6803:1999 Acoustics - Construction Noise and BS 5228-2:2009 "Code of Practice for Noise and Vibration Control on Construction and Open Sites- Part 2", is appropriate on its own, and that such conditions have never been imposed on any other earthworks. The applicant also states that the hours of work outlined in NZS 6803:1999 Acoustics- Construction Noise are contrary to those hours stated in Palmerston North City Council Engineering Standards for Land Development (ESLD).
68. The District Plan does not contain rules that control noise from construction activities, but instead relies on the New Zealand Standard (NZS 6803:1999 Acoustics- Construction Noise). The District Plan does also not contain rules that control vibration levels, however this condition is a recommendation of the geotechnical review undertaken by Mr Peter's on behalf of Council.
69. Construction noise, while undesirable, should be anticipated in a greenfield environment. I concur with the applicant, that a condition requiring compliance with NZS 6803:1999 Acoustics- Construction Noise, is appropriate.
70. With respect to construction vibration; the geotechnical review undertaken by Mr Peters of Geocivil, on behalf of the Council makes the recommendation that a condition of consent be imposed requiring the consent holder (if consent is granted) to submit to Council for review and approval, a Vibration Monitoring Plan, that is to be in accordance with and BS 5228-2:2009 "Code of Practice for Noise and Vibration Control on Construction and Open Sites- Part 2". In accordance with the recommendation of a suitably qualified Geotechnical Engineer, I consider this condition appropriate.
71. Overall, construction related effects are somewhat unavoidable in earthworks of this scale in close proximity to neighbouring residential properties. These effects are however somewhat mitigated by the fact they are temporary in nature and will be managed (as best as reasonably possible) through best practice and compliance with the applicable NZ standards and code of practice. I therefore concur with the applicant and Council that construction effects are expected to be no more than minor on the adjoining properties, and to have less than minor effects on the wider environment.

### Earthworks Effects

72. Earthworks effects are considered to encompass those effects relating to natural hazards, and instability, dust, erosion and sediment control. Effects relating to landscape and visual effects will be discussed separately in turn.
73. All geotechnical information submitted with this application has been reviewed by Mr Peters - of Geocivil on behalf of the Council. Mr Peters makes further recommendations on conditions of consent. In accordance with the recommendation, of the applicant's Geotechnical Report, the peer review undertaken by Mr Peter's on behalf of the Consent Authority, and the conclusion reached by Mr Sowersby regarding this matter in the s42A report, that the conditions of consent to ensure sufficient methodology, monitoring, testing and certification, will ensure that any adverse effects regarding stability, dust and erosion and sediment control will be less than minor.

### Landscape and Visual Effects

74. Ms McArthur and Mr Hudson are the only witnesses at the hearing with landscape expertise and it is only their evidence which I have considered in this regard. Any views expressed by others with respect to landscape and visual effects have been disregarded.
75. The opinions expressed by both landscape architects seem to agree that 'Landscape' extends across three categories being; the physical landscape; the perceptual landscape; and the associative landscape. Both also agree that landscape, visual and amenity are also separate considerations. This section considers landscape and visual. Amenity effects are discussed separately below. This report does not dissect these assessments fully as the assessments of both experts are clearly outlined in their evidence.
76. Both Mr Hudson and Ms McArthur do however agree that the naturally dissected landform of terraces and small gullies gives a significant landscape character to the Aokautere area. In their evidence, they both make a statement that the proposed works will significantly modify the existing landscape. Continuing this debate around the level of adverse effects that this modification will have on the landscape, Ms McArthur considers that the gully has little remaining natural character due to the works that have already been carried out, therefore resulting in low landscape effects. Mr Hudson considers that the works will result in a significant change to the natural landform, therefore resulting in significant landscape effects.
77. As discussed earlier, the existing natural environment is to be considered in the context of the natural gully prior to any earthworks having being undertaken. Given Mr Hudson's landscape and visual assessment is taken from this baseline environment I must give more weight to Mr Hudson's assessments. Ms McArthur's assessment appears to rely on the unlawfully modified environment as the baseline for her assessment and therefore I must in turn give it less weight in my consideration. It is also noteworthy that Ms McArthur did not respond to the Council view on the baseline environment in the applicants right of reply which makes it more difficult for me to give more weight

to Ms McArthur's landscape assessment. Mr Hudson's response therefore was uncontested in the applicants right of reply.

78. For these reasons I therefore rely on the evidence of Mr Hudson and concur with the s42A reporting planner that the landscape and visual effects of the earthworks in the gully will be more than minor.

#### Neighbour Amenity Effects

79. In Ms McArthur's assessment and evidence, amenity values and effects on these values are referenced based on viewpoints. Ms McArthur goes on to say that views of the gully are generally obscured and overall the magnitude of amenity effects from filling the gully are considered to be low due to the lack of vantage points.
80. Mr Hudson's evidence does not agree with this and considers that amenity values are an entirely different matter from 'visual impacts.' In his reply Mr Hudson notes that '*amenity values mean those natural and physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.*' He concludes that amenity value effects will be more than minor.
81. The submitters best describe the amenity values that the gully has to them. The submission from Mr and Mrs Astle and Mr and Mrs White states that they have great views of the gorse in the gully and can see water flowing when it rains.
82. The submission from Jose Roman, who did not wish to be heard, commented that to be able to have an open space at your backyard, and a pleasant area with a reasonable view away from a busy urban centre where you can unwind, relax or study and work from home without noise and a high level of privacy is not always appreciated.
83. Mr and Mrs Bishop commented that the majority of properties have sloping yards which do enable views down to the gully, built up decks and second storey windows allow further views into the gully.
84. With respect to amenity, the question is whether the amenity currently experienced by these submitters is anticipated under the District Plan (as is the view of Mr Hudson) or is it 'borrowed' amenity because the gully is zoned residential although not yet developed (which is the view of Ms McArthur). Mr Jessen, legal counsel for the Council, correctly states that the District Plan rule framework does not allow earthworks in this area as a permitted activity and therefore the earthworks cannot have been anticipated by the residential neighbours, despite the residential zoning of the site. Furthermore, the policy framework of the District Plan requires the consideration of the residential amenity of adjoining neighbours as part of the assessment of any earthworks proposal. For this reason I concur with the Council that the submitters should be able to anticipate that any earthworks do not affect their residential amenity.
85. Where I disagree with the Council is the extent that the residential amenity of adjoining properties is affected by the proposed earthworks. During my site visits I visited a number of submitter's properties which back onto the gully. I agree these submitters enjoy an openness at the rear of their properties

that the gully provides. The proposed earthworks will however not extend above the top of the gully and in itself will not obstruct this sense of openness. In this regard I concur with the assessment of Ms McArthur with respect to the amenity effects of the earthworks on the submitters.

86. Many of the submitters also expressed concerns with the effect that future residential development will have their amenity. This application is for the earthworks only and is not for the intended future residential development of the site. This would need to be done via a separate resource consent application should this resource consent for application be granted.
87. For these reasons I consider the overall actual and potential for neighbouring amenity effects to be no more than minor.

#### Reserve Potential

88. It was a common point noted in the submissions, that adjoining neighbours believed that the Abby Road gully was to become a reserve, as many of the gullies in the immediate area are. Some submissions go on to say that properties were purchased on the belief that this gully was to be a reserve.
89. Council have confirmed that this is not a reserve nor are there any plans in place for Council to purchase this land for reserve purposes.
90. Notwithstanding the possible misinformation or misinterpretation of information I must consider this application on the facts. The fact being in this regard that the gully has no reserve status nor is there any stated intention from either the applicant or the Council for the gully to be a future reserve.

#### Property Values Effects

91. A number of the submitters raised in their submissions, that the loss of the gully, through the earthworks and the subsequent intended future residential development, would devalue their properties. Property values is not an RMA matter and cannot be taken into consideration as part of this decision.

#### Mistrust for the applicant's development practices

92. A number of submitters raised some concern with the development practices of the applicant and questioned the likelihood of the conditions of consent being met, should consent be granted.
93. This application is being considered on its own merits and any background to the applicant's development practices have not been evaluated or questioned. Whether the accusations be fact or otherwise, they are not a consideration of this decision.

### Flooding and Stormwater Effects

94. At least one submitter raised concern with the potential for flooding and stormwater effects on their property following the earthworks given their property's lower ground level relative to some neighbouring properties.
95. Both the applicant and the Council have raised no concern with the potential flooding risk. This will be a matter that would be assessed as part of the engineering plan approval process with any potential issues being able to be mitigated.

### Mr Pirie's Expert Witness Status and Experience

96. There are areas that the applicant's witness, Mr Pirie, and the s42A reporting planner, disagree, particularly with regard to the activity status of this application and the planning assessment, as well as consideration of landscape matters.
97. Mr Jessen, in his legal submission, notes that Mr Pirie has no qualifications as a planner, landscape architect nor is he a chartered engineer. Therefore when opinion clashes expert statement should be preferred.
98. In response, Mr Woollaston, in the applicants right of reply is of the view that Mr Pirie's extensive experience in matters including land development and planning allow that Mr Pirie's evidence can be accepted.
99. Mr Pirie has clearly outlined in his statement of evidence he has had extensive experience in land development matters, including resource management. For this reason, I have accepted Mr Pirie's expertise in these areas. In saying this, Mr Pirie's evidence includes a planning assessment (paragraphs 29-49). This assessment however does not include an assessment against the relevant objectives and policies of the District Plan, although I note that an assessment is undertaken in the application AEE. Mr Pirie's planning assessment is however taken with the view that the site is already modified. For the reasons discussed earlier, this is the incorrect baseline environment for the application to be assessed. For this reason, I have given more weighting to planning evidence of Mr Sowersby with respect to his assessment against the relevant District Plan matters.
100. Mr Pirie has however not been able to demonstrate he has any qualification or experience in matters directly relating to landscape assessment. Any opinions expressed by Mr Pirie with respect to landscape have therefore been disregarded and reliance on the evidence of the applicant's landscape architect, Ms McArthur has been taken instead.

## **Statutory Evaluation**

### **Section 104D**

101. The test under Section 104D of the Act, requires applications for Non-Complying Activities to satisfy at least one of the following matters which is commonly referred to as 'the gateway'. The first test

considers whether the adverse effects of the activity on the environment will be minor. The second test considers whether the application is for an activity that will not be contrary to the objectives and policies of the relevant plan.

#### Adverse Effects on the Environment

102. In considering the effects on the environment, I have reviewed the application and assessment of environmental effects submitted by the applicant, the evaluation undertaken in the s42A report, with consideration of the Council's experts in landscaping and engineering, and submissions from the identified potentially affected parties. In addition to this, I have also had the benefit of being provided further evidence and assessment on the respective matters from all parties involved at the hearing, including the applicant.
103. For the reasons discussed earlier in the findings of the principle issues in contention, and relying on the evidence of Mr Hudson, I concur with the s42A reporting planner's assessment that the effects with respect to landscape will have a more than minor effect on the environment. As such, the application fails to meet the first test for a Non-Complying Activity under Section 104D of the Act.

#### Objectives and Policies

104. I concur with the s42A reporting planner that the objectives and policies of Chapters 6 (Earthworks) and 22 (Natural Hazards) of the District Plan are relevant to this application. The specific objectives and policies are assessed further below:

*Objective 6.3.3 To provide for earthworks activities where the associated adverse effects are able to be avoided, remedied or mitigated.*

*Policy 1.1 To limit the location and scale of earthworks where adverse effects may result.*

*Policy 1.2 To avoid, remedy or mitigate any adverse effects on the environment from earthworks on:*

- *Natural landform;*
- *Landscape values;*
- *Visual amenity values;*
- *Natural hazards and processes;*
- *Effects on the National Grid*

*Further Policy under Rule 6.3.7*

- (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*

105. I note that the further policy under Rule 6.3.7 is in an unusual place being in the Rule and in some ways appears as assessment criteria. Notwithstanding this, they are specifically referenced to as policy and therefore must be considered as policy.

106. These objectives and policies have been assessed in the applicant's AEE but is not referred to in Ms McArthur's Landscape and Visual Report in full. Ms McArthur does mention part of this objective and policy in her evidence, but no assessment is undertaken. It is considered that an assessment of this objective and policy is vital to this proposal given its Non-Complying status.

107. The s42A Report includes a comprehensive assessment of this objective and policy, as does Mr Hudson's reply. The language of the objective and policy both use the word 'avoid' effects on the environment. Where this is not achieved, the objective and policy then relies on remediation or mitigation to reduce the effects on the environment. As detailed above, the assessment of the effects and the measures of mitigation proposed are not considered to avoid, remedy or mitigate the effects on the environment to a level where they are minor or less than minor. As such, it is considered that the application is contrary to the above objective and policies.

*Objective 22.3 To control the type of development on land which is or might be affected by natural hazards.*

*Policy 2.1 To exclude development on hazard-prone land where the hazard cannot be effectively avoided, remedied or mitigated.*

*Policy 2.2 To establish appropriate controls to avoid, remedy or mitigate the effects of natural hazards.*

108. Again, these objective and policies have been assessed in the Applicant's AEE, although it is noted that at this point in the application the applicant did not consider that the rules of Chapter 22 to apply to this application. The Geotechnical Report submitted in support of the application does not make an assessment of these objective and policies, as this report is concerned with the technical assurance of the proposed works. The s42A report does undertake an assessment of these objective and policies and concludes that the proposal is consistent with Objective 22.3 and Policies 2.1 and 2.2. I concur with the s42A assessment that this application does meet the above objective and policy.

109. To conclude this assessment, in my opinion, the proposed application and all assessments and evidence in support of the application, is contrary to Objective 6.3.3 and Policies 1.1, 1.2, and 6.3.7. As such, the application fails to meet the second test for a Non-Complying Activity under Section 104D of the Act.

#### Section 104D Determination

110. The above assessment finds that the proposal to undertake earthworks at Abby Road and Johnstone Drive, Palmerston North, fail to satisfy both of the gateway tests under s104D of the Act for a Non-Complying Activity.

#### **Other Matters**

111. The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (2011) is not applicable to this application.

112. As the proposal fails to satisfy both of the gateway tests under s104D of the RMA no further assessment of the proposal against any other s104 matter is required.

### **Decision**

113. Consequently, having regard to the evidence presented, and the relevant statutory criteria under s104D and for the reasons set out below, the Independent Commissioner **DECLINES** consent to undertake earthworks to develop the land at Johnstone Drive, and to fill in a gully at Abby Road, Palmerston North, being Lot 2 DP 484516; Lot 1004 DP 490091; Lot 694 DP 500578.

### **Reasons for the Decision**

114. Section 113(1)(a) of the Act requires that I state my reasons for the decision of decline. Although it will be clear from the assessments carried out above, for the avoidance of doubt I confirm that the principal reasons for decline are:

1. The proposed earthworks within the extent of the Abby Road gully are considered to have more than minor effects on the natural landform.
2. The proposed earthworks within the extent of the Abby Road gully are considered to have more than minor effects on the Landscape Values of the environment.
3. The proposed earthworks within the extent of the Abby Road gully are considered to have more than minor effects on the Visual Amenity Values of the environment.
4. The proposal is inconsistent with the Objectives and Policies of Chapter 6 pertaining to earthworks.



**ANGELA JONES**

Independent Hearing Commissioner  
29 May 2018



## Appendix 5- PNCC Decision SUB 5031

### Palmerston North City Council

**Minutes of the Hearings Committee Meeting Part I Public, held in the Council Chamber, First Floor, Civic Administration Building, 32 The Square, Palmerston North on 23 March 2020, commencing at 9.30am**

**Members Present:** Commissioners Tangi Utikere (in the Chair), Bruno Petrenas and Aleisha Rutherford.

#### NOTES:

- (i) The meeting adjourned at 9.51am and resumed at 10.08am.
- (ii) The meeting adjourned at 10.13am.
- (iii) The meeting resumed again at 9.30am on 6 April 2020 via Zoom.
- (iv) The meeting adjourned at 10.29am and resumed again at 10.43am.
- (v) The meeting adjourned at 12.05pm and resumed again at 12.45pm.
- (vi) The meeting adjourned at 2.33pm and resumed again at 2.45pm.
- (vii) The meeting adjourned at 4.13pm and resumed again at 4.23pm.
- (viii) The meeting adjourned at 4.55pm.

#### **1-20 Hearing of Application for a Resource Consent for a six lot residential subdivision at 30 Abby Road, Palmerston North**

Consideration was given to:

- (i) Application from Aokautere Land Holdings Limited.
- (ii) Submission from Christopher and Aneta Britton.
- (iii) Section 42A report by Craig Auckram, Senior Planner.

The following people appeared before the Committee:

#### For the Applicant

Mr G Woollaston

Mr P Pirie

Mr L Fugle

#### As Submitter

Mr C and Mrs A Britton

#### For the Council

Mr N Jessen

Mr S Mori

Mr G Connelly

Mr D Arseneau

### Right of Reply

Mr Woollaston filed a right of reply in the form of two additional briefs of evidence from Messrs Fugle and Pirie.

*Note: There were a number of Minutes that were issued relating to the directions for the filing of submissions and other matters relating to hearing procedure and process, namely:*

*Minute No. 1 Dated 12 February 2020*

*Minute No. 2 Dated 27 February 2020*

*Minute No. 3 Dated 18 March 2020*

*Minute No. 4 Dated 23 March 2020*

*Minute No. 5 Dated 26 March 2020*

*Minute No. 6 Dated 14 April 2020*

*Minute No. 7 Dated 5 May 2020*

The Committee reserved its decision and:

**2-20**

### **Exclusion of Public**

The **COMMITTEE RESOLVED** that the public be excluded from the following parts of the proceedings of this meeting, namely agenda item 1.

The general subject of each matter to be considered while the public was excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution were as follows:

General subject of each matter to be considered		Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for passing this resolution
1	Hearing of an Application Pursuant to Section 8B of the First Schedule of the Resource Management Act 1991 for a six lot residential subdivision at 30 Abby Road, Palmerston North	Right of Appeal	48(2)(a)(i)

This resolution was made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public were as follows:

1. **Hearing of an Application Pursuant to Section 8B of the First Schedule of the Resource Management Act 1991 for a**

**six lot residential subdivision at 30 Abby Road, Palmerston North**

**3-20 Consideration of Hearing of an Application Pursuant to Section 8B of the First Schedule of the Resource Management Act 1991 for a six lot residential subdivision at 30 Abby Road, Palmerston North**

The meeting resumed again at 4.56pm.  
The meeting adjourned at 5.17pm.

The meeting resumed again at 2.00pm on 7 April 2020.  
The meeting adjourned at 2.38pm.

The meeting resumed again at 2.00pm on 14 April 2020.  
The meeting adjourned at 2.23pm.

The meeting resumed again at 11.00am on 8 May 2020.

Further consideration was given to the evidence before the Committee on the Hearing of an Application Pursuant to Section 8B of the First Schedule of the Resource Management Act 1991 for a six lot residential subdivision at 30 Abby Road, Palmerston North

**COMMITTEE RESOLVED:**

- 3.1 That the Resource Consent Application (SUB5031) by Aokautere Land Holdings Limited to subdivide land at 30 Abby Road into six residential allotments is declined, as set out in the decision (attached).
- 3.2 That copies of the decision be served on the Applicant, Submitters, Council Officers and be available for public inspection.

The meeting finished at 11.18am on 8 May 2020

CONFIRMED THIS 8<sup>TH</sup> DAY OF MAY 2020



**CHAIRPERSON**

**BEFORE A PANEL OF THE HEARINGS COMMITTEE  
OF THE PALMERSTON NORTH CITY COUNCIL  
UNDER THE RESOURCE MANAGEMENT ACT 1991**

**IN THE MATTER** of a Resource Consent  
Application for a six lot residential subdivision  
at 30 Abby Road, Palmerston North.

**APPLICANT** Aokautere Land Holdings Ltd

**Membership:** Deputy Mayor Tangi Utikere (Chairperson)  
Cr Bruno Petrenas  
Cr Aleisha Rutherford

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**DECISION OF THE HEARINGS COMMITTEE DATED 8 MAY 2020**

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## SUMMARY OF DECISION

[1] We, the Panel of Hearings Committee Members acting under delegated authority from the Palmerston North City Council, pursuant to section 104 of the Resource Management Act 1991 **decline** the application for resource consent, for the reasons outlined in this decision.

## INTRODUCTION

[2] The Palmerston North City Council, under delegation, has appointed Tangi Utikere (Chairperson), Aleisha Rutherford and Bruno Petrenas as Commissioners to hear and determine an Application by Aokautere Land Holdings Limited [ALHL] (The Applicant).

[3] ALHL has lodged a Resource Consent Application for Subdivision and an associated Land Use Consent (to be referred to as SUB 5031) in respect of the land located at 30 Abby Road, Aokautere, Palmerston North. The Legal Description of the property is Lot 2 DP 484516. The Applicant seeks a consent to enable the creation of six new residential allotments, one Right of Way and one balance allotment (Lot 100) that is to be amalgamated with an adjacent property (Lot 1102 DP 519561).

[4] The proposed six allotments are at the northern end of Abby Road on flat land, adjacent to the Abby Road Gully. It also proposes a Right of Way with variable access to the six Lots. An overview of the proposal, as prepared by Pirie Consultants Limited was contained within the Application and annexed as Attachment 2 to Mr Auckram's Section 42A Report<sup>1</sup>.

[5] The Application shows Limited Development Land positioned adjacent to the Abby Road Gully, along with the legal boundary crossing through the existing vehicle crossing to 41 Abby Road. The conclusion of Abby Road ends where proposed Lots 1 and 2 are located, with a blunt end rather than a typical cul-de-sac head.

[6] The subdivision is also proposed on an area that the Council contends is subject to a publicly notified *Notice of Requirement* for the purposes of designating a road link between Abby Road and Johnstone Drive.

## SITE AND LOCALITY

[7] The site is located in Aokautere, an area that is notable for its flat terrace areas divided by gullies with streams running towards the Manawatu River. The site along with adjacent properties which have dwellings on them are obviously within the Residential Zone under the Palmerston North City District Plan. It also falls within the area that is defined as the Aokautere Development Area with the site's north-western boundary also bordering land that is zoned Recreational.

### *Site Visit*

[8] A site visit was undertaken by the Committee on Wednesday 12 March 2020. The Panel members were the only individuals present and it provided a valuable perspective on where things were located and was an opportunity for the Panel to familiarise itself with various

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<sup>1</sup> Drawing Reference 2043/192 Sheet 1 of 1 dated March 2019.

aspects of the proposal, the submitter's opposition along with the position of Council Officers.

### **ACTIVITY STATUS**

[9] Safe for the effect of the *Notice of Requirement*, which is contested by the Applicant, the Council had originally assessed the proposal's Activity Status to potentially be that of Controlled<sup>2</sup>, with an assessment of the relevant Performance Conditions for such Activities under R7.6.1.1 being identified in the s42A Report<sup>3</sup>.

[10] Subsequent to that assessment, the position of the Council has been modified to reflect the view that the Application should be considered with a Restricted Discretionary Activity Status. The rationale and differing submissions on this matter are outlined further on in this decision.

### **NOTIFICATION DECISION**

[11] Council Officers made the decision under delegated authority pursuant to section 95 of the Resource Management Act 1991 (the Act) to process the Application on a Limited Notified basis. Accordingly, the Application was Limited Notified on one party, which were the owners of 41 Abby Road.

### **SUMMARY OF SUBMISSION**

[12] The owners of 41 Abby Road, Mr and Mrs Britton, filed a submission in opposition to the proposal. Their submission referred to access considerations to 41 Abby Road, alongside other properties on the roadway; the requirement for increased stormwater mitigation measures; and the importance of pedestrian access for existing and new dwellings.

### **THE HEARING AND APPEARANCES**

[13] The Hearing commenced at the PNCC Chambers on Monday 23 March 2020. The Applicant's attendance was excused and was represented by Counsel Mr Greg Woollaston and Mr Phil Pirie. For PNCC in attendance were Legal Counsel Mr Nicholas Jessen, Council's Senior Planner Mr Simon Mori and Transportation Expert Mr Glenn Connelly. Mr and Mrs Britton along with others were not present due to Covid-19 concerns at the time. The hearing was subsequently adjourned so that Legal Submissions could be prepared with the Hearing to reconvene via AVL Link on Monday 6 April.

[14] When the Hearing reconvened via AVL on 6 April, the Applicant Mr Les Fugle, Mr Pirie and Mr Woollaston were in attendance. Mr and Mrs Britton were also present as were Messrs Jessen, Mori, Arseneau and Connelly for the Council.

[15] With the concurrence of all parties, the Chair directed that Legal Submissions would be heard first as a discrete consideration, noting that Mr and Mrs Britton declined their opportunity to submit on the legal matters of difference between Counsel; a position that they confirmed *in person* at the Hearing.

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<sup>2</sup> At [31] of Mr Auckram's S42A Report

<sup>3</sup> Ibid., at Para [30].

[16] While it would be for the Panel to consider submissions relating to the relative status, if any, of the proposed *Notice of Requirement*, viz a viz the substantive Application, it was accepted that as much effort had gone into assembling the Panel and all parties via AVL, the substantive consent submissions should be heard at the same hearing. This was despite the fact that such considerations may be rendered inadmissible in the event the Committee determined that the status of the *Notice of Requirement* was such that it would be an impediment to further legitimate consideration of the substantive Application by the Panel at that point in time.

[17] Following the Hearing, with agreement, the Applicant filed a written *Right of Reply*; following the receipt of which the Public Hearing was closed by way of a Minute<sup>4</sup>.

### **RELEVANT STATUTORY, POLICY STATEMENTS AND PLANNING PROVISIONS**

[18] While there are some differing expert views on some aspects of the Applicant's proposal, the immediate consideration relates to the proposed *Notice of Requirement* and the relevance of this instrument under sections 176 and 178 of the Act. We must turn our minds to this legal matter first, before we are able to consider the substantive Application.

### **PRINCIPAL LEGAL ISSUE(S) IN CONTENTION**

[19] Both counsel had very helpfully filed extensive Legal Submissions and elaborated upon these at the resumed Hearing.

#### *The Applicant's Legal Submissions*

[20] Mr Woollaston's position is that the Panel have the right to consider the validity of the *Notice of Requirement* and that Council could not advance the issue of validity due to another process, in this regard one that involved an independent Commissioner. Council had brought it as subject matter to the table, having referenced it substantively in their documentation; and therefore it was procedurally fair to allow it to be considered by the Panel as valid and robust enough so that it could be relied upon.

[21] He identified that the *Notice of Requirement* was constituted under *Form 18*<sup>5</sup>; and in the context of this hearing, a Lot that was specified on the relevant *Form 18* for the proposed *Notice of Requirement* was a Lot that did not exist. Counsel submitted that there must be sufficient rigour and the greatest of care taken when completing the statutory documentation to give effect to the proposed *Notice of Requirement*, and cited comparisons with attempting to register a mortgage in a similar manner.

[22] It was submitted that there had been non-compliance on the part of the Council with the notification requirements, and that the error needed to be amended as it was a fundamental error. Further, that the inclusion of a visual image<sup>6</sup> did not mitigate the error that had been made as there was a duty on the party seeking to expropriate the right to ensure that the documentation was accurate. Mr Woollaston believed that the *Notice of Requirement* had to be set aside as a consideration as it had not been correctly notified.

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<sup>4</sup> Minute No. 6 of Hearings Committee Dated 14 April 2020.

<sup>5</sup> Schedule 1 of Resource Management (Forms, Fees and Procedure) Regulations 2003.

<sup>6</sup> At Page 194 of the s42A Report Bundle

[23] Counsel also helpfully provided the relevant statutory provisions<sup>7</sup> along with his analysis of their applicability to the matter currently before the Panel. While he submitted that s166 defined what a 'Designation' was, there were discrete instances of a *Notice of Requirement* under s178 and a Designation under s176. If the *Notice of Requirement* had been robust, then the Applicant would concede that s178(1)(b) could be within scope; however the restriction contained in s176 was not contained in s178.

[24] This was prefaced upon the suggestion from Mr Woollaston that a *Notice of Requirement* was not a Designation until it had been embedded and notified within the City's District Plan. As such, he did not believe s176 would prevent the Applicant from doing anything under the relevant framework, and that to simply apply the effects of that section of the Act would be to sidestep the statutory rights to appeal, which would be a significant procedural impropriety.

[25] Counsel clarified that the Applicant was not seeking a Subdivision, but a consent to begin the process by which a Subdivision may come into existence. In light of this, he contended that no subdivision would be triggered as a consequence of granting the consent that was being sought.

[26] In relation to the Activity Status under which the proposal was to be considered, the Applicant believed it had been correctly notified as a Controlled Activity. To continue under an alternative status would give rise to procedural difficulties as they had proceeded on the basis that it was a Controlled Activity. As the change in position from the Council had been very recent, it had been difficult to find an expert within the previous 10 days prior to the Hearing. The Applicant had proceeded upon an assumption that there was compliance, at a Controlled level, for the purposes of putting its case. Counsel submitted that to reverse that position so late in the piece meant the Applicant was denied an opportunity to advance expert evidence and was such a fundamental ground shift.

[27] While the Applicant had offered up an amendment to have access to Lot(s) from the Right of Way, if a change in Activity Status was to be adopted, Mr Woollaston submitted that it might be proper to set the process aside so that there was time for the s42A Report to be restructured and reset. The Application had been notified as a Controlled activity and therefore the framework for determination had already been set. In response to questioning from the Panel, Mr Woollaston confirmed that for evidential reasons, it was the Applicant's view that the Controlled Activity Status must stand.

#### The Council's Legal Submissions

[28] Mr Jessen reinforced that in relation to the validity of the *Notice of Requirement*, notwithstanding the single digit error, if the Panel was satisfied that it applied to the Applicant's land, then that would be the sufficient threshold. He also challenged any suggestion that it was to be comparable with a mortgage instrument or Land Transfer document. The latter being a very strict document with a requirement to deliberately specify details. *Form 18* did not specifically require that degree of specificity.

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<sup>7</sup> Namely ss 175, 176 and 178 of the Act.



[29] Counsel submitted that *Form 18* did not require that the 'Title Reference' be inserted, but rather a description of the site as it is commonly known. Also, that all of the material which immediately follows *Form 18* was to be considered as part of the Notification material. Although he accepted there was a single digit error, everything else about the document related to the land in question; including a Diagram<sup>8</sup> which included the correct Title description.

[30] He referred to s176 for the effect of a *Notice of Requirement*, as it was not related to the compulsory acquisition of land. Mr Jessen did not believe the Panel should be asserting the decision-making responsibility of the Independent Commissioner who had been assigned to determine the *Notice of Requirement* matter, noting that the Commissioner could also alter any defect within the *Notice* under delegated powers.

[31] Council had been also aware of the Applicant's position to re-notify for some time; but this was seen as pointless as there was no procedural unfairness to ALHL as it was involved in both processes. The position of the Council was that there was no doubt that the *Notice of Requirement* process related to ALHL's land. Mr Jessen submitted that following previous discussions with the Applicant, this Application was simply a retaliation for a decision of Council to decline resource consent two years ago.

[32] Counsel submitted that the Panel could look at the *Notice of Requirement* for a Designation as if it was a proposed plan within the District Plan<sup>9</sup>, or alternatively as another matter for which it could have regard to<sup>10</sup>.

[33] With reference to s176, Mr Jessen identified that when a Designation had effect under that section of the Act it carried two components. The first was that it was enabling. That is, it would override everything else in the District Plan. The second being preventative; so that any impediment to the *Notice of Requirement* would be prevented. While the current *Notice of Requirement* in question was not yet final, and therefore not at the s176 stage, he submitted that it did carry interim effect under s178(2) as it provided for the preventative aspect. The relevance of s175, was that it made it clear that once a *Notice of Requirement* was confirmed, then it would be regarded as a rule or provision in a Plan.

[34] What the Council was seeking to do was give notice that it required the designation in the District Plan, and therefore it was to be regarded as a proposed provision within it. Mr Jessen stated that Mr Woollaston had already conceded that if subdivision was to be implemented, it would impede the *Notice of Requirement*, and that a proposal that had a full subdivision that closed off Abby Road would prevent access to Adderstone Reserve and Johnstone Drive; both being purposes of the current *Notice of Requirement* process.

[35] Mr Jessen accepted that there was an exemption for works to be undertaken which lay within s178(2). This required the prior written approval of the Council to have been obtained by the Applicant, but on this occasion such consent had not been sought nor granted.

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<sup>8</sup> Labelled as Appendix A at Page 59 of Mr Auckram's s42A Report.

<sup>9</sup> Citing s104(1)(b)(vi).

<sup>10</sup> Citing s104(1)(c).

[36] On the matter of the Activity Status, counsel submitted that procedural fairness arguments advanced by Mr Woollaston were irrelevant to the question of what the appropriate Activity Status should be. While the s42A authors had initially accepted that the proposal was Controlled, upon reflection they had now formed the view that it was to be considered as a Restricted Discretionary Activity.

[37] In any event, the position adopted by ALHL was in Mr Jessen's view unsound as the Policies and Objectives were still relevant, so there was no issue of unfairness that arose. It was in his submission over to the Panel to assign the correct Activity Status under s104(5), regardless of what Activity Status position was being taken by either party.

#### Applicant's Right of Reply on Legal Submissions

[38] Mr Woollaston re-iterated the Applicant's view that in respect of this Proposal, there had been a failure to communicate on the part of the Council, and that the rationale for seeking the Resource Consent was wholly irrelevant from a legal perspective. In response to the matters outlined by the Council, counsel submitted that the Panel, if it felt necessary, could impose conditions to simply mitigate any concerns it may have.

[39] ALHL also offered up the alteration for Lots 1 and 2 to have access via the Right of Way if the Panel believed that Rule 20.4.2.5 applied. Mr Woollaston believed this would obviate any procedural fairness issues that may arise from any change in the Activity Status.

### **COMMITTEE ANALYSIS AND FINDINGS ON LEGAL ISSUES IN CONTENTION**

[40] The Committee has considered the extensive legal submissions that have been advanced in written and oral form and thanks counsel for their diligence in this regard. There are two areas for which the Panel has turned its mind towards. The first concerns the validity and consequential effect of the *Notice of Requirement*; and the second is the process and suitability of assigning the Activity Status for what is proposed.

#### Notice of Requirement

[41] The Notification for a *Notice of Requirement* must be set out in accordance with what is known in RMA parlance as 'Form 18' within the necessary Regulations<sup>11</sup>. This *Form* requires information to be submitted, in no fewer than 12 fields, in order to ensure there is adequate information to identify the site(s) and proposed public works for which the *Notice of Requirement* relates to. Our review of that *Form* sets it apart from an instrument that would seek to register a mortgage.

[42] When prompted to populate the 'site field' to which the *Notice of Requirement* relates, it asks the author to "*describe the site as it is commonly known and in a way that will enable it to be easily identified (eg, the street address, the legal description, proximity to any well-known landmark, the grid reference (if known))*"<sup>12</sup>.

[43] In the context of the current *Notice*, we are satisfied that if the only identifier was the incorrect Title Reference, then that would give rise to the suggestion that the *Notice* does

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<sup>11</sup> Schedule 1 of Resource Management (Forms, Fees and Procedure) Regulations 2003.

<sup>12</sup> Ibid.

not relate to the Applicant's land. However, that is not the case. There are a number of supplementary descriptors contained within *Form 18*<sup>13</sup> and the broader *Notice Bundle*<sup>14</sup>. When these are considered collectively, it is clear to us that the *Notice of Requirement* does indeed relate to the land for which the Applicant seeks Resource Consent.

[44] In short, an inaccurate Lot reference, in the context of the full *Form 18* consideration(s), in our assessment does not render the entire *Form 18 Notice of Requirement* invalid. What we must now consider is whether or not the mere existence of the *Notice of Requirement* limits our capacity to consider, in full or in part, the merits of granting of consent.

[45] It is important at this point to set out the relevant statutory provisions of s178 as we see them, to consider the status that is to be afforded to the *Notice* as part of this process.

[46] Section 178 states:

(1) *This section applies when—*

...

(b) *a requiring authority gives notice of a requirement for a designation to a territorial authority under section 168:*

...

(2) *In the period that starts as described in subsection (3) and ends as described in subsection (4), no person may do anything that would prevent or hinder the public work, project, or work to which the designation relates unless the person has the prior written consent of the requiring authority.*

(3) *The period starts,—*

...

(b) *for the purposes of subsection (1)(b), on the day on which the requiring authority gives notice of the requirement under section 168:*

...

(4) *The period ends on the earliest of the following days:*

(a) *the day on which the requirement is withdrawn:*

(b) *the day on which the requirement is cancelled:*

(c) *the day on which the designation is included in the district plan.*

..."

[47] It is apparent to us that this section is applicable. The *Notice* has been publicly notified and issued in accordance with s168. As this has occurred, this means that in relation to ALHL's Application which involves land subject to the *Notice of Requirement*, s178(2) is engaged.

[48] The *Notice of Requirement* is a proposed Designation. While it has not matured into the latter at this point in time, due to it being currently before an Independent Commissioner, it nonetheless carries with it the restriction identified in s178(2). Such restriction applied from

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<sup>13</sup> For example Criteria 2, 3, 4 and 5.

<sup>14</sup> Including 'Part B' and 'Appendix A' of the Notification Bundle from Page 44 of Mr Auckram's s42A Report.

the date of notification, 18 January 2020<sup>15</sup>, and as none of the limbs identified in s178(4) have been met, the Committee has no other option but to afford the *Notice* a 'live' status in relation to the Proposal currently before it.

[49] There is of course a statutory avenue that would permit work, such as what has been proposed by ALHL to be carried under s178(2). However, the Council has confirmed that ALHL has not sought permission for such a course of action to occur. We might infer that this may in some part be due to the Applicant's view that the status of the proposed Notice of Requirement is non-restrictive in relation to its land, but we note that this is an inference only.

[50] As such, in the context of the current Application; as the *Notice* has been duly notified, it carries status within s178, to the extent that it impedes our consideration for the purposes of granting Resource Consent. While the existence of such a process could also be captured as a consideration under s 104(1)(c), our paramount reliance upon the restriction remains within s178.

[51] Having determined that the current *Notice of Requirement* has legal status in relation to the land that is the subject of this Application, it must clearly follow that its mere existence within the statutory framework is an absolute impediment to our consideration of the substantive Resource Consent Application. In fact, we form the view, that to do so within the current context would be improper in law.

[52] Instead of 'parking' the Application and putting it on hold; there are fundamental concerns with what has been advanced. So much so, that the more appropriate course of action, in light of the legal restrictive nature to consider the Application under s178, is to decline the Application so that a fresh s42A Report can be written. At such time the *Notice of Requirement* process is concluded, the Applicant may then be afforded an opportunity to respond in light of the apparent change in Activity Status, amongst other things.

#### The Activity Status

[53] We agree and accept that for Council to reverse their position on the Activity Status so late in the process gives rise to a perception of a potential procedural impediment. It is understandable that this could be seen as especially so when the nature of the change carries significant restrictions and potential changes to the proposal to accommodate an additional level of compliance or mitigation.

[54] While we accept that upon our analysis and interpretation of the evidence the appropriate Activity Status is that of a Restricted Discretionary Activity, such a change should have been signalled to the Applicant much sooner in the process. It had obviously gone via at least three experts before the change was identified.

[55] The Hearing was advised that the modification to the relevant section of the District Plan Rule is relatively recent, but there is still an expectation, and an onus of responsibility, on those that review such matters to ensure a correct and accurate lens is applied over these matters in a timely way. This ensures there is little risk of unfair procedural prejudice

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<sup>15</sup> Pursuant to s178(3)(b).

to participants. While we accept the submission that it is for the Panel to assign the accurate Activity Status, there is still a role for Council Officers in the process prior to it being placed before the Hearings Committee for determination.

[56] It seems there has been much discussion between the parties prior to the Application being lodged. While we have not been privy to these discussions, we feel we must reject Mr Jessen's assertion that the lodging of this Consent is a form of retaliation for previous decisions that may have been made against the Applicant. ALHL is entitled to seek consent, and to have the merits of such an Application considered genuinely with regard to the legislative and policy framework that exists at the time.

#### **ADDITIONAL COMMENTARY**

[57] While it has been determined that there are legal barriers to our consideration of ALHL's Application, given the goodwill of those who participated in the Hearing, we consider it appropriate to make some comments on matters that were placed before us. In doing so, it is important that we indicate that such commentary is in response to the issues expressed by participants. Our commentary is not to be perceived as formal findings on aspects of the Application, nor is it to be seen as a formal response to matters of expert evidence and opinion that was placed before us.

#### **Stormwater**

[58] It was clear that to an extent there is an existing issue with stormwater at the end of Abby Road and whilst the proposal won't create the problem, it has the potential to add to it if not mitigated. Mr Arseneau provided evidence showing the 'bowl' at the end of Abby Road where flooding occurs.

[59] It is a possibility that Stormwater ponding had been occurring at the top of the Abby Road stormwater catchment previously. Steps may have been taken in the past to address the stormwater ponding via the implementation of a gully trap north of and adjacent to the vehicle crossing serving 41 Abby Road. Such a small gully trap may have been piped adjacent to the kerb and channel outside 41 Abby Road in order to connect to a stormwater sump within the stormwater network serving the Abby Road catchment. There was no council record of the gully trap near the entry point to proposed Lot 1, therefore no evidence could be given regarding its performance.

[60] Previous imagery over the years may show whether such a solution would work along with any minor ponding at the interface of the Applicant's land and the Abby Road carriageway. Whether or not the vehicle crossing at 41 Abby Road was already exhibiting signs of distress via cracking may also provide some insight.

[61] In relation to the new vehicle crossing, previous imagery may assist in exploring the extent of subsequent trenching for any stormwater crossing connection. It may also be possible that historically the wastewater connection that services 28 Abby Road had been connected at right angles across the stormwater line constructed to alleviate the stormwater ponding at the head of Abby Road. If so, it is quite possible that both these works have compromised the performance of the stormwater line established to drain the ponding and the time taken to drain any flooding. It might be prudent for the stormwater

line to be investigated before any stormwater network catchment analysis is undertaken, or overland flow solutions adopted.

[62] The stormwater issues should be addressed regardless of any current or future works, and it would also be prudent to ensure the gully trap is noted on Council's records if it is on public land or connected to the stormwater network.

#### Turning Head

[63] for a turning head with the proposed subdivision as it would significantly encroach on either the existing private dwellings or the proposed Lots.

[64] The Woodgate Subdivision Stage 2 drawings 1991 showed quite clearly that the end of Abby Road would be an alternative through road or cul-de-sac with a turning head. Mr Pirie in his Written Reply<sup>16</sup> has suggested that while a circular turning head is not feasible, a standard L-Turning, T-Turning or Y-Turning arrangement as specified by NZS 4404:2010 Fig 3.4 would be able to be constructed. The PNCC Engineering Subdivision Code of Practice allows such a configuration if a standard 8 metre truck can manoeuvre safely.

#### Provision of Footpaths

[65] As it stands there is no provision of any new footpath connection at the end of Abby Road. A footpath connection would still be desirable to complete the existing footpath network on each side of Abby Road presently. A creative solution would also be required to tidy up the end of Abby Road and ensure there was connectivity with the existing footpaths.

#### Community Amenity (Access to Adderstone Reserve)

[66] ALHL's Proposal removes direct local access to Adderstone Reserve. Whilst this is not a requirement of the District Plan, it does reduce the amenity value to local residents who no longer have direct access to the Reserve. It may be considered desirable for the Applicant to address this.

#### Property Rights for 41 Abby Road

[67] It was identified by several parties that the driveway to 41 Abby Road encroaches onto property that is owned by ALHL. Mr and Mrs Britton have no idea how this occurred, and the Applicant advances that Council obviously signed off the placement and construction of the reinforced crossing. ALHL advise that they were unaware at the time of construction that it impinged on their land. It would be prudent for efforts to be made to explore how this happened and how this can be rectified. Whilst it is a possibility that both parties are comfortable leaving it as is, any agreement should be formalised.

[68] In conclusion, as identified at Para [57] above, the purpose of providing some commentary on these matters is largely in fairness to the time that the Applicant, Submitters and Council had committed to the hearing, rather than providing a definitive and conclusive view on the contextual evidence before us.

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<sup>16</sup> Mr Pirie's Right of Reply, 7 April 2020.

## DECISION

[69] For the reasons outlined above, the Resource Consent Application (SUB5031) by Aokautere Land Holdings Limited to subdivide land at 30 Abby Road into six residential allotments is **declined**.

[70] The Committee wishes to note its thanks to hearing participants and other personnel for the assistance they have provided the Committee in the course of considering the Application.

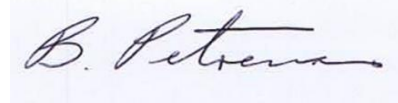
Dated at Palmerston North, this 8<sup>th</sup> day of May 2020.



Deputy Mayor Tangi Utikere  
Chairperson



Cr Aleisha Rutherford  
Member



Cr Bruno Petrenas  
Member