

Section 42A Officer’s Report

Hearing Stream 7: Other Topics

Subjects: Earthworks

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1 Contents

1	Contents.....	2
2	Introduction	5
2.1	Authors.....	5
2.2	Declaration of Interests.....	6
2.3	Supporting evidence.....	6
2.4	Glossary and abbreviations.....	7
2.5	Procedural issues.....	8
2.6	Relevance of PDP exemption for Earthworks chapter	8
2.6.1	Integration with the ODP	11
2.7	Implications for submissions on the Earthworks Chapter.....	12
3	Earthworks	14
3.1	Chapter Summary	14
3.2	Statutory and Policy Context	14
3.2.1	National Direction Instruments	14
3.3	Submissions and further submissions.....	15
3.4	Key resource management issues	16
3.4.1	Provisions not in contention.....	16
3.5	Discussion of submissions and recommendations	18
3.5.1	Definition – Earthworks.....	18
3.5.2	Definition – Minor earthworks.....	20
3.5.3	Definition – Cleanfill material.....	21
3.5.4	New definition – Community Scale Natural Hazard Mitigation Structure	22
3.5.5	New definition – Stabilised	24
3.5.6	Whole chapter	25

3.5.7	National Grid Yard provisions	26
3.5.8	Slope Assessment Overlay provisions	27
3.5.9	EW-O1: Earthworks	29
3.5.10	EW-P1: Minor earthworks.....	31
3.5.11	EW-P6: Earthworks within Flood Hazard Overlays	33
3.5.12	EW-P7: Earthworks on slopes	37
3.5.13	EW-P8: Earthworks in the Slope Assessment Overlay	40
3.5.14	EW-P15: Earthworks and vertical holes within the National Grid Yard not associated with infrastructure.....	43
3.5.15	EW-R1: Minor earthworks.....	46
3.5.16	EW-R2: General earthworks	47
3.5.17	EW-R3: Earthworks for maintaining or constructing public walking and cycling tracks	49
3.5.18	EW-R4: Earthworks for maintaining or constructing farming tracks	50
3.5.19	EW-R5: Earthworks associated with Natural Hazard Mitigation Works or Green Infrastructure within the Flood Hazard Overlays and Coastal Hazard Overlays	51
3.5.20	EW-R6: Earthworks within Flood Hazard Overlays	53
3.5.21	EW-R8: Earthworks for a building platform in the Slope Assessment Overlay	56
3.5.22	EW-R16: Earthworks and vertical holes within the National Grid Yard not associated with infrastructure.....	58
3.5.23	EW-S1: Area of earthworks.....	60
3.5.24	EW-S2: Cut height and fill depth	65
3.5.25	EW-S3: Existing slope angle, where outside the Slope Assessment Overlay	67
3.5.26	EW-S4: Transport of cut and fill material.....	69
3.5.27	EW-S5: Site reinstatement	72
3.5.28	EW-S6: Earthworks for farming tracks	73
3.5.29	EW-S13: Earthworks and vertical holes within the National Grid Yard not associated with infrastructure.....	75
4	Mechanical issues, minor and consequential amendments	80

5 Summary of recommendations..... **Error! Bookmark not defined.**

6 Conclusion.....81

7 Attachments.....82

2 Introduction

- (1) This report is the Officers Report for Hearing #7 Other Topics – Earthworks Chapter for the Proposed Lower Hutt District Plan (the PDP).
- (2) This report is prepared under section 42A of the Resource Management Act 1991 (the RMA) to:
 - a. Assist the Hearing Panel in making their recommendations on the submissions and further submissions on the Earthworks chapter of City of Lower Hutt District Plan, and
 - b. Provide submitters with information on how their submissions/further submissions have been evaluated by the reporting officer(s) for this hearing stream, and their recommendations to the Hearing Panel.
- (3) This report considers submissions/further submissions received by Council in relation to the Earthworks chapter, and concludes with recommendations with respect to decisions requested by submitters for the chapter.
- (4) The Hearing Panel may choose to accept or reject the conclusions and recommendations of this report, or may come to different conclusions and make different recommendations, based on the information provided to them, including evidence provided to them by submitters.

2.1 Author

- (5) My name is Catherine Anna Nichol. I am a Consultant Planner at Boffa Miskell, who is assisting Hutt City Council (HCC) with the District Plan Review/PDP. My role with the District Plan Review/PDP has been assisting with the drafting and preparation of s42A reports for specific chapters. However, I was not involved in the review or preparation of the Earthworks chapter.
 - (6) I hold the qualifications of Bachelor of Resource and Environmental Planning from Massey University, Palmerston North. I am an intermediate member of the New Zealand Planning Institute.
 - (7) I have 10 years' experience in planning and resource management including policy development and the preparation of and processing of resource
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consent applications and plan changes. I have worked as a resource consents planner in local authorities across New Zealand and London, UK.

- (8) Although this is a Council hearing, I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023. I have complied with the Code of Conduct when preparing my written report and I agree to comply with it when I give any oral evidence.
- (9) Other than where I state that I am relying on the advice of another person, this evidence is within my areas of expertise. I have not omitted to consider material facts known to us that might alter or detract from the opinions that I express.
- (10) Any data, information, facts, and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinion. Where I have set out opinions in my evidence, I have given reasons for those opinions.

2.2 Declaration of Interests

- (11) Boffa Miskell also provides policy advice and assistance to Transpower New Zealand Ltd with reviewing and submitting on RMA planning documents. Therefore, in preparing this Section 42A report, where provisions have been submitted on by Transpower, those evaluations and recommendations (which refer to first person) are authored by Nathan Geard, Policy Planning Manager, Hutt City Council.

2.3 Supporting evidence

- (12) The s32 evaluation reports for these chapters remain relevant. I do reference other existing publicly available reports, which will be shown in the body of the report.

2.4 Glossary and abbreviations

Term or abbreviation	Meaning
The Fuel Companies	The joint submission of BP Oil New Zealand Ltd, Mobil Oil New Zealand Ltd and Z Energy Ltd (submitter 471).
GW, GWRC, WRC	Wellington Regional Council, t/a "Greater Wellington" and "Metlink" (submitter 452)
HCC	Hutt City Council
NES-CS	National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health
NES	National Environmental Standard
NPS	National Planning Standard
NZDF	New Zealand Defence Force (submitter 404)
NZEC 34:2001	New Zealand Electrical Code of Practice for Safe Electrical Distances
NZTA	New Zealand Transport Agency (submitter 385)
ODP	Operative District Plan
PDP	Proposed District Plan
Policy Planning Team	Policy Planning Team of the Hutt City Council (submitter 440). For the avoidance of doubt this is a submission by officers, not a submission of the Hutt City Council.
RMA or 'the Act'	Resource Management Act 1991

RPS	Regional Policy Statement for the Wellington Region
The Telecommunication Companies	Joint submission (311) of Connexa, Chorus, FortySouth and Spark

2.5 Procedural issues

- (13) At the time of writing this report there have not been any pre-hearing conferences, clause 8AA meetings, or expert witness conferencing in relation to the Earthworks chapter.

2.6 Relevance of PDP exemption for Earthworks chapter

- (14) As set out in the s42A report for Hearing Stream #1, Hutt City Council sought an exemption to allow the majority of the PDP to continue through the Schedule 1 process following the 'Plan Stop' mechanism introduced in the Resource Management (Consenting and Other System Changes) Amendment Act.
- (15) On 15 January 2026, the Minister Responsible for RMA Reform, Hon Chris Bishop, approved the exemption in full, enabling most PDP chapters to proceed to hearings and decisions.
- (16) As a result, the PDP is exempted from the plan stop requirements, with the exception of the following parts:
- Historical and Cultural Values chapters, schedules and overlays,
 - Natural Environmental Values chapters, schedules and overlays,
 - Non-hazard parts of the Coastal Environment chapter and associated schedules and overlays (including coastal natural character), and
 - Parts relating to Highly Productive Land.
- (17) In this report, I refer to this as the "plan stop exemption" or "Council's plan stop exemption".

- (18) In accordance with The Resource Management (Consenting and Other System Changes) Amendment Act and the Minister’s exemption decision, Council is statutorily required to withdraw those parts of the PDP that are not covered by the exemption.
- (19) For the most part, this was completed and publicly notified on 15 January 2026.
- (20) However, not all provisions that related to these parts of the PDP were withdrawn at that time. In particular, provisions in several district-wide chapters address matters that are outside the scope of the exemption (that ultimately need to be withdrawn) alongside matters that are in scope of the exemption (that need to be retained). A decision was made to not undertake the partial withdrawals of those chapters as it would have resulted in a rewrite of the chapters, and risked confusion for plan users and people involved in the PDP process.
- (21) For the Earthworks chapter, the objectives, policies and rules of the chapter were drafted to interact with a number of PDP chapters that have since been withdrawn. I have therefore reviewed the Earthworks chapter to identify provisions, or parts of provisions, that relate to matters outside the scope of the exemption and which will ultimately need to be withdrawn from the PDP. Table 1 below lists the provisions of the Earthworks chapter which are considered out of scope in their entirety. These are provisions which wholly relate to chapters, overlays or other notations or schedules which have been withdrawn.

Table 1: Provisions in the Earthworks Chapter considered wholly outside the scope of the plan stop exemption

Withdrawn topic	Earthworks Chapter provisions not within scope of the exemption
Heritage chapters and overlays	EW-P9 – Earthworks on sites with Heritage Buildings or Heritage Structures, or within Heritage Areas EW-R9 – Earthworks on sites with heritage buildings or heritage structures, or within heritage areas

	EW-S8 – Earthworks on sites with heritage buildings or heritage structures, or within heritage areas
Sites and Areas of Significance to Māori chapter, overlays and schedules	EW-P10 – Earthworks on Sites and in Areas of Significance to Māori EW-R10 – Earthworks on Sites and in Areas of Significance to Māori EW-S9 – Earthworks on sites and in Areas of Significance to Māori
Outstanding Natural Features and Landscapes	EW-P12 – Earthworks within Outstanding Natural Features and Landscapes EW-R12 – Earthworks within Outstanding Natural Features and Landscapes EW-S10 – Earthworks within Outstanding Natural Features and Outstanding Natural Landscapes
Natural Character Chapter – Coastal and riparian margins	EW-P13 – Earthworks within coastal margins and riparian margins EW-R13 – Earthworks within coastal margins and riparian margins EW-S11 – Earthworks within coastal margins and riparian margins
High, Very High and Outstanding Coastal Natural Character Areas	EW-P14 – Earthworks within High, Very High and Outstanding Coastal Natural Character Areas EW-R14 – Earthworks within High and Very High Coastal Natural Character Areas

	EW-R15 – Earthworks within Outstanding Coastal Natural Character Areas EW-S12 – Earthworks within High, Very High and Outstanding Coastal Natural Character Areas
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- (22) In addition, I have reviewed the remaining provisions in the Earthworks chapter to identify any that are partially not in scope of the plan stop exemption. Table 2 below lists these provisions, including a rationale for why the listed aspect of the provision is not in scope. Appendix 1 of this report includes a marked-up version of the chapter which shows these changes in full alongside changes recommended in response to submissions.

Table 2: Provisions in the Earthworks chapter partially not in scope of the plan stop exemption

Provisions of the Earthworks chapter partially not in scope of the exemption.	Reason provision is partially out of scope
EW-O1 – Earthworks Clause 4: <i>4. Minimises adverse effects on cultural and historic heritage</i>	Clause 4 relates to cultural and historic heritage. These parts of the PDP are outside the scope of the plan stop exemption, and relevant schedules and overlays have been withdrawn.

2.6.1 Integration with the ODP

- (23) Given the above, the PDP is no longer a complete replacement of the ODP. As a result, the parts of the ODP that are equivalent to the parts of the PDP that are not in scope of the plan stop exemption will need to be retained. These retained provisions will ultimately need to be integrated with the PDP.
- (24) I note that this means the final Integrated District Plan will not be able to give effect to all higher order documents. However, this is an inevitable

consequence of the plan stop provisions of the RMA and the scope of Council's plan stop exemption.

- (25) Council officers anticipate that integration will happen at the same time that Council makes its decisions on the PDP. This will involve some reformatting of the ODP provisions to conform to the National Planning Standards and ease this integration (to the extent Council is able to undertake this reformatting without the need for a Schedule 1 process).
- (26) In addition, there may need to be further plan changes in the future to improve the integration and implementation of higher order documents, but this will depend on what is enabled by relevant legislation at the time.
- (27) With regard to the Earthworks chapter, the equivalent chapter of the ODP most relevant to the management of earthworks effects on heritage, cultural or natural values are contained within Chapters 14E and 14F of the ODP. As these subject areas fall outside the scope of the plan stop exemption, the corresponding ODP provisions will need to be retained. These include:
- *Chapter 14E: Significant Natural Cultural and Archaeological Resources* (the ODP's closest equivalent to the Natural Environment chapters, Sites and Areas of Significance to Māori chapter, and natural character parts of the Coastal Environment chapter of the PDP), and
 - *Chapter 14F: Heritage Buildings and Structures* (the ODP's equivalent to the Historical Heritage chapter of the PDP).
- (28) These chapters include provisions that manage the effects of earthworks on heritage, cultural, archaeological and natural values. To the extent these matters are no longer addressed through the PDP, the ODP provisions will remain relevant and will need to be retained within the Integrated District Plan.

2.7 Implications for submissions on the Earthworks Chapter

- (29) A number of submission points on the Earthworks chapter seek changes that relate to PDP provisions identified above which are outside the scope of the plan stop exemption.

(30) As set out in the s42A report for Hearing Stream #1, the Council has obtained legal advice¹ on the implications of the exemption and withdrawal on submitters and the remaining PDP process. The legal advice concludes that:

- Submission points on withdrawn provisions fall away, because the Hearing Panel has no jurisdiction to grant any relief relating to provisions that no longer exist.
- Submitters who only submitted on withdrawn provisions do not need to be heard, as there is nothing the Panel can lawfully consider or determine.

(31) This report focuses on the provisions and associated submission points that are still within scope of the plan stop exemption.

(32) Any submission relief requesting amendments to withdrawn chapters, or dependent on their reinstatement, cannot be recommended or granted under Schedule 1. For completeness, these submissions have been included in Appendix 2 of this report, with an officer recommendation of 'No recommendation'.

¹ <https://www.huttcity.govt.nz/council/district-plan/district-plan-review/proposed-district-plan-hearings/hearing-stream-1>

3 Earthworks

3.1 Chapter Summary

- (33) The purpose of the Earthworks chapter is to assist the Council to carry out its functions under the RMA to provide for the sustainable management through the management of earthworks. The Earthworks chapter applies on a district-wide basis across all zones in the city and works alongside other relevant chapters of the PDP.

3.2 Statutory and Policy Context

- (34) The Section 32 evaluation report for the Earthworks topic outlines the statutory and policy context for the chapter which is still relevant.
- (35) While national direction does not generally explicitly address earthworks as a standalone activity, a number of national direction instruments are relevant because earthworks can affect matters such as natural hazards, freshwater, infrastructure, indigenous biodiversity and the use and development of land.

3.2.1 National Direction Instruments

- (36) The section 42A report for Hearing 1: Opening Hearing, sets out the relationship between the PDP, the RMA, and “higher order documents” i.e. national policy statements (NPS) and national environmental standards (NES). Of particular relevance to the Earthworks Chapter is the new National Policy Statement for Natural Hazards 2025 which came into effect since the PDP was publicly notified. The relevance and integration of the PDP with this NPS is discussed against applicable submission points in this report.
- (37) Since the writing of Hearing 1 s42A report, further national direction amendments have been made, and one new NES has been approved. The following amended and new national direction came into force on 4 June 2026, as follows:
- Resource Management (National Environmental Standards for Electricity Network Activities and Electric Charging Infrastructure Activities) Amendment Regulations 2026

- Resource Management (Stock Exclusion) Amendment Regulations 2026

- (38) Mr Stephen Quinn, Legal Counsel for the Council, provided advice to the Council about how new national direction should be considered in the PDP hearings process both prior to the commencement of the hearings, and subsequently following an information request by the Panel following Hearing 1. Mr Quinn's initial advice was provided in Minute 2 and his further advice has been provided as part of the Hearing 1 Reply documents². In preparing this report, I have had regard to that advice when considering the relevance of national direction changes arising after notification of the PDP.
- (39) Apart from the matters identified in this report, I do not consider changes in national direction since notification of the PDP require a fundamental reconsideration of the overall approach adopted in the Earthworks chapter. My assessment therefore focuses on whether targeted amendments are necessary to address specific submission points or to ensure consistency with current national direction.

3.3 Submissions and further submissions

- (40) A total of 58 original submissions, comprising 176 submission points were received on the Earthworks chapter. Submissions opposing and supporting the provisions have been received. Amendments have been sought to support specific outcomes in relation to natural hazards and specific zones and increase the permitted standards thresholds.
- (41) A summary of decisions requested was then prepared and publicly notified in accordance with clause 7 of Schedule 1, initiating the further submission period. Council subsequently received 7 further submissions, comprising 18 submission points, supporting or opposing specific submission points within the Earthworks chapter.
- (42) The key issues raised in submissions include:
- Earthworks within the Slope Assessment Overlay

² <https://www.huttcity.govt.nz/council/district-plan/district-plan-review/proposed-district-plan-hearings/hearing-stream-1>

- Earthworks within Flood hazards Overlays
- Objectives and Policies of the Earthworks Chapter
- Earthworks land use and overlay rules
- Earthworks standards

3.4 Key resource management issues

3.4.1 Provisions not in contention

(43) A number of provisions either received submissions in support only, or did not receive any submission points. These provisions are generally not in contention and, for the reasons outlined below, I recommend they be retained as notified. These provisions include definitions, strategic directions, objectives, and policies, which are summarised in Table 3 below.

Table 3: Earthworks Chapter provisions not in contention

Provision	Submission in support only or no submissions received
Definition – Land disturbance	Z Energy (468.14) and The Fuel Companies (471.64)
Introduction – Earthworks	The Aggregate and Quarry Association (202.2), HNZPT (248.58), Wellington Water (422.19), The Fuel Companies (471.208) and Transpower NZ (504.51)
EW-P2: Appropriate earthworks	Natural Hazards Commission Toka Tū Ake (327.79), NZTA (385.65), WRC (452.173), The Fuel Companies (471.211) and Transpower NZ (504.53)
EW-P3: Earthworks for public walking and cycling tracks	NZTA (385.65)
EW-P4: Earthworks for farming tracks	WRC (452.174) support Policy EW-P4, specifically clauses 1 and 2

EW-P5: Earthworks associated with natural hazard mitigation works	Natural Hazards Commission Toka Tū Ake (327.80) and WRC (452.175, supported by Natural Hazards Commission Toka Tū Ake, F15.79) support Policy EW-P5.
EW-P11: Earthworks within the Root Protection Area of Notable Trees	No submission points were received on this policy.
EW-P16: Earthworks within the Gas Transmission Pipeline Corridor not associated with infrastructure	Clarus (474.64) supports Policy EW-P16.
EW-R7: Earthworks on Community Scale Natural Hazard Mitigation Structures	Natural Hazards Commission Toka Tū Ake (327.85) and WRC (452.183, supported by Natural Hazards Commission Toka Tū Ake F15.84) support Rule EW-R7.
EW-R11 - Earthworks within the Root Protection Area of Notable Trees	No submissions received.
EW-R17: Earthworks within the Gas Transmission Pipeline Corridor not associated with infrastructure	Clarus (474.65) supports Rule EW-R17.
EW-S7: Earthworks for public walking and cycling tracks	No submissions were received on Standard EW-S7.
EW-S14 (Earthworks within the Gas Transmission Pipeline Corridor not associated with infrastructure)	Clarus (474.66)

- (44) Having reviewed the provisions identified in Table 3, I am satisfied that they are not in contention. The submissions received either support the provisions as notified or no submission points were received. I have also undertaken an independent review of these provisions and have not identified any issues arising from the statutory and policy framework, recent changes to national direction, or the plan stop exemption that would warrant amendment.

Accordingly, I consider the provisions remain appropriate and effective in achieving the objectives of the Earthworks chapter and recommend that the supporting submissions be accepted and the provisions retained as notified.

3.5 Discussion of submissions and recommendations

- (45) This section is a discussion of the submission points on the Earthworks chapter, with my recommendations on decisions requested by submitters on this topic.
- (46) The submission points are discussed in order that the relevant provision as they appear in the Earthworks chapter as proposed.

3.5.1 Definition – Earthworks

Submissions

- (47) Wainuiomata Rural Community Association Incorporated (364.8), Federated Farmers of New Zealand (410.54), David and Pauline Innes (416.6), Wellington Regional Council (452.6) and Transpower New Zealand Limited (504.3) support the definition of ‘Earthworks’ and seek that this is retained as notified.
- (48) Go Architecture Ltd (331.2) support the definition in part and seek amendments to make clear what works related to gardening require resource consent (i.e., raised garden beds, garden retaining walls). (Refer to original submission).
- (49) NZ Transport Agency Waka Kotahi (385.7) support the definition in part and seek the following amendment:

“Means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock), but excludes gardening, cultivation, sealing or resealing of a road or footpath, and disturbance of land for the installation of fence posts”
- (50) Z Energy Limited (468.13) oppose the definition in part and seek the following amendment:

"means the ~~alteration or disturbance~~ modification of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but excludes land disturbance, minor earthworks, gardening, cultivation, and disturbance of land for the installation of fence posts."

- (51) The Fuel Companies (471.63) oppose the definition and seek the following amendment:

"means the ~~alteration or disturbance~~ modification of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but excludes land disturbance, minor earthworks, gardening, cultivation, and disturbance of land for the installation of fence posts."

Assessment

- (52) The definition of "Earthworks" is a mandatory National Planning Standards definition and cannot be modified. As such, no changes are recommended to this definition.

Recommendation

- (53) I recommend rejecting submission points Z Energy Limited (468.13), The Fuel Companies (471.63), Go Architecture Ltd (331.2), and NZ Transport Agency Waka Kotahi (385.7).
- (54) I recommend accepting submission points from Wainuiomata Rural Community Association Incorporated (364.8), Federated Farmers of New Zealand (410.54), David and Pauline Innes (416.6), Wellington Regional Council (452.6) and Transpower New Zealand Limited (504.3).

Section 32AA Assessment

- (55) As I am not recommending any amendments to the definition, a section 32AA assessment is not required.

3.5.2 Definition – Minor earthworks

Submissions

- (56) Go Architecture (331.3) support the definition of ‘Minor earthworks’ in part, and seeks that the definition is amended to include gardening and garden beds (e.g. raised garden beds of up to 500mm in height, with no alteration to the underlying ground).
- (57) Z Energy Limited (468.15) opposes the definition in part, and seeks the following amendment:
- "means earthworks for the purposes of piling, trenching, geotechnical investigations, contaminated land investigations, interments within existing cemeteries or urupā, soakpits, stormwater detention tanks, rainwater tanks, wastewater mitigation tanks, and the replacement or removal of underground petroleum storage systems and stormwater treatment devices."*
- (58) The Fuel Companies (471.65) support in part the definition of ‘Minor earthworks’ and seek the same amendment as submission point 468.15 above.
- (59) Transpower New Zealand Limited (504.5a) support the definition of ‘Minor earthworks’ and seek that this is retained as notified.

Assessment

- (60) In regard to Go Architecture’s submission point, it is noted that the definition of ‘Earthworks’ excludes gardening. As such, gardening related earthworks would not be minor earthworks, which is effectively a subset of earthworks. Given this, no changes are recommended to the definition of ‘Minor earthworks in this regard’.
- (61) In regard to Z Energy’s and the Fuel Companies submission points, Z Energy considers that the ‘Minor earthworks’ definition should also apply to contaminated land investigations (also regulated by the NES-CS, which involve soil sampling, similar to geotechnical investigations), the replacement or removal of underground drainage devices, such as the oil-water interceptors necessary for service station / truck stop stormwater management.

- (62) The NES-CS permits soil sampling under regulation 8(2) of that document, and soil disturbance under regulation 8(3), subject to the standards set out in those clauses.
- (63) The Proposed District Plan Contaminated Land Chapter states: As *the NESCS provides a complete framework of rules that deal with assessing and managing contaminated soils, the District Plan does not contain any independent or separate set of rules or assessment matters.*
- (64) Given these activities would be caught by the NESCS and not the District Plan, no changes are recommended in this regard.

Recommendation

- (65) I recommend submission points Go Architecture Ltd (331.3), Z Energy Limited (468.15) and the Fuel Companies (471.65) are rejected.
- (66) I recommend that submission point of Transpower New Zealand Limited (504.5a) is accepted.

Section 32AA Assessment

- (67) As I am not recommending any amendments to the definition, a section 32AA assessment is not required.

3.5.3 Definition – Cleanfill material

Submissions

- (68) Enviro NZ (323.006) supports the definition of ‘Cleanfill material’ and seeks that this is retained as notified [inferred].
- (69) The Fuel Companies (471.61) support the definition in part and seek the following amendment:
- "means virgin excavated natural materials including clay, gravel, sand, soil and rock, and other inert materials such as concrete or brick that are free of:*
- ..."*

Assessment

- (70) The Fuel Companies [471.61] seek an amendment to include inert materials within the definition.

- (71) The notified definition of “cleanfill material” has been adopted from the National Planning Standards definition list. Under the mandatory directions of the National Planning Standards, where a defined term is used in the same context as the National Planning Standards definition, the local authority must use that definition. While councils may define terms that are a sub-category of, or have a narrower application than, a National Planning Standards definition, they cannot amend a defined term so that it has a different meaning from that prescribed in the Definitions List.
- (72) In my view, the relief sought by The Fuel Companies would change the meaning and scope of the National Planning Standards definition by expressly including additional materials not contained within the prescribed definition. I do not consider this would constitute a narrower application or sub-category of the National Planning Standards term. Accordingly, I consider the requested amendment would be inconsistent with the mandatory directions of the National Planning Standards.
- (73) I therefore consider that retaining the notified definition is the most appropriate approach, as it ensures consistency with the National Planning Standards and provides certainty for plan users. For these reasons, I recommend the submission is rejected.

Recommendation

- (74) I recommend accepting the submission points from Enviro NZ (323.006).
- (75) I recommend rejecting the submission point from The Fuel Companies (471.61).

Section 32AA Assessment

- (76) As I am not recommending any amendments to the definition, a section 32AA assessment is not required.

3.5.4 New definition – Community Scale Natural Hazard Mitigation Structure

Submissions

- (77) Michael Rachlin (232.24) seeks a new definition of ‘Community scale natural hazard mitigation structure’. This is sought in relation to EW-R7 which uses the

term; Mr Rachlin has concerns that the phrase it is not defined and lacks certainty for a permitted activity rule.

Assessment

- (78) Rule EW-R7 provides for earthworks associated with community-scale natural hazards mitigation structures where those works are undertaken by central government, local government, or their agents. The rule requires compliance with the associated standards which control matters like volume and area.
- (79) Any community-scale natural hazards mitigation structures undertaken by any other persons would require resource consent.
- (80) I acknowledge that the term 'community-scale natural hazards mitigation structures' is not defined in the PDP. However, in my view the phrase has a sufficiently clear and ordinary meaning when read in the context of the rule. The rule framework limits its application to natural hazard mitigation works undertaken for a community-scale purpose, rather than works associated with individual sites or private land development. The rule therefore provides an adequate framework for determining when it applies.
- (81) I also note that similar terminology is used in other district plans without definition (e.g. Wellington District Plan), which suggests the term is capable of being understood and applied in practice. While this is not determinative, it provides additional support for retaining the notified approach.
- (82) For these reasons, I do not consider a definition is necessary and recommend rejecting the submission.

Recommendation

- (83) I recommend rejecting the submission point from Michael Rachlin (232.24).

Section 32AA Assessment

- (84) As I am not recommending any amendments, a section 32AA assessment is not required.

3.5.5 New definition – Stabilised

Submissions

- (85) Kāinga Ora – Homes and Communities (386.16) seek a new definition of ‘stabilised’ as follows:

"means the process of making an area of disturbed soil or site of earthworks resistant to erosion, achieved by paving, metaling, building over or revegetating. Where seeding or grassing is used on a surface that is not otherwise resistant to erosion, the surface is stabilised once 80% vegetative ground cover has been established over the entire area."

Assessment

- (86) The submission is not supported. The term “stabilised” is used infrequently within the Proposed District Plan and only in limited circumstances relating to site reinstatement following earthworks. In my view, the term has a clear and commonly understood meaning in the context of earthworks, and I am not aware of any implementation issues arising from the absence of a specific definition.
- (87) The proposed definition includes both specific methods of stabilisation and prescriptive performance standards. While these measures may be appropriate in some circumstances, I do not consider it necessary or desirable to prescribe a particular threshold within the definition. Site conditions, erosion risks and appropriate stabilisation techniques can vary significantly, and a prescriptive definition may unnecessarily constrain how stabilisation outcomes are achieved. In my view, it is more appropriate to specify these requirements through consent conditions or industry guidance. The amendment is not considered necessary to achieve the outcomes sought by the relevant provisions and may reduce flexibility in how site stabilisation is achieved.
- (88) Overall, I consider retaining the ordinary meaning of the term provides sufficient certainty while allowing flexibility for a range of effective stabilisation methods to be used. I therefore consider the notified approach remains the most appropriate and recommend rejecting the submission.

Recommendation

- (89) I recommend rejecting the submission point from Kāinga Ora – Homes and Communities (386.16).

Section 32AA Assessment

- (90) As I am not recommending any amendments, a section 32AA assessment is not required.

3.5.6 Whole chapter

Submissions

- (91) Winstone Aggregates (444.32) support the Earthworks chapter and request it be retained as notified ensuring the Quarry Zone and quarrying activities are excluded.
- (92) The Petone Historical Society (496.40) support the Earthworks chapter.

Assessment

- (93) The submissions from The Petone Historical Society (496.40) and Winstone Aggregates (444.32) support the Earthworks Chapter and seek it is retained as notified is noted.
- (94) While I generally support the intent and framework of the Earthworks chapter, I am recommending a number of amendments elsewhere in this report in response to submissions. As a consequence, I do not recommend retaining the chapter entirely as notified.
- (95) I therefore recommend accepting in part these submissions as I am recommending amendments to these standards in response to other submissions.

Recommendation

- (96) I recommend accepting in part submission points from The Petone Historical Society (496.40) and Winstone Aggregates (444.32). The submissions are accepted to the extent they support the overall approach of the Earthworks chapter, but rejected insofar as they seek the chapter be retained entirely as notified.

Section 32AA Assessment

- (97) Amendments are recommended throughout this report and supported by a section 32AA assessment as required. As I am not recommending any specific changes in this section a section 32AA assessment is not required.

3.5.7 National Grid Yard provisions

- (98) Transpower NZ (504.5b) support the Earthworks chapter in part, and seeks clarification that 'minor earthworks' will be subject to rules for earthworks within the National Grid Yard.

Assessment

- (99) The PDP defines 'minor earthworks' as a specific group of activities³ where the effects of the earthworks are minimal due to a combination of the small scale of the earthworks, the fact that the disturbed area is likely to be covered shortly after the earthworks take place (for example, by piles or stormwater detention and rainwater tanks) and/or on the completion of the activity the ground level is reinstated (for example, trenching, geotechnical investigations and replacement/removal of underground petroleum storage systems).
- (100) However, even small-scale, temporary earthworks in the National Grid Yard have the potential to adversely affect the safety of the National Grid, and it was intended for these activities to be captured by the provisions for general earthworks in the National Grid Yard. As a result, I recommend that this submission point be accepted, and note that more specific recommendations are given elsewhere in this report in relation to the specific provisions on earthworks in the National Grid Yard.

Recommendation

- (101) I recommend accepting the submission point of Transpower NZ (504.5b).

³ Piling, trenching, geotechnical investigations, interments within existing cemeteries or urupā, soakpits, stormwater detention tanks, rainwater tanks, wastewater mitigation tanks, and the replacement or removal of underground petroleum storage systems.

Section 32AA Assessment

- (102) As I am not recommending any amendments, a section 32AA assessment is not required.

3.5.8 Slope Assessment Overlay provisions

Submission

- (103) D Surrey (427.13b) oppose the Earthworks chapter in part, and requests a different policy and rule framework for properties in the Slope Assessment Overlay which are at the base of hills as opposed to those properties on hills, suggesting:
- a. The rule framework could be tied to buildings rather than earthworks, and
 - b. A controlled activity status to allow for works, providing there is a geotechnical report.

Assessment

- (104) I acknowledge the submitters request to separate development on the lower slopes however; the overlay is not intended to distinguish between properties that may cause slope failure and properties that may be affected by slope failure. Rather, it identifies land with a susceptibility to slope instability and triggers the need for further geotechnical assessment where development is proposed. This ensures that development can safely occur on the site without increasing slope instability or exposing people and property to unacceptable risk from slope failure.
- (105) The Slope Assessment Overlay is based on the findings of the Slope Failure Susceptibility Assessment by WSP, which undertook a district-wide assessment of slope failure susceptibility using a combination of topographic, geological, geomorphological and land cover data, together with records of historic landslides. The assessment considered a range of factors known to influence slope stability, including slope angle, geology, proximity to streams and faults, vegetation cover, soil characteristics and evidence of past instability.
- (106) Importantly, the overlay is not solely based on slope gradient. The assessment recognises that slope failure susceptibility is influenced by a combination of

factors and that landslides can occur on lower angle slopes where other conditions increase susceptibility. Historic landslide data was also reviewed as part of the assessment which demonstrated that slope failures have occurred on slopes below those typically associated with very steep land, reinforcing the need for a broader assessment approach.

- (107) The overlay was developed through a GIS-based methodology using high-resolution LiDAR data, validated against known landslide locations and supported by site observations. The mapped areas were subsequently refined in key development areas to ensure the overlay realistically reflects slope failure susceptibility.
- (108) Therefore, I consider that the Slope Assessment Overlay accurately reflects the findings of the technical assessment and provides an appropriate and precautionary approach to managing slope instability hazards. Deleting lower slope areas from the overlay would be inconsistent with the underlying technical evidence and could result in areas with a recognised susceptibility to slope failure no longer being identified through the District Plan.
- (109) The submitter is also seeking a separate policy and rule framework for properties located at the base of hills, including a different activity status focused on buildings rather than earthworks. This relief is not supported.
- (110) The technical evidence does not support treating properties at the base of hills differently from other land within the overlay. The Slope Failure Susceptibility Assessment specifically recognises that areas downslope of steep land may be exposed to regression and debris runout hazards and recommends that these risks be considered through the planning framework. The notified approach appropriately manages these risks without requiring a separate overlay, policy framework or activity status.
- (111) I also do not support shifting the assessment trigger from earthworks to buildings. Earthworks can directly affect slope stability and are an appropriate point at which potential hazards are assessed and managed.
- (112) Nor do I support a controlled activity status where a geotechnical report is provided. While geotechnical information is an important component of the assessment, the provision of such information does not in itself demonstrate that residual hazard risks can be appropriately managed. Retaining a restricted discretionary framework enables Council to consider the nature of

the proposed earthworks, any mitigation measures and the residual risk on a site-specific basis.

- (113) For these reasons, I consider the notified provisions remain the most appropriate and effective approach and recommend that the submission be rejected.

Recommendation

- (114) I recommend rejecting the submission point from D Surrey (427.13b).

Section 32AA Assessment

- (115) As I am not recommending any amendments, a section 32AA assessment is not required.

3.5.9 EW-O1: Earthworks

Submissions

- (116) HNZPT (248.59), Natural Hazards Commission Toka Tū Ake (327.77), WRC (452.172), Federated Farmers (410.47), D and P Innes (416.7b) and The Fuel Companies (471.209) support Objective EW-O1.
- (117) The Wainuiomata Rural Community Association (364.9), Federated Farmers (410.46, supported by Royal Forest and Bird Protection Society of New Zealand Inc, F23.2 and 410.47) and D and P Innes (416.7a) support Objective EW-O1 in part, and request the following amendment:

Earthworks are undertaken in a manner that:

1. *Is consistent with the anticipated scale and form of development in the underlying zone,*
2. ~~Minimises adverse effects~~ Avoids, remedies or mitigates adverse effects on the natural environment, including changes to natural landforms,
3. ~~Minimises adverse effects~~ Avoids, remedies or mitigates adverse effects on visual amenity values,
4. ~~Minimises adverse effects~~ Avoids, remedies or mitigates adverse effects on cultural and historic heritage values,

5. *Minimises erosion, dust, and sediment effects beyond the site boundary,*
6. *Does not cause or exacerbate risks from natural hazards,*
7. *Minimises risks associated with slope instability, and*
8. *Protects the safety of people and property.*

Assessment

- (118) I support the submissions requesting the replacement of '*minimise*' with '*avoid, remedies or mitigates adverse effects*'. Section 75 of the RMA, read in conjunction with Section 72, requires district plan objectives to achieve the purpose of the Act. Section 5 outlines the purpose of the Act and specifically clause 2 (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment*. In my view, the phrase "avoid, remedy or mitigate" more appropriately reflects the sustainable management purpose of the RMA and provides a clearer indication of the intended environmental outcomes associated with earthworks activities.
- (119) While both approaches seek to manage adverse effects, the notified wording focuses solely on minimisation of effects. By comparison, the requested wording recognises that some effects should be avoided altogether, while others may be appropriately remedied or mitigated depending on their nature and significance. This better reflects the range of responses available through the district plan framework.
- (120) I also consider the amendment improves consistency with the wider PDP framework, which generally manages adverse effects through an avoid, remedy or mitigate approach, while allowing more specific direction regarding minimisation of effects to be addressed through the supporting policies and rules.
- (121) For these reasons, I consider the proposed amendment is a more effective and appropriate way of achieving the purpose of the objective and satisfies the requirements of section 32AA of the RMA.
- (122) For completeness, I note that clause 4 of this Objective relates to cultural and historic heritage values and is outside the scope of the plan stop exemption. Accordingly, that clause is recommended for withdrawal as discussed in Section 2.6.

Recommendation

- (123) I recommend that the submission points of H HNZPT (248.59), Natural Hazards Commission Toka Tū Ake (327.77), WRC (452.172), Federated Farmers (410.47), D and P Innes (416.7b) and The Fuel Companies (471.209) are accepted in part.
- (124) I recommend that the submission points of The Wainuiomata Rural Community Association (364.9), Federated Farmers (410.46, supported by Royal Forest and Bird Protection Society of New Zealand Inc, F23.2 and 410.47) and D and P Innes (416.7a) are accepted.
- (125) EW-O1 is recommended to be amended as follows:

EW-O1	Earthworks
<i>Earthworks are undertaken in a manner that:</i> <i>1. Is consistent with the anticipated scale and form of development in the underlying zone,</i> <i>2. Minimises adverse effects <u>Avoids, remedies or mitigates adverse effects</u> on the natural environment, including changes to natural landforms,</i> <i>3. Minimises adverse effects <u>Avoids, remedies or mitigates adverse effects</u> on visual amenity values,</i> <i>4. Minimises adverse effects on cultural and historic heritage values,</i> <i>5. Minimises erosion, dust, and sediment effects beyond the site boundary,</i> <i>6. Does not cause or exacerbate risks from natural hazards,</i> <i>7. Minimises risks associated with slope instability, and</i> <i>8. Protects the safety of people and property.</i>	

Section 32AA Assessment

- (126) The recommended amendments are the most appropriate way to achieve the purpose of the RMA for the following reasons:

- Objective EW-O1 referring to 'Avoids, remedies or mitigates' as opposed to 'minimise', is the most appropriate way to achieve the purpose of the RMA, allowing more specific direction regarding minimisation of effects to be addressed through the supporting policies and rules.

3.5.10 EW-P1: Minor earthworks

Submissions

- (127) Natural Hazards Commission (327.78), NZTA (385.65) The Fuel Companies (471.210) support Policy EW-P1.
- (128) Transpower NZ (504.52) are neutral on Policy EW-P1, and request the policy is retained subject to acceptance of the relief they request in submission points 504.56 and 504.57 (discussed in sections 3.5.22 and 3.5.29 of this report).
- (129) Fish and Game (509.16) support Policy EW-P1 in part, and request the following amendment:

Enable minor earthworks where:

1. *The stability and structural integrity of land, infrastructure, and buildings are not compromised,*
2. *Erosion, dust, and sedimentation effects on land and water bodies are avoided or minimised, and*
3. *Effects on visual amenity are insignificant.*

Assessment

- (130) In regard to Fish and Game's submission point, 'minimised' is a term which is defined in the RPS as meaning 'to reduce to the smallest amount reasonably practicable'. While this is not the same meaning as avoid, it is still a high bar to be achieved.
- (131) Under the PDP, 'minor earthworks' are defined as:
- means earthworks for the purposes of piling, trenching, geotechnical investigations, interments within existing cemeteries or urupā, soakpits, stormwater detention tanks, rainwater tanks, wastewater mitigation tanks, and the replacement or removal of underground petroleum storage systems.*

- (132) These activities by nature would not involve large areas of earthworks at any one time would be of a smaller scale.
- (133) If the requested wording was included in the policy, given this is an 'or', it would still enable earthworks which minimise effects and therefore I consider there is not value in making this change.
- (134) Given the above, being the high bar set with the term 'minimise', the nature of activities which are captured by the 'minor earthworks' definition, I do not consider that this change requested is necessary.
- (135) Transpower NZ's request that the policy EW-P1 is retained subject to acceptance of their requested relief rule EW-R16 and EW-S13 is noted. These aspects of the Transpower NZ submission is discussed in sections 3.5.22 and 3.5.29 of this report, where I do not recommend that their request be fully accepted. However, as this submission point is still technically a submission point in support of EW-P1, my recommendation is that the submission point be accepted.

Recommendation

- (136) I recommend that the submission points of Natural Hazards Commission (327.78), NZTA (385.65), The Fuel Companies (471.210) and Transpower NZ (504.52) are accepted.
- (137) I recommend that the submission point of Fish and Game (509.16) is rejected.

Section 32AA Assessment

- (138) As I am not recommending any amendments to the Policy, a section 32AA assessment is not required.

3.5.11 EW-P6: Earthworks within Flood Hazard Overlays

Submissions

- (139) The Fuel Companies (471.212) support Policy EW-P6 and seeks it to be retained as notified.
- (140) M Rachlin (232.21) opposes Policy EW-P6 in part and requests the policy be replaced with risk-based policies that address the hydraulic differences between overland flowpaths, stream corridors, and ponding/inundation areas.

- (141) Natural Hazards Commission Toka Tū Ake (327.81) request the following amendment to Policy EW-P6:

Provide for earthworks in Flood Hazard Overlays where ~~any increase in~~ flooding risk for neighbouring properties is ~~minimised when compared to the existing situation~~ reduced or not increased by:

1. *Managing the displacement of flood waters, and*
2. *Ensuring the earthworks do not impede floodwaters from being conveyed along Overland Flowpaths or Stream Corridors.*

- (142) The Policy Planning team of HCC (440.49) oppose Policy EW-P6 in part, and request the following amendment:

Provide for earthworks in Flood Hazard Overlays where any increase in flooding risk for neighbouring properties is minimised when compared to the existing situation by:

1. *Managing the displacement of flood waters, and*
2. *Ensuring the earthworks do not impede floodwaters from being conveyed along ~~Overland Flowpaths~~ Medium Flood Hazard Overlays or ~~Stream Corridors~~ High Flood Hazard Overlays.*

- (143) WRC (452.176, supported in part by Natural Hazards Commission Toka Tū Ake, F15.80) supports Policy EW-P6 in part, and seek the following amendment:

Provide for earthworks in Flood Hazard Overlays where ~~any increase in~~ flooding risk for neighbouring properties is ~~minimised when compared to the existing situation~~ there is no increase in existing risk to neighbouring properties by:

1. *Managing the displacement of flood waters, and*
2. *Ensuring the earthworks do not impede floodwaters from being conveyed along Overland Flowpaths or Stream Corridors.*

Assessment

- (144) M Rachlin (232.21) submits that the EW-P6 policy relies on the terms “Overland Flowpaths” and “Stream Corridors”, despite these terms not being defined or identified on the planning maps. Similar concerns regarding flood hazard terminology were raised through submission point 232.5, which was

addressed in Hearing Stream #5⁴. Through that process, a High, Medium and Low Flood Hazard Overlay framework was adopted, which aligns more closely with the hazard-ranking system contained within the RPS and NPS-NH.

- (145) I agree with Mr Rachlin that the wording is inconsistent, the policy as notified refers to "Overland Flowpaths" and "Stream Corridors" which are not mapped. The PDP has been drafted to refer to high/medium/low risk approach.
- (146) I agree that the wording of Policy EW-P6 should be amended to reflect the terminology adopted through the flood hazard framework. The references to "Overland Flowpaths" and "Stream Corridors" are inconsistent with the overlay mapping and terminology now used elsewhere in the PDP. Updating the policy to refer to the Medium Flood Hazard Overlay and High Flood Hazard Overlay will improve consistency across the plan and provide greater certainty for plan users
- (147) I therefore accept Mr Rachlin's submission in part. While I agree that the policy should adopt terminology consistent with the flood hazard overlay framework, I do not consider a separate policy framework is required for different flood hazard types. The distinctions between flood hazard areas are already recognised through the flood hazard mapping, overlay hierarchy and associated Natural Hazards chapter provisions. Policy EW-P6 is intended to manage the effects of earthworks on flood behaviour across the flood hazard overlays and does not need a separate set of policies for individual flood hazard categories.
- (148) Similarly, the Policy Planning Team of HCC (440.49) seeks amendments that differentiate between hazard risks requesting the reference to Medium Flood Hazard Overlays and High Flood Hazard Overlays rather than overland flow paths and stream corridors, which the notified rule specifies. For the reasons set out above, I support this amendment.
- (149) Natural Hazards Commission Toka Tū Ake (327.81) and WRC (452.176) both seek amendments to the wording of EW-P6 to clearly state that flooding impact from earthworks, on neighbouring sites is not increased.

⁴ Refer to paragraphs 850–851 of the Natural Hazards s42A Report

- (150) The Natural Hazards Commission (327.81) seeks the wording to include reduced or not increased. While WRC (452.176) seeks the insertion of there is no increase in existing risk to neighbouring properties.
- (151) I have reviewed the flood hazard provisions contained within Natural Hazards chapter, in particular NH-P8 and NH-P9. Those provisions seek outcomes whereby natural hazard risks are reduced or not increased. I consider it appropriate that Policy EW-P6 adopts a consistent approach, given both chapters address the management of flood-related effects.
- (152) In my view, the phrase "reduced or not increased" provides clearer and more effective policy direction than the notified wording of "minimised". The recommended wording establishes a more specific outcome for flood risk management, provides clearer guidance for plan users and decision-makers, and recognises that appropriately designed earthworks may either reduce existing flood risk or ensure that risk does not increase.
- (153) Therefore, I support and recommend the amended wording to the EW-P6 as sought by the Natural Hazards Commission Toka Tū Ake (327.81). While I agree with Wellington Regional Council that earthworks should not increase flood risk to neighbouring properties, I prefer the wording "reduced or not increased" as it is consistent with the Natural Hazards chapter and recognises that earthworks may, in some circumstances, provide flood mitigation benefits. Accordingly, I recommend accepting Wellington Regional Council's submission in part.
- (154) The Fuel Companies' submission (471.212) in support is noted; however, amendments are recommended in response to other submissions received on the provision and the submission is accepted in part.

Recommendation

- (155) I recommend that the submission points from The Policy Planning team of HCC (440.49) and Natural Hazards Commission Toka Tū Ake (327.81) are accepted.
- (156) I recommend accepting the submission points from M Rachlin (232.21), The Fuel Companies (471.212), and WRC (452.176) in part.
- (157) I recommend amending Policy EW-P6 as follows:

EW-P6	Earthworks within Flood Hazard Overlays
Provide for earthworks in Flood Hazard Overlays where any increase in flooding risk for neighbouring properties is minimised when compared to the existing situation <u>reduced or not increased</u> by: 1. Managing the displacement of flood waters, and 2. Ensuring the earthworks do not impede floodwaters from being conveyed along Overland Flowpaths <u>Medium Flood Hazard Overlays</u> or Stream Corridors <u>High Flood Hazard Overlays</u>.	

Section 32AA Assessment

- (158) The recommended amendments are the most appropriate way to achieve the purpose of the RMA.
- (159) Policy EW-P6 referring to 'reduced or not increased' as opposed to 'minimised when compared to the existing situation', is the most appropriate way to achieve the objectives of the PDP, because it provides clarity to plan users that earthworks in the Flood Hazard Overlays shall reduce or not increase effects.
- (160) Policy EW-P6 referring to 'Medium Flood Hazard Overlays' and 'High Flood Hazard Overlays' as opposed to 'overland flowpaths and stream corridors', as it provides clarity for plan users. The PDP does not map overland flow paths and stream corridors, so referring to the corresponding overlay is most appropriate.

3.5.12 EW-P7: Earthworks on slopes

Submissions

- (161) GO Architecture Ltd (331.11) supports Policy EW-P7.
- (162) WRC (452.177, supported in part by Natural Hazards Commission Toka Tū Ake, F15.81) support Policy EW-P7 in part, and request the following amendment:

On slopes greater than 34 degrees, where the 34 degree slope angle is sustained over a distance of at least 3m, measured horizontally, provide for earthworks that have a functional use or functional need where a geotechnical assessment confirms that:

1. *The proposed earthworks will minimise the risk from slope instability to people and buildings, and*
2. *The proposed earthworks will not increase the risk of slope failure on adjacent sites.*

(163) Natural Hazards Commission Toka Tū Ake (327.82) request the following amendment to Policy EW-P7:

On slopes greater than 34 degrees, where the 34 degree slope angle is sustained over a distance of at least 3m, measured horizontally, provide for earthworks where a geotechnical assessment confirms that:

1. *The proposed earthworks will ~~minimise~~ reduce or not increase the risk from slope instability to people and buildings, and*
2. *The proposed earthworks will reduce or not increase the risk of slope failure on adjacent sites.*

Assessment

(164) WRC (452.177), supported in part by Natural Hazards Commission Toka Tu Ake (F15.82) seeks an amendment to EW-P7 to require that earthworks on steep slopes to have a functional use or need.

(165) The requested amendment is not supported. The concepts of functional need and functional use are generally relevant where an activity must be located in a particular area in order to operate effectively, such as infrastructure, network utilities, or activities that are inherently dependent on a specific location. Policy EW-P7 is concerned with managing the effects of earthworks on steep slopes and ensuring that slope instability risks are appropriately assessed and managed. The policy framework does not rely on a demonstrated functional need for earthworks to occur, and no planning rationale has been provided to justify imposing such a requirement for all earthworks occurring on sloping land.

(166) In my view, the notified policy appropriately focuses on the effects of the activity rather than the reasons why the activity is being undertaken. Whether earthworks are proposed for development, site preparation, landscaping, infrastructure, or hazard mitigation purposes, the key issue is whether the works can occur without creating or exacerbating slope instability risks. This

matter is appropriately addressed through the requirement for a geotechnical assessment.

- (167) I therefore recommend rejecting the amendment sought by Wellington Regional Council to introduce a functional need or functional use test.
- (168) Natural Hazards Commission Toka Tu Ake (327.82) seeks amendments to Clauses 1 and 2 of the Policy to replace references to minimising risk with wording requiring risks to be “reducing or not increased”.
- (169) I agree with this submission in part. The purpose of EW-P7 is to manage the effects of earthworks on sloping land (outside of the slope assessment overlay) and ensure earthworks do not create or exacerbate slope instability effects. I agree with the submitter that the policy should clearly direct that earthworks do not worsen existing slope instability risks.
- (170) Turning to Clause 1, the submitter seeks to replace "minimise" with "reduce or not increase". I support the inclusion of "not increase", as this provides clearer and more measurable outcome than the notified wording requiring risks to be "minimised". The recommended wording focuses directly on the effect of the proposed earthworks and establishes a clear expectation that earthworks should not create additional slope instability risks for people, buildings, or neighbouring properties.
- (171) The amendment to Clause 2 similarly seeks to require that slope instability risk be "reduce or not increased".
- (172) I do not support the insertion of "reduce" into Clauses 1 and 2 of EW-P7. While earthworks may in some circumstances contribute to improved slope stability through engineering or hazard mitigation measures, the purpose of EW-P7 is to manage adverse effects arising from earthworks rather than require an improvement to existing conditions. Requiring all earthworks to reduce existing instability risk would create a higher threshold than is necessary to achieve the policy intent and could unnecessarily constrain otherwise appropriate development. Accordingly, it is more appropriate to require that earthworks do not increase slope instability risk.
- (173) The support from GO Architecture Ltd (331.11) is noted; however, amendments are recommended in response to other submissions received on the provision and the submission is accepted in part.

Recommendation

- (174) I recommend accepting in part the submission points from GO Architecture Ltd (331.11) and Natural Hazards Commission (327.82).
- (175) I recommend rejecting the submission point from WRC (452.177).
- (176) I recommend amending Policy EW-P7 as follows:

EW-P7	Earthworks on slopes
<i>On slopes greater than 34 degrees, where the 34 degree slope angle is sustained over a distance of at least 3m, measured horizontally, provide for earthworks where a geotechnical assessment confirms that:</i> <i>1. The proposed earthworks will minimise-not increase the risk from slope instability to people and buildings, and</i> <i>2. The proposed earthworks will not increase the risk of slope failure on adjacent sites.</i>	

Section 32AA Assessment

- (177) The recommended amendments are the most appropriate way to achieve the purpose of the RMA.
- (178) Policy EW-P7 referring to 'not increase' as opposed to 'minimised', is the most appropriate way to achieve the objectives of the PDP, because it provides clarity to plan users that earthworks in the Slope Assessment Overlay shall not increase effects. It also ensures plan users do not need to minimise slope stability issues from existing, which would unnecessarily constrain development and add unnecessary costs.

3.5.13 EW-P8: Earthworks in the Slope Assessment Overlay

Submissions

- (179) WRC (452.178, supported in part by Natural Hazards Commission Toka Tu Ake, F15.82) supports Policy EW-P8.
- (180) J Gustafson and P Gentle (6.6a), J Sarich (91.2b), Cheow Khong Chng (104.2) and GO Architecture Ltd (331.12) oppose Policy EW-P8 and request it is deleted.

- (181) Natural Hazards Commission Toka Tū Ake (327.83) requests the following amendment to Policy EW-P8:

Provide for earthworks in the Slope Assessment Overlay, where a geotechnical assessment confirms that:

- 1. The earthworks will ~~minimise~~ reduce or not increase the risk from slope instability to people and buildings, and*
- 2. The earthworks will reduce or not increase the risk of slope failure on adjacent sites.*

Assessment

- (182) The support from WRC (452.178, supported in part by Natural Hazards Commission Toka Tu Ake, F15.82) is noted.
- (183) J Gustafson and P Gentle (6.6a), J Sarich (91.2b), Cheow Khong Chng (104.2) and GO Architecture Ltd (331.12) oppose Policy EW-P8. All three submitters state that a Slope Assessment Overlay is not necessary and there are existing provisions that can adequately manage the land instability risk.
- (184) I note that this matter was partly addressed through Hearing Stream #5, where these submitters generally sought the removal of the Slope Assessment Overlay. Sections 5.2.2 and 6.2.8 of the Natural Hazards Section 42A Report discuss these submissions and the purpose of the overlay.
- (185) The Slope Assessment Overlay forms part of the Proposed District Plan's integrated natural hazards framework and suite of Natural Hazard Overlays and is supported by the objectives and policies of the Natural Hazards chapter. While the overlay is primarily implemented through the Earthworks chapter and Subdivision chapter, its purpose is to identify land with susceptibility to slope hazard risk and ensure that geotechnical considerations are taken into account before earthworks and development occur. The principle of the overlay was considered through Hearing Stream #5 and is recommended to be retained as notified. I do not recommend any change to this recommendation.
- (186) Turning to whether the operative or proposed provisions are more appropriate, I consider the proposed Slope Assessment Overlay provides a more robust and consistent district-wide approach to the management of slope instability hazards than the operative District Plan. The overlay is

informed by updated landslide susceptibility and runout modelling and identifies areas that may be subject to slope instability risks that were not previously mapped. By contrast, the operative earthworks provisions do not provide the same spatial identification of potentially hazard-prone land. These matters were considered through the Section 32 evaluation and technical evidence prepared in support of the Natural Hazards chapter.

- (187) I consider that the Slope Assessment Overlay and Policy EW-P8 serve an important role within the Proposed District Plan's natural hazards framework by ensuring that earthworks within the Slope Assessment Overlay are supported by appropriate geotechnical assessment and do not adversely affect slope stability. For these reasons, I do not support the relief sought and recommend that Policy EW-P8 be retained as notified.
- (188) The Natural Hazards Commission (327.83) seek amendments to the wording of EW-P8 to clearly state that earthworks will ~~minimise~~ reduce or not increase the risk from slope instability on neighbouring sites.
- (189) I support this submission in part. Similar amendments have been sought in relation to Policy EW-P7, and I consider the same planning rationale applies. In my view, the phrase "not increase" provides a clearer and more certain policy outcome than the notified reference to "minimise". It establishes a direct expectation that earthworks should not worsen existing slope instability risks to people, buildings or neighbouring sites.
- (190) However, I do not support the inclusion of the word "reduce". While earthworks may in some circumstances contribute to improved slope stability through engineering or mitigation measures, the purpose of Policy EW-P8 is to manage the effects arising from earthworks activities rather than require remediation of existing hazard conditions. Requiring all earthworks to reduce existing instability risks would create a higher threshold than is necessary to achieve the purpose of the policy.
- (191) I also note that Policy NH-P12 seeks to ensure development does not cause land instability on the subject site or adjoining sites and that any associated risk is avoided, remedied or mitigated. It does not require activities to achieve a reduction in existing instability risk. Furthermore, the submitter has not provided evidence to show that reducing slope instability on adjacent sites is possible.

- (192) Accordingly, requiring slope instability risk to be "reduced" on sites and adjoining sites would impose a higher threshold than established under NH-P12 and is not considered necessary for EW-P8.
- (193) Overall, I consider the recommended amendment is the most appropriate and effective way of achieving the purpose of Policy EW-P8. The amendment provides greater certainty regarding the intended hazard management outcome, aligns with the wider Natural Hazards framework, and avoids imposing an unnecessary requirement to improve pre-existing instability conditions.

Recommendation

- (194) I recommend rejecting the submission points from J Gustafson and P Gentle (6.6a), J Sarich (91.2b), Cheow Khong Chng (104.2) and GO Architecture Ltd (331.12).
- (195) I recommend accepting in part the submission points from WRC (452.178, supported in part by Natural Hazards Commission Toka Tu Ake, F15.82) and Natural Hazards Commission Toka Tū Ake (327.83).
- (196) I recommend amending Policy EW-P8 as follows:

EW-P8	Earthworks in the Slope Assessment Overlay
<i>Provide for earthworks in the Slope Assessment Overlay, where a geotechnical assessment confirms that:</i> <i>The earthworks will minimise not increase the risk from slope instability to people and buildings, and</i> <i>The earthworks will not increase the risk of slope failure on adjacent sites.</i>	

Section 32AA Assessment

- (197) The recommended amendments are the most appropriate way to achieve the purpose of the RMA.
- (198) Policy EW-P8 referring to 'not increase' as opposed to 'minimised', is the most appropriate way to achieve the objectives of the PDP, because it provides clarity to plan users that earthworks in the Slope Assessment Overlay shall not increase effects. It also ensures plan users do not need to minimise slope

stability issues from existing, which would unnecessarily constrain development and add unnecessary costs.

3.5.14 EW-P15: Earthworks and vertical holes within the National Grid Yard not associated with infrastructure

Submissions

(199) Winstone Aggregates (444.33) supports Policy EW-P15.

(200) Transpower NZ (504.54) requests the following amendment to Policy EW-P15:

EW-P15: Minor earthworks, Earthworks and vertical holes within the National Grid Yard not associated with infrastructure

Only allow minor earthworks, earthworks and vertical holes within the National Grid Yard where:

- 1. The minor earthworks, earthworks and vertical holes are of a scale and nature that will not compromise the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid, or*
- 2. It can be demonstrated that the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid will not be compromised, taking into account:*
 - a. The extent to which the minor earthworks, earthworks and vertical holes may compromise the safe access to and operation, maintenance and repair, upgrading and development of the National Grid,*

...

Assessment

(201) As is noted by the submitter, the definition and rules relating to 'minor earthworks' do not include any standards around the scale of these earthworks that can be undertaken. Instead, the definition lists types of earthworks/activities that are captured. While these types of earthworks are likely to be small-scale in nature and have minimal effects, I acknowledge

what the submitter has raised in terms of there being no control or limit on the size or scale of the earthworks or proximity to National Grid assets.

- (202) I agree with the submitter, that this policy should apply to all earthworks, including minor earthworks in order to ensure the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid.
- (203) While the policy as proposed would apply to minor earthworks (as minor earthworks are a subset of earthworks) I accept that this would not be abundantly clear to all plan users, particularly plan users who are unfamiliar with the approach of this district plan.
- (204) I also agree with the submitter that the wording “not associated with infrastructure” should be removed from the policy title. While the initial intention of this language was to be clear that this policy (and the corresponding rule and standard: EW-R16 and EW-S13) did not constrain earthworks associated with the National Grid, this language has the broader implication of excluding all other types of infrastructure as well. In my opinion, this is not appropriate given the potential effects of earthworks associated with infrastructure on the National Grid.

Recommendation

- (205) I recommend that the submission point of Winstone Aggregates [444.33] is rejected in part.
- (206) I recommend that the submission point of Transpower NZ [504.54] is accepted and the amendments are made as follows:

EW-P15: Minor earthworks, Earthworks and vertical holes within the National Grid Yard ~~not associated with infrastructure~~

Only allow minor earthworks, earthworks and vertical holes within the National Grid Yard where:

- 1. The minor earthworks, earthworks and vertical holes are of a scale and nature that will not compromise the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid, or*

2. It can be demonstrated that the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid will not be compromised, taking into account:

a. The extent to which the minor earthworks, earthworks and vertical holes may compromise the safe access to and operation, maintenance and repair, upgrading and development of the National Grid,

...

Section 32AA Assessment

(207) The recommended amendments are relatively minor, and are more for the purpose of providing clarity for plan users on what is intended to be covered by the policy, rather than meaningfully changing the direction given by the policy.

(208) The recommended change would improve the efficiency and effectiveness of the policy at implementing the objectives of the Earthworks chapter by improving clarity and overall usability of the Plan.

3.5.15 EW-R1: Minor earthworks

Submissions

(209) The Fuel Companies (471.215) supports Rule EW-R1 in part, and requests the following amendment:

Minor Earthworks, except as provided by EW-R15

All Zones

1. Activity status: Permitted

Where:

a. Compliance is achieved with EW-S5.

All Zones

2. Activity status: Restricted discretionary

Where:

a. Compliance is not achieved with EW-S5.

Matters of discretion are restricted to:

1. The matters of discretion of any infringed standard.

2. The matters in EW-P1: Minor Earthworks

- (210) Transpower NZ (504.55) is neutral on Rule EW-R1, and request that the rule is retained subject to acceptance of relief request in submission points 504.56 and 504.57 (discussed in sections 3.5.22 and 3.5.29 of this report).

Assessment

- (211) Regarding the submission point of The Fuel Companies to refer to Rule EW-R15 (a rule on earthworks within Outstanding Coastal Natural Character Areas), it is noted that this rule is now out of scope of the PDP and will be withdrawn. As such, this reference is not required.
- (212) In regard to the submitter's relief to include compliance with EW-S5, I agree with the submitter that this is relevant to minor earthworks. Applying this standard would ensure that minor earthworks do not have ongoing amenity, dust, or stability effects. If this standard cannot be complied with then any ongoing effects of this nature can be assessed and appropriately mitigated through this process. I also agree with the submitter's matters of discretion.

Recommendation

- (213) I recommend that submission point (471.215) of the Fuel Companies is accepted in part as follows:

Minor Earthworks

All Zones

1. Activity status: Permitted

Where:

a. Compliance is achieved with EW-S5.

All Zones

2. Activity status: Restricted discretionary

Where:

a. Compliance is not achieved with EW-S5.

Matters of discretion are restricted to:

1. The matters of discretion of any infringed standard.

2. The matters in EW-P1: Minor Earthworks

(214) I recommend that submission point (504.55) of Transpower NZ is accepted.

Section 32AA Assessment

(215) The recommended amendments ensure there is a mechanism to manage the potential effects of minor earthworks on slope stability and more effectively implements policy EW-P1, which includes policy direction on land stability, sedimentation and visual amenity, all of which can be addressed through site reinstatement as required by standard EW-S5.

3.5.16 EW-R2: General earthworks

Submissions

(216) The NZ Defence Force (404.19) support Rule EW-R2 in part and seeks to retain a rule providing for earthworks as a permitted activity district-wide.

(217) The Policy Planning Team of HCC (440.52) oppose Rule EW-R2 in part, and request the following amendment to the rule title:

~~General earthworks~~ Earthworks not otherwise provided for

Assessment

(218) The NZ Defence Force (404.19) supports the retention of a district-wide permitted activity framework for earthworks. I agree with the overall intent of this submission, as Rule EW-R2 continues to provide for earthworks activities on a district-wide basis where they are not otherwise addressed by more specific provisions within the chapter. However, I recommend a minor amendment to the title of the rule in response to another submission. Accordingly, I recommend accepting the submission in part.

(219) I agree with the relief sought by the Policy Planning Team of HCC. The title "General earthworks" could imply that the rule applies to all earthworks activities. However, the structure of the chapter is that several more specific rules apply before EW-R2, including EW-R1, R3, R4, and R5. The amended title more accurately describes the purpose of the rule as the residual rule applying where no other earthworks rule is engaged.

- (220) The amendment is also consistent with drafting conventions used elsewhere in the PDP, “not otherwise provided for” and will improve clarity and usability for plan users without changing the substantive operation of the rule.

Recommendation

- (221) I recommend that the submission point of The NZ Defence Force (404.19) is accepted in part. The submission is accepted to the extent it supports the continued district-wide operation of Rule EW-R2 but rejected insofar as amendments to the rule title are recommended.
- (222) I recommend that the submission point of The Policy Planning Team of HCC (440.52) is accepted.
- (223) I recommend amending the title of Rule EW-R2 as follows:

EW-R2 ~~General earthworks~~ Earthworks not otherwise provided for

Section 32AA Assessment

- (224) The recommended amendments are the most appropriate way to achieve to achieve the objectives of PDP because it provides clarity to what earthworks are subject to EW-R2.

3.5.17 EW-R3: Earthworks for maintaining or constructing public walking and cycling tracks

Submissions

- (225) NZTA (385.66) support Rule EW-R3 and seeks it is retained as notified.
- (226) The Policy Planning team of HCC (440.53) oppose Rule EW-R3 in part, and requests the following amendment to the rule title:

Earthworks for maintaining or constructing public walking and cycling tracks

~~This rule overrides Rule EW-R2 in relation to earthworks for the purposes of maintaining or constructing public walking and cycling tracks~~

Assessment

- (227) NZTA (385.66) supports Rule EW-R3 and seeks that it be retained as notified. I support the overall intent of this submission. Rule EW-R3 continues to provide

a specific permitted activity pathway for earthworks associated with the maintenance and construction of public walking and cycling tracks.

- (228) The Policy Planning Team of HCC (440.53) seeks clarification that Rule EW-R3 overrides Rule EW-R2 in relation to earthworks for public walking and cycling tracks. I agree that there should be clarity regarding the relationship between the two rules. The recommended change to EW-R2 above through submission point 440.52 will make clear when that rule applies, and as such a note in EW-R3 is no longer required.

Recommendation

- (229) I recommend that the submission point of NZTA (385.66) is accepted in part.
- (230) I recommend the submission point of The Policy Planning Team of HCC (440.53) is accepted.
- (231) I recommend amending the title of Rule EW-R3 as follows:

Earthworks for maintaining or constructing public walking and cycling tracks

~~*This rule overrides Rule EW-R2 in relation to earthworks for the purposes of maintaining or constructing public walking and cycling tracks*~~

Section 32AA Assessment

- (232) The recommended amendments are the most appropriate way to achieve to achieve the objectives of PDP because it provides clarity to plan users. Works not provided for are assessed under EW-R2 and it does not need to be reiterated in the title of EW-R3.

3.5.18 EW-R4: Earthworks for maintaining or constructing farming tracks

Submissions

- (233) The Wainuiomata Rural Community Association (364.10a and 364.10b), and D and P Innes (416.8a and 8b) request that tracks associated with QEII covenants are permitted along with all necessary work on those tracks and any replacement tracks that may be required in the situation where a track might be washed out or otherwise be inaccessible.

- (234) Federated Farmers (410.48) supports EW-R4 and seek that the permitted activity status for farm tracks is retained.

Assessment

- (235) I acknowledge the intent of these submissions, which is to ensure that access tracks servicing land subject to QEII covenants can continue to be maintained and replaced where necessary.
- (236) I do not consider it appropriate or necessary to amend Rule EW-R4 to specifically refer to QEII covenants. As notified, EW-R4 applies to farming tracks regardless of whether the land is subject to a QEII covenant or any other form of covenant, easement or legal protection. Accordingly, the rule already provides a permitted activity framework for qualifying earthworks associated with farming tracks where the relevant standards are met. However, the particular requirements that apply to any relevant covenant would also need to be complied with through that separate process.
- (237) Federated Farmers supports Rule EW-R4 and seeks retention of the permitted activity status for farming tracks. I agree that the rule provides an appropriate framework for enabling farming track construction and maintenance activities and recommend accepting that submission.
- (238) Overall, I consider the notified rule remains the most appropriate and effective approach. No amendment to Rule EW-R4 is required.

Recommendation

- (239) I recommend accepting submission points from The Wainuiomata Rural Community Association (364.10a), D and P Innes (416.8a) and Federated Farmers (410.48) to the extent they support the continued availability of a permitted activity pathway for farming tracks.
- (240) I recommend rejecting submission points from The Wainuiomata Rural Community Association (364.10b) and D and P Innes (416.8b) insofar as they seek specific reference to QEII covenants.

Section 32AA Assessment

- (241) As I am not recommending any amendments to rule EW-R4, a section 32AA assessment is not required.

3.5.19 EW-R5: Earthworks associated with Natural Hazard Mitigation Works or Green Infrastructure within the Flood Hazard Overlays and Coastal Hazard Overlays

Submissions

- (242) M Rachlin (232.22) opposes Rule EW-R5 in part, and requests that part 2 of the rule be deleted, relying on the remaining earthwork rules to manage earthworks for Natural Hazard Mitigation Works and Green Infrastructure not undertaken by central government, local government, or their agents.

Assessment

- (243) I support this submission. Rule EW-R5.1 provides a specific permitted activity pathway for Natural Hazard Mitigation Works and Green Infrastructure undertaken by central government, local government, or their agents. The key distinction between compliance and non-compliance with Rule EW-R5.1 is therefore not the scale or effects of the earthworks, but the identity of the party undertaking the works.
- (244) As notified, Rule EW-R5.2 applies a discretionary activity status to all earthworks associated with Natural Hazard Mitigation Works and Green Infrastructure that are not undertaken by central government, local government, or their agents. This means that otherwise similar activities may be subject to different activity statuses based solely on who is carrying out the work rather than the effects of the activity.
- (245) In my view, this approach is not necessary. The Earthworks chapter already contains a comprehensive framework of district-wide and overlay-specific rules that assess earthworks according to their location, scale and potential effects. Where Natural Hazard Mitigation Works or Green Infrastructure do not qualify for the specific permitted activity pathway in Rule EW-R5.1, those activities can appropriately be assessed under the applicable earthworks rules.

- (246) I consider this provides a more effects-based approach to managing earthworks activities and avoids creating a separate discretionary activity pathway based solely on the identity of the works promoter.
- (247) For these reasons, I consider deletion of Rule EW-R5.2 is the most appropriate and effective approach and recommend accepting the submission.

Recommendation

- (248) The submission point of M Rachlin (232.22) is accepted.
- (249) EW-R5 is recommended to be amended as follows:

EW-R5	Earthworks associated with Natural Hazard Mitigation Works or Green Infrastructure within the Flood Hazard Overlays and Coastal Hazard Overlays
All Zones	1. Activity status: Permitted Where: a. The earthworks are for the express purpose of Natural Hazard Mitigation Works or Green Infrastructure and are undertaken by central government, local government, or their agents.
All Zones	2. Activity status: Discretionary Where: a. Compliance is not achieved with EW-R5.1.

Section 32AA Assessment

- (250) The recommended amendments are the most appropriate way to achieve the objectives of PDP because it provides clarity to plan users. Earthworks that do not meet EW-R5, being non-government persons, should not default to a discretionary activity. The remaining rule framework is efficient and effective for managing all other earthworks. The amendments ensure there are no unnecessary costs for earthworks undertaken by non-government persons.

3.5.20 EW-R6: Earthworks within Flood Hazard Overlays

Submissions

- (251) M Rachlin (232.23) and The Fuel Companies (471.216) support Rule EW-R6.
- (252) WRC (452.182, supported in part by Natural Hazards Commission Toka Tū Ake, F15.83) support Rule EW-R6 in part, and request it be retained as notified.
- (253) Natural Hazards Commission Toka Tū Ake (327.84, opposed by Michael Rachlin F04.5, and supported by Wellington Regional Council, F38.6) requests the following amendment to Rule EW-R6.1:

1. Activity status: *Permitted*

Where:

a. The risk from flooding is not increased in adjacent properties; and either

~~a~~ b. The earthworks are located within the low hazard area of the Flood Hazard Overlay, or

~~b~~ c. The earthworks are located within a medium hazard area, or high hazard area of the Flood Hazard Overlay and, the finished ground level upon the completion of the earthworks are the same as the natural ground level at the start of the earthworks.

- (254) The Policy Planning team of HCC (440.50, 440.51 and 440.54) opposes Rule EW-R6 in part, and requests the following amendments to Rule EW-R6.1:

Earthworks within ~~Flood Hazard Overlays~~ the Medium Flood Hazard Overlay and High Flood Hazard Overlay

1. Activity status: *Permitted*

Where:

~~a. The earthworks are located within the low hazard area of the Low Flood Hazard Overlay, or~~

b. ~~The earthworks are located within a medium hazard area, or high hazard area of the Flood Hazard Overlay and the finished ground level upon the completion of the earthworks~~ are is the same as the natural ground level at the start of the earthworks.

- (255) Federated Farmers (410.49) oppose Rule EW-R6 in part, and request that farming earthworks are considered appropriate for flood hazard overlay areas because they enable farming land use to occur and are low-risk compared to urban land uses and earthworks.

Assessment

- (256) Natural Hazards Commission Toka Tū Ake (327.84, opposed by Michael Rachlin F04.5, and supported by Wellington Regional Council, F38.6) seeks to amend the permitted activity clause to include that 'risk from flooding is not increased'.
- (257) I do not support this submission. I agree with Mr Rachlin (F04.5) and consider that the proposed amendment lacks the necessary certainty required for a permitted activity standard. For this reason, I consider the notified wording provides a more certain and workable framework.
- (258) The Policy Planning team of HCC (440.50 and 440.51) have sought clarity in the relevant overlay, being low/medium/high hazards. I note the amendment to the rule title of EW-R2, which provides for all earthworks not otherwise provided for. Earthworks within a Low Flood Hazard Overlay would be appropriately covered by EW-R2. I agree with the submission, the intent of this permitted activity is to allow earthworks in a medium to high flood risk overlay that maintains the finished ground levels and recommended accepting the amendment.
- (259) Federated Farmers (410.49) seeks exemption from the rule to allow for earthworks on a farm within a flood hazard overlay as a permitted activity. I do not support this submission. The potential adverse effects of earthworks on flooding are related to the nature, scale, and location of the earthworks rather than the underlying land use. Earthworks for farming can still affect flood storage, flow paths, and flood risk. Consequently, I consider the notified rule should apply consistently to all earthworks within the relevant Flood Hazard Overlay.

Recommendation

- (260) I recommend rejecting the submission points from Federated Farmers (410.49), Natural Hazards Commission Toka Tū Ake (327.84, supported by WRC F38.6 and opposed by M Rachlin F04.5).

- (261) I recommend accepting in part the submission points from WRC (452.182, supported in part by Natural Hazards Commission Toka Tū Ake, F15.83) M Rachlin (232.23) and The Fuel Companies (471.216).
- (262) I recommend accepting the submission points of HCC (440.50, 440.51 and 440.54) and Mr Rachlin (F04.5)
- (263) EW-R6 is recommended to be amended as follows:

EW-R6	Earthworks within Flood Hazard Overlays <u>the Medium Flood Hazard Overlay and High Flood Hazard Overlay</u>
All Zones	<i>1. Activity status: Permitted</i> <i>Where:</i> <i>a. The earthworks are located within the low hazard area of the Low Flood Hazard Overlay, or</i> <i>b. The earthworks are located within a medium hazard area, or high hazard area of the Flood Hazard Overlay and t</i><i>The finished ground level upon the completion of the earthworks are <u>is</u> the same as the natural ground level at the start of the earthworks</i>
...	...

Section 32AA Assessment

- (264) The recommended amendments are the most appropriate way to achieve the objectives of PDP because it provides clarity to plan users. Earthworks that within medium or high flood hazard overlays shall be permitted if they maintain the natural ground level. This approach ensures a consistent approach to earthworks within flood hazard areas.

3.5.21 EW-R8: Earthworks for a building platform in the Slope Assessment Overlay

Submissions

- (265) WRC (452.184, supported by Natural Hazards Commission Toka Tū Ake, F15.85) supports Rule EW-R8 and request in be retained.
- (266) Natural Hazards Commission Toka Tū Ake (327.86) supports Rule EW-R8 in part, with the requested amendments to Policy EW-P8 (discussed in section 3.5.7 of this report, which sought to amend the wording; ~~minimise~~ reduce or not increase).
- (267) J Gustafson and P Gentle (6.6b) and J Sarich (91.2c) oppose Rule EW-R8 and request in be deleted.

Assessment

- (268) J Gustafson and P Gentle (6.6b) and J Sarich (91.2c) are seeking for rule EW-R8 to be deleted. Both submitters state that a Slope Assessment Overlay is not necessary and there are existing provisions that can adequately manage the land instability risk. I note that I have addressed this relief in relation to Policy EW-P8, this assessment was undertaken in Section 3.5.13 of this report.
- (269) For the same reasons outlined in Section 3.5.7 of this report, I do not support the relief sought. I consider that the Slope Assessment Overlay and Rule EW-R8 serve an important role within the Proposed District Plan's natural hazards framework by ensuring that slope hazard risks are identified early which ensures slope instability risk is appropriately considered through future development and subdivision proposals. For these reasons, I do not support the relief sought and recommend that Policy EW-R8 be retained as notified.
- (270) Natural Hazards Commission Toka Tū Ake (327.86) supports EW-R8 subject to the amendment requested in EW-P8. This relief was accepted in part, and the support is noted.
- (271) The support from WRC (452.184, supported by Natural Hazards Commission Toka Tū Ake, F15.85) is accepted.

Recommendation

- (272) The submission from WRC (452.184 supported by Natural Hazards Commission Toka Tū Ake, F15.85) and Natural Hazards Commission Toka Tū Ake (327.86) is accepted.
- (273) The submissions from J Gustafson and P Gentle (6.6b) and J Sarich (91.2c) are rejected.

Section 32AA Assessment

- (274) As I am not recommending any amendments to rule EW-R8, a section 32AA assessment is not required.

3.5.22 EW-R16: Earthworks and vertical holes within the National Grid Yard not associated with infrastructure

Submissions

- (275) Transpower NZ (504.56) request the following amendment to Rule EW-R16:

Minor earthworks, Earthworks and vertical holes within the National Grid Yard not associated with infrastructure

1. Activity status: *Permitted*

Where:

- a. Compliance is achieved with EW-S13: Minor earthworks, Earthworks and vertical holes within the National Grid Yard not associated with infrastructure.

2. Activity status: ~~Restricted-discretionary~~ Non-complying

Where:

- a. Compliance is not achieved with EW-R16.1.

~~Matters of discretion are restricted to:~~

- ~~1. The matters of discretion of any infringed standard.~~
- ~~2. The matters in EW-P15: Minor earthworks, Earthworks and vertical holes within the National Grid Yard not associated with infrastructure.~~

Assessment

- (276) I agree with this submission point. As has been outlined in the assessment for policy EW-P15 above, I agree with the submitter in regard to the explicit inclusion of 'Minor earthworks' for the policy of the Earthworks chapter that relates to the National Grid (policy EW-P15). As such, I also support this change in the corresponding rule, to ensure that minor earthworks do not impact the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid.
- (277) I also agree with the submitter that the wording "not associated with infrastructure" should be removed from the rule title. While the initial intention of this language was to be clear that this rule did not apply to earthworks associated with the National Grid, this language has the broader implication of excluding all other types of infrastructure as well. In my opinion, this is not appropriate given the potential effects of earthworks associated with infrastructure on the National Grid.
- (278) Regarding the non-complying activity status sought by the submitter, this activity status should be applied where the non-complying activity 'gateway' test in s104D is appropriate for future consents, that is, that Council would only grant the consent if Council was satisfied the adverse effects of the activity on the environment would be no more than minor *or* the application is for an activity that would not be contrary to the objectives and policies of the Plan.
- (279) The amended rule would capture some earthworks as a non-complying where the breach of standard EW-S13 (and associated effects would be minimal), and it could be argued that a non-complying activity status is too onerous for such an activity as a non-complying activity is often seen as a very restrictive (or even discouraging) activity status for an activity. However, in my opinion the first arm of the gateway test provides for these small-scale activities sufficiently.

Recommendation

- (280) I recommend that submission point (504.56) is accepted and amendments are made as follows:

Minor earthworks. Earthworks and vertical holes within the National Grid
Yard ~~not associated with infrastructure~~

1. Activity status: Permitted

Where:

- a. Compliance is achieved with EW-S13: Minor earthworks, Earthworks and vertical holes within the National Grid Yard ~~not associated with infrastructure~~.

2. Activity status: ~~Restricted-discretionary Non-complying~~

Where:

- a. Compliance is not achieved with EW-R16.1.

~~Matters of discretion are restricted to:~~

- ~~1.—The matters of discretion of any infringed standard.~~
- ~~2.—The matters in EW-P15: Minor earthworks, Earthworks and vertical holes within the National Grid Yard not associated with infrastructure.~~

Section 32AA Assessment

- (281) The recommended amendment improves the effectiveness of rule EW-R16. The rule implements policy EW-P15, which specially addresses the potential effects of earthworks (including minor earthworks) and vertical holes on the National Grid. Policy EW-P15 gives the direction to 'Only allow' earthworks and vertical holes in the circumstances described by the policy. The change to a non-complying activity would be more effective at implementing this policy as the s104D gateway would allow earthworks/vertical holes that are contrary to that policy to be declined unless the effects are no more than minor.
- (282) This in turn reduces the potential risk from earthworks and vertical holes on the National Grid, and better protects the economic and social benefits from that infrastructure.

3.5.23 EW-S1: Area of earthworks

Submissions

- (283) Natural Hazards Commission Toka Tū Ake (327.87) supports EW-S1.
- (284) EW-S1.1: Residential zones
- Kāinga Ora (386.14) requests Standard EW-S1 be amended to increase the threshold to 500m² per site in any 12-month period.

- (285) EW-S1.2: Commercial zones and industrial zones:
- Bunnings Ltd (173.4, supported by McDonald's Restaurant (NZ) Limited F11.2) and Foodstuffs North Island (239.10) requests Standard EW-S1 be amended to increase the threshold to 3,000m² per site in any 12-month period.
 - McDonald's Restaurants (174.6, supported by Foodstuffs North Island, F17.3 and Bunnings Ltd, F18.2) requests Standard EW-S1 be amended to increase the threshold to 2,500m² per site in any 12-month period.
 - Enviro NZ (323.40) requests Standard EW-S1 be amended to increase the threshold to 1,000m².
- (286) EW-S1.3: Rural zones:
- K Jackson (168.7) and D McCreary (196.6) Steve Full and Andrea Bason (365.9) requests Standard EW-S1 be amended to increase the threshold for soil disturbance in general rural areas to at least 4,000m², or 2,000m² per each 4 hectares of land.
 - C Jackson (319.7) requests Standard EW-S1 be amended to 2,000m² in rural areas for soil disturbance. It is assumed that the submitter is referring to earthworks in general in the General Rural Zone.
 - The Wainuiomata Rural Community Association (364.6), Federated Farmers (410.50, opposed by Wellington Regional Council, F38.37) and D and P Innes (416.4) request Standard EW-S1 be amended to increase the threshold to 2,000m² per site in any 12-month period.
- (287) Regarding the Seaview Marina Zone:
- Seaview Marina Ltd (343.55) requests Standard EW-S1 be amended so the Seaview Marina Zone is included in the list of zones where an earthworks area threshold of 500m² applies.
- (288) The Fuel Companies (471.221) support Standard EW-S1 in part, and request the following additional matter of discretion:

7. Benefits associated with the earthworks.

Assessment

- (289) Where submitters have referred to 'soil disturbance', I have assumed this relates to earthworks. Similarly, where submitters have referred to 'rural

areas', I have assumed they are referring to the General Rural Zone unless specified otherwise. Finally, reference to increasing the volume have been assumed as increasing the volume per site in any 12-month period unless specified otherwise.

- (290) I note the submissions are all seeking to increase the earthworks area, per site in a 12-month period. As discussed in the Earthworks Section 32 Evaluation Report, the different area thresholds under EW-S1 are proposed for different zones to be consistent with the anticipated scale and form of development in the underlying zone. This is a reflection of the potential effects anticipated in each of these zones in regard to earthworks, such as amenity and visual effects.

Residential Zones

- (291) Kāinga Ora (386.14) requests Standard EW-S1 be amended to increase the threshold to 500m² per site in any 12-month period in Residential Zones. I do not support this submission. Residential zones generally comprise smaller sites with development occurring in close proximity to neighbouring properties. Consequently, earthworks undertaken within residential environments have greater potential to adversely affect residential amenity, visual character and adjoining properties. I consider the notified threshold of 250m² appropriately provides for anticipated residential development activities while ensuring that larger-scale earthworks are assessment through the resource consent process.
- (292) I also note that the 250m² threshold is broadly consistent with the approach adopted in other district plans within the Wellington region. I therefore consider the notified threshold remains the most appropriate threshold for Residential Zones.

Commercial and Industrial Zones

- (293) Several submitters have sought an increase of EW-S1.2 threshold from 500m² per site in any 12-month period in the Commercial and Industrial Zones; Bunnings Ltd (173.4, supported by McDonald's Restaurant (NZ) Limited F11.2) requests 3,000m², McDonald's Restaurants (174.6, supported by Foodstuffs North Island, F17.3 and Bunnings Ltd, F18.2) requests 2,500m² and Enviro NZ (323.40) seeks 1000m².

- (294) I do not support these submissions requesting a higher threshold. As discussed, the thresholds seek to be consistent with the anticipated scale and form of development in the underlying zone. The notified 500m² threshold already recognises that commercial and industrial areas generally accommodate larger sites and a greater scale of development than residential environments.
- (295) While commercial and industrial activities often require a greater degree of site preparation, earthworks within these zones still have the potential to create adverse effects including modification of landforms, instability, and impacts on adjoining sites. I am not satisfied that the submissions provide sufficient evidence to demonstrate that increasing the threshold to between 1,000m² and 3,000m² would achieve the same level of environmental management anticipated by the chapter.
- (296) For these reasons, I consider the notified threshold of 500m² remains appropriate.

Rural Zones

- (297) Several submitters have sought an increase of EW-S1.3 threshold from 1000m² per site in any 12-month period in the Rural Zone; K Jackson (168.7) and D McCreary (196.6) Steve Full and Andrea Bason (365.9) seek 4,000m², or 2,000m² per each 4 hectares of land, C Jackson (319.7), The Wainuiomata Rural Community Association (364.6), Federated Farmers (410.50, opposed by Wellington Regional Council, F38.37) and D and P Innes (416.4) request 2,000m².
- (298) I acknowledge that rural sites are generally larger, and that farming and rural production activities may require earthworks over greater areas than those typically undertaken within urban environments. This is reflected in the notified threshold of 1,000m², which is already significantly more enabling than the thresholds applying within Residential, Commercial, and Industrial Zones.
- (299) However, earthworks in rural areas can still result in adverse effects including instability and neighbouring properties. In my view, the notified threshold appropriately recognises the scale of earthworks of rural activities while ensuring that larger earthworks activities are subject to assessment through resource consents.

- (300) I do not consider the submitters have demonstrated that thresholds of 2,000m², 4,000m², or thresholds linked to landholding size would achieve the same level of effects management as the notified provisions. Accordingly, I do not support the relief sought.

Seaview Marina Zone

- (301) Seaview Marina Ltd (343.55) has identified that the Seaview Marina Zone is not included in the EW-S1 Table. This is a drafting error, and I agree that the table should be updated to include this zone alongside the other urban and special purpose zones where the 500m² threshold applies. I accept this submission.

Matters of Discretion

- (302) The Fuel Companies (471.221) seek an amendment to the matters of discretion, to include: Benefits associated with the earthworks.
- (303) I do not support this submission. Earthworks are an essential aspect of new land uses, subdivision and development which is not a benefit that needs to be considered when considering the potential impact from earthworks.
- (304) For these reasons, I consider that EW-S1 should only be amended to include the Seaview Marina Zone in the table. Otherwise, no increases to the proposed thresholds are recommended.

Recommendation

- (305) I recommend rejecting the submission points from Kāinga Ora (386.14), Bunnings Ltd (173.4, supported by McDonald's Restaurant (NZ) Limited F11.2), Foodstuffs North Island (239.10), McDonald's Restaurants (174.6, supported by Foodstuffs North Island, F17.3 and Bunnings Ltd, F18.2), Enviro NZ (323.40), K Jackson (168.7) and D McCreary (196.6) Steve Full and Andrea Bason (365.9), C Jackson (319.7), The Wainuiomata Rural Community Association (364.6), Federated Farmers (410.50, opposed by Wellington Regional Council, F38.37), D and P Innes (416.4) and The Fuel Companies (471.221).
- (306) I recommend accepting the submission point from the Natural Hazards Commission Toka Tū Ake (327.87) and Seaview Marina Ltd (343.55).
- (307) I recommend amending EW-S1 as proposed:

EW-S1	Area of earthworks
...	...
Local Centre Zone Mixed Use Zone Town Centre Zone Metropolitan Centre Zone City Centre Zone Industrial Zones Open Space and Recreation Zones Hospital Zone Seaview Marina Zone	2. <i>The area of earthworks must not exceed 500m² per site in any 12-month period.</i> Matters of discretion if the standard is breached: 1. <i>The stability of land or structures in or on the site or adjacent sites.</i> 2. <i>The visual amenity values and character of the surrounding area.</i> 3. <i>The natural landform and the extent to which the finished site will reflect and be sympathetic to the surrounding landform.</i> 4. <i>The retention of silt and sediment on the site and the control of dust.</i> 5. <i>The staging of earthworks.</i> 6. <i>The total area of exposed soils at any point in time.</i>

3.5.24 EW-S2: Cut height and fill depth

Submissions

- (308) D McCreary (196.7) and C Jackson (319.8) support Standard EW-S2.
- (309) K Jackson (168.8) and S Full and A Bason (365.10) oppose Standard EW-S2 in part, and request Clause 1b of the standard be amended to increase the maximum cut height/fill depth to 2.0m in the General Rural Zone.
- (310) The Fuel Companies (471.222) support Standard EW-S2 in part, and request the following additional matter of discretion:

7. Benefits associated with the earthworks.

Assessment

- (311) K Jackson (168.8) and S Full and A Bason (365.10) seek an increase in cut or fill from 1.5m to 2m in the General Rural Zone.
- (312) I do not support these submissions.
- (313) As outlined in the Section 32 Evaluation Report, the cut height and fill depth standard is a mechanism for addressing land and structural stability and natural hazard issues. The standard recognises that larger cuts and fills have a greater potential to alter landforms, affect slope stability, and adversely impact neighbouring sites.
- (314) While I acknowledge that rural sites are generally larger and can sometimes accommodate more extensive earthworks than urban environments, I do not consider a higher permitted threshold is justified. Increasing the permitted cut height and fill depth from 1.5 metres to 2.0 metres would allow a greater scale of landform modification to occur without assessment. In my view, cut faces and fills exceeding 1.5 metres have a greater potential to create stability issues and therefore warrant site-specific consideration through the resource consent process.
- (315) I consider the notified threshold appropriately balances the need to enable routine earthworks activities with the need to ensure that larger-scale landform modification is assessed where adverse effects may arise. I therefore consider the notified 1.5 metre threshold remains the most appropriate standard.
- (316) The Fuel Companies (471.222) seek an amendment to the matters of discretion, to include: Benefits associated with the earthworks. As discussed above, I do not support this submission. Earthworks are an essential aspect of new land uses, subdivision and development which is not a benefit that needs to be considered when considering the potential impact from earthworks.
- (317) For these reasons I recommend no amendments to EW-S2.

Recommendation

- (318) I recommend rejecting submission points from K Jackson (168.8), S Full and A Bason (365.10) and the Fuel Companies (471.222).

- (319) I recommend accepting submission points D McCreary (196.7) and C Jackson (319.8).

Section 32AA Assessment

- (320) As I am not recommending any amendments to rule EW-S2, a section 32AA assessment is not required.

3.5.25 EW-S3: Existing slope angle, where outside the Slope Assessment Overlay

Submissions

- (321) Natural Hazards Commission Toka Tū Ake (327.88) supports Standard EW-S3.
- (322) GO Architecture (331.13) opposes Standard EW-S3 in part, and request either the following amendments to Standard EW-S3 or a new standard:

EW-S3: Existing slope angle, ~~where outside the Slope Assessment Overlay~~

1. *Earthworks must not be undertaken on land with an existing slope angle of 34 degrees or greater, where the 34-degree slope angle is sustained over a distance of at least 3m, measured horizontally.*

Unless:

The area is within the Slope assessment overlay and is not for a building footprint. In which case Earthworks must not be undertaken without a geotechnical report, unless the earthworks are on an area with a slope less than 10° for more than 5m measured horizontally and not within 3m of any slopes of 34 degrees or greater.

...

- (323) The Policy Planning team of HCC (440.56) opposes Standard EW-S3 in part, and request the following amendment to the standard title:

Existing slope angle, ~~where outside the Slope Assessment Overlay~~

- (324) As a consequence of this requested amendment, the Policy Planning team also requests the following amendment to Rule EW-R2.1: Amend rule EW-R2.1.iii. as follows:

1. **Activity status:** *Permitted*

Where:

- a. *Compliance is achieved with:*
- i. *EW-S1: Area of earthworks,*
 - ii. *EW-S2: Cut height and fill depth,*
 - iii. *EW-S3: Existing slope angle (~~where located outside of the Slope Assessment Overlay~~),*
 - iv. *EW-S4: Transport of cut and fill material, and*
 - v. *EW-S5: Site reinstatement.*

Assessment

- (325) I support the submission points from the Policy Planning team of HCC (440.56) and in part from GO Architecture (331.13) which seek to amend the title to remove the reference to earthworks outside of the Slope Assessment Overlay. The purpose of EW-S3 is to provide a district-wide control on earthworks occurring on steep slopes. Therefore, this standard should apply to all sites and not exclude areas within the Slope Assessment Overlay.
- (326) I do not support the proposed additional wording to EW-S3 sought by GO Architecture (331.13) as the PDP already contains a comprehensive set of provisions addressing slope instability.
- (327) As noted in the Policy Planning team of HCC (440.56) submission this requires a consequential referencing update to EW-R2 which is accepted. The amendments sought by the Policy Planning Team improve plan usability and provide greater certainty regarding when the standard applies.
- (328) For these reasons I recommend amending the title of EW-S3 but retaining the wording of the standards as notified.

Recommendation

- (329) I recommend accepting the submission point from the Policy Planning team of HCC (440.56).
- (330) I recommend accepting the submission points from GO Architecture (331.13) and Natural Hazards Commission Toka Tū Ake (327.88) supports Standard EW-S3 in part.
- (331) I recommend amending EW-S3 as follows:

EW-S3	Existing slope angle, where outside the Slope Assessment Overlay
...	...

(332) As a consequential amendment, I recommend amending EW-R2 as follows:

EW-R2	General earthworks
All Zones	1. Activity status: <i>Permitted</i> Where: a. <i>Compliance is achieved with:</i> i. EW-S1: Area of earthworks, ii. EW-S2: Cut height and fill depth, iii. EW-S3: Existing slope angle (where located outside of the Slope Assessment Overlay), iv. EW-S4: Transport of cut and fill material, and v. EW-S5: Site reinstatement.

Section 32AA Assessment

(333) The recommendation to amend Standard EW-S3 is considered the most appropriate way to achieve the objectives of PDP because it provides clarity that EW-S3 is a district-wide control on earthworks occurring on steep slopes. Therefore, this standard should apply to all sites and not exclude areas within the Slope Assessment Overlay. The amendment does not result in any additional costs and is therefore considered an efficient and effective method of achieving the relevant objectives.

3.5.26 EW-S4: Transport of cut and fill material

Submissions

- (334) K Jackson (168.6), Donald McCreary (196.5), C Jackson (319.6) and S Full and A Bason (365.8) support Standard EW-S4.
- (335) The Fuel Companies (471.223) support Standard EW-S4 in part, and request the following amendment to the matters of discretion for both parts of the standard:

Matters of discretion if the standard is breached:

1. *The safe and efficient operation of the transport network.*
2. *Any nuisance effects.*
3. *The retention of silt and sediment on site.*
4. *Benefits associated with the earthworks.*

- (336) Seaview Marina Ltd (343.56) oppose Standard EW-S4, and requests that the Seaview Marina Zone is included in the list of zones where a 400m³ threshold applies.
- (337) Kāinga Ora (386.15) oppose Standard EW-S4 and request the standard be deleted.

Assessment

- (338) Seaview Marina Ltd (343.56) has identified that the Seaview Marina Zone is not included in the EW-S4 Table. I agree with this submission. The omission appears to be a drafting error. The Seaview Marina Zone is a Special Purpose Zone and I consider it appropriate that it be included alongside the other urban and special purpose zones where the 400m³ threshold applies. I therefore recommend accepting this submission.
- (339) The Fuel Companies (471.223) seek an amendment to the matters of discretion, to include: Benefits associated with the earthworks. As discussed above, I do not support this submission. Earthworks are an essential aspect of new land uses, subdivision and development which is not a benefit that needs to be considered when considering the potential impact from earthworks.
- (340) Kāinga Ora (386.15) opposes EW-S4 and considers that it should be a matter of discretion under EW-S1. I do not support this submission. Standard EW-S1

and Standard EW-S4 address different effects arising from earthworks activities. EW-S1 focuses on the area of earthworks undertaken on a site and the associated effects on landform, amenity, stability and erosion. In contrast, EW-S4 specifically manages the effects of transporting cut and fill material on the transport network. While EW-S1 controls the area of earthworks undertaken on a site, it does not regulate the transportation of any material to and from the site. In my view, incorporating transport-related matters solely within EW-S1 would reduce the visibility of these effects within the Earthworks chapter and weaken the direct connection between the movement of cut and fill material and the effects being managed. Retaining EW-S4 as a standalone standard provides greater clarity for plan users and decision-makers and applies a specific mechanism to manage the potential effects of vehicle movements on the transport network. I recommend rejecting the submission.

Recommendation

- (341) I recommend rejecting the submission points from Kāinga Ora (386.15) and The Fuel Companies (471.223).
- (342) I recommend accepting in part the submission points from K Jackson (168.6), Donald McCreary (196.5), C Jackson (319.6) and S Full and A Bason (365.8).
- (343) I recommend accepting the submission point from Seaview Marina (343.56)
- (344) I recommend amending EW-S4 as proposed:

EW-S4	Transport of cut and fill material
...	...
Local Centre Zone Mixed Use Zone Town Centre Zone Metropolitan Centre Zone City Centre Zone Industrial Zones	2. <i>The combined volume of cut material (including cleanfill material) resulting from earthworks transported off the site and cleanfill material required for earthworks transported onto the site must not exceed 400m³.</i> Matters of discretion if the standard is breached:

Open Space and Recreation Zones	1. <i>The safe and efficient operation of the transport network.</i>
Rural Zones	2. <i>Any nuisance effects.</i>
Hospital Zone	3. <i>The retention of silt and sediment on site.</i>
Marae Zone	
<u>Seaview Marina Zone</u>	

Section 32AA Assessment

- (345) The recommendation to amend Standard EW-S4 is considered the most appropriate way to achieve the objectives of PDP because it provides clarity that EW-S4 relates to all zones of the District Plan. Seaview Marina Zone was missed through a drafting error.

3.5.27 EW-S5: Site reinstatement

Submissions

- (346) The Fuel Companies (471.224) support Standard EW-S5 in part, and request the following amendment:
1. *As soon as practical, but no later than three months after the completion of the minor earthworks, earthworks or stages of ~~earthworks~~, the earthworks area must be stabilised with vegetation or sealed, paved, metalled or built over.*

Assessment

- (347) The Fuel Companies (471.224) seek to include 'minor earthworks' within the standard. I do not support this submission and the requested refer minor earthworks.
- (348) Rule EW-R1 provides a specific permitted activity pathway for minor earthworks and as notified, those activities are not required to comply with the standards contained within the Earthworks chapter. However, through this report it is recommended that rule EW-R1 is amended to apply standard EW-S5 to minor earthworks. As a consequence, I recommend that the reference to minor earthworks be added to this standard.

- (349) I also do not consider it necessary to amend the wording to refer to “earthworks or stages of works”. The purpose of EW-S5 is to ensure that disturbed land is appropriately stabilised following completion of an earthworks activity.

Recommendation

- (350) I recommend accepting in part the submission point from The Fuel Companies (471.224), and that standard EW-S5 be amended as follows:
- 1. As soon as practical, but no later than three months after the completion of the minor earthworks, earthworks or stages of earthworks, the earthworks area must be stabilised with vegetation or sealed, paved, metalled or built over.*

Section 32AA Assessment

- (351) The recommended amendment is minor, and is solely a consequence of an amendment recommended to rule EW-R1.

3.5.28 EW-S6: Earthworks for farming tracks

Submissions

- (352) The Wainuiomata Rural Community Association (364.7a), D and P Innes (416.5a) and Federated Farmers (410.51, opposed by Wellington Regional Council, F38.38) support EW-S6 on the basis that no volume limit is applicable to earthworks for farm tracks.
- (353) The Wainuiomata Rural Community Association (364.7b), D and P Innes (416.5b) and Federated Farmers (410.52) seeks that clause (1)(b) is increased from 2.5m to 3.5m

Assessment

- (354) The support from the Wainuiomata Rural Community Association (364.7a), D and P Innes (416.5a) and Federated Farmers (410.51, opposed by Wellington Regional Council, F38.38) is noted.
- (355) The Wainuiomata Rural Community Association (364.7b), D and P Innes (416.5b) and Federated Farmers (410.52) seek an increase from 2.5m to 3.5m for farming tracks, to be practical to enable tracks on steep hillsides which is where safe passage is most needed for farm vehicles.

- (356) I acknowledge that farming tracks may need to traverse steeper land and therefore require a more enabling framework than applies to general earthworks. This is reflected in the notified provisions, which already permit cut heights and fill depths of up to 2.5m, compared with the 1.5m threshold that applies under Standard EW-S2.
- (357) However, I do not support increasing the permitted cut height and fill depth threshold to 3.5m. The purpose of EW-S6 is to provide a practical and enabling pathway for farm track construction while still ensuring that larger-scale earthworks with the potential to create adverse effects are subject to assessment. The notified 2.5m threshold already provides a more enabling framework than the general earthworks standard and appropriately provides for the operational needs of farming activities compared to urban areas.
- (358) Increasing the permitted cut height and fill depth to 3.5m would allow a substantially greater level of landform modification to occur without assessment. In my view, larger cuts and fills have a greater potential to contribute to land instability, erosion, sediment generation and adverse effects on neighbouring properties and the wider environment. While there may be circumstances where cuts or fills greater than 2.5m are required to safely construct a farming track, I consider these situations are more appropriately addressed through the resource consent process, which enables site-specific consideration of the scale of works, the landform, and any associated effects.
- (359) For these reasons I recommend rejecting the submission and retaining EW-S6 as notified.

Recommendation

- (360) I recommend accepting the submission points from Wainuiomata Rural Community Association (364.7a), D and P Innes (416.5a) and Federated Farmers (410.51).
- (361) I recommend rejecting the submission points from The Wainuiomata Rural Community Association (364.7b), D and P Innes (416.5b) Federated Farmers (410.52) and Wellington Regional Council (F38.38).

3.5.29 EW–S13: Earthworks and vertical holes within the National Grid Yard not associated with infrastructure

Submissions

- (362) Transpower NZ (504.57) requests the following amendments to Standard EW–S13:

Minor earthworks, Earthworks and vertical holes within the National Grid Yard not associated with infrastructure

1. The depth of minor earthworks, earthworks and vertical holes in the National Grid Yard must be no greater (measured vertically) than:
....
2. Minor earthworks, Earthworks and vertical holes must not:
....
3. The following are exempt from ~~this standard 1.a., and b., and 2.b. and c. above:~~
 - a. Minor earthworks, Earthworks and vertical holes that are undertaken by the operator of the National Grid, or excluding mining and quarrying, are undertaken by a network utility operator as defined by the Resource Management Act 1991.
 - b. Minor earthworks, Earthworks and vertical holes for the repair, sealing or resealing of a footpath, driveway or farm track.
 - c. Minor earthworks, Earthworks and Vertical holes not exceeding 500 millimetres in diameter that:
 - i. ~~Are more than 1.5 metres from the outer edge of the pole support structure or stay wire, or~~
 - ii. ~~Are~~ are a post hole for a farm fence or horticulture structure more than 6 metres from the visible outer edge of a tower or support structure foundation.
 - iii. ~~d. Earthworks and vertical holes~~ Minor earthworks, Earthworks and Vertical holes:

i. Subject to a dispensation from Transpower under the New Zealand Electrical Code of Practice for Safe Electrical Distances (NZECP 34:2001) ISSN 01140663; or

iv. In relation to rule EW-S13.2.c., written approval is provided by Transpower.

Assessment

- (363) As discussed in section 3.5.22, I agree with the submitter regarding adding a specific reference to “minor earthworks” and to remove the reference to “not associated with infrastructure” from rule EW-R16, and likewise, I agree with the submitter that the corresponding changes should be made to standard EW-S13 for the same reasons outlined in that section.
- (364) The remaining requested amendments from this submission point relate to types of earthworks that should be exempt from the standard.
- (365) The requested amendments are:
- Restricting the exemptions to only relate to points 1.a., 1.b., 2.b. and 2.c. of the standard (that is, all parts of the standard except 2.a., which relates to clearance distances required in the NZECP 34:2001),
 - Adding an exemption for earthworks undertaken by a network utility operator as defined by the RMA (excluding mining and quarrying) (3.a.),
 - Amending the exemption for vertical holes not exceeding 500mm in diameter so:
 - The exemption also applies to earthworks and minor earthworks not exceeding 500mm in diameter, and
 - Vertical holes/earthworks/minor earthworks would not need to be more than 1.5m from the outer edge of a pole support structure or stay wire to be exempt from the standard (3.c.),
 - Amending the exemption for vertical holes that are subject to a dispensation from Transpower under the NZECP 34:2001 so:
 - The exemption also applies to earthworks and minor earthworks (new 3.d.i.), and

- Extending this exemption to also apply to vertical holes/earthworks/minor earthworks that would trigger standard EW-S13.2.c. (regarding earthworks etc that would permanently physically impede vehicular access to a National Grid support structure) where written approval is provided by Transpower (new 3.d.ii.).

- (366) The following paragraphs assess each of these requests.
- (367) *Regarding restricting the exemptions to only relate to points 1.a., 1.b., 2.b. and 2.c. of the standard, and not 2.a.,* I do not agree with this point. The intention is for this list to be a straightforward list of situations where standard EW-S13 (and the associated resource consent trigger) does not apply. Applying the exemptions to all parts of the standard except 2.a. makes this a more complicated matter, noting that the exemptions specifically address the NZECP 34:2001.
- (368) *Regarding adding an exemption for earthworks undertaken by a network utility operator as defined by the RMA (excluding mining and quarrying),* I do not agree with this point. The earthworks undertaken by a network utility operator would have the same potential effects on the National Grid as earthworks undertaken by any other party. While I'm sure in practice a network utility operator would contact Transpower to discuss the potential impacts and put a plan in place to manage the potential effects, I do not think it is appropriate to treat network utility operators differently from any other developer wishing to undertake earthworks in the National Grid Yard.
- (369) *Regarding amending the exemption for vertical holes not exceeding 500mm in diameter to also apply to earthworks and minor earthworks not exceeding 500mm in diameter,* while earthworks/minor earthworks with a diameter not exceeding 500mm seems unlikely if not for a vertical hole, I accept that the exemption should apply to earthworks/minor earthworks more generally.
- (370) *Regarding amending the exemption for vertical holes not exceeding 500mm in diameter so that they would not need to be more than 1.5m from the outer edge of a pole support structure or stay wire,* it is not clear from the submission why this amendment is requested. In my opinion, it is only appropriate to exemption vertical holes (and earthwork/minor earthworks) from the standard where they are not in close proximity to pole support structures or stay wires. As such, I do not agree with this amendment.

- (371) *Regarding amending the exemption for vertical holes that are subject to a dispensation from Transpower under the NZECP 34:2001 to also apply to earthworks and minor earthworks, I agree that this standard should equally apply to all forms of earthworks, and not specifically to vertical holes.*
- (372) *Regarding amending the exemption for vertical holes that are subject to a dispensation from Transpower under the NZECP 34:2001 to also exempt vertical holes that would trigger standard EW-S13.2.c. (regarding earthworks etc that would permanently physically impede vehicular access to a National Grid support structure) where written approval is provided by Transpower, I do not consider it appropriate for a person to be exempted from a rule of a district plan (which this amendment could have the effect of doing) on the basis of a separate approval being given from a third party (in this case, a written approval from Transpower).*

Recommendation

- (373) I recommend submission point of Transpower (504.57) is accepted in part and rejected in part, and that standard EW-S13 as follows:

Minor earthworks, Earthworks and vertical holes within the National Grid Yard not associated with infrastructure

1. The depth of minor earthworks, earthworks and vertical holes in the National Grid Yard must be no greater (measured vertically) than:
...
2. Minor Earthworks, Earthworks and vertical holes must not:
...
3. The following are exempt from this standard:
 - a. Minor earthworks, Earthworks and vertical holes that are undertaken by the operator of the National Grid.
 - b. Minor earthworks, Earthworks and vertical holes for the repair, sealing or resealing of a footpath, driveway or farm track.
 - c. Minor earthworks, Earthworks and Vertical holes not exceeding 500 millimetres in diameter that:
 - i. Are more than 1.5 metres from the outer edge of the pole structure or stay wire, or

- ii. *Are a post hole for a farm fence or horticulture structure more than 6 metres from the visible outer edge of a tower or support structure foundation, or*
- d. *Minor earthworks. Earthworks and Vertical holes subject to a dispensation from Transpower under the New Zealand Electrical Code of Practice for Safe Electrical Distances (NZECP 34:2001) ISSN 01140663.*

4 Mechanical issues, minor and consequential amendments

- (374) No Schedule 1, clause 16 (2) of the RMA corrections or minor amendments have been identified for the Earthworks chapter. No other consequential amendments have been identified, apart from those contained in the evaluation and recommendations in the previous section of this report.

5 Conclusion

- (375) This report has provided an assessment of submissions received in relation to the Earthworks chapter.
- (376) Section 3 assesses and provides recommendations on the decisions requested in submissions. I consider that the submissions on this topic should be accepted, accepted in part, or rejected, as set out in my recommendations of this report and in Appendix 2.
- (377) I recommend that provisions be amended as set out in Appendix 1 for the reasons set out in this report.
- (378) I consider that the amended provisions will be efficient and effective in achieving the purpose of the RMA, the relevant objectives of the PDP and other relevant statutory documents, for the reasons set out in the Section 32AA assessments undertaken in the relevant sections of this report.

6 Attachments

Appendix 1: Recommended amendments to the Proposed District Plan

Appendix 2: Recommended decisions on submissions on the Earthworks chapter

Appendix 1: Recommended amendments to the Proposed District Plan

Appendix 2: Recommended decisions on submissions on the Earthworks chapter
