
REPORT 1
(1215/11/IM)

DECISION ON PROPOSED DISTRICT PLAN CHANGE 70 EARTHWORKS

1. Purpose of Report

To report to Council the recommendations of the District Plan Hearings Commissioner concerning Proposed District Plan Change 70 Earthworks.

2. Executive Summary

The Hearing Commissioner has considered all written and oral submissions on Plan Change 70 and made its decisions accordingly. Some changes have been made to improve the workability of the rules in response to submitters concerns, but the fundamental approach adopted in the notified plan change remains intact.

3. Recommendations

It is recommended that Council:

- 1. Receive the information.*
- 2. Approve proposed District Plan Change 70 including the amendments arising from the hearing of submissions as detailed in the Hearing Report and set out in Appendix One and Two.*
- 3. Note that an appeal may be lodged within 30 working days from the notification of this decision.*

4. Background

District Plan Change 70 was prepared to amend the way earthworks are managed. Plan Change 70 places all provisions for earthworks in two new chapters of the District Plan and deletes existing earthworks provisions from the Operative Plan.

The key aspects of the new rules are:

- Cuts and fills are permitted to a height of 1.5m (subject to conditions relating to distance from boundaries, slope angle and maximum area); or up to 2.5m if a structure authorised by a building consent is to retain the cut or fill (subject to a maximum area condition);
- Cuts and fills are permitted up to 2.5m for farm tracks in the Rural Area;

- In visually sensitive areas (the Urban Coastal Edge, Ridgelines and Hilltop Overlay areas, Open Space B, Conservation Sites, and Heritage Areas and sites containing Heritage Items) cuts and fills are permitted to a maximum height of 1.5m (subject to conditions relating to distance from boundaries, slope angle and maximum area);
- Activities which do not meet the permitted activity standards are discretionary (restricted) activities.

The Plan Change was notified on 18 July 2009 and generated 26 submissions and nine further submissions. The hearing of submissions was held on 10 December 2010. Nine submitters appeared at the hearing.

5. Discussion

5.1 Overview of Decision

A range of submissions which supported, requested changes or opposed the Plan Change were received. There were no obvious or consistent themes, with submissions seeking a wide variety of changes to different parts of the Plan Change.

Submissions included requests for: increasing or decreasing the cut/fill thresholds; additional engineering related performance standards; exclusions for specific activities or operations and additional provisions for the protection of streams/waterways.

The hearing commissioner recommends the following key changes to the Plan Change as notified (Appendix 1):

- the inclusion of a separate earthworks rule for the Central Area;
- the exclusion of the Airport and Golf Course Precinct from the earthworks rules (specific rules were introduced by Plan Change 57);
- the exclusion of 'the removal of underground petroleum storage systems' (introduced by Plan Change 69 Contaminated Land) from the Earthworks Rules;
- the inclusion of more information about the process required under the Historic Places Act if an archaeological site is discovered during earthworks;
- the inclusion of additional assessment criteria for assessing earthworks in Heritage Areas or on sites containing Heritage Items;

- the inclusion of specific provisions for earthworks near high voltage transmission lines;
- the inclusion of existing earthwork provisions (from Plan Change 62) for the Churton Park Village Concept Area; and
- amended the definition of 'cut height'.

The Plan Change, annotated to include the recommendations is attached as Appendix 2.

5.2 Consultation and Engagement

The issues addressed in this plan change were initially raised with the community during the development of Plan Change 65 Earthworks (which was subsequently withdrawn) and then through the submission period required as part of the RMA First Schedule process.

5.3 Financial Considerations

There are no specific OPEX or CAPEX proposals directly related to this paper.

It is noted that funding will be required in order to resolve any appeals that may be received following the release of the decision. A number of concerns held by submitters have been resolved through the submission stage, but it is possible that appeals may still be made against some aspects of the decision.

5.4 Climate Change Impacts and Considerations

The changes to the earthworks rules are unlikely to create any discernable climate change impacts.

5.5 Long-Term Council Community Plan Considerations

This plan change is consistent with the Urban Development Strategy.

6. Conclusion

The Hearing Commissioner has considered all submissions on this Plan Change and, where appropriate, has modified the notified provisions of the plan change in response to submissions.

Once approved by Council the decision will be publicly notified and served on the parties. They have the option of appealing the matter to the Environment Court within 30 working days. If no appeals are made, Plan Change 70 will become fully operative.

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Supporting Information

(1) Strategic Fit / Strategic Outcome

The District Plan changes support goals and outcomes desired by the Urban Development Strategy.

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

There are no OPEX or CAPEX proposals directly related to the Plan Change.

(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 proposals to change the District Plan are in accordance with Council's wider strategic framework and the decisions made on submissions maintain the original intent of the notified provisions. Elements of the plan change seek to enhance protection for elements of the city that contribute to the city's sense of place (i.e. heritage values and the urban coastal edge).

(5) Consultation

(a) General Consultation

The notified plan change reflected the advice and feedback from consultation and submissions on Plan Change 65 (which was subsequently withdrawn). The decision report discusses the submissions received and decisions made on those submissions.

(b) Consultation with Maori

The Wellington Tenth Trust and Te Runanga o Toa Rangatira were advised of the plan change, but held no particular concerns.

(6) Legal Implications

A legal peer review was carried out on the plan change, with further follow up legal review done on specific issues. No further legal input was required as a result of the Committee decisions.

(7) Consistency with existing policy

The Plan Change is consistent with other Council policy.