

**BEFORE THE MANAWATU – WANGANUI REGIONAL COUNCIL (HORIZONS
REGIONAL COUNCIL)**

In the matter of

The Resource Management Act 1991; and

In the matter of

**The Proposed One Plan: Consolidated Regional
Policy Statement, Regional Plan and Regional
Coastal Plan for the Manawatu - Wanganui Region**

**STATEMENT OF EVIDENCE BY DAVID RICHARD MURPHY
FOR PALMERSTON NORTH CITY COUNCIL**

CHAPTERS 5 AND 12 AND SCHEDULE A OF THE ONE PLAN

THE LAND CHAPTERS OF THE ONE PLAN

Dated: 30 June 2008

Introduction

1. My name is David Richard Murphy. I hold the position of Senior Policy Planner with the Palmerston North City Council. I have the tertiary qualification of Bachelor of Resource and Environmental Planning (honours) from Massey University and I am a full member of the New Zealand Planning Institute. I have six and a half years planning experience, of which four and a half years have been in local government with the Palmerston North City Council (PNCC).
2. I have read the One Plan Hearing Procedures and Directions and Requests from the Chairperson circulated to all submitters by Horizons Regional Council (Horizons) on 9 May 2008. I have read the Code of Conduct for Expert Witnesses (section 5 of the Environment Court Consolidated Practice Note 2006). I agree to comply with this Code of Conduct.
3. I have overseen PNCC's formal response to the Proposed One Plan: Consolidated Regional Policy Statement, Regional Plan and Regional Coastal Plan for the Manawatu - Wanganui Region (the One Plan) since the initial submission on the One Plan "Road Map" in October 2005. This work has included attendance at a number of meetings, including pre-hearing meetings, with Horizons officers; the preparation of PNCC's submissions on earlier One Plan working documents; and the preparation of PNCC's formal submission and further submission on the Proposed One Plan.
4. While this is my own expert planning evidence, given the strategic importance of the One Plan to PNCC's long term planning, I do refer, in parts, to the collective view PNCC has on the One Plan.

Structure of Evidence

5. My evidence is structured in the following manner:
 - (a) Introduction (above)
 - (b) Structure of Evidence (this section)
 - (c) Scope of Evidence
 - (d) PNCC's interest in the Land chapters of the One Plan
 - (e) The basic elements of the Land chapters of the One Plan
 - (f) PNCC's submission points on the Land chapters of the One Plan
 - (g) Dialogue with Horizons Regional Council before and after public notification of the One Plan

- (h) An overview in terms of the requirements set out in the Resource Management Act 1991
- (i) PNCC Strategic Planning and Policy documents
- (j) Horizons Regional Council s42A Reports
- (k) Conclusions

Scope of Evidence

6. The primary purpose of my evidence is:
 - To provide planning evidence to support the submission points made by PNCC on the Land chapters of the One Plan; and
 - Respond to Horizons s42A reports.
7. My planning evidence covers 3 main topic areas:
 - SLUI;
 - High Class Soils; and
 - Earthworks.
8. It is acknowledged that the issue of urban subdivision and development on high class soils is to be addressed as part of the hearings on Chapter 3: Infrastructure, Energy and Waste (paragraph 3.10, page 14 of the Planners Report on the Land chapters of the One Plan).
9. As other submitters may seek amendments to Chapter 5 (Issue 5-1) to include the loss of Class I and II soils as a significant resource management issue, in my opinion, it is important to address this matter at this time.
10. My planning evidence takes into account the following matters that have occurred since the lodgement of PNCC's original submission on the One Plan:
 - Ongoing discussions that have occurred between PNCC and Horizons officers and experts on the One Plan, e.g. pre-hearing meetings;
 - The more detailed evidence provided by Horizons through its s42A reports;
 - An increase in the level of earthworks being undertaken within Palmerston North City as part of new urban developments;
 - The public notification of Plan Change 42: Earthworks to the Palmerston North City District Plan;
 - The recent resolution of PNCC to prepare a Climate Change Strategy;

- The submission lodged by PNCC on Horizons' 2008/2009 Annual Plan; and
- The recent decision of PNCC to initiate a review of its Urban Growth Strategy.

PNCC's Interest in the Land chapters of the One Plan

11. PNCC lodged a submission on the One Plan in August 2007. PNCC also lodged a further submission on the One Plan in December 2007.
12. PNCC has a statutory duty to the Palmerston North community to ensure the sustainable management of the City's natural and physical resources is achieved in an integrated manner. It follows that the City's interest in the Land chapters of the One Plan rests on the following grounds:
 - PNCC and Horizons are jointly responsible for a number of resource management functions under the RMA, including the management of earthworks which is an issue addressed within the Land chapters of the One Plan. It is important the roles and responsibilities of the two authorities are clearly communicated.
 - One of the main methods identified in the One Plan to address unsustainable hillcountry land uses, i.e. accelerated erosion resulting from hillcountry farming, is the Sustainable Land Use Initiative – Hill Country Erosion (SLUI). A portion of the significant costs of this project will fall on the City's ratepayers.
 - Palmerston North City is located within the catchment and flood plains of the Manawatu River and therefore has a strong interest in SLUI. The successful long term implementation of SLUI is likely to result in reduced flood risk for the City and improved water quality in the Manawatu River, two very important issues for Palmerston North City.
 - SLUI is addressing a regional issue and will be funded regionally but the issue is of varying significance throughout the region. PNCC needs to be certain that the potential economic burden of SLUI on the City is not disproportionate to the local significance of the issue.
 - Based on Horizons 2008/2009 Annual Plan, by 2014-2015 PNCC ratepayers will be contributing \$2,600,000 per annum towards SLUI (UAGC of \$85.70 x 30,321 rateable properties).
 - PNCC has a joint responsibility with Horizons under the RMA to *have particular regard to the effects of climate change*. SLUI is one of Horizons key methods for adapting to the predicted effects of climate change.
 - PNCC has recently resolved to prepare a Climate Change Strategy.
 - PNCC has recently notified Proposed Plan Change 42: Earthworks which seeks to better manage the adverse effects of earthworks within the Palmerston North City District Plan.
 - PNCC has undertaken reviews of residential and industrial growth options for the City. Determining appropriate areas to meet the City's demand for

residential and industrial growth is challenging and made difficult by a number of constraints, one of which is the loss of productive soils.

- Preferred residential and industrial growth paths are best determined based on a robust analysis of all possible constraints and key considerations. It is important that the One Plan achieves its purpose under the Resource Management Act 1991 (RMA) while also providing sufficient flexibility to provide for the continued growth of the City in a sustainable manner.

The Basic Elements of the Land chapters of the One Plan

14. The One Plan is a consolidated Regional Policy Statement, Regional Plan and Regional Coastal Plan for the Manawatu-Wanganui Region. It consists of two key parts:
- Part 1 – The Regional Policy Statement
 - Part II – The Regional Plan
15. The key parts of the One Plan in terms of the management of land are:
- Chapter 5 - Land (RPS): Chapter 5 contains the RPS objectives and policies regarding land, which also provide direction to the rules regarding land use activities in Chapter 12 (the Regional Plan). Chapter 5 also contains a description of the significant resource management issues and lists a number of methods, including SLUI.
 - Chapter 12 - Land Use Activities and Land Based Biodiversity (Regional Plan): Chapter 12 contains a number of policies that provide direction to the vegetation clearance and land disturbance rules that are also contained within Chapter 12. The objectives and policies contained within Chapter 5 provide direction to the vegetation clearance and land disturbance rules.
 - Schedule A - Properties Containing Highly Erodible Land: Schedule A contains one map, Figure A:1 Highly Erodible Land.

PNCC's submission points on the Land chapters of the One Plan

16. PNCC requested the following decisions within it's original submission on the Land Chapters of the One Plan:
- *That Horizons adopt Issue 5-1*
 - *That Horizons adopt Objective 5-1 subject to satisfactory details on how it is to be funded*

- *That Horizons reconsider Policies 5-1 & 5-2, and provide an analysis of costs and benefits of SLUI, in particular the costs that will fall upon regional ratepayers in the future.*
- *That Horizons amend Section 5-5 Methods, to provide relief to the reservation about costs and benefits of SLUI expressed above.*
- *That Horizons amend Rule 12-5, or alternatively amend the definition of vegetation clearance, to permit roadside vegetation clearance carried out under the direction of the roading authority.*
- *That Horizons adopt Policy 12-4.*
- *That Horizons makes all consequential amendments required to the Regional Plan to give effect to the submission points made by PNCC on the RPS section of the One Plan.*

Dialogue with Horizons Regional Council before and after public notification of the One Plan

17. The purpose of this section of my evidence is to provide some context to the extent and nature of the dialogue that has occurred between PNCC and Horizons before and after public notification of the One Plan.

Dialogue before public notification of the One Plan

18. As indicated in my planning evidence on the overall One Plan, given the long lead in time before public notification of the One Plan, a number of meetings were held at the officer level between PNCC and Horizons before public notification of the One Plan.

High Class Soils:

19. Dialogue between PNCC and Horizons before public notification of the One Plan on the issue of high class soils is summarised in PNCC's submission points on the One Plan "Roadmap" and Version 4 of the One Plan working document. The relevant extracts from each submission are provided below:

PNCC "Roadmap" submission:

In the current RPS Land Chapter the issue of Class I and II soils is prominent. The Council agrees that this is an issue, however there is a risk of stating it too strongly. The urban growth choices that Palmerston North faces are complex, and involve potential expansion on to some Class I and II soils. There are many other issues to consider as well as the inherent value of the soils, such as efficient transport links, infrastructure, landscape issues, the desirable balance between residential and industrial areas, and so forth. Council has an Urban Growth Strategy, prepared after consideration of the range of relevant factors. Council seeks provision in the One Plan to allow managed extension of Palmerston North City onto areas that

contain high class soils, provided that is in accordance with the Urban Growth Strategy.

PNCC version 4 working document submission:

The Council supports discarding elite soils (Class I and II soils) from the regional issues, and agrees this is best dealt with at territorial local authority (TLA) level. This Council has an Urban Growth Strategy, prepared after consideration of a wide range of relevant factors, such as efficient transport links, infrastructure, landscape issues, the desirable balance between residential and industrial areas, as well as the inherent value of the soils. The Urban Growth Strategy takes an integrated approach to the complex issues of sustainable urban development, and this is much preferred to a situation where one factor is given artificial prominence over others.

SLUI:

20. Despite the lengthy consultation period on the One Plan, limited correspondence occurred between PNCC and Horizons with regards to the development and implementation of SLUI, a key method in Chapter 5 of the One Plan.
21. Despite a Uniform Annual General Charge being used to contribute towards the financing of SLUI, it is noted that the SLUI working party listed in Appendix 1 of Greg Carlyon's s42a report did not include any PNCC representatives and only had one representative of a TLA (Mayor – Manawatu District).

Earthworks:

22. Limited discussions occurred between Horizons and PNCC regarding the roles and responsibilities for managing the effects of earthworks prior to the notification of the One Plan.

Dialogue after public notification of the One Plan

High Class Soils:

23. Consistent with the PNCC submission on the One Plan, it was confirmed at the pre-hearing meeting held with Horizons on 8 May 2008 that PNCC supports the decision to discard the protection of high class soils as a significant resource management issue within the One Plan.

SLUI:

24. PNCC lodged a submission on Horizons' 2008/2009 Draft Annual Plan questioning the funding arrangement for SLUI. A copy of the submission is attached as Appendix One.
25. PNCC requested a copy of Horizons' application to the Ministry of Agriculture and Forestry's Land Management Fund for SLUI. This document was useful in providing a greater understanding of SLUI prior to this hearing.
26. Consistent with the PNCC submission on the One Plan, it was confirmed at the pre-hearing meeting held with Horizons on 8 May 2008 that PNCC is not fundamentally opposed to SLUI. It was also acknowledged by PNCC at this

meeting that the funding of SLUI is largely an issue for the Annual Plan, not the One Plan.

Earthworks:

27. As a result of an increasing level of earthworks within the City, PNCC investigated, and has now developed, a comprehensive set of earthworks provisions for inclusion within the District Plan. As part of this work a discussion document on earthworks was prepared and circulated to interested parties for comment, including Horizons. A copy of Horizons' comments on the earthworks discussion document is attached as Appendix Two.

An overview in terms of the requirements set out in the Resource Management Act 1991

High Class Soils:

28. Issue 5-1 of the One Plan identifies 3 significant resource management issues:
- Hillcountry farming;
 - Coastal activities; and
 - Land disturbance from urban development
29. PNCC supports the identification of these matters as significant resource management issues for the region. PNCC also supports issue 5-1 as it does not identify the loss of Class I and II soils due to urban expansion as a significant resource management issue.
30. The loss of Class I and II soils for agricultural production due to urban expansion was discarded as significant resource management issue within the One Plan. It was considered by Horizons at the time as a local issue that could be addressed through District Plans and urban growth strategies. PNCC expressed its support for this approach early in the One Plan development process (refer to submission points on earlier working documents at paragraph 19).
31. The RMA framework establishes various tests for the development of Plans and assessment of development proposals against those Plans. Planning evaluations at both the plan development stage and individual development stage are subject to the purpose and principles of the RMA. This process requires an overall broad judgement to be made on whether or not a Plan or development proposal is consistent with the purpose and principles of the RMA (Part II).
32. The purpose of the RMA (Section 5) is to promote the sustainable management of natural and physical resources.
33. Residential and industrial growth planning and its supporting infrastructure represents a significant community resource in terms of the investment made and the actual and potential economic and social benefits that residential and industrial growth provides to the City. In this regard, residential and industrial growth planning promotes the sustainable management of the resources of Palmerston North City

by providing for the physical growth of the City, an activity that stimulates and drives economic growth and development while providing for the social and economic well-being of the community.

34. Enabling people to make provision for their social, economic and cultural well-being and health and safety is qualified by the goals described in paragraphs (a), (b) and (c) of section 5(2) as follows:
 - (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *Safeguarding the life supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*
35. In achieving the purpose of the RMA, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for those matters listed in section 6, have particular regard to those matters listed in section 7 and take into account section 8.
36. In my opinion, the most relevant sections of the RMA in terms of the protection of high class soils are sections 5(2) (a) and (b), listed above, and section 7(g) – the finite characteristics of natural and physical resources.
37. Unlike previous planning legislation, the RMA has no specific reference to *the avoidance of encroachment of urban development on, and the protection of, land having a high actual or potential value for the production of food.*
38. The difficulty for residential and industrial growth planning is that all matters in sections 5, 6, 7 and 8 are relevant. If the protection of high class soils was added to the One Plan as a significant resource management issue, PNCC would need to give effect to this direction through its urban growth planning and District Plan review. As indicated in PNCC's submission on the One Plan "Roadmap" and Version 4 of the working document, urban growth planning needs to take an integrated approach to the complex issues of sustainable urban development. An integrated approach is preferred to a situation where one factor such as the protection of high class soils is given artificial prominence over others.
39. In my opinion, the relatively limited controls on rural-residential subdivision within the region are a much greater risk to the needs of future generations and the life supporting capacity and finite characteristics of the regions productive land, than strategically planned extensions to Palmerston North City's current urban limits.
40. While rural-residential subdivision generally occurs on lower class soils, in my opinion, it has the potential to result in a reduction in the overall productive capacity of rural land within the region much quicker than planned extensions to urban areas such as Palmerston North City.
41. From my experience, in terms of the loss of productive land, planned extensions to urban areas come under unnecessarily more scrutiny than rural-residential subdivisions which are generally provided for in many District Plans in the region as

controlled activities (must be granted subject to compliance with performance conditions).

42. Palmerston North City is the only City in the Horizons region currently experiencing any significant residential and industrial growth. To limit a potentially favourable urban growth option due to a restriction on the loss of high class soils is unnecessary when it is not a regionally significant issue and rural-residential subdivisions continue to occur across the region with relatively limited controls.
43. While I support Issue 5-1 in the One Plan as it does not identify the loss of Class I and II soils due to urban expansion as a significant resource management issue, I would not be opposed to any additional regional direction Horizons may wish to provide on the risks posed to the overall productive capacity of rural land by largely uncontrolled rural-residential subdivision occurring within the region.
44. Currently 41% of Palmerston North City's rural zone can be subdivided down to 1ha lots as a controlled activity, subject to compliance with a number of performance conditions. The review of the rural-residential provisions of the Palmerston North City District Plan is therefore a major task that needs to be completed as part of the upcoming District Plan review. It is likely that PNCC will look to reduce the extent of the current rural-residential overlay (zone) as part of this process.
45. Further planning evidence will be provided on this topic as part of the hearings on Chapter 3: Infrastructure, Energy and Waste.

SLUI:

46. SLUI is identified as one of the main methods in section 5 to address the issue of hill country erosion. As indicated in PNCC's submission on the One Plan, the benefits of SLUI for the City will be some reduction in flood risk, and improved water quality in the Manawatu River. The negative effects include large costs falling on the City's ratepayers, and most importantly the costs will occur immediately and continue indefinitely.
47. In general I support the concept of SLUI. Hill country erosion is a region wide issue that realistically can only be tackled through a comprehensive non-regulatory approach. In my opinion SLUI also represents a significant regional contribution towards adapting to the effects of climate change (s7(i) of the RMA). PNCC has recently resolved to prepare a climate change strategy. In my opinion the City's significant contribution towards SLUI needs to be recognised within this strategy.
48. In general I support the conclusions and points made in the s42A reports on land. The quantity and detail of evidence presented to the Hearings panel indicates the resources that have been put into developing SLUI. A more detailed analysis of the s42A reports that fall within my area of expertise is provided later in my evidence.
49. As indicated in my evidence on the overall One Plan, in my opinion Horizons has achieved a close alignment between the One Plan and the Community Plan (LTCCP). The identification and funding of SLUI in Horizons' Community Plan is a good example of this alignment.
50. PNCC has, at an organisational level, expressed concern over the funding arrangement for SLUI. It is acknowledged that PNCC's concerns over the funding

arrangement for SLUI are more appropriately addressed through the Annual Plan / Community Plan process than the One Plan hearings.

51. As mentioned previously, PNCC lodged a submission on Horizons 2008/2009 Draft Annual Plan questioning the funding arrangement for SLUI. A copy of the submission is attached as Appendix One.
52. The management reply from Horizons to PNCC's submission on the Draft Annual Plan and relevant recommendations are listed below:

Management Reply:

Generally SLUI was widely supported but concerns were expressed regarding funding and funding policy. Funding of SLUI has been consistent with our application to central government and our SLUI implementation plan endorsed by Council on an annual basis.

Management Recommendations:

Maintain current funding levels and funding policy as per the draft annual plan

Modify commentary to better explain SLUI and general soil activities.

Page 21 Strategy and Policy Committee, Deliberations on Submissions to Draft Annual Plan / Amendments to the Community Plan 2006-2016, Wednesday 4 June 2008.

53. The s42A reports on Land have provided PNCC with the opportunity to carry out a more detailed analysis of SLUI than that that was carried out as part of the PNCC submission on Horizons' 2008/2009 Draft Annual Plan.
54. In my opinion the merits for and against the current funding arrangement for SLUI sit outside of my role in providing expert planning evidence on behalf of PNCC on the land sections of the One Plan. Taking this into account, all I intend on doing as part of my planning evidence is outlining some of the key facts and figures, as I understand them, regarding SLUI and PNCC's role in funding SLUI.
55. Key facts and figures regarding SLUI and PNCC's role in funding SLUI:
 - Total cost of SLUI over 10 years \$128 million (page 1, Horizons' Application to MAF's Sustainable Land Management Fund).
 - The \$128 million cost of SLUI over 10 years is to be funded by 1/3 Central Government, 1/3 landowners and 1/3 Horizons (regional ratepayers), which equates to approximately \$42.7 million each over the 10 years (page 2, Horizons' Application to MAF's Sustainable Land Management Fund).
 - The original SLUI funding proposal was 1/2 Central Government, 1/4 landowners and 1/4 Horizons (page vii, Draft Annual Plan / Amendment 2008-09).
 - Central Government's Sustainable Land Use funding package has provided the SLUI project with \$5.78 million for the four years starting 2007-2008 (page vii, Draft Annual Plan / Amendment 2008-09).
 - The \$5.78 million over four years is the only Central government funding secured to date and represents 13% of the anticipated contribution from Central Government.

- Additional Central Government funding will also be applied for from the Afforestation Grant Scheme from 2008-09 onwards (page vii, Draft Annual Plan / Amendment 2008-09).
- The Uniform Annual General Charge for SLUI was previously anticipated to be \$9.30 for 2008/09. The SLUI Uniform Annual General Charge is now proposed to be \$19.88 for 2008/09 rising to \$85.70 in 2014/15 (page vii, Draft Annual Plan / Amendment 2008-09).
- By 2014-2015 PNCC ratepayers will be contributing \$2,600,000 per annum towards SLUI (UAGC of \$85.70 x 30,321 rateable properties). This contribution may need to increase if the remainder of the Central Government funding is not secured.
- SLUI targets 273,000ha of Highly Erodible Land (HEL) in the region (page 1, Horizons' Application to MAF's Sustainable Land Management Fund).
- The breakdown of HEL within the region is shown below in Table One:

Table One: Breakdown of Highly Erodible Land within the Horizons Region

Catchment	Catchment Area (ha)	Total Erodible Land (ha)	Highly Erodible Land (ha)	Percentage of Total Highly Erodible Land
Whanganui	712,185	95,000		34.73%
Whangaehu	196,561	42,000		15.35%
Turakina	96,606	26,808		9.8%
Rangitikei	397,931	34,633		12.67%
Manawatu	596,861	39,356		14.39%
Other Catchments	220,746	35,730		13.06%
Total Region	2,220,890	273,527		100%

(Page 3, Horizons Application to MAF's Sustainable Land Management Fund).

- HEL in the Manawatu River Catchment represents **14.39%** of total HEL in the region
- The number of rateable properties in the Horizons region is 105,020 (Horizons data)
- The number of rateable properties in PNCC is 30,321 (Horizons data)
- The number of rateable properties in the Manawatu River catchment is approximately 57,000 (Horizons data)
- Based on the figures above, PNCC's contribution of Horizons 1/3 is **28.87%**.

- Based on the figures above, the Manawatu River catchment's contribution of Horizons 1/3 is approximately **54%**.
 - The SLUI working party did not include any PNCC representatives and only had one representative of a TLA (Mayor – Manawatu District).
56. In summary, the key facts and figures in terms of PNCC's contribution to SLUI are the percentage of work that will occur in the Manawatu River catchment over the 10 year life cycle of the project (14.39% of HEL) verses the costs contributed by the Palmerston North community (28.87% of Horizons 1/3) and property owners located within the Manawatu River catchment (approximately 54% of Horizons 1/3).
57. While the above analysis is relevant to the matters being discussed as part of this hearing on Land, in my opinion, it is more likely to become part of future discussions held in relation to Horizons' 2009-19 Community Plan (LTCCP) and subsequent Annual Plans as opposed to the One Plan.
58. It is also noted that under section 101(3) of the LGA, *the funding needs of the local authority must be met from those sources that the local authority determines to be appropriate, following consideration of,—*
- (a) *in relation to each activity to be funded,—*
 - (i) *the community outcomes to which the activity primarily contributes; and*
 - (ii) *the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals; and*
 - (iii) *the period in or over which those benefits are expected to occur; and*
 - (iv) *the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the activity; and*
 - (v) *the costs and benefits, including consequences for transparency and accountability, of funding the activity distinctly from other activities; and*
 - (b) *the overall impact of any allocation of liability for revenue needs on the current and future social, economic, environmental, and cultural well-being of the community.*

Earthworks:

59. Like a number of resource management functions, Earthworks (land disturbance) is generally an activity that is shared between regional councils and TLAs.
60. The following functions of a regional council under section 30 of the RMA are relevant to the management of earthworks:
- (a) *The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:*
 - (c) *The control of the use of land for the purpose of—*
 - (i) *Soil conservation:*

(ii) *The maintenance and enhancement of the quality of water in water bodies and coastal water:*

61. The following functions of a TLA under section 31 of the RMA are relevant to the management of earthworks:

(a) *The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*

(b) *the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—*

(iia) *the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land*

62. In terms of PNCC's interests in the potential effects of earthworks, the key provisions of the One Plan are:

- Issue 5-1 (c): Identifies land disturbance from urban development as a significant resource management issue (this was supported by PNCC).
- Objective 5-1: Includes a number of relevant objectives with regards to land disturbance from urban development.
- Policies 5-3, 5-4 and 5-5: Requires regulation of land disturbance on highly erodible and not highly erodible land and recognises the need for and use of codes of practice.
- Policies 12-1 to 12-5: Guide the associated rules and provide direction for the assessment of resource consent applications.
- Rules 12-1, 12-3 and 12-6: Relevant rules with regards to managing the effects of land disturbance resulting from urban development.
- Of note, under rule 12-1 of the One Plan, land disturbance that is not specifically regulated by any other rule in the One Plan, is a permitted activity subject to the provision of effective sediment control and various heritage and archaeological matters. The effect of this rule is reasonably large scale earthworks can be carried out without the need for resource consent from Horizons.

63. A number of recent developments within Palmerston North City have required a significant amount of earthworks to be undertaken to provide for the development. In some cases the associated earthworks have been carried out prior to final approval of the development without the need for resource consent from either PNCC or Horizons, despite Issue 5-1(c) of the One Plan identifying *land disturbance from urban development* as a significant resource management issue. The permissive nature of the One Plan land disturbance rules means only land disturbance on highly erodible land requires resource consent (see rules 12-1 and 12-3).

64. Importantly for Horizons and PNCC, in one case the earthworks carried out prior to the final approval of a development has included the placement of a significant amount of soil within an area subject to inundation. Earthworks of this scale have the potential to displace flood flows onto adjoining properties that may result in significant effects on the environment.
65. A greater appreciation of the earthworks being undertaken within the City and the resulting effects on the environment has developed within PNCC since public notification of the One Plan. For this reason there were limited submission points on earthworks (land disturbance) within PNCC's submission on the One Plan.
66. As mentioned previously, as a result of the increasing level of earthworks, PNCC investigated, and has now developed, a comprehensive set of earthworks provisions for inclusion within the District Plan. As part of this work a discussion document on earthworks was prepared and circulated to interested parties for comment, including Horizons. Horizons' response is attached as Appendix Two.
67. PNCC has recently notified Plan Change 42: Earthworks to the Palmerston North City District Plan. A copy of Plan Change 42 is attached as Appendix Three.
68. Provided Plan Change 42 is approved and made operative, the potential effects of land disturbance associated with urban development within Palmerston North City should be appropriately avoided, remedied or mitigated in the future. In my opinion, Plan Change 42 gives effect to Issue 5-1 of the One Plan, as required by section 73(4) of the RMA, and is consistent with the overall approach regarding land disturbance promoted in the One Plan, which is:
- Horizons will manage the significant effects of erosion in Highly Erodible Land (SLUI);
 - Horizons will manage the effects of land disturbance in Highly Erodible Land (rule 12-3);
 - Horizons will manage the effects of land disturbance over 1000m³/year where appropriate sediment control is not put in place (rule 12-1); and
 - PNCC will manage the potential effects of land disturbance associated urban development, which is generally those land disturbance activities not captured by the One Plan (intent of Plan Change 42).

PNCC Strategic Planning and Policy Documents

69. The One Plan, with the inclusion of the RPS, will become the new strategic planning document for the region. In making decisions on the One Plan it is therefore important that Horizons has good understanding of the strategic planning occurring at the local level.
70. An analysis of the most relevant PNCC strategic planning and policy documents, and the implications the One Plan may have on these documents, is provided below.

Palmerston North City District Plan

71. The Palmerston North City District Plan was prepared in the early to mid 1990s and is now due for review. PNCC is currently finalising a project plan and timeline for the District Plan review.
72. The current District Plan has strong guiding (Citywide) objectives with respect to maintaining a compact urban form and ensuring the efficient provision of essential services. Without pre-empting the District Plan consultation process, such Citywide objectives are likely to be maintained or retain some level of importance within the City's second generation District Plan.
73. Given the physical characteristics and location of Palmerston North, citywide objectives such as compactness and the efficient provision of essential services can potentially conflict with other issues such as the protection of high class soils.
74. For the reasons described previously, PNCC support Issue 5-1 as it does not identify the loss of Class I and II soils due to urban expansion as a significant resource management issue, thus providing greater flexibility to plan for future growth.

Urban Growth Strategy (Residential)

75. PNCC recently agreed to review the City's Urban Growth Strategy.
76. The Council's most recent residential Urban Growth Strategy was adopted in December 2003. That strategy sought to manage the future residential growth of Palmerston North in a way that is consistent with the City's vision and objectives.
77. Importantly, in terms of the content of PNCC's original submission on the One Plan, the Cloverlea and Te-Matai urban growth areas that were identified in PNCC's most recent Urban Growth Strategy were located on productive (Class I and II) soils.
78. While the decision to review the City's Urban Growth Strategy affects some of PNCC's specific submissions points on the land section of the One Plan, in my opinion, the technical submission points on the One Plan that may affect future urban growth planning for the City are still relevant, e.g. the reasons for supporting Issue 5-1 of the One Plan goes beyond supporting the Cloverlea and Te-Matai land as future residential areas.
79. The timeframes for reviewing the City's Urban Growth Strategy and confirming the final makeup of the One Plan provide a good opportunity for PNCC and Horizons to work together to develop complementary regional and local policy.

Horizons Regional Council s42A Reports

80. In my opinion the s42A reports prepared for the Land hearings are very comprehensive and reflect the detail behind the Land sections of the One Plan, in particular with regards to the development of SLUI.

81. An evaluation of the Horizons s42A reports that fall within my area of expertise is provided below.

Phillip Percy

82. It is acknowledged that most of PNCC's original submission points on the Land sections of the One Plan have been either accepted or accepted in part within Phillip Percy's Planners Report on Submissions to the Proposed One Plan, in particular it is noted that Issue 5-1 be adopted, as requested by PNCC.
83. It is noted that the request that Horizons provide an analysis of the costs and benefits of SLUI, in particular the costs that will fall upon regional ratepayers in the future was rejected.

Greg Carlyon

84. There are three comments I wish to make with regards to Greg Carlyon's s42A report:

1. It is noted at paragraph 5 that SLUI has been successfully presented to local and national communities and as a result there was widespread support for the introduction of a special, and not insignificant, increase to the region's rates in the 2006-07 Annual Plan to fund SLUI implementation.

The Uniform Annual General Charge for SLUI was previously anticipated to be \$9.30 for 2008/09. The SLUI Uniform Annual General Charge is now proposed to be \$19.88 for 2008/09 rising to \$85.70 in 2014/15 (page vii, Draft Annual Plan / Amendment 2008-09). This is a significant increase, as noted in PNCC's submission on Horizons' 2008/09 Draft Annual Plan.

There is also a risk that if Central Government does not meet the remainder of its 1/3 contribution then the burden on ratepayers will need to increase further. Central Government has currently committed \$5.78 million over four years (13% of the anticipated \$42.7 million contribution).

2. As previously mentioned, it is noted that the SLUI governance group referred to at paragraphs 15 – 20 and listed in Appendix 1 of Mr. Carlyon's s42A report did not include any PNCC representatives and only had one representative of a TLA (Mayor – Manawatu District).
3. It is acknowledged that the lobbying and negotiations undertaken by Horizons with Central Government officials helped elevate the issue of hill country erosion to a matter of national priority (paragraphs 26 and 27).

Conclusions

85. PNCC supports the significant resource management issues identified in Issue 5-1. PNCC also supports Issue 5-1 as it does not identify the loss of Class I and II soils due to urban expansion as a significant resource management issue.

86. While I support Issue 5-1 in the One Plan, I would not be opposed to any additional regional direction Horizons may wish to provide on the risks posed to the overall productive capacity of rural land by largely uncontrolled rural-residential subdivision occurring within the region.
87. In general I support the concept of SLUI. Hill country erosion is a region wide issue that realistically can only be tackled through a comprehensive non-regulatory approach.
88. The benefits of SLUI for the City will be some reduction in flood risk, and improved water quality in the Manawatu River. The negative effects include large costs falling on the City's ratepayers, and most importantly the costs will occur immediately and continue indefinitely.
89. The key facts and figures in terms of PNCC's contribution to SLUI are the percentage of work that will occur in the Manawatu River catchment over the 10 year life cycle of the project (14.39% of HEL) versus the costs contributed by the Palmerston North community (28.87% of Horizons 1/3) and property owners located within the Manawatu River catchment (approximately 54% of Horizons 1/3).
90. While the SLUI analysis carried out as part of this evidence is relevant to the matters being discussed as part of the hearing on Land, in my opinion, it is more likely to become part of future discussions held in relation to Horizons' 2009-19 Community Plan (LTCCP) and subsequent Annual Plans as opposed to the One Plan.
91. Provided Plan Change 42 (Earthworks) to the Palmerston North City District Plan is approved and made operative, the potential effects of land disturbance associated with urban development within Palmerston North City should be appropriately avoided, remedied or mitigated in the future. In my opinion, Plan Change 42 gives effect to Issue 5-1 of the One Plan, as required by section 73(4) of the RMA.
92. Given the permissive nature of the land disturbance rules within section 12, depending on the provisions of the District Plans in the region, there may be a need to tighten the rules to better address the effects of land disturbance associated with urban development.



David Murphy
Senior Policy Planner
City Future
PALMERSTON NORTH CITY COUNCIL

List of Appendices

APPENDIX ONE: PNCC Submission on Horizons 2008/2009 Draft Annual Plan

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APPENDIX ONE: PNCC Submission on Horizons 2008/2009 Draft Annual Plan



Office Of The Mayor
Palmerston North City Council

2 May 2008

Mr G P Murfitt
Chairperson
Horizons Regional Council
Private Bag 11-025
PALMERSTON NORTH

Dear Garrick

Thank you for the opportunity to comment on your Draft Annual Plan. The City Council would like to comment on two issues.

The Council supports the Sustainable Land Use Initiative (SLUI) programme in principle. We are comfortable with the funding split of one-third affected landowners, one third central government and one-third general ratepayers. However, we are asking for a different mechanism for allocating the costs within the general ratepayers share. Rather than spreading the cost over all ratepayers equally the Council believes it should be done on a catchment basis. Ratepayers in those catchments that benefit the most would then pay the most.

We acknowledge that there will be benefits to the City from the SLUI and we want to ensure that the City pays its fair share of the costs. However, a lot of the hill country erodible land lies outside the City's catchment and we are concerned that under the present arrangements a disproportionate funding burden is being placed on City residents.

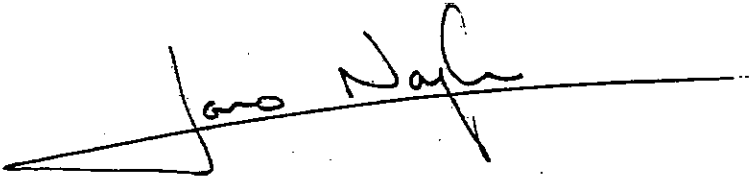
We also have some concern about the uncertainty of central government meeting its one-third share. If central government does not meet its share of costs then the burden on ratepayers will be increased. We note that there is already an increase proposed for the ratepayers through the Uniform Annual Charge.

The Council is also raising issues about the SLUI through the One Plan submission process.

The Council acknowledges the other work that Horizons is doing to protect the City from flooding and supports the Ashhurst Stream Scheme.

The Council would also like to comment on the Emergency Management Activity, in particular the new contracts to deliver emergency management services to Rangitikei and Manawatu District Councils. The Council has no concerns with these contracts as such but wants to ensure that the resources for these contracts are additional resources so there is no impact on Horizons' ability to respond to any events on a regional basis.

Yours faithfully

A handwritten signature in black ink, appearing to read "Jono Naylor", written over a horizontal line.

Jono Naylor
Mayor



APPENDIX TWO: Horizons comments on PNCC Earthworks Discussion Document

14 April 2008



Private Bag 11025
Manawatu Mail Centre
Palmerston North 4442

P 06 952 2800
F 06 952 2929

www.horizons.govt.nz

Palmerston North City Council
Private Bag 11034
Manawatu Mail Centre
Palmerston North 4442

File ref: EM 09 07
2008/02735
BWG:JHC

Attention: Matthew Mackay

Dear Matthew

DISCUSSION DOCUMENT – EARTHWORKS

Thank you for this opportunity to provide feedback on the Earthworks Discussion Document. Horizons Regional Council agrees that management of earthworks in Palmerston North is an issue and supports Palmerston North City Council (PNCC) in initiating this process to improve this situation.

Background

Horizons mostly becomes involved in earthworks activities in a regulatory role after they have started. This involvement is generally triggered by environmental incident complaints about things such as dust nuisance or sediment discharges into adjacent watercourses. In some cases we become involved because of concerns about adverse effects on floodplains.

The fact that Horizons often becomes involved after earthworks have started causes frustration for both Horizons staff and developers. Horizons staff find themselves trying to deal with issues that could have been avoided by the use of good site management practice from the beginning of the project. Sometimes the work is stopped until resource consents are obtained and/or appropriate mitigation works are completed. Such time delays are a source of frustration for developers.

I have been told that some developers only do what is required by local authorities to manage adverse effects of earthworks rather than consistently using current good practice no matter where the development occurs. This attitude contributes to the issues we see locally. It also seems short-sighted and, unfortunately, demonstrates the need for this intervention by PNCC.

Ideal Outcome

The ideal outcome from Horizons viewpoint is a system or process that results in the whole life-cycle of a development project being managed so that Horizons involvement is non-existent after the earthworks have started. To achieve this, PNCC and developers (and Horizons) need to get things right before work begins. If this can be done with a low level of bureaucracy, that will be great.

Kairanga

Marton

Palmerston North

Taihape

Taumarunui

Wanganui

Woodville

Issues

From Horizons' point of view the issues with earthworks are:

- Sediment discharges to waterways;
- Accelerated instability of erosion prone land;
- Dust nuisance; and
- Capacity reduction or damming of floodplains. Note that the scale of works is not an indication of impact because an issue can be caused by something as simple as a raised driveway or track across a flood flow path.

Specific Feedback on Discussion Document

Horizons has land disturbance rules in its operative Land and Water Regional Plan and the Proposed One Plan. These rules focus on managing the adverse effects of land disturbance on a Regional scale. Under these rules, land disturbance is generally permitted unless it is adjacent a water body, a habitat of significant biodiversity or on highly erodible land. If the volume of fill or excavation exceeds 1000m³ per year effective erosion control and sediment control measures must be installed and maintained to meet permitted activity status (Proposed One Plan Rule 12-1).

The relevant rules are:

- Land and Water Regional Plan, Rule LM 2; and
- Proposed One Plan Part II, Rules 12-1 to 12-8.

I am happy to provide copies of these rules if you need them.

I have assessed your proposals in the discussion document and, they do not appear inconsistent with Regional Rules. In fact, it could be argued that discussion document proposals complement Regional Rules by providing the lower threshold for intervention that appears needed to deal with local issues. For example, in your Rural and Residential Zones a consent for earthworks is triggered at or below the 1000m³ threshold Horizons has in the Proposed One Plan and "a management plan that minimises the effects of erosion and sedimentation" is required as part of the assessment of any application. This has the benefit of getting environmental effects issues sorted out at an early stage in the development and reducing the potential for complaint response once the works have started.

There may be a slight inconsistency in the way earthworks in Industrial Zones are handled. In this instance, the developer would need to provide "effective erosion and sediment control measures" to meet Horizons' permitted activity rule if earthworks exceed 1000m³ but would not be "caught" by the requirements of your rules until exceeding 2000 m³. I know from our discussion you consider earthworks in Industrial Zones to be potentially less "problematic", but in terms of adverse environmental effects, that may not hold true. This is a topic we can discuss in more detail if you wish.

Feedback from Horizons compliance staff members has caused us to give further thought on the use of an area versus a volume as a trigger for erosion and sediment control measures in Proposed Plan Rule 12-1. Our compliance team holds the view that an area is much simpler to measure than a volume. In response to this, the Horizons staff submission to the Proposed One Plan seeks a change to the standard in Rule 12-1 requiring “effective erosion and sediment control measures” should land disturbance exceed either 1000m³ per year per property *or* 2500 m² per year per property. There is no certainty that this will be agreed during the hearing process, but the use of an area standard is something you may wish to consider as you evaluate feedback on the discussion document.

I note that there are no rules proposed for the Flood Protection Zone, but on reflection it appears that the current restrictions for that Zone provide a reasonable degree of certainty that no/limited earthworks would occur there.

Horizons supports the exclusion of flood protection works from the indicative rule stream. This is consistent with the approach taken in the Flood Protection Zone.

If you would like me to clarify anything in this feedback or you wish to discuss any matters about earthworks, please contact me.

Yours sincerely



Barry Gilliland
POLICY TEAM MEMBER

APPENDIX THREE: Proposed Plan Change 42: Earthworks



PALMERSTON NORTH CITY DISTRICT PLAN

PROPOSED PLAN CHANGE 42: EARTHWORKS

CONTENTS

- PART I:**
- (1) Description of Proposed Plan Change**
 - (2) Proposed amendments to the District Plan**
- PART II:** **Section 32 RMA Report**

CONTENTS

- PART I: (1) Description of Proposed Plan Change 42
 (2) Proposed amendments to the District Plan
- PART II: Section 32 Report

PART I

1. DESCRIPTION OF PROPOSED PLAN CHANGE 42

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

PART I

2. PROPOSED AMENDMENTS TO THE DISTRICT PLAN

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

SECTION 4: DEFINITIONS

Amend the following Definitions in Section 4:

Height:

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

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

.....

...insert the following Definitions in Section 4:

Earthworks means

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

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

Ground Level

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

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

SECTION 5 – INFORMATION REQUIREMENTS

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

5.4 Land Use Consents

...

(c) Proposed Development Information and Plans

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

...

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

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

SECTION 6 – GENERAL SECTION

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

6.3	<i>Earthworks</i>	6-19
6.3.1	<i>Introduction</i>	6-19
6.3.2	<i>Resource Management Issues</i>	6-19
6.3.3	<i>Objectives and Policies</i>	6-20
6.3.4	<i>Methods</i>	6-20
6.3.5	<i>Anticipated Environmental Results</i>	6-21
6.3.6	<i>Rules: Permitted Activities</i>	6-21
	<i>R 6.3.6.1 Permitted Earthworks</i>	6-21
	<i>R 6.3.6.2 Exclusions from Earthworks Rule 6.3.6.1</i>	6-22
6.3.7	<i>Rules: Discretionary Activities (Restricted)</i>	6-23
	<i>R 6.3.7.1 Discretionary Activities (Restricted)</i>	6-23

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

6.3 *Earthworks*

6.3.1 *Introduction*

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

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

6.3.2 *Resource Management Issues*

Adverse effects commonly associated with earthworks include

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

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

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

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

6.3.3 Objectives and Policies

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

Objective 1:

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

Policies:

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

6.3.4 Methods

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

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

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

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

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

6.3.4 Environmental Results Anticipated

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

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

6.3.6 Rules: Permitted Activities

® R 6.3.6.1 Permitted Activities for Earthworks

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

Performance Conditions:

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

(a) Rural Zone

In the Rural Zone, no earthworks shall:

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

(b) Residential Zone

In the Residential Zone, no earthworks shall involve:

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

(c) Industrial Zone

In the Industrial Zone no earthworks shall:

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

(d) North East Industrial Zone

In the North East Industrial Zone no earthworks shall:

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

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

Explanation

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

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

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

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

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

NOTES TO PLAN USERS:

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

® R 6.3.6.2 Exclusions from Earthworks Rule 6.3.6.1

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

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

Explanation

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

6.3.7 Rules: Discretionary Activities (Restricted)

® R 6.3.7.1 Discretionary Activities (Restricted)

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

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

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

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

Explanation

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

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

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

SECTION 7 – SUBDIVISION SECTION

Amend Section 7: Subdivision Table of Consents as follows:

7.16 Rural Zone

...

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

...insert a new Performance Condition:

7.7.1 Rules: Controlled Activities

...

® R 7.7.1.2 Performance Conditions for Controlled Activities

...

(i) Earthworks

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

...amend Rule 7.7.2.1 as follows:

7.7.2 Rules: Discretionary Activities (Restricted)

® R 7.7.2.1 Discretionary Activities (Restricted)

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

are Discretionary Activities (Restricted) with regard to:

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

...

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

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

Explanation

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

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

7.9.1 Rules: Controlled Activities

...

® R 7.9.1.2 Performance Conditions for Controlled Activities

...

(h) Earthworks

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

...amend Rule 7.9.2.1 as follows:

7.9.2 Rules: Discretionary Activities (Restricted)

® R 7.9.2.1 Discretionary Activities (Restricted)

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

....

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

....

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

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

...amend Rule 7.16.1.2 as follows:

Rule 7.16.1: Controlled Activities

...

® R 7.16.1.2 Performance Conditions for Controlled Activities

...

(g) Earthworks

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

...insert new Rule 7.16.2.3 as follows:

7.16.2 Rules: Discretionary Activities (Restricted)

...

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

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

§ *Landscape and visual impact*

§ *Effects on adjoining properties including amenity values*

§ *Impact on flood plains and flood flows*

§ *Increase in hazard risk and effects on land stability*

§ *Effects of erosion and sedimentation*

§ *Effects on overland flow paths*

§ *Those matters described in Sections 108 and 220 of the Resource Management Act 1991.*

NOTES TO PLAN USERS

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

SECTION 10 – RESIDENTIAL ZONE

...amend Note to Plan Users:

10.7.1 Rules: Permitted Activities

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

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

NOTE TO PLAN USERS

Also refer to the following rules:

...

R 10.8.1.7	Undevelopable Land in the Aokautere Development Area;
R 6.3.6	Earthworks;
R 20.3.5.2	Roading Designations;
R17.6.1-17.9.1	Cultural and Natural Heritage.

...

...amend Rule 10.7.6.1 as follows:

10.7.6 Rules: Prohibited Activities

® R 10.7.6.1 Awatea Stream and Jensen Street Ponding Areas.

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

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

is a Prohibited Activity.

NOTE TO PLAN USERS

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

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

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

Explanation

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

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

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

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

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

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

In addition to Rules 10.7.1.1 and 10.7.1.2

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

Explanation

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

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

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

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

NOTE TO PLAN USERS

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

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

10.8.1 Rules: Permitted Activities

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

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

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

Performance Condition

(a) **Stability**

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

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

NOTE TO PLAN USERS

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

SECTION 12 – INDUSTRIAL ZONE

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

12.6 Rules: Permitted Activities

® R 12.6.1.1 Permitted Activities

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

NOTE TO PLAN USERS:

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

SECTION 12A – NORTH EAST INDUSTRIAL ZONE

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

12A.6 Rules: Permitted Activities

® R 12A.6.1 Permitted Activities

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

...

NOTE TO PLAN USERS:

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

...

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

12A.8 Rules: Discretionary Activities (Restricted)

...

® R 12A.8.3 Stormwater Detention Area

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

- Effects on the storage capacity of the stormwater detention area

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

Non-notification

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

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

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

Explanation

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

NOTE TO PLAN USERS:

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

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

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

SECTION 22 – NATURAL HAZARDS SECTION

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

Rule 22.9.2: Discretionary Activities (Restricted)

® R 22.9.2.1 Restructuring of Land in Aokautere

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

- The Avoidance or Mitigation of any Natural Hazard.

provided it complies with the following Performance Conditions:

Performance Condition

- (a) Timing of Application and Undertaking of Works

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

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

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

Explanation

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

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

NOTE TO PLAN USERS:

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

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

PART II SECTION 32 REPORT

1. INTRODUCTION

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

2. DESCRIPTION

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

3. PLAN CHANGE OBJECTIVE

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

4. REASON FOR THE PROPOSED PLAN CHANGE

4.1 Resource Management Issues

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

4.5 Building Development

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

4.6 **The Existing Earthworks Framework**

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

4.8 The Resource Management Act 1991

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

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

4.11 The District Plan

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

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

4.13 Resource Consent Conditions– Landuse and Subdivision activities

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

4.15 The Palmerston North City Council Subdivision Engineering Standards

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

4.17 Tonkin and Taylor Policy Document

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

4.19 Other Legislation

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

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

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

71 Building on land subject to natural hazards

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

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

4.23 Other Agencies

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

4.25 **Adverse Effects of Earthworks**

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

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

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

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

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

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

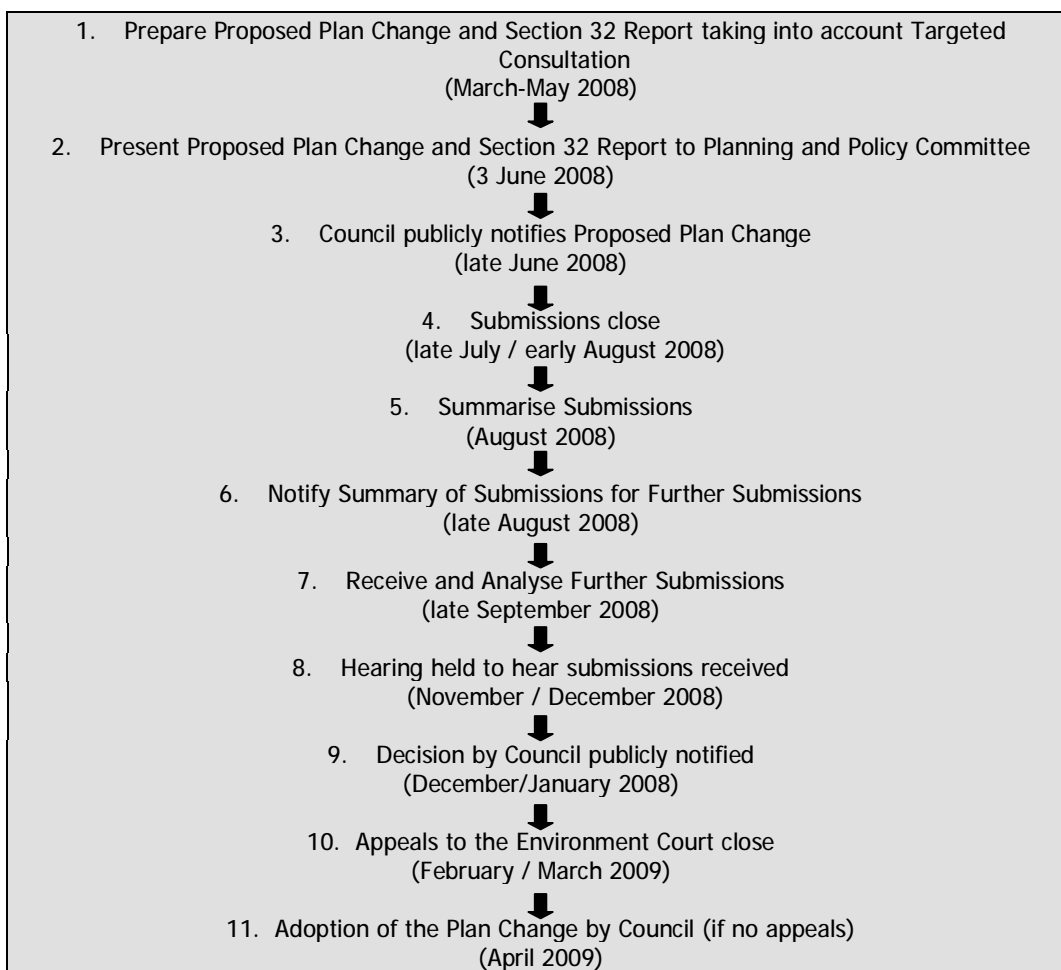
4.29 Chronology

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

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

4.31 An Indicative Timetable of the Plan Change Process

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



5. CONSULTATION

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

6. STATUTORY REQUIREMENTS

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

"32 Consideration of alternatives, benefits, and costs –

(1) In achieving the purpose of this Act, before a proposed plan, proposed policy statement, change, or variation is publicly notified, a national policy statement or New Zealand coastal policy statement is notified under section 48, or a regulation is made, an evaluation must be carried out by–

...

(c) the local authority, for a policy statement or plan ...

(2) A further evaluation must also be made by–

(a) a local authority before making a decision under clause 10 or clause 29(4) of the Schedule 1; ...

- (3) An evaluation must examine–
 - (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
 - (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.
- (4) For the purposes of the examinations referred to in subsections (3) and (3A), an evaluation must take into account–
 - (a) the benefits and costs of policies, rules, or other methods; and
 - (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.
- (5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.
- (6) The report must be available for public inspection at the same time as the document to which the report relates to is publicly notified or the regulation is made.”

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

“5 Purpose

- (1) The purpose of this Act is to promote the sustainable management of nature and physical resources.
- (2) In this Act, “sustainable management” means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while-
 - (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) **Avoiding, remedying, or mitigating any adverse effects of activities on the environment”** (emphasis added)

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

“6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

...

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

“7 Other Matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to-

...

- (b) the efficient use and development of natural and physical resources:
- (c) the maintenance and enhancement of amenity values:
- ...
- (f) maintenance and enhancement of the quality of the environment:
- (g) any finite characteristics of natural and physical resources:

...”

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

“31 Functions of territorial authorities under this Act

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

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

7. ASSESSMENT OF PLAN CHANGE OBJECTIVES

7.1 Existing District Plan

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

7.3 Proposed Plan Objective

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

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

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

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

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

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

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

The Healthy Community

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

The Working Community

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

The Heritage Community

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

The Attractive Community

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

7.9 Fit with Existing District Plan

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

7.11 Appropriateness

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

8. ASSESSMENT OF POLICIES AND METHODS OF IMPLEMENTATION

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

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

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

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

8.3 POLICIES

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

Policies:

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

1.2 To ensure that any adverse effects on the environment from earthworks, including effects on:

- Visual Effects;
- Effects on the Natural Land Form;
- Effects on Adjoining Properties;
- Land Stability;
- Flooding Effects;

are avoided, remedied, or mitigated.

8.5 The first policy operates as a broad overarching policy position that the scale and location of earthworks are closely linked with the likelihood of adverse effects occurring. The term '*limit*' identifies that in some scenarios it is possible to place a restriction on earthworks. The reference to '*where adverse effects may result*' identifies that adverse effects do not always arise from earthworks developments. The location and scale of earthworks may be limited to manage the potential adverse effects. Location and scale are terms describing the physical extent of the earthworks relative to the site and development, and relative to the immediate surroundings (including zoning and physical characteristics).

8.6 The second policy provides guidance on the term '*adverse effects*' by highlighting particular issues that are of concern. The purpose of this policy is to clarify the types of potential effects that may arise. The use of the term '*including*' identifies the list as not being exclusive to the issues raised, but mentions the common likely effects.

8.7 OTHER METHODS

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

8.9 OPTION 1: STATUS QUO (DO NOTHING)

8.10 Option 1 involves:

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

8.11 Reasons for and against Option 1 are listed below:

FOR:

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

AGAINST:

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

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

8.12 Statement on Efficiency and Effectiveness:

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

8.13 OPTION 2: INTRODUCE SUBDIVISION EARTHWORKS RULES

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

8.15 Option 2:

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

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

8.16 Reasons for and against Option 2 are listed below:

FOR:

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

AGAINST:

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

8.17 Statement on Efficiency and Effectiveness:

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

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

8.18 OPTION 3: INTRODUCE GENERIC EARTHWORKS RULES

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

8.20 Option 3 involves:

This option involves:

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

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

FOR:

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

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

AGAINST:

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

8.22 Statement on Efficiency and Effectiveness:

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

8.23 PREFERRED ALTERNATIVE

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

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

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

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

9. EVALUATION OF COSTS

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

10. CONCLUSION

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