
REPORT 1
(1215/52/IM)

PROPOSED DISTRICT PLAN CHANGE 65 – EARTHWORKS

1. Purpose of Report

The purpose of this report is to recommend to the Committee a proposed district plan change to the rules for earthworks. The change is a complete review of earthworks issues and affects the whole District Plan.

2. Executive Summary

Proposed District Plan Change 56: Earthworks, has been drafted to replace the Earthworks Bylaw. The proposed plan change is also a complete review of all the earthworks objectives, policies and rules in the District Plan. The new 'rules' interact together and most apply in the same way in all Areas (zones) of the City. For this reason the earthworks rules have been removed from the Area based chapters and consolidated into a single issue based chapter of the Plan.

The issues that Plan Change 65 addresses are:

- earthworks stability
- erosion, dust and sediment control
- earthworks associated with streams and wetlands
- flooding hazard of earthworks
- earthworks for tracks
- visual amenity of earthworks – general
- visual amenity of earthworks – suburban coastal areas
- transport of material
- cultural and archaeological material and sites

The Earthworks Bylaw expires on the 30th of June 2008. To avoid any overlap the earthworks plan change will be publicly notified on the 1st of July.

The proposed plan change poses technical and legal problems in relation to other proposed plan changes that have not completed all their statutory processes under the Resource Management Act. It is recommended that the Portfolio Leader for Urban Development be given the authority to approve and sign off proposed plan variations (i.e. changes to plan changes) closer to the date of notification of the earthworks plan change. This will enable minor

amendments to be made to bring current plan changes into the new earthworks approach in Proposed Plan Change 65.

3. Recommendations

It is recommended that the Committee:

1. *Receives the information.*
2. *Agrees to notify Proposed Plan Change 65 (attached as Appendix One and Appendix Two of this report), in accordance with the First Schedule of the Resource Management Act 1991 (the Act), to be publicly advertised on 1 July 2008.*
3. *Agrees to adopt the Section 32 Report for Proposed District Plan Change 65 (attached as Appendix Three of this report).*
4. *Directs officers to prepare proposed plan variations, as necessary in June, to align proposed district plan changes (that have not completed their statutory processes under the Act) with Proposed District Plan Change 65.*
5. *Delegates to the Portfolio Leader for Urban Development, the authority to approve minor editorial changes to Proposed District Plan Change 65, and the authority to sign off the final plan change documentation prior to notification.*
6. *Delegates to the Portfolio Leader for Urban Development, the authority to approve and notify variations to proposed district plan changes, as necessary to align these plan changes with Proposed District Plan Change 65; and to sign off the final plan variation documentation prior to notification.*
7. *Delegates to the Portfolio Leader for Urban Development, the authority to approve minor changes to Proposed District Plan Change 65, as necessary to align the proposed change with other proposed plan changes that become operative between 13 March and 1 July 2008; and the authority to sign off the final plan change documentation prior to notification.*
8. *Delegates to the Portfolio Leader for Urban Development, the authority to approve and sign off minor amendments to the Section 32 Report for Proposed District Plan Change 65 and aligned variations to district plan changes.*

4. Background

In 2005, the Strategy and Policy Committee agree to replace the Earthworks Bylaw with a district plan change (the Bylaw is the present control on earthworks). The main function of the Bylaw is to control the engineering aspects of earthworks, to minimise the risk of landslips and other types of earthworks failure. The main function of the existing District Plan earthworks rules is to address the visual effects of earthworks. The Bylaw will continue to operate until it expires on 30 June 2008, when it will be replaced by the notification of the proposed plan change.

Officers have taken the opportunity of the plan change to fully review all the existing earthworks rules in the District Plan. Beside engineering stability, the main issues the proposed change addresses are erosion, dust and sediment control; earthworks affecting streams and wetlands; the transport of material between properties; the visual appearance of earthworks generally, and their appearance in suburban coastal areas.

5. Discussion

5.1 Targeted consultation

In February 2007, the Committee confirmed the general approach of the proposed earthworks plan change and agreed to undertake consultation with appropriate groups and organisations. The groups and individuals consulted and their responses are summarised in Appendix Four and Five. They are separated into general responses, where the people or organisation responded to all parts of the proposed rules, and responses from people owning coastal properties, who were consulted on a rule to protect the character of coastal properties and their frontages, within the suburban areas of the city.

Two responses were received from professionals concerned with the building and development industry: from GHD Ltd. and Cardno TCB, both planning and engineering consultancies. Detailed responses were also received from the Makara Peak Mountain Bike Park Supporters, the Trelissick Park Group and the Otari/Wilton's Bush Trust. The plan change was also discussed with the Environment Reference Group and its comments are also recorded in Appendix Five.

Twenty nine responses were received from the owners of residential coastal properties. They gave a range of opinions. Nineteen people supported the tighter rule for earthworks (some asked for greater control of associated buildings as well), eight expressed specific concerns, and two opposed the idea of further controls.

5.2 Statutory consultation

Statutory consultation on the plan change has continued since the February 2007 report including with the Policy Team at Greater Wellington Regional Council, the Department of Conservation and Wellington Tenth's Trust and Ngati Toa Rangatira. The Makara Ohariu Community Board has reviewed the details of the plan change for the Rural Area and generally supports it, and the rules have been communicated to the Tawa Community Board.

5.3 Overview of the Proposed Plan Change

Officers consider, given the relative complexity of the rules and their comprehensive nature, that they will work better as a stand-alone chapter that applies to all Areas of the City (Residential, Suburban Centres, Institutional Precincts etc).

The issues that Plan Change 65 addresses are:

- earthworks stability
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The proposed plan change follows the new approach adopted under Plan Change 48 for the Central Area, with greater emphasis put on the policies for earthworks and no assessment criteria under the discretionary activity rule. The policies provide the rational and guidance for assessing applications.

An applicant will only be required to provide information for the aspects of earthworks that fails to meet the permitted conditions (flooding hazard, visual amenity etc), and the application will only be assessed for the area of non-compliance (there is one exception to this, which is discussed under 'erosion, dust and sediment control').

Non-notification of applications

It is proposed that all resource consent applications for earthworks be assessed on a non-notified basis without the need for the application to be publicly notified, or notice being served on people who may be affected in some way, although this does not preclude the notification of an application with significant adverse effects.

The assessment of many of the items is highly technical issues that need to be analysed by appropriate experts.

The replacement of the Earthworks Bylaw with the new rule for earthworks stability means there will be a large number of extra resource consents to be processed (about 400 – 500), which will have significant resource implications. To notify or limited notify applications would also add significantly to the cost and processing time of applications.

Council earthworks

Continuing a tradition already established in the District Plan (earthworks for the upgrading and maintenance of roads), the proposed rules have been drafted to exempt the City Council from the need to get resource consent for various activities such as the construction of tracks and the maintenance of sports fields. This is on the assumption that the Council is a ‘responsible citizen’ and can be relied upon to meet the community’s expectations in environmental matters.

5.4 Earthworks issues

Stability

The proposed rule for permitted activities is based on slope and the depth of cut or fill. These are considered to be the most reliable means of minimising the risk of instability across all sites. It has been developed with consultant advice from Tonkin and Taylor, Environmental and Engineering Consultants.

The rule is more complex than the simple criteria of the Earthworks Bylaw (0.6 metres in depth or 10 cubic metres of earthworks) but it provides for a greater depth and volume of earthworks on gentler slopes. As a general principle the permitted activity allows for small scale earthworks projects, such as levelling, ground contouring and other landscape work. The majority of building projects, including driveways, will require a resource consent, in the same way as they require an Earthworks Bylaw consent at present.

Erosion, dust and sediment control

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 coastal waters and can be detrimental to aquatic life. The proposed rule has been developed and refined in close cooperation with officers at Greater Wellington and uses its published guidelines for controlling sediment.

The mechanism for controlling erosion and sediment has been improved by tying it to applications for stability. As the stability rule replaces the Earthworks Bylaw, the vast majority of resource consent applications will be for stability, allowing them to be assessed for their potential to cause problems with sediment.

A major consideration in drafting the rules has been to avoid, as much as possible, overlap between district plan and regional plan rules, so the applicant will not need to apply for resource consent from both councils. However, there will be some situations when two consents are necessary, for example the harvesting of plantation forests.

Earthworks associated with streams and wetlands

Stream protection was one of the strategic priorities selected by the Councillors as part of the Council's Environmental Strategy. A programme for stream protection was reported to the Committee in March 2007, including a review of existing regulatory options for protecting streams under the District Plan. The proposed plan change is an opportunity to extend the regulatory protection of streams and a proposed rule has been included.

A reason for protecting streams and wetlands is to protect the habitat of fish, insects and other 'animals' and the functioning of the ecosystems that support these species. This is principally the function of the Regional Council under the Act and while this does not preclude the City Council taking on this function it would need to be agreed to by both this council and Greater Wellington. It is noted that the rules in the Regional Freshwater Plan provide very little protection to urban streams from piping or other modification. Despite this, regional council officers actively discourage piping and have successfully negotiated with applicants reductions in the total length of piping / modification.

The District Plan rule is intended to complement the Regional Council's rule and has been drafted in terms of protecting the character and amenity of streams and wetlands, rather than protecting the ecosystem. Further protection could be added at a later time if Wellington City Council and Greater Wellington agree on a new joint approach.

Flooding hazard of earthworks

The rule for earthworks in an identified Hazard (Flooding) Area continues the existing rule. A new policy criterion is proposed directing the applicant and the Council to consider 'soft' engineering practices, that are visually softer and have less effect on the stream life.

Earthworks for tracks

This rule continues the existing rules for Open Space Area and Conservation Sites that permit walking / cycling tracks to be formed without resource consent. A condition has been added requiring a written agreement with Parks and Gardens on measures to minimise instability and sediment runoff from the earthworks.

Visual amenity of earthworks – general

Rules concerned with the visual effects of earthworks are already a feature of the District Plan. The permitted activity condition requiring resource consent for earthworks exceeding 2.5 metres remains the same. The policy has been rewritten to provide more specific guidelines to applicants and those assessing applications.

Visual amenity of earthworks – suburban coastal areas

The suburban coastal environment is a distinctive component of Wellington City's character. Earthworks on the coastal escarpments and headlands and frontages on the landward side of roads are often highly visible and particularly damaging to the coastal character. Thin soils and the coastal climate make revegetation of earthworks difficult.

The controls restrict not just earthworks on steep slopes but also buildings (slopes steeper than an angle of 1.5 horizontal to 1 vertical, or approximately 34 degrees are proposed). This enables consideration of whether the earthworks and associated structures will enable a building to be constructed and can be declined if the proposal is judged to be inappropriate to its location.

The earthworks rules have also been extended to include non-residential properties (properties located in the Suburban Centre or Open Space Areas). The owners of these properties have not yet been consulted but will have the opportunity to have their say through the submission process.

Transport of material

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. It will separate large projects, requiring the transport of material, from smaller projects for small subdivisions or house construction.

This is a new issue for the District Plan. The thresholds for moving material (e.g. earth or commercial hard fill) are set in cubic metres, which provides a practical unit of measure as it can be converted to truckloads (a large truck with no trailer, holds approximately 10 cubic metres). Depending on the Area of the City and the access to major roads, the permitted condition ranges from 100m³ to 2000m³.

Protection of cultural and archaeological values

The iwi authorities (Wellington Tenth's Trust and Ngati Toa Rangatira) are concerned about the possible destruction of koiwi (human remains), taonga and sites of significance to iwi. It is proposed to introduce a policy and a note in the rules to address this issue.

The policy addresses the possible loss of Maori and non-Maori cultural and material or archaeological sites. It provides the basis for requiring applicants to provide information when seeking resource consent for other aspects of earthworks and for conditions on resource consents requiring work to stop if material is discovered. The note is included with the permitted activity rules to advise people that archaeological sites are protected under the Historic Places Act 1993. It recommends that they stop earthworks immediately and advise the New Zealand Historic Places Trust (NZHPT) and the two iwi authorities.

5.4 Plan changes and plan variations

The proposed earthworks rules are drafted as a district plan change to the Operative District Plan. The Council has a number of proposed district plan changes that have been publicly notified but which haven't completed their statutory processes under the Act, to become operative. They have interrelationships with the earthworks plan change and it is important that the wording of all the changes is consistent. To achieve this it will be necessary to vary some of the plan changes that have already been notified. This requires a proposed district plan variation, which must be publicly notified in the same way as the plan change that it varies.

Eight proposed plan changes are affected by the proposed earthworks plan change. The most significant are Plan Change 33 (Ridgelines and Hilltops and Rural Area), Plan Change 43 (Heritage Objectives, Policies and Rules) and Plan Change 45 (Urban Development Area and Structure Plans).

With four months to the notification of the proposed earthworks plan change it is difficult to predict which of the other proposed plan changes will be approved by the Council without appeal, or successfully settled at the Environment Court. For this reason this report recommends the delegation of authority to the Portfolio Leader of Urban Development to approve and notify variations to district plan changes to align these plan changes with the proposed earthworks plan change, and to sign off the final proposed plan variation documents. It is also recommended that the Portfolio Leader is given authority to approve and sign off minor amendments that may be required to the Section 32 Report (the formal consideration of alternatives, benefits and costs required by the Act – see Appendix Three).

5.5 Implementation project

A cross-divisional team is also examining the best way to coordinate the processing of the applications under the new rules, and integrate of the existing bylaw consent processes with those for resource consents. This will consider impacts on staff resources, delegated decision authorities and application fees. The project is being lead by the Local Area Planning and Building Approvals units.

6. Conclusion

Proposed District Plan Change 65: Earthworks, has been drafted to replace the Earthworks Bylaw, which expires on the 30th of June 2008. The proposed plan change is also a complete review of all the earthworks objectives, policies and rules in the District Plan. The new 'rules' interact together and most apply in the same way in all Areas (zones) of the City. For this reason it is proposed that the earthworks rules from are consolidated into a single issue based chapter of the Plan.

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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).

The Iwi Authorities have been consulted on the preparation of the plan change.

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 has been with the construction industry, community groups and other groups; and residents of coastal properties

b) Consultation with Maori

Consultation has been taken place with the Iwi Authorities: Wellington Tenth's Trust and Ngati Toa Rangatira

6) Legal Implications

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

7) Consistency with existing policy

The proposed 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 the control of sediment and the protection of streams and wetlands are consistent with the Council's Environmental Strategy and the strategic initiatives for stream protection and biodiversity.