

SECTION 32 REPORT

PLAN CHANGE 24, HAURAKI GULF ISLANDS

REVIEW OF EARTHWORKS CONTROLS

1.0 Background

1.1 Introduction

In 1999, the Council commissioned Hill Young Cooper Limited to undertake a review of the earthworks, indigenous vegetation and lot coverage controls applying in the Hauraki Gulf Islands Section of the Council's District Plan ('the HGI Plan' or 'the Plan'). The HGI Plan has been operative since June 1996 and this work was commissioned as part of a progressive review. Hill Young Cooper was asked to focus on whether the practical application of the rules actually achieved the stated outcomes. The resulting report by Hill Young Cooper¹ suggested several changes to the existing earthworks controls. In particular, it recommended replacing the existing cubic metre earthworks control with a control based on exposed area (square metres) and slope. The consent thresholds could then be better linked to the adverse sedimentation effects of earthworks.

Building on the conclusions of the Hill Young Cooper report, the Council produced a discussion paper in October 2000 entitled 'Review of the Gulf Earthworks Rules'. The discussion document included a draft plan change and public comments were invited. Eleven individuals or groups provided written comments. Public meetings about the discussion paper were also held on Great Barrier Island, Waiheke Island and at the Civic Building.

The main amendments contained within the draft Plan Change were as follows:

- introduction of a square metre 'exposed surface' limit and a maximum slope angle for permitted activities;
- introduction of an intermediate 'restricted discretionary activity' category and associated assessment criteria for earthworks;
- removal of the ability to undertake earthworks up to the permitted thresholds on a 'per 12 month period';
- clarification of the information requirements for earthworks applications for resource consent.

As the result of the discussion paper process, a number of issues were identified which required further consideration prior to notification of a Plan Change. Additional specialist work was undertaken for the Council in 2001 and 2002 by Brian Handyside of Erosion Management Ltd², and Melean Absolum (Landscape Architect) of Melean Absolum Ltd³.

¹ Hill Young Cooper, *Hauraki Gulf Islands – Review of Earthworks, Indigenous Vegetation and Lot Coverage Mechanisms*, November 1999

² Erosion Management Ltd, *Review of Earthworks Provisions, Hauraki Gulf Islands Section, Auckland District Plan*, February 2002

³ Melean Absolum Ltd, *Hauraki Gulf Islands: District Plan Review. Earthworks Provisions*, April 2002, and *Supplementary Report*, May 2002

1.2 Existing Earthworks Rules

Currently the following parts of the HGI Plan include specific controls on earthworks:

Part 6B – Standards for Permitted Activities

- Clause 6B.1.1.5 Rooding
- Clause 6B.1.3.6 Earthworks
- Table 1 – Standards for Permitted Activities, Row 3.6

Part 6C – Standards for Discretionary Activities

- Clause 6C.1.1.5 Rooding
- Clause 6C.1.3.6 Earthworks
- Table 2 – Standards for Non-Notified Activities, Row 3.6
- Table 3 – Standards for Discretionary Activities, Row 3.6

Part 7 – Policy Areas

- Policy Area 1 (Tryphena) – Clauses 7.1.3.1, 7.1.3.2, 7.1.3.3B, 7.1.3.4
- Policy Area 2 (Medlands) – Clauses 7.2.3.1, 7.2.3.2, 7.2.3.3B, 7.2.3.4
- Policy Area 3 (Claris) – Clauses 7.3.3.1, 7.3.3.2, 7.3.3.3D, 7.3.3.4, 7.3.3.5
- Policy Area 4 (Port Fitzroy) – Clauses 7.4.3.1, 7.4.3.2, 7.4.3.3B, 7.4.3.4
- Policy Area 5 (Oneroa) – Clauses 7.5.3.1, 7.5.3.2, 7.5.3.4
- Policy Area 6 (Onetangi) – Clauses 7.6.3.1, 7.6.3.2, 7.6.3.3F, 7.6.3.4
- Policy Area 7 (Okahuiti-Ostend-Tahi) – 7.7.3.1, 7.7.3.2, 7.7.3.4
- Policy Area 8 (Rangihoua Park) – Clauses 7.8.3.1A & D, 7.8.3.3B & D, 7.8.3.4, 7.8.3.5

Part 11 – Definitions

- Definition of earthworks

Summary of Existing Rules

- 1 The following activities are exempt from the standard earthworks controls:
 - gardening for domestic purposes and horticulture;
 - works to provide for effluent disposal systems and pile foundations;
 - utility trenching;
 - the use, maintenance and upgrading of existing formed roads.
- 2 Earthworks in Land Unit 16 Quarrying are controlled by the requirement for a Quarry Management Plan.
- 3 A discretionary activity resource consent is required for all earthworks in Land Units 1 and 4.
- 4 Subject to conditions, including requirements for erosion and sediment control, and a provision that face height shall not exceed 2m, earthworks are permitted within any 12 month period up to the following limits in the various land units:
 - 5m³ in Land Units 2 & 9;
 - 10m³ in Land Units 3, 17, 19 & 25;
 - 20m³ in Land Units 7, 11-15, 18, 20-24;
 - 30m³ in Land Units 6, 8 & 10;
 - 50m³ in Land Unit 5.

- 5 Earthworks exceeding the above limits are a discretionary activity. The Plan sets the following limits for discretionary activities to be dealt with on a non-notified basis:
 - 20m³ in Land Units 1, 2, & 4;
 - 50 m³ in Land Units 3, 7, 9, 11-15, 17-19, 25;
 - 100m³ in Land Units 5, 6, 8, 10, 20-24.
- 6 A controlled activity resource consent is required for all earthworks in the eight Policy Areas.

1.3 Proposed Earthworks Rules

It is proposed to amend the existing earthworks rules by means of a Plan Change. The Plan Change is summarised below.

- 1 Alterations to the definition of earthworks as follows:
 - The definition now specifically refers to cleanfill operations (not including material subject to biological breakdown);
 - The current exemptions for pile foundations are removed;
 - The current exemptions for utility trenching and effluent disposal systems are removed but these still provided for as a permitted activity within most land units under Part 6B;
 - New exemptions are added for –
 - cultivation associated with horticulture or agriculture
 - the digging of holes for the erection of posts
 - the cleaning and maintenance of farm drainage canals.
- 2 The use, maintenance and upgrading of existing formed roads is now required to comply with erosion and sediment control guidelines though a resource consent is not required.
- 3 Noise resulting from earthworks activities is now required to comply with specified noise limits which are based on NZS 6803: 1999 Acoustics – Construction Noise.
- 4 No change to the requirements in Land Unit 16 Quarrying.
- 5 A restricted discretionary resource consent is required for all earthworks in Land Units 1, 2 and 4.
- 6 A restricted discretionary resource consent is required for all earthworks which result in more than 200m³ of fill being transported by public road either to or from the area subject to earthworks.
- 7 Subject to conditions specifying noise standards and requiring sediment control and to the 200m³ limit on transported fill, 50m² of earthworks is permitted as of right in Land Units 3, 5-15, 17-25 on land with a slope of greater than 1 in 6.
- 8 Subject to conditions specifying noise standards and requiring sediment control and to the 200m³ limit on transported fill, 400m² of earthworks is permitted as of right in Land Units 3, 5-15, 17-25 on land with a slope of 1 in 6 or less.
- 9 Unless specified elsewhere, earthworks which are not a permitted activity are a restricted discretionary activity.
- 10 No earthworks is permitted as of right in wetland / water systems yards.

- 11 The existing 'not permitted' standard for vehicle access in Land Unit 9 is replaced with a 1 in 6 permitted activity standard.
- 12 The Plan Change clarifies the information requirements for earthworks applications and sets out new assessment criteria.
- 13 Changes are made to the Policy Areas as follows:
 - Earthworks in Policy Area 5 – Oneroa are no longer a controlled activity;
 - Earthworks within the Ostend sub-area of Policy Area 7 – Okahuiti-Ostend-Tahi are no longer a controlled activity;
 - A specific criteria relating to earthworks is added to the list of controlled activity assessment criteria applying in the Okahuiti and Tahi sub-areas of Policy Area 7;
 - A clause applying in Policy Area 8 – Rangihoua Park is amended to make it clear that a controlled activity resource consent is required for earthworks within the Recreational Amenity Area and the Landscape Amenity Area⁴.

2.0 Part II, Sections 31, 32, 72 and 76 of the Resource Management Act

2.1 Statutory Requirements

Before adopting an objective, policy or rule or other method in the District Plan, an assessment under Section 32 of the Resource Management Act must be carried out. Section 32(1) states as follows:

- (1) In achieving the purpose of this Act, before adopting any objective, policy, rule, or other method in relation to any function described in subsection (2), any person described in that subsection shall-
 - (a) Have regard to-
 - (i) The extent (if any) to which any such objective, policy, rule, or other method is necessary in achieving the purpose of this Act; and
 - (ii) Other means in addition to or in place of such objective, policy, rule, or other method which, under this Act or any other enactment, may be used in achieving the purpose of this Act, including the provision of information, services, or incentives, and the levying of charges (including rates); and
 - (iii) The reasons for and against adopting the proposed objective, policy, rule, or other method and the principal alternative means available, or of taking no action where this Act does not require otherwise; and
 - (b) Carry out an evaluation, which that person is satisfied is appropriate to the circumstances, of the likely benefits and costs of the principal alternative means including, in the case of any rule or other method, the extent to which it is likely to be effective in achieving the objective or policy and the likely implementation and compliance costs; and
 - (c) Be satisfied that any such objective, policy, rule, or other method (or any combination thereof)-
 - (i) Is necessary in achieving the purpose of this Act; and
 - (ii) Is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means.

⁴ A discretionary activity consent is required for earthworks within the Heritage Protection Area or the Conservation Protection Area of the Rangihoua Park Policy Area as provided for in Clause 7.8.3.5A(b) of the Plan.

In *Nugent Consultants Limited v the Auckland City Council* (Decision No A33/96) the Environment Court stated that:

... a rule in a proposed district plan has to be necessary in achieving the purpose of the Act, being the sustainable management of natural and physical resources (as those terms are defined); it has to assist the territorial authority to carry out its function of control of actual or potential effects of the use, development or protection of land in order to achieve the purpose of the Act; it has to be the most appropriate means of exercising that function; and it has to have a purpose of achieving the objectives and policies of the plan.

Section 32 matters are assessed below under the following headings:

- Whether the proposed rules are necessary in achieving the purpose of the Act;
- Whether the proposed rules assist the Council to carry out its function of control of actual or potential effects of the use, development or protection of land;
- Whether the proposed rules are the most appropriate means of exercising that function
 - Having regard to alternative means of achieving the purpose of the Act, including non-statutory means
 - Having regard to the reasons for and against adopting the proposed rules, the principal alternative means, or of taking no action
 - Evaluation of the benefits and costs of the proposed rules and the principal alternative means (including efficiency, effectiveness at achieving the objective, likely implementation and compliance costs);
- Whether the proposed rules have the purpose of achieving the objectives and policies of the Plan.

2.2 Whether the Proposed Rules are Necessary in Achieving the Purpose of the Act

Purpose of the Act

Section 5 of the Resource Management Act describes its purpose to be:

- (1) The purpose of this Act is to promote the sustainable management of natural 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.

Environment is defined in Section 2 of the RMA as including:

- (a) Ecosystems and their constituent parts, including people and communities; and
- (b) All natural and physical resources; and
- (c) Amenity values; and

- (d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters.

Section 6 of the RMA identifies matters of national importance, which need to be recognised and provided for in achieving the purpose of the Act. The following matters are of relevance to the current proposal:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- ...
- (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

Section 7 deals with ‘other matters’ which, in achieving the purpose of this Act, persons exercising functions and powers under the Act shall have particular regard to. These matters are of particular relevance to the current appeal:

- (a) Kaitiakitanga:
- (aa) The ethic of stewardship:
- (b) The efficient use and development of natural and physical resources:
- (c) The maintenance or enhancement of amenity values:
- (d) Intrinsic value of ecosystems”
- ...
- (f) Maintenance or enhancement of the quality of the environment:
- (g) Any finite characteristics of natural and physical resources.

Section 8 provides that in achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti O Waitangi).

Necessity in Achieving the Purpose of the Act

The proposed rules provide for earthworks while ensuring that any adverse effects are avoided, remedied or mitigated. This is a means of achieving the purpose of the Act under Section 5(1), which is “*to promote the sustainable management of natural and physical resources*”.

The rules recognise that a certain level of earthworks will occur on the island in conjunction with activities such as the formation of dwelling sites and associated access. While the rules seek to control the effects of earthworks they also enable “*people and communities to provide for their social, economic, and cultural well being and for their health and safety*” [Section 5(2)].

The proposed rules are in keeping with the need to minimise the potential for erosion and sedimentation, and protect the natural environment. Uncontrolled earthworks can remove or smother vegetation and cause silt runoff into streams, wetlands, and coastal waters. This silt can smother aquatic life and affect fish feeding and breeding areas. The proposed rules are consistent with “*sustaining the potential of natural and physical resources (excluding*

minerals) to meet the reasonably foreseeable needs of future generations”, “safeguarding the life-supporting capacity of air, water, soil, and ecosystems”, and “avoiding, remedying, or mitigating any adverse effects of activities on the environment” [Section 5(2)(a) (b) (c)].

Section 6 identifies matters of national importance which need to be recognised and provided for in achieving the purpose of the Act. The proposed rules are in accordance with the requirement in subsection 6(a) to protect coastal environments and wetlands. The proposed rules will also contribute to subsection 6(b) which refers to the protection of outstanding natural features and landscapes.

Section 6(e) refers to *“the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga”* as a matter of national importance. Sections 7(a) and (b) require particular regard to be given to kaitiakitanga and the ethic of stewardship. Earthworks can result in the disturbance or destruction of archaeological or cultural heritage sites of significance to Iwi. This issue will be considered in more detail later in this report.

The proposed rules are in keeping with *“the ethic of stewardship”* and provide for *“the efficient use and development of natural and physical resources”* and *“the maintenance of amenity values”* [Section 7(b) and (c)]. The rules also recognise the *“intrinsic value of ecosystems”*, will assist in the *“maintenance and enhancement of the quality of the environment”*, and has regard to *“finite characteristics of natural and physical resources”* [Section 7(f) and (g)].

2.3 Whether the Proposed Rules Assist the Council to Carry Out its Function of Control of Actual or Potential Effects of the Use, Development or Protection of Land

2.3.1 Statutory Requirements

Both the Auckland City Council and the Auckland Regional Council have functions under the RMA related to the control of earthworks. Under Section 30 of the Act, the ARC has the function of controlling the use of land for the purpose of soil conservation, and the maintenance and enhancement of water quality [Section 30(1)(c)]. Under Section 31 of the Act, the functions of the Auckland City Council include *“The control of any actual or potential effects of the use, development, or protection of land”* [Section 31(b)].

Section 72 of the RMA states as follows:

The purpose of the preparation, implementation, and administration, of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act.

The following provisions of Section 76 of the Act are also relevant:

- (1) A territorial authority may, for the purpose of –
 - (a) Carrying out its functions under this Act; and
 - (b) Achieving the objectives and policies of the plan, -include in its district plan rule which prohibit, regulate, or allow activities.
- ...
- (3) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities, including, in particular, any adverse effect;

and rules may accordingly provide for permitted activities, controlled activities, discretionary activities, non-complying activities, and prohibited activities.

2.3.2 Potential Adverse Effects

Potential adverse effects from earthworks in the HGI include:

- Sediment and erosion effects;
- Stability effects;
- Effects on archaeological and cultural heritage sites;
- Visual effects;
- Noise effects;
- Traffic effects.

These effects will be further outlined below, together with an assessment of the extent to which the Plan Change will assist the Council to control them.

2.3.2.1 Sediment and Erosion Effects

The sediment runoff associated with earthworks can have an adverse effect on streams, wetlands and coastal systems. Aquatic life can be adversely affected by smothering, reduced light penetration, scouring and abrasion. Sediment also provides particles for other pollutants to attach to, carrying them into water systems. These adverse effects can be minimised by undertaking erosion and sediment control measures in association with earthworks. Erosion control measures aim to prevent the generation of sediment. Sediment control measures aim to minimise the amount of sediment leaving exposed areas.

In preparation of this Plan Change, the Council has obtained expert advice on erosion and sediment issues from Erosion Management Ltd (EML). The report from EML forms part of the Section 32 material. The information in the report assisted in the identification of appropriate permitted activity thresholds for earthworks having regard to potential sediment and erosion effects.

The Plan Change assists the Council to control sediment and erosion effects by:

- Specifying that earthworks which are a permitted activity must comply with development standards requiring erosion and sediment controls;
- Setting a threshold at which earthworks require a resource consent based partly on the potential for adverse erosion and sedimentation effects;
- Setting out assessment criteria and information requirements for resource consents which enable the Council to minimise sediment and erosion effects.

2.3.2.2 Stability Effects

Related to sediment and erosion effects, is the potential for instability. Earthworks can adversely affect the stability of the property on which it is occurring, and neighbouring properties. Neighbouring properties are more likely to be adversely affected if excavation occurs close to the boundary.

Where a building consent is required, such as for a retaining wall or a dwelling, stability issues can be addressed as part of the Building Act 1991. The Plan Change does not include any specific controls to restrict excavation in the vicinity of adjacent sites. However there are civil law requirements which apply if earthworks on one property cause instability on a neighbouring property.

The Plan Change assists the Council to control the stability effects associated with earthworks by:

- Specifying that earthworks which are a permitted activity must comply with development standards requiring erosion and sediment controls;
- Setting a threshold at which earthworks require a resource consent based partly on the potential for adverse erosion and sedimentation effects;
- Setting out assessment criteria and information requirements for resource consents which enable the Council to minimise sediment and erosion effects.

2.3.2.3 Effects on Archaeological and Cultural Heritage Sites

Earthworks can result in disturbance or destruction of archaeological or cultural heritage sites of significance to Iwi.

There is already a legal requirement under Section 10 of the Historic Places Act for persons to obtain authorisation from the Historic Places Trust before an archaeological site can be lawfully destroyed, damaged or modified.⁵ The definition of ‘archaeological site’ is as follows:

“Archaeological site” means any place in New Zealand that –

- (a) Either –
 - (i) Was associated with human activity that occurred before 1900; or
 - (ii) Is the site of the wreck of any vessel where that wreck occurred before 1900; and
- (b) Is or may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand:

The Plan lists 31 scheduled archaeological and Maori heritage sites for the inner islands but none for the outer islands (refer Appendix B.3 of the Plan). A resource consent is required for works affecting a scheduled site. The Heritage Division of the Council has commenced work to identify, in conjunction with Iwi, additional sites which met the criteria for scheduling in the Plan. A Plan Change would be required to add additional items to the schedule. In the interim, the Heritage Division is preparing indicative maps of known or suspected archaeological sites on Great Barrier Island to assist Council officers and applicants. Where a resource consent is sought for works in the vicinity of a suspected site, the applicant may be required to provide an assessment undertaken by an archaeologist.

The Plan Change assists the Council to control effects on archaeological and cultural heritage sites by:

- Requiring works to cease and the Council and Historic Places Trust to be advised where evidence of a burial site or any other archaeological feature is exposed during earthworks;
- Setting out an assessment criterion for resource consents which refers to protection and management measures for heritage items or sites of cultural significance.

⁵ Section 10(1) of the Historic Places Act states as follows:

“Except pursuant to an authority granted under section 14 of this Act, it shall not be lawful for any person to destroy, damage, or modify, or cause to be destroyed, damaged, or modified, the whole or any part of any archaeological site, knowing or having reasonable cause to suspect that it is an archaeological site.”

2.3.2.4 Visual Effects

Earthworks can have an adverse visual effect due to the removal of vegetation and the alteration of landforms. Visual effects are most obvious during the construction phase but reduce over time if planting is established around the new building or driveway. The potential for adverse visual effects is greater in coastal landscapes and where the altered landform is visible from public places such as roads, reserves, and the sea.

As well as the earthworks controls applying within the land units, there are other existing controls in the District Plan which address the visual effects of undertaking earthworks and / or locating buildings in prominent locations. Existing controls include:

- A requirement for a controlled activity consent where it is proposed to erect, alter or add to any building in Land Units 12, 17, 18, 19, 20, 21, 22, 23 and 24, or to any building within the coastal amenity area in Land Unit 11. The assessment criteria refer to landscape and visual amenity issues and, with the exception of Land Unit 11, to the need to undertake any associated earthworks in a manner which creates minimum disturbance to the landform and character of the site;
- A requirement for a discretionary activity consent for any building in Land Units 1 and 4;
- A requirement for a controlled activity consent where it is proposed to erect, alter or add to any building; or undertake earthworks in any of the seven policy areas identified in the Plan (Typhena, Medlands, Claris, Port Fitzroy, Oneroa, Onetangi, Okahuiti-Ostend-Tahi)⁶. In Policy Areas 1-4, and 6, assessment criteria for both buildings and earthworks include visual and landscape concerns. It is also specified that earthworks shall be carried out so visual impacts and alteration to the predominant natural landform is minimised. In Policy Areas 5 and 7, the assessment criteria for the scale and form of buildings include landscape concerns;
- Restrictions on the location of buildings within 100 metres either side of a significant ridgeline as identified on the Planning Maps.

In the preparation of this Plan Change, the Council has obtained expert advice on landscape effects from Melean Absolum Ltd. The resulting visual assessment reports form part of the Section 32 material. The information in the report has assisted in the determination of appropriate permitted activity thresholds for earthworks having regard to visual effects.

Melean Absolum Ltd was asked to comment on an earlier draft of the Plan Change. Her report recommended several changes to the draft Plan Change to better address landscape effects. The changes recommended and the action taken are outlined below.

Recommendation	Action Taken
Extend restricted discretionary status to all earthworks within LU2 Dune Systems and Sand Flats.	Now included within Plan Change.
Consider extending restricted discretionary status to all earthworks within LU5, LU6, LU7, LU9.	Not acted upon.
Strengthen the assessment criteria which addresses visual effects.	Now included within Plan Change.

⁶ As outlined in Section 1.3, the Plan Change proposes to remove the earthworks controls from all of Policy Area 5 – Oneroa, and part of Policy Area 7 – Okahuiti-Ostend-Tahi.

Recommendation	Action Taken
Change the activity status for earthworks in Policy Areas from controlled to a restricted discretionary status.	Not acted on. This is more appropriately dealt with in the context of an in-depth review of the Policy Areas.
Include an assessment criteria for earthworks within the Okahuiti and Tahi sub-areas of Policy Area 7.	Now included within Plan Change.
Include in Policy Area 7 – Rangihoua Park an assessment criteria dealing with potential adverse effects on landforms.	Not acted upon. The existing assessment criteria are sufficiently general to enable consideration of visual effects.
The earthworks controls could be removed from Policy Area 5 – Oneroa, and from the Ostend sub-area of Policy Area 7 – Okahuiti-Ostend-Tahi as these areas are already substantially developed.	Now included within Plan Change.

Melean Absolum Ltd was also asked to comment on the current version of the Plan Change which is more permissive than the earlier draft initially provided as the permitted activity threshold had been increased from 1 in 20 (5%), to 1 in 6 (16.7%). This meant that a greater amount of earthworks was now permitted on land with a slope between 5% and 16.7%. Melean Absolum Ltd concluded that the more permissive controls had the potential to result in adverse visual effects on the upper slopes of the ridges on Waiheke Island and on the edges of the coastal slopes on Great Barrier Island.

The Plan Change assists the Council to control visual effects by:

- Including information requirements and assessment criteria for resource consents which enable the Council to minimise adverse visual effects.

2.3.2.5 Noise Effects

Heavy machinery undertaking earthworks can cause noise disturbance to neighbouring properties. Heavy earthmoving machinery operating near habitable buildings would not be able to keep within the limits specified for permitted activities in Clause 6B.1.3.5 of the Plan. As noise from earthworks is generally of limited duration, a higher noise level is usually tolerated provided it is no louder than necessary, and occurs within appropriate hours of the day.

The Plan Change assists the Council to control the effects of noise from earthworks by:

- Including a permitted activity standard which is based on the noise limits set out in the New Zealand Standard NZS 6803:1999 Acoustics – Construction Noise;
- Including information requirements and assessment criteria for resource consents which enable the Council to take into account the hours of operation and duration of earthworks activities.

2.3.2.6 Traffic Effects

Earthworks operations may involve heavy vehicles taking spoil to or from a site. Adverse effects associated with this include noise, road damage, and safety for pedestrians and vehicles particularly where trucks have difficulty accessing the site.

The Plan Change assists the Council to control the effects of traffic associated with earthworks by:

- Requiring a restricted discretionary activity consent where more than 200m³ of fill is transported by public road either to or from the area subject to earthworks;
- Including a permitted activity standard which states that no material shall be deposited on the road;
- Including information requirements and assessment criteria for resource consents which enable the Council to address maintenance of public roads and road safety.

2.4 Whether the Proposed Rules are the Most Appropriate Means of Exercising that Function

2.4.1 Alternative Means

2.4.1.1 Introduction

The Council is required to have regard to other means which may be used in achieving the purpose of the Act. This includes non-statutory means such as the provision of information, services, or incentives, and the levying of charges (including rates).

The following alternative means are considered under headings below:

- Retain existing rules;
- Provide additional advice and education;
- Increase monitoring and enforcement;
- Require consent for all earthworks in the HGI;
- Introduce a modified Plan Change with a lower slope threshold for requiring resource consents;
- Take no action (also known as the ‘do nothing’ option);
- Rely on ARC controls and Building Act requirements.

2.4.1.2 Retain Existing Rules

One alternative would be to retain the existing earthworks rules (which have been summarised in Section 1.2 of this report).

When accompanied by advice, education, compliance checking and monitoring, the existing rules can be relatively effective at controlling the adverse effects of earthworks. However with some modification the existing rules can be made more effective by setting consent thresholds at a level which is more precisely linked to the potential for significant adverse effects. Increased effectiveness would also result from the introduction of a requirement for the use, upgrading and maintenance of existing formed roads to comply with erosion and sediment control guidelines. Efficiencies will result from the introduction of a restricted discretionary consent category and related assessment criteria. This means that the Council’s assessment of a resource consent application must be confined to the effects specifically listed in the Plan and not broadened to include the general effects of the development in its entirety. Subject to Section 94(5)⁷ of the Resource Management Act, restricted discretionary activities will also be dealt with on a non-notified basis and without the need to obtain written consent of affected parties. The non-notified process enables quicker processing, more focussed assessment of effects, reduced resource consent costs, and eliminates the possibility of third party appeals to the Environment Court.

⁷ Under Section 94(5), if the Council considers that special circumstances exist it may require an application to be publicly notified even if the Plan expressly provides that it need not be so notified.

2.4.1.3 Provide Additional Advice and Education

Advice and education is most effective as a complementary provision to statutory means which require certain actions to be taken and include means of enforcement. The effectiveness of advice and education also depends on the quality of the information, the method of delivery, who it is provided to, and the willingness and ability of people to act on the information.

Both the Council and the ARC are working to improve the quality of advice and information available to staff and external parties involved in earthworks in the HGI. Initiatives include:

- encouragement for Council staff to attend the Erosion and Sediment Control Education Programme run by the ARC;
- seminars run by the ARC and Council staff for earthworks contractors in the HGI;
- encouraging on site meetings between Council enforcement officers and contractors prior to commencement of earthworks;
- information produced by ARC and the Council setting out erosion and sediment control techniques.

The Plan Change inserts into the Plan a non-statutory annexure which outlines appropriate erosion and sediment control measures for earthworks.

2.4.1.4 Increase Monitoring and Enforcement

This option involves increased monitoring and enforcement of earthworks activities in the Islands to ensure that earthworks are undertaken in accordance with resource consent conditions and District Plan requirements. Earthworks which are permitted as of right are required to install erosion and sediment control measures. Resource consents granted for earthworks are likely to be subject to conditions covering such matters as sediment and erosion control measures, hours of operation, and reinstatement and planting. Monitoring and enforcement is needed to ensure that these conditions are complied with. For instance, in order to mitigate adverse effects it is essential to ensure that effective sediment and erosion controls are properly constructed prior to commencement of earthworks and maintained until the earthworks are complete. Without site visits by compliance officers there is a likelihood that sediment and erosion controls will be neglected in the midst of a busy earthworks operation. This is particularly the case if the contractor has not properly understood the requirements and budgeted for them accordingly.

Monitoring and enforcement are extensions of the Council's advice and information role. In order to achieve good environmental outcomes the Council needs to ensure adequate resourcing of its monitoring and enforcement activities on the Islands.

2.4.1.5 Require Consent for all Earthworks in the HGI

A further alternative would be to introduce a Plan Change setting more restrictive controls so that resource consents would be required for all earthworks activities in the HGI. This would enable the Council to assess all earthworks proposals and set site specific conditions relating to such matters as erosion and sediment control measures, and planting. However, such a restrictive approach has significant cost and resourcing issues, and is not justified in terms of the Council's function of controlling adverse effects.

2.4.1.6 Modified Version of the Proposed Plan Change

Another alternative would be to introduce a Plan Change with lower thresholds for resource consents than proposed but still based on slope and area.

For all land units except for 1, 2 and 4, the Plan Change currently permits up to 400m² of earthworks where the slope of the land is up to 1 in 6. Another possibility would be to decrease the slope threshold to 1 in 20 (5%). This is in line with the recommendations in the report of Erosion Management Ltd⁸.

2.4.1.7 Take No Action

Section 32 requires consideration of the 'take no action' or 'do nothing' option. 'Take no action' means that the Council would have no methods, either in the Plan or outside it, to address the issues associated with earthworks. A Plan Change would be required to remove the existing controls from the Plan.

Under this option, earthworks of any scale would be a permitted activity in the District Plan with no limitations or assessment criteria to control effects such as sediment runoff, construction noise, traffic, or visual impacts. However, even under the 'do nothing' option there would still be some controls on earthworks due to the requirements of the Building Act, the Regional Plan and the Historic Places Act. The Building Act and the Regional Plan are considered further below.

2.4.1.8 Rely on ARC Controls and Building Act Requirements

ARC Controls

Sediment control, particularly soil conservation and the maintenance of water quality and the control of the discharge of contaminants into or onto land or water are specific functions of Regional Councils under the RMA (Section 30). The ARC has a Regional Plan: Sediment Control ('Sediment Control Plan') which sets controls on earthworks.

The following are permitted activities in the Sediment Control Plan:

- earthworks < 0.25ha within the sediment control protection area⁹, or where the land has a slope of $\geq 15^{\circ 10}$;
- earthworks < 1ha where the land is outside the sediment control protection area and has a slope of < 15°;
- roading / tracking / trenching < 100m in length within the sediment control protection area;
- all roading / tracking / trenching on sand soils outside the sediment control protection area;
- roading / tracking / trenching on soils other than sand soils outside the sediment control protection area where the area is < 1ha and the land has a slope of < 15°;

⁸ The report by Erosion Management Ltd acknowledged that due to the costs to applicants in the resource consent process, the Council would probably want to consider an alternative regime which placed more reliance on permitted activity standards with a higher threshold than 5% for resource consents.

⁹ Sediment Control Protection Area is defined as:

- a) 100m either side of a foredune or 100m landward of the coastal marine area (whatever is more landward of mean high water springs); or
- b) 50m landward of the edge of a watercourse, or wetland of 1000m² or more.

¹⁰ 15 degrees is approximately 27% or 1 in 3.7.

- roading / tracking / trenching on soils other than sand soils outside the sediment control protection area where the area is < 0.25ha and the land has a slope of $\geq 15^\circ$;

Under the Proposed Regional Plan: Air, Land and Water, an ARC consent may also be required for the following earthworks activities:

- works within a watercourse;
- the cultivation of soil for commercial crop production;
- discharges from landfills involving other than cleanfill.

Smaller scale earthworks which are permitted as of right under the Sediment Control Plan are still required to comply with specified conditions relating to sediment control. However the ARC does not have sufficient resources to ensure that all permitted earthworks install erosion and sediment control measures. Unlike the Council, the ARC does not have a permanent officer presence on Great Barrier Island or Waiheke Island. The ARC is supportive of local authorities introducing more restrictive earthworks controls in their District Plans.

In accordance with its functions under the RMA, the ARC's Sediment Control Plan focuses on sediment control and water quality. The ARC consent process therefore does not address other effects of the earthworks activities such as visual effects, traffic effects, or noise effects. It also does not assess the activity in the context of the District Plan objectives and policies. Reliance on the ARC controls is therefore not the most appropriate means of the Council exercising its function of controlling the actual or potential effects of the use.

Building Act

Often earthworks are associated with construction which requires a building consent under the Building Act 1991. For example, earthworks are often associated with the formation of driveway access and a building platform for a house. A building consent will be required for the house and for any retaining walls over a certain height. The building consent process provides the Council with some ability to control earthworks. However, the Council has received legal advice that the control of earthworks is only available under the Building Act to the extent that the earthworks relate to building work. The scope of the Building Act is clearly linked to regulation and control of building, rather than to any wider environmental concerns which may be relevant under the RMA. Reliance on the Building Act would therefore fail to provide the Council with an effective means of controlling adverse environmental effects such as sediment runoff, visual effects, traffic effects or noise effects.

2.4.2 Reasons For and Against, Evaluation of Benefits and Costs

This section will consider the benefits and costs of the proposed rules, the principal alternative means, or of taking no action. The principal alternative means are considered to be maintaining the status quo, or adopting a modified Plan Change with a lower threshold for requiring resource consents.

2.4.2.1 The Proposed Rules

Benefits

- 1 The slope and area (m^2) thresholds at which earthworks require a resource consent is based on the potential for adverse erosion and sedimentation effects.
- 2 The use, upgrading and maintenance of existing formed roads is required to comply with erosion and sediment control guidelines thus ensuring that a previously exempted activity which has the potential to cause adverse effects is controlled.

- 3 Introduces a non-notified restricted discretionary activity category for earthworks which would currently require a discretionary or non-complying resource consent. This reduces processing costs and gives greater certainty to the applicant.

Costs

- 1 The costs incurred by the Council in undertaking the Plan Change procedure.
- 2 The costs incurred by those who choose to lodge submissions or appeals to the Plan Change.
- 3 The inconvenience associated with having two sets of rules to administer and comply with during the transition phase.
- 4 The introduction of a restricted discretionary category largely removes the opportunity for third party involvement (via the submission process) which currently exists for discretionary and non-complying activities. Notification only occurs where the Council considers that special circumstances exist in terms of Section 94(5) of the RMA.
- 5 Places a greater reliance on permitted activity standards than if the threshold for permitted activities were set at a lower level. This necessitates greater monitoring of permitted activities on a non cost recoverable basis.

2.4.2.2 The Status Quo

Benefits

- 1 Staff, developers, contractors, and consultants have some familiarity with the existing controls.
- 2 Avoids the costs that the Council and submitters incur during the Plan Change process.

Costs

- 1 The cubic metre threshold at which earthworks in land units require a resource consent is not based on the potential for adverse erosion and sedimentation effects.
- 2 The existing rules do not require the use, maintenance and upgrading of existing formed roads to comply with erosion and sediment control guidelines. This results in a lack of control for earthworks activities which have the potential to cause adverse effects.
- 3 The current discretionary category for some earthworks can lead to increased costs and uncertainty for applicants due to the potential for notification and the need to assess the effects of the activity (such as construction of a dwelling) as a whole not just the effects associated with the earthworks.

2.4.2.3 Modified Version of Proposed Plan Change

This alternative would involve modifying the Plan Change by reducing the slope threshold from 1 in 6 (16.7%) to 1 in 20 (5%). For earthworks sites over 50m², a resource consent would be required once earthworks exceed 400m² or occur on land with a slope greater than 1 in 20 (rather than the steeper slope of 1 in 6). The exception would be in Land Units 1, 2 and 4, where consents would continue to be required for all earthworks.

Benefits

- 1 When compared with the proposed Plan Change, the lower slope threshold would mean that there is less opportunity for earthworks to be undertaken as a permitted activity, and the Council would therefore have greater opportunity to assess effects, set specific

conditions and undertake compliance checking via the resource consent process. Conditions are likely to include a requirement for the Council to approve erosion and sediment control measures prior to their installation.

- 2 When compared with the proposed Plan Change, lower thresholds would mean that there is less reliance on compliance with permitted activity standards and therefore less need for the Council to monitor permitted activities on a non-cost recoverable basis to ensure installation of erosion and sediment control measures.
- 3 Requires the use, upgrading and maintenance of existing formed roads to comply with erosion and sediment control guidelines thus ensuring that a previously exempted activity which has the potential to cause adverse effects is controlled.
- 4 Introduces a non-notified restricted discretionary activity category for earthworks which would currently require a discretionary or non-complying resource consent. This reduces processing costs and gives greater certainty to the applicant.

Costs

- 1 When compared with the Proposed Plan Change, the lower threshold would mean that there is less opportunity for earthworks to be undertaken as a permitted activity. This means that a greater number of people will incur the costs and time delays associated with the resource consent process.
- 2 The costs incurred by the Council in undertaking the Plan Change.
- 3 The costs incurred by those who choose to lodge submissions or appeals to the Plan Change.
- 4 The inconvenience of having two sets of rules to administer and comply with during the transition phase.
- 5 The introduction of a restricted discretionary category largely removes the opportunity for third party involvement (via the submission process) which currently exists for discretionary and non-complying activities. Notification only occurs where the Council considers that special circumstances exist in terms of Section 94(5) of the RMA.

2.4.2.4 Taking No Action (Reliance on Building Act and ARC Requirements)

Benefits

- 1 Avoids the situation where consents are required from both the Council and the ARC for earthworks on a site.
- 2 As resource consents from the Council would not be required, there would be reduced compliance costs and time delays for persons seeking to undertake earthworks.
- 3 Reduced costs to the Council in undertaking monitoring and enforcement in association with earthworks activities. However the Council may still need to undertake enforcement under Section 17 of the RMA which deals with the duty of persons to avoid, remedy or mitigate adverse effects whether or not the activity is in accordance with a rule in the Plan.

Costs

- 1 It is unlikely to achieve good environmental outcomes for smaller scale earthworks which do not need ARC consent and which the ARC is currently not resourced to comprehensively monitor.

- 2 It is unlikely to achieve good environmental outcomes for larger scale earthworks which do require ARC consent, as the ARC consent process does not address all of the actual or potential effects of earthworks but focuses on the ARC functions of water quality and sediment control. It does not seek to control visual effects, traffic effects, or noise effects. It also does not assess the activity in the context of the District Plan objectives and policies.
- 3 The costs incurred by the Council in undertaking a Plan Change to remove the existing controls from the Plan.
- 4 The costs incurred by those who choose to lodge submissions or appeals to the Plan Change.

2.5 Whether the Proposed Rules have the Purpose of Achieving the Objectives and Policies of the Plan

The relevant objectives and policies of the Plan relating to Strategic Management Areas are attached as **Appendix A**. Those relating to land units are attached as **Appendix B**. The proposed rules have the purpose of achieving the existing objectives and policies and no changes to these are proposed as part of the Plan Change.

3.0 National Planning Documents

3.1 Hauraki Gulf Maritime Park Act 2000

In accordance with the requirements of Section 9(3) of the Hauraki Gulf Maritime Park Act, the Council must ensure that:

“... any part of a district plan that applies to the Hauraki Gulf, its islands, and catchments, does not conflict with sections 7 and 8 of this Act.”

Sections 7 and 8 are attached at **Appendix C**. Section 7 recognises the national significance of the Hauraki Gulf and Section 8 provides management direction for the Gulf. Section 10 of the Act requires that Sections 7 and 8 be treated as a New Zealand coastal policy statement under the RMA.

The proposed rules, which seek to avoid, remedy or mitigate the adverse effects from earthworks, are not in conflict with Sections 7 or 9 of the Hauraki Gulf Maritime Park Act.

3.2 New Zealand Coastal Policy Statement 1994

The New Zealand Coastal Policy Statement 1994 (NZCPS) sets out policies to achieve the purpose of the RMA in relation to the coastal environment. It identifies national priorities for the preservation of the natural character of the coastal environment including protection from inappropriate use, subdivision, use and development. The following policies are considered to be of particular relevance to this Plan Change:

Policy 3.2.2

Adverse effects of subdivision, use or development in the coastal environment should as far as practicable be avoided. Where complete avoidance is not practicable, the adverse effects should be mitigated and provision made for remedying those effects, to the extent practicable.

Policy 3.2.7

Policy statements and plans should identify any practicable ways whereby the quality of water in the coastal environment can be improved by altered land management practices, and should encourage the adoption of those practices.

The proposed rules are in keeping with these policies. In particular, the rules emphasise the need for altered land management practices, in the form of erosion and sediment control measures when undertaking earthworks. This is compatible with improving the quality of coastal waters.

4.0 Regional Planning Documents

Section 75(2) of the RMA states that a District Plan must not:

- (a) Be inconsistent with any national policy statement or New Zealand coastal policy statement; or
- (b) Be inconsistent with any water conservation order; or
- (c) Be inconsistent with—
 - (i) The regional policy statement; or
 - (ii) Any regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part IV.

4.1 Regional Policy Statement (Operative 31 August 1999)

The Regional Policy Statement (RPS) provides an overview of the resource management issues of the Auckland region, and policies and methods to achieve integrated management of the natural and physical resources of the region.

The RPS maps (Map 2, Sheet 2) identify ‘significant natural heritage areas and landscape quality’ on or around the Hauraki Gulf Islands as follows:

- areas of landscape quality 5 (regionally significant) and 6 (outstanding) on Waiheke Island;
- coastal and marine ecosystems described as Hauraki Gulf and Islands, and Frenchmans Cap;
- areas with multiple values at the The Noises, Rangitoto Island, Motukorea, Awaawaroa Bay and Te Matuku Bay (Waiheke), and Ponui Island).

The significant natural heritage areas and values are further described in Appendix B to the RPS.

The RPS maps (Map 3, Sheet 2) identify areas of significant landscape sensitivity. Such areas are identified on Waiheke, particularly in the central part of the Island.

The RPS maps identify areas where water quality is susceptible to degradation (Map 5, Sheet 1) and areas of high ecological value susceptible to degradation (Map 5, Sheet 3). Such areas require greater emphasis for the avoidance and mitigation of adverse effects to water quality. Some areas are identified around Great Barrier, Little Barrier, Rakitu, Mokohinau, Waiheke, and Rangitoto.

The portions of the RPS relevant to the Plan Change are attached as **Appendix D**.

Policy 6.4.19 Landscape requires subdivision, use and development to be controlled so as to avoid adverse effects on the landscapes. Particular regard is given to the landscapes identified in Map Series 2 and 3 of the RPS.

Of particular relevance to the Plan Change are the following policies in 7.4.10 relating to subdivision, use and development of the coastal environment:

- 1 The diverse range of values of the coastal environment shall be recognised and the need to enable people and communities to provide for their social, economic and cultural wellbeing shall be provided for in appropriate areas of the coastal environment.
- 2 In assessing the appropriateness of subdivision, use and development in the coastal environment particular regard shall be had to the following matters:
 - (i) natural character is preserved and protected in accordance with Policies 7.4.4-1(i), (ii) and (iii), and 7.4.4-2;
 - ...
 - (iii) amenity values are maintained or enhanced as far as practicable;
 - ...
 - (vi) efficient use is made of the natural and physical resources of the coastal environment;
 - (vii) activities are of a scale, design and location that maintain and enhance landscape values in the area, including seascapes and landforms;
 - (viii) there are no significant adverse effects of activities on the CMA, or on adjacent land, including effects across the MHWS boundary;

The Plan Change is in keeping with the following policy 8.4.7(3) relating to stormwater and sediment discharge:

- 3 All land disturbance activities which may result in elevated levels of sediment discharge shall be carried out so that the adverse effects of such discharges are avoided, remedied, or mitigated.

The proposed rules are not incompatible with the RPS.

4.2 Proposed Regional Plan: Coastal (September 1999)

The purpose of the Proposed Regional Plan: Coastal ('Coastal Plan') is to provide a framework to promote the integrated and sustainable management of Auckland's coastal environment. The Plan contains a number of broadly relevant objectives and policies relating to protecting the coastal environment from inappropriate subdivision, use and development and from the adverse effects of other activities on adjoining land.

The Coastal Plan defines areas that are of regional, national or international significance due to their ecological, landform or geological values as coastal protection areas. The purpose of coastal protection areas is to give effect to the requirements of Sections 6(a), (b) and (c) of the RMA. The planning maps identify coastal protection areas around the following islands within the Hauraki Gulf: parts of The Noises, Motutapu, Motukorea, Motuihe, Waiheke and offshore islands, Great Barrier; all of Rangitoto, Little Barrier, Mokohinau Islands, Rakitu. (see Maps 20, 32, 40-47, and Schedule 3)

The planning maps also identify outstanding (very highest value) or regionally significant (highly valued) landscapes along the coastlines of various of the Hauraki Gulf Islands. Outstanding landscapes are identified along the entire coastlines of Rangitoto, Motutapu, Motuihe, Motukorea, Mokohinau, Little Barrier Island and Rakitu. Parts of the coastline of

Waiheke are identified as either regional or outstanding. Almost all of the coastline of Great Barrier Island is identified as either regional or outstanding.

The Plan Change is not inconsistent with the Coastal Plan. The emphasis in the Plan Change on erosion and sediment controls is in keeping with objectives and policies in the Coastal Plan relating to maintaining or improving water quality. In keeping with the landscape values identified in the Coastal Plan, the Plan Change includes an assessment criterion which considers the potential adverse effects of earthworks on the coastal landscapes of the Hauraki Gulf Islands.

4.3 Regional Plan: Sediment Control (November 2001)

The Regional Plan: Sediment Control ('Sediment Plan'), addresses the issue of sediment discharge, and defines the mechanisms the ARC has chosen for avoiding, mitigating or remedying any adverse effect on the environment due to sediment discharge from bare earth surfaces.

The Plan Change includes more restrictive controls than in the Sediment Plan. However the controls are not inconsistent with the Regional Plan and are also justified in terms of the functions of the City Council.

The Sediment Plan has four objectives:

- To maintain or enhance the quality of water in waterbodies and coastal water.
- To sustain the mauri of water in waterbodies and coastal waters, ancestral land, sites, waahi tapu and other taonga.
- To reduce the exposure of land to the risk of surface erosion leading to sediment generation.
- To minimise sediment discharge to the receiving environment.

The Plan Change is in keeping with these objectives.

4.4 Proposed Regional Plan: Air, Land and Water 2001

Chapter 5 of the Regional Plan: Air, Land and Water ('Air, Land and Water Plan') addresses discharges to land or water. The following objective and policies under the heading Rural Activities, Land Management are of relevance:

Objective

5.3.1.2

To encourage land management practices that minimise the discharge of sediment, maintain and enhance the productive potential of soil, and minimise soil loss and degradation.

Policies

5.4.21

The discharge of sediment shall be avoided where it will result in more than a minor adverse effect on the values of any Natural Lakes, Natural Streams and Wetlands Management Areas.

5.4.22

Land disturbing and cultivation activities shall avoid, remedy or mitigate adverse effects from the generation and discharge of sediment. In assessing the effects on the environment, regard shall be had to appropriate sediment control measures specified in the Franklin Sustainability Project Guidelines, Doing it Right (2000).

In line with the above objective and policies, Rule 5.5.31 identifies the conditions under which ‘the cultivation of soil for commercial crop production and associated management of surface water and discharge of sediment’ is a permitted activity. Under Rule 5.5.32, any cultivation of soil for commercial crop production that does not comply with Rule 5.5.31 is a controlled activity, generally be dealt with on a non-notified basis under Section 94(1)(b). Cultivation is defined in Part 12 as “the disturbance of topsoil for the purpose of growing crops and includes ploughing, discing, hoeing, harrowing, mouldboarding, ripping, turning, and lifting”. In view of the fact that the Air, Land and Water Plan has controls on cultivation, the proposed District Plan rules do not attempt to control the earthworks associated with such activities.

Chapter 7 of the Air, Land and Water Plan contains provisions relating to the ARC’s management of the beds of lakes, rivers and streams in the Auckland Region. Rules 7.5.31 to 7.5.47 apply to the disturbance of the bed of a perennial river or stream and identifies those activities which require a resource consent.

The Air, Land and Water Plan identifies some ‘Natural Stream Management Areas’ on Motutapu Island, Waiheke Island, Ponui Island, and Great Barrier Island. ‘Wetlands Management Areas’ are also identified at three locations on Waiheke Island, one location on Ponui Island and at thirteen locations on Great Barrier Island. (See Maps Series 1 – Maps 25, 26, 27, 32, 50, 51, 52, 53 and 54; Schedule 1.)

The proposed rules are not inconsistent with the Air, Land and Water Plan in relation to any matter of regional significance or for which the ARC has primary responsibility under Part IV.

4.5 Conservation Management Strategy (DOC)

Section 74(2)(b) of the RMA requires that the Council, when changing a District Plan, have regard to management plans and strategies prepared under other Acts. The Conservation Management Strategy for Auckland 1995-2001 was prepared by the Department of Conservation (‘DOC’) under the Conservation Act 1987. It provides a strategy for achieving the desired outcomes for the Auckland Conservancy for the next ten years.

Places in the Auckland Conservancy administered by the DOC are referred to in the Conservation Management Strategy as ‘key areas’. In the HGI, key areas are: Mokohinau Islands, Little Barrier Island (Hauturu), Great Barrier Island (Aotea), Rangitoto Island, Motutapu Island, Browns Island (Motukorea), Motuihe Island, Stony Batter / Te Matuku Bay (on Waiheke Island). In the HGI Plan, with the exception of the DOC holdings on Great Barrier Island, and Waiheke Island, a Land Unit 23 classification (Conservation Islands) is applied to these areas.

Volume II of the Strategy includes maps which identify sites of natural significance; and sites of outstanding and regionally significant landscape value, and significant recreation / tourism value. Landscapes of outstanding value in terms of Section 6(b) of the RMA are identified throughout most of Great Barrier Island; parts of the coastline of Waiheke Island; parts of the Mokohinau Islands; all of Little Barrier Island, Rakitu Island, Rangitoto, Motutapu, Motukorea, Motuihe and The Noises. Landscapes of regional significance are identified on the remainder of Great Barrier Island and the Mokohinau Islands; the central part of Waiheke Island and along some Waiheke coastlines; and all of Ponui Island.

The Strategy includes a section (p219) on DOC's functions in relation to statutory planning with the RMA being identified as the main focus of statutory planning in the Auckland Conservancy. Objective 42.0.1 states as follows:

Improve the provisions for the protection of natural and historic resources through the Resource Management Act planning processes as a matter of priority, and through the provisions of other Acts as opportunities arise.

The Plan Change is in accordance with this objective.

Under Section 9(1) of the RMA, no person may use any land in a manner that contravenes a rule in a District Plan unless the activity is permitted by a resource consent or has existing use rights. Section 4(3) of the RMA exempts DOC from the requirements of Section 9(1) in the following circumstances:

- “(3) Section 9(1) does not apply to any work or activity of the Crown within the boundaries of any area of land held or managed under the Conservation Act 1987 or any other Act specified in the First Schedule to that Act (other than land held for administrative purposes) that—
- (a) Is consistent with a conservation management strategy, conservation management plan, or management plan established under the Conservation Act 1987 or any other Act specified in the First Schedule to that Act; and
 - (b) Does not have a significant adverse effect beyond the boundary of the area of land.”

5.0 Iwi Consultation

5.1 Ngati Paoa Whanau Trust Board

Ngati Paoa Whanau Trust Board considered a draft version of the Plan Change and Section 32 report and provided comments in July 2001. Their comments and the Council's response are summarised below.

Comment	Council's Response
The current Plan does not adequately reflect or address the concerns of Ngati Paoa with regards to land disturbance and in particular its effects on waahi tapu.	Noted.
The current rules and their application do not work due to lack of monitoring, lack of experienced and qualified Council staff, the practices of earthmoving contractors and landowners.	Noted. Section 2.4 of this report recognises the importance of monitoring and enforcement, and of advice and education including training of Council staff.
If the rules, conditions of consent, and monitoring are not managed to the satisfaction of Ngati Paoa, the only way to protect waahi tapu is reject every application for earthworks and monitor all potentially affecting applications under an iwi monitoring programme.	Noted.

Comment

The Council should seek through the consents process and other appropriate processes, to facilitate opportunities for greater participation of Ngati Paoa in the monitoring and use of resources and subsequent effects, where this is mutually agreeable to Ngati Paoa, applicants and the Council.

Planners are not giving due consideration to iwi concerns when assessing an application for development. The Plan should include a section on iwi values.

The Council needs to seek agreement with Ngati Paoa on local implementation of the Treaty principles, and their participation in resource management decision-making.

Insert a new rule in Part 6B – Standards for Permitted Activities (eg in 6B1.3.6D) as follows:

Protection of Heritage and Iwi Sites of Significance

Where any earthworks are proposed to be undertaken within 100m of a significant ridgeline or within 100m of MHW iwi shall be notified by the Council and an assessment shall be undertaken to determine any heritage or cultural significance.

and / or amend existing 6B.1.3.6 Earthworks, subclause D as follows:

‘Where evidence of a burial site or any other archaeological ...’ An iwi approved archaeologist will provide an assessment on behalf of the Council (within five days) in conjunction with the HPT with a proposal for treatment of the site.

Council’s Response

Noted.

The inclusion of a new section in the Plan on iwi values is outside the scope of this Plan Change.

Noted.

The Plan Change does not adopt this approach but relies on the scheduling of sites in the Plan and the requirements of the Historic Places Act.

The potential effects of earthworks on archaeological and cultural heritage sites is addressed in Section 2.3.2.3 of this report.

The Plan Changes includes a clause which states that where evidence of a burial site or any other archaeological feature is exposed during earthworks, all work must cease and the Council and Historic Places Trust be advised. The clause further notes that on receipt of such advice it is the Council’s practice to consult with the relevant authorities (HPT, DOC, Tangata Whenua) and the owner of the property with regard to the appropriate treatment of the feature.

In some cases an archaeological report would be required. However this may be provided by the landowner or the HPT rather than done on behalf of the Council.

Comment

Include a requirement for 'Ngati Paoa Protocols on Earthworks' to be a condition of consent for any application approved by the Council. Reference to the following iwi planning documents will be made

Ngati Paoa Policy Statement Resource Management 1993
Ngati Paoa Protocols on Earthworks
Ngati Paoa Resource Management Plan May 1996

Council's Response

It would not be appropriate to attach the whole protocol as a condition of consent. Portions of it would be relevant in particular cases.

It is standard practice for the Council to attach a condition to earthworks consents requiring site works to cease if an archaeological or traditional site is exposed. The site supervisor is required to secure the area and notify the appropriate authorities (the Council, HPT, DOC, the police) so appropriate action can be taken. This condition covers some of the items contained in the protocol provided by the Trust.

The Ngati Paoa Policy Statement Resource Management 1993 and the Ngati Paoa Resource Management Plan May 1996 are wide-ranging documents which raise issues which are beyond the scope of this Plan Change.

Seek the following amendments to existing Part 6E General Assessment Criteria – Discretionary Activities

Amend 6E.1.1 Assessment Criteria, subclause C to refer to the likely effects of the proposal 'on any significant environmental or archaeological features ...'

Add '(d) disturb the heritage feature'

Require earthworks that are proposed to be undertaken within the environs of a waterway or coastal margin to have a sediment control plan that is approved by both the Council and the iwi authority. The 'environs' would relate to the current standards for permitted, discretionary and non-complying activities near a watercourse.

A protocol is provided for work in the proximity of waahi tapu. Noted.

The Plan Change includes the following assessment criteria for earthworks as a restricted discretionary activity:

'The extent to which protection and management measures can be undertaken to avoid, remedy or mitigate adverse effects on significant environmental features, ... heritage items, or sites of cultural significance'

The Plan Change requires a sediment control plan as part of any resource consent application for earthworks. However there is no requirement in the Plan Change for this plan to be approved by iwi.

5.2 Huakina Development Trust

Huakina Development Trust considered a draft version of the Plan Change and Section 32 report and provided comments in March 2001. Their comments and the Council's response are summarised below:

Comment

Non-notification of resource consents is a disadvantage to Tangata Whenua.

Would prefer to be notified of applications for earthworks and be given the opportunity to provide a response.

Council's Response

Noted.

Noted.

Comment

Requests that the protocols provided by Huakina Development Trust regarding the unearthing of koiwi, artefacts or archaeological sites be attached to all resource consent applications granted by the Council for earthworks.

Council's Response

It is standard practice for the Council to attach a condition to earthworks consents requiring site works to cease if an archaeological or traditional site is exposed. The site supervisor is required to secure the area and notify the appropriate authorities (the Council, HPT, DOC, the police) so appropriate action can be taken. This condition covers items (a) to (e) contained in the protocol provided by the Trust. The other five items would be addressed as part of the procedures under the Historic Places Act.

5.3 Hauraki Maori Trust

Hauraki Maori Trust considered a draft version of the Plan Change and Section 32 report and provided comments in December 2000. Their comments and the Council's response are summarised below:

Comment

Concern about the desecration of waahi tapu and the inadequacies of the Council's Tangata Whenua consultation process in general.

Activities shall be considered inappropriate where they will adversely affect the mauri (life force) of natural and physical resources unless any adverse effects can be avoided, remedied or mitigated against.

Has no objection to the Plan Change.

Council's Response

Noted.

Noted.

Noted.

6.0 Conclusions

A Plan Change has been prepared to amend the existing earthworks rules contained within the HGI Plan. This report has undertaken an assessment as required under Section 32 of the rules contained in the Plan Change. The following conclusions are reached:

- The proposed rules contained within the Plan Change are necessary in achieving the purpose of the RMA;
- The proposed rules assist the Council to carry out its function of control of the actual or potential effects of earthworks activities;
- Having regard to other means which may be used, the proposed rules are the most appropriate means of exercising that function;
- The proposed rules have the purpose of achieving the objectives and policies of the Plan;
- The proposed rules are in keeping with national and regional planning documents.

CONSULTATION TO DATE

This section lists consultation undertaken to date during the formulation of this Plan Change.

Initial discussion document, November 2000. Eleven written comments.

Iwi

- Ngati Paoa Whanau Trust Board
- Huakina Development Trust
- Hauraki Maori Trust

Auckland City Staff

- Waiheke Island staff – Richard Osborne, Senior Planner; James Griffin, Compliance Officer
- Great Barrier staff – Lance Dixon, Compliance Officer
- Traffic and Roading Services – Neil Forgie, Manager: Professional Services
- Professional and Technical Services – Michelle Hewitt, Team Co-ordinator
- Other – Andrea Julian, Ecologist

Auckland City Community Boards

- Waiheke Island Community Board
- Great Barrier Island Community Board

Auckland Regional Council – Michael Parsonson, Senior Soil Conservator

Ministry for the Environment – Michael Wood, Policy Analyst

Department of Conservation – Bob Laing, Consultant Planner; Debbie Wingate, Planner

External Consultants

- Brian Handyside, Erosion Consultant
- Melean Absolum, Landscape Architect

APPENDIX A: PLAN OBJECTIVES AND POLICIES – STRATEGIC MANAGEMENT AREAS

Available from Council offices.

APPENDIX B: PLAN OBJECTIVES AND POLICIES – LAND UNITS

Land Unit	Objectives	Policies Relevant to Earthworks
1. Coastal Cliffs	6.1.3.1 To allow land use activities in land unit 1 only where they preserve and protect the natural features of the coastal environment:	B. By only allowing earthworks, vegetation removal and buildings where they facilitate and protect the natural features of the coastal environment.
2. Dune Systems and Sand Flats	6.2.3.1 To recognise through appropriate rules the sensitivity, natural values and functions of coastal sand systems.	C. By limiting land use activities and buildings to particular locations and to a scale and intensity compatible with the capability and capacity of the land unit. D. By recognising that sand systems (particularly dunes) are hazard prone areas and that land use activities and subdivision should be managed accordingly.
3. Alluvial Flats	6.3.3.1 To ensure that the productive potential of the alluvial flats is not reduced by inappropriate land use activities or subdivision.	D. By controlling, the effects of intensive land use activities on the natural environment, particularly stormwater, effluent disposal impacts and potential impacts on adjoining land units, eg wetlands. H. By protecting and preserving the high visual amenity values of the land unit through controls on buildings and land use activities.
4. Wetland Systems	6.4.3.1 To limit land use activities within land unit 4 to those which preserve and protect the natural character and function of wetlands.	A. By recognising the importance of wetlands as productive, ecological management systems and valuable wildlife habitat through: ... • ensuring no detrimental activities from surrounding land use activities occur. B. By maintaining the flood mitigation role and stormwater control functions of wetlands through their protection. C. By limiting land use activities including drainage of low-lying areas to those that do not detrimentally affect the natural functions of wetlands.
5. Foothills and Lower Slopes	6.5.3.1 To provide for a range of compatible land use activities which benefit from the productive potential, aspect, location and rural character of the land unit.	B. By imposing controls on modifications to the natural landform and vegetation.
6. Steep Pastured Slopes	6.6.3.1 To ensure that management of this land unit recognises and accords with the intrinsic sensitivity and high amenity value of the land.	E. By protecting any riparian or wetland areas. F. By controlling earthworks and vegetation removal and limiting buildings and land use activities to those with no detrimental impact on the environment.
7. Steep Infertile Coastal Slopes	6.7.3.1 To recognise the sensitivity of the land unit by restricting land uses and activities to those which encourage the preservation and protection of the land	B. By controlling earthworks and vegetation removal and limiting buildings (other than dwellings) to those associated with or complimentary to the preservation

Land Unit	Objectives	Policies Relevant to Earthworks
	unit.	and conservation of the natural environment.
8. Regenerating Slopes	6.8.3.1 To provide for a range of small scale land use activities, consistent with the land unit's role in the protection of the natural environment and its inherent character.	B. By recognising the importance of the land unit for water and soil conservation functions by maintaining appropriate vegetation cover in steeper areas, riparian areas, around streams, wetlands and coastal margin and within areas of potential erosion. C. By protecting the visual amenity of the land unit through: <ul style="list-style-type: none"> • limitations on earthworks, ... F. By recognising the sensitivity of the land unit in terms of its potential for erosion. G. By ensuring any land use activity in the land unit is compatible with the natural environmental values of the coastal environment.
9. Low Fertility Hills	6.9.3.1 To encourage revegetation and stabilisation of the land unit and to prevent further degradation.	A. By recognising the existing instability and potential for erosion within the land unit through: <ul style="list-style-type: none"> • Restrictions on earthworks C. By recognising the visual prominence of the land unit through the control of the location and design of buildings and land use activities.
10. Forest and Bush Areas	6.10.3.1 To maintain the intrinsic value of the land unit for the protection of ecosystems and the natural environment.	B. By maintaining water and soil conservation functions of the land unit through: <ul style="list-style-type: none"> • preventing disturbance of the landscape which may lead to any increased stability or erosion, ... C. By protecting the visual amenity of the land unit through: <ul style="list-style-type: none"> • strictly limiting earthworks, ...
11. Traditional Residential	6.11.3.1 To provide for residential development which maintains neighbourhood amenities and the qualities of the local environment. 6.11.3.2 To facilitate the establishment of non-residential activities which are compatible with a predominantly residential area. 6.11.3.3 To maintain the amenity and landscape qualities of beach front locations. 6.11.3.4 To ensure that the quality of natural water bodies and potable water sources are not compromised by development.	A. By ensuring that development will not lead to siltation or degradation of natural water courses and wetland or the coastal marine area.

Land Unit	Objectives	Policies Relevant to Earthworks
12. Bush Residential	<p>6.16.12.3.1 To only allow residential development and other complementary small-scale development which is in sympathy with the dominant natural environment.</p> <p>6.12.3.2 To ensure the retention of native bush cover and encourage regeneration where practicable.</p> <p>6.12.3.3 To ensure minimal disturbance to existing landforms, including ridgelines and skylines.</p> <p>6.12.3.4 To ensure that the quality of natural water bodies and potable water sources are not compromised by development.</p>	<p>A. By ensuring that development will not detract from natural landforms or intrude into identified ridgelines.</p> <p>C. By ensuring that development does not lead to soil instability or erosion.</p> <p>A. By ensuring that development will not lead to siltation or degradation of natural watercourses and wetlands.</p>
13. Retailing	<p>6.13.3.1 To consolidate business activity and community facilities within the existing settlements.</p> <p>6.13.3.2 To secure a safe, convenient and congenial environment for business and community activities.</p> <p>6.13.3.3 To ensure the retention and enhancement of landscape qualities and general local amenity values.</p>	<p>C. By imposing controls that limit the intensity and scale of development to a level commensurate with the environmental capacity of the land unit.</p>
14. Visitor Facilities	<p>6.14.3.1 To allow for the establishment of visitor facilities in a manner that does not compromise existing standards of amenity.</p> <p>6.14.3.2 To require the enhancement of local amenity in conjunction with further visitor facility development.</p>	
15. Industrial	<p>6.15.3.1 To provide for low to medium intensity business activity within a good quality environment.</p> <p>6.15.3.2 To ensure that any adverse effect of business activity on the environment of the land unit or on adjoining residential lots is avoided or reduced to an acceptable level.</p>	
16. Quarrying	<p>6.16.16.3.1 To provide for the careful management and extraction of aggregate resources and the rehabilitation of exhausted quarries.</p>	

Land Unit	Objectives	Policies Relevant to Earthworks
	6.16.3.2 To impose controls which protect the environmental quality and amenity of neighbouring properties.	C. To adopt controls designed to prevent or reduce vibration, dust, noise, and soil and water contamination.
17. Landscape Amenity	6.17.3.1 To provide for the management and protection of public open space for passive recreation. 6.17.3.2 To limit buildings and land use activities within the land unit.	B. By protecting and conserving all native trees, and bush, wetlands, habitats, and other natural features. C. By protecting those landforms contained within the land unit. C. By limiting land unit activities to those allied to the protection and enjoyment of the natural environment.
18. Outdoor Activities	6.18.3.1 To provide for a variety of active recreational uses compatible with the environmental capacity of the land. 6.18.3.2 To conserve those natural features which are significant to the amenities of the reserve.	
19. Community Activities	6.19.3.1 To provide for a balanced range of community activities for the cultural needs of the community.	
20. Landscape Protection	6.20.3.1 To provide for a diverse range of land use activities compatible with maintaining the special environmental amenity and open rural landscape of land unit 20, in order to secure its long term protection as a rural buffer area with potentially productive rural land use capability in some parts.	D. By protecting wetlands and other water systems, native bush areas and other environmentally sensitive areas.
21. Te Whau Peninsula	6.21.3.1 To protect, preserve and enhance the special character of the natural environment of the land unit 21 particularly the coastal environment, whilst providing opportunities for land use activities including residential uses, subject to appropriate control of density, disposition and appearance of buildings.	A. By ensuring buildings and access roads are sited so that they do not detract from important visual features such as prominent skylines and ridgelines, cliff tops, coastal headlands, beaches and areas of native bush. G. By using Plan rules to minimise disturbance to land forms, trees, bush, streams, other water systems, including wetlands and the foreshore and coastal environment. H. By controlling the removal of native bush and the nature and extent of earthworks.
22. Western Landscape	6.22.3.1 To foster the continued use of the land for rural activities in conjunction with residential uses or visitor facilities in appropriate locations. 6.22.3.2 To control subdivision and the erection of dwellings and other buildings so that the rural character of the land unit is maintained.	

Land Unit	Objectives	Policies Relevant to Earthworks
	<p>6.22.3.3 To ensure that development leads to enhanced land management practices and continued rural use which fosters and enhances landscape and environmental values.</p>	<p>C. By ensuring land use activities facilitate sustainable land use and maintain and enhance rural landscape qualities.</p>
23. Conservation Islands	<p>6.23.3.1 To ensure that land unit 23 is appropriately managed so that the conservation and preservation and enhancement of the natural environment occurs and that sustainable land management is facilitated in tandem with limited, appropriate visitor and recreational activities.</p>	<p>C. By specifically protecting the coastal environment through Plan rules.</p>
24. Pakatoa Island	<p>6.24.3.1 To allow for the future development of visitor facilities which are in keeping with the landscape and environmental qualities of the island.</p> <p>6.24.3.2 To secure the amenity and environmental values of the coastal environment.</p>	<p>A. By ensuring that development on the island does not compromise environmental values in the coastal marine area and on the coastline.</p>
25. Wharf	<p>6.25.3.1 To provide for development which facilitates the efficient integration of water and associated land-based activities in a manner which caters for the needs of both residents and visitors.</p> <p>6.25.3.2 To ensure that future development within land unit 25 does not dominate or detract from the natural character or environmental quality of the coastline.</p>	<p>A. By directing future development so that it does not dominate or detract from the natural character of the coastal landscape especially the coastal edge.</p> <p>C. By protecting adjoining coastal waters from degradation from stormwater, foulwater, effluent or impacts from development.</p>

APPENDIX C: HAURAKI GULF MARITIME PARK ACT 2000

7. Recognition of national significance of Hauraki Gulf—

- (1) The interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance.
- (2) The life-supporting capacity of the environment of the Gulf and its islands includes the capacity—
 - (a) to provide for—
 - (i) the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands; and
 - (ii) the social, economic, recreational, and cultural well-being of people and communities:
 - (b) to use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation:
 - (c) to maintain the soil, air, water, and ecosystems of the Gulf.

8. Management of Hauraki Gulf—

To recognise the national significance of the Hauraki Gulf, its islands, and catchments, the objectives of the management of the Hauraki Gulf, its islands, and catchments are—

- (a) the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments:
- (b) the protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments:
- (c) the protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its islands, and catchments with which tangata whenua have an historic,

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traditional, cultural, and spiritual relationship:

(d) the protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources:

(e) the maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand:

(f) the maintenance and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, which contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.

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APPENDIX D: PROVISIONS OF REGIONAL POLICY STATEMENT

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