
BEFORE THE HEARINGS COMMITTEE

IN THE MATTER

**of hearings on
submissions
concerning the
proposed One Plan
notified by the
Manawatu-Wanganui
Regional Council**

**REPORT PURSUANT TO S.42A RESOURCE MANAGEMENT ACT
CONCERNING THE INCLUSION OF PROVISIONS IN PART I POP
REGARDING VERSATILE SOILS
(ie. Class I and II Soils)**

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COOPER RAPLEY
110 Years of Excellence
Palmerston North & Feilding

Solicitor: J W Maassen

Address: 240 Broadway Avenue
P O Box 1945
DX PP80001
Palmerston North

Telephone: (06) 353 5210

Facsimile: (06) 356 4345

Email: jmaassen@crlaw.co.nz

INTRODUCTION

1. This report has been prepared in response to a request by the Hearing Panel for further information. It relates to the absence of any reference in Part I, POP to the protection of versatile soils from land use and subdivision activities. For the purpose of this report, versatile soils refer to Class I and II soils based on the LUC classification system¹.
2. Some submitters request that protection of versatile soils be identified as a resource management issue in the proposed RPS. The submissions on this topic are disparate and identify sometimes contradictory relief. By way of example:
 - (a) The McKellar submission seeks a land use rule controlling rural lot sizes. You cannot accept that request since land use for the purpose of managing the soil resource (other than for erosion control purposes) is a function of territorial authorities;
 - (b) The Milne submission is focused on controlling urban development on versatile soils;
 - (c) The Cooper submission which is focused on preventing rural residential development and encouraging organic extension of existing urban centres thus taking the pressure off rural land.
3. HRC consulted extensively with the regional community prior to notification of the proposed RPS. The extent of that consultation

¹ Classification in New Zealand is based on the LUC handbook (1974). As recorded in the evidence of Alec Mackay for HRC on Chapter 5 POP, work has been done in relation to updating the LUC handbook in respect of the Horizons region. See Douglas, G Handsworth, G and McIvor, I (2006). Updating the Land Use Capability Handbook – a scoping report. There is also a project involving the LUC Handbook revision.

has been summarised in HRC's evidence on the overall plan. Consultation included consultation with regional TA's. As a result of that consultation, HRC concluded that there was an insignificant amount of community concern regarding the rate and extent of loss of versatile soils. This feedback coincided with HRC's own analysis that the issue was not of sufficient regional significance to warrant treatment in the proposed RPS.

4. As Helen Marr outlined at the first hearing for POP the focus of the POP is on the 'Big Four' and resources have been allocated to achieving those goals.
5. Submissions on the protection of versatile soils have been coded as submissions to chapter 3: Infrastructure Energy and Waste. That is because it is linked to urban development and associated infrastructure. This report should therefore be treated as a report to the Hearing Panel for chapter 3.

A SUMMARY OF THE POSITION OF HRC

6. The operative RPS does contain provisions concerning the protection of versatile soils (see **Appendix 1**). The following paragraphs summarise why HRC did not include similar provisions in POP.
7. Protection of versatile soils does not feature in either sections 6, 7 or 8. Since the enactment of the RMA there has been considerable debate about the significance of the issue regarding versatile soils having regard to the statutory definition of sustainable management. That definition, along with the provisions of Part III are said to be enabling in respect of land use and subdivision subject to the management of effects. Some members of rural communities expressed concern during consultation at the loss of productive capacity caused by rural residential subdivision.

However, where rural residential subdivision occurs (at minimum lot sizes of say 4ha) the act of subdivision does not affect the soils productive capacity so much as it affects patterns of ownership. The RMA is not concerned with patterns of ownership but with environmental effects. The real complaint of members of the rural community concerning lifestyle subdivisions is the difficulties associated with re-aggregation of land that undermine in the medium term the productive use of smaller lots. On the other hand, other members of the rural community strongly oppose controls that unduly limit their capacity to deal with land on the most economically advantageous terms to them.

8. Case law demonstrates that the protection of versatile soils is not an end in itself and that sustainable management of resources when providing for urban expansion in particular, raises a basket of issues all of which must be considered contextually within the framework of the RMA². Consideration of the basket of issues is best done at a district plan level by TA's. HRC considers that the RPS could provide little guidance that would be constructive and sufficiently specific. Generalised statements of the type that are contained in the operative RPS are problematic and potentially unhelpful particularly given the statutory direction as a result of the 2005 amendment that district plans must give effect to the RPS³.
9. HRC has analysed the loss of versatile soils that has occurred regionally between 2003 and 2008. The term 'loss' is used advisedly. The assumption is that loss of productive capacity occurs as a result of the creation of lot sizes less than 4 hectares. The following table demonstrates the change in land parcel size.

² Not even s.6 matters are an end in themselves – see *New Zealand Rail Ltd v. Marlborough District Council* [1994] NZRMA 70. Rural residential development raises issues such as landscape, amenity effects, the effects of rural residential development and efficient use of infrastructure. Urban expansion raises similar issues but also issues relating to urban form and social and community well being.

³ See section 75(3) RMA

Area of Class 1 and Class 2 Land Within the Horizons Region Intensified Between July 2003 and July 2008

Districts/Area(Ha)	Area - Class 1 & 2 & town	Area - Class 1 & 2	Area of Change 2003-2008 Class 1and2	%change	Area of Change 2003-2008 Class 1 & 2 <10ha	% change	Area of Change 2003-2008 Class 1and2 <4ha	% change	Area of Change 2003-2008 Class 1 & 2 <1ha	% change
Ruapehu	2613	1582	55	3.49	14	0.91	4	0.25	0.3	0.02
Wanganui	22762	20438	2507	12.27	569	2.78	330	1.62	56	0.27
Rangilikei	43388	42343	5065	11.96	586	1.38	236	0.56	59	0.14
Manawatu	79564	78815	8148	10.34	1230	1.56	694	0.88	155	0.20
Palmerston North	9044	5286	460	8.70	224	4.24	153	2.89	64	1.21
Horowhenua	26647	24868	1492	6.00	469	1.88	286	1.15	43	0.17
Tararua	32770	31882	1905	5.97	264	0.83	125	0.39	33	0.10
Stratford	63	63	No Change		No Change		No Change		No Change	
Taupo	n/a	n/a	No Change		No Change		No Change		No Change	
Waltomo	n/a	n/a	No Change		No Change		No Change		No Change	
Total Area	216851	205277								
Number of Parcels			3098		2693		2458		1757	
Total Area of change			19049		3293		1806		409	

Across the Region there is a change to 3098 land parcels between July 2003 and July 2008.

10. The total 'loss' ranges between 0.25% and 2.8% (between districts) with the highest figure applying in Palmerston North. These figures indicate a low level of change over the 2003-2008 period. This is a period of significant economic activity in New Zealand's history. Not unexpectedly, the greatest change is occurring on the fringe of the regions largest city.
11. TA's do take into account of the need to protection versatile soils. The Horowhenua District Plan has minimum lot sizes for subdivision in the rural zone that are materially different depending on whether the soils are versatile or not. The Palmerston North City Council's operative district plan identifies the protection of agricultural land as a resource management issue for the district. When TA's have evaluated plan changes or reviewed plans they have demonstrated to the satisfaction of HRC sufficient understanding of the issue of protecting versatile soils. This issue has been addressed and weighted appropriately having regard to the range of factors that must bear on any decision making and the fact that a value judgement must be made by individual communities.

12. The operative RPS focuses on urban development on the fringes of settlements, towns and cities on the basis that this represents the biggest threat to versatile soils. The operative RPS recognises however, that protection of versatile soils is not a pre-eminent consideration. The RPS simply requires TA's when providing for urban development to take into account the retention of options for future use of Class I and II land⁴. This is one of the range of matters to be considered along with the efficient use of resources including energy, transport and utility infrastructure. The principal urban growth area in the region, is on the fringes of Palmerston North. Residents of Palmerston North City are very positive about the city's compact urban form.
13. HRC considers that compact urban form is very desirable and enables infrastructure to be utilised efficiently. HRC considers that sustainable management of Palmerston North City could justifiably result in the loss of some versatile soils. For example, a combined industrial land use study by David Forrest on behalf of Palmerston North City Council and Manawatu District Council identified rural land to the north east as a suitable node for industrial growth. That land is likely to have pockets of Class I and II soils.

STATUTORY CONTEXT

14. Section 30 RMA sets out the functions of regional councils. The following provisions are relevant:

"30 Functions of regional councils under this Act

- (1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:
- (a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:

⁴ See policy 6.1(b) page 85 RPS

- (b) The preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:

....

- [(gb) the strategic integration of infrastructure with land use through objectives, policies, and methods:]”

15. Section 62 RMA says that a regional policy statement must state the significant resource management issues for the region.

“[62 Contents of regional policy statements

- (1) A regional policy statement must state—

- (a) the significant resource management issues for the region;”

16. Section 59 RMA describes the purpose of regional policy statements as follows:

“59 Purpose of regional policy statements

The purpose of a regional policy statement is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.”

17. As stated earlier, as a result of the 2005 amendment to the Resource Management Act, every TA must in its review of a district plan give effect to any regional policy statement. This means that particular care is needed in the drafting of Part I. It is important that issues of complexity are not unduly simplified by an RPS with the consequence that sustainable management of natural and physical resources is not achieved. Physical resources include infrastructure including major transportation corridors. The 2005 amendment probably reflects the growing movement known as “New Regionalism”⁵. New Regionalism is a planning movement seeking to in particular to provide greater regional direction for rapid growth urban regions. It has particular application in New Zealand to such regions as Auckland and Canterbury.

⁵ See for example Wheeler, Stephen MVT New Regionalism: Key Characteristics of an Emerging Movement, *Journal of the American Planning Association*, 68(3), 2002b PP267-78

RELEVANT CASE LAW

18. The case law supports a series of propositions which are set out below.
19. Protection of versatile soils is a matter relevant under s.5 RMA and can be given weight in district and regional planning⁶.
20. Section 5(2)(b) does not mean that land of good quality whatever its location size and other features is effectively proscribed from urban use. In *Becmead Investments Ltd v. Christchurch City Council*⁷ the Court stated:

“We have indicated that section 5(2)(b) is couched in a general way. It falls to be applied so that its broad requirement is met. Obviously it is not to be taken as meaning that land containing soil of good quality whatever its location, size and other features is effectively proscribed from use in any circumstances for residential development and activity.”

21. Protection of soil is placed in a situation of primacy. In *Canterbury Regional Council v. Selwyn District Council and Tucker*⁸ the Court stated:

“In the present case we agree with Mr Milligan that the RMA does not place soil in a situation of primacy, any more than section 5(2)(b) could be construed as placing an absolute prohibition upon the use of air or water.”

⁶ See *Pickmere v. Franklin District Council* A46/93; *Peters v. Franklin District Council* [1993] 2NZRMA 42; *Houchen v. Waikato District Council* [1985] NZRMA 421; *Lovegrove v. Waikato District Council* A17/97; *Whiteman v. Waipa District Council* A62/97; *Croud's Family Trust v. Franklin District Council* A113/97; *Baker v. Franklin District Council* A70/98; *Gentry v. Waikato District Council* A118/99

⁷ [1997] NZRMA 1 at 23

⁸ [1997] NZRMA 25 37

CONSIDERATION OF THE PALMERSTON NORTH SITUATION

22. Palmerston North is the only city in the region experiencing and projected to experience significant population growth in the medium term. It is the only centre likely to experience growth pressures resulting in the potential use of versatile soils for urban development of significance. Palmerston North's economic and social vitality depends on a range of factors including good community infrastructure, a strategic location and compact urban form⁹. It is worthwhile to consider the issue whether or not the proposed RPS should consider protection of Class I and II soils as a significant issue in the context of projected growth in Palmerston North. Discussions have occurred between planners for Palmerston North City Council and HRC. There is agreement that providing sustainable urban growth involves a consideration of a range of issues. Policies in the proposed RPS that seek to protect versatile soils are likely to be inimical to the holistic assessment of all those relevant issues and jeopardise the integrated management of natural and physical resources.
23. A non exhaustive list of factors relevant to the selection of urban growth nodes include:
- (a) maintaining a compact urban form;
 - (b) achieving good urban design;
 - (c) integration with district and regional transportation corridors including meeting the objectives of the Regional Land Transportation Strategy;
 - (d) hazard avoidance or mitigation;

⁹ See City Wide Objectives of PNDP

- (e) integration with community infrastructure eg. parks and reserves;
 - (f) integration with service networks and district capital expenditure plans.
24. Maintenance of optimal urban form yields significant economic, social and transportation benefits. Policies in a proposed RPS that have the effect of undermining optimal urban outcomes cannot be consistent with sustainable management.
25. The following quote from the book *Planning for Sustainability* summarises current thinking on good urban form¹⁰:

"Looking ahead, certain urban form values are likely to be particularly essential in the future for sustainability goals such as preserving open space, reducing automobile use, enhancing equity, and improving community vitality. The work of urban designer and MIT professor Kevin Lynch, especially his landmark 1981 book *A Theory of Good City Form*, is an important precedent to such analysis, in that Lynch was among the first to systematically analyse the values and characteristics of different types of urban form. But, as mentioned earlier, Lynch did much of his writing before the influence of the modern environmental movement had been fully felt, and his work needs to be updated in light of current sustainability concerns. Expanding on his efforts, five urban form values now seem particularly important to the challenge of developing more sustainable cities and towns.

1. *Compact urban form* limits suburban sprawl and makes more efficient use of land than in conventional suburbia. The challenge is two-part: to preserve open space and to design a more efficient, compact, and liveable urban form inside growth limit lines. Regions such as Portland, Oregon, which have sought to manage growth through an Urban Growth Boundary have learned this lesson the hard way. Much sprawl has occurred inside the Portland UGB because it was set too far out initially and the characteristics of new development were not a major focus until recently. Now the region must rethink how to create more compact development within its existing urban area.

¹⁰ Stephen Wheeler - *Planning for Sustainability: Creating Liveable Equitable and Ecological Communities* 2004 (2006 Reprint at page 163)

2. *Contiguous urban form* implies that new expansion takes place next to existing urban areas. If new development projects are not contiguous, then inefficient, disjointed land use patterns are likely to result as the spaces between projects fill in haphazardly, and street connections between subdivisions are likely to be poor. The opposite of contiguous development is often referred to as "leapfrog" growth, in that development jumps from place to place across the landscape to wherever developers can find cheap available land.
3. *Connected urban form* features good street, path, and visual connections within the region, and is also relatively "legible" and easy for people to find their way around. Without these connections, a disjointed landscape is created in which walking, bicycling, using public transit, and even driving are difficult and involve circuitous routes. Arguably it then also becomes more difficult for residents in disconnected subdivisions to gain a sense of participation in the broader urban and regional environment. The nineteenth-century, square-block grids at the core of many older cities provide an extremely high degree of connectivity, promoting travel through the city by a variety of transportation modes. Not surprisingly, winding suburban street patterns feature very low connectivity¹⁰.
4. *Diverse urban form* contains a mixture of land uses, building and housing types, architectural styles, and prices or rents. If development is not diverse in these ways, then the result is a homogenous built form, monotonous urban landscapes, segregation of income groups, and increased driving, congestion, and air pollution. Nineteenth-century neighbourhoods with diverse building types and land uses are today among the most vibrant, attractive, and popular districts in many North American cities. Twentieth-century, single-use zoning was a major force preventing diversity of urban form. In addition, the large scale of recent homebuilding and office park construction often prevents the creation of a diverse urban fabric, in that each builder is often unwilling to create more than a single type of land use.
5. *Ecological urban form* integrates features of the natural landscape into the form of the city in a way that protects and restores local ecosystems while providing recreational amenities for residents. In most urban areas little thought was given to this urban form value until the last third of the twentieth century. Developers simply bulldozed hills, culverted streams, and generally treated the landscape as a

¹⁰ See Southworth and Owens (1993)

slate to be wiped clean for human use. Even garden suburb developers treated ecosystem elements primarily as aesthetic amenities for human benefit, not as valuable entities in their own right. In the last few decades, however, planners and citizen activists have begun seeking ways to protect or enhance ecosystem elements during the urbanisation process. Regional and local planning agencies have designated park and greenway networks, placed some wetlands and stream corridors off-limits to development, and changed zoning codes to require park or open space dedication for most projects of any size. These agencies increasingly seek to identify key areas of ecological concern well in advance of development and integrate them into local or regional planning frameworks. Where simply zoning land off-limits to development is not an option, officials may choose to negotiate with developers, environmentalists, and other constituencies to develop "habitat conservation plans", under which some land is protected while other sites are developed¹¹. This controversial approach has the advantage of leveraging protection for some areas without enormous expenditure of public funds, but the disadvantage of allowing much other development to go forth. In other cases local governments, park or open space districts, or NGOs such as The Nature Conservancy may purchase fragile habitat or conservation easements on the land to prevent development. Such emphasis on incorporating environment concerns into the development of urban form, however, is still in its early stages and is far from universal.

CONCLUSION

26. HRC after extensive consultation decided not to make provision for the protection of versatile soils. There is a paucity of detailed technical evidence demonstrating that the issue is of regional significance. I doubt there is sufficient information available for the Hearing Panel to complete a robust S.32 analysis that would justify amendments to the RPS addressing the management of versatile soils.

¹¹ See Beatley (1994)

27. If the Hearing Panel chooses to include some wording to address that issue, then it is considered essential to recognise that the protection of versatile soils is only one part of the mix when considering potential urban growth paths and that there are some equally or more important factors to consider and which local authorities must consider under the statutory framework of the RMA.



John Maassen
Legal Counsel

APPENDIX 1

Extracts from the Operative Regional Policy Statement

Part 5

The Region has substantial areas of highly productive alluvial plains and terraces, particularly in the Manawatu Catchment. This is vital to the farming economy of the Region. Class I and II land, as classified in the Land Resource inventory, is the best and most versatile land. It is a subset of the plains and terraces suite. It is particularly significant because of the potential conflict in land use between high value agricultural production, and urban expansion on the edge of towns and cities.

Issue L6 Adverse effects from urban growth

Urban development and the expansion of settlements are important aspects of the social and economic fabric of the Region. They can, however, lead to significant land-use conflicts, particularly where urban development activities can have adverse effects on the land and other resources.

Urban encroachment onto adjacent land can result in the loss of highly productive Class I and II land. These conflicts occur on the fringes of many of the Region's urban areas, most notably Palmerston North, Wanganui, Levin and Feilding. The loss of this highly productive land, and the associated economic implications, is a significant issue in some parts of the Region.

21.3 Objective 5

To achieve sustainable land use.

21.3.1 Policies

Policy 5.1

All land in the Region shall be managed sustainably. In particular the adverse effects of land use activities resulting in a significant:

- (a) loss of soil from subsidence, landslip or erosion; or
- (b) loss of soil structure; or
- (c) irreversible loss of the productive capability of Class I and II land;
or
- (d) degradation of water quality shall be avoided, remedied or mitigated.

21.4.5 Alternatives

The principal alternative is for District Councils and market forces to determine the use, development and protection of land in the Region. Most of the Region's highly productive and most versatile soils have remained in primary production. However, future pressures for urban expansion may result in the loss of such productive areas, or in reduction of other natural values. The Council considers it necessary to provide a policy framework within which urban expansion can occur. It does not consider it necessary to provide more detailed policies for the build environment. It is more appropriate that District Councils develop objectives, policies and methods within this framework in relation to the specific needs of their district.