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**REPORT 3**  
*(1215/52/IM)*

## **DRAFT DISTRICT PLAN CHANGE – EARTHWORKS PROVISIONS**

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### **1. Purpose of Report**

The purpose of this report is to present to the Committee a draft district plan change for consultation with professional and industry groups, community groups and other interested organisations. The change follows from a review of the earthwork provisions of the District Plan. It affects almost all chapters of the Plan.

### **2. Executive Summary**

In 2005 the Committee decided to replace the Earthworks Bylaw with rules in the District Plan. New rules have been drafted to ensure the stability and safety of development projects.

The process has provided an opportunity to review the thresholds for earthworks stability. The draft rules are designed to allow earthworks that are at a low risk of collapse, at the same time allowing a greater depth of excavation without the need for application. Resource consent will still be needed for many projects and there will be numerous situations where both resource consent and building consent are required. It is envisaged that the two will be processed together to avoid duplication and unnecessary cost to customers.

A second component of the draft rules is a review of the existing district plan rules as part of the rolling review of the District Plan. New or modified rules have been introduced for flooding, dust and sediment, protection of archaeological sites, transport of materials and the visual impact of earthworks, including a new rule for visual concerns in the residential coastal environment.

The rules are presented in draft form for the Committee's approval of their general direction, which will allow further consultation with professional and industry groups, community groups and other interested organisations. The report provides an indication of which groups and organisations will be engaged in the consultation process.

### **3. Recommendations**

It is recommended that the Committee:

- 1. Receive the information.*
- 2. Agree to consult on the draft plan change as set out at Appendix 1.*
- 3. Agree that the results of consultation will be reported to the Committee with recommendations on changes to the draft plan change. This will occur at the same time that approval is sought for public notification of the plan change.*

### **4. Background**

#### **4.1 Earthworks Bylaw Review**

On 16 February 2005 a report was presented to the Strategy and Policy Committee, outlining a proposal to rationalise the regime that regulates earthworks in the City. The Committee agree that a district plan change should be prepared to replace the Earthworks Bylaw (Wellington Consolidated Bylaw 1991 Part 8 – Earthworks). With the Bylaw up to three consents are required for earthworks (a bylaw consent, a building consent and resource consent). Under the new regime a maximum of two consents will be required.

The background issues and the different options for regulating earthworks were discussed in the report, which is attached as Appendix 2.

#### **4.2 Development of the draft change**

The need to incorporate the functions of the Bylaw into the District Plan has been taken as an opportunity to review all the provisions for earthworks in the Plan. This is consistent with the Council's decision to undertake a rolling review of the District Plan.

The new Central Area rules, recently notified under Proposed Plan Change 48, have dispensed with assessment criteria and replaced them with more comprehensive policies and explanations in the Objectives and Policies section. The same approach is taken with the draft earthworks rules, as they are part of the rolling review of the Plan.

The draft rules have been prepared for the Residential Area, as residential projects make up the vast majority of earthworks approved by the Council.

#### 4.3 Further consultation and timetable

Once the Committee confirms the general approach, officers will undertake wider consultation with appropriate groups and organisations.

The Engagement Policy provides guidance on who the Council will consult with. In consultation *it must identify individuals and groups that are likely to be affected by, or have interest in, the matter (noting, that it can use its discretion to determine who this will be)*. The Council will ensure representation is obtained from the community and sector groups and it will involve groups who are able to provide information and expertise the Council may not otherwise have access to.

Some groups and organisations have already been consulted in the preparation of the draft plan change and they will be involved further in the next stage of consultation. It is proposed to consult the bodies identified in Table 1.

**Table 1: Groups and Organisations for Consultation**

<p><b>Statutory Agencies as required under the RMA</b></p> <ul style="list-style-type: none"><li>• MfE</li><li>• Greater Wellington - Regional Council</li><li>• Adjacent Cities - Porirua City, Hutt City</li><li>• Tangata whenua – Tenths Trust, Ngati Toa</li></ul>
<p><b>Community Boards</b></p> <ul style="list-style-type: none"><li>• Makara Ohariu Community Board</li><li>• Tawa Community Board</li></ul>
<p><b>Professional and Industry Groups</b></p> <ul style="list-style-type: none"><li>• Property Council</li><li>• Institute of Engineers</li><li>• Institute of Surveyors</li><li>• Institute of Architects</li><li>• Institute of Landscape Architects</li><li>• Contractors Federation</li><li>• Master Builders Federation</li><li>• Major consultancy firms</li></ul>

- Truebridge Callendar Beach
- Spencer Holmes
- MWH
- Connell Wagner
- Tse Group

### **Interest Groups**

- Federation of Progressive Associations
- Local Residents Associations – throughout the City:
- New Zealand Historic Places Trust
- Project Kaiwharawhara
- Friends of Owhiro Stream

The outcomes of consultation and a proposed plan change will be reported to the Strategy and Policy Committee in July. Upon the Committee's approval the plan change would be publicly notified for submissions.

## **5. Discussion**

### **5.1 Stability rules**

Under the Earthworks Bylaw an approval is required from the Council when an earthworks project exceeds 10 cubic metres or the existing ground level is altered by more than 0.6 metres. These thresholds have been used for many years and the reasons for their selection are probably now forgotten.

The drafting of new rules for the District Plan has provided an opportunity to re-examine the thresholds. The aim is to use criteria that are simple and readily understood, set at a level that will ensure safety is maintained when the earthworks are allowed as a permitted activity (i.e. without the need to obtain resource consent).

Ensuring stability of land is a complex issue dependant on a host of variables. Examples are rock and soil types and their mechanical properties, slope of the site and the land around the site, surface and subsurface drainage, vegetation, past earthquake damage, previous history of earthworks on the site and around the site, and climatic events such as unusually wet winters and major storms.

The new thresholds are based on slope and the depth of cut or fill. These two factors are considered to be the most reliable means of minimising the risk of instability across all sites. Some places in the City are recognised as being

particularly hazardous. However they have not been mapped and mapping them, at a scale that they could be used to regulate earthworks, would be a major project. In the absence of such information the stability thresholds must be set at a level that captures the most hazardous situations.

The draft rule differentiates between level and gentle slopes, and steep slopes. Steep slopes are those steeper than 26 degrees. Cuts (excavation or removal of ground) up to 1.5 metres are permitted on level or gentle slopes. Cuts on steep slopes automatically require resource consent.

Fill (or placement of excavated or other material) is a more difficult situation to manage. To ensure safety fill areas are only permitted to a depth of 0.6 metres. More than this, a resource consent is needed to ensure sound construction of the fill area.

The existing rules in the Plan separate earthworks for building from earthworks for subdivisions. This has led to some difficulties over the years where the earthworks for new housing areas are undertaken ahead of an application for subdivision or a controlled activity subdivision is used to guarantee approval for large scale earthworks, which might not otherwise be approved. To simplify this assessment, earthworks have been removed from subdivisions and all earthworks will now be assessed under a single set of rules.

## **5.2 Stability and the Building Consent process**

Many earthworks are associated with building projects. Consideration has been given to not requiring resource consent when the earthworks are associated with a building consent. Legal advice is that this is not possible. The Building Act 2004 has not been written to address earthworks and while there are references in the Act and Building Code to “siteworks” and ground stability the regulation of earthworks would be problematic and risky.

In practical terms it is envisaged that staff will continue to assess the new resource consent applications in the same way that they presently assess the Earthworks Bylaw approvals. Where a project involves both a resource consent for earthworks and a building consent for a retaining wall, the two will be assessed together to avoid duplication of resources.

## **5.3 Other rules**

### **Flooding**

The existing rules in the District Plan for earthworks in a flood hazard area have been extended to consider the adverse effect of removing vegetation or topsoil from an earthworks site. A threshold of 500 square metres, roughly the size of a section in a new subdivision, is proposed to separate modest projects such as earthworks for a single house from larger projects, such as multi-unit subdivisions.

## Dust and sediment

The existing rules address dust nuisance from earthworks. New rules have been added to manage problems with sediment carried in stormwater from a site. Sediment is a major concern as it has the potential to affect water quality in streams and can be detrimental to stream life. Sediment is also a problem when it is deposited on neighbour's properties, the road or into the Council's stormwater sumps and pipes.

The Resource Management Act 1991 separates the functions of Regional Councils and City Councils. Neither can take on functions that are the legal responsibility of the other. Water quality and the maintenance and enhancement of ecosystems in streams are under the jurisdiction of Greater Wellington Regional Council. For this reason the District Plan's rules for sediment are confined to the adverse effects of sediment on neighbours, the road and the stormwater system. However, requiring sediment to be managed for these reasons will indirectly benefit the health of streams.

## Transport

A new rule has been introduced to manage the impacts of transporting large quantities of earth or construction fill material to, or from, a site. A threshold of 3,000 cubic metres has been suggested by the Council's traffic engineers, which would separate large projects, requiring transport, from more run-of-the-mill earthworks for small subdivisions or house construction.

## Visual appearance

The existing rule in the Plan is concerned with managing the visual effects of larger earthworks. It is triggered by earthworks that exceed 2.5 metres in height or that involve more than 250 square metres of land. The effectiveness of the rule has been examined through a landscape assessment of 15 projects that feature large and highly visible earthworks.

The assessment supports the view of the Resource Consent Team that the 2.5 metre threshold is 'about right'. Any move to raise the threshold would result in unattractive earthworks that would be readily visible without the benefit of a process to soften the visual impact. Lowering it would lead to extra resource consents without a big gain in visual quality. A comparison of the landscape assessment and the current criteria in the Plan did lead to a complete rewriting of the criteria (now including in the policy section). The new criteria are much more specific in the matters that need to be considered, particularly the measures to mitigate visual effects.

A new rule is proposed for properties along coastal roads from the end of Oriental Bay to Kilbirnie, around the Miramar Peninsular and along the South Coast to the end of Owhiro Bay. This residential coastal environment is a distinctive component of Wellington City's character. Earthworks on the coastal escarpments and headlands and close to the roads are often highly visible and

particularly damaging to the coastal character. Thin soils and the coastal climate make revegetation of any earthworks difficult. A lower threshold of 1.5 metres is proposed and a high quality of design, materials and landscape planting is specified.

### Maori archaeological values

Under the 2003 amendment to the Resource Management Act historic heritage was made a matter of national importance [section 6(f) of the Act] and archaeological qualities were defined as a component of heritage. *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga*, is another matter of national importance [section 6(e) of the Act]. Consultation with local tangata whenua groups has reinforced the need to improve protection for Maori archaeological values under the Plan.

Proposed Plan Change 43 made changes to the text of Chapters 20 and 21 for Heritage. It recognises that further work needs to be done, in liaison with New Zealand Historic Places Trust, to identify archaeological sites in the City. Earthworks are the main way that archaeological material is destroyed and the earthworks rules provide an opportunity to provide extra protection. As an interim measure it is proposed that the new earthworks rules are used to protect Maori archaeological values and sites. However, this idea will need to be tested through further consultation with iwi and the Historic Places Trust.

#### **5.4 Approach to other Areas in the Plan**

Each Area (zone) in the City has its own chapter in the District Plan. Some or all of the Residential earthworks rules above will be appropriate to each Area. It is proposed that rules be used as follows in the different Areas (Table 2).

**Table 2: Approach to Earthworks Rules proposed for different Areas / Chapters of the District Plan**

<b>Area:</b>	<b>Earthworks Rules:</b>	<b>Comments:</b>
<b>Residential</b> <i>(See draft rules in Appendix 1)</i>	<b>Stability</b>	Required to replace the Earthworks Bylaw. Consent required for earthworks on steep slopes or where they exceed a certain depth.
	<b>Flood hazard areas and vegetation removal</b>	Flood hazard areas in Tawa.
	<b>Dust and sediment</b>	Resource consent required for more than 100 cubic metres of material

	<p><b>Maori archaeological values</b></p> <p><b>Transport of material – 3000 Cubic metres</b></p> <p><b>Visual</b></p> <p><b>Visual – Residential Coastal Environment</b></p>	<p>Resource consent required within a Maori Precinct or within 100 metres of the dot marking a Maori site on the planning maps</p> <p>Resource consent required for more than 3000 cubic metres of earth or other material being brought or removed from a site. This is about 30 large truck loads</p> <p>Existing rule in District Plan</p> <p>Tougher rules proposed to protect Wellington's distinctive coastal environment</p>
<p><b>Suburban Centres</b> <i>(in association with a wider review of Suburban Centres provisions)</i></p>	<p><b>Stability</b></p> <p><b>Flood hazard areas and vegetation removal</b></p> <p><b>Dust and sediment</b></p> <p><b>Maori archaeological values</b></p> <p><b>Transport of material – 3000 Cubic metres</b></p> <p><b>Visual</b></p>	<p>Required to replace the Earthworks Bylaw</p> <p>Flood hazard areas in Tawa. Rules as for Residential</p> <p>As for Residential – resource consent required for more than 100 cubic metres of material</p> <p>A number of Suburban Centre sites are within Maori Precincts or have Maori Sites</p> <p>Same as Residential</p> <p>In the smaller centres within residential areas and for retail shopping centres. Some industrial areas e.g. Nguaranga excluded as large earthworks batters already part of the character</p>
<p><b>Central Area</b></p>	<p><b>Stability</b></p> <p><b>Dust and sediment</b></p>	<p>Required to replace the Earthworks Bylaw. Most assessment will be undertaken under building consents</p> <p>Same rules as Residential – they are issues that need to be managed</p>

	<p><b>Maori archaeological values</b></p> <p><b>Transport of material</b> – 1000 cubic metres</p>	<p>There are number of Maori Sites in the Central Area e.g. Te Aro Pa</p> <p>Lower threshold due to the high traffic and pedestrian environment</p> <p>No flood hazard areas and vegetation rules would have little benefit. Visual rules not necessary as sites are heavily built over and good design guides in place</p>
<p><b>Institutional Precincts</b> (Victoria University, Massey University, Wellington Hospital)</p>	<p><b>Stability</b></p> <p><b>Dust and sediment</b></p> <p><b>Transport of material</b> – 3000 Cubic metres</p>	<p>Required to replace the Earthworks Bylaw</p> <p>As for Residential</p> <p>As for Residential</p> <p>There are no flood hazard areas or Maori Precincts or Maori archaeological sites that coincide with Institutional Precincts. Visual rules are not necessary due to existing design guides and a generally high quality of design and construction are the norm</p>
<p><b>Airport and Golf Course</b> <i>(in association to wider review of Airport provisions)</i></p>	<p><b>Stability</b></p> <p><b>Dust and sediment</b></p> <p><b>Transport of material</b> – 3000 Cubic metres</p> <p><b>Visual</b></p>	<p>Required to replace the Earthworks Bylaw</p> <p>As for Residential</p> <p>As for Residential</p> <p>Hill beside Calabar Road is an important landscape feature</p> <p>Not within flood hazard areas and there are no Group 2 Maori sites</p>

<p><b>Rural</b></p>	<p><b>Stability</b></p> <p><b>Flood hazard areas</b></p> <p><b>Dust and sediment</b></p> <p><b>Maori archaeological values</b></p> <p><b>Visual</b> – no changes to Ridgeline and Hilltops rules</p>	<p>Required to replace the Earthworks Bylaw. Restricted to sites of buildings and structures</p> <p>Flood hazard areas along Makara Stream. Vegetation removal rules not justified for low density environment</p> <p>Same as Residential</p> <p>Several Maori Precincts and many Maori sites</p> <p>Component of existing Rural rules. Reinforced by Rural Design Guide</p> <p>No transport rule as existing rules prevent the transport of earth beyond the site</p>
<p><b>Open Space &amp; Conservation Sites</b></p>	<p><b>Stability</b></p> <p><b>Flood hazard areas</b></p> <p><b>Dust and sediment</b></p> <p><b>Maori archaeological values</b></p> <p><b>Transport of material</b> – 3000 Cubic metres</p>	<p>Required to replace the Earthworks Bylaw – applied to building sites and roads but not pedestrian tracks</p> <p>Flood hazard areas along Porirua and Makara Streams. Vegetation removal rules not necessary as vegetation removal and mass earthworks would be rare. Also land managed by the Council</p> <p>May be an issue for high use recreational facilities</p> <p>Several Maori Precincts and a good number of Maori Sites</p> <p>May be an issue for upgrading of high use recreational facilities</p> <p>No visual rules. Rules are restrictive or the Council mostly controls projects, which ensures a high quality of design and construction</p>

<b>Heritage</b>	<b>Heritage Areas</b>  <b>Area based rules</b>	Earthworks rules introduced under Plan Change 43  Area based rules apply for stability, dust and sediment, transport and visual
<b>Utilities</b>	<b>Stability</b>  Clarification that access roads and tracks are not utilities and that the <b>Area based rules</b> apply	Utilities need to be subject to Stability rules to ensure the same regulation as currently exists under the Earthworks Bylaw  Area based rules do not apply to utilities as the existing rules provides criteria to assess earthworks associated with utilities. Transport rules may be justified

## 5. Conclusion

In 2005 the Committee decided to replace the Earthworks Bylaw with rules in the District Plan. New rules have been drafted to ensure the stability and safety of development projects. A review of other environmental effects of earthworks has lead to new or modified rules for flooding, dust and sediment, protection of archaeological sites, transport of materials and the visual impact of earthworks, including a new rule for visual concerns in the residential coastal environment.

The rules are presented in draft form for the Committee's approval of their general direction, which will allow further consultation with the professional and industry groups, community groups and other interested organisations.

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## **Supporting Information**

### **1) Strategic Fit / Strategic Outcome**

*The draft district plan change relates to the Urban Development and Environmental Strategies and specifically the long term outcome that:*

*Wellington will be a memorable, beautiful city, celebrating and building on its sense-of-place, capital city status, distinctive landform and landmarks, defining features, heritage and high quality buildings and spaces.*

*And*

*Wellington will recognise and protect significant features of its coastal and terrestrial landscape and natural heritage.*

### **2) LTCCP/Annual Plan reference and long term financial impact**

*Relates to the ongoing review of the District Plan. Project C533 – District Plan*

### **3) Treaty of Waitangi considerations**

*All District Plan work is required to take into account the principles of the Treaty of Waitangi (refer to section 8 of the Resource Management Act 1991).*

### **4) Decision-Making**

*The proposed changes to the District Plan are not significant in that they amend existing provisions that were adopted after following required Council decision making and Resource Management Act processes.*

### **5) Consultation**

#### **a) General Consultation**

*Consultation to date has been mostly within the Council. Consultation with the construction industry, community groups and other groups is proposed as the next stage in the process.*

#### **b) Consultation with Maori**

*Initial consultation has been taken place with iwi. Further consultation will take place at the next stage of the process*

**6) Legal Implications**

*The Council's lawyers have been involved in preparation of the draft change to the earthworks rules.*

**7) Consistency with existing policy**

*The draft plan change builds on the existing Wellington Consolidated Bylaw 1991 for earthworks and the existing District Plan provisions for earthworks and heritage. New elements for management of sediment are consistent with the Council's Environmental Strategy and strategic initiatives for stream protection and biodiversity.*

## **APPENDIX 1**

## **APPENDIX 2**