

**Before the Hearings Panel
At Wellington City Council**

Under Schedule 1 of the Resource Management Act 1991

In the matter of the Proposed Wellington City District Plan

**Hearing Stream 5 (Earthworks) Reporting Officer Right of Reply of
Hannah van Haren-Giles on behalf on Wellington City Council
Date: 28 August 2023**

INTRODUCTION

1. My name is Hannah van Haren-Giles. I am employed as a Senior Planning Advisor at Wellington City Council (the Council).
2. I have prepared this Reply in respect of the matters in Hearing Stream 5 relating to the Earthworks Chapter (EW).
3. I have listened to submitters in Hearing Stream 5, read their evidence and tabled statements, and referenced the written submissions and further submissions relevant to the Hearing Stream 5 topics.
4. The [Earthworks Section 42A Report](#) sets out my qualifications and experience as an expert in planning.
5. I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023, as applicable to this Independent Panel hearing. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.
6. Any data, information, facts, and assumptions I have considered in forming my opinions are set out in the relevant part of my evidence to which it relates. Where I have set out opinions in my evidence, I have given reasons for those opinions.

SCOPE OF REPLY

7. This Reply follows Hearing Stream 5 held from 1 August to 7 August 2023. [Minute 33: Directions Following Hearing Stream 5](#) released by the Panel on 14 August 2023 requested that Section 42A report authors submit a written Right of Reply as a formal response to matters raised during the course of the hearing. The Minute requires this response to be submitted by 28 August 2023.
8. The Reply includes:
 - (i) Responses to specific matters and questions raised by the Panel in Minute 33.
 - (ii) Commentary on additional matters that I consider would be useful to further clarify or that were the subject of verbal requests from the Panel at the hearing.

Responses to specific matters and questions raised in Minute 33:

(2)(i) The proposed wording of a proposed standalone Earthworks section policy on Sites and Areas of Significance to Māori.

9. As set out in my s42A Report¹, it was the preference of mana whenua for the policy direction for SASM earthworks to be retained in the SASM chapter. I continue to support the bespoke carve out in the PDP as earthworks and modifications are inherently linked. The reference to SASM-P5 as a matter of discretion in notified rule EW-R21 is in my view suitable to provide that linkage between the SASM's and EW chapters. The benefit of this approach is that it reduces duplication of plan content.
10. I do however acknowledge that an earthworks specific policy is an option that would reduce the need for plan users to rely on cross referencing and consult more than one chapter of the plan for a single activity. I therefore suggest proposed wording for a new policy that reflects the phrasing of SASM-P5, as follows:

EW-PX Earthworks within a site or area of significance to Māori

Provide for earthworks within a Category A or B site or area of significance to Māori where it can be demonstrated that the spiritual and cultural values of the site will be protected and maintained, having regard to:

1. Consultation undertaken with mana whenua;
2. The extent to which the values of mana whenua have been incorporated into the proposal;
3. Whether alternative methods, locations or designs are available that would avoid or reduce the impact on the identified site or area of significance;
4. Any positive effects for mana whenua or opportunities to enhance the cultural values of the site; and
5. The extent or ability for mana whenua to access and use the site or area.

(2)(ii) Whether the Introduction should make more explicit reference to earthworks objectives in other chapters of the PDP (as an alternative to the relief sought by Heritage New Zealand Pouhere Taonga in relation to EW-O1)?

11. At the hearing there were some questions raised about EW-O1 and whether there could be a separate clause in EW-O1 that points to heritage and environmental effects more broadly in parent chapters. I have not changed my view as to amending EW-O1 in response to the evidence of Mr Raymond for Heritage NZ.

¹ Earthworks s42A Report, Para 333.

12. I acknowledge and agree that objectives in other chapters are relevant to earthworks. However, this is not unique to the Earthworks chapter.
13. As to whether the introduction should make explicit reference to earthworks objectives in other chapters of the PDP – I note that this is achieved in the Subdivision chapter by way of the statement: *‘This chapter includes objectives, policies and rules that relate to subdivision generally. It also includes policies and rules that implement objectives in other chapters, specifically as they relate to the management of subdivision.’* I suggest that this same statement be added to the ‘Application of rules in this chapter’ section of Earthworks chapter introduction.
14. This amendment and two other minor corrections are set out below and in Appendix A to this Right of Reply:
 - a. [This chapter includes objectives, policies and rules that relate to earthworks generally. It also includes policies and rules that implement objectives in other chapters, specifically as they relate to the management of earthworks.](#)
 - b. Adding ‘[The](#)’ to the last sentence of the introduction.
 - c. Correcting the spelling of ‘[Transmission](#)’ in the ‘Other relevant District Plan provisions’ section.

(2)(v)² A further evaluation of the proposed change to the definition of ‘cut’ in response to the evidence of David Gibson for Spatial and Survey NZ: in particular, additional explanation of the reasons for the recommended change.

15. The part of the s32 Report Mr Gibson has quoted in his evidence refers to the fact that the thresholds for areas, depths of cut and heights of fill have been retained i.e. thresholds in EW-S1 and EW-S2 reflect thresholds in the ODP.
16. As to the definition of ‘cut height’, the [s32 Report](#) identifies that through the review of the operative provisions there was an issue identified and subsequent opportunity to resolve ambiguities in the way in which the permitted activity standards are interpreted and implemented.³
17. Mr Gibson in his evidence has identified two possible interpretations of ‘cut height’. Both interpretations have arisen through inconsistencies in the ODP

² This question was identified in Minute 33 under the Subdivision heading, but relates to Earthworks and as such is addressed in this Right of Reply.

³ Earthworks s32 Report, Page 23.

interpretation/application of the definition which the PDP definition seeks to resolve. In other words, the PDP definition seeks to retain but clarify the intent of the ODP definition and reflect current interpretation/application of 'cut height'. This will provide plan efficiency and clarity for both plan users and Council staff.

18. For ease of reference:

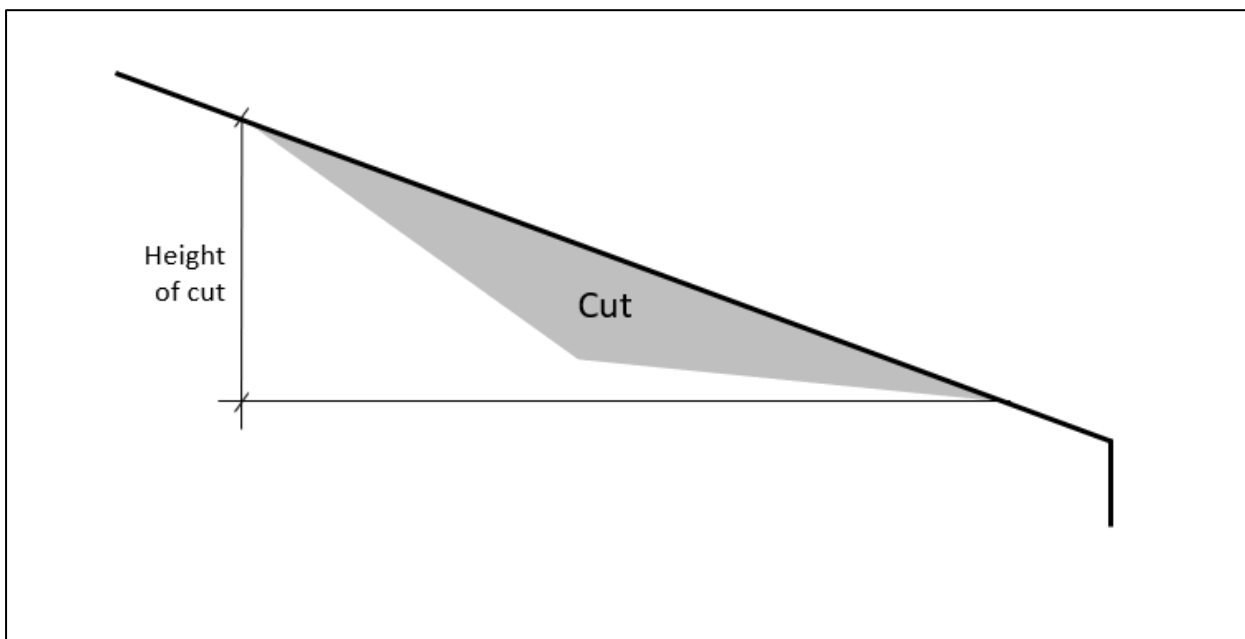
ODP definition	<i>means the maximum height of the earthworks cut at any time, measured vertically and includes any working cut height during the course of the earthworks.</i>
PDP definition	<i>means the maximum height of the cut at the completion of earthworks, measured vertically from the highest point at the top of the cut to the bottom of the cut.</i>

19. Another reason for the PDP definition of 'cut height' being amended from the ODP definition was to be more consistent with the ODP definition of 'fill depth' which has been rolled over into the PDP: '*means the maximum depth of the fill at the completion of the earthworks, measured vertically from the highest point on the top of the fill to the bottom of the fill placement*'. In particular, to specify measurement is 'measured vertically from the highest point of the top of the cut/fill to the bottom of the cut/fill'.

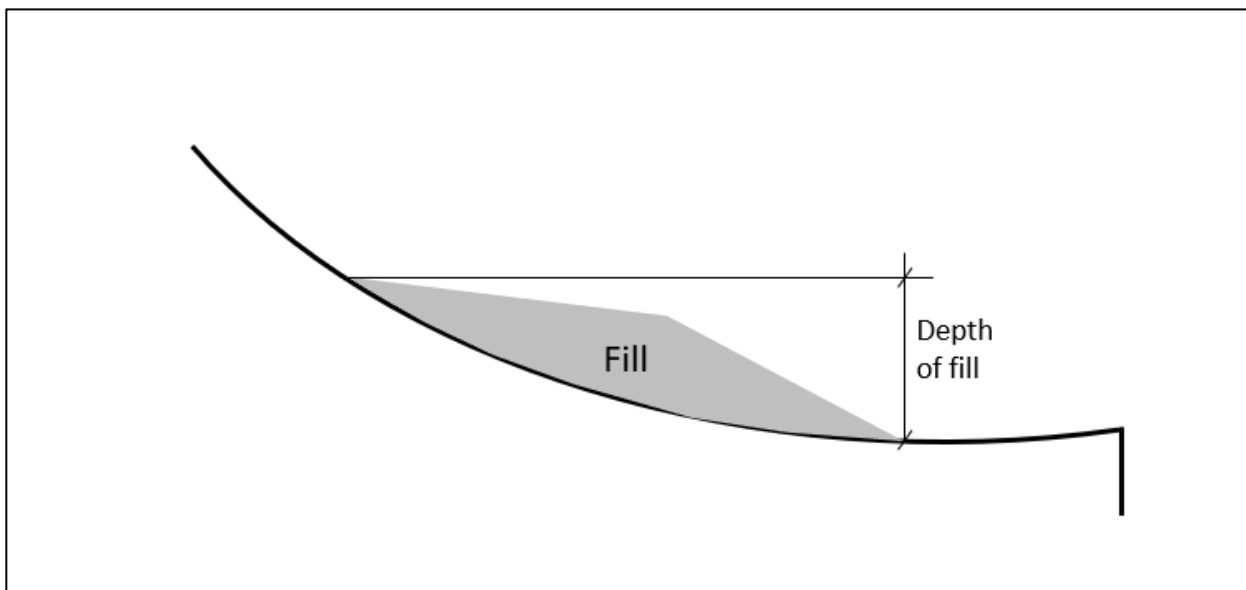
20. I note that there is a 'depth of fill' figure associated with the 'fill depth' definition in the ODP. Based on this diagram, the inverse measurement of cut height should be apparent – i.e. measured from the highest point of the cut to the bottom of the cut.

21. Through discussions with consents and compliance staff it has been suggested that a figure illustrating the 'cut height' definition would be beneficial to further aid clarity. I therefore recommend that diagrams illustrating cut height and fill depth be (re)introduced to support the PDP definitions, as follows:

a. Cut height



b. Fill depth



Response to other matters raised at the hearing:

22. As raised by Commissioner Faulkner, I note a minor correction to the 'Other relevant District Plan provisions' section of the chapter to update reference to 'Sites and Areas of Significance [to Māori](#)'.

23. At the hearing it was raised by Ms Whitney for Transpower that the 'Other relevant District Plan provisions' section of the chapter referring to the Infrastructure chapter should be amended to reference 'infrastructure policies' rather than 'infrastructure provisions'. Commissioner Daysh then asked whether this reference relates to third party earthworks or earthworks undertaken by Transpower. This discussion raised an important point, and I suggest amending the 'Other relevant District Plan provisions' to better notate that the Infrastructure chapter contains policies for earthworks undertaken in the National Grid and Gas Transmission Pipeline Corridor, as well as provisions that manage earthworks associated with infrastructure. I therefore propose the following amendment:

Other relevant District Plan provisions

- Infrastructure - the Infrastructure chapter contains provisions policies relating to certain types of earthworks within the National Grid Yard and Gas Transmission Pipeline Corridor, and includes policies and standards regarding earthworks associated with infrastructure.

24. The only other matter raised at the hearing that I wish to comment on is in relation to EW-P3. Ms Woodbridge was supportive of my recommended amendments in response to her evidence, but suggested that adding 'adverse effects' in front of 'climate change' might be beneficial. I concur and propose that EW-P3 be amended akin to the notified policy as follows:

EW-P3 Maintaining stability

Require earthworks to be designed and carried out in a manner that maintains slope stability and minimises the risk of slope failure associated with natural hazards ~~such as earthquakes~~ and ~~increased rainfall intensities~~ adverse effects arising from climate change.



Date: 28 August 2023