



New Zealand
Institute of Architects
Western Branch

Form 5
**Submission on publicly notified proposal for policy statement or plan,
change or variation**

Clause 6 of Schedule 1, Resource Management Act 1991

To:

Palmerston North City Council
Private Bag 11-034
Palmerston North 4410

Attention: Team Leader - Governance and Support

Name of submitter:

The New Zealand Institute of Architects
& the Western Branch New Zealand Institute of Architects
P O Box 2516
Shortland Street
Auckland 1140

1. The NZIA and the Western Branch of the NZIA welcomes this important opportunity to comment on the Proposed Plan Change 13 in the Palmerston North District Plan.
2. We welcome the opportunity to discuss the content of this submission further as the Palmerston North City Council and Hearings Panel move forward with the Sectional District Plan Review process. The NZIA considers there are a number of issues with the Sectional District Plan Review that require resolving and this is best achieved through appropriate pre-hearing processes on Proposed Plan Change 13. We would welcome the involvement of the New Zealand Historic Places Trusts in any pre-hearing process with stakeholders.
3. Registered Architects under the Architects Act 2005 bring a wide range of skills in the areas of urban design, spatial design, economic feasibility, building resilience and architectural design assessment to the master planning of New Zealand projects. Our members work collaboratively with other disciplines including; IPENZ Engineering Professional, Landscape Architects, Planners, and others to facilitate desirable built outcomes



4. The New Zealand Institute of Architects supports the reuse of New Zealand Buildings including Heritage Buildings at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety in a manner which reasonably meets the foreseeable needs of future generations.

5. The NZIA considers its interest in architecture, buildings, urban environments and the proposed plan to be greater than that of general public interest. This position is supported by the NZIA Rules, which specifically states among other things that, the Institute seeks:
 - 5.1 To promote excellence in architecture, the acquisition and dissemination of knowledge relating to architecture, ethical conduct in the practice of architecture and the interests of the profession of architecture in New Zealand and overseas.

 - 5.2 To advance the study and practice of architecture.

 - 5.3 To bring before government authorities, public and other bodies any matters affecting architecture and architects.

- A full copy of the Rules can be found at <https://www.nzia.co.nz/the-nzia/rules.aspx>

- It is on this basis that the NZIA respectfully requests that the Council considers and grants the NZIA *'further submission'* status under the Resource Management Act 1991.

6. The NZIA could not gain an advantage in trade competition through this submission.

7. This is a submission on the following proposed variation to a proposed plan (the **proposal**) by Palmerston North City Council *Sectional District Plan Review Plan Change 13 - Cultural and Natural Heritage*. It specifically addresses amendments to the *Building and Objects of Cultural Heritage Value* matters of the District Plan.



General reasons for the submission:

8. At a general level, we consider the Proposed Plan Change 13 provisions as notified will not:
- Enable the sustainable management of resources or achieve the purpose of the RMA;
 - Meet the reasonably foreseeable needs of future generations;
 - Enable social, economic and cultural well-being;
 - Enable the efficient use and development of Palmerston North assets ; or
 - Represent the most appropriate means of exercising the Council's functions, having regard to the efficiency and effectiveness of the provisions relative to other means and according to the provisions do not discharge the Council's duty under Section 32 of the RMA.

Our submission is:

9. Pursuant to Section 86B, the provisions of Proposed Plan Change 13 with respect to *historic heritage buildings and objects* has immediate legal effect and places controls on the rights of those with an interest in the land at s85 of the Act.
10. The provisions of Proposed Plan Change 13 alters the activity status from *restricted discretionary* to *non-complying* and introduces an increased gateway test for all *non-complying* activities under s104 of the Act. Effectively the assessment of applications for *restricted discretionary* activities at s104 and s104C will change to assessment under *non-complying* at s104 and s104D.
11. This approach by Palmerston North City Council in the Proposed Plan Change 13 potentially engenders a significant '*taking of the owners property rights*' at s85 without due compensation and the proposed policies and objectives are potentially *ultra vires* in practice due to the interrelated matters of compliance with the Building Act 2004 and the Health & Safety and Employment Act 1992 particularly for commercial buildings. The proposed direction of the Building (Earthquake-prone



Buildings) Amendment Bill (a bill that proposes to improve the system for managing earthquake-prone buildings under the Building Act 2004) and the Health and Safety Reform Bill (a bill that proposes reform of NZ workplace health and safety system and seeks to replace the Health & Safety in Employment Act 1992 and the Machinery Act 1950) are relevant related matters. For commercial buildings the proposed policies and objectives are likely to be *ultra vires* due to current Insurance and Bank lending policies.

12. The net likely effect of the proposed Plan Change 13 is an adverse effect on the New Zealand economy and loss of financial investment to the Palmerston North Region whereby the owners of Heritage and Heritage Earthquake Prone properties are restricted in the use of their property through these proposed changes and misaligned legislation; unable to fund remedial work, not permitted (under proposed PC13) to demolish through neglect, unable to meet the s104D gateway test nor the costs associated with expert reports to support consent applications under the RMA1991 and unable to fund appeals to prevent the taking of their property at s85 of the Act. There is very real potential that forced mortgage sales, empty tenancies and a loss of vitality and amenity will result with a myriad of adverse social effects to the community. Ultimately a loss of Heritage for future generations may result due to the available funds from the community and greater NZ being extinguished in legal debates around these issues instead of being directed towards building resilience and heritage preservation.
13. Is the proposed Plan Change 13 consistent with current case law which enables the demolition of the Category 1 and Category 2 buildings where it has been demonstrated that it is uneconomic to repurpose the building and that the building is at the end of its economic life?
14. We request a copy of the Palmerston North City Council economic analysis supporting proposed Plan Change 13?
15. We **oppose** the proposed Plan Change 13 in its current form.



We seek the following decision from the local authority:

1) That the Proposed Plan Change 13 be withdrawn in full, but failing a full withdrawal of the proposed amendment that;

2) Proposed amendments be placed on hold to enable Central Government legislation amendments to be completed because this would enable better alignment of policy framework to statutory requirements; and/or

3) That the wording of the Proposed Plan Change 13 be amended to enable the best possible alignment between related statutes and RMA policies to enable a workable solution to resilient building practice framework which informs *Cultural and Natural Heritage* matters in the Palmerston North District plan. Specifically that;

Delete R17.7&.2 External Alterations and Additions to Category 1 and 2 Scheduled Buildings and Objects

Replace with R17.7&.2 External Alterations and Additions to Category 1 and 2 Scheduled Buildings and Objects

Delete R17.7&.2 Assessment Criteria (f) and (g)

Delete R17.9 Non-Complying Activities

Replace with R17.9 Restricted Discretionary Activities Category 1 and 2 Buildings

R17.9.1 Restricted Discretionary Activities

(a) Total or partial demolition of the exterior of any scheduled building

R17.9.2 Restricted Discretionary Activities for Category 1 & 2 Buildings
Assessment Criteria

- (i) The extent of the buildings Cultural Values and Contextual Value
- (ii) Whether there has been any change in circumstances that has resulted in a reduction of the heritage or cultural value of the building
- (iii) The extent to which the building and structure has been damaged by a disaster.
- (iv) Whether it can be demonstrated that no sustainable continued use or adaptive reuse of the building is economically viable.



(v) Whether the site has or is likely to have significant archaeological values, and whether the effects on those values by the proposal can be adequately avoided, remedied or mitigated.

Add Guidance in respect to Assessment Criteria (iv) Notwithstanding the purpose of the RMA1991 the interests of *natural justice* shall prevail in providing for the foreseeable needs of future generations. The provision for the needs of future generations shall not be made at the cost of meeting the reasonable needs of the current generation where it can be demonstrated that the economic impact has adverse effect on the current generation.

Comment - Current RMA Policy seeks to place the burden for the cost of historic building and objects preservation disproportionately on the private owner as a taking of their property rights under statute. In the current NZ context insurance for earthquake prone buildings (particularly heritage buildings) is near impossible to obtain because the premium outweighs the potential return on investment. Additionally, there is a lack of support in bank lending policy to fund the remedial work required for these buildings to bring them up to current NZ Building Code standard which, in turn, places the lease and use of commercial buildings at risk. Yet, owners of such buildings must meet mortgage repayments, rates and whatever insurance costs they can obtain (often unobtainable), a slow decline towards bankruptcy can and does result where the owner does not have access to private funds to prevent it.

There is potential for the building owner to be prosecuted under either the Building Act 2004 and / or the Health and Safety & Employment Act 1992 for allowing the use of a '*dangerous or unsanitary*' building. There is also potential for the Palmerston North City Council to be prosecuted under the same Acts if they decline resource consents or private plan changes to demolish unsafe and unsanitary buildings (as the owners only viable economic means to make them safe) and the building collapses and harms or kills a member of the public in the public domain. We acknowledge that is not within the power of the commissioners appointed to change central government policy, however the misalignment of legislation (RMA1991, Building Act 2004 and Health and Safety & Employment Act) is problematical for the protection of heritage buildings. It is clear that legislative alignment is required at central government level. It should not be forced down onto local government where resulting policies attempting to control related matters result in lack of clear direction and become unworkable in practice.



Demolition by neglect is mentioned as an "issue" in section 32A and the introduction of R17.7.2 (f) and (g) should recognise that it is not possible to provide for "ongoing preservation" of all scheduled buildings and that "*alternative option analysis*" places additional burdens on landowners where council or council experts do not agree with the remedial proposals of the building owner. Such debates are often detrimental to the preservation of our historic heritage as they are wasteful of funds available.

Add R17.10 Non-Complying Activities

Rule 17.10.1 Non-Complying Activities

(a) Total or partial demolition of the exterior or destruction of any scheduled object.

Add Any similar amendments that achieve greater clarity surrounding these rules.

Add Any other consequential amendments arising from these changes throughout the District Plan.

We wish to be heard in support of the NZIA/Western Branch NZIA submission, we reserve the right to call on any NZIA Architect Member(s) from *the Western Branch* Manawatu region to present information to the hearing for the NZIA.

If others make a similar submission, the NZIA will consider presenting a joint case with them at a hearing.

Signature of submitter

(or person authorised to sign on behalf of submitter)

A handwritten signature in black ink, appearing to be 'Duncan Sinclair', written over a horizontal line.

.....
Duncan Sinclair

Chairperson on behalf of NZIA Western Branch Members and the NZIA

Date: 11 April 2014

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