

Wellington City Proposed District Plan

Hearing Stream 5 – Earthworks

Section 42A of the Resource Management Act 1991

Document Information

REPORT FOR:	Independent Hearings Commissioners: Robert Schofield (Chair) Lindsay Daysh Jane Black Rawiri Faulkner
SUBJECT:	Wellington City Proposed District Plan – Part 2 – District-wide Matters – Earthworks (EW)
PREPARED BY:	Hannah van Haren-Giles
REPORT DATED:	3 July 2023
DATE OF HEARING:	1 August 2023

Executive Summary

- i. This report considers submissions received by Wellington City Council in relation to the relevant definitions, objectives, policies, rules, standards, and maps of the Wellington City Proposed District Plan as they apply to the Earthworks chapter (EW).
- ii. There were 241 submission points and 43 further submission points received in relation to the Earthworks chapter. The submissions received were diverse and sought a range of outcomes. This report outlines recommendations in response to the issues that have emerged from these submissions.
- iii. The following are considered to be the key issues in contention:
 - a. The request for more protection for ridgelines and hilltops, and specifically the ridgetop area in the Upper Stebbings and Glenside West Development Area;
 - b. Consistency and alignment of earthworks provisions with the NZCPS and approach of the Natural Environmental Value and Coastal Environment chapters;
 - c. The policy and rule framework for earthworks associated with natural hazard mitigation works and listed entities to undertake these works;
 - d. The policy and rule framework for earthworks in the Airport Zone and infrastructure more broadly; and
 - e. Area and volume thresholds within the standards.
- iv. This report addresses each of these key issues, as well as any other relevant issues raised in the submissions.
- v. The report includes recommendations to address matters raised in submissions as to whether the provisions in the Proposed District Plan relating to Earthworks should be retained as notified, amended, or deleted in full.
- vi. Appendix A of this report sets out the recommended changes to the Earthworks chapter in full. These recommendations take into account all of the relevant matters raised in submissions and relevant statutory and non-statutory documents.
- vii. Appendix B of this report details officers' recommendations on submissions, and whether those submissions should be accepted or rejected. The body of this report should be consulted for reasoning.
- viii. For the reasons set out in the Section 32AA evaluation included throughout this report, the proposed objectives and associated provisions, with the recommended amendments, are considered to be the most appropriate means to:
 - a. Achieve the purpose of the Resource Management Act 1991 (RMA) where it is necessary to revert to Part 2 and otherwise give effect to higher order planning documents, in respect to the proposed objectives; and
 - b. Achieve the relevant objectives of the Proposed District Plan, in respect to the proposed provisions.

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Interpretation

Table 1: Abbreviations

Abbreviation	Means
the Act / the RMA	Resource Management Act 1991
the Council	Wellington City Council
the ODP/ODP	Operative Wellington City District Plan
the Proposed Plan/PDP	Proposed Wellington City District Plan
GWRC	Greater Wellington Regional Council
NES	National Environmental Standard
NES-AQ	National Environmental Standards for Air Quality 2004
NES-CS	National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011
NES-ETA	National Environmental Standards for Electricity Transmission Activities 2009
NES-FW	National Environmental Standards for Freshwater 2020
NES-MA	National Environmental Standards for Marine Aquaculture 2020
NES-PF	National Environmental Standards for Plantation Forestry 2017
NES-SDW	National Environmental Standards for Sources of Drinking Water 2007
NES-TF	National Environmental Standards for Telecommunication Facilities 2016
NPS	National Policy Statement
NPS-ET	National Policy Statement on Electricity Transmission 2008
NPS-FM	National Policy Statement for Freshwater Management 2020
NPS-UD	National Policy Statement on Urban Development 2020
NPS-REG	National Policy Statement for Renewable Electricity Generation 2011
NZCPS	New Zealand Coastal Policy Statement 2010
PNRP	Proposed Wellington Natural Resources Plan (Appeals Version) 2022
RPS	Wellington Regional Policy Statement 2013
Spatial Plan	Spatial Plan for Wellington City 2021
S32	Section 32 of the Resource Management Act 1991
S32AA	Section 32AA of the Resource Management Act 1991

Table 2: Submitters' and Further Submitters' Names

Abbreviation	Submitters
Airways	Airways Corporation of New Zealand Limited
the Fuel Companies	BP Oil New Zealand, Mobil Oil New Zealand Limited and Z Energy Limited (the Fuel Companies)
CentrePort	CentrePort Limited
Firstgas	Firstgas Limited
GWRC	Greater Wellington Regional Council
Heritage NZ	Heritage New Zealand Pouhere Taonga
Horokiwi Quarries	Horokiwi Quarries Ltd
Kāinga Ora	Kāinga Ora – Homes and Communities
Kilmarston	Kilmarston Developments Limited and Kilmarston Properties Limited
KiwiRail	KiwiRail Holdings Limited
Restaurant Brands	Restaurant Brands Limited
Forest & Bird	Royal Forest and Bird Protection Society
EQC	Toka Tū Ake EQC
Transpower	Transpower New Zealand Limited
WCC	Wellington City Council
WIAL	Wellington International Airport Limited
Woolworths	Woolworths New Zealand
Zealandia	Zealandia Te Māra a Tāne

1.0 Introduction

1.1 Purpose

1. This report is prepared under section 42A of the Resource Management Act 1991 (the **RMA**) to:
 - a. Assist the Hearings Panel in their role as Independent Commissioners in making their decisions on the submissions and further submissions on the Wellington City Proposed District Plan (the **PDP**); and
 - b. Provide submitters with information on how their submissions have been evaluated and the recommendations made by officers, prior to the hearing.

1.2 Scope

2. This report considers submissions received by the Council in relation to the relevant definitions, objectives, policies, rules, and standards as they apply to the Earthworks chapter.
3. This report:
 - a. Discusses general issues;
 - b. Considers the original and further submissions received;
 - c. Makes recommendations as to whether those submissions should be accepted or rejected; and
 - d. Concludes with a recommendation for any consequential changes to the plan provisions or maps based on the assessment and evaluation contained in the report.
4. This report is intended to be read in conjunction with the Section 42A Assessment Report: Part A – Overview, which sets out the statutory context, background information and administrative matters pertaining to the District Plan review and PDP.
5. The Hearings 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 and evidence provided to them by submitters.

1.3 Author and Qualifications

6. My full name is Hannah Jane van Haren-Giles. I am a Senior Planning Advisor in the District Planning Team at Wellington City Council (the Council).
7. My role in preparing this report is that of an expert in planning.
8. I hold the qualification of Bachelor of Resource and Environmental Planning (First Class Honours) from Massey University. I am an Intermediate Member of the New Zealand Planning Institute.
9. I have five years' experience in planning and resource management, primarily as a consultant planner working for Hill Young Cooper Ltd. I have background in preparing and processing district and regional resource consent applications, plan and policy development, reviewing and preparing submissions, and providing resource management advice to a range of clients including local authorities, industry groups, private sector companies, and individuals on various

projects and planning processes.

10. My involvement with the Proposed Wellington City District Plan commenced in early 2020 when I was engaged to assist the Council with issues and options reports. I subsequently led the review and drafting of the Special Purpose Port Zone (including the Inner Harbour Port Precinct and Multi-User Ferry Precinct), Special Purpose Quarry Zone (including Kiwipoint Quarry Precinct), Special Purpose Stadium Zone, Hazardous Substances, and Contaminated Land chapters. I also authored the Section 32 Evaluation Reports for the Port Zone, Quarry Zone, Hazardous Substances, and Contaminated Land chapters.
11. Since joining the District Plan Team in July 2022 I have been involved in summarising submissions and further submissions, as well as developing the systems and database used to capture submissions and further submission points on the PDP.
12. I am also the reporting officer on the General Industrial Zone, Subdivision, Port Zone, Quarry Zone, Hazardous Substances, and Contaminated Land chapters.

1.4 Code of Conduct

13. Although this is a Council Hearing, I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court 1 January 2023. I have complied with the Code of Conduct when preparing my written statement of evidence and I agree to comply with it when I give any oral evidence.
14. Other than when I state that I am relying on the evidence or advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.
15. 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 opinions. Where I have set out opinions in my evidence, I have given reasons for those opinions.

1.5 Supporting Evidence

16. The expert evidence, literature, legal cases or other material which I have used or relied upon in support of the opinions expressed in this report is as follows:
 - a. Assessments contained in other relevant s42A Reports; and
 - b. Advice from other Council staff, including the district plan and consents teams.

1.6 Key resource management issues in contention

17. Having read the submissions and further submissions, I consider that the following matters are the key issues in contention in the chapter:
 - a. The request for more protection for ridgelines and hilltops, and specifically the ridgetop area in the Upper Stebbings and Glenside West Development Area;

- b. Consistency and alignment of earthworks provisions with the NZCPS and approach of the Natural Environmental Value and Coastal Environment chapters;
- c. The policy and rule framework for earthworks associated with natural hazard mitigation works and listed entities to undertake these works;
- d. The policy and rule framework for earthworks in the Airport Zone and infrastructure more broadly; and
- e. Area and volume thresholds within the standards.

1.7 Procedural Matters

- 18. At the time of writing this report there have been no pre-hearing conferences, clause 8AA meetings or expert witness conferencing in relation to submissions on any Earthworks provisions.
- 19. I note that some submissions in the submission tables at Appendix B of this s42A report relate to matters that have been addressed in Hearing Stream 1 (Strategic Direction), Hearing Stream 2 (Residential) and/or Hearing Stream 3 (Historic Heritage). If submission points have been addressed in earlier streams this has been noted.
- 20. The submission tables at Appendix B also include reference to matters that will be addressed in later hearing streams. Where a submission point is included in the summary tables for Earthworks but would be more appropriately assessed under later hearing streams, this has been noted in Appendix B.

2.0 Background and Statutory Considerations

2.1 Resource Management Act 1991

21. The PDP has been prepared in accordance with the RMA and in particular, the requirements of:
 - a. Section 74 Matters to be considered by territorial authority; and
 - b. Section 75 Contents of district plans.

22. As set out in the Section 32 Evaluation Report Part 1 – Context to Evaluation and Strategic Objectives, there are a number of higher order planning documents and strategic plans that provide direction and guidance regarding the preparation and content of the PDP. These documents and a comprehensive assessment of all relevant consultation and statutory considerations prior to public notification of the PDP are discussed in detail within the [Earthworks s32 Report](#).

23. Since public notification of the PDP and publishing of the related section 32 evaluation reports on 18th July 2022, the following relevant statutory considerations have changed/been introduced:
 - a. Spatial Planning Bill and Natural and Built Environment Bill (14.11.2022)**
 - i. These Bills are currently before the select committee and have no implications for the plan.

 - b. Plan Change 1 to the Wellington Regional Policy Statement was notified (19.08.2022)**
 - i. A submission was received from GWRC seeking amendments to the PDP, in part to achieve alignment with this notified Plan Change. In Hearing Stream 1 the Reporting Officer confirmed that Plan Change 1 (PC1) to the WRPS must be had regard to, but that given the stage that PC1 is at in the legislative process (with substantial parts the subject of competing submissions), it may be difficult to give much weight to the PC1. However, it is appropriate that consideration is given to PC1 where relevant.

2.2 Schedule 1 and ISPP

24. As detailed earlier in the section 42A Overview Report, the Council has chosen to use two plan review processes:
 - a. The Intensification Streamlined Planning Process (ISPP) under Part 6 of Schedule 1 of the RMA for the intensification planning instrument (IPI). There are no appeal rights on ISPP provisions.
 - b. For all other PDP provisions and content, the standard Part 1 of Schedule 1 process of the RMA is used. Part 1 Schedule 1 provisions can be appealed.

25. The PDP is annotated with provisions that are to be assessed under the ISPP and the Part 1 Schedule 1 process. For this topic, the following provisions were notified under the ISPP as per the decision of the Pūroro āmua | Planning and Environment committee on 12 May 2022:

- a. Objectives: EW-O1
 - b. Policies: EW-P1, EW-P2, EW-P3, EW-P4, EW-P5, EW-P6, EW-P7
 - c. Rules: EW-R1, EW-R6, EW-R8, EW-R16, EW-R21
 - d. Standards: EW-S1, EW-S2, EW-S3, EW-S4, EW-S5, EW-S6, EW-S10
26. The following provisions were notified under the Part 1 Schedule 1 process:
- a. Introduction
 - b. Objectives: EW-O2
 - c. Policies: EW-P8, EW-P9, EW-P10, EW-P11, EW-P12, EW-P13, EW-P14, EW-P15, EW-P16, EW-P17, EW-P18, EW-P19, EW-P20
 - d. Rules: EW-R2, EW-R3, EW-R4, EW-R5, EW-R7, EW-R9, EW-10, EW-R11, EW-R12, EW-R13, EW-R14, EW-R15, EW-R17, EW-R18, EW-R19, EW-R20, EW-R22, EW-R23, EW-R24
 - e. Standards: EW-S7, EW-S8, EW-S9, EW-S11, EW-S12, EW-S13, EW-S14, EW-S15

2.3 Section 32AA

27. I have undertaken an evaluation of the recommended amendments to provisions since the initial section 32 evaluation was undertaken in accordance with s32AA. Section 32AA states:

32AA Requirements for undertaking and publishing further evaluations

(1) A further evaluation required under this Act—

(a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and

(b) must be undertaken in accordance with section 32(1) to (4); and

(c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and

(d) must—

(i) be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or

(ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.

(2) To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).

28. The required section 32AA evaluation for changes proposed as a result of consideration of submissions with respect to this topic is contained within the assessment of the relief sought in submissions in section 3 of this report, as required by s32AA(1)(d)(ii).

29. The Section 32AA further evaluation contains a level of detail that corresponds to the scale and significance of the anticipated effects of the changes that have been made. Recommendations on editorial, minor, and consequential changes that improve the effectiveness of provisions without changing the policy approach have not been re-evaluated. Additionally, further re-evaluation has not been undertaken if the recommended amendments have not materially altered the policy approach.

2.4 Trade Competition

30. Trade competition is not considered relevant to the provisions of the PDP relating to this topic.
31. There are no known trade competition issues raised within the submissions.

3.0 Consideration of Submissions and Further Submissions

3.1 Overview

32. In total there were 284 submission points received in relation to Earthworks, as follows:
 - a. 32 original submitters who collectively made 241 submission points; and
 - b. 12 further submitters who collectively made 43 further submission points in support or opposition to the primary submissions.

3.2 Report Structure

33. Submissions raised several issues that have been grouped for convenience and ease of reference by the parent chapter matters they relate to as opposed to the chronological ordering of provisions as they appear in the Earthworks Chapter. Substantive commentary on primary submissions contained in further submissions has been considered as part of consideration of the primary submissions to which they relate.
34. In accordance with Clause 10(3) of the First Schedule of the RMA, the following evaluations have been undertaken for the purposes of this report:
 - a. An issues and provisions, versus submission by submission, based evaluative approach, where a large number of similar submissions have been received.
 - b. A submission by submission evaluative approach, where a small number of submissions have been received.
35. Recommended amendments are contained in the following appendices:
 - a. Appendix A – Recommended Amendments to the Earthworks Chapter
 - b. Appendix B – Recommended Responses to Submissions and Further Submissions on the Earthworks Chapter
36. Additional information can also be obtained from the [Earthworks Section 32 Report](#), and the overlays and maps on the ePlan.
37. The following evaluation should be read in conjunction with the summaries of submissions and further submissions, along with the full submissions. Where there is agreement with the relief sought and the rationale for that relief, this is noted in the assessment section of the report, with the associated recommendation provided in the summary of submission table in Appendix B. Where a further evaluation of the relief sought in a submission(s) has been undertaken, the evaluation and recommendations are set out in the body of this report. A marked-up version of the Earthworks chapter with recommended amendments in response to submissions is contained in Appendix A.
38. This report only addresses definitions that are specific to this topic. Definitions that relate to

more than one topic have previously been addressed in the section 42A report relating to Hearing Stream 1, as well as other relevant s42A reports relating to different topics.

Format for Consideration of Submissions

39. The consideration of submissions has been undertaken in the following format:
 - a. Matters raised by submitters;
 - b. Assessment; and
 - c. Summary of recommendations.

40. The recommended amendments to the relevant parts of the PDP are set out in Appendix A of this report where all text changes are shown in a consolidated manner.

41. The recommended acceptance or rejection of submissions (and accordingly further submissions) is set out in Appendix B.

42. I have undertaken a s32AA evaluation in respect to the recommended amendments in my assessment that represent a material change from the policy direction in the proposed Earthworks chapter.

43. Where relevant I have addressed minor and inconsequential changes, pursuant to Schedule 1, clause 16 (2) of the RMA, within the context of the relevant provision assessment.

44. I note that the provisions of the Earthworks Chapter are unique in that they relate to a number of zone specific and district wide matters. For ease and clarity, the assessments undertaken in this report have been organised into related sections based on the zone/district wide matter or theme to which they relate, as set out below. The table below also sets out which provisions are to be assessed under the ISPP (shown in purple) and the Part 1 Schedule 1 process (shown in black).

Report Section	Zone/ District wide matter / theme	Objectives	Policies	Rules	Standards
Section 3.4	General Points				
Section 3.5	Recurring submission points relating to multiple provisions				
Section 3.6	General Earthworks	EW-O1	EW-P1 EW-P2 EW-P3 EW-P4 EW-P5 EW-P6	EW-R1 EW-R6 EW-R24	EW-S1 EW-S2 EW-S3 EW-S4 EW-S5 EW-S6 EW-S7
Section 3.7	General Rural Zone and			EW-R2	EW-S8

	Open Space and Recreation Zones			EW-R3 EW-R4 EW-R5	EW-S9
Section 3.8	Airport Zone			EW-R20	EW-S14
Section 3.9	Historical and Cultural Values		EW-P7 EW-P8	EW-R8 EW-R9 EW-R21	EW-S10
Section 3.10	Natural Environment Values		EW-P9 EW-P10 EW-P13 EW-P14 EW-P15	EW-R7 EW-R12 EW-R13 EW-R14	EW-S13
Section 3.11	Coastal Environment		EW-P11 EW-P12	EW-R10 EW-R11	EW-S11 EW-S12
Section 3.12	Natural Hazards		EW-P16 EW-P17 EW-P18 EW-P19	EW-R16 EW-R17 EW-R18 EW-R19	
Section 3.13	Development Areas		EW-P20	EW-R15	
Section 3.14	Infrastructure			EW-R22 EW-R23	EW-S15

45. Given that the provisions of the Earthworks Chapter are interrelated to a number of other PDP chapters that are yet to be assessed and heard, the recommendations in this report are somewhat limited on the basis that the outcomes of the ‘parent’ chapter hearing processes are unknown. To the extent possible, I have made recommended amendments for the earthworks provisions, or otherwise noted proposed amendments that I consider would be appropriate.
46. The sections of this report which this issue is most relevant to are:
- a. Section 3.8 Airport Zone – to be addressed in Hearing Stream 6
 - b. Section 3.10 Natural Environmental Values – to be addressed in Hearing Stream 8
 - Ecosystems and Indigenous Biodiversity (ECO)
 - Natural Character (NATC)
 - Natural Features and Landscapes (NFL)
 - c. Section 3.11 Coastal Environment – to be addressed in Hearing Stream 8
 - d. Section 3.12 Development Areas – to be addressed in Hearing Stream 6
 - e. Section 3.14 Infrastructure – to be addressed in Hearing Stream 9
47. Where amendments are proposed these will either be made in parallel with, or consequential to, the parent chapter hearings.
48. I also note that there are interrelated matters between the earthworks provisions and other chapter content also part of Hearing Stream 5. In light of this, recommended amendments to the earthworks provisions set out in this report have sought to align with the recommendations of these other chapters as far as possible, noting that further consequential amendments may be

required for reasons of consistency and alignment dependent on the outcomes of Hearing Stream 5.

49. The sections of this report that are relevant to chapters also being considered through Hearing Stream 5 are:
 - a. Section 3.12 Natural and Coastal Hazards

50. Finally, in relation to Proposed RPS Change 1, I concur with Mr McCutcheon's verbal confirmation in Hearing Stream 1 that given the current point that this change is at in the process that no statutory weight is required to be given to it. However, as publicly notified, the intent of Change 1 can be used to inform consideration in the context of the WCC PDP process, noting that it is subject to potential change through the process.

3.3 Definitions

3.3.1 Definition of Cut Height

Matters Raised by Submitters

51. The Fuel Companies [372.9] seek that the definition of 'cut height' is retained as notified.
52. Survey & Spatial New Zealand Wellington Branch [439.4] oppose the definition of 'cut height' noting that other local authorities in the Wellington Region do not have a definition of 'cut height'. They seek that the definition be replaced as follows:

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 vertical alteration of the ground by excavation measured vertically.

Assessment

53. In my view the definition as notified provides a greater level of clarity to plan users than the amendment sought by Survey & Spatial New Zealand Wellington Branch [439.4].

Summary of Recommendations

54. **HS5-EW-Rec1:** That the definition of 'cut height' be retained as notified.
55. **HS5-EW-Rec2:** That submission points relating to definition of 'cut height' are accepted/rejected as detailed in Appendix B.

3.3.2 Definition of Earthworks

Matters Raised by Submitters

56. Horokiwi Quarries [271.1], Aggregate and Quarry Association [303.1], Firstgas [304.1], Transpower [315.1], and the Fuel Companies [372.2] seek that the definition of 'earthworks' is retained as notified.
57. Rod Halliday [25.1] (opposed by Heidi Snelson [FS24.1]) considers that the definition is too restrictive in term of what activities it allows, with the exclusions for just gardening, cultivation and fence posts too narrow and restrictive. Mr Halliday seeks that the 'earthworks' definition be amended to exclude topsoil removal, as this practice is necessary to enable the solid ground level to be accurately surveyed prior to dwelling or civil design work taking place.
58. Mr Halliday [25.2] (opposed by Heidi Snelson [FS24.2]) also seeks that the 'earthworks' definition be amended to exclude trenching as it is a short-term activity and almost all are reinstated within 1-2 days once drainage, water or utilities such as power, fibre and gas are installed.

Assessment

59. As identified in the Definitions section of the Plan, the definition of ‘Earthworks’ is taken directly from the National Planning Standards.
60. Section 14 of the National Planning Standards states that [**emphasis added**]:
- Where terms defined in the Definitions List are used in a policy statement or plan, and the term is used in the same context as the definition, **local authorities must use the definition as defined in the Definitions List.** However if required, they may define:*
- a. terms that are a subcategory of, or have a narrower application than, a defined term in the Definitions List. Any such definitions must be consistent with the higher level definition in the Definitions List.*
 - b. additional terms that do not have the same or equivalent meaning as a term defined in the Definitions List.*
61. The changes sought by Mr Halliday are therefore not able to be made, as they would contradict the requirements of the National Planning Standards. However, for completeness the amendments sought are analysed below.
- a. [25.1] Topsoil is encompassed within the National Planning Standards definition, and as such any exclusion of this activity would not be appropriate. The removal of topsoil could give rise to the same effects that removal of substrata would i.e. erosion, sedimentation, and effects on visual amenity.
 - b. [25.2] I note that EW-R1 permits earthworks for the purposes of piling and trenching where compliance is achieved with EW-S5 and EW-S6. Similarly, the Infrastructure chapter includes a specific rule for new underground infrastructure (including customer connections), and upgrading of existing underground infrastructure (INF-R2) which addresses the activities identified by Mr Halliday, and which requires compliance with specific infrastructure standards, including INF-S3 that addresses earthworks matters.

Summary of Recommendations

62. **HS5-EW-Rec3:** That the definition of ‘earthworks’ be retained as notified.
63. **HS5-EW-Rec4:** That submission points relating to the definition of ‘earthworks’ are accepted/rejected as detailed in Appendix B.

3.3.3 Definition of Existing Slope Angle

Matters Raised by Submitters

64. Survey & Spatial New Zealand Wellington Branch [439.5] submit that the definition should have a minimum length over which the slope angle should extent, to avoid very short changes in gradient that have no bearing on the overall slope of a site. They seek that the definition be amended as follows:

means the maximum slope segment angle of all slope segments.

For a Cut – slope segments are measured (on a horizontal plane);

– within the extent of the cut; and

– uphill of the cut, the distance to the boundary or 10m whichever is the lesser.

For a Fill – slope segments are measured (on a horizontal plane);

– within the extent of the fill; and

– downhill of the fill, the distance to the boundary or 10m

whichever is the lesser.

A slope segment is a segment of sloping ground that falls generally at the same angle to the horizontal (slope segment angle) and extends for a horizontal distance of at least 3m.

Assessment

65. I firstly draw attention to EW-S3 which is the standard for existing slope angle, and which specifies the 3m horizontal distance the submitter refers to. In my view, there is scope to improve the connection between the definition and standard. It is appropriate that EW-S3 specifies the required slope factor of 34 degrees or greater, but I acknowledge and agree with the submitter that the definition should include all aspects of calculation.
66. As such, I recommend that ‘sustained over a distance of at least 3m, measured horizontally’ is added to the definition. This will provide alignment and consistency between the definition and EW-S3.

Summary of Recommendations

67. **HS5-EW-Rec5:** That the definition of ‘existing slope angle’ is amended as set out below and detailed in Appendix A.

means the maximum slope segment angle of all slope segments.

For a Cut – slope segments are measured (on a horizontal plane);

– within the extent of the cut; and

– uphill of the cut, the distance to the boundary or 10m whichever is the lesser.

For a Fill – slope segments are measured (on a horizontal plane);

– within the extent of the fill; and

– downhill of the fill, the distance to the boundary or 10m

whichever is the lesser.

A slope segment is a segment of sloping ground that falls generally at the same angle to the horizontal (slope segment angle) sustained over a distance of at least 3m, measured horizontally.

68. **HS5-EW-Rec6:** That submission points relating to the definition of ‘existing slope angle’ are accepted/rejected as detailed in Appendix B.

3.3.4 Definition of Fill Depth

Matters Raised by Submitters

69. The Fuel Companies [372.10] seek that the definition of ‘fill depth’ is retained as notified.
70. Survey & Spatial New Zealand Wellington Branch [439.6] oppose the definition of ‘fill depth’ noting that other local authorities in the Wellington Region do not have a definition of ‘fill depth’. They seek that the definition be replaced as follows:

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~~ vertical alteration of the ground by filling measured vertically.

Assessment

71. In my view the definition as notified provides a greater level of clarity to plan users than the amendment sought by Survey & Spatial New Zealand Wellington Branch [439.6].

Summary of Recommendations

72. **HS5-EW-Rec7:** That the definition of ‘fill depth’ be retained as notified.
73. **HS5-EW-Rec8:** That submission points relating to the definition of ‘fill depth’ are accepted/rejected as detailed in Appendix B.

3.4 General Points

3.4.1 General Points on the chapter as a whole

Matters Raised by Submitters

74. Restaurant Brands [349.32] seek that the Earthworks chapter is retained as notified.
75. Kilmarston [290.43 and 290.44] seek that the objectives and policies are retained as notified.
76. The Aggregate and Quarry Association [303.17] support the Earthworks chapter as it specifies that Earthworks provisions do not apply to quarrying activities provided for in the Special Purpose Quarry Zone, and seek that the introductory statement "the provisions in this chapter do not apply to quarrying activities provided for in the Special Purpose Quarry Zone".
77. Waka Kotahi [370.204] support that the provisions do not relate to infrastructure activities, as this enables Waka Kotahi to undertake works to infrastructure as provided for by the infrastructure chapter, and seek that the introductory statement “The provisions of this Chapter do not apply in relation to activities provided for in the Infrastructure Chapter, unless specifically stated in the rule or standard concerned” is retained as notified.

78. John Tiley [142.15] and Churton Park Community Association [189.15] submit that the Earthworks chapter subjugates any visual amenity and open space values to the interests of development, and seek an explanation of 'sustainable' management of earthworks is offered.
79. John Tiley [142.16] and Churton Park Community Association [189.16] submit that the final sentences of the Earthworks introduction avoid any obligation to avoid or even mitigate harmful effects.
80. John Tiley [142.17] and Churton Park Community Association [189.17] further submit that the sentence 'To a large extent, these effects can be addressed through careful design and management of physical works' is not true as any earthworks will compromise a ridgeline's integrity including community and amenity values.
81. Horokiwi Quarries [271.51] supports the clarification that the earthworks rules do not apply to quarrying activities provided for in the Quarry Zone, and seeks to retain the chapter as notified.
82. Tawa Community Board [294.13] submit that climate change is driving more frequent and more severe climatic events, and seek that earthworks heights are amended to support more resilience. Tawa Community Board [294.14] also seek increased construction setbacks from retaining walls and embankments, including stream embankments.
83. WIAL have made a number of submissions relating to the Earthworks chapter as follows:
 - a. WIAL [406.360] (supported by Airways [FS105.17]) seek that the Earthworks chapter introduction is amended to delete the reference to EW-R20 (Earthworks in the Airport Zone) to EW-S14 (Earthworks in the Airport Zone) so that the chapter does not apply to the Airport Zone.
 - b. WIAL [406.361] (supported by Airways [FS105.18]) seek that the Airport Zone is exempt from the Earthworks provisions to the same extent that it was in the Operative District Plan.
 - c. WIAL [406.362] seek to clarify the extent to which the Earthworks chapter applies within the Airport Zone.
 - d. WIAL [406.364] seeks that the Earthworks chapter is amended to rework how it relates to the Airport Zone, done through the Schedule 1 Resource Management Act process.
84. Forest & Bird [345.361] submit that the Earthworks chapter provisions are silent on earthworks in wetlands and their margins, and seek a suite of new earthworks provisions protecting wetlands and their margins, or amendments to the notified provisions to achieve this. In terms of rules, Forest & Bird seek at the very least rules require setbacks from all natural wetlands.

Assessment

85. Firstly, in response to the submission points of John Tiley [142.15] and Churton Park Community Association [189.15] in relation to an explanation of sustainable management.
86. The term 'sustainable management' is derived from the purpose (s5) of the Resource Management Act. Additionally, sustainable management is a defined term within the PDP - consistent with its meaning in the RMA. I note that reference to sustainable management in the

introduction is not linked to the e-plan definition. I recommend a minor consequential amendment to update this linked definition for plan efficiency and clarity.

87. I do not consider that the rules and policies of the chapter subjugate visual amenity and open space values. In my view the provisions provide an appropriate balance between the interests of development whilst avoiding, remedying, or mitigating any adverse effects of earthworks on the environment – consistent with sustainable management.
88. In response to John Tiley [142.16] and Churton Park Community Association [189.16], the introduction to the chapter details potential effects that could arise from poorly designed or managed earthworks. The introduction is factual and not directive. Instead, the introduction sets the scene for the objectives and policies which provide direction to minimise adverse effects and risks, and protect the safety of people and property.
89. In response to John Tiley [142.17] and Churton Park Community Association [189.17], DEV3-R33 sets out that the construction of buildings and structures in the Ridgetop are a non-complying activity. This matter will be further addressed in the Development Area and Natural Features and Landscapes hearings. EW-P20, EW-R15, and EW-S13 provide specific direction in relation to earthworks within ridgelines and hilltops. Other submissions have also sought to strengthen controls for ridgetops – this is further assessed in section 3.13 of this report.
90. In response to Tawa Community Board [294.13] that climate change is driving more frequent and more severe climatic events – I agree. I draw attention to SRCC-O3 and SRCC-O4 which set out that land use, subdivision and development manage the risks associated with climate change, support natural functioning ecosystems and processes to help build resilience into the natural and built environments, and integrate natural processes that provide opportunities for natural hazard risk reduction and support climate change adaptation.
91. On this basis, it is my view that the earthworks provisions in conjunction with the strategic directions provide appropriate consideration of the effects of climate change in accordance with s7(i) RMA. I also consider that EW-P3 appropriately responds to the matter of risk of slope failure associated with natural hazards and increased rainfall arising from climate change. EW-P3 in association with the general earthworks standards (particularly EW-S1, EW-S2, and EW-S3) suitably address the submitters concerns in relation to heights and retaining walls [294.14]. As to setbacks from stream embankments – this is managed by GWRC.¹
92. In response to WIAL [406.360, 406.361, and 406.362], the application of earthworks provisions as it applies to the Airport Zone is clear because ‘the ‘Application of rules in this Chapter’ section sets out that:
- The provisions of this chapter do not apply in relation to activities provided for in the Airport Chapter, except to the extent specified in EW-R20 and EW-S14.*
93. I do not consider that the Earthworks chapter introduction should be amended to delete the reference to EW-R20 and EW-S14 so that the chapter does not apply to the Airport Zone, nor

¹ [GWRC Proposed Natural Resources Plan](#) Rule 101 sets out that ‘earthworks will not create or contribute to instability or subsidence of a slope or another land surface at or beyond the boundary of the property where the earthworks occurs’ and ‘earthworks shall not occur within 5m of a surface water body’. Where these conditions are not met, it becomes a discretionary activity under Rule 107.

should the Airport Zone be exempt from the earthworks provisions to the same extent that it was in the ODP. The approach of the PDP, consistent with the National Planning Standards, is that provisions relating to earthworks be located within the Earthworks chapter, as opposed to the Airport Zone chapter, which is how it was in the ODP.

94. Turning to WIAL seeking that the Airport Zone is exempt from earthworks provisions to the same extent that it was in the ODP. I note that EW-R20 and EW-S14 as they relate to the Rongotai Ridge Precinct reflect ODP rule 11.1.6 which managed earthworks on Rongotai Ridge as a permitted activity subject to conditions, or otherwise ODP rule 11.3.5 as a restricted discretionary activity in respect of visual appearance, geomorphological impacts, dust and sediment control, and traffic impacts caused by transporting earth and construction fill material. The PDP and ODP provisions for earthworks as they apply to Rongotai Ridge are similar. I note elsewhere in their submission WIAL have sought to add matters of discretion and clauses to EW-R20 and EW-S14 to more closely reflect ODP rule 11.3.5. This is further assessed in section 3.8 of this report.
95. As to WIAL [406.364] that the Earthworks chapter as it relates to the Airport Zone be amended through the Schedule 1 Resource Management Act process, I note that both EW-R20 and EW-S14 have been notified using a Part One Schedule 1 process, and that this matter was addressed in the Hearing Stream 1 s42A Report².
96. In response to Forest & Bird [345.361] relating to provisions protecting wetlands and their margins. The NES-FW contains national regulations for earthworks within and in proximity to natural wetlands. Regulation 6 of the NES-FW sets out that district plans may be more stringent than the regulations, however there is no requirement to include provisions in district plans that duplicate the NES-FW; instead, the converse applies. Section 44A of the RMA (Local authority recognition of national environmental standards), provides that in particular circumstances if a district plan rule duplicates or conflicts with a rule in a NES, then the local authority must amend its plan to remove the duplication or conflict without using the process in Schedule 1. As an example, the Contaminated Land chapter of the Plan contains no rules as it relies on the NES-CS regulations.
97. I concur with Mr McCutcheon that “the NES-FM, administered by regional councils, establishes a framework for the management of activities that relate to wetlands and as such is the appropriate tool for protecting wetlands.”³
98. I further note that the Natural Character chapter introduction sets out:
- Resource Management (National Environmental Standards for Freshwater) Regulations 2020 manage vegetation removal, earthworks, natural hazards works, infrastructure and public access structures within 10 metres of natural wetlands. As such, Council has decided not to duplicate provisions for these activities and they are not managed through this chapter.*
99. To specifically respond to Forest & Bird seeking that earthworks rules require setbacks from all natural wetlands. I note that any type of earthworks within, or within a 10m setback from, a natural wetland (note this is defined to exclude constructed wetlands) is required under

² Paragraph 81, [Hearing Stream 1 s42A Report](#)

³ Paragraph 939, Strategic Direction s42A Report

regulation 54(b) of the NES-FW as a non-complying activity, and this is managed by the Regional Council.

100. As such, it is my view that including provisions that duplicate the NES-FW would not be efficient or effective, and therefore I do not consider that the amendments sought by Forest & Bird would be appropriate. However, for clarity I recommend that explanatory text be added to the Earthworks chapter introduction, in a similar manner to the Natural Character Chapter introduction. To this extent, I agree in part the submission from Forest & Bird.

Summary of Recommendations

101. **HS5-EW-Rec9:** That the Introduction be amended in response to submissions on general points as set out below and detailed in Appendix A.

<p>Introduction</p> <p>...</p> <p><u>Resource Management (National Environmental Standards for Freshwater) Regulations 2020 manage earthworks within 10 metres of natural wetlands. As such, Council has decided not to duplicate provisions for these activities and they are not managed through this chapter.</u></p>

102. **HS5-EW-Rec10:** That submission points relating to General Points are accepted/rejected as detailed in Appendix B.

3.5 Recurring submission points relating to multiple provisions

103. This section of the report addresses submission points that have been made in relation to multiple provisions throughout the Earthworks chapter. To reduce repetition, relevant submission points have been grouped and collectively assessed, as opposed to individually on a provision by provision basis. The submission points are considered broad enough that they can be assessed at this overarching level.

104. There are four main matters that attracted recurring submission points as follows:
- a. The matter of climate change and natural hazard resilience of development in the Upper Stebbings and Glenside West Development Area.
 - b. The matter of reference to 'identified values'.
 - c. The matter of reference to 'operational need'.
 - d. The matter of Marshall's Ridge and other ridgelines.

3.5.1 The matter of climate change and natural hazard resilience of development in the Upper Stebbings and Glenside West Development Area

Matters Raised by Submitters

105. Heidi Snelson, Aman Hunt, Chia Hunt, Ela Hunt [submitter 276] have made submissions on the earthworks provisions as they relate to the climate change and natural hazard resilience of development in the Upper Stebbings and Glenside West Development Area. In particular – as relevant to the Earthworks provisions – the submitter has concerns in relation to large escarpments requiring significant earthworks, removal of hilltops resulting in significant landform and contour changes, and infilling of gullies and smaller water courses.
106. The specific provisions and submission points relevant to the relief sought are as follows:

Provision	Submission points
EW-O1	276.22
EW-P1	276.24
EW-P2	276.25
EW-P3	276.26
EW-P4	276.27
EW-P5	276.29
EW-P16	276.30

Assessment

107. I acknowledge the concerns of the submitter in relation to current and future risks of climate change and hazard resilience as they relate to development in the Upper Stebbings and Glenside West Development Area. In my view EW-P3 appropriately responds to the matter of risk of slope failure associated with natural hazards and increased rainfall arising from climate change. I also note that there is specific policy direction for earthworks in development areas in EW-P20, which speaks to the conveyance of flood waters to minimise risk.
108. In addition, I draw attention to SRCC-O3 and SRCC-O4 which set out that land use, subdivision and development manage the risks associated with climate change, support natural functioning ecosystems and processes to help build resilience into the natural and built environments, and integrate natural processes that provide opportunities for natural hazard risk reduction and support climate change adaptation. I also draw attention to NE-O2 that future subdivision and development contributes to an improvement in the quality of the City’s water bodies.
109. In their submission, they seek that earthworks should be low impact - kept to an absolute minimum using individual build platforms, with no removal of hilltops, landforms or contours but instead fit into the form and look of the landscape. In my view, the appropriateness of earthworks in Upper Stebbings and Glenside West is established via the provisions in DEV3.
110. In particular, I note that construction of buildings and structures in the ridgetop is a non-complying activity under DEV3-R33. It is also my understanding that in Upper Stebbings and Glenside West, natural features are recognised by distinguishing the Build and the No Build areas. It is anticipated however that *“earthworks to facilitate the Development Plan layout and residential building platforms will be required in the no build area, for example for access and creation of building platforms in the build area.”*⁴ On this basis, I agree with the submitter that earthworks in the ridgetop area should be minimal.
111. The submitters more specific concerns in relation to the Upper Stebbings and Glenside West

⁴ Introduction, Development Area - Upper Stebbings and Glenside West PDP Chapter

Development Area and ridgelines/ridgetop area, including in relation to Plan Change 33 (PC33)⁵, are more appropriately addressed in Hearing Stream 6 and Hearing Stream 8 respectively.

112. To the extent their submission relates to the Earthworks chapter, I note EW-P20.5 sets out that ridgeline and hilltop areas [ridgetop areas] be protected from inappropriate earthworks. The policy and rule framework for the ridgetop area in Upper Stebbings and Glenside West Development Area is further assessed in section 3.13 of this report.

Summary of Recommendations

113. **HS5-EW-Rec11:** No changes are recommended in response to these submissions on climate change and natural hazard resilience of development in the Upper Stebbings and Glenside West Development Area.
114. **HS5-EW-Rec12:** That submission points relating to Climate Change and Natural Hazard Resilience of Development in the Upper Stebbings and Glenside West Development Area are accepted/rejected as detailed in Appendix B.

3.5.2 The matter of reference to ‘identified values’

Matters Raised by Submitters

115. Forest & Bird have made submission points opposing reference to ‘identified values’ and seek that all references to ‘identified’ values be deleted. In relation to EW-P9 they submit that ‘identified’ values will not necessarily protect all the relevant values.
116. The specific policies and submission points relevant to the relief sought are as follows:

Provision	Submission points
EW-P9	345.363
EW-P11	345.366
EW-P14	345.369
EW-P15	345.370

Assessment

117. The rationale for referring to ‘identified values’ was to draw the plan user to the detail provided in the various schedules of the PDP (and not just any unspecified ‘values’). The values identified in the schedules have been identified through rigorous engagement, research, and assessment. The phrasing of ‘identified values’ is terminology that has been consistently applied throughout the PDP to refer to values, as exemplified by the comparable use of this term in the natural environmental values and historical and cultural values chapters and their associated schedules.
118. I note that Forest & Bird have also made other submission points on use of this phrasing throughout the PDP, particularly its use within the relevant parent chapter - Natural Features and Landscapes. Policy 23 of the RPS requires that the District Plan identify and evaluate indigenous ecosystems and habitats with significant indigenous biodiversity values, according to specified criteria. As I understand it, the PDP methodology effectively implements this higher

⁵ Plan Change 33: Ridgelines & Hilltops (Visual Amenity) & Rural Area, Operative 20 November 2009.

order direction, noting that the explanation to the policy sets out that ‘Policy 23 will ensure that significant biodiversity values are identified in district and regional plans in a consistent way.’ However, given the breadth and topic related focus of these submission points I consider that they are matters more appropriately addressed in Hearing Stream 8.

119. Regardless, for the purposes of this s42A Report I disagree with the request to delete reference to ‘identified values’ in the earthworks provisions as I consider its retention is appropriate for the reasons outlined above.

120. **Summary of Recommendations**

121. **HS5-EW-Rec13:** No changes are recommended in response to these submissions on reference to ‘identified values’, subject to any amendments arising from Hearing 8.

122. **HS5-EW-Rec14:** That submission points relating to Identified Values are accepted/rejected as detailed in Appendix B.

3.5.3 The matter of reference to ‘operational need’

Matters Raised by Submitters

123. Forest & Bird have consider that reference to ‘operational need’ is extremely broad and should be deleted.

124. The specific policies and submission points relevant to the relief sought are as follows:

Provision	Submission points
EW-P11 Earthworks within High Coastal Natural Character Areas within the coastal environment	345.366
EW-P12 Earthworks within coastal margins and riparian margins within the coastal environment	345.367
EW-P13 Earthworks within riparian margins outside of the coastal environment	345.368

Assessment

125. The policies that Forest & Bird have made these submission points on relate to earthworks primarily within the coastal environment. EW-P11 relates to matters in Policy 15 of the NZCPS and EW-P12 relates to matters in Policy 13 of the NZCPS.

126. Objective 6 of the NZCPS is as follows:

To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:

- *the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;*
- *some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;*
- *functionally some uses and developments can only be located on the coast or in the*

coastal marine area;

- *[continues...]*

127. Objective 6 of the NZCPS specifies ‘functionality’ in the third bullet point, noting that functional need, and operational need, were not defined terms in the NZCPS or wider planning framework at that time. These terms have since been defined in the National Planning Standards.

128. Policy 6 of the NZCPS is as follows:

(1) In relation to the coastal environment:

(a) recognise that the provision of infrastructure, the supply and transport of energy including the generation and transmission of electricity, and the extraction of minerals are activities important to the social, economic and cultural well-being of people and communities;

(b) consider the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment;

(c) [continues...]

129. In my view Objective 6 and Policy 6, in particular (6)(a) and (6)(b) of the NZCPS, acknowledge that enabling development and infrastructure is important so long as the values of the coastal environment are not compromised. In this context it is important to note that proposals must meet all clauses in EW-P11 and EW-P12 i.e. there must be both a functional or operational need, in addition to meeting all other matters including incorporating measures to restore or rehabilitate disturbed areas.

130. I note that Forest & Bird have also made other submission points in relation to the use of ‘operational need’ throughout the PDP, including its use within the Infrastructure and Renewable Electricity Generation chapters, and its use within the relevant parent chapters - Coastal Environment and Natural Character. Both ‘operational need’ and ‘functional need’ are referenced in unison throughout relevant policies in the PDP – reflective of CE-P5.2.d, CE-P7.2.b, and NATC-P1.3. In this sense, EW-P11, EW-P12, and EW-P13 directly reflect the policy directive in the parent chapters.

131. I consider that this broader matter is more appropriately addressed in Hearing Stream 8. To the extent the matter relates to earthworks, for the purposes of this s42A Report, it is my view that reference to ‘operational needs’ in the earthworks provisions is appropriate. I consider that EW-P11 and EW-P12 are consistent with the NZCPS and all three policies are aligned with their ‘sister’ Coastal Environment and Natural Character policies.

Summary of Recommendations

132. **HS5-EW-Rec15:** No changes are recommended in response to these submissions on reference to ‘operational needs’, subject to any amendments arising from Hearing 8.

133. **HS5-EW-Rec16:** That submission points relating to Operational Need are accepted/rejected as detailed in Appendix B.

3.5.4 The matter of Marshall’s Ridge and other ridgelines

Matters Raised by Submitters

134. Heidi Snelson, Aman Hunt, Chia Hunt, Ela Hunt [submitter 276] have made submissions seeking further protection to Marshall's Ridge and the steeper ridges and spurs descending into Stebbings Valley and Middleton Road.
135. The specific provisions and submission points relevant to the relief sought are as follows:

Provision	Submission points
EW-O1	276.23
EW-P5	276.28
EW-R15	276.31
EW-S13	276.32

Assessment

136. Heidi Snelson, Aman Hunt, Chia Hunt, Ela Hunt [276.28] have made submissions seeking stronger wording to reinforce the need to protect significant ridgelines, including Marshalls Ridge, from housing development breaches. They submit that words such as 'mitigation, minimisation, accommodation of, and sustainable management of earthworks' are undefined and weakly worded.
137. As detailed in the introduction to the Development Area: Upper Stebbings and Glenside West (DEV3) chapter: *‘A vision and set of development principles were developed for these areas through engagement with the surrounding communities in 2018. A master planning process was then undertaken based on the vision and principles.’* In particular I note that extensive earthworks modelling, landscape, ecological and transport studies, as well as a cultural values and local history report were produced and taken into account in this process.
138. The DEV3 introduction continues as follows:
- ‘The provisions in this Development Area and the layout of the Development Plan are based on the Upper Stebbings Glenside West Concept Masterplan (20 October 2020) and can be viewed on the Planning maps. The concept masterplan was again circulated with the community in 2020 for feedback. The feedback gained from this process helped to inform the Development Plan and objectives, policies and rules included in this chapter as well as the requirements that manage development in the area in Appendix 13.’*
139. For clarity, I firstly note that the ridgelines and hilltops to which the submitter refers, are instead within the context of the PDP referred to as ‘ridgetops’. This matter is further detailed in section 3.13 of this report, but the intent is that ‘ridgelines’ within the Upper Stebbings and Glenside West Development Area are separate to ‘ridgelines and hilltops’ as referenced elsewhere in the PDP, and have their own specific term – ‘ridgetop area’.
140. In my view the DEV3 provisions including APP13 set the directive for Marshall's Ridge and other ridgelines within the area. I note that construction of buildings and structures in the ridgetop is a non-complying activity under DEV3-R33. It is also my understanding that in Upper Stebbings and Glenside West, natural features are recognised by distinguishing the Build and the No Build areas. In particular, noting that the ridgetop area is outside the Build area shown on the

Development Plan, and that in any case this will have a ‘dampening’ effect on disturbance in these areas.

- 141. To the extent their submission relates to the Earthworks chapter, I note EW-P20.5 sets out that ridgeline and hilltop areas [ridgetop areas] be protected from inappropriate earthworks. I also refer to my recommendations in section 3.13 of this report, that in my view strengthen the protection for the ridgetop area in the Upper Stebbings and Glenside West Development Area, and respond to the submitters concerns. To this extent I agree in part with 276.23.
- 142. The submitters’ more specific concerns in relation to the Upper Stebbings and Glenside West Development Area and ridgelines/ridgetop area, are more appropriately addressed in Hearing Stream 6 and Hearing Stream 8 respectively.

Summary of Recommendations

- 143. **HS5-EW-Rec17:** No changes are recommended in response to these submissions on the matter of Marshall’s Ridgeline and other ridgelines.
- 144. **HS5-EW-Rec18:** That submission points relating to Marshall’s Ridgeline and other ridgelines are accepted/rejected as detailed in Appendix B.

3.6 General Earthworks

- 145. This section of the report covers earthworks provisions as they relate to General earthworks:

Objectives	Policies	Rules	Standards
EW-O1	EW-P1 EW-P2 EW-P3 EW-P4 EW-P5 EW-P6	EW-R1 EW-R6	EW-S1 EW-S2 EW-S3 EW-S4 EW-S5 EW-S6

3.6.1 EW-O1: Management of earthworks

Matters Raised by Submitters

- 146. GWRC [351.229] and WCC Environmental Reference Group [377.283] seek that EW-O1 is retained as notified.

147. Heritage NZ [70.22 and 70.23] (supported by Onslow Historical Society [FS6.12 and FS6.13] and Historic Places Wellington Inc [FS111.11 and FS111.12]) submit that the potential adverse effects referenced in EW-O1.2 are too narrow and restricted and seek that EW-O1 should be amended to allow for consideration of a broader range of adverse effects, not limited to only visual amenity. The amendment sought by Heritage NZ [70.23] (supported by Onslow Historical Society [FS6.13] and Historic Places Wellington Inc [FS111.12]) is as follows:

EW-O1 Management of earthworks

Earthworks are undertaken in a manner that:

1. Is consistent with the anticipated scale and form of development in the relevant zone;
2. Minimises adverse effects on the environment, including effects on visual amenity values and, including changes to natural landforms;
3. Minimises erosion and sediment effects beyond the site;
4. Minimises risks associated with slope instability; and
5. Protects the safety of people and property.

148. Kāinga Ora [391.269 and 391.270] submit that “visual amenity values” is too vague in the context of earthworks assessment and seek that EW-O1 be amended to be more specific with regard to the effect being managed. The amendment sought by Kāinga Ora [391.270] (opposed by Wellington’s Character Charitable Trust [FS82.139]) is as follows:

EW-O1 Management of earthworks

Earthworks are undertaken in a manner that:

1. Is consistent with the anticipated scale and form of development in the relevant zone;
2. Minimises adverse effects on visual amenity values, including changes to the appearance of natural landforms;
3. Minimises erosion and sediment effects beyond the site;
4. Minimises risks associated with slope instability; and
5. Protects the safety of people and property.

Assessment

149. Heritage NZ [70.22 and 70.23] seek consideration of a broader range of adverse effects. In response I note that the intent of EW-O1 is to address core effects that are relevant to all earthworks, irrespective of their location and/or values. Moreover, the values associated with each of the relevant district-wide matters are addressed in EW-P7 to EW-P15 and informed by objectives in their ‘parent’ chapters that generally seek protection from inappropriate use, subdivision and development. This is consistent with the National Planning Standards and the approach in other PDP chapters including Subdivision.
150. As an example, where EW-R8 (Earthworks on the site of scheduled heritage buildings and structures, and within heritage areas) is not complied with, then as a matter of discretion EW-P7 (Earthworks on the site of heritage buildings and heritage structures, and within heritage areas) will be a consideration. This policy provides for consideration of adverse effects relevant

to historic heritage – specific to that district-wide matter. Also acknowledging that in this scenario HH-O2⁶ would be a relevant consideration.

151. Consequently, in my view the amendment sought would not be as efficient or effective as the wording of EW-O1 as notified, as it would duplicate the aims of objectives in other district-wide chapters. As such, I disagree with Heritage NZ [70.22 and 70.23], Onslow Historical Society [FS6.13], and Historic Places Wellington Inc [FS111.12].
152. In response to Kāinga Ora [391.269 and 391.270], I firstly note my agreement with Wellington’s Character Charitable Trust [FS82.139] who submitted in opposition on the basis that visual amenity is a well understood RMA concept and is an important consideration in assessing the appropriateness of earthworks activity. I concur – noting that ‘amenity values’ is a term defined in the PDP⁷ consistent with the RMA definition. I therefore disagree with Kāinga Ora that the term ‘visual amenity values’ is vague.
153. Additionally, I concur with nationally-developed practice guidance in the Earthworks Management section of the Quality Planning website⁸, which includes ‘effects on local amenity’ under the Issues and Effects heading. In relation to this, the website states:
- Earthworks can have adverse effects on amenity values, including - Visual Impacts - earthworks involving cut and fill have the potential to affect the visual qualities in the immediate area, including natural landscapes and views. Large areas of fill have the potential to block views, while large cuts can create a 'scar' or a visually dominant face.*
154. The phrasing of this explanation is generally consistent with the proposed wording of EW-O1.2, as it states that the potential effects include those on natural landscapes, while placing this within the wider context of the effects on the visual qualities on the immediate area.
155. Kāinga Ora’s amendment would remove this wider perspective and focus solely on effects on natural landforms. For these reasons, it is my view that the wording of EW-O1.2 as notified is more appropriate as it recognises that there are a range of potential visual effects from earthworks, including those from the modification of natural landforms.

Summary of Recommendations

156. **HS5-EW-Rec19:** That EW-O1 be confirmed as notified.
157. **HS5-EW-Rec20:** That submission points relating to EW-O1 are accepted/rejected as detailed in Appendix B.

3.6.2 New policies

Matters Raised by Submitters

⁶ HH-O2 Historic heritage is retained and protected from inappropriate use, subdivision and development.

⁷ has the same meaning as in section 2 of the RMA (as set out in the box below) means those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

⁸ <https://www.qualityplanning.org.nz/node/734>

158. GWRC [351.228] submit that the earthworks policies do not adequately recognise the potential impacts of sedimentation on tangata whenua values, particularly with regard to mahinga kai and access for mahinga kai purposes. GWRC seek a new policy be inserted to recognise the potential adverse effects of earthworks on water bodies and mahinga kai and this should also be a relevant matter of discretion for restricted discretionary rules in this chapter, to have regard to Proposed RPS Change 1 (Policy FW.3).
159. Te Rūnanga o Toa Rangatira [488.67] submit that the potential impacts of earthworks and sedimentation on sites of significance need to be acknowledged as a separate policy, as follows:

EW-PX

Avoid adverse effects of earthworks on Tangata Whenua freshwater values especially when they may impact on mahinga kai, kai moana and access.

Assessment

160. In response to GWRC [351.228] and Te Rūnanga o Toa Rangatira [488.67], in my opinion this matter has been addressed through recommended amendments to NE-O2 and NE-O5 in the Strategic Directions s42A Report⁹, and the corresponding Appendix A¹⁰, as set out below:

NE-O2: Future subdivision, land use and development contributes to an improvement in the quality of the City's water bodies, freshwater ecosystems and receiving environments, protects and enhances Māori freshwater values and recognises mana whenua and their relationship to water (Te Mana o Te Wai).

NE-O5: Subdivision, land use and development is undertaken in an integrated manner recognising the importance of ki uta ki tai and the interconnectedness between ecosystems, natural processes and freshwater.

161. It is important to note that the PDP is intended to be read as a whole, and as such consent applications will consider the relevant strategic directions.
162. I note that the earthworks provisions are intended to cater for relatively small-scale earthworks, where the focus is mostly on stability, amenity and basic erosion and sediment control, corresponding with Wellington City Council's s31 RMA responsibilities. GWRC's consent requirements then apply to earthworks above a 3,000m² area threshold and are focused on erosion and sediment control in fulfillment of its s30 RMA responsibilities This approach to demarcation is set out in the introductory text to the Earthworks chapter as follows:

"...GWRC manages erosion and sediment effects on larger sites, above that 3,000m² threshold, and earthworks on all sites in proximity to water bodies, among other matters.

GWRC also manages disturbance activities in the beds of rivers and lakes."

163. GWRC's Proposed Natural Resources Plan¹¹ policies focus on the receiving environment, for example, P109 states:

⁹ See paragraphs 922 and 947: [HS1 Section 42A Report - Plan wide matters and strategic direction](#)

¹⁰ See NE-O2 and NE-O5: [HS1 - Appendix A to s42A Report - Recommended amendments to provisions](#)

¹¹ [GWRC Proposed Natural Resources Plan](#)

“Policy P109: Management of riparian margins

Maintain or restore water quality, aquatic ecosystem health, mahinga kai and natural character, and reduce the amount of contaminants entering surface water bodies, through the management of riparian margins including:

(a) the exclusion or restricted access of livestock likely to affect riparian margins or water quality,

(b) appropriate set-back distances from surface water bodies for some land use activities including earthworks, vegetation clearance, cultivation and break-feeding,

(c) encouraging the planting of appropriate riparian vegetation, and

(d) the control of pest plants and animals.”

164. GWRC’s policies and rule framework apply to larger scale activities and I do not consider it necessary for these to be duplicated in the PDP. I note that EW-P2 addresses sedimentation effects on land and water bodies and EW-P4 also requires earthworks to adopt effective measures to manage the potential for the movement of sediment beyond the site and in particular into surface water. As a result, these matters are already within the rule framework as matters of discretion as all general earthworks rules (EW-R1 - EW-R6) include EW-P4 as a matter of discretion. To this extent I disagree with the submitters’ relief sought.

Summary of Recommendations

165. **HS5-EW-Rec21:** No changes are recommended in response to submissions on new policies.
166. **HS5-EW-Rec22:** That submission points relating to new policies are accepted/rejected as detailed in Appendix B.

3.6.3 EW-P1: Co-ordination and integration with development and subdivision

Matters Raised by Submitters

167. There are no submissions in relation to EW-P1 other than those addressed in section 3.5.1 of this report. I recommend that this policy be confirmed as notified, and have not assessed it further.

3.6.4 EW-P2: Provision for minor earthworks

Matters Raised by Submitters

168. WCC Environmental Reference Group [377.284] seek that EW-P2 is retained as notified.

169. GWRC [351.230 and 351.231] seek to amend EW-P2 to have regard to Objectives 19 and 20 and Policies 51 and 52 in Proposed Change 1 to RPS. The amendment sought by GWRC (supported by EQC [FS70.40]) is as follows:

EW-P2 Provision for minor earthworks

Enable the efficient use and development of land by providing for earthworks and associated structures where:

1. The risk associated with instability is minimised~~not increased~~;
2. Erosion, dust and sedimentation effects on land and water bodies will be minimal; and
3. Effects on visual amenity would be insignificant.

170. GWRC considers that the term ‘minimise’, defined as ‘as low as reasonably practicable’ leaves room for reduction as far as practicable but is a clearer signal than ‘reduce’ or ‘do not increase’, to actively look to bring down the risk in the design and planning of the development. EQC [FS70.40] agree with GWRC that ‘minimise’ is a clearer instruction in line with standard risk-based hazard management approaches.
171. Kāinga Ora [391.271 and 391.272] submit that ‘visual amenity’ is too vague in the context of earthworks assessment, and seek that EW-P2 be amended to be more specific with regard to the effect being managed. The amendment sought by Kāinga Ora (opposed by Wellington’s Character Charitable Trust [FS82.140]) is as follows:

EW-P2 Provision for minor earthworks

Enable the efficient use and development of land by providing for earthworks and associated structures where:

1. The risk associated with instability is not increased;
2. Erosion, dust and sedimentation effects on land and water bodies will be minimal; and
3. ~~Effects on visual amenity~~The appearance of earthworks would be insignificant.

Assessment

172. In response to GWRC [351.230 and 351.231], I note that the term ‘instability is not increased’ in EW-P2.1 is closely linked to the phrasing of EW-P3 ‘maintains slope stability and minimises the risk of slope failure’. The aim of EW-O1.4 is that earthworks are undertaken in a manner that ‘Minimises risks associated with slope instability’. For consistency of terminology, and for the reasons set out by GWRC and EQC, I agree that ‘not increased’ should be replaced with ‘minimised’. This is consistent with Policy 15 of the RPS which requires district plans to include policies, rules and/or methods that control earthworks ... to minimise: (a) erosion; and (b) silt and sediment runoff into water, or onto land that may enter water, so that aquatic ecosystem health is safeguarded.
173. In response to Kāinga Ora [391.271 and 391.272] I refer to my parallel assessment and reasoning in paragraphs 152-155. For those same reasons, as well as consistency with my recommendations on EW-O1, I disagree with Kāinga Ora that replacing ‘effects on visual

amenity' with 'the appearance of earthworks' is appropriate.

Summary of Recommendations

174. **HS5-EW-Rec23:** That EW-P2 be amended as set out below and detailed in Appendix A.

EW-P2 Provision for minor earthworks

Enable the efficient use and development of land by providing for earthworks and associated structures where:

1. The risk associated with instability is ~~not increased~~ **minimised**;
2. Erosion, dust and sedimentation effects on land and water bodies will be minimal; and
3. Effects on visual amenity would be insignificant.

175. **HS5-EW-Rec24:** That submission points relating to EW-P2 are accepted/rejected as detailed in Appendix B.

3.6.5 EW-P3: Maintaining stability

Matters Raised by Submitters

176. GWRC [351.232] seek that EW-P3 is retained as notified.
177. Kāinga Ora [391.273 and 391.274] submit that EW-P3 should be amended to remove reference to examples to simplify the 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 arising from climate change~~.

Assessment

178. In response to Kāinga Ora [391.273 and 391.274], it is my view that the examples provided are deliberate in that they directly reference the type of hazards that can impact stability. In addition, EW-P3 directly responds to Strategic Objectives SRCC-O2 and SRCC-O3.
179. Notwithstanding this, the management of significant risks from natural hazards is a section 6 matter (s6(h)) and the effects of climate change are a section 7 matter (s7(i)). EW-P3 emphasises Council's responsibilities with respect to natural hazard mitigation (s6(h)) and climate change adaptation (s7(i)) - being the importance of accounting for the effects of earthquakes and climate change on soils, slope stability and the management of erosion and sediment arising from earthworks. For these reasons, I disagree that EW-P3 should be simplified by removing reference to examples.

Summary of Recommendations

180. **HS5-EW-Rec25:** That EW-P3 be confirmed as notified.
181. **HS5-EW-Rec26:** That submission points relating to EW-P3 are accepted/rejected as detailed in Appendix B.

3.6.6 EW-P4: Erosion, dust and sediment control

Matters Raised by Submitters

182. WCC Environmental Reference Group [377.285] seek that EW-P4 is retained as notified.
183. GWRC [351.233 and 351.234] seek to amend EW-P4 to require erosion and sediment control measures which are designed and will be managed in accordance the principles and methods in the GWRC's Erosion and Sediment Control Guide for Land Disturbing Activities in the Wellington Region 2021 and which are set out in an erosion and sediment control plan.
184. GWRC support the requirement for earthworks to adopt effective erosion and sediment control measures and dust control measures, however, to have regard to Proposed RPS Change 1 (policies FW.3 and 15) and give effect to the NPS-FM, they submit that EW-P4 should be strengthened to better protect waterways and the coastal environment.

Assessment

185. GWRC [351.233 and 351.234] consider that EW-P4 should more directly require details about erosion sediment control methods that are currently incorporated as assessment matters and their provision through erosion and sediment control plans, in order to aid in the understanding of requirements by plan users. In response I note that the extent to which earthworks '*are designed and will be managed in accordance the principles and methods in the GWRC's Erosion and Sediment Control Guide for Land Disturbing Activities in the Wellington Region 2021*' is a common assessment criteria in the earthworks standards.¹²
186. In my view reference to the document in the policy is not necessary or appropriate as:
 - a. compliance with a guide is not mandated;
 - b. not all methods and techniques in the guide will be appropriate in any particular situation; and
 - c. the guide may be updated during the life of the plan, which would 'throw out' any more specific cross-references.
187. The relevant objectives of PNRP (Appeals Version) are set out in the Earthworks Section 32 Report, and include, relevant to the effects of earthworks on receiving environments, O41 (relating to minimizing adverse effects of dust), O44 (relating to minimising adverse effects on soil and water from land use activities), and, specifically, O47 (amount of sediment-laden runoff entering water is minimised). The relevant policy being P107 as follows:

Land use activities, erosion and associated discharges Earthworks, vegetation clearance and plantation forestry harvesting activities that have the potential to result in significant accelerated soil erosion, or to lead to off-site discharges of silt and sediment to surface water bodies, shall use measures, including good management practice, to:

(a) minimise the risk of accelerated soil erosion, and

¹² EW-S1, EW-S2, EW-S3, EW-S7, EW-S8 and EW-S9.

(b) control silt and sediment runoff, and

(c) ensure the site is stabilised and vegetation cover is restored.

188. EW-P2.2 and EW-P4 give effect to Policy 15 of the RPS, which sets out that district plans shall include policies, rules and/or methods that control earthworks and vegetation disturbance to minimise erosion and silt and sediment runoff into water, or onto land that may enter water, so that aquatic ecosystem health is safeguarded. As such, I consider that the earthworks provisions are consistent with the RPS, and whilst noting the uncertainty surrounding Change 1, it will provide greater likelihood that the PDP will not be inconsistent with Change 1 becoming operative, whilst also contingent on the outcome of any appeals arising following a decision on Change 1.

Summary of Recommendations

189. **HS5-EW-Rec27:** That EW-P4 be confirmed as notified.
190. **HS5-EW-Rec28:** That submission points relating to EW-P4 are accepted/rejected as detailed in Appendix B.

3.6.7 EW-P5: Effects on earthworks on landform and visual amenity

Matters Raised by Submitters

191. WCC Environmental Reference Group [377.286] seek that EW-P5 is retained as notified.
192. John Tiley [142.18] and Churton Park Community Association [189.18] submit that the wording of EW-P5 is misleading and must be rewritten as once a ridgeline or hilltop is compromised to any extent, effects cannot be minimised, mitigated or remedied.
193. Horokiwi Quarries [271.52 and 271.53] are neutral on the policy directive to minimise adverse effects on natural landforms, but oppose the reference to hilltops and ridgelines noting the Hilltops and Ridgelines are specifically addressed in NFL-P2. The amendment sought by Horokiwi Quarries is as follows:

EW-P5 Effects on earthworks on landform and visual amenity

Require earthworks and associated structures, including structures used to retain or stabilise landslips, to be designed and constructed to minimise adverse effects natural landforms and visual amenity ~~and where located within identified ridgelines and hilltops ensure the effects are mitigated or remedied.~~

194. Kāinga Ora [391.275 and 391.276] submit that ‘visual amenity’ is too vague in the context of earthworks assessment, and seek that EW-P5 be amended to be more specific with regard to the effect being managed, as follows:

EW-P5 Effects on earthworks on landform and visual amenity

Require earthworks and associated structures, including structures used to retain or stabilise landslips, to be designed and constructed to minimise adverse effects on the appearance of natural landforms and visual amenity and where located within identified ridgelines and hilltops ensure the effects are mitigated or remedied.

Assessment

195. In response to John Tiley [142.18] and Churton Park Community Association [189.18] I disagree, as the visual prominence, including visual intrusiveness of earthworks, can be mitigated as detailed in assessment criteria EW-S2.1.9 and EW-S3.1.9 which provides clear examples of methods. I also refer to my assessment in section 3.13 of this report that further details the provision framework for managing earthworks in the Upper Stebbings and Glenside West Development Area ridgetop area.
196. In response to Horokiwi Quarries [271.52 and 271.53] I acknowledge that ridgelines and hilltops are addressed in NFL-P2, however note that the approach of the PDP is that each parent chapter includes overarching policies specific to each of the relevant chapters’ district-wide matter/overlay – in this case NFL. This approach allows for catered outcomes to be expressed for each district-wide matter and/or overlay, particularly where there is a need to implement relevant higher order direction from Part 2, NPSs, and/or the RPS. The approach of the PDP is then that there are specific provisions for each district-wide matter and/or overlay as it relates to earthworks contained within the Earthworks chapter. This is consistent across all the Natural Environment Value chapters, for example EW-P9 and EW-P10 relate to SNAs, EW-P14 relates to SAL’s, EW-P15 relates to ONFL – all of which have corresponding use and development policies in their parent chapter.
197. In response to Kāinga Ora [391.275 and 391.276] I refer to my parallel assessment and reasoning in paragraphs 152-155. For those same reasons, as well as consistency with EW-O1, I disagree with Kāinga Ora that replacing ‘effects on visual amenity’ with ‘the appearance of earthworks’ is appropriate.

Summary of Recommendations

198. **HS5-EW-Rec29:** That EW-P5 be confirmed as notified.
199. **HS5-EW-Rec30:** That submission points relating to EW-P5 are accepted/rejected as detailed in Appendix B.

3.6.8 EW-P6: Earthworks and the transport network

Matters Raised by Submitters

200. Waka Kotahi [370.205] seek that EW-P6 is retained as notified.

Assessment

201. No further assessment is required.

Summary of Recommendations

202. **HS5-EW-Rec31:** That EW-P6 be confirmed as notified.
203. **HS5-EW-Rec32:** That submission points relating to EW-P6 are accepted/rejected as detailed in Appendix B.

3.6.9 EW-R1: Earthworks for the purposes of piling, trenching, maintaining sports fields, undertaking geotechnical investigations and grave digging, the replacement or removal of underground petroleum storage systems associated with service stations

Matters Raised by Submitters

204. Waka Kotahi [370.206] (supported by KiwiRail [FS72.65]) seek that EW-R1 is retained as notified.
205. The Fuel Companies [372.92 and 372.93] submit that EW-R1 should apply more broadly to other sites and activities that may necessitate the removal or replacement of underground petroleum storage systems. The amendment sought by the Fuel Companies is as follows:

EW-R1 Earthworks for the purposes of piling, trenching, maintaining sports fields, undertaking geotechnical investigations and grave digging, the replacement or removal of underground petroleum storage systems ~~associated with service stations~~

Assessment

206. In response to the Fuel Companies [372.92 and 372.93], I acknowledge that the replacement or removal of a fuel storage system is specifically addressed and managed under the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS) in relation to contaminant effects.
207. I further agree that EW-R1 should not be limited to just service stations, as underground petroleum storage occurs as part of a variety of activities including refueling facilities at airports and at commercial and industrial sites (e.g. rental car facilities, transport depots). I note that such works will be subject to the requirements of the NES-CS, which provides an appropriate level of regulation for the removal and replacement of underground petroleum storage systems, irrespective of whether they occur at a service station or another type of site. As mentioned above, the NES-CS manages contaminant effects, whilst EW-R1 is proposed to manage erosion and sediment control.
208. As such, I recommend that EW-R1 is amended to remove the reference to service station as I consider this rule should apply irrespective of whether the replacement or removal of underground petroleum storage systems is associated with service stations or another activity.

Summary of Recommendations

209. **HS5-EW-Rec33:** That EW-R1 is amended as set out below and detailed in Appendix A.

EW-R1 Earthworks for the purposes of piling, trenching, maintaining sports fields, undertaking geotechnical investigations and grave digging, the replacement or removal of underground petroleum storage systems ~~associated with service stations~~

210. **HS5-EW-Rec34:** That submission points relating to EW-R1 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

211. In my opinion, the amendments recommended to EW-R1 are the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that:

- a. The amendment is not inconsistent with the notified objective in relation to the management of earthworks.
- b. The amendment recognises the replacement or removal of underground petroleum storage systems and ensures that this activity is not unnecessarily restricted.

212. The recommended amendments will not have any greater environmental, social, or cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

3.6.10 EW-R6: General earthworks

Matters Raised by Submitters

213. WCC Environmental Reference Group [377.301] and Kāinga Ora [391.277] seek that EW-R6 is retained as notified.
214. CentrePort [402.127] support EW-R6 subject to resolving their submission point on EW-S1. Their submission point on EW-S1 [402.132] is addressed in section 3.6.12.
215. Survey & Spatial New Zealand Wellington Branch [439.35] submit that the limited and public notification preclusion should be broadened to include all standards EW-S1 to EW-S6, as follows:

...

Applications under this rule ~~which result from non-compliance with EW-R6.1.a.i and EW-R6.1.a.iii-vi~~ are precluded from being publicly or limited notified.

Applications under this rule ~~that result from non-compliance with EW-R6.1.a.ii~~ are ~~precluded from being publicly notified.~~

Assessment

216. In response to Survey & Spatial New Zealand Wellington Branch [439.35] I consider limited notification should be retained where there are potential stability or other direct effects on

adjoining properties.

217. Non-compliance with EW-S2 is not precluded from limited notification to acknowledge that cut height and fill depth could be a reason for seeking written approvals for earthworks close to boundaries. I consider this to be appropriate and disagree with the amendments sought by Survey & Spatial New Zealand Wellington Branch.

Summary of Recommendations

218. **HS5-EW-Rec35:** That EW-R6 be retained as notified.
219. **HS5-EW-Rec36:** That submission points relating to EW-R6 are accepted/rejected as detailed in Appendix B.

3.6.11 EW-R24: Structures used to retain or stabilise landslips

Matters Raised by Submitters

220. There were no submissions in relation EW-R24. I recommend that this rule be confirmed as notified, and have not assessed it further.

3.6.12 EW-S1: Area

Matters Raised by Submitters

221. Phillippa O'Connor [289.11] and Woolworths [359.34] submit that the earthworks triggers are too low and lack nuance, and consider that the Auckland Unitary Plan baseline in residential zones of 500m² is more appropriate. The amendment sought by both Ms O'Connor and Woolworths is as follows:

EW-S1 Area

1. The total area of earthworks must not exceed ~~250m²~~ 500m² per site in any 12-month period.

222. Phillipa O'Connor [289.12 and 289.13] and Woolworths [359.33] also submit that assessment criteria EW-S1.5 only apply if the site is within a Significant Natural Area (SNA) or if the site has a known ecological feature (such as a stream or wetland) rather than requiring an additional report to be prepared for a consent application where there are no ecological features on a site. Both Ms O'Connor and Woolworths seek to delete assessment criteria 5 as follows:

<p>EW-S1 Area</p> <p>Assessment criteria where the standard is infringed:</p> <ol style="list-style-type: none"> 1. Whether the stability of land or buildings or structures in or on the site or adjacent sites is likely to be adversely affected; 2. The extent to which the earthworks will reflect and be sympathetic to the natural qualities of the surrounding landform; 3. The effectiveness of measures to retain dust, silt and sediment on site during the course of earthworks; 4. The extent to which the earthworks are designed and will be managed in accordance the principles and methods in the GWRC's Erosion and Sediment Control Guide for Land Disturbing Activities in the Wellington Region 2021; and 5. For applications involving areas of earthworks exceeding 1000m² in any 12-month period, the results of an ecological survey conducted by a suitably qualified expert.

223. Kāinga Ora [391.280 and 391.281] seek that EW-S1 be amended to ensure the assessment criteria reflect the effects sought to be managed, and to align with the objectives and policies of the chapter. Kāinga Ora have also sought the deletion of assessment criteria EW-S1.5 as above.
224. Kāinga Ora [391.280 and 391.281] also seek that amendments are made to the thresholds for permitted activity earthworks across the different zones to recognise that different thresholds are appropriate across different zones, as follows:

<p>EW-S1 Area</p> <p><u>Medium Density Residential Zone, High Density Residential Zone, and Neighbourhood Centre Zone</u></p> <ol style="list-style-type: none"> 1. The total area of earthworks must not exceed 250m² per site in any 12-month period. <p><u>Local Centre Zone, Commercial Zone, Mixed Use Zone, Metropolitan Zone, City Centre Zone, General Industrial Zone, Open Space Zone, Natural Open Space Zone, and Sport and Recreation Zone, All Special Purpose Zones</u></p> <ol style="list-style-type: none"> 2. <u>The total area of earthworks must not exceed 500m² per site in any 12-month period.</u> <p><u>General Rural Zone, Large Lot Residential Zone, All Development Areas</u></p> <ol style="list-style-type: none"> 3. <u>The total area of earthworks must not exceed 1000m² per site in any 12-month period.</u>

225. The Fuel Companies [372.94 and 372.95] submit that the 250m² limit should be increased to a greater permitted threshold to better relate to the permitted cut and fill volumes in EW-S4.

226. CentrePort [402.132] seek that the Port Zone be excluded from EW-S1 on the basis that for a very large landholding with large sites such as at CentrePort, 250m² is inadequate to be able to deal with the area of earthworks that are required from time to time.

Assessment

227. In response to submissions seeking an increase in the total area of earthworks [289.11, 359.34, 391.280, 391.281, 372.94 and 372.95], I do not recommend any amendments. National direction policy is captured in the PDP in the strategic directions. NE-O1 states: *“The natural character, landscapes and features, and ecosystems that contribute to the City’s identity and have significance for mana whenua as kaitiaki are identified, recognised, protected, and, where possible, enhanced.”* This strategic direction sets out that matters are to be protected and where possible enhanced.
228. NE-O2 discusses how future subdivision contributes to an improvement in the quality of the City’s water bodies and Te Mana o Te Wai. In my view, while nuisance effects such as dust as they are experienced in some less intensely developed zones may be less pronounced where, for instance, greenfield development in the Future Urban Zone is concerned, the same sediment and stability risks apply. In addition, in the Future Urban Zone and greenfield sites, bulk earthworks and land contouring will more likely be dealt with at the whole of subdivision level, and involve significant earthworks which will exceed 3,000m² and therefore also fall under the Regional Council’s jurisdiction.
229. As discussed in the Earthworks Section 32 Evaluation Report, thresholds for consent in terms of area (and/or volume) of earthworks vary significantly between plans (and between zones within plans).¹³ I consider the 250m² threshold in EW-S1 a reasonable limit below which risks associated with earthworks, independent of location, are sufficiently minimal to enable them to occur without recourse to consent. In developing the provisions, suitable metrics, including area thresholds, were tested with Council consents and compliance staff and Regional Council staff. Feedback was that the 250m² base figure is appropriate as it accounts for risk factors including erosion and sediment control. In my view there is no effective difference in terms of environment risk where the 'host' zone is concerned.
230. CentrePort [402.132] has raised concerns that EW-S1 applies as a permitted activity condition under EW-R6 (General Earthworks) and R11 (relating to earthworks in the Coastal Environment) stating that the total area of earthworks must not exceed 250m² per site in any 12-month period. They note that as a very large landholding with large sites 250m² is inadequate to be able to deal with the area of earthworks that are required from time to time. As discussed above, I consider the threshold to be appropriate due to the potential effects including sediment and stability risks, which need to be managed in all environments, across all zones.
231. In response to the submission points seeking to delete EW-S1.5 [289.12, 289.13, 359.33, 391.280 and 391.281], I consider this assessment criterion lacks clarity as to the nature of the ecological environment that is to be surveyed. I also consider that criterion (4) addresses erosion and sediment control measures at the source, which is a more direct means of managing effects on aquatic ecology. Additionally, if the activity is in a significant natural area, specific rules will apply

¹³ [Section 32 Evaluation Report, Part 2: Earthworks](#), Page 26.

to deal with terrestrial ecology. I therefore agree with the submissions and recommend this clause is deleted.

Summary of Recommendations

232. **HS5-EW-Rec37:** That EW- S1 is amended as set out below and detailed in Appendix A.

<p>EW-S1 Area</p> <p>...</p> <p>Assessment criteria where the standard is infringed:</p> <ol style="list-style-type: none"> 1. Whether the stability of land or buildings or structures in or on the site or adjacent sites is likely to be adversely affected; 2. The extent to which the earthworks will reflect and be sympathetic to the natural qualities of the surrounding landform; 3. The effectiveness of measures to retain dust, silt and sediment on site during the course of earthworks; <u>and</u> 4. The extent to which the earthworks are designed and will be managed in accordance the principles and methods in the GWRC’s Erosion and Sediment Control Guide for Land Disturbing Activities in the Wellington Region 2021; <u>and</u> 5. For applications involving areas of earthworks exceeding 1000m² in any 12-month period, the results of an ecological survey conducted by a suitably qualified expert.

233. **HS5-EW-Rec38:** That submission points relating to EW-S1 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

234. In my opinion, the amendments recommended to EW-S1 are the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that the amended standard:

- a. Improves useability of the standard by reducing ambiguity and is therefore more efficient and effective than the notified provisions in achieving the objectives of the PDP.

235. The environmental, economic, social and cultural effects of the recommended amendments, as they vary somewhat from the existing plan s32 evaluation report, are below.

Environmental	<ul style="list-style-type: none"> • There are unlikely to be any environmental costs compared to the notified provisions as criterion (4) addresses erosion and sediment control at the source, which manages effects on aquatic ecology.
Economic	<ul style="list-style-type: none"> • Compared to the notified proposal, the recommended approach is unlikely to have additional economic costs. • The effects are likely to be more positive, in reducing additional reporting to comply with the standard.
Social	<ul style="list-style-type: none"> • There are unlikely to be any additional social costs or benefits

	compared to the notified proposal.
Cultural	<ul style="list-style-type: none"> No cultural effects are identified.

3.6.13 EW-S2: Cut height and fill depth

Matters Raised by Submitters

236. The Fuel Companies [372.96] seek that EW-S2 is retained as notified.
237. Kāinga Ora [391.282 and 391.283] submit that EW-S2 should be amended to align the matters of discretion [assessment criteria] more appropriately with the issue being managed by this standard, in this case stability and visual effects resulting from cut faces/retaining structures.

The amendment sought by Kāinga Ora (opposed by GWRC [FS84.87]) is as follows:

Assessment criteria where the standard is infringed:

1. ...
2. ...
3. ...
4. ...
5. ...
6. ...
7. ~~The effectiveness of measures to retain dust, silt and sediment on site during the course of earthworks;~~
8. ~~The extent to which the earthworks are designed and will be managed in accordance the principles and methods in the GWRC's Erosion and Sediment Control Guide for Land Disturbing Activities in the Wellington Region 2021;~~
9. The need for, and effectiveness of, measures to reduce the visual prominence and particularly visual intrusiveness of the earthworks, and any buildings and other structures associated with or subsequently located on them, including:
 - a. ~~Designing and engineering to reflect natural landforms and natural features such as cliffs, escarpments, streams and wetlands;~~
 - b. ~~Avoiding unnatural scar faces;~~
 - c. ~~Favouring untreated cut faces over artificial finishes in areas where bare rock is common;~~
 - d. ~~Favouring alternatives to the use of sprayed concrete on cut faces, such as anchored netting;~~
 - e. ~~Designing and finishing retaining walls or stabilising structures to reflect existing buildings and structures, in urban settings;~~
 - f. ~~Designing and finishing retaining walls or stabilising structures to reduce their apparent size by, for example, employing features that break up the surface area and create patterns of light and shadow;~~
 - g. ~~Retaining existing vegetation above, below and at the sides of earthworks and associated structures;~~
 - h. ~~Integrating new landscaping and associated planting to conceal or soften the appearance of earthworks and associated structures;~~
 - i. ~~Concealing views of earthworks and associated structures from streets, other public places and other properties through the positioning of proposed or future buildings; and~~
 - j. ~~Placing pipes below ground or integrating them into earthworks and associated structures.~~

Assessment

238. In response to Kāinga Ora [391.282 and 391.283], I consider that assessment criteria inclusive of those relating to erosion and sediment control, and dust (criterion 7 and 8) address relevant effects arising from cut faces/retaining structures. Further, the examples in terms of mitigating visual effects set out under criterion 9 provide guidance to applicants and decision-makers, and on that basis I recommend their retention.

Summary of Recommendations

239. **HS5-EW-Rec39:** That EW-S2 be confirmed as notified.

240. **HS5-EW-Rec40:** That submission points relating to EW-S2 are accepted/rejected as detailed in Appendix B.

3.6.14 EW-S3: Existing slope angle

Matters Raised by Submitters

241. GWRC [351.244 and 351.245] support slope failure being incorporated into the earthworks chapter to manage impacts on slope stability, but submit that a slope of 34 degrees or higher, as drafted, is very steep and seek that WCC consider reducing the existing slope angle to 20 degrees for consistency with the Natural Resources Plan. GWRC considers that using a slope of 34 degrees or higher has the potential to create more effects on the environment than the standard would anticipate, and that 34 degrees is difficult to calculate on the ground

Assessment

242. In response to GWRC [351.244 and 351.245], I note the 34 degree metric is employed in the ODP without any apparent issue arising. The selected metric addresses a number of considerations, the primary consideration being stability, with erosion and sediment control, and visual amenity also factors involved in its retention in the PDP.
243. As to whether 34 degrees is difficult to calculate on the ground, I note that there were some interpretation and practicality issues involved in measuring slope over variable ground in the ODP. Hence, the following clarification was added to the standard to aid interpretation - 'where angles of 34° or greater are sustained over a distance of at least 3m, measured horizontally.' On this basis I disagree with GWRC.

Summary of Recommendations

244. **HS5-EW-Rec41:** That EW-S3 be confirmed as notified.
245. **HS5-EW-Rec42:** That submission points relating to EW-S3 are accepted/rejected as detailed in Appendix B.

3.6.15 EW-S4: Transport of cut or fill material

Matters Raised by Submitters

246. The Ministry of Education [400.75] seek that EW-S4 is retained as notified.
247. Rod Halliday [25.28 and 25.29] submits that the volume of material permitted to be transported off site is too low and needs to be increased to facilitate increased volumes of material being transported as a permitted activity. Mr Halliday seeks two amendments as follows:
- a. [25.28] amend EW-S4.1.b to increase transport volume in all other Zones from 200m³ to 400m³.
 - b. [25.29] amend EW-S4.1.a to include the Future Urban Zone/Development Areas.
248. Mr Halliday has detailed that 200m³ equates to around 27 movements utilising a 7.5m³ truck which is too low for most Wellington sites, with most development now occurring in the outer

suburbs where new roads are wide, traffic volumes are low and there is a short term expectation of truck movements associated with development. Mr Halliday considers that the current 200m³ appears to be arbitrary and not supported by evidence.

249. GWRC [351.246] seek that WCC consider including an advice note referring to similar rules in the Natural Resources Plan which may be relevant.
250. Waka Kotahi [370.209 and 370.210] support EW-S4 but seek amendment to include stabilising the material in the truck bed to prevent clean fill material from falling onto the road, and direction to ensure that truck wheels do not truck mud and/or debris into the road reserve, as follows:

EW-S4 Transport of cut or fill material

1. The combined volume of cut material resulting from earthworks transported off the site and cleanfill material required for earthworks transported onto the site must not exceed:
 - a. 2,000m³ in the City Centre, Centres, Mixed use and General industrial zones; or
 - b. 200m³ in all other Zones.
2. Transported material must be stabilised, and the truck wheels must be kept clean, to prevent the falling or trucking of material into the road reserve.

251. The Fuel Companies [372.97 and 372.98] submit that the s32 analysis indicates that EW-S4 only seeks to restrict the total material transported to and from the site with no restriction on the volume of material within the site. The Fuel Companies support this approach but seek clarification.

Assessment

252. In response to Mr Halliday [25.28 and 25.29], I acknowledge that earthworks in the Future Urban Zone and Development Areas will be at a generally greater volume in terms of transport. I agree with the submitter that EW-S4.1.a. could be amended to reflect this, and consider that it would be appropriate for Development Areas to also have a 2,000m³ threshold.
253. In developing the provisions, suitable metrics, including transport thresholds, were tested with Council consents and compliance staff and Regional Council staff. Feedback was that the 200m³ in all other zones is appropriate as it accounts for risk factors including the narrow and steep roads throughout most of Wellington City. Movements of heavy vehicles to and/or from sites can have adverse amenity effects through the generation of noise and vibration. This is particularly relevant to earthworks due to the number of vehicle movements often associated with such activities.
254. The number of truck movements required to and from a particular site where earthworks are being undertaken will vary considerably depending on a range of factors, such as the volume of fill on the site, whether the material being cut can be reused on site for fill, the type and capacity of trucks being used, and material volume being taken off site and its density. Using Mr Halliday's calculation that 200m³ equates to around 27 movements utilising a 7.5m³ truck, increasing EW-S4.1.b to 400m³ would double this to approximately 54 truck movements. The

potential effects of this on the safety and efficiency of the transport network and any associated nuisance effects will also depend on the site access characteristics and the surrounding environment. These are matters that would be considered through a resource consent process. On this basis, I consider that 200m³ is appropriate.

255. In response to GWRC [351.246] I note that GWRC responsibilities are outlined in the introduction to the Earthworks chapter. I do not consider that advice notes are necessary or part of the drafting protocol for the PDP.
256. In response to Waka Kotahi [370.209 and 370.210], in my view it is not practical to impose standards on small scale earthworks to provide 'direction' with respect to the management of transported material. However, where the volumes stated in EW-S4 are exceeded and consent under EW-R6 is required, then the types of measures referred to (as well as others) become relevant considerations in the assessment criteria, particularly EW-S4.1.h - *measures to minimise the risk of material being deposited on roads*.
257. I also note that the matters of discretion in EW-R6 refer back to EW-P6 which requires *that any transport of earth and cleanfill material to and from any site to be undertaken in a way that minimises adverse effects on surrounding amenity and the safety of the transport network*. When read as a whole, I consider that the general earthworks policies, rules and standards appropriately manage adverse effects on surrounding amenity and the safety of the transport network.
258. In response to the Fuel Companies [372.97 and 372.98], it is my view that the wording of EW-S4 is clear, with references to 'off' and 'onto' the site. The result of the request would be to add words but not further clarity.

Summary of Recommendations

259. **HS5-EW-Rec43:** That EW-S4 is amended as set out below and detailed in Appendix A.

EW-S4 Transport of cut or fill material

1. The combined volume of cut material resulting from earthworks transported off the site and cleanfill material required for earthworks transported onto the site must not exceed:
 - a. 2,000m³ in the **Future Urban Zone**, City Centre, Centres, Mixed use and General industrial zones; or
 - b. 200m³ in all other Zones.

260. **HS5-EW-Rec44:** That submission points relating to EW-S4 are accepted/rejected as detailed in Appendix B.

3.6.16 EW-S5: Dust management, EW-S6: Site reinstatement and EW-S7: Height of structures used to retain or stabilise landslips

261. There were no submissions received in relation to EW-S5, EW-S6 and EW-S7. I recommend that these standards are confirmed as notified, and have not assessed them further.

3.7 General Rural Zone and Open Space and Recreation Zones

262. This section of the report covers earthworks provisions as they relate to the Rural Zone and Open Space and Recreation Zones, noting that these provisions fall under the 'General Earthworks' provision category.

3.7.1 EW-R2: Earthworks for the purposes of maintaining tracks associated with permitted activities in Rural Zones

Matters Raised by Submitters

263. WCC Environmental Reference Group [377.297] seek that EW-R2 is retained as notified.
264. Zealandia [486.7] submit that EW-R2 may prevent maintenance and management work on bridges and associated infrastructure in the sanctuary, and seek an additional clause that enables Zealandia operations to continue as per other areas in the Proposed Plan, by way of listing Karori Sanctuary Trust as an approved operator.

Assessment

265. In response to Zealandia [486.7], my understanding is that Zealandia is entirely located within the Natural Open Space Zone (NOSZ) (addressed in EW-R4 and EW-R5), as opposed to the General Rural Zone (GRUZ) (addressed in EW-R2 and EW-R3). Nevertheless, I do not consider there is a need to add Karori Sanctuary Trust as an approved operator to EW-R2 (or for that matter EW-R3, EW-R4, or EW-R5) as these rules do not otherwise limit activities to being undertaken by particular entities.
266. As detailed in the s32 Report¹⁴, earthworks for specific lower-risk purposes are enabled via these rules subject to specific standards (compliance with EW-S8 and EW-S9 respectively), but not the more general earthworks standards as per EW-R6. This approach is set out in the 'Application of rules in this Chapter' section which states that *EW-R6 to EW-R19 and EW-21 to EW-24 do not apply to earthworks activities that are described and catered for solely by EW-R1 to EW-R5.*
267. The work Zealandia undertakes is in my view categorised as 'Conservation activities'¹⁵, which is a permitted activity under NOSZ-R2 and GRUZ-R6. As such earthworks for the purpose of maintaining or constructing tracks associated with conservation activities would be a permitted activity under EW-R2 and EW-R3 (where located within the GRUZ), subject to compliance with EW-S8. Where located within the NOSZ, earthworks for the purposes of maintaining or constructing tracks associated with public walking or cycling tracks would be permitted under EW-R4 and EW-R5, subject to compliance with EW-S9.
268. The actual maintenance and management of bridges and associated infrastructure within Zealandia is otherwise appropriately addressed in the NOSZ and NFL chapters. In addition, I note

¹⁴ Page 43, [Earthworks s32 Report](#)

¹⁵ means the use of land for activities undertaken for the purposes of maintaining, protecting and/or enhancing the natural and/or ecological values of a natural resource. It may include activities which assist to enhance the public's appreciation and recreational enjoyment of the resource, including: a. species protection and conservation management work, including restoration and revegetation; b. pest and weed control; and c. educational activities.

that ‘maintenance and repair of buildings and structures’ is a permitted activity under NOSZ-R13 and NFL-R9, as well as GRUZ-R15.

269. As such, it is my view that earthworks associated with Zealandia’s primary operations are appropriately enabled by EW-R4 and EW-R5 subject to compliance with EW-S9. Earthworks associated with activities outside this scope, for example the construction of new buildings and structures, would be otherwise subject to the broader range of earthworks rules and standards.
270. Beyond the scope of submissions at hand, I note that as EW-R2 is phrased, that it permits tracks associated with any permitted activity in the Rural Zone. By way of example this would include a home business, residential activity, and visitor accommodation. EW-R2 would therefore enable tracks associated with these activities without being subject to the other overlay earthworks rules. This is not appropriate nor the intent of the rule. As such, I propose that EW-R2 is amended to clarify that the rule permits tracks associated with permitted rural activities and in response to Zealandia’s submission, permitted conservation activities.

Summary of Recommendations

271. **HS5-EW-Rec45:** That EW-R2 is amended as set out below and detailed in Appendix A.

EW-R2 Earthworks for the purposes of constructing and maintaining tracks associated with permitted rural and conservation activities in the General Rural Zones

272. **HS5-EW-Rec46:** That submission points relating to EW-R2 are accepted/rejected as detailed in Appendix B.

3.7.2 EW-R3: Earthworks for the purposes of constructing tracks associated with permitted activities in Rural Zones

Matters Raised by Submitters

273. WCC Environmental Reference Group [377.298] seek that EW-R3 is retained as notified.

Assessment

274. I acknowledge the submission of WCC Environmental Reference Group [377.298]. However, as an administrative amendment I recommend that EW-R3 be deleted in its entirety to remove unnecessary duplication with EW-R2.
275. EW-R2 and EW-R3 are identical rules other than that EW-R2 addresses earthworks for the purposes of *maintaining* tracks and EW-R3 addresses earthworks for the purposes of *constructing* tracks. EW-R2.1 and EW-R3.1 are both permitted activities subject to compliance with EW-S8, a standard which addresses both the maintenance and construction of tracks in the GRUZ. EW-R2.2 and EW-R3.2 are both restricted discretionary activities with the same matters of discretion and notification status.

Summary of Recommendations

276. **HS5-EW-Rec47:** That EW-R3 be deleted in its entirety as detailed in Appendix A.

277. **HS5-EW-Rec48:** That submission points relating to EW-R3 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

278. In my opinion, the recommended deletion of EW-R3 is the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that the deletion of the rule:

- a. Removes duplication between EW-R2 and EW-R3 which, once EW-R2 is amended to include *constructing tracks*, will manage the same activity.
- b. Provides a more nuanced and clearer rule framework with respect to earthworks for the purposes of constructing tracks in the General Rural Zone.
- c. Simplifies and reduces unnecessary duplication which reduces the likelihood of interpretative issues when applying relevant provisions of the plan. Consequently, they are more efficient and effective than the notified provisions in achieving the objectives of the PDP.

279. The environmental, economic, social and cultural effects of the recommended amendments, as they vary somewhat from the existing plan s32 evaluation report, are below.

Environmental	<ul style="list-style-type: none"> • There are unlikely to be any environmental costs compared to the notified provisions as the substance of the rule framework is not altered, instead there are positive effects from improved plan interpretation and more efficient plan administration in clarifying the provision framework and reducing duplication.
Economic	<ul style="list-style-type: none"> • Compared to the notified proposal, the recommended approach is unlikely to have additional economic costs.
Social	<ul style="list-style-type: none"> • There are unlikely to be any additional social costs or benefits compared to the notified proposal.
Cultural	<ul style="list-style-type: none"> • No cultural effects are identified.

3.7.3 EW-R4: Earthworks for the purposes of maintaining public walking or cycling tracks in Open Space Zones

Matters Raised by Submitters

280. Waka Kotahi [370.207] and WCC Environmental Reference Group [377.299] seek that EW-R4 is retained as notified.

Assessment

281. I acknowledge the submissions of Waka Kotahi [370.207] and WCC Environmental Reference

Group [377.299]. However, as an administrative amendment I recommend that EW-R4 be deleted in its entirety to remove unnecessary duplication with EW-R5.

282. EW-R4 and EW-R5 are near identical rules other than that EW-R4 addresses earthworks for the purposes of *maintaining* tracks and EW-R5 addresses earthworks for the purposes of *constructing* tracks. EW-R4.1 and EW-R5.1 are both permitted activities subject to compliance with EW-S9, a standard which addresses both the maintenance and construction of tracks in the Open Space Zones. EW-R4.2 and EW-R5.2 are both restricted discretionary activities with the same notification status, and both rules have nearly identical matters of discretion, except that EW-R4 includes EW-P3 as a matter of discretion whereas EW-R5 does not. In my view EW-P3 is an appropriate matter of discretion for earthworks associated with both the construction and maintenance of public walking and cycling tracks where compliance with EW-S9 cannot be achieved.

Summary of Recommendations

283. **HS5-EW-Rec49:** That EW-R4 be deleted in its entirety as detailed in Appendix A.
284. **HS5-EW-Rec50:** That submission points relating to EW-R4 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

285. In my opinion, the recommended deletion of EW-R4 is the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that the deletion of the rule:
- a. Removes duplication between EW-R4 and EW-R5 which, once EW-R5 is amended to include *maintaining*, will manage the same activity.
 - b. Provides a more nuanced and clearer rule framework with respect to earthworks for the purposes of constructing tracks in the Open Space and Recreation Zones.
 - c. Simplifies and reduces unnecessary duplication which reduces the likelihood of interpretative issues when applying relevant provisions of the plan. Consequently, they are more efficient and effective than the notified provisions in achieving the objectives of the PDP.
286. The environmental, economic, social and cultural effects of the recommended amendments, as they vary somewhat from the existing plan s32 evaluation report, are below.

Environmental	<ul style="list-style-type: none"> • There are unlikely to be any environmental costs compared to the notified provisions as the substance of the rule framework is not altered, instead there are positive effects from improved plan interpretation and more efficient plan administration in clarifying the provision framework and reducing duplication.
Economic	<ul style="list-style-type: none"> • Compared to the notified proposal, the recommended approach is unlikely to have additional economic costs.

Social	<ul style="list-style-type: none"> There are unlikely to be any additional social costs or benefits compared to the notified proposal.
Cultural	<ul style="list-style-type: none"> No cultural effects are identified.

3.7.4 EW-R5: Earthworks for the purposes of constructing public walking or cycling tracks in Open Space Zones

Matters Raised by Submitters

287. Waka Kotahi [370.208] and WCC Environmental Reference Group [377.300] seek that EW-R5 is retained as notified.

Assessment

288. No further assessment is required.

289. However, as a consequential administrative amendment based on my assessment in section 3.7.3 above, I propose to amend the heading of EW-R5 to add ‘maintaining’.

Summary of Recommendations

290. **HS5-EW-Rec51:** That EW-R5 amended as set out below and detailed in Appendix A.

EW-R5 Earthworks for the purposes of constructing and maintaining public walking or cycling tracks in Open Space and Recreation Zones

291. **HS5-EW-Rec52:** That submission points relating to EW-R1 are accepted/rejected as detailed in Appendix B.

3.7.5 EW-S8: Cut height and fill depth associated with the construction or maintenance of tracks in the General Rural Zone, and EW-S9: Track width associated with the construction or maintenance of walking and cycling tracks in the Open Space and Recreation Zones

292. There were no submissions received in relation to EW-S8 and EW-S9. While I have not assessed these standards further, I have recommended minor and inconsequential amendments as set out below.

3.7.6 Minor and inconsequential amendments

293. I recommend minor and inconsequential administrative amendments as follows:

- a. The left hand zone panel of EW-R2 should refer to ‘General Rural Zone’.
- b. The heading of EW-R2 should refer to ‘General Rural Zone’.
- c. The left hand zone panel of EW-R5 should refer to ‘Open Space and Recreation Zones’.
- d. The heading of EW-R5 should refer to ‘Open Space and Recreation Zones’.

- e. EW-S8.1.b has text missing in error and should read 'The cut height and fill depth does not exceed the distance from...'
- f. The left hand zone panel of EW-S8 should refer to 'General Rural Zone'.
- g. The left hand zone panel of EW-S9 should refer to 'Open Space and Recreation Zones'.

3.8 Airport Zone

294. To the extent possible I have assessed and made recommendations as applicable to earthworks provisions relevant to the Airport Zone within this section, noting that submissions relating more broadly to the Airport Zone will be heard and considered in Hearing Stream 6. Given the interrelated nature of the earthworks and parent chapter provisions, the outcome of Hearing Stream 6 deliberations could have a material bearing on the recommendations contained in this section.

295. It is important is note that the Airport Zone is exempt from the earthworks provisions except to the extent specified in EW-R20 and EW-S14.

3.8.1 EW-R20: Earthworks in the Airport Zone

Matters Raised by Submitters

296. Z Energy [361.13] seek that EW-R20 is retained as notified.

297. WIAL [406.373, 406.374 and 406.375] oppose EW-R20 and seek that it is deleted in its entirety, or requests amendments as set out below:

EW-R20 (Earthworks in the Airport Zone)

1. Activity status: Permitted
Where:

- ~~a. Compliance is achieved with EW-S14.1 to EW-S14.4 and EW-S14.2; and~~
- ~~b. Compliance is achieved with EW-S14.3; and~~
- ~~c. Earthworks are for the purposes of the upgrade or maintenance of existing formed roads and public accessways; or~~
- ~~d. Earthworks are for the purposes of construction, upgrade, maintenance or repair of the Airport pavement (apron and taxiway surfaces); or~~
- ~~e. Earthworks permitted by any other rule.~~

2. Activity status: Restricted Discretionary
Where:

- a. Compliance with any of the requirements of EW-20.1a cannot be achieved; or
- b. Earthworks associated with the construction of new legal roads.

Matters of discretion are:

- 1. The extent and effect of non-compliance with any relevant standard as specified in the associated assessment criteria for the infringed standards;
- 2. Relevant matters in AIRPZ-P3 and AIRPZ-P4. ~~AIRPZ-P4 and AIRPZ-P5;~~
- 3. Visual appearance and mitigation; and
- 4. Geomorphological impacts.
- 5. Traffic impacts caused by transporting earth and construction fill material.

~~2. Activity status: Discretionary~~
~~Where:~~

- ~~a. Compliance with EW-R20.1.b, c or d cannot be achieved.~~

~~Notification Status: an application for resource consent made in respect of rule EW-R20.3 must be publicly notified.~~

298. WIAL [406.373] submit that the starting presumption that all discretionary earthwork activities within the Airport Zone will be publicly notified is inappropriate and unjustified.
299. WIAL [406.376 and 406.377] notes that EW-R20.1 implies that only those activities listed are permitted in the zone, and this includes EW-R20.1.e that any earthworks permitted by any other rule are also permitted within the Airport Zone. The submitter seeks clarity on the activity status for earthworks that do not comply with permitted activity requirements specified in EW-20.1.e.
300. WIAL [406.378] also notes that despite the reference to earthworks within the Airport Zone being permitted where they comply with other provisions in the earthworks chapter, EW-20.3.a appears to render any earthworks that are not for the purpose of the upgrade or maintenance of existing formed roads and public accessways or for the purpose of construction, upgrade, maintenance or repair of the Airport pavement a discretionary activity.
301. WIAL [406.379] requests that the earthworks chapter is amended to remove ISPP for provisions

that do not relate to the implementation of the NPS-UD.

302. WIAL [406.380] seeks that EW-R20.4 is amended to specify which aspects of geomorphology require consideration or that this be deleted.

Assessment

303. In response to WIAL [406.373, 406.374 and 406.375], I consider that an earthworks rule relating to the Airport Zone should be retained in the PDP. There may be circumstances where the earthworks required for development of the East Side Area exceed what is enabled by the Airport's designation conditions and it is important that there is a mechanism to manage effects of earthworks. As such I disagree that EW-R20 should be deleted.
304. I do not recommend the addition of '*earthworks associated with the construction of new legal roads*' as a restricted discretionary activity. Earthworks associated with infrastructure including legal roads are exempt from this chapter, and instead managed within the Infrastructure chapter.
305. I also do not recommend the Airport Zone policy references be amended, and they should remain as 'AIRPZ-P3 and AIRPZ-P4'. I note that the submitter has sought this amendment based on their submissions to the Airport Zone chapter. If amendments are recommended through the relevant hearing, these references should be updated.
306. In response to WIAL's [406.363] requested deletion of the notification status, I consider it to be sufficient that the activity be assessed at the time of application and a determination be made at that point in relation to notification, based on the particular activity. I agree that this notification status should be deleted.
307. As to their request to add a matter of discretion relating to traffic impacts caused by transporting earth and construction fill material. I consider that this should be included as a matter of discretion, especially given that the Airport Zone is not subject to the other general earthworks rules and standards i.e. EW-S4.
308. In response to WIAL [406.376 and 406.377], I acknowledge and agree that EW-R20.1.e requires clarity. The submitter seeks clarity on the activity status for when this permitted activity requirement is not met. However, I note that the introduction to the earthworks chapter notes that the provisions of this chapter do not apply in relation to activities provided for in the Airport Chapter except to the extent specified in EW-R20 and EW-S14. Since there are no 'other rules' that would be relevant here, I consider EW-R20.1.e is unnecessary and should be deleted.
309. In response to WIAL [406.378], I note that the rule frameworks sets out that earthworks which do not comply with EW-S14.1 and EW-S14.2 are restricted discretionary activities under EW-R20.2, while activities which do not comply with EW-R20.1.b, c, and d are discretionary activities. In the absence of any compelling evidence, planning evaluation or s32AA evaluation, I consider the notified provisions most appropriately implement the objectives of the PDP.
310. In response to WIAL [406.379], I note that this matter was addressed in the Hearing Stream 1 s42A Report¹⁶. This notes that elected Council decisions regarding what should be addressed

¹⁶ Paragraph 81, [Hearing Stream 1 s42A Report](#)

through the ISPP cannot be changed post notification by the Council.

311. Turning to WIAL [406.380] on the 'geomorphological impacts' matter of discretion, I do not recommend any amendments. In this instance, the 'geomorphological impacts' relate to the landform impacts on the Rongotai ridge and the hillock at the south end of the Terminal precinct. In terms of the specificity in the matter of discretion, I consider the phrasing is sufficient and restricting further is unnecessary and may lead to unintended restriction.

Summary of Recommendations

312. **HS5-EW-Rec53:** That EW-R20 is amended as set out below and detailed in Appendix A.

<p>EW-R20 (Earthworks in the Airport Zone)</p> <p>1. Activity status: Permitted Where:</p> <ul style="list-style-type: none">a. Compliance is achieved with EW-S14.1 and EW-S14.2; and b. Compliance is achieved with EW-S14.3; andb. Earthworks are for the purposes of the upgrade or maintenance of existing formed roads and public accessways; orc. Earthworks are for the purposes of construction, upgrade, maintenance or repair of the Airport pavement (apron and taxiway surfaces); ord. Earthworks permitted by any other rule. <p>2. Activity status: Restricted Discretionary Where:</p> <ul style="list-style-type: none">a. Compliance with any of the requirements of EW-20.1a cannot be achieved:<ul style="list-style-type: none">i. in the Rongotai Ridge Precinct;ii. in the Miramar South Precinct; andiii. in relation to the Hillock (south end of Terminal Precinct). <p>Matters of discretion are:</p> <ul style="list-style-type: none">1. The extent and effect of non-compliance with any relevant standard as specified in the associated assessment criteria for the infringed standards;2. Relevant matters in AIRPZ-P4 and AIRPZ-P5;3. Visual appearance and mitigation; and4. Geomorphological impacts; and<u>5. Traffic impacts caused by transporting earth and construction fill material.</u> <p>3. Activity status: Discretionary Where:</p> <ul style="list-style-type: none">a. Compliance with EW-R20.1.b, c or d cannot be achieved. <p>Notification Status: an application for resource consent made in respect of rule EW-R20.3 must be publicly notified.</p>

313. **HS5-EW-Rec54:** That submission points relating to EW-R20 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

314. In my opinion, the amendments recommended to EW-R20 are the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that the amended rule:

- a. Simplifies, reduces unnecessary duplication and clarifies the intent and application of the earthworks provisions for the Airport Zone which reduces the likelihood of interpretative issues when applying relevant provisions of the plan. Consequently, they are more efficient and effective than the notified provisions in achieving the objectives of the PDP.
- b. Better gives effect to the objective of managing earthworks, and ensuring that traffic impacts are considered as a matter of discretion.

315. The environmental, economic, social and cultural effects of the recommended amendments, as they vary somewhat from the existing plan s32 evaluation report, are below.

Environmental	<ul style="list-style-type: none"> • There are unlikely to be any environmental costs compared to the notified provisions, as the amendments are largely to improve clarity and useability of the rule. • The effects are more likely to be positive with including traffic effects as a matter of discretion. • Removing the public notification requirement will not have an environmental cost as public notification is still available where it is deemed appropriate.
Economic	<ul style="list-style-type: none"> • Compared to the notified proposal, the recommended approach is unlikely to have additional economic costs. There will be benefits from improved plan interpretation and more efficient plan administration. • The effects are likely to be more positive, in removing the requirement for public notification, where this may not provide additional benefit for the processing of the application.
Social	<ul style="list-style-type: none"> • There are unlikely to be any additional social costs or benefits compared to the notified proposal.
Cultural	<ul style="list-style-type: none"> • No cultural effects are identified.

3.8.2 EW-S14: Earthworks in the Airport Zone

Matters Raised by Submitters

316. GWRC [351.247] seek that WCC consider reducing the existing slope angle to 20 degrees for consistency with the Natural Resources Plan.

317. Z Energy [361.14 and 361.15] support EW-S14.3 for earthworks in all areas but seek clarification on whether it relates to permanent structures and aboveground structures and therefore does not relate to temporary and/or aboveground ground structures.

318. WIAL [406.381, 406.382, 406.383, and 406.384] seek that EW-S14 is deleted or amended as follows:

EW-S14 Earthworks in the Airport Zone

1. In the Rongotai Ridge Precinct, ~~or in relation to the Hillock at the south end of the Terminal precinct~~ earthworks shall not:
 - a. Alter the existing ground level by more than 2.5 metres measured vertically.
 - b. Disturb more than 250m² of ground surface.
 - c. Be undertaken on slopes of more than 34° in relation to the Hillock and 45° in relation to the Rongotai Ridge Precinct.
- ~~2. In the Miramar South Precinct, earthworks must be undertaken in accordance with an Erosion and Sediment Control Plan prepared in accordance with the Erosion and Sediment Control Guidelines for the Wellington Region (or equivalent)~~
3. In all areas, a structure used to retain or stabilize a slope must be no higher than 2.5m measured vertically.
4. No earthwork shall create a dust nuisance.
5. As soon practicable, but not later than three months after the completion of earthworks or stages earthworks, the earthworks area must be stabilised with vegetation or sealed, paved, metalled or built over.

~~Except:~~

- ~~a. The construction, upgrade or maintenance of:
 - i. ~~Apron and taxiway surfaces.~~
 - ii. ~~Road and accessway surfaces.~~~~

Assessment criteria where the standard is not met-infringed:

1. Rongotai Ridge Precinct:
 - a. Extent of cut faces;
 - ~~b. Enhancement of pedestrian and cycle networks;~~
 - c. Impact on views of, through and within the site; and
 - ~~d. Connections to community and recreation resources.~~
2. ~~Miramar South Precinct:~~
 - ~~a. Erosion and Sediment Control Guidelines for the Wellington Region (or equivalent).~~
3. ...
4. ...
5. With respect to EW-S14(4):
 - a. The effectiveness of temporary measures to avoid the creation of dust nuisance.
6. With respect to EW-S14(5):
 - a. The effectiveness of permanent measures to avoid erosion, the creation of dust nuisance, to filter silt and sediment and reduce the volume and speed of runoff from the site.

Assessment

319. In response to GWRC [351.247] seeking that the existing slope angle be reduced to 20 degrees, I refer to my assessment at paragraphs 227-229. On this basis I do not recommend any changes.
320. In response to Z Energy [361.14 and 361.15], I note that this clause uses the RMA definition of structure – that is a structure ‘fixed to land’. On this basis I do not consider the standard would apply to temporary structures.
321. In response to WIAL [406.381, 406.382, 406.383, and 406.384], consistent with my associated assessment in section 3.8.1 above, I consider that this standard relating to earthworks in the Airport Zone should remain in the PDP. I note that the submission does not provide any planning evaluation or s32AA evaluation in support of their amendments. The Airport Zone chapter introduces a number of precincts, which EW-S14 responds to, again consistent with EW-R20. As I understand it, the Rongotai Ridge Precinct and Miramar South Precinct are physically separate from the other Airport Precincts and are identified for non-Airport or support services purposes, and as such have different earthworks standards. I therefore do not consider it appropriate to amend or remove the earthworks standards or assessment criteria for these precincts.
322. I do however consider that WIAL’s proposed amendment to add sub-clauses 4 and 5 to the standard are efficient and effective, especially given that the Airport Zone is not subject to the other general earthworks rules and standards i.e. EW-S4 and EW-S6. These new subclauses would appropriately respond to the matters in EW-S4 and EW-S6.

Summary of Recommendations

323. **HS5-EW-Rec55:** That EW-S14 is amended as set out below and detailed in Appendix A.

EW-S14 Earthworks in the Airport Zone

1. In the Rongotai Ridge Precinct, or in relation to the Hillock at the south end of the Terminal precinct earthworks shall not:
 - a. Alter the existing ground level by more than 2.5 metres measured vertically.
 - b. Disturb more than 250m² of ground surface.
 - c. Be undertaken on slopes of more than 34°
2. In the Miramar South Precinct, earthworks must be undertaken in accordance with an Erosion and Sediment Control Plan prepared in accordance with the Erosion and Sediment Control Guidelines for the Wellington Region (or equivalent)
3. In all areas, a structure used to retain or stabilize a slope must be no higher than 2.5m measured vertically.
4. No earthwork shall create a dust nuisance.
5. As soon practicable, but not later than three months after the completion of earthworks or stages of earthworks, the earthworks area must be stabilised with vegetation or sealed, paved, metalled or built over.

Except:

- a. The construction, upgrade or maintenance of:
 - i. Apron and taxiway surfaces.
 - ii. Road and accessway surfaces.

Assessment criteria where the standard is infringed:

...

5. With respect to EW-S14(4):
 - a. The effectiveness of temporary measures to avoid the creation of dust nuisance.
6. With respect to EW-S14(5):
 - a. The effectiveness of permanent measures to avoid erosion, the creation of dust nuisance, to filter silt and sediment and reduce the volume and speed of runoff from the site.

324. **HS5-EW-Rec56:** That submission points relating to EW-S14 are accepted/rejected as detailed in Appendix B.

3.9 Historical and Cultural Values

3.9.1 New policies

Matters Raised by Submitters

325. Heritage NZ [70.21] (supported by Onslow Historical Society [FS6.11], Historic Places Wellington Inc [FS111.10], and Te Rūnanga o Toa Rangatira [FS138.9]) submit that as an alternative to the proposed HNZPT amendment of EW-P7 to cover scheduled archaeological sites and Sites of Significance to Māori, additional policies could be added to the earthworks chapter to address

archaeological sites and Sites of Significance to Māori.

326. Te Rūnanga o Toa Rangatira [488.68] seek a new policy that acknowledges the importance of Accidental Discovery to maintaining and protecting the sites and areas of significance to Māori and iwi.

Assessment

327. I acknowledge Heritage NZ [70.21] seeking consistency in the policy framework for historical and cultural values to include scheduled archaeological sites and Sites of Significance to Māori (SASM). However, both scheduled archaeological sites and SASM have a bespoke carve out in the PDP.
328. In relation to scheduled archaeological sites, HH-P20 and HH-R18 address modification, including earthworks within their mapped extent. This reflects an early demarcation that the provisions be located in the Historic Heritage chapter given that they relate to wider 'modifications' in addition to earthworks. The rationale being that by their nature, a scheduled archaeological site means that any modification is essentially a trigger for earthworks.
329. In this instance modifications and earthworks are inherently linked. I therefore consider the relevant policy is appropriately located within the Historic Heritage chapter, and do not recommend this be duplicated in the Earthworks chapter as the plan is to be read as a whole.
330. However, I can appreciate that the inconsistency of this bespoke approach is potentially unclear within the PDP, as such I recommend:
- a. Amending the 'Other relevant District Plan provisions' section in the Earthworks introduction to make the link to the Historic Heritage chapter provisions for scheduled archaeological sites clear; and
 - b. Amending the Earthworks chapter introduction to clarify the regulatory framework for archaeological sites and the archaeological authority process. I note Mr McCutcheon's recommendation for this clarification to the SASM chapter.¹⁷
331. In relation to SASMs, EW-R21 addresses earthworks within Sites and Areas of Significance Category A and Category B and relies on SASM-P5 as a matter of discretion. The differentiation between archaeological sites and SASMs is that EW-R21 is just limited to earthworks, while SASM-R3 addresses modification of features integral to a Category A or B site or area of significance to Māori identified in SCHED7.
332. For context, I reference Mr McCutcheon's assessment in Hearing Stream 3 that demonstrates the interrelationship of modification and earthworks with examples of SASMs:
- The intent of this policy [SASM-P5] is to recognise that some sites have features present that if modified can result in adverse effects on values. These features are identified in SCHED7 and modification of these features triggers SASM-R3 and assessment against this policy. Examples of features include middens, karaka groves, terraces and the piped awa.¹⁸*

¹⁷ HS3-Rec18 Historic Heritage s42A Report

¹⁸ Para 1591, Historic Heritage s42A Report.

333. As the relevant policy is addressed in the SASM chapter, I do not recommend this be duplicated in the Earthworks chapter as the plan is to be read as a whole. In addition, I understand that it was the preference of mana whenua for the policy to be retained in the SASM chapter.
334. However, I again appreciate that the inconsistency of this bespoke approach is potentially unclear within the PDP, as such I recommend:
- a. Amending the 'Other relevant District Plan provisions' section in the Earthworks introduction to make the link to the Sites and Areas of Significance chapter provisions clear; and
 - b. Amending the Earthworks Introduction to clarify that the Earthworks chapter does not apply to modifications of Sites of Significance to Māori, and scheduled archaeological sites.
335. If the panel were of mind to grant further relief on this matter, consideration could be given to the appropriateness of a standalone SASM earthworks policy in the Earthworks chapter.
336. Te Rūnanga o Toa Rangatira [488.68] submit that the accidental discovery protocol and how it would be implemented can be improved by embedding the process into policy. I disagree that a policy acknowledging the accidental discovery protocol is necessary or appropriate. The accidental discovery protocol is regularly applied to resource consents as advice notes without any need for a policy context.
337. I do however consider that acknowledgement of the importance of the accidental discovery protocol would be efficient and effective to assist plan users. In my view explicit reference to the accidental discovery protocol in the Introduction which already refers to *Appendix 1* would be appropriate to provide clarity.

Summary of Recommendations

338. **HS5-EW-Rec57:** That the Earthworks Introduction is amended as set out below and detailed in Appendix A.

Introduction

...

In accordance with the Heritage New Zealand Pouhere Taonga Act 2014, where an archaeological site is present (or uncovered), an authority from Heritage New Zealand is required if the site is to be modified in any way.

Heritage New Zealand Pouhere Taonga is responsible for issuing any archaeological authority for any earthworks that may affect an archaeological site (refer to Appendix 1 APP1 – Historic Heritage Advice Notes for more information on the archaeological authority process and Accidental Discovery Protocol).

339. **HS5-EW-Rec58:** That the ‘Other relevant District Plan provisions’ section is amended as set out below and detailed in Appendix A.

It is important to note that in addition to the provisions in this chapter, the following Part 2: District-Wide chapters may also be of relevance, including:

- **Transport** - The Transport Chapter contains provisions relating to transport matters.
- **Subdivision** - The Subdivision Chapter contains provisions which manage subdivision of land.
- **Trees** – The Notable Tree chapter contains specific provisions relating to the management of notable trees, including works within the root protection area.
- **Historic Heritage** - The Historic Heritage Chapter manages the adverse effects of modifications, including earthworks within the extent of scheduled archaeological sites identified in SCHED4.
- **Sites and Areas of Significance** – The Sites and Areas of Significance Chapter contains specific provisions relating to modification of features integral to a Category A or B site or area of significance to Māori identified in SCHED7.

Resource consent may therefore be required under rules in this chapter as well as other chapters. Unless specifically stated in a rule or in this chapter, resource consent is required under each relevant rule. The steps to determine the status of an activity are set out in the General Approach chapter.

340. **HS5-EW-Rec59:** That submission points relating to new policies are accepted/rejected as detailed in Appendix B.

3.9.2 EW-P7: Earthworks on the site of heritage buildings and heritage structures, and within heritage areas

Matters Raised by Submitters

341. WCC Environmental Reference Group [377.287] seek that EW-P7 is retained as notified.
342. Heritage NZ [70.24 and 70.25] submit that for improved consistency, EW-P7 should also cover scheduled archaeological sites and Sites of Significance to Māori. The amendment sought by Heritage NZ (supported by Onslow Historical Society [FS6.14 and FS6.15], Historic Places Wellington [FS111.13 and FS111.14], and Te Rūnanga o Toa Rangatira [FS138.10]) is as follows:

EW-P7: Earthworks on the site of heritage buildings, ~~and~~ heritage structures, ~~and~~ within heritage areas, within the extent of scheduled archaeological sites and within Sites and Areas of Significance to Māori

Manage earthworks within sites occupied by heritage buildings and heritage structures, ~~and~~ within heritage areas, within the extent of scheduled archaeological sites and within Sites and Areas of Significance to Māori, having regard to:

1. The identified ~~heritage~~ values of the scheduled item or heritage building, heritage structure or heritage area;
2. The extent to which the earthworks would detract from those identified values and setting; and
3. Whether the earthworks can be achieved without altering the significance of the item or heritage area.

Assessment

343. I acknowledge Heritage NZ [70.24 and 70.25] seeking consistency in the policy framework for historical and cultural values to include scheduled archaeological sites and Sites of Significance to Māori. However, as discussed above in section 3.9.1, both scheduled archaeological sites and SASMs have a bespoke carve out in the PDP and as such I do not consider that the amendment sought is appropriate. Likewise, I do not support the amendments to replace ‘heritage buildings, heritage structure or heritage area’ with ‘item’ as the notified phrasing provides a suitable degree of clarity as it reflects the terms used in the relevant schedules.

Summary of Recommendations

344. **HS5-EW-Rec60:** That EW-P7 be confirmed as notified.
345. **HS5-EW-Rec61:** That submission points relating to EW-P7 are accepted/rejected as detailed in Appendix B.

3.9.3 EW-P8: Earthworks within the root protection area of notable trees

Matters Raised by Submitters

346. WCC Environmental Reference Group [377.288] seek that EW-P8 is retained as notified.

Assessment

347. No further assessment is required.

Summary of Recommendations

348. **HS5-EW-Rec62:** That EW-P8 be confirmed as notified.
349. **HS5-EW-Rec63:** That submission points relating to EW-P8 are accepted/rejected as detailed in Appendix B.

3.9.4 EW-R8: Earthworks on the site of scheduled heritage buildings and structures, and

within heritage areas

Matters Raised by Submitters

350. WCC Environmental Reference Group [377.303] seek that EW-R8 is retained as notified.
351. Heritage NZ [70.26] (supported by Onslow Historical Society [FS6.16], Historic Places Wellington Inc [FS111.15], and Te Rūnanga o Toa Rangatira [FS138.11]) and 70.27 (supported by Onslow Historical Society [FS6.17] and Historic Places Wellington Inc [FS111.16]) seek that EW-R8 be broadened to include scheduled archaeological sites, as follows:

EW-R8 Earthworks on the site of scheduled heritage buildings and structures, and within heritage areas, and within scheduled archaeological sites.

352. WCC [266.120] seek to amend EW-R8 so that resource consent is not required for earthworks within the legal road in a heritage area, as follows:

EW-R8 Earthworks on the site of scheduled heritage buildings and structures, and within heritage areas.

1. Activity status: Permitted

Where:

- a. Ceompliance is achieved with EW-S10; or
- b. The earthworks are located within legal road.

Assessment

353. I acknowledge Heritage NZ [70.26 and 70.27] seeking consistency in the rule framework for historical and cultural values to include scheduled archaeological sites. However, as discussed above in section 3.9.1, scheduled archaeological sites have a bespoke carve out in the PDP and as such I do not consider that the amendment sought is appropriate.
354. In response to WCC [266.120] seeking that earthworks within the legal road of a site of scheduled heritage buildings and structures, and within heritage areas are enabled as a permitted activity. I acknowledge that this would be consistent with a similar recommendation from Hearing Stream 3 in relation to new buildings and structures within heritage areas on legal road.¹⁹
355. However, earthworks associated with infrastructure including roads are exempt from this chapter, and instead managed within the Infrastructure chapter. On this basis, I do not consider this lower-level exemption is necessary. Likewise, I do not consider it would be appropriate to add the legal road to EW-R8, when it is not referenced in any other earthworks chapter rules.

Summary of Recommendations

356. **HS5-EW-Rec64:** That EW-R8 be confirmed as notified.
357. **HS5-EW-Rec65:** That submission points relating to EW-R8 are accepted/rejected as detailed in Appendix B.

¹⁹ Refer to HS3-Rec92: [Hearing Stream 3 – Historic Heritage, Notable Trees, Sites and Areas of Significance to Māori](#)

3.9.5 EW-R9: Earthworks within the root protection area of notable trees

Matters Raised by Submitters

358. Forest & Bird [345.377] and WCC Environmental Reference Group [377.304] seek that EW-R9 is retained as notified.

Assessment

359. No further assessment is required.

Summary of Recommendations

360. **HS5-EW-Rec66:** That EW-R9 be confirmed as notified.
361. **HS5-EW-Rec67:** That submission points relating to EW-R9 are accepted/rejected as detailed in Appendix B.

3.9.6 EW-R21: Earthworks within Sites and Areas of Significance Category A and Category B

Matters Raised by Submitters

362. WCC Environmental Reference Group [377.311] and Te Rūnanga o Toa Rangatira [488.70] seek that EW-R21 is retained as notified.

Assessment

363. No further assessment is required.

Summary of Recommendations

364. **HS5-EW-Rec68:** That EW-R21 be confirmed as notified.
365. **HS5-EW-Rec69:** That submission points relating to EW-R21 are accepted/rejected as detailed in Appendix B.

3.9.7 EW-S10: Earthworks on the site of heritage building, heritage structures or on a site within a heritage area

Matters Raised by Submitters

366. Wellington Heritage Professionals [412.65] seek that EW-S10 is retained as notified.
367. Heritage NZ [70.28 and 70.29] (supported by Onslow Historical Society [FS6.18 and FS6.19] and Historic Places Wellington Inc [FS111.17 and FS111.18]) submit that for improved consistency, EW-S10 should be broadened to include scheduled archaeological sites. The amendment sought by Heritage NZ is as follows:

<p>EW-S10 Earthworks on the site of heritage building, heritage structures or on a site within a heritage area, or within a scheduled archaeological site</p>

368. Donna Sherlock [384.1 and 384.2] opposes the 10m² per annum clause of the standard on the basis that there should not be a blanket application on rural heritage areas such as the submitter's land which is 9.1ha, but the heritage area footprint is <100m².

Assessment

369. I acknowledge Heritage NZ [70.28 and 70.29] seeking consistency for the standard to include scheduled archaeological sites. However, as discussed above in section 3.9.1, scheduled archaeological sites have a bespoke carve out in the PDP and as such I do not consider that the amendment sought is appropriate.
370. In response to Ms Sherlock [384.1 and 384.2], it is important to consider that even a small amount of earthworks can have impacts on the setting of a heritage area and/or the values of the heritage building or structure. I acknowledge that in some instances small objects on large sites are addressed through 'curtilage' or 'mapped extents'. However, if the standard were to be based on this, it would significantly reduce the protection for heritage buildings and structures in context of the wider site. On this basis, I recommend no changes to EW-S10.

Summary of Recommendations

371. **HS5-EW-Rec70:** That EW-S10 be confirmed as notified.
372. **HS5-EW-Rec71:** That submission points relating to EW-S10 are accepted/rejected as detailed in Appendix B.

3.10 Natural Environment Values

373. To the extent possible I have assessed and made recommendations as applicable to earthworks provisions relevant to Natural Environment Values within this section, noting that submissions relating more broadly to these values will be heard and considered in Hearing Stream 8. Given the interrelated nature of the earthworks and parent chapter provisions, the outcome of Hearing Stream 8 deliberations could have a material bearing on the recommendations contained in this section.

3.10.1 New rules

Matters Raised by Submitters

374. GWRC [351.227] submit that rules only have assessment matters regarding the extent and effect of non-compliance on identified, ecological values or amenity values or landscape values for earthworks in riparian areas, and that to have regard to the Proposed RPS Change 1 (policies FW.3 and 15) an amendment is required to include matters of control or discretion which protect cultural values. GWRC seek a matter of control or discretion be included as follows:

Potential for adverse effects on water quality of any waterbody, wahi tapu, wahi taonga and habitat of any significant indigenous species.

Assessment

375. In response to GWRC [351.227] I refer to my associated assessment in section 3.6.2 above. For ease I note again here that EW-P2 addresses sedimentation effects on land and water bodies and EW-P4 also requires earthworks to adopt effective measures to manage the potential for the movement of sediment beyond the site and in particular into surface water. As a result, these matters are already within the rule framework as matters of discretion as all general earthworks rules (EW-R1 - EW-R6) include EW-P4 as a matter of discretion.
376. As also detailed in section 3.6.2, in my opinion this matter has also been addressed through recommended amendments to NE-O2 and NE-O5 in the Strategic Directions s42A Report²⁰, and the corresponding Appendix A²¹, as set out below:

NE-O2: Future subdivision, land use and development contributes to an improvement in the quality of the City's water bodies, freshwater ecosystems and receiving environments, protects and enhances Māori freshwater values and recognises mana whenua and their relationship to water (Te Mana o Te Wai).

NE-O5: Subdivision, land use and development is undertaken in an integrated manner recognising the importance of ki uta ki tai and the interconnectedness between ecosystems, natural processes and freshwater.

377. I also consider that this approach is consistent with the RPS, and whilst noting the uncertainty surrounding RPS Change 1, it will provide greater likelihood that the PDP will not be inconsistent with the RPS following PC1 becoming operative, whilst also contingent on the outcome of any appeals arising following a decision on PC1.
378. It is important to note that the PDP is intended to be read as a whole, and as such consent applications will consider the relevant strategic directions. In my view it is also important that the PDP not stray too directly into water quality matters, which are GWRC's jurisdiction. Duplication needs to be avoided, provided sufficient coverage is achieved overall.
379. To that extent I note that references to 'identified' values in assessment criteria draw the reader to cultural values where they are specified in the relevant schedules. I do however consider that there may be a case for adding 'cultural values' where other types of values (i.e. 'landscape') are mentioned in assessment criteria. The only example of this is EW-S12 which I recommend is amended in response to GWRC [351.227].

Summary of Recommendations

380. **HS5-EW-Rec72:** That EW-S12 is amended as set out below and detailed in Appendix A.

EW-S12 Earthworks in coastal or riparian margins

Assessment criteria where the standard is infringed:

1. The extent and effect of non-compliance on identified, ecological values or amenity values or landscape values or cultural values.

²⁰ See paragraphs 922 and 947: [HS1 Section 42A report - Plan wide matters and strategic direction](#)

²¹ See NE-O2 and NE-O5: [HS1 - Appendix A to s42A report - Recommended amendments to provisions](#)

381. **HS5-EW-Rec73:** That submission points relating to new rules are accepted/rejected as detailed in Appendix B.

3.10.2 EW-P9: Minor earthworks within significant natural areas

Matters Raised by Submitters

382. WCC Environmental Reference Group [377.289] and the Director-General of Conservation [385.70] seek that EW-P9 is retained as notified.
383. Forest & Bird [345.363] consider that EW-P9 takes a different approach than ECO-P2 that addresses appropriate uses in SNAs and lists the purposes for which vegetation clearance may be appropriate. They seek that EW-P9 be amended to list the relevant activities in an exhaustive list (as ECO-P2 does) as follows:

EW-P9 Minor earthworks within significant natural areas

Consider enabling ~~Enable~~ earthworks within Significant Natural Areas identified within SCHED8 where they are of a minor scale and nature that maintains the ~~identified~~ biodiversity values to provide for:

1. *(list permitted activities only)*

384. As an alternative, Forest & Bird [345.364] seek that EW-P9 be deleted in its entirety and EW-P10 is relied on instead.
385. GWRC [351.235] consider that the tenure of EW-P9 is more enabling than other similar policies and seek to replace the beginning of the policy with 'Only allow for...'

Assessment

386. In response to Forest & Bird [345.363 and 345.364], I note that EW-P9 is intended to provide the rationale for the very limited permitted activity earthworks in EW-R7.1. As such I do not consider that EW-P9 should be deleted. However, I do consider that the associated rule could be further refined. This is addressed further in section 3.10.7 of this report in response to submissions from Forest & Bird on EW-R7.
387. In response to GWRC [351.235], in my view 'Only allow for' is not necessary given the limitations imposed by the associated rule. Likewise, 'Consider enabling' is not helpful to decision-making and the PDP seeks to avoid the use of such phraseology. The wording of policies within the Plan is consistent based on the provisions that flow from the policy. The phrase 'enable' is used for policies that set up what is generally provided for or encouraged, as is the case in EW-R7.1.

Summary of Recommendations

388. **HS5-EW-Rec74:** That EW-P9 be confirmed as notified, subject to any amendments arising from Hearing 8.
389. **HS5-EW-Rec75:** That submission points relating to EW-P9 are accepted/rejected as detailed in Appendix B.

3.10.3 EW-P10: Earthworks within significant natural areas

Matters Raised by Submitters

390. WCC Environmental Reference Group [377.290] seek that EW-P10 is retained as notified.
391. Horokiwi Quarries [271.54 and 271.55] support EW-P10 but seek clarification on whether the correct policies are referenced.
392. Director-General of Conservation [385.71, 385.72, and 385.73] support EW-P10 but seek clarification on whether the correct policies are referenced, in particular if ECO-P2 is correct or whether EW-P10 should refer to ECO-P1.
393. Forest & Bird [345.365] submit that the Earthworks chapter takes a different approach than the Subdivision chapter where policies from the ECO chapter are somewhat replicated, while earthworks policies instead reference back to the relevant ECO policies which Forest & Bird submit is a simpler approach that should be consistent across the plan's chapters. They also seek to amend the direction of 'provide for' and update references to ECO policies, as follows:

EW-P10 Earthworks within significant natural areas

Consider providing Provide for earthworks of a more than minor scale within Significant Natural Areas only where it can be demonstrated that any adverse effects on indigenous biodiversity values are addressed in accordance with ECO-P2~~1~~ and the matters in ECO-P4~~3~~ and ECO-P7~~5~~.

394. GWRC [351.236] consider that the tenure of EW-P10 is more enabling than other similar policies and seek to replace the beginning of the policy with 'Only allow for...'

Assessment

395. In response to Forest & Bird [345.365] in my view 'Consider enabling' is not helpful to decision-making and the PDP seeks to avoid the use of such phraseology. However, I agree with GWRC [351.236] that the addition of 'Only allow for' would be appropriate given the limitations imposed by the associated rule (EW-R7). The wording of policies within the Plan is consistent based on the provisions that flow from the policy. The phrase 'only allow' is used for policies that provide for activities but only in the right circumstances where it is demonstrated through a consent process that effects can be adequately avoided, remedied or mitigated, and where key outcomes can be achieved; 'provide for' is used for policies that set up what is generally provided for or encouraged. On this basis I agree in part with Forest & Bird.
396. As to their point on the approach of the earthworks policies to reference back to the relevant ECO policies, and how this differs to the subdivision chapter. Forest & Bird have made similar submission points in relation to the Subdivision chapter, and my response is that to be in accordance with National Planning Standards²² I consider that all subdivision provisions must be located within the Subdivision Chapter. The same is not required of earthworks provisions, where it is instead the approach of the PDP that the relevant district-wide matter and overlay provisions are embedded in the corresponding parent chapter. This approach allows for catered

²² Page 34, National Planning Standards.

outcomes to be expressed for each district-wide matter and/or overlay, particularly where there is a need to implement relevant higher order direction from Part 2, NPSs, and/or the RPS.

397. Turning to the Director-General of Conservation [385.71, 385.72, and 385.73] and Horokiwi Quarries [271.54 and 271.55] as to whether the correct ECO policies are referenced, I acknowledge that these need to be updated, and have made recommendations to this effect, noting further that these may again change following the ECO hearing process. Any changes to the outcomes and direction as applicable to the Environmental and Natural Values chapter at Hearing Stream 8 can be consequentially updated as relevant to the Earthworks chapter to ensure consistency with the parent ECO chapter.

Summary of Recommendations

EW-P10 Earthworks within significant natural areas

~~Only allow~~**Provide** for earthworks of a more than minor scale within Significant Natural Areas only where it can be demonstrated that any adverse effects on indigenous biodiversity values are addressed in accordance with ECO-P~~21~~ and the matters in ECO-P~~43~~ and ECO-P~~75~~.

398. **HS5-EW-Rec76:** That EW-P10 is amended as set out below and detailed in Appendix A.
399. **HS5-EW-Rec77:** That submission points relating to EW-P10 are accepted/rejected as detailed in Appendix B.

3.10.4 EW-P13: Earthworks within riparian margins outside of the coastal environment

Matters Raised by Submitters

400. WCC Environmental Reference Group [377.293] seek that EW-P13 be strengthened to signal that poorly managed earthworks cannot be an option in any riparian margin. They seek an additional point be added as follows:

EW-P13 Earthworks within riparian margins outside of the coastal environment

Only allow earthworks within riparian margins outside of the coastal environment where:

1. They are of a scale that maintains the natural character of the riparian margin concerned;
2. They are undertaken in a manner that avoids significant adverse effects and avoids, remedies or mitigates any other adverse effects on the natural character of the riparian margin;
3. There is a functional need or operational need for the earthworks to be undertaken within a riparian margin;
4. They would not significantly increase the flooding risk, when compared to the existing situation, including by compromising the effectiveness of community scale natural hazard mitigation structures; and
5. They incorporate measures to restore and rehabilitate disturbed areas.

Assessment

401. In response to WCC Environmental Reference Group [377.293] it is important to note that proposals must meet all four clauses in EW-P13.
402. I acknowledge that there is an equivalent clause in EW-P12 to the amendment WCC Environmental Reference Group has sought. However, the absence of this clause in EW-P13 is deliberate, as the NZCPS is additionally directive and constraining for activities within the coastal environment. As such, I disagree with WCC Environmental Reference Group as in my view EW-P12 as notified provides an appropriate level of protection for natural character within riparian margins, consistent with the directive in the parent chapter NATC-P1.
403. WCC Environmental Reference Group [377.293] have raised concerns that poor earthworks controls can adversely affect Wellington's urban streams, and eventually, as that sediment moves downwards, the harbour. In response, I note that any earthworks undertaken within the riparian margins, both within and outside of the coastal environment, would also trigger the general earthworks rule (EW-R6). EW-R6 as a permitted activity requires compliance with standards EW-S1 – EW-S6 which address matters including area, existing slope angle, and site reinstatement. Where compliance is not achieved with EW-R6.1 the matters of discretion include EW-P4 which requires earthworks to adopt effective measures to manage the potential for erosion, and the movement of sediment beyond the site, and in particular into surface water. As such, when considered on the whole, the framework is appropriate.

Summary of Recommendations

404. **HS5-EW-Rec78:** That EW-P13 be confirmed as notified, subject to any amendments arising from Hearing 8.
405. **HS5-EW-Rec79:** That submission points relating to EW-P13 are accepted/rejected as detailed in Appendix B.

3.10.5 EW-P14: Earthworks within special amenity landscapes

Matters Raised by Submitters

406. WCC Environmental Reference Group [377.294] and Kilmarston [290.45] seek that EW-P14 is retained as notified.

Assessment

407. No further assessment is required.

Summary of Recommendations

408. **HS5-EW-Rec80:** That EW-P14 be confirmed as notified, subject to any amendments arising from Hearing 8.
409. **HS5-EW-Rec81:** That submission points relating to EW-P14 are accepted/rejected as detailed in Appendix B.

3.10.6 EW-P15: Earthworks within outstanding natural features and landscapes

Matters Raised by Submitters

410. WCC Environmental Reference Group [377.295] and the Director-General of Conservation [385.75] seek that EW-P15 is retained as notified.

Assessment

411. No further assessment is required.

Summary of Recommendations

412. **HS5-EW-Rec82:** That EW-P15 be confirmed as notified, subject to any amendments arising from Hearing 8.
413. **HS5-EW-Rec83:** That submission points relating to EW-P15 are accepted/rejected as detailed in Appendix B.

3.10.7 EW-R7: Earthworks within a significant natural area

Matters Raised by Submitters

414. WCC Environmental Reference Group [377.302] and Horokiwi Quarries [271.57] seek that EW-R7 is retained as notified.
415. Forest & Bird [345.374, 345.375, and 345.376] seek:
- a. ii. needs to be limited to a certain amount of earthworks, either by referencing that in the rules, or by reference to a standard. This would replicate the approach taken in the corresponding vegetation clearance rule in ECO R.1.a.vii. Forest & Bird seek that the permitted earthworks are subject to the same limits as the permitted vegetation clearance, being a maximum earthworks of 2.5m width in total, to accommodate the track.
 - b. iii. no longer references the correct ECO rule.
 - c. iv. this refers to a deleted rule in ECO-R1. If residential SNAs are returned to the plan in line with our submission, vegetation clearance for the installation of services must be controlled at least, so that the Council retains the ability to at least minimise the damage done to the SNA. Forest & Bird make the same submission here – this activity should be controlled. It should also be limited to existing residential units. New development in SNAs should have a higher consenting requirement, at least RDA.
 - d. v. Forest & Bird have made submissions about the accompanying vegetation clearance rules above in the ECO chapter, and seek the same amendments here. permitted activity status is only appropriate for the maintenance of existing fences in SNAs.
 - e. Forest & Bird also seek that limits on the amounts of earthworks permitted for these activities, as per the above submission on ECO R1.2.a.i.,ii. and iv. This can either be done by reference to limits in the EW rule below, or reference to a new standard.

416. The amendment sought by Forest & Bird is as follows:

<p>1. Activity status: Permitted</p> <p>Where:</p> <p>a. The earthworks:</p> <ul style="list-style-type: none">i. do not involve the removal of any indigenous vegetation; orii. are for the maintenance of existing public walking or cycling tracks, as carried out the Council, GWRC, or their approved contractor (<u>either refer to a new standard, or include maximum earthworks of 2.5m width in total, to accommodate the track</u>); oriii. are required for the purpose of ECO-R1.1.a.iv (<u>flood protection control</u>); oriv. required for the purpose of ECO-R1.a.viii (installation of services); orv. associated with the <u>maintenance of existing</u> fencing, farm drainage creating farm access tracks in accordance with ECO-R1.2.a.i or ECOR1.2.a.ii or ECO-R1.2.a.iv. (<u>insert earthworks limits as sought for ECO R1.2 above, either here or by reference to a standard</u>)

417. Forest & Bird [345.362] (opposed by WIAL [FS36.141]) seek a non-complying rule for earthworks where the SNA contains matters identified in policy 11 NZCPS, replicating ECO-R1.6, with section 88 requirements as follows:

<p><u>Activity status: Non-complying</u></p> <p><u>Where:</u></p> <p>a. <u>The Significant Natural Area includes matters identified in policy 11 of the NZ Coastal Policy statement</u></p> <p><u>Section 88 requirements:</u></p> <p><u>1. Identifying the indigenous biodiversity values and potential impacts from the proposal; and</u></p> <p><u>2. Demonstrating that ECO P5 has first been met, and the effects management hierarchy at ECO-P21 has been applied to other adverse effects.</u></p>

Assessment

418. In response to Forest & Bird [345.374, 345.375, and 345.376] seeking that EW-R7.1.a.i is deleted, I agree that SNAs are usually complex ecosystems, that involve interactions between the fauna and vegetation with the landform that supports them. However, I disagree that this clause should be deleted. Instead I recommend that EW-R7.1.a.i be amended to also refer to 'habitat of indigenous fauna'. This will ensure consistency with the definition of significant natural areas - *means an area of significant indigenous vegetation or significant habitat of indigenous fauna identified in SCHED8 - Significant Natural Areas*. In my view this will align with Policy 11 of the NZCPS, noting however that the broader matters of this policy are addressed in the CE/ECO parent chapters.

419. I agree that iii. no longer references the correct ECO rule and that this should be deleted. In my view it would be appropriate to amend the links to the relevant ECO rules, noting again that

these may be subject to change following the ECO hearing.

420. Forest & Bird have sought amendments on the basis that residential SNAs are returned to the plan. If this is to occur any amendments will be addressed at that time. So far as the amendment relates to earthworks I reject their submission on this matter.
421. In my view it would be most efficient and effective to cross-reference to the relevant permitted activity ECO rules rather than specify which activities are appropriate. I therefore agree in part with Forest & Bird's amendments, noting again that references to ECO rules may be subject to change following the ECO hearing.
422. I further agree with Forest & Bird that there should be a standard associated with limits on the amounts of earthworks for walking and farm tracks in EW-R7.1. To this extent I note that EW-R2 – EW-R5 are applicable permitted activity rules for earthworks associated with walking or cycling tracks in the Open Space and Recreation Zones, and farm tracks within the General Rural Zone, which are subject to compliance with EW-S8 and EW-S9 respectively. As per the application of rules, EW-R7 would not apply to any earthworks activity that are described and catered for solely by EW-R2 – EW-R5. As such, I recommended that EW-R7.1.a.ii and v be deleted as these activities are provided for in EW-R2 – EW-R5 with associated standards.
423. In response to Forest & Bird [345.362 and 345.376] seeking a new non-complying rule for earthworks where the SNA contains matters identified in policy 11 NZCPS, and associated hook in the restricted discretionary activity rule, I agree that this is appropriate in giving effect to the NZCPS. To this extent I have recommended a new non-complying rule, in a manner that is consistent with the relevant 'sister' rule ECO-R1.6.

Summary of Recommendations

424. **HS5-EW-Rec84:** That EW-R7 is amended as set out below and detailed in Appendix A, subject to any amendments arising from Hearing 8.

1. Activity status: **Permitted**

Where:

- a. The earthworks:
- i. do not involve the removal of any indigenous vegetation or habitat of indigenous fauna; or
 - ~~ii. are for the maintenance of existing public walking or cycling tracks, as carried out the Council, GWRC, or their approved contractor; or~~
 - iii. are associated with permitted activities provided for in ECO-R1.1. ECO-R1.2, ECO-R2.1 or ECO-R3.1 are required for the purpose of ECO-R1.1.a.iv; or
 - iv. required for the purpose of ECO-R1.a.viii (installation of services); or
 - ~~v. associated with the fencing, farm drainage creating farm access tracks in accordance with ECO-R1.2.a.i or ECOR1.2.a.ii or ECO-R1.2.a.iv.~~

2. Activity status: Restricted Discretionary

Where:

- a. Compliance with any of the requirements of EW-R7.1 cannot be achieved ~~and~~
- b. The significant natural area does not include matters identified in policy 11 of the NZ Coastal Policy Statement.

Matters of discretion are:

1. The matters in EW-P10.

3. Activity status: Non-complying

Where:

1. The significant natural area includes matters identified in Policy 11(a) of the New Zealand Coastal Policy Statement 2010 where located within the Coastal Environment.

Section 88 requirements:

Applications for activities within an identified significant natural area must provide, in addition to the standard information requirements, an ecological assessment in accordance with APP15:

1. Identifying the indigenous biodiversity values and potential impacts from the proposal; and
2. Demonstrating that ECO P5 has first been met, and the effects management hierarchy at ECO-P2 has been applied to other adverse effects.

425. **HS5-EW-Rec85:** That submission points relating to EW-R7 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

426. In my opinion, the amendments recommended to EW-R7 are the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that the amended rule:

- a. Provides a workable pathway for compliance.
- b. Provides alignment with the NZCPS (Policy 11). Consequently, the amendments are more efficient and effective than the notified provisions in achieving the objectives of the PDP.

427. The environmental, economic, social and cultural effects of the recommended amendments, as they vary somewhat from the existing plan s32 evaluation report, are below.

Environmental	<ul style="list-style-type: none">• Ensures that the potential effects of earthworks in SNAs in the coastal environment are managed appropriately.
Economic	<ul style="list-style-type: none">• Would impose additional consenting and assessment costs on property owners and developers in SNAs in the coastal

	environment.
Social	<ul style="list-style-type: none"> There are unlikely to be any additional social costs or benefits compared to the notified proposal.
Cultural	<ul style="list-style-type: none"> No cultural effects are identified.

3.10.8 EW-R12: Earthworks within riparian margins (outside the coastal environment)

Matters Raised by Submitters

428. WCC Environmental Reference Group [377.307] seek that EW-R12 is retained as notified.
429. Forest & Bird [345.380] seek clarification on what is meant by 'Compliance is achieved with EW-12'.

Assessment

430. In response to Forest & Bird [345.380], I agree that clarification is required to correct an error. I recommend the reference 'EW-12' be amended refer to 'EW-S12', being the relevant standard.

Summary of Recommendations

431. **HS5-EW-Rec86:** That EW-R12 is amended as set out below and detailed in Appendix A.

<p>EW-R12 Earthworks within riparian margins (outside the coastal environment)</p> <p>1. Activity status: Permitted</p> <p>Where:</p> <p>a. Compliance is achieved with EW-S12.</p>

432. **HS5-EW-Rec87:** That submission points relating to EW-R12 are accepted/rejected as detailed in Appendix B.

3.10.9 EW-R13: Earthworks within special amenity landscapes

Matters Raised by Submitters

433. WCC Environmental Reference Group [377.308] and Kilmarston [290.46] seek that EW-R13 is retained as notified.
434. Forest & Bird [345.381] oppose EW-R13 on the basis it does not appear to give effect to policy 15 NZCPS, where the SAL is in the coastal environment.

Assessment

435. In response to Forest & Bird [345.381] I note that EW-R13.2 has EW-P14 as a matter of

discretion, of which EW-P14 distinguishes between SAL located outside the coastal environment and within the coastal environment, with the latter held to a higher test consistent with the directive of Policy 15 of the NZCPS. I also note that the relevant 'sister' policies NFL-P3 and NFL-P4 similarly differentiate between SAL within and outside of the coastal environment, of which both policies begin with 'provide for...'. The Natural Features and Landscapes rule for activities within SAL is restricted discretionary and refers to both NFL-P3 and NFL-P4 as matters of discretion. On this basis the approach in the Earthworks chapter is consistent with the approach of the parent NFL chapter.

436. It is important to note that Forest & Bird have made submissions on the NFL parent chapter provisions for SAL, including how these relate to the NZCPS. In my view 'Avoid' is a more appropriate directive for earthworks within SAL within the coastal environment, consistent with the NZCPS, however this is a broader matter beyond the scope of submissions at hand, and is more appropriately addressed in the NFL hearing as the parent chapter setting the direction for SAL provisions. Any changes to the outcomes and direction as applicable to SAL within or outside of the coastal environment at Hearing Stream 8 can be consequentially updated as relevant to the Earthworks chapter to ensure consistency with the parent NFL chapter.
437. As a consequential amendment for consistency, for the reasons set out in paragraph 445 of this report, I recommend an administrative amendment to EW-R13.1 to clarify the intent and application of the rule framework.

Summary of Recommendations

438. **HS5-EW-Rec88:** That EW-R13 is amended as set out below and detailed in Appendix A, subject to any amendments arising from Hearing 8.

EW-R13 Earthworks within special amenity landscapes

1. Activity status: Permitted

Where:

- ~~a. Compliance is achieved with EW-S13, or~~
- ~~b. Earthworks are for the maintenance or construction of farm tracks required for permitted rural activities; and~~
- ~~c. Compliance is achieved with EW-S8.~~

439. **HS5-EW-Rec89:** That submission points relating to EW-R13 are accepted/rejected as detailed in Appendix B.

3.10.10 EW-R14: Earthworks within outstanding natural features and landscapes

Matters Raised by Submitters

440. WCC Environmental Reference Group [377.309] seek that EW-R14 is retained as notified.
441. Forest & Bird [345.382] oppose EW-R14 on the basis it does not appear to give effect to policy

15 NZCPS, where the ONFL is in the coastal environment.

442. Zealandia [486.8] submit that EW-R14 be amended with an additional clause that enables Zealandia operations to continue as per other areas in the plan, and seek that the Karori Sanctuary Trust is listed as an approved operator.

Assessment

443. In response to Forest & Bird [345.382], I disagree as in my view EW-R14 gives effect to Policy 15 of the NZCPS as earthworks within ONFL that are located within the coastal environment are a non-complying activity under EW-R14.3. The activity status of EW-R14.3 reflects the 'sister' rule NFL-R4 where activities within ONFL are discretionary activities when outside of the Coastal Environment and then non-complying activities when located within the Coastal Environment. I also note that the wording of EW-P15 directly reflects the wording of the relevant 'sister' policies NFL-P5 and NFL-P6. On this basis the approach in the Earthworks chapter is consistent with the approach of the parent NFL chapter.
444. It is important to note that Forest & Bird have made submissions on the NFL parent chapter provisions for ONFL, including how these relate to the NZCPS. Any changes to the outcomes and direction as applicable to ONFL within or outside of the coastal environment at Hearing Stream 8 can be consequentially updated as relevant to the Earthworks chapter to ensure consistency with the parent NFL chapter.
445. In response to Zealandia [486.8], I firstly note that the 'Application of rules in this Chapter' section sets out that EW-R6 to EW-R19 and EW-21 to EW-24 do not apply to earthworks that are described and catered for solely by EW-R1 to EW-R5. To this extent, I disagree with Zealandia and recommend that EW-R14.1 be deleted. 'Conservation activities'²³ are a permitted activity in the Natural Open Space Zone (NOSZ-R2) and General Rural Zone (GRUZ-R6). As such earthworks for the purpose of maintaining tracks associated with conservation activities would be permitted under EW-R2, EW-R3, EW-R4, or EW-R5 dependent on their location within either the General Rural Zone or Natural Open Space Zone. These rules, and recommended amendments to clarify the intent and application of these rules are further addressed in section 3.7 of this report.

Summary of Recommendations

446. **HS5-EW-Rec90:** That EW-R14 is amended as set out below and detailed in Appendix A, subject to any amendments arising from Hearing 8.

²³ means the use of land for activities undertaken for the purposes of maintaining, protecting and/or enhancing the natural and/or ecological values of a natural resource. It may include activities which assist to enhance the public's appreciation and recreational enjoyment of the resource, including: a. species protection and conservation management work, including restoration and revegetation; b. pest and weed control; and c. educational activities.

EW-R14 Earthworks within outstanding natural features and landscapes

~~1. Activity status: Permitted~~

~~Where:~~

- ~~a. Earthworks are for the maintenance or construction of farm tracks required for permitted rural activities; and~~
- ~~b. Compliance is achieved with EW-S8.~~

~~2.~~ 1. Activity status: Restricted Discretionary

Where:

- a. Compliance is achieved with EW-S13; and
- ~~b. The earthworks are located outside the coastal environment; or~~
- ~~c. Compliance with EW-R14.1 cannot be achieved.~~

447. **HS5-EW-Rec91:** That submission points relating to EW-R14 are accepted/rejected as detailed in Appendix B.

3.10.11 EW-S13: Earthworks within outstanding natural features and landscapes, within special amenity landscapes and within the ridgelines and hilltops in the Upper Stebbings Glenside West Development Area

Matters Raised by Submitters

448. Kilmarston [290.47] seek that EW-S13 is retained as notified.

449. John Tiley [142.20] and Churton Park Community Association [189.20] submit that the EW-S13 assessment criteria for assessing applications made under EW-R15 are entirely subjective and offer no protection for ridgelines, and seek that the standard is rewritten.

450. WCC [266.123] seek to amend EW-S13 for consistency with other amendments in relation to the ridgetop area of the Upper Stebbings and Glenside West Development Area, as follows:

EW-S13 Earthworks within outstanding natural features and landscapes, within special amenity landscapes and within the ridgelines and hilltops in the Upper Stebbings-Glenside West Development Area Earthworks within: outstanding natural features and landscapes; special amenity landscapes; ridgelines and hilltops overlay; or the ridgetop area of the Upper Stebbings and Glenside West Development Area

1. Earthworks must not exceed:
 - a. A maximum cut height or fill depth greater than 1.5m above ground level measured vertically; and
 - b. the following within any 5-year period:
 - i. 100m² in total area per site within an identified outstanding natural feature and landscape; or
 - ii. 200m² in total area per site within identified special amenity landscapes; or
 - iii. 200m² in total area per site within the ridgelines and hilltops overlay or the ridgetop area in the Upper Stebbings and Glenside West Development Area.

Assessment criteria where the standard is infringed:

1. The extent and effect of non-compliance on identified values and characteristics of outstanding natural features and landscapes, special amenity landscapes, ~~and the ridgelines and hilltops, and in the ridgetop area in the~~ Upper Stebbings and Glenside West Development Area and the ability to integrate and be sympathetic with the surrounding landform; and
2. The degree to which the effect of the earthworks can be remedied or mitigated.

Assessment

451. In response to John Tiley [142.20] and Churton Park Community Association [189.20], I refer to my related assessment in section 3.13 of this report, in particular my recommended amendments to EW-R15 to provide stronger protection for the ridgetop area.

452. I disagree that the assessment criteria for assessing applications made under EW-R15 are entirely subjective. Instead, it directs the plan reader to consider the ability of the earthworks to integrate and be sympathetic with the surrounding landform, and the degree to which the effect of the earthworks can be remedied or mitigated. I note that the intent of standards is to guide plan users towards considering specified environmental effects, as opposed to being 'gate-keeping' conditions for establishing consent status.

453. I also note that any earthworks within the ridgelines and hilltops or the ridgetop area of the Upper Stebbings and Glenside West Development Area will also be assessed under the general earthworks rule EW-R6 and associated standards. Any non-compliance with EW-S2 or EW-S3 will trigger assessment criteria EW-S2.1.9 and EW-S3.1.9 in relation to the need for, and effectiveness of, measures to reduce the visual prominence and particularly visual intrusiveness of the earthworks. In my view, when the provisions are read as a whole, there is suitable assessment criteria for the protection of ridgelines and hilltops, and the ridgetop area.

454. In response to WCC [266.123], I agree with the amendments as they will provide clarity consistency with other amendments in relation to the ridgetop area of the Upper Stebbings and Glenside West Development Area. This is further addressed in section 3.13 of this report.

Summary of Recommendations

455. **HS5-EW-Rec92:** That EW-S13 is amended as set out below and detailed in Appendix A.

EW-S13 ~~Earthworks within outstanding natural features and landscapes, within special amenity landscapes and within the ridgelines and hilltops in the Upper Stebbings-Glenside West Development Area~~ Earthworks within: outstanding natural features and landscapes; special amenity landscapes; ridgelines and hilltops overlay; or the ridgetop area of the Upper Stebbings and Glenside West Development Area

2. Earthworks must not exceed:
 - c. A maximum cut height or fill depth greater than 1.5m above ground level measured vertically; and
 - d. the following within any 5-year period:
 - iv. 100m² in total area per site within an identified outstanding natural feature and landscape; or
 - v. 200m² in total area per site within identified special amenity landscapes; or
 - vi. 200m² in total area per site within the ridgelines and hilltops overlay or the ridgetop area in the Upper Stebbings and Glenside West Development Area.

Assessment criteria where the standard is infringed:

3. The extent and effect of non-compliance on identified values and characteristics of outstanding natural features and landscapes, special amenity landscapes, ~~and the ridgelines and hilltops, and in the ridgetop area in the~~ Upper Stebbings and Glenside West Development Area and the ability to integrate and be sympathetic with the surrounding landform; and
4. The degree to which the effect of the earthworks can be remedied or mitigated.

456. **HS5-EW-Rec93:** That submission points relating to EW-S13 are accepted/rejected as detailed in Appendix B.

3.11 Coastal Environment

457. To the extent possible I have assessed and made recommendations as applicable to earthworks provisions relevant to the Coastal Environment chapter within this section, noting that submissions relating more broadly to the coastal environment will be heard and considered in Hearing Stream 8. Given the interrelated nature of the earthworks and parent chapter provisions, the outcome of Hearing Stream 8 deliberations could have a material bearing on the recommendations contained in this section.

3.11.1 EW-P11: Earthworks within High Coastal Natural Character Areas within the coastal

environment

Matters Raised by Submitters

458. WCC Environmental Reference Group [377.291] seek that EW-P11 is retained as notified.
459. Forest & Bird [345.366] submit that it is inconsistent with NZCPS policy 13 to only extend protection to high natural character areas, and seek that EW-P11 apply to any area of natural character in the coastal environment, not only High Coastal Natural Character Areas in SCHED 12.

Assessment

460. In response to Forest & Bird [345.366] Policy 13 of the NZCPS differentiates between ‘outstanding natural character’ and natural character more broadly. Policy 13.1.a of the NZCPS directs that adverse effects of activities in areas of ‘outstanding natural character’ in the coastal environment are to be avoided. Policy 13.1.b then directs that only significant adverse effects are avoided, and other adverse effects on natural character in all other areas of the coastal environment are to be avoided, remedied, or mitigated.
461. The directive of the NZCPS is then reflected in the PDP through the differentiation of ‘high natural character areas’ identified in SCHED12 and the corresponding policy directive in the Coastal Environment Chapter. CE-P5 addresses use and development in high coastal natural character areas, while CE-P6/CE-P7 address use and development in the coastal environment more broadly – including in relation to natural character.
462. As it relates to the earthworks provisions, this is reflected in the differentiation between EW-P11 and EW-P12, with EW-P11 addressing ‘high natural character areas’ while EW-P12 addresses all other areas of natural character within the coastal environment.
463. ‘Coastal Natural Character Areas’ are defined in the PDP as follows:
- means an area of very high or high coastal natural character identified in SCHED12 – High Coastal Natural Character Areas.*
464. I acknowledge though that this definition may be interpretively confusing as it refers to both ‘very high or high coastal natural character’ values, whereas the use of this definition in the PDP, including within Coastal Environment chapter, is accompanied by the word ‘high’ i.e. ‘High Coastal Natural Character Areas’. In my view it would be beneficial to amend the definition to ‘High Coastal Natural Character Areas’. This is however a matter for the Coastal Environment hearing and would necessitate consequential amendments throughout the PDP – including in EW-R10.
465. As it relates to earthworks, in response to Forest & Bird [345.366] it is my view that the earthworks provisions framework appropriately addresses high natural character in EW-P11 and natural character more broadly in EW-P12, consistent with NZCPS Policy 13.
466. Any changes to the outcomes and direction as applicable to High Coastal Natural Character Areas at Hearing Stream 8 can be consequentially updated as relevant to the Earthworks chapter to ensure consistency with the parent ECO chapter.

Summary of Recommendations

- 467. **HS5-EW-Rec94:** That EW-P11 be confirmed as notified, subject to any amendments arising from Hearing 8.
- 468. **HS5-EW-Rec95:** That submission points relating to EW-P11 are accepted/rejected as detailed in Appendix B.

3.11.2 EW-P12: Earthworks within coastal margins and riparian margins within the coastal environment

Matters Raised by Submitters

- 469. WCC Environmental Reference Group [377.292] and the Director-General of Conservation [385.74] seek that EW-P12 is retained as notified.
- 470. Forest & Bird [345.367] submit that the policy is not clear as to whether the requirements in clauses 1-5 also apply to the Port Zone etc, but consider those requirements do need to apply in all zones.
- 471. GWRC [351.237] consider that the tenure of EW-P12 is more enabling than other similar policies and seek to replace the beginning of the policy with 'Only allow for...'
- 472. WIAL [406.365] (opposed by Guardians of the Bays [FS44.135]) oppose EW-P12 to the extent that it does not recognise or provide for the existing hard engineering structures located between Lyall Bay and Moa Point which protect regionally significant infrastructure, including WCC's wastewater network and Wellington International Airport, as well as Moa Point Road, from the effects of coastal erosion. WIAL have proposed three different options as detailed below:

- a. WIAL [406.366] (opposed by Guardians of the Bays [FS44.136]) propose to amend EW-P12 as follows:

EW-P12 Earthworks within coastal margins and riparian margins within the coastal environment

Provide for earthworks within coastal margins and riparian margins within the coastal environment where located inside the Port Zone, Airport Zone, Stadium Zone, Waterfront Zone or City Centre Zone, and within the Natural Open Space Zone between Lyall Bay and Moa Point; and

Only allow for earthworks within coastal and riparian margins in the coastal environment located outside of the Port Zone, Airport Zone, Stadium Zone, Waterfront Zone or the City Centre Zone or the Natural Open Space Zone between Lyall Bay and Moa Point where:

1. They are of a scale and for a purpose that is compatible with the natural character of the coastal or riparian margin concerned;
2. They are undertaken in a manner that avoids significant adverse effects and avoids, remedies or mitigates any other adverse effects on the natural character of the coastal environment and the affected margins;
3. There is a functional need or operational need for the earthworks to be undertaken within a coastal or riparian margin;
4. They would not significantly increase the flooding risk, when compared to the existing situation, including by compromising the effectiveness of community scale natural hazard mitigation structures; and
5. They incorporate measures to restore and rehabilitate disturbed areas; and
6. They involve earthworks that support or protect regionally significant infrastructure.

- b. WIAL [406.367] (opposed by Guardians of the Bays [FS44.137]) propose to amend EW-P12 to a similar effect as above if the area of Natural Open Space zoned land is rezoned to an alternative zoning.
- c. WIAL [406.368] (opposed by Guardians of the Bays [FS44.138]) propose to delete EW-P12 in its entirety.

Assessment

473. In response to Forest & Bird [345.367] and GWRC [351.237] the intent of the policy is to differentiate between providing for earthworks in certain zones (Port, Airport, Stadium, Waterfront, and City Centre) and only allowing for earthworks in other zones where they align with clauses 1-5.
474. The policy beginning with 'Provide for' reflects the specific carve out for the Port, Airport, Stadium, Waterfront, and City Centre Zones, and directly corresponds to CE-P6²⁴ in acknowledgement that these zones have a substantial land area located within what is a highly modified coastal environment.

²⁴ CE-P6: Provide for use and development within coastal margins and riparian margins in the coastal environment where it is located in the highly modified Port Zone, Airport Zone, Stadium Zone, Waterfront Zone or City Centre Zone or Evans Bay Marine Recreation Area.

475. In my view the distinction between where clauses 1-5 apply is clear in the phrasing of the policy. However, if the panel were of mind to grant relief in relation to this matter, one option could be to split out EW-P12 in a manner similar to its 'sister' policies' CE-P6 and CE-P7.
476. As to the matter of whether clauses 1-5 should apply regardless of zoning in order to give effect to the NZCPS, I consider this would be more appropriately addressed in the Coastal Environment hearing in response to submission points Forest & Bird have made on this same matter. However, as it relates to the earthworks chapter, it is my view that that the provision framework is consistent with the NZCPS, in particular I note Policy 6(1)(b)²⁵, (c)²⁶ and (f)²⁷ which are enabling of development in the coastal environment where other values of the coastal environment are not compromised.
477. In response to WIAL [406.365, 406.366, 406.367, 406.368] I acknowledge that existing hazard mitigation structures are located in the peripheral Natural Open Space Zone and not the Airport Zone. I note that WIAL [406.498] has made associated submission points on this matter as it relates to the Natural Open Space Zone. I consider that the rezoning matter would be more appropriately addressed as part of Hearing Stream 7 on Open Space and Recreation Zones, with any consequential amendments to the Earthworks chapter considered then.
478. As to adding a new clause that 'they involve earthworks that support or protect regionally significant infrastructure', I do not consider this appropriate because all clauses of EW-P12 apply. Therefore, adding this clause would limit earthworks that do not support or protect regionally significant infrastructure. Instead, I consider that EW-P12.3 suitably addresses this matter.
479. I also do not consider it appropriate to include reference to the Natural Open Space Zone between Lyall Bay and Moa Point in the policy or delete EW-P12 in its entirety. The intent of the policy is to distinguish between areas of the coastal environment that are highly modified, of which the Natural Open Space Zone does not meet this criterion. This matter is further assessed in response to the submissions of WIAL as it relates to the associated rule framework in section 3.11.4 of this report.

Summary of Recommendations

480. **HS5-EW-Rec96:** That EW-P12 be confirmed as notified, subject to any amendments arising from Hearing 7.
481. **HS5-EW-Rec97:** That submission points relating to EW-P12 are accepted/rejected as detailed in Appendix B.

3.11.3 EW-R10: Earthworks within High Coastal Natural Character Areas within the coastal environment

²⁵ consider the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment;

²⁶ encourage the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and urban growth;

²⁷ consider where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable;

Matters Raised by Submitters

- 482. WCC Environmental Reference Group [377.305] seek that EW-R10 is retained as notified.
- 483. Forest & Bird [345.378] submit that in order to give effect to NZCPS policy 13, EW-R10 should apply in all areas of natural character in the coastal environment, not only High Coastal Natural Character Areas in SCHED12.

Assessment

- 484. In response to Forest & Bird [345.378] I note that that 'Coastal Natural Character Areas' is a defined term and refer to parallel assessment and reasoning in section 3.11.1 above.
- 485. The earthworks provisions framework addresses 'high natural character areas' in EW-R10 while EW-R11 addresses natural character in the coastal environment more broadly. EW-R10.1 is a restricted discretionary activity where compliance is achieved with EW-S11. This standard sets a higher level of protection for earthworks in 'high natural character areas' including that earthworks must not exceed 100m² in total area per site within any 5-year period.
- 486. I note that any earthworks undertaken within 'high natural character areas' under EW-R10 would also be assessed under EW-R11 – at which point EW-P12 that relates to natural character of the coastal environment is a relevant matter of discretion.

Summary of Recommendations

- 487. **HS5-EW-Rec98:** That EW-R10 be confirmed as notified, subject to any amendments arising from Hearing 8.
- 488. **HS5-EW-Rec99:** That submission points relating to EW-R10 are accepted/rejected as detailed in Appendix B.

3.11.4 EW-R11: Earthworks within coastal or riparian margins within the coastal environment

Matters Raised by Submitters

- 489. WCC Environmental Reference Group [377.306] seek that EW-R11 is retained as notified.
- 490. Forest & Bird [345.379] (opposed by WIAL [FS36.142]) seek that EW-R11 is amended to give effect to the NZCPS, which must be complied with regardless of zoning.
- 491. CentrePort [402.128] support EW-R11 subject to resolving their submission point on EW-S1. Their submission point on EW-S1 [402.132] is addressed in section 3.6.12 of this report.
- 492. WIAL [406.369 and 406.370] (opposed by Guardians of the Bays Inc [FS44.139 and FS44.140]) seek that EW-R11 be amended to include the relevant area of Natural Open Space zoned land, between Lyall Bay and Moa Point in order to provide for the existing hard engineering structures located between Lyall Bay and Moa Point which protect regionally significant infrastructure.
- 493. WIAL [406.371 and 406.372] (opposed by Guardians of the Bays Inc [FS44.141 and FS44.142]) submit that EW-R11 is inefficient and does not relate to effects management within the coastal environment. Instead, the trigger is non-compliance with a general earthworks rule (EW-R6) and

associated standards. WIAL notes that EW-R6 is subject to the ISPP, which it considers is inappropriate for activities that do not have a clear link to one of the mandatory outcomes.

Assessment

494. In response to Forest & Bird [345.379], I refer to my related assessment in section 3.11.1 above. It is my view that EW-R11 does give effect to the NZCPS, noting that NZCPS Policy 13 differentiates between areas of 'outstanding natural character' and natural character in all other areas. This again reflects the directive of the parent chapter and 'sister' policy CE-R8 that is more enabling of activities in the Port, Airport, Stadium, Waterfront, and City Centre Zones in acknowledgement that these zones have a substantial land area located within what is a highly modified coastal environment. This however, is not the case for EW-R10 and CE-R9 which address earthworks and activities within 'high natural character areas' consistent across all zones.
495. As to the matter of whether EW-R11 must be complied with regardless of zoning in order to give effect to the NZCPS, I consider this would be more appropriately addressed in the Coastal Environment hearing in response to submission points Forest & Bird have made on this same matter. However, as it relates to the earthworks chapter, it is my view that that the provision framework is consistent with the NZCPS, in particular I note Policy 6(1)(b)²⁸, (c)²⁹ and (f)³⁰ which are enabling of development in the coastal environment where other values of the coastal environment are not compromised.
496. In response to WIAL [406.371 and 406.372] who consider that EW-R11 is inefficient. I firstly note that EW-R11 does not apply to the Airport Zone, because as per the 'Application of rules in this Chapter' section:
- The provisions of this chapter do not apply in relation to activities provided for in the Airport Chapter, except to the extent specified in EW-R20 and EW-S14.*
497. However, for completeness, the intent of requiring compliance with EW-R6 is to acknowledge that where an activity in the Port, Stadium, Waterfront, and City Centre Zones complies with EW-R6, given the highly modified coastal environment within these zones, there are unlikely to be any adverse effects on coastal or riparian margins if all the general earthworks standards are complied with. Further to this, as per the 'Application of rules in this Chapter' section, any earthworks activity being assessed under EW-R11 would by default also be assessed under EW-R6 as it applies to all earthworks. To this extent I disagree with WIAL.
498. In response to WIAL [406.369 and 406.370], I note that their reasoning for seeking amendment to include the area of Natural Open Space zoned land between Lyall Bay and Moa Point is to enable earthworks associated with an existing seawall. As I understand it, this seawall is a 'hard engineering natural hazard mitigation structure' which as per the directive of CE-P26 and

²⁸ consider the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment;

²⁹ encourage the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and urban growth;

³⁰ consider where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable;

associated rule CE-R24 – hard engineering measures in the high coastal hazard area are a discretionary activity. In my view, hard engineering natural mitigation works are inherently related to a structure, whereas soft engineering and green infrastructure more directly involve earthworks. Given the seawall is existing, any maintenance and repair would most likely relate to aspects of the structure rather than earthworks. This would be permitted under NOSZ-R13.

499. I note that at paragraphs 988-992 of the Natural and Coastal Hazards s42A Report, Mr Sirl has recommended amendments to CE-R24 to allow maintenance and repair of existing hard engineering natural hazard mitigation structures, or upgrades of these structures that protect existing regionally or nationally significant infrastructure. On this basis, I consider the concerns of WIAL and their relief sought as set out at paragraph 4.45³¹ of their original submission are suitably addressed.
500. Where earthworks are required, I consider that restricted discretionary activity status is appropriate under EW-R11.3 as given the location within the coastal environment any earthworks could give rise to unintended or unforeseen consequences.
501. I also refer to my assessment in section 3.12.3 of this report, as to adding Wellington International Airport to the listed entities permitted to undertake earthworks associated with natural hazard mitigation works within the Flood Hazard Overlays and Coastal Hazard Overlays under EW-R17. I note that this amendment would permit earthworks associated with natural hazard mitigation works, whilst still needing to be assessed under the relevant overlay rules of which EW-R11 is one.

Summary of Recommendations

502. **HS5-EW-Rec100:** That EW-R11 be confirmed as notified, subject to any amendments arising from Hearing 8.
503. **HS5-EW-Rec101:** That submission points relating to EW-R11 are accepted/rejected as detailed in Appendix B.

3.11.5 EW-S11: Earthworks in areas of high coastal natural character within the Coastal Environment and EW-S12: Earthworks in coastal or riparian margins

504. There were no submissions received in relation to EW-S11 and EW-S12. I recommend that these standards are confirmed as notified, and have not assessed them further.

3.12 Natural and Coastal Hazards

505. For this section of the report I acknowledge that there might not be clear scope within the submissions at hand, however it would be beneficial for plan efficiency if the panel were to consider the proposed amendments I have set out. These proposed amendments will provide consistency with the ‘parent’ chapters, in line with the recommendations of Mr Sirl contained in the Natural and Coastal Hazards s42A Report.

³¹ The planning framework, insofar as it relates to the seawall between Lyall Bay and Moa Point, should be updated to enable the ongoing maintenance, repair, upgrading and renewal of the existing seawall where it protects regionally significant infrastructure.

3.12.1 EW-P16: Earthworks within Flood Hazard Overlays

Matters Raised by Submitters

506. GWRC [351.238] seek that EW-P16 is retained as notified.

Assessment

507. No further assessment is required.

Summary of Recommendations

508. **HS5-EW-Rec102:** That EW-P16 be confirmed as notified.

509. **HS5-EW-Rec103:** That submission points relating to EW-P16 are accepted/rejected as detailed in Appendix B.

3.12.2 EW-P17: Earthworks on community scale natural hazard mitigation structures

Matters Raised by Submitters

510. Forest & Bird [345.371] and GWRC [351.239] seek that EW-P17 is retained as notified.

Assessment

511. No further assessment is required as the submissions have sought that EW-P17 is retained as notified.

512. However, I note that at paragraphs 71-74 of the Natural and Coastal Hazards s42A Report, Mr Sirl has assessed and made recommendations on the definition of 'Community Scale Natural Hazard Mitigation Structures'. For ease of reference, the key matters Mr Sirl has addressed are:

- a. That the definition for 'Community Scale Natural Hazard Mitigation Structures' is only referenced in the PDP in the Earthworks Chapter in EW-P12, EW-P13 and EW-P17, and is not used in the Natural Hazards or Coastal Hazards provisions.
- b. That the definition of 'Community Scale Natural Hazard Mitigation Structures' definition be deleted in its entirety, with consequential amendments made to clarify the specific entities in each of the relevant provisions.

513. On this basis, the deletion of this definition in turn makes EW-P17, in my view, redundant. Particularly when noting that the definition (and therefore EW-P17) were intended to address natural hazard mitigation works that serve multiple properties and are constructed and administered by listed entities. I note that EW-P18 and EW-P19 both list out the same entities to undertake natural hazard mitigation works, and also both policies reference either 'benefit to a collective group' or 'natural hazard reduction benefit at a community scale'. To this extent, the matters of EW-P17 are in my view covered by EW-P18 and EW-P19.

514. As such, I consider that inclusion of all three natural hazard mitigation earthworks policies is duplicative, inefficient and confusing, particularly given there are existing inconsistencies across the phrasing of clauses. For the purpose of plan efficacy, I suggest as a proposed amendment that EW-P17 be deleted in its entirety. To this extent I disagree with the submissions of Forest

& Bird and GWRC.

Summary of Recommendations

515. **HS5-EW-Rec104:** That EW-P17 be deleted in its entirety.

~~**EW-P17 Earthworks on community scale natural hazard mitigation structures**~~

~~Only allow for earthworks on community scale natural hazard mitigation structures where:-~~

- ~~1. The community scale natural hazard mitigation structures are fully reinstated to the original profile and condition that existed prior to the commencement of the earthworks;~~
- ~~2. The earthworks do not compromise the short or long term integrity of the community scale natural hazard mitigation structures; and~~
- ~~3. The earthworks to reinstate the community scale natural hazard mitigation structures are undertaken in accordance with accepted engineering practices.~~

516. **HS5-EW-Rec105:** That submission points relating to EW-P17 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

517. In my opinion, the deletion of EW-P17 is the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that:

- a. The proposed deletion is consistent with the recommendations in the Natural and Coastal Hazards s42A Report, including deletion of the associated definition 'community scale natural hazard mitigation structures'.
- b. The deletion of the policy simplifies, reduces unnecessary duplication and clarifies the provision framework for natural hazard mitigation structures in the PDP which reduces the likelihood of interpretative issues when applying relevant provisions of the plan. Consequently, they are more efficient and effective than the notified provisions in achieving the objectives of the PDP.
- a. The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

3.12.3 EW-P18: Earthworks associated with natural hazard mitigation works

Matters Raised by Submitters

518. Forest & Bird [345.372] and GWRC [351.240] seek that EW-P18 is retained as notified.

519. CentrePort [402.123 and 402.124] submit that CentrePort should be listed as appropriate to carry out natural hazard mitigation works, noting that they hold considerable land that also adjoins the Coastal Marine Area and has extensive network and land transport infrastructure within these landholdings. Their amendment sought is as follows:

EW-P18 Earthworks associated with natural hazard mitigation works

Enable earthworks associated with natural hazard mitigation works where:

1. They provide a natural hazard risk reduction benefit at a community scale;
2. They are part of a planned natural hazard mitigation works programme by a central government agency, GWRC, the Council, CentrePort or a nominated contractor or agent and will be maintained by one or more of these parties at the completion of the works;
3. They do not result in an increase in natural hazard risk to any other property;
4. They are constructed in accordance with approved engineering practices; and
5. There is a maintenance programme for the natural hazard mitigation works to ensure their on-going effectiveness.

Assessment

520. I firstly note that there is a discrepancy between ‘*Central Government Agency*’ as used in the Earthworks chapter and the phrasing in the Natural Hazards and Coastal Environment chapter which is ‘The works must be undertaken by either a *Crown entity*, Regional or Territorial Authority or an agent on their behalf’. In my view there is a need for consistent terminology. I note that Mr Sirl at paragraph 73 of the Natural and Coastal Hazards s42A Report has made the same observation.
521. Mr Sirl has recommended that consequential amendments be made to clarify the specific entities in each of the relevant provisions. In response to a similar submission point from CentrePort [402.11] Mr Sirl at paragraph 73 of the Natural and Coastal Hazards s42A Report has recommended that:
522. *Subject to including CentrePort as one of the listed entities, I consider that the clarity sought by the submitter would best be achieved, whilst also addressing the existing inconsistencies across the plan in relation to permitted works relating to natural hazard mitigation works and structures, if the ‘Community Scale Natural Hazard Mitigation Structures’ definition was deleted in its entirety, with consequential amendments made to clarify the specific entities in each of the relevant provisions.*
523. For consistency in ensuring the same entities are referenced, I adopt the same recommendation of Mr Sirl at paragraph 74 of his s42A Report, that it is appropriate to include CentrePort, Wellington International Airport, KiwiRail, and Waka Kotahi where references to ‘Central Government Agency’ are referenced in the Earthworks chapter. Relying on the assessment of Mr Sirl, this aligns with the intent of these provisions as to entities that meet the ‘lifeline utilities’ provided for in the CDEM Act in protecting regionally significant infrastructure.
524. In response to CentrePort [402.123 and 402.124], I therefore consider it appropriate that CentrePort be listed in EW-R18.2 on the basis of alignment with Mr Sirl’s recommendations and noting that the company that operates Wellington Port is recognised in relation to ‘lifeline

utilities' in the CDEM Act, with the hazard mitigation works they would undertake falling under the protection of regional infrastructure.

Summary of Recommendations

525. **HS5-EW-Rec106:** That EW-P18 is amended as set out below and detailed in Appendix A.

EW-P18 Earthworks associated with natural hazard mitigation works

Enable earthworks associated with natural hazard mitigation works where:

1. They provide a natural hazard risk reduction benefit at a community scale;
2. They are part of a planned natural hazard mitigation works programme by ~~a~~ [Central Government Agency, GWRC Greater Wellington Regional Council, Wellington City Council the Council, Waka Kotahi, KiwiRail, CentrePort Limited, or Wellington International Airport Limited](#) or a nominated contractor or agent and will be maintained by one or more of these parties at the completion of the works;
3. They do not result in an increase in natural hazard risk to any other property;
4. They are constructed in accordance with approved engineering practices; and
5. There is a maintenance programme for the natural hazard mitigation works to ensure their on-going effectiveness.

526. **HS5-EW-Rec107:** That submission points relating to EW-P18 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

527. In my opinion, the amendments recommended to EW-P18 are the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that:

- a. It is a more targeted approach that replaces an unnecessarily broad term 'Central Government Agency' with references to the specific entities that are anticipated to carry out natural hazard mitigation works of a scale that protects multiple properties, people and significant infrastructure, and is consistent with the recommendations in the Natural and Coastal Hazards s42A Report.
- b. The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

3.12.4 EW-P19: Earthworks associated with soft engineering natural hazard mitigation works

Matters Raised by Submitters

528. Forest & Bird [345.373] and GWRC [351.241] seek that EW-P19 is retained as notified.

529. CentrePort [402.125 and 402.126] submit that CentrePort should be listed as appropriate to carry out natural hazard mitigation works, as follows:

EW-P19 Earthworks associated with soft engineering natural hazard mitigation works

Enable earthworks associated with soft engineering natural hazard mitigation works where:

1. They provide a natural hazard risk reduction benefit to either individual or a collective group of properties or infrastructure;
2. They are undertaken by a central government agency, GWRC, the Council, CentrePort or a nominated contractor or agent;
3. They do not result in an increase in natural hazard risk to any other property; and
4. There is a maintenance programme for the soft engineering natural hazard mitigation works to ensure their on-going effectiveness.

Assessment

530. In response to CentrePort [402.125 and 402.126] I refer to my assessment above in section 3.12.3 of this report that I consider it appropriate for CentrePort to be included within the listed entities appropriate to undertake natural hazard mitigation works.

531. However, as detailed above in section 3.12.2, beyond the scope of submissions at hand, in my view the inclusion of all three natural hazard mitigation earthworks policies is duplicative, inefficient and confusing, particularly given there are existing inconsistencies across the phrasing of clauses. In my view it would be most efficient and effective if there were policy direction enabling natural hazard mitigation works when undertaken by listed entities, and a broader directive where not undertaken by listed entities. This would reflect the earthworks rule framework that permits natural hazard mitigation works when undertaken by listed entities. This would also be consistent with the policy directive in the Natural Hazards chapter.

Summary of Recommendations

532. **HS5-EW-Rec108:** That EW-P19 is amended as set out below and detailed in Appendix A.

EW-P19 Earthworks associated with soft engineering natural hazard mitigation works

Enable earthworks associated with soft engineering natural hazard mitigation works where:

1. They provide a natural hazard risk reduction benefit to either individual or a collective group of properties or infrastructure;
2. They are undertaken by ~~a Central Government Agency, GWRC~~ Greater Wellington Regional Council, Wellington City Council, the Council, Waka Kotahi, KiwiRail, CentrePort Limited, or Wellington International Airport Limited or a nominated contractor or agent;
3. They do not result in an increase in natural hazard risk to any other property; and
4. There is a maintenance programme for the soft engineering natural hazard mitigation works to ensure their on-going effectiveness.

533. **HS5-EW-Rec109:** That submission points relating to EW-P19 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

534. In my opinion, the amendments recommended to EW-P19 are the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that:

- c. It is a more targeted approach that replaces an unnecessarily broad term 'Central Government Agency' with references to the specific entities that are anticipated to carry out natural hazard mitigation works of a scale that protects multiple properties, people and significant infrastructure, and is consistent with the recommendations in the Natural and Coastal Hazards s42A Report.
- d. The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

3.12.5 EW-R16: Earthworks within the Flood Hazard Overlay

Matters Raised by Submitters

535. GWRC [351.243] seek that EW-R16.2.1 be amended to refer to the correct policy reference EW-P16 instead of EW-P14.

Assessment

536. I agree with the policy reference correction identified by GWRC and recommend that this be amended. This will ensure that EW-P16 (Earthworks within Flood Hazard Overlays) is referenced as the relevant matter of discretion.

Summary of Recommendations

537. **HS5-EW-Rec110:** That EW-R16.2 is amended as set out below and detailed in Appendix A.

Matters of discretion are:

1. The matters in EW-P14~~6~~.

538. **HS5-EW-Rec111:** That submission points relating to EW-R16 are accepted/rejected as detailed in Appendix B.

3.12.6 EW-R17: Earthworks associated with natural hazard mitigation works within the Flood Hazard Overlays and Coastal Hazard Overlays

Matters Raised by Submitters

539. Kāinga Ora [391.278 and 391.279] seek that EW-R17 be amended so that the ability to undertake earthworks associated with natural hazard mitigation as a permitted activity is extended beyond the parties currently listed in this rule. The amendment sought by Kāinga Ora (opposed by GWRC [FS84.86]) is as follows:

EW-R17 Earthworks associated with natural hazard mitigation works within the Flood Hazard Overlays and Coastal Hazard Overlays

1. Activity Status: Permitted

Where:

- a. The natural hazard mitigation works are undertaken by a Central Government Agency, GWRC, the Council, Kāinga Ora, or a nominated contractor or agent for the express purpose of natural hazard mitigation works.

540. CentrePort [402.129 and 402.130] seek that CentrePort be listed as appropriate to carry out natural hazard mitigation works, as follows:

EW-R17 Earthworks associated with natural hazard mitigation works within the Flood Hazard Overlays and Coastal Hazard Overlays

1. Activity Status: Permitted

Where:

- a. The natural hazard mitigation works are undertaken by a Central Government Agency, GWRC, the Council, CentrePort or a nominated contractor or agent for the express purpose of natural hazard mitigation works.

Assessment

541. I refer to my assessment above in section 3.12.3 of this report. For those same reasons, including consistency, I consider:
- a. It appropriate that CentrePort [402.129 and 402.130] be listed in EW-R17.1.a on the basis of alignment with Mr Sirl’s recommendations and noting that the company that operates Wellington Port is recognises in relation to ‘lifeline utilities’ in the CDEM Act, with the hazard mitigation works they would undertake falling under the protection of regional infrastructure.
 - b. It is not appropriate that Kāinga Ora [391.278 and 391.279] be listed in EW-R17.1.a for the converse reason that, agreeing with GWRC [FS84.86], Kāinga Ora does not have a natural hazard mitigation works or emergency works mandate and should instead work with other agencies to undertake earthworks where relevant.

Summary of Recommendations

542. **HS5-EW-Rec112:** That EW-R17 is amended as set out below and detailed in Appendix A.

EW-R17 Earthworks associated with natural hazard mitigation works within the Flood Hazard Overlays and Coastal Hazard Overlays

1. Activity Status: Permitted

Where:

- a. The natural hazard mitigation works are undertaken by ~~a Central Government Agency, GWRC Greater Wellington Regional Council, Wellington City Council, the Council, Waka Kotahi, KiwiRail, CentrePort Limited, or Wellington International Airport Limited~~ or a nominated contractor or agent for the express purpose of natural hazard mitigation works.

543. **HS5-EW-Rec113:** That submission points relating to EW-R17 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

544. In my opinion, the amendments recommended to EW-R17 are the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that:

- a. It is a more targeted approach that replaces an unnecessarily broad term 'Central Government Agency' with references to the specific entities that are anticipated to carry out natural hazard mitigation works of a scale that protects multiple properties, people and significant infrastructure, and is consistent with the recommendations in the Natural and Coastal Hazards s42A Report.
- b. The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

3.12.7 EW-R18: Earthworks associated with soft engineering natural hazard mitigation works within Flood Hazard Overlays and Coastal Hazard Overlays

Matters Raised by Submitters

545. CentrePort [402.131] seek that CentrePort be listed as appropriate to carry out natural hazard mitigation and soft engineering works, as follows:

EW-R18 Earthworks associated with soft engineering natural hazard mitigation works within Flood Hazard Overlays and Coastal Hazard Overlays

1. Activity Status: Permitted

Where:

a. The soft engineering natural hazard mitigation works are undertaken by a central government agency, GWRC, the Council, CentrePort or a nominated contractor or agent for the express purpose of soft engineering natural hazard mitigation works.

Assessment

546. In response to CentrePort [402.131] I refer to my associated assessment in section 3.12.3 of this report, that I consider it appropriate for CentrePort to be included within the listed entities appropriate to undertake natural hazard mitigation works. However, on the basis of my assessment below I reject the relief sought.

547. However, beyond the scope of submissions, in my view it would be most appropriate for plan efficacy to delete EW-R18 in its entirety. The reason being that both EW-R17 and EW-R18 have the same intent – that is to enable earthworks associated with natural hazard mitigation works within Flood Hazard Overlays and Coastal Hazard Overlays as a permitted activity where undertaken by listed entities. The only difference is that EW-R18 specifies ‘soft engineering’ whereas EW-R17 is broader in that it applies to all with natural hazard mitigation works.

548. As I understand it, ‘soft engineering natural hazard mitigation works’ is a subset of the broader definition ‘natural hazard mitigation works’. To this extent, ‘soft engineering’ is by default captured by EW-R17, making EW-R18 redundant and duplicative. I therefore propose that EW-R18 is deleted in its entirety.

549. The policies in the PDP including NH-P17, CE-P24, and CE-P25 all encourage and enable green infrastructure. The associated rule framework NH-R3 and CE-R17 permit green infrastructure in all Natural Hazard Overlays and Coastal Hazard Overlays when undertaken by listed entities. Similarly, NH-R2 (Flood mitigation works within the Flood Hazard Overlays) is a permitted activity when undertaken by listed entities, or otherwise falls to be a discretionary activity.

550. Whereas, NH-P16 is broader, as follows:

Enable natural hazard mitigation or stream and river management works undertaken by a statutory agency or their nominated contractors or agents within Natural Hazard Overlays where these will significantly decrease the existing risk to people’s lives and wellbeing, property and infrastructure.

551. Hard engineering though is less desired, as reflected by the directive of CE-P26 and associated rule CE-R24 – that all hard engineering measures in the high coastal hazard area are a discretionary activity.

552. The policy and rule framework for natural hazard mitigation works is similar throughout the PDP, that when undertaken by a Regional or Territorial Authority, or an agent on their behalf, the activity is permitted. By way of example, NATC-P1.2, NATC-R4³², ECO-P2.4 and ECO-R1.a.ii.³³
553. To this extent, whether the natural hazard mitigation response is hard, soft, or green infrastructure is driven by the provisions of the zone or overlay chapter, with the consistent element being whether the works are undertaken by a listed entity. On this basis, I consider that there only needs to be one rule for earthworks associated with natural hazard mitigation works.
554. Therefore, although outside the scope of this submission, to improve the interpretive and administrative clarity concerning these provisions the Panel could, in line with Schedule 1, clause 99(2)(b) of the RMA, consider recommending deletion.

Summary of Recommendations

555. **HS5-EW-Rec114:** That EW-R18 be deleted in its entirety.

~~**EW-R18 Earthworks associated with soft engineering natural hazard mitigation works within Flood Hazard Overlays and Coastal Hazard Overlays**~~

~~1.—Activity Status: Permitted~~

~~Where:~~

~~a.—The soft engineering natural hazard mitigation works are undertaken by a central government agency, GWRC, the Council, or a nominated contractor or agent for the express purpose of soft engineering natural hazard mitigation works.~~

~~_____~~

~~2.—Activity Status: Discretionary~~

~~Where:~~

~~a.—Compliance with any of the requirements of EW-R18.1 cannot be achieved.~~

556. **HS5-EW-Rec115:** That submission points relating to EW-R18 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

557. In my opinion, the deletion of EW-R18 is the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that:
- a. The deletion of the policy simplifies, reduces unnecessary duplication and clarifies the

³² Construction, addition or alteration of buildings or structures for natural hazard mitigation purposes where carried out within riparian margins by a Regional or Territorial Authority, or an agent on their behalf

³³ Enable flood protection or natural hazard control where undertaken by a Regional or Territorial Authority or agents on their behalf as part of natural hazard mitigation works.

provision framework for natural hazard mitigation structures in the PDP which reduces the likelihood of interpretative issues when applying relevant provisions of the plan. Consequently, they are more efficient and effective than the notified provisions in achieving the objectives of the PDP.

- b. The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

3.12.8 EW-R19: Earthworks on community flood defence scale natural hazard mitigation structures

Matters Raised by Submitters

- 558. There were no submissions in relation EW-R19.
- 559. However, for consistency with the recommendations in paragraphs 71-74 of the Natural and Coastal Hazards s42A Report where Mr Sirl has recommended deletion of the associated definition 'Community Scale Natural Hazard Mitigation Structures' I propose that EW-R19 be deleted in its entirety. This would also be consistent with my recommendation in section 3.12.2 of this report to delete the policy for earthworks on community scale natural hazard mitigation structures, for the same reasoning.
- 560. Although outside the scope of submissions at hand, to improve the interpretive and administrative clarity concerning these provisions the Panel could, in line with Schedule 1, clause 99(2)(b) of the RMA, consider recommending deletion.
- 561. **HS5-EW-Rec116:** That EW-R19 be deleted in its entirety.

~~EW-R19 Earthworks on community flood defence scale natural hazard mitigation structures~~

~~3. Activity Status: Permitted~~

~~Where:~~

~~b. The earthworks are undertaken by GWRC, the Council or a nominated contractor.~~

~~4. Activity Status: Restricted Discretionary~~

~~Where:~~

~~a. Compliance any of the requirements of EW-R19.1 cannot be achieved.~~

~~Matters of discretion are:~~

~~1. The matters in EW-P17.~~

- 562. **HS5-EW-Rec117:** That submission points relating to EW-R19 are accepted/rejected as detailed in

Appendix B.

Section 32AA Evaluation

563. In my opinion, the deletion of EW-R19 is the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that:
- a. The proposed deletion is consistent with the recommendations in the Natural and Coastal Hazards s42A Report, including deletion of the associated definition ‘community scale natural hazard mitigation structures’.
 - b. The deletion of the policy simplifies, reduces unnecessary duplication and clarifies the provision framework for natural hazard mitigation structures in the PDP which reduces the likelihood of interpretative issues when applying relevant provisions of the plan. Consequently, they are more efficient and effective than the notified provisions in achieving the objectives of the PDP.
 - c. The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

3.13 Development Areas

564. To the extent possible I have assessed and made recommendations as applicable to earthworks provisions relevant to the Development Area chapters within this section, noting that submissions relating more broadly to the Development Areas will be heard and considered in Hearing Stream 6. Given the interrelated nature of the earthworks and parent chapter provisions, the outcome of Hearing Stream 6 deliberations could have a material bearing on the recommendations contained in this section.

3.13.1 EW-P20: Earthworks in development areas

Matters Raised by Submitters

565. WCC Environmental Reference Group [377.296] seek that EW-P20 is retained as notified.
566. WCC [266.119] seek to amend EW-P20 to clarify its application to the Upper Stebbings and Glenside West Development Area and ridgetop area, as follows:

EW-P20 Earthworks in development areas

Enable earthworks associated with the development of the Lincolnshire Farm and Upper Stebbings Glenside West Development Areas where the design of those earthworks:

1. Is generally in accordance with the Development Plan in the Planning Maps and with the requirements set out in Appendix 12 and Appendix 13, respectively;
2. Provides for water sensitive urban design;
3. Provides for long-term access to intended open space areas;
4. Incorporates functional overland flowpaths, stream corridors and ponding areas that are capable of conveying flood waters in a manner that minimises risk to existing and new residential properties downstream; and
5. Protects ridgeline and hilltop ridgetop areas from inappropriate earthworks.

567. Glenside Progressive Association [374.3] (opposed by Lincolnshire Farm Ltd, Hunters Hill Ltd, Best Farm Ltd, Stebbings Farmland [FS75.2]) oppose any earthworks in the Glenside West Area as it is meant to be a protected area under PC33.

568. GWRC [351.242] consider that the tenure of EW-P20 is more enabling than other similar policies and seek to replace the beginning of the policy with 'Only allow for...'. They also submit that these greenfield developments have the potential for significant effects on surrounding areas in terms of compatibility and effects downstream in Porirua Stream and Onepoto Arm of Porirua Harbour.

569. Te Rūnanga o Toa Rangatira [488.69] seek to add a new clause as follows:

Earthworks in development areas will avoid practices that will send additional sediment to Porirua Harbour and will avoid impacts downstream of Porirua Stream.

Assessment

570. The amendment sought by WCC [266.121] seeks to clarify and correct EW-R20 to specify the 'ridgetop area' as the relevant consideration, as opposed to the 'ridgeline and hilltop' overlay which is not relevant or applicable to Development Area – Upper Stebbings and Glenside West (DEV3). I agree with their submission, and note that this matter is further assessed in section 3.13 2. below.

571. In response to Glenside Progressive Association [374.3], I acknowledge PC33 but note that there has since been concept planning with community input (2018) and further consultation that has informed the PDP. The earthworks provisions seek to enable development consistent with the direction set out in the Development Area – Upper Stebbings and Glenside West (DEV3) chapter. The submitters more specific concerns in relation to the Upper Stebbings and Glenside West Development Area and ridgelines/ridgetop area, including in relation to PC33, are more appropriately addressed in Hearing Stream 6 and Hearing Stream 8 respectively.

572. In response to GWRC [351.242] seeking EW-P20 begin with 'Only allow for...', my view is that the directive in Development Area – Upper Stebbings and Glenside West (DEV3) supports the 'enable' approach of EW-P20 as development is encouraged and enabled in this area. However,

what is not enabled is development in the ridgetop area, as evident by the non-complying activity status for buildings and structures (DEV3-R33), that is supported by the policy directive in DEV3-P4.6 and EW-P20.5. On balance, I consider that the notified phrasing is appropriate, consistent with the approach of the Upper Stebbings and Glenside West (DEV3) Chapter.

573. In response to Te Rūnanga o Toa Rangatira [488.69] and GWRC [351.242] seeking consideration of downstream effects on Porirua Stream, I note that EW-P4 requires effective management of potential erosion and the movement of sediment beyond the site, and in particular into surface water, where proposals for earthworks of less than 3,000m² in area are concerned. Above the 3,000m² threshold, GWRC assumes responsibility for consenting under the provisions of the NRP. EW-P4, as with the other general earthworks policies, applies in concert with EW-P20. As such I disagree with the submitters as EW-P4 in association with the general earthworks policies, rules and standards are appropriate to address sediment impacts on the Porirua Stream.
574. In addition, I draw attention to NE-O2 that seeks that future subdivision and development contributes to an improvement in the quality of the City's water bodies and recognises mana whenua and their relationship to water (Te Mana o Te Wai). I also consider relevant SRCC-O3 and SRCC-O4 which set out the Council's expectations with respect to land use, subdivision and development supporting natural functioning ecosystems and processes to help build resilience into the natural and built environments, and integrating natural processes that provide opportunities for natural hazard risk reduction and support climate change adaptation.

Summary of Recommendations

575. **HS5-EW-Rec118:** That EW-P20 is amended as set out below and detailed in Appendix A.

EW-P20 Earthworks in development areas

Enable earthworks associated with the development of the Lincolnshire Farm and Upper Stebbings Glenside West Development Areas where the design of those earthworks:

1. Is generally in accordance with the Development Plan in the Planning Maps and with the requirements set out in Appendix 12 and Appendix 13, respectively;
2. Provides for water sensitive urban design;
3. Provides for long-term access to intended open space areas;
4. Incorporates functional overland flowpaths, stream corridors and ponding areas that are capable of conveying flood waters in a manner that minimises risk to existing and new residential properties downstream; and
5. Protects ~~ridgeline and hilltop~~ ridgetop areas from inappropriate earthworks.

576. **HS5-EW-Rec119:** That submission points relating to EW-P20 are accepted/rejected as detailed in Appendix B.

3.13.2 EW-R15: Earthworks within the ridgeline and hilltops in the Upper Stebbings Glenside West Development Area

Matters Raised by Submitters

577. WCC Environmental Reference Group [377.310] seek that EW-R15 is retained as notified.
578. John Tiley [142.19] and Churton Park Community Association [189.19] submit that the EW-S13

assessment criteria for assessing applications made under EW-R15 are entirely subjective and offer no protection for ridgelines, and seek that the rule is rewritten.

579. WCC [266.121] seek to amend EW-R15 to provide clarification as to how EW-R15 applies to the Upper Stebbings and Glenside West Development Area and ridgetop area, as follows:

EW-R15 Earthworks within the ridgeline and hilltops overlay or within the ridgetop area of the Upper Stebbings and Glenside West Development Area

1. Activity status: Permitted

Where:

- a. Compliance is achieved with EW-S13.2 and
- b. For the ridgetop area of the Upper Stebbings and Glenside West Development Area the earthworks are for the purpose of constructing public footpaths or tracks.

2. Activity status: Restricted Discretionary

Where:

- a. Compliance with any of the requirements of EW-R15.1.a cannot be achieved; and
- b. The total area of earthworks in any 5-year period does not exceed:
 - i. 500m² per site ~~within the ridgeline and hilltops in the Upper Stebbings-Glenside West Development Area;~~ and
- c. The maximum cut height or fill depth does not exceed 1.5m above ground level measured vertically.

580. WCC [266.122] also seek a new non-complying rule for earthworks that are not related to new public footpaths or tracks in the ridgetop area of the Upper Stebbings and Glenside West Development Area, as follows:

EW-R15 Earthworks within the ridgeline and hilltops overlay or within the ridgetop area of the Upper Stebbings and Glenside West Development Area

...

4. Activity status: Non-complying

Where:

- a. Compliance with the requirements of EW-R15.1.b cannot be achieved.

581. Glenside Progressive Association Inc [374.4] (opposed by Lincolnshire Farm Ltd, Hunters Hill Ltd, Best Farm Ltd, Stebbings Farmland [FS75.3]) submit that all earthworks in Lincolnshire Farm and Upper Stebbings-Glenside West should be reclassified from restricted discretionary to discretionary. They also raise concerns about noise and dust associated with earthworks.

Assessment

582. In response to WCC [266.121], I consider that the amendment to the rule heading will clarify

how EW-R15 applies to the ridgetop area of the Upper Stebbings and Glenside West Development Area. The matter of the ridgetop area (which was left out of the PDP maps in error) will be addressed in the Development Area Hearing. By way of context, the ridgetop area is shown in dark grey in the figure below.

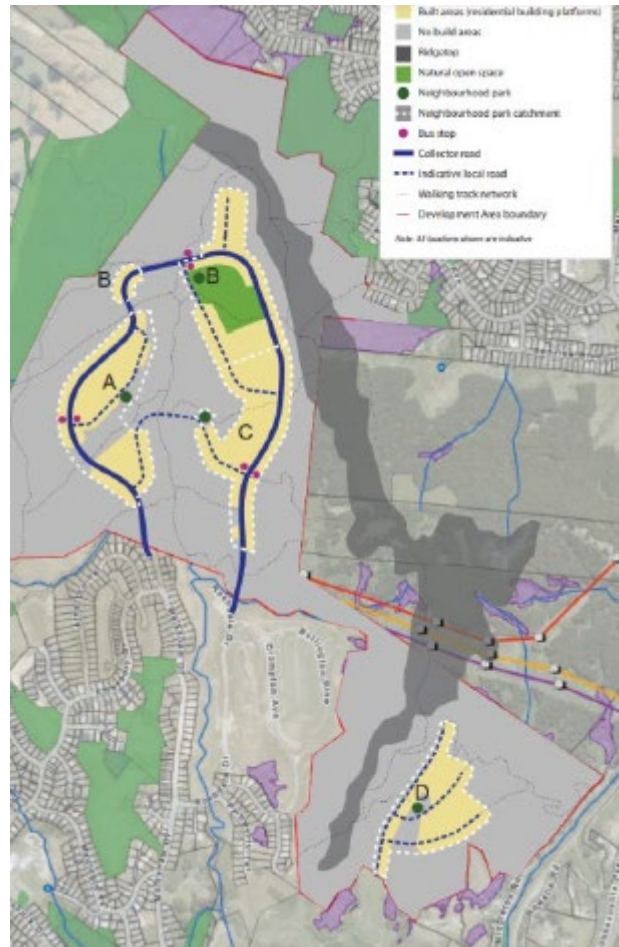


Figure 1: WCC [266.39] have sought to amend the planning map to include the ridgetop area (dark grey).

583. It is important to note that the assessment and recommendations in relation to the ‘ridgetop area’ in this report are for the Earthworks chapter only and are not recommendations on the suitability of additional amendments sought by the submitter in other chapters.
584. As to the amendments sought by WCC [266.121 and 266.122] to add an additional clause to the permitted activity rule and new non-complying activity status for earthworks in the ridgetop area of the Upper Stebbings and Glenside West Development Area. I consider that this would address a gap in the rule framework that arose from the lack of distinction/clarification between the ridgeline and hilltops overlay and the ridgetop area.
585. In my view, permitted activity status for earthworks in the ridgetop area of the Upper Stebbings and Glenside West Development Area where they are for the purpose of constructing public footpaths or tracks where compliance is achieved with EW-S13 is appropriate. This aligns with strategic direction NE-O1 and NE-O3 in that the ridgetop area is recognised and protected, while meeting the needs of anticipated future growth for an accessible open space network that connects the urban and natural environment.

586. This permitted activity, in conjunction with a new non-complying activity where earthworks are not for the purpose of constructing public footpaths or tracks, aligns with the policy directive of DEV3-P4.6 and EW-P20.5 that seek to protect the ridgetop area from inappropriate earthworks.
587. In my view these amendments respond to the concerns of John Tiley [142.19] and Churton Park Community Association [189.19] in providing stronger protection for the ridgetop area. I disagree that the rule needs to be rewritten or that the assessment criteria for assessing applications made under EW-R15 are entirely subjective. Instead, I note that any earthworks within the ridgetop area of the Upper Stebbings and Glenside West Development Area will also be assessed under the general earthworks rule EW-R6 and associated standards. Any non-compliance with EW-S2 or EW-S3 will trigger assessment criteria EW-S2.1.9 and EW-S3.1.9 in relation to the need for, and effectiveness of, measures to reduce the visual prominence and particularly visual intrusiveness of the earthworks. In my view, when the provisions are read as a whole, there is suitable assessment criteria for the protection of ridgelines and hilltops, and the ridgetop area.
588. However, in considering the submission points of John Tiley [142.19] and Churton Park Community Association [189.19], I do consider that matter of discretion 1 in EW-R15.2 should be broadened to reference EW-P20, as opposed to just EW-P20.5. This will provide further protection to the ridgetop area – particularly in that earthworks be generally in accordance with the Development Plan in the Planning Maps.
589. In response to Glenside Progressive Association Inc [374.4] seeking that all earthworks in Lincolnshire Farm and Upper Stebbings-Glenside West should be reclassified from restricted discretionary to discretionary. To the extent their submission relates to the Upper Stebbings and Glenside West Development Area ridgetop area, I consider that my recommended amendments above respond to their relief sought.
590. Otherwise, earthworks more broadly within the Lincolnshire Farm and Upper Stebbings and Glenside West Development Areas would be assessed under EW-R6 and the general earthworks standards, including EW-S5 which addresses dust.
591. It is anticipated that any earthworks in Lincolnshire Farm and Upper Stebbings-Glenside West will involve significant earthworks, likely exceeding the permitted area threshold in EW-S1. Any earthworks would then be considered as a restricted discretionary activity. In the absence of any compelling evidence, planning evaluation or s32AA evaluation, I consider the notified provisions most appropriately implement the objectives of the PDP, and that restricted discretionary activity is appropriate. It is also likely that earthworks in Lincolnshire Farm and Upper Stebbings-Glenside West will exceed 3000m² and then be subject to a regional resource consent at which point this enables erosion and sediment control and effects on receiving water bodies to be comprehensively addressed.
592. As a clause 16 amendment I do however recommend that the matters of discretion for EW-R6.2 be amended to correct the reference to EW-P20, as opposed to EW-P18 (which I note also incorrectly hyperlinks to CE-P18) to ensure consideration is given, where relevant, to the matters in EW-P20.
593. As to Glenside Progressive Association's [374.4] concerns about noise and dust associated with

earthworks, I note that NOISE-R2 and EW-S5 directly address these matters.

594. **Summary of Recommendations**

595. **HS5-EW-Rec120:** That EW-R15 is amended as set out below and detailed in Appendix A.

EW-R15 Earthworks within the ridgeline and hilltops overlay or within the ridgetop area of the Upper Stebbings and Glenside West Development Area

1. Activity status: Permitted

Where:

- a. Compliance is achieved with EW-S13; and
- b. For the ridgetop area of the Upper Stebbings and Glenside West Development Area the earthworks are for the purpose of constructing public footpaths or tracks.

2. Activity status: Restricted Discretionary

Where:

- a. Compliance with any of the requirements of EW-R15.1.a cannot be achieved; and
- b. The total area of earthworks in any 5-year period does not exceed:
 - i. 500m² per site ~~within the ridgeline and hilltops in the Upper Stebbings-Glenside West Development Area~~; and
- c. The maximum cut height or fill depth does not exceed 1.5m above ground level measured vertically.

...

5. Activity status: Non-complying

Where:

- b. Compliance with the requirements of EW-R15.1.b cannot be achieved.

596. **HS5-EW-Rec121:** That EW-R6 is amended as set out below and detailed in Appendix A.

EW-R6 General earthworks

...

2. Activity status: Restricted Discretionary

Where:

- a. Compliance with any of the requirements of EW-R6.1 cannot be achieved

Matters of discretion are:

1. The matters in EW-P1;
2. The matters in EW-P1820, where relevant;

597. **HS5-EW-Rec122:** That submission points relating to EW-R15 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

598. In my opinion, the amendments recommended to add a new non-complying rule are the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that the amended rule:

- a. The amendments reflects a more nuanced and targeted rule framework with respect to the ridgetop area of the Upper Stebbings and Glenside West Development Area.
- b. Better aligns with the directive in the Upper Stebbings and Glenside West Development Area chapter to protect the ridgetop. Consequently, EW-R15 is more efficient and effective than the notified provisions in achieving the objectives of the PDP.

599. The environmental, economic, social and cultural effects of the recommended amendments, as they vary somewhat from the existing plan s32 evaluation report, are below.

Environmental	<ul style="list-style-type: none">• Ensures that the potential effects of earthworks are managed appropriately.• Protects the ridgetop area.
Economic	<ul style="list-style-type: none">• Would impose additional consenting and assessment costs on property owners and developers.
Social	<ul style="list-style-type: none">• There are unlikely to be any additional social costs or benefits compared to the notified proposal.
Cultural	<ul style="list-style-type: none">• No cultural effects are identified.

3.14 Infrastructure

600. To the extent possible I have assessed and made recommendations as applicable to earthworks provisions relevant to the Infrastructure chapter within this section, noting that submissions relating more broadly to infrastructure will be heard and considered in Hearing Stream 9. Given the interrelated nature of the earthworks and parent chapter provisions, the outcome of Hearing Stream 9 deliberations could have a material bearing on the recommendations contained in this section.
601. It is important is note that infrastructure is exempt from the earthworks provisions and that the following provisions are intended to protect infrastructure from inappropriate earthworks associated with other activities.

3.14.1 General Points on the National Grid

Matters Raised by Submitters

602. Transpower [315.174] submit that for EW-R22 there is no supporting policy framework and no guidance within the introductory text to the Earthworks Chapter to refer plan users to the Infrastructure Chapter. Transpower is not opposed to the structure of the PDP that rules relating to earthworks and subdivision in proximity of the National Grid are addressed under the respective Earthworks and Subdivision chapters, subject to appropriate linkages between the chapters so that plan users can clearly understand (and find) the relevant rules and corresponding policy framework. Transpower seeks either:
- a. The inclusion of a specific National Grid policy within the INF chapter, cross referenced to that chapter, as follows:

Other relevant District Plan provisions

It is important to note that in addition to the provisions in this chapter, the following Part 2: District-Wide chapters may also be of relevance, including:

- Transport - The Transport Chapter contains provisions relating to transport matters.
- Subdivision - The Subdivision Chapter contains provisions which manage subdivision of land.
- Trees – The Notable Tree chapter contains specific provisions relating to the management of notable trees, including works within the root protection area.
- Infrastructure - the earthworks chapter includes rules to implement objectives and policies in the Infrastructure Chapter where certain types of earthworks are within the National Grid Yard.

- b. or provision of a specific National Grid policy within the EW chapter, as follows:

Earthworks or vertical holes within the National Grid Yard

Avoid earthworks or vertical holes within the National Grid Yard which may compromise the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid.

603. Transpower [315.175] submit that the provision of a rule framework achieves Policies 2 and 10

of the NPS-ET in that it protects the integrity of the National Grid and the ability to operate it. Transpower also support the provision of standards specific to earthworks on the basis such activities can compromise the National Grid and are a form of development contemplated by the NPS-ET.

Assessment

604. I agree with Transpower that there should be clarity between the provision framework for the national grid (and gas transmission pipeline corridor) across the Infrastructure and Earthworks chapters. In my view this is already achieved, in that:
- a. The introduction to the Infrastructure chapter states: *"The provisions within this chapter apply on a City-wide basis. As such the rules in the zone chapters and earthworks chapter do not apply to infrastructure unless specifically stated within an infrastructure rule or standard."*
 - b. The Earthworks chapter 'Application of rules in this Chapter' section states that: *"The provisions of this Chapter do not apply in relation to activities provided for in the Infrastructure Chapter, unless specifically stated in the rule or standard concerned."*
605. I note that Transpower [315.48, 315.50-315.55] have sought a separate suite of National Grid provisions within a separate Infrastructure sub-chapter, including a number of new National Grid policies. These submission points will be addressed in Hearing Stream 9. As to whether cross reference in the 'Other relevant District Plan provisions' in the Earthworks chapter introduction is necessary, this will depend on any amendments to the Infrastructure chapter arising from Hearing Stream 9. However, to the extent relevant to earthworks, I disagree with Transpower's proposed wording as it creates a reverse situation (in that the rules are already in the Earthworks chapter, so a cross-reference to it from within the chapter does not make sense).
606. As to whether a specific National Grid policy within the Earthworks chapter is necessary, I note that EW-R22 implicitly relies on objectives and policies in the Infrastructure chapter and that the matters of discretion are comprehensive. To this extent, I cannot undertake a full assessment of whether additional policies are necessary within the Earthworks chapter without knowing the outcomes of Hearing Stream 9. The reason being is that the approach of the PDP is that it is to be read on the whole – in this instance in conjunction with the objectives and policies of the Infrastructure parent chapter.

Summary of Recommendations

607. **HS5-EW-Rec123:** That the Earthworks introduction is amended as set out below and detailed in Appendix A, and subject to any amendments arising from Hearing 9.

Other relevant District Plan provisions

It is important to note that in addition to the provisions in this chapter, the following Part 2: District-Wide chapters may also be of relevance, including:

- Transport - The Transport Chapter contains provisions relating to transport matters.
- Subdivision - The Subdivision Chapter contains provisions which manage subdivision of land.
- Trees – The Notable Tree chapter contains specific provisions relating to the management of notable trees, including works within the root protection area.
- Infrastructure - the Infrastructure chapter contains provisions relating to certain types of earthworks within the National Grid Yard and Gas Transmission Pipeline Corridor.

608. **HS5-EW-Rec124:** That submission points relating to General Points on the National Grid are accepted/rejected as detailed in Appendix B.

3.14.2 EW-R22: Earthworks in the national grid yard

Matters Raised by Submitters

609. Transpower [315.176] submit that earthworks have the potential to restrict Transpower’s ability to access the line and locate heavy machinery required to maintain support structures around lines and may lead to potential tower failure and significant constraints on the operation of the line. The amendments sought to EW-R22 are as follows:
- a. Move the depth standards from EW-S15 to EW-R22 to provide more clarity and a clear relationship to the exemptions;
 - b. Amend the default activity status to non-complying where permitted conditions are not complied with (and as a subsequent amendment, deletion of the discretionary matter and notification clause).

EW-R22 Earthworks or vertical holes in the national grid yard

1. Activity status: Permitted

Where:

- a. Earthworks or vertical hole depth must be no greater (measured vertically) than:
 - i. 300 millimetres within 6 metres of the outer visible edge of a foundation of any National Grid support structure: or
 - ii. Between 6 metres and 12 metres from the outer visible edge of a foundation of any National Grid support structure
- b. Compliance is achieved with EW-S15.1

...

2. Activity status: ~~Restricted Discretionary~~ Non complying

Where:

- a. Compliance with any of the requirements of EW-R22.1 cannot be achieved.

~~Matters of discretion are:-~~

- ~~1. The extent and effect of non-compliance with any relevant standard as specified in the associated assessment criteria for the infringed standards;~~
- ~~2. Impacts on the operation, maintenance, upgrading and development of the National Grid;~~
- ~~3. The risk to the structural integrity of the affected National Grid support structure(s);~~
- ~~3. Any impact on the ability of Transpower to access the National Grid;~~
- ~~4. The risk of electrical hazards affecting public or individual safety, and the risk of property;~~
- ~~5. Technical advice provided by Transpower; and~~
- ~~6. Any effects on National Grid support structures including the creation of an unstable batter.~~

~~Notification Status:-~~

~~An application for resource consent made in respect of rule EW-R22.2 is precluded from being publicly notified.~~

~~Notice of any application for resource consent under this rule must be served on Transpower New Zealand Limited in accordance with Clause 10(2)(i) of the Resource Management (Forms, Fees, and Procedures) Regulations 2003.~~

Assessment

610. Transpower [315.176] considers that earthworks have the potential to restrict Transpower's ability to access their lines and locate heavy machinery required to support structures around the lines. Consequently Transpower considers that the depth standards for EW-S15 be moved to EW-R22 for clarity and connection to the exemptions and considers that a non-complying activity status is the most effective means of giving effect to the NPS-ET's objective of managing the adverse effects of the network and managing the adverse effects of other activities on the network as required by NPS-ET Policy 2 and Policy 10.

611. I agree in part with Transpower [315.176] that conditions specifying the permitted activity depth and distance can be moved from EW-S15.1(a)-(b) to EW-R22. I note that the metrics proposed are largely consistent with the Porirua District Plan which is important from a regional consistency perspective. I also note that the wording as proposed by the submitter has changed from specific references to ‘stay wires’, ‘poles’ and ‘support towers’ to ‘support structures’ more broadly. I understand that this amendment to the depths better reflects NZECP34 but with all support structures treated the same in respect of setbacks, thereby recognising the risks to the National Grid extend beyond those addressed by NZECP34.
612. I agree with the suggested amendment to add reference to clause (1) of EW-S15 rather than EW-S15 in total as EW-R22 refers to the national grid only and clause (2) of EW-S15 refers to gas transmission pipeline corridors, so it is important that EW-R22 provides for this differentiation.
613. I disagree that it is appropriate to amend the restricted discretionary activity status under EW-R22.2 to non-complying activity status as per the submitter’s relief sought. I also disagree with the associated relief sought by the submitter to delete the matters of discretion in EW-R22.2 and notification clauses. I consider that this suggested change in activity status would create a very onerous pathway for potentially minor earthworks. To this extent I disagree with the submitter that Policy 10 of the NPS-ET can only be achieved by way of non-complying activity status. Elevating to non-complying activity would mean that the activity would need to pass the ‘gateway test’, and resource consent would likely only be granted in exceptional circumstances. This would be disproportionate to the activity and its effects. I consider that restricted discretionary activity status is appropriate, particularly given the comprehensive matters of discretion that EW-R22.2 provides for.
614. On this basis, it is my view that it is important to preserve the requirement for notice to be given to Transpower for any application for resource consent under this rule (in accordance with clause 10(2)(i) of the Resource Management (Forms, Fees and Procedures) Regulations 2003). I consider that this adequately protects the interests of the grid operator.

Summary of Recommendations

615. **HS5-EW-Rec125:** That EW-R22 is amended as set out below and detailed in Appendix A.

EW-R22 Earthworks or vertical holes in the national grid yard

1. Activity status: Permitted

Where:

a. Earthworks or vertical hole depth must be no greater (measured vertically) than:

- i. 300 millimetres within 6 metres of the outer visible edge of a foundation of any National Grid support structure: or
- ii. Between 6 metres and 12 metres from the outer visible edge of a foundation of any National Grid support structure
- iii. Compliance is achieved with EW-S15

...

616. **HS5-EW-Rec126:** That submission points relating to EW-R22 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

617. In my opinion, the amendments recommended to EW-R22 are the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that:

- a. The amended rule better ensures that the national grid is protected from earthworks activities.
- a. The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

3.14.3 EW-R23: Earthworks within the gas transmission pipeline corridor

Matters Raised by Submitters

618. Firstgas [304.41] seek that EW-R23 not require a copy of a Pipeline Easement Permit to be provided to the Council. The amendment sought by Firstgas is as follows:

<p>EW-R23 Earthworks within the gas transmission pipeline corridor</p> <p>1. Activity status: Permitted</p> <p>Where:</p> <ul style="list-style-type: none">a. For any earthworks within a gas pipeline easement area, a Pipeline Easement Permit is obtained and a copy of the permit is provided to the Council prior to the commencement of the earthworks; orb. For any earthworks outside of a gas pipeline easement area, written advice of the work is provided to the gas transmission pipeline owner and operator at least 15 working days prior to the commencement of the earthworks; andc. Compliance is achieved with EW-S15.

Assessment

619. Firstgas [304.41] have outlined that the Pipeline Easement Permit is a paper-based permit issued by Firstgas to the contractor at the time of the works taking place and is therefore not achievable for a copy to be provided to Council prior to the commencement of the works. On this basis, I consider that the amendment sought to delete these matters is a reasonable request.

620. As a consequential amendment I recommend that note 2 associated with clause (a) and (b) be deleted.

Summary of Recommendations

621. **HS5-EW-Rec127:** That EW-R23 is amended as set out below and detailed in Appendix A.

<p>EW-R23 Earthworks within the gas transmission pipeline corridor</p> <p>1. Activity status: Permitted</p> <p>Where:</p> <p>a. For any earthworks within a gas pipeline easement area, a Pipeline Easement Permit is obtained and a copy of the permit is provided to the Council prior to the commencement of the earthworks; or</p> <p>b. For any earthworks outside of a gas pipeline easement area, written advice of the work is provided to the gas transmission pipeline owner and operator at least 15 working days prior to the commencement of the earthworks; and</p> <p>c. Compliance is achieved with EW-S15.</p> <p>Note:</p> <p>1. Earthworks, excluding and quarrying, that are undertaken by the owner and operator of the gas transmission pipeline are exempt from EW-R23.1.</p> <p>2. Clause (a) and (b) above do not apply to earthworks undertaken as part of normal agricultural, horticultural or domestic cultivation activities, or the maintenance and repair, including sealing, of a road, footpath, driveway or farm track.</p>

622. **HS5-EW-Rec128:** That submission points relating to EW-R23 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

623. In my opinion, the amendments recommended to EW-R23 are the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that:

- a. The amended rule provides a workable pathway for compliance.
- b. The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

3.14.4 EW-S15: Earthworks in the national grid yard and gas transmission pipeline corridor

Matters Raised by Submitters

624. Firstgas [304.42] seek that EW-S15 is retained as notified.

625. Rod Halliday [25.30] (supported by Firstgas [FS97.13]) seek to clarify what is defined as a 'gas transmission pipeline corridor' in EW-S15.

626. Transpower [315.177] in conjunction with their amendments to EW-R22, seek amendment to EW-S15 as follows:

- a. Depths are amended to better reflect NZECP34 but with all support structures treated the same in respect of setbacks (thereby recognising the risks to the National Grid extend beyond those addressed by NZECP34).
- b. An additional clause is sought to ensure ongoing access is maintained to support structures.
- c. Minor grammatical and wording refinements are proposed.

EW-S15 Earthworks in the National Grid Yard and gas transmission pipeline corridor

1. Earthworks or vertical holes in the National Grid Yard must comply with the following:
 - a. ~~Earthworks or vertical hole/s depth must be no greater than:~~
 - i. ~~300 millimetres within 2.2 metres of any National Grid support poles or stay wires; or~~
 - ii. ~~750 millimetres between 2.2 metres and 5 metres of the pole or stay wire.~~
 - b. ~~Earthworks or vertical hole depth must be no greater than:~~
 - i. ~~300 millimetres within 6 metres of the outer visible edge of a foundation of any National Grid support tower (including any tubular steel tower that replaces a steel lattice tower); or~~
 - ii. ~~Between 6 metres and 12 metres from the outer visible edge of a foundation of any National Grid support tower (including any tubular steel tower that replaces a steel lattice tower).~~
 - c. ~~The earthworks must n~~Not result in a reduction in the ground to conductor clearance distances as required in Table 4 of the New Zealand Electrical Code of Practice for Safe Electrical Distances (NZECP 34:2001) ISSN 01140663.
 - d. ~~The earthworks must n~~Not result in vehicular access to a National Grid support structure being permanently obstructed.
 - e. Not compromise the stability of a National Grid support structure.

...

627. Transpower [315.177] would also support the separating of the National Grid from the Gas Transmission pipeline to avoid confusion to plan users.

Assessment

628. In response to Rod Halliday [25.30] and Firstgas [FS97.13] I agree that a definition of ‘gas transmission pipeline corridor’ would assist with plan readability. I note that elsewhere in their submission Firstgas [304.6] has sought to add a definition for Gas Transmission Pipeline Corridor as follows:

Gas Transmission Pipeline Corridor:

The area of land within 10m either side of the centreline of the Gas Transmission Pipeline.

629. This definition will need to be addressed to do a full assessment of the submission point from Firstgas. These definitions have wide reach across the PDP, with frequent use proposed in the INF, INF-CE, INF-NFL, INF-ECO and SUB chapters. As such, I consider these definitions are more

appropriately addressed in Hearing Stream 9. I note, however, that whether this definition is or is not recommended to be accepted at Hearing Stream 9, that it does not alter the phrasing of EW-S15, other than that term would be hyperlinked in the ePlan.

630. Turning to the matters raised by Transpower [315.177], as per my associated assessment for EW-R22 above I consider the amendments sought to EW-S15 are appropriate. I concur with the submitter that EW-R22 and EW-S15 achieves Policies 2 and 10 of the NPS-ET in that it protects the integrity of the National Grid and the ability to operate it.
631. In response to Transpower [315.177] I agree that separating the standards for the National Grid from the Gas Transmission Pipeline Corridor would improve clarity in separating out the matters into individual standards as is the approach in EW-R22 and EW-R23. On this basis I recommend that EW-S15 be amended to just specify that standards for the National Grid Yard, and that the standards for the Gas Transmission Pipeline Corridor be split out into a new standard- EW-S16.

Summary of Recommendations

632. **HS5-EW-Rec129:** That EW-S15 and a new EW-S16 are amended as set out below and detailed in Appendix A.

EW-S15 Earthworks in the National Grid Yard

1. Earthworks or vertical holes in the National Grid Yard must comply with the following:
 - a. ~~Earthworks or vertical hole/s depth must be no greater than:~~
 - i. ~~300 millimetres within 2.2 metres of any National Grid support poles or stay wires; or~~
 - ii. ~~750 millimetres between 2.2 metres and 5 metres of the pole or stay wire.~~
 - b. ~~Earthworks or vertical hole depth must be no greater than:~~
 - i. ~~300 millimetres within 6 metres of the outer visible edge of a foundation of any National Grid support tower (including any tubular steel tower that replaces a steel lattice tower); or~~
 - ii. ~~Between 6 metres and 12 metres from the outer visible edge of a foundation of any National Grid support tower (including any tubular steel tower that replaces a steel lattice tower).~~
 - c. ~~The earthworks must n~~ot result in a reduction in the ground to conductor clearance distances as required in Table 4 of the New Zealand Electrical Code of Practice for Safe Electrical Distances (NZECP 34:2001) ISSN 01140663.
 - d. ~~The earthworks must n~~ot result in vehicular access to a National Grid support structure being permanently obstructed.
 - e. Not compromise the stability of the National Grid Support Structure.

EW-S16 Earthworks in the Gas Transmission Pipeline Corridor

1. ~~2.~~ Earthworks within the gas transmission pipeline corridor must comply with the following:
 - a. The stability or integrity of the gas transmission pipeline is not compromised.
 - b. The earthworks must not involve:
 - i. Any permanent alteration to the profile, contour or height of the land within the corridor; or the planting of trees within 10 metres of the gas transmission pipeline.

Note:

Clause ~~12~~.b. above does not apply to earthworks undertaken as part of normal agricultural, horticultural or domestic cultivation activities, or the maintenance and repair, including sealing, of a road, footpath, driveway or farm track. Clause ~~12~~.b. does not apply to earthworks undertaken by a network utility operator within a road reserve.

633. **HS5-EW-Rec130:** That submission points relating to EW-S15 are accepted/rejected as detailed in Appendix B.

Section 32AA Evaluation

634. In my opinion, the amendments recommended to EW-S15 and a new EW-S16 are the most appropriate way to achieve the objectives of the plan compared to the notified provisions. In particular, I consider that:
- a. The amended standard better ensures that the national grid is protected from earthworks activities.
 - b. The amendments provide a more nuanced and clearer layout for standards relating to the national grid and gas transmission pipeline that will aid in plan interpretation.
 - c. The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

4.0 Minor and inconsequential amendments

635. Pursuant to Schedule 1, clause 16 [2] of the RMA, a local authority may make an amendment, without using the process in this schedule, to its proposed plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors.
636. Minor and inconsequential amendments relevant to this report have been assessed in the provision sections of this report, including section 3.7.6, and/or otherwise notated in Appendix A as an administrative amendment.
637. Key 'minor and inconsequential amendments' to the Earthworks chapter include:

- a. The reordering of provisions so that they are grouped and flow in a logical order as per

the structure of the PDP. One example of this is EW-R21 that manages earthworks within Sites and Areas of Significance Category A and Category B. I have shifted this rule to follow behind what was EW-R8 (Earthworks on the site of scheduled heritage buildings and structures, and within heritage areas) and EW-R9 (Earthworks within the root protection area of notable trees) so that all the Historical and Cultural Value chapter earthworks rules are grouped. This will aid in plan interpretation.

- b. Updating the 'Other relevant District Plan provisions' section of the Earthworks chapter.

5.0 Conclusion

638. This report has provided an assessment of submissions received in relation to the Earthworks Chapter.

639. Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, I recommend that the PDP should be amended as set out in Appendix A of this report.

640. For the reasons set out in the Section 32AA evaluation included throughout this report, I consider that the proposed objectives and provisions, with the recommended amendments, will be the most appropriate means to:

- a. Achieve the purpose of the Resource Management Act 1991 (RMA) where it is necessary to revert to Part 2 and otherwise give effect to higher order planning documents, in respect to the proposed objectives; and
- b. Achieve the relevant objectives of the PDP, in respect to the proposed provisions.

5.1 Recommendations

641. It is recommended that:

- a. The Hearing Commissioners accept, accept in part, or reject submissions (and associated further submissions) as outlined in Appendix B of this report; and
- b. The PDP is amended in accordance with the changes recommended in Appendix A of this report.

6.0 Appendices

6.1 Appendix A: Recommended Amendments to the Earthworks Chapter

Where I recommend changes in response to submissions, these are shown as follows:

- Text recommended to be added to the PDP is underlined.
- Text recommended to be deleted from the PDP is ~~struck through~~.

6.2 Appendix B: Recommended Responses to Submissions and Further Submissions on the Earthworks Chapter