



SECTION 42A REPORT

Earthworks

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Appendix 1: Recommended amendments to Earthworks Chapter

Appendix 2: Recommended decisions on submissions on the Earthworks Chapter

List of Abbreviations

Table 1: List of Submitters and Abbreviations of Submitters' Names

Submitter Number	Abbreviation	Full Name of Submitter
S421	Federated Farmers	Northland Federated Farmers of New Zealand
S368	FNDC	Far North District Council
S335	Fuel Companies	BP Oil New Zealand Limited, Mobil Oil New Zealand Limited, Z Energy Limited
S409	Heritage New Zealand	Heritage New Zealand Pouhere Taonga
S159	HortNZ	Horticulture New Zealand
S359	NRC	Northland Regional Council
S55	NZ Pork	New Zealand Pork Industry
S282	Telco Companies	Chorus New Zealand Limited, Spark New Zealand Trading Limited, Spark TowerCo Limited, Vodafone New Zealand Limited
S483	Top Energy	Top Energy Limited
S454	Transpower	Transpower New Zealand Limited

Note: This table contains a list of submitters relevant to this topic which are abbreviated and does not include all submitters relevant to this topic. For a summary of all submitters please refer to Section 5.1 of this report (overview of submitters). Appendix 2 to this Report also contains a table with all submission points relevant to this topic.

Table 2: Other abbreviations

Abbreviation	Full Term
CMA	Coastal Marine Area
FNDC	Far North District Council
MHWS	Mean High Water Springs
NES-CS	Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011
NES-ETA	Resource Management (National Environmental Standard for Electricity Transmission Activities) Regulations 2009
NES-F	Resource Management (National Environmental Standards for Freshwater) Regulations 2020
NPS	National Policy Statement
NPS-FM	National Policy Statement for Freshwater Management 2020
NRP	Proposed Northland Regional Plan
NZIECP34: 2001	New Zealand Electrical Code of Practice for Electrical Safe Distances NZIECP34:2001
ODP	Operative District Plan
PDP	Proposed District Plan
RMA	Resource Management Act 1991
RPS	Regional Policy Statement for Northland 2016



1 Executive summary

1. The Far North Proposed District Plan (PDP) was publicly notified in July 2022. The Earthworks Chapter is located in the District-Wide Matters section of the PDP.
2. There were 46 original submitters (with 193 individual submission points) and 43 further submitters (with 320 individual submission points) received on the Earthworks Chapter. The submissions received on the Earthworks Chapter can largely be categorised into several key themes as follows
 - a) Duplication and overlap with controls on earthworks by the Northland Regional Council (NRC) and the Northland Regional Plan (NRP).
 - b) Duplication in the PDP earthworks rules that require compliance with the same earthworks standards and requests to rationalise these.
 - c) The need to provide for earthworks associated with all primary production activities.
 - d) Concerns that some of the earthworks standards are too stringent and/or uncertain.
 - e) Requests for exemptions to certain earthworks rules and standards for range of activities.
3. This report has been prepared in accordance with Section 42A of the Resource Management Act 1991 (RMA) and outlines recommendations in response to the issues raised in submissions. This report is intended to both assist the Hearings Panel to make decisions on the submissions and further submissions on the PDP and also provide submitters with an opportunity to see how their submissions have been evaluated, and to see the recommendations made by officers prior to the hearing.
4. The key changes recommended in this report are:
 - a) Removing unnecessary duplication with controls in the NRP that are primarily the responsibility of NRC under section 30 of the RMA.
 - b) Consolidating EW-R1 to EW-R14 into a single earthworks rule that requires compliance with all the earthworks standard to reduce duplication, remove unnecessary consent requirements, and to provide a more effective and effects-based rule framework.
 - c) Providing exemptions to the earthwork rule/standards for certain common and/or low-risk activities to remove unnecessary consent requirements.



2 Introduction

2.1 Author and qualifications

5. My full name is Jerome Wyeth. I am a Technical Director – Planning at SLR Consulting based in Whangarei.
6. I hold the qualification of Bachelor of Science (Geography) and Masters of Science (Geography), with First Class Honours. I am a Full member of the New Zealand Planning Institute.
7. I have over 20 years of experience in resource management and planning with roles in central government, local government and the private sector. My primary area of work is policy planning for local and central government, and I am the New Zealand Policy Portfolio Lead at SLR Consulting. I have worked on a number of district and regional plans at various stages of the RMA Schedule 1 process and have prepared planning evidence for local authority and Environment Court hearings on a range of resource management issues, including earthworks.
8. I have been closely involved in the development and implementation of numerous national direction instruments under the RMA (national policy statements and national environmental standards), from the policy scoping stage through to policy decisions and drafting, the preparation of section 32 evaluation reports and implementation guidance. This includes close involvement in national direction instruments relating to highly productive land, indigenous biodiversity, climate change, renewable electricity generation and transmission, plantation forestry and telecommunication facilities.
9. I have been working with the Far North District Council (FNDC) on the PDP since 2021. I am the reporting officer for a number of PDP topics, including special purpose zones, coastal environment and indigenous biodiversity topics considered in Hearings 2, 3 and 4. I was not involved in the preparation of the Earthworks Chapter prior to notification of the PDP.

2.2 Code of Conduct

10. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and that I have complied with it when preparing this report. Other than when I state that I am relying on the 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 that I express.
11. I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearings commissioners (Hearings Panel).



3 Scope/Purpose of Report

12. This report has been prepared in accordance with section 42A of the RMA to:
 - a) Assist the Hearings Panel in making their decisions on the submissions and further submissions on the PDP; and
 - b) Provide submitters with an opportunity to see how their submissions have been evaluated and the recommendations being made by officers, prior to the hearing.
13. This report responds to submissions on the Earthworks Chapter.
14. Separate to the section 42A report recommendations in response to submissions, Council has made a number of Clause 16 corrections to the PDP since notification¹. These changes are neutral and do not alter the effect of the provisions. The Clause 16 corrections relevant to Earthworks Chapter are reflected in Appendix 1 to this Report (Officer's Recommended Provisions in response to Submissions). For clarity and consistency with the PDP, these corrections are not shown in strikethrough or underlined in **Appendix 1**.

4 Statutory Requirements

4.1 Statutory documents

15. The section 32 evaluation report for the Earthworks Chapter provides a summary of the relevant statutory considerations applicable to this topic, including key provisions in the RMA, relevant NPS and NES, the RPS and NRP. As such, it is not necessary to repeat that statutory assessment here. However, it is important to highlight the higher order documents which have been gazetted or amended following notification of the PDP.

4.1.1 Resource Management Act

16. The Government elected in October 2023, has repealed both the Spatial Planning Act 2023 and Natural and Built Environment Act 2023 on the 22of December 2023 and has reinstated the RMA as Zealand's primary resource management policy and plan making legislation. The Government has indicated that the RMA will ultimately be replaced, with work on replacement legislation to begin in 2024. The government has indicated that this replacement legislation will be introduced to parliament this term of government (i.e. before the next central government election in 2026). However, at the time of writing, details of the new legislation and exact timing are unknown. The RMA continues to be in effect until if, or when, any potential new replacement legislation is passed.

¹ [Clause 16 Amendments | Far North District Council \(fndc.govt.nz\)](https://www.fndc.govt.nz/Clause-16-Amendments).



4.1.2 National Policy Statements

4.1.2.1 National Policy Statements Gazetted since Notification of the PDP

17. The PDP was prepared to give effect to the National Policy Statements that were in effect at the time of notification (27 July 2022). This section provides a summary of the National Policy Statements, relevant to the Earthworks Chapter, that have been gazetted since notification of the PDP. As District Plans must be "*prepared in accordance with*"² and "*give effect to*"³ a National Policy Statement, the implications of the relevant National Policy Statements on the PDP must be considered.
18. The National Policy Statement for Indigenous Biodiversity (NPS-IB) came into effect on 4 August 2023 after the PDP was notified (27 July 2022). The NPS-IB is a comprehensive NPS with a range of detailed implementation requirements that must be given effect to "*as soon as reasonably practicable*" or within the timeframes specified in Part 4 of the NPS-IB. The objective of the NPS-IB is to maintain indigenous biodiversity so there is at least no overall loss in indigenous biodiversity from the commencement date. The objective is supported by 17 policies and Part 3 (implementation) of the NPS-IB sets out what must be done to give effect to the NPS-IB objective and policies. The NPS-IB was considered in detail as part of the Ecosystems and Indigenous Biodiversity topic (Hearing 4) where, as reporting officer, I make a number of recommendations in relation to how the NPS-IB should be given effect to through that chapter. As such, the NPS-IB is not considered further in this report.
19. The National Policy Statement for Highly Productive Land (NPS-HPL) came into effect on 17 October 2022. The NPS-HPL has a single objective: "*Highly productive land is protected for use in land-based primary production, both now and for future generations*". The NPS-HPL objective is supported by nine policies and a set of implementation requirements in Part 3 which set out what local authorities must do to give effect to the objective and policies of the NPS-HPL. I note that the NPS-HPL will be primarily given effect to through the suite of Rural Zones in the PDP and the Subdivision chapter, which are being considered in Hearing 9 and 17 respectively. As such, the NPS-HPL is not considered further in this report.

4.1.3 National Environmental Standards

The NES-CF

20. The National Environment Standards for Commercial Forestry 2017 (NES-CF) came into effect on 3 November 2023, amending and replacing the National Environment Standards for Plantation Forestry 2017 (NES-PF). In addition to regulating the effects of "*plantation forestry*", the NES-CF now regulates "*exotic continuous-cover forestry*", which is "*commercial*

² Section 74(1)(a) of the RMA.

³ Section 75(3)(a) of the RMA.



*forestry*⁴ not intended to be harvested (i.e. carbon forestry). As such, the NES-CF now applies to all types of forestry deliberately established for commercial purposes (although permanent indigenous forestry is not regulated under the NES-CF).

21. The NES-CF is relevant to the Earthworks Chapter as it provides specific controls for earthworks associated with commercial forestry. The NES-CF allows plan rules to be more stringent than the NES-CF regulations but only in the specific circumstances set out in Regulation 6 and subject to the requirements in section 32(4) of the RMA to demonstrate that more stringent rules than the NES-CF are justified in the context of the particular region or district. District plan rules must not duplicate or conflict with a provision in NES under section 44A of the RMA.

NES-F

22. The National Environmental Standards for Freshwater 2020 (NES-F) came into effect on 3 September 2020. The NES-F set out requirements for carrying out certain activities that pose risks to freshwater and freshwater ecosystems. The NES-F regulates earthworks for various purposes within a 10m setback from natural inland wetlands. The table below provides a summary of the different earthworks activities regulated under the NES-F within these setbacks and the most lenient activity status for that purpose.

Permitted	Restricted discretionary	Discretionary
Natural inland wetland restoration, wetland maintenance, or biosecurity	Constructing and maintenance a wetland utility structure	Specified infrastructure*
Scientific research	Urban development*	Quarrying*
Removing material that deposited as a result of a natural hazard or is/may cause an immediate hazard to people or property		Mineral Extraction*
		Landfills*

** Earthworks for the activity within 100m of a natural inland wetland has the same activity status if it results in any drainage of the natural inland wetland.*

23. District rules for earthworks can be more stringent than the NES-F regulations but cannot be more lenient (Regulation 6).

NES-CS

⁴ In Hearing 4, I recommend that the PDP includes new definitions of these activities to align with the NES-CF and assist with the interpretation of my recommended amendments to the rules.



24. The National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 (NES-CS) applies to assessing and managing the actual or potential adverse effects of contaminants in soil on human health from five activities, including removing or replacing fuel storage system sampling soil, disturbing soil, subdivision or a change in land-use. The NES-CS sets specific requirements on the volume of earthworks that can be undertaken where the site has, or is likely to have had, an activity listed on the Hazardous Activities and Industries List (HAIL) undertaken on it. The intent is that the NES-CS is relied on to manage any actual or potential adverse effects arising from earthworks that are undertaken on contaminated sites.

4.1.4 National Planning Standards

25. The National Planning Standards provide standards for the format, structure and content of district plans. In relation to the Earthworks Chapter, the National Planning Standards state that if provisions for managing earthworks are addressed, the provisions must be located in the Earthworks Chapter under "*General district-wide matters*". The National Planning Standards also states that the Earthworks Chapter in district plans:
 - a) **May** include provisions for quarries, mining and gravel extraction when these are managed on a district-wide basis.
 - b) **Must** include cross-references to any relevant earthworks provisions under the energy, infrastructure, and transport heading.

4.1.5 Northland Regional Plan

26. Regional councils are required to manage the effect of earthwork activities with respect to their functions under section 30 of the RMA while territorial authorities are required to manage the effect of earthwork activities with respect to their functions under section 31 of the RMA. This can result in an overlap of responsibilities and controls in regional and district plans in relation to earthworks that need to be carefully managed.
27. The Proposed Northland Regional Plan (NRP) was adopted by NRC in August 2023⁵. The earthworks rules are set out in section C.8.3 of the NRP. The earthworks rules cover the following RMA activities:
 - a) Earthworks (section 9(2)).
 - b) Damming and diversion of stormwater associated with earthworks (section 14(2)).

⁵ The rules in the NRP are to be treated as operative in accordance with section 86F of the RMA and therefore the operative Northland regional plan rules are no longer applicable.



- c) Discharge of stormwater associated with earthworks into water or onto or into land where it may enter water (section 15(1)).
28. Rule C.8.3.1 in the NRP sets out a range of different permitted activity thresholds for earthworks depending on where the earthworks are located as summarised in the table below.

Location	Earthworks threshold
Within 10m a natural wetland, the bed of a continually or intermittently flowing river or lake	200m ² of exposed earth at any time, and 50m ³ of moved or placed earth in any 12-month period.
Within 10m of an īnanga spawning site	200 m ² of exposed earth at any time, and 50m ³ of moved or placed earth in any 12-month period.
Catchment of an Outstanding Lake	2,500m ² of exposed earth at any time
Erosion-prone Land	2,500m ² of exposed earth at any time
High-risk flood hazard area	50m ³ of moved or placed earth in any 12-month period.
Coastal riparian and foredune management area	Excluding for coastal dune restoration, 200m ² of exposed earth at any time
Flood hazard area	100m ³ of moved or placed earth in any 12-month period
Other areas	5,000m ² of exposed earth at any time.

29. Rule C.8.3.1 also sets out a range of other permitted activity conditions for earthworks. Of particular relevance are the following permitted activity conditions:
- a) Good management practice erosion and sediment control measures, equivalent to those set out in the Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016 (Auckland Council Guideline Document GD2016/005), must be implemented for the duration of the activity (condition 3).
- b) Exposed earth must be stabilised upon completion of the earthworks to minimise erosion and avoid slope failure (condition 5).
- c) Earthworks must not exacerbate flood or coastal hazard risk on any other property, create or contribute to the instability or subsidence of land on other property, divert flood flow onto other property (condition 7).



30. Where the permitted activity conditions are not met, resource consent is required as a controlled activity under Rule C.8.3.2 or Rule C.8.3.3 or as a discretionary activity under Rule 8.3.4. The only policy specific to earthworks in the NRP is Policy D.4.27 which requires consideration of the extent to which earthworks are undertaken in accordance with established “good management practices” and avoid and mitigate adverse effects on a range of values in receiving environments. The overlap between the Earthworks Chapter in the PDP and the earthworks provisions in the NRP is discussed further under Key Issue 1 below.

4.1.6 Treaty Settlements

31. There have been no further Deeds of Settlement signed to settle historic Treaty of Waitangi Claims against the Crown, in the Far North District, since the notification of the PDP.

4.1.7 Iwi Management Plans – Update

32. Ngā Tikanga mo te Taiao o Ngāti Hine’ the Ngāti Hine Environmental Management Plan was in draft form at the time of the notification of the PDP. This was updated, finalised and lodged with the Council in 2022, after notification of the PDP in July 2022. In respect of the Earthworks Chapter the Ngāti Hine Environmental Management Plan provides the following policies in section 2.3 (soils and minerals):

3 - External stakeholders, external entities and groups shall ensure that earthworks provided for as a permitted activity in council plans must meet stringent environmental performance standards.

4 - Ngāti Hine requires integrated earthworks management plans detailing how erosion, sediment control, possible archaeological or cultural and historical sites and revegetation are to be managed, and how risks will be identified and minimised are mandatory for any earthworks consent application.

33. The Ahipara Takiwā Environmental Management Plan was in draft form at the time of the notification of the PDP. This was updated, finalised and lodged with Council in 2023, after notification of the PDP in July 2022. In respect of the Earthworks Chapter, the Environmental Management Plan provides the following policies specific to earthworks:

WTP1. To require an accidental discovery protocol for any earthworks or other disturbance of the whenua to provide for discovery of previously unknown wāhi tapu.

TTIP1. To require an accidental discovery protocol in all resource consents which involve earthworks or other activities likely to uncover artefacts or koiwi.



PP23. Require accidental discovery protocol to be signed between Ngā Marae o Ahipara and the developer as part of any subdivision activity requiring earthworks.

34. These updated iwi management plans are considered through this report, to the extent relevant and within the scope of submissions on relevant provisions.

4.2 Section 32AA evaluation

35. This report uses “key issues” to group, consider and provide reasons for the recommended decisions on similar matters raised in submissions. Where amendments to the provisions of the PDP are recommended, these are evaluated in accordance with section 32AA of the RMA.
36. Where applicable, the section 32AA further evaluation for each key issue considers:
 - a) Whether the amended objectives are the best way to achieve the purpose of the RMA.
 - b) The reasonably practicable options for achieving those objectives.
 - c) The environmental, social, economic and cultural benefits and costs of the amended provisions.
 - d) The efficiency and effectiveness of the provisions for achieving the objectives.
 - e) The risk of acting or not acting where there is uncertain or insufficient information about the provisions.
37. The section 32AA further evaluation contains a level of detail that corresponds to the scale and significance of the anticipated effects of the recommended amendments. Recommendations that relate to editorial, minor and consequential changes that improve the effectiveness and efficiency of the provisions without changing the policy intent are not evaluated under section 32AA of the RMA in this report.

4.3 Procedural matters

38. No correspondence or meetings with submitters were undertaken, therefore and there are no procedural matters to consider for this hearing.
39. I note that one of the submitters on the Earthworks Chapter, the Fuel Companies, are represented by SLR Consulting which could give rise to a potential or perceived conflict of interest issues. This is something that SLR Consulting regularly encounter and actively manage in RMA plan review processes in consultation with our clients. Our approach to manage this potential or perceived conflict of interest in these circumstances is to



ensure that staff working with local authorities on plan review processes (including the PDP) are not involved in any work for the Fuel Companies and there is a clear separation of SLR Consulting staff, including being located in different offices. As such, I consider that there are no conflict-of-interest issues in relation to my recommendations on these submission points.

5 Consideration of submissions received

5.1 Overview of submissions received.

40. There were 46 original submitters (with 193 individual submission points) and 43 further submitters (with 320 individual submission points) received on the Earthworks Chapter.
41. The main submissions on the Earthworks Chapter came from:
 - a) Primary sector submitters, including Federated Farmers (S421), HortNZ (S159), NZ Pork (S55), Summit Forests New Zealand Limited (S148) and Manulife Forest Management (NZ) Ltd (S160).
 - b) Infrastructure providers, including Transpower (S454), Top Energy (S483), the Telco Companies (S282) and the Fuel Companies (S335).
 - c) Central and local government organisations, including Northland Regional Council (S359), DOC (S364) and Heritage New Zealand (S409).
 - d) Planning and engineering firms, including Northland Planning and Development 2020 Limited (S502) and Haigh Workman Limited (S215).
 - e) Environmental organisations, including Fish and Game (S436), Kapiro Residents Association (S429) and Russell Protection Society (S179)
42. The key issues identified in this report are set out below:
 - a) Key Issue 1: General submissions on the Earthworks Chapter
 - b) Key Issue 2: Objectives
 - c) Key Issue 3: Policies
 - d) Key Issue 4: General comments on rules and advice notes
 - e) Key Issue 5: Rules
 - f) Key Issue 6: EW-S1 – maximum earthworks thresholds
 - g) Key Issue 7: Other earthworks standards
 - h) Key Issue 8: Definitions.



43. Section 5.2 constitutes the main body of the report and considers and provides recommendations on the decisions requested in submissions. Due to the large number of submissions received and the repetition of issues, it is not efficient to respond to each individual submission point raised in the submissions. Instead, this part of the report groups similar submission points together under the key issues sections outlined above. This thematic response assists in providing a more concise response to, and recommended decisions on the submission points on the Earthworks Chapter.

5.2 Officer Recommendations

44. A copy of the recommended amendments to Earthworks Chapter is provided in **Appendix 1 – Recommended provisions** to this report.
45. A full list of submissions and further submissions on the Earthworks Chapter and my recommended decisions on those submissions is contained in **Appendix 2 – Recommended Decisions on Submissions** to this report.

5.2.1 Key Issue 1: General submissions on Earthworks Chapter

Overview

Provision(s)	Officer Recommendation(s)
Multiple	Amend provisions throughout the Earthworks Chapter to reduce unnecessary overlap/duplication with NRC's functions under section 30 of the RMA and the NRP

Analysis of Submissions on Key Issue 1: General submissions on Earthworks Chapter

Matters raised in submissions

46. Top Energy (S483.177) supports the Earthworks Chapter and requests that the provisions that enable earthworks associated with the installation, upgrade and maintenance of infrastructure are retained.
47. DOC (S364.073, S364.001) requests that the earthworks policies and rules be amended to address the management of kauri dieback to prevent the spread of this disease. DOC notes that any land disturbance works within three times the radius of the canopy of the dripline of New Zealand Kauri Tree ("the kauri hygiene zone") can cause potential contamination of an uninfected site and spread the disease. DOC considers that there is a need for collaborative work to manage the kauri dieback and control further spread of this disease.

Overlap with regional council functions and effects on freshwater

48. NRC (S359.043, S359.045, S359.038, S359.044) considers that there is some overlap between the PDP controls for earthworks and those in the



NRP which can become problematic and potentially costly for applicants. NRC requests that the provisions in the Earthworks Chapter are reviewed and amended to avoid duplication with regional council functions where possible.

49. Reuben Wright (S178.014) raises a similar, but more specific concern that EW-R13, EW-S4 and EW-S5 relating to erosion and sediment control are already addressed through the NRP (Rule C.8.3.1) and that FNDC has no role in addressing these effects. Reuben Wright requests that these rules and standards are removed from the PDP to remove this duplication.
50. Summit Forests New Zealand Limited (S148.038, S148.139) raises concerns that the matters of discretion in the earthworks rules and standards exceed the scope of FNDC's functions under section 31 of the RMA and extend into to NRC's functions under section 30 of the RMA. Summit Forests New Zealand Limited requests that any matters of discretion that exceed the functions of FNDC under section 31 of the RMA are deleted from the PDP.
51. Kapiro Residents Association (S429.007) requests that the PDP give effect to the NPS-FM where freshwater issues are relevant. More specifically, Kapiro Residents Association requests that the PDP give effect to Te Mana o Te Wai where land use and development may affect the health and well-being of water bodies, freshwater ecosystems, and receiving environments. Kapiro Residents Association also notes the importance of earthworks being undertaken in a way that prevents sediment runoff and pollutants from entering waterways.

Analysis

Kauri dieback

52. I address a similar submission point from DOC requesting specific provisions for Kauri dieback in the section 42A report for Ecosystems and Indigenous Biodiversity (Hearing 4)⁶. In that report, I acknowledge the importance of Kauri dieback and the need for active management of this disease. However, I do not make any recommendations to the PDP to specifically address this disease on the basis that there is not sufficient reasoning and evidence in the DOC submission to recommend new provisions in the PDP to manage the disease (and provide the required section 32AA evaluation). I consider that the same rationale and recommendation applies here in relation to DOC's submission points on the Earthworks Chapter.
53. In my opinion, DOC needs to demonstrate in more detail that this requested rule is appropriate, effective and efficient in the Far North District before I can be satisfied it is appropriate to recommend that it is included in the Earthworks Chapter (and meet section 32AA

⁶ Paragraph 94 and 95, Ecosystems and Indigenous Biodiversity section 42A report.



requirements). DOC may choose to do this through the lodgement of evidence prior to the hearing on the Earthworks Chapter.

Overlap with NRC functions and the Northland Regional Plan

54. A key issue in submissions for the Earthworks Chapter is the potential overlap with NRC's functions under section 30 of the RMA and duplication of controls between the PDP and the NRP. From my experience, overlap in the management of earthworks between regional councils and territorial authorities is a common issue under the RMA and difficult to completely avoid in practice. However, in my view, it is also important that this duplication is minimised and that the responsibilities of regional councils and territorial authorities to manage the different effects of earthworks through the relevant RMA planning instruments are clear to all parties.
55. As outlined in section 4.1.5 above, the NRP includes a range of controls to manage earthworks and other land disturbance activities for the purposes of carrying out the following functions under section 30 of the RMA:
 - a) Soil conservation (section 30(1)(c)(i)).
 - b) The maintenance and enhancement of the quality of water in water bodies and coastal water (section 30(1)(c)(ii)).
 - c) The maintenance and enhancement of ecosystems in water bodies and coastal water (section 30(1)(c)(iii)).
 - d) The avoidance or mitigation of natural hazards (section 30(1)(c)(iv)).
56. The PDP includes controls to manage earthworks for the purposes of carrying out FNDC's functions under section 30(1)(b) of the RMA to control the effects of the use, development and protection of land, including for the purposes of:
 - a) The avoidance or mitigation of natural hazards (section 30(1)(b)(i)).
 - b) The adverse effects from the development, subdivision and use of contaminant land (section 30(1)(b)(ii)).
 - c) The maintenance of indigenous biodiversity (section 30(1)(b)(iii)).
57. The functions of FNDC to manage the effects of land use and development (including earthworks) are not limited to those matters listed in section 31(1)(b) of the RMA and extend to other adverse effects of earthworks (as a land use activity) such as:
 - a) Adverse effects on amenity (e.g. visual, dust, sediment runoff).



- b) Adverse effects on natural character and on natural landscapes and features.
 - c) Adverse effects on historic heritage, including sites of significance to Māori.
58. The PDP includes more stringent earthworks rules in other district-wide chapters⁷ to manage the adverse earthworks on natural character of the coastal environment and water bodies, outstanding natural features and landscapes, historic heritage, and sites and areas of significance to Māori. Therefore, in my view, the focus of the Earthworks Chapter should be on managing the adverse effects of earthworks that are not managed by those other PDP chapters while also avoiding unnecessary duplication with the NRP.
59. In my opinion, there is clear overlap in the provisions in the PDP Earthworks Chapter to manage adverse effects on water bodies and the coastal marine areas (CMA)⁸ and the earthworks provisions in the NRP. As stated in the submission from Kapiro Residents Association, there is an argument that territorial authorities should include controls on earthworks to give effect to the NPS-FM, in particular Clause 3.5(4) which states:

3.5 Integrated management

(4) Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.

60. However, in my opinion, managing the adverse effects of earthworks on freshwater health and ecosystems is first and foremost a regional council function. The only reason to control earthworks through the PDP for the purposes of managing adverse effects on freshwater health and ecosystems is therefore when there is a clear omission in the NRP, otherwise this would simply result in unnecessary duplication (and associated uncertainty/compliance costs for applicants).
61. As outlined in section 4.1.5 above, the NRP includes specific rules and standards to manage the effects of earthworks on freshwater health and ecosystems. Therefore, in my opinion, there is no need for the PDP to include controls on earthworks for the purposes of managing effects on

⁷ This is reflected in Advice Note 1 in the earthworks chapter which states "More stringent earthworks rules apply in the following other district-wide matters: Natural Character, Natural Features and Landscapes, Coastal Environment, Heritage Area Overlays, Historic Heritage, Notable Trees, and Sites and Areas of Significance to Māori. Those earthworks rules apply in addition to the earthworks rules and standards in this chapter".

⁸ For example, EW-O1, EW-P2, EW-P3 and EW-S5.



freshwater health and ecosystems (or coastal waters) which primarily relates to erosion and sediment runoff.

62. However, controls on erosion and sediment runoff from earthworks can be for several reasons. In addition to managing the adverse effects on receiving water bodies, sediment controls are often used to manage sediment runoff beyond the property boundary (e.g. roads, stormwater infrastructure, downstream properties) which can have a range of adverse effects that are more relevant to FNDC's functions under section 31 of the RMA. For this reason, many district plans include controls on sediment runoff in addition to more the specific earthworks and sediment discharge controls in the relevant regional plan.
63. Managing earthworks for the purposes of avoiding or mitigating natural hazards is a "greyer area" in my view as this is a function of regional councils and territorial authorities under section 30 and 31 of the RMA. While the RPS gives some direction to allocate responsibilities between the regional council and territorial authorities for the purposes of managing natural hazards, there is no clear allocation of responsibilities in relation to earthworks⁹. Whether the PDP should include controls on earthworks for the purposes of avoiding or mitigating natural hazards is therefore a question of what is the most appropriate, efficient and effective approach in terms of section 32 of the RMA in my opinion.
64. To respond to the above submissions relating to the duplication of controls on earthworks between the PDP and NRP, the following table provides a comparison between the PDP and NRP permitted activity standards to identify where there is unnecessary overlap and duplication. This table also provides my analysis and recommendations to remove unnecessary duplication where appropriate.

PDP	NRP	Analysis/ recommendation
<p>EW-S1 – maximum earthworks thresholds Volume: 200m³ – 5000m³ (depending on zone) Area: 2,500m² (all zones)</p>	<p>Volume: 50m³ – 100m³ (within 10m of waterbodies and in flood hazard areas) Area: 200m² – 2,500m² (within 10m of waterbodies, flood hazards areas, erosion prone land, catchments of outstanding lakes and coastal riparian areas) 5,000m² all other areas</p>	<p>The PDP controls are targeted to different zones recognising that the adverse effects of earthworks vary between the different zones. The PDP maximum area and volume earthworks thresholds also address a range of adverse effects relevant to FNDC's functions under section 31 of the</p>

⁹ Section 1.6 of the RPS (Statement of regional and district council responsibilities) simply states that both the regional council and territorial authorities have responsibility for controlling land for the purpose of avoiding or mitigating natural hazards.



PDP	NRP	Analysis/ recommendation
		RMA (e.g. visual amenity, landscape). Recommendation: No change.
EW-S2 – depth and slope Cut and fill must not exceed 1.5m to 3m	No equivalent standards.	The purpose of EW-S2 is to manage land stability and can also manage adverse effects on visual amenity/landscape. Recommendation: No change.
EW-S3 – accidental discovery protocol Outlines process to follow.	No equivalent standard, but NRP includes an advice note highlighting that an archaeological authority is required for disturbing an archaeological site.	I consider that it is appropriate for both the PDP and NRP to highlight the archaeological authority process under the Heritage New Zealand (Pouhere Taonga) Act. Recommendation: No change.
EW-S4 – site reinstatement Requirements to make disturbed land consistent with surrounding land and be replanted with same or similar vegetation.	5) exposed earth is established upon completion of the earthworks to minimise erosion and avoid slope failure	While there is some overlap, the two standards manage different effects. EW-S4 in the PDP is more focused on visual amenity to ensure the disturbed area is reinstated to be consistent with surrounding land and vegetation whereas the NRP controls are more focused on minimising erosion. Recommendation: No change.
EW-S5 – erosion and sediment control Requirements to: 1. Comply with <i>Auckland Council Guideline Document GD2016/005</i> ¹⁰	3) Erosion and sediment control measures equivalent to those set out in the <i>Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016</i>	The Auckland Council Erosion and Sediment Control Guidelines referenced in the standards address effects on freshwater health, ecosystems and amenity

¹⁰ *Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016.*



PDP	NRP	Analysis/ recommendation
<p>2. Prevent silt or sediment from entering water bodies, coastal marine area, any stormwater system, overland flow paths, or roads.</p>	<p><i>(Auckland Council Guideline Document GD2016/005)</i> must be implemented.</p>	<p>effects (a mix of regional and district council functions). The NRP standard limits application of the guidelines to erosion and sediment control.</p> <p>Recommendation: EW-S3 is amended so it only references the aspects of the Auckland Council Erosion and Sediment Control Guidelines that relate to impacts of sediment on stormwater systems, overland flow paths and roads). Condition 2 is also amended to replace "prevent" with "minimise" (discussed further under Key Issue 7 below below).</p>
<p>EW-S6 – setback Setback requirements to site boundaries and the CMA. Refers to Natural Character chapter for setbacks for earthworks to water bodies and their margins.</p>	<p>1) Reduced area / volume within vicinity of freshwater bodies and coastal marine area.</p>	<p>Setback to boundaries serve a clear purpose to manage land stability effects on adjacent properties. However, the rationale for the setback to the CMA in EW-S6 is unclear and seems to duplicate earthworks controls in the PDP Coastal Environment chapter and the NRP.</p> <p>Recommendation: Amend EW-S6 to delete the setback to the CMA.</p>
<p>EW-S7 – land stability Earthworks must not result in any instability of land at or beyond the boundary of the property where the earthworks occur.</p>	<p>7) c) The earthworks activity does not create or contribute to the instability or subsidence of land on other property.</p>	<p>There is a high level of duplication between the two standards. However, EW-S7 provides an important function to manage the adverse effects of land stability on adjacent properties and infrastructure.</p>



PDP	NRP	Analysis/ recommendation
		Recommendation: Retain EW-S7.
<p>EW-S8 – filling material</p> <p>The fill material shall not:</p> <ol style="list-style-type: none"> 1. contain putrescible, pollutant, inflammable or hazardous components; or 2. consist of material other than soil, rock, stone, aggregate, gravel, sand, silt, or demolition material; or 3. comprise more than 5% vegetation (by volume) of any load. 	<p>The NRP includes control on clean fill through the definition of earthworks which differs from the PDP and the National Planning Standards and refers to “<i>placing or replacing earth or clean fill material</i>”. The NRP definition of clean fill then includes some controls on hazardous substances that are similar but more comprehensive than point 1 in EW-S8.</p>	<p>While there is some overlap between EW-S8 and the controls on clean fill in the NRP, I consider that that EW-S8 is much clearer standard to plan users than an indirect reference to clean fill through the earthworks definition in the NRP. Relying on a definition of earthworks in the NRP to manage fill material which differs from the definition of earthworks in the PDP (and National Planning Standards) is also confusing for plan users in my opinion.</p> <p>Recommendation: Retain EW-S8.</p>
<p>EW-S9 – flood and coastal hazards</p> <p>Earthworks must not:</p> <ol style="list-style-type: none"> 1. divert flood flow or coastal inundation onto other properties or otherwise result in any increase in flood hazard or coastal inundation beyond the boundaries of the site; or 2. result in the loss of any flood storage volume within a flood hazard area, unless equivalent flood storage is provided. 	<p>7) The earthworks activity does not:</p> <p><i>b) exacerbate flood or coastal hazard risk on any other property, or</i></p> <p><i>d) divert flood flow onto other property, and</i></p>	<p>While there is some duplication in these standards, the PDP has a mandate to control the use of land for the purposes of avoiding or mitigating natural hazards. I therefore consider that EW-P9 should be retained as it provides more specific direction on how earthworks need to be managed to avoid exacerbating the risk of flood and coastal hazards beyond the boundary of the site.</p> <p>Recommendation: Retain EW-S9.</p>

65. The other key issue raised in submissions with respect to duplication, is the matters of discretion where compliance with the PDP earthworks standards is not achieved. I have therefore listed all the matters of



discretion in EW-S1¹¹ below along with my recommended amendments and deletions to remove unnecessary duplication (both with the NRP and with other PDP chapters¹²):

- a. the location, scale and volume;*
- b. depth and height of cut and fill;*
- c. the nature of filling material and whether it is compacted;*
- d. the extent of exposed surfaces or stockpiling of fill;*
- e. erosion, dust and sediment controls;*
- f. the risks of natural hazards, particularly flood events;*
- g. stormwater controls;*
- h. flood storage, overland flow paths and drainage patterns;*
- i. ~~impacts on natural coastal processes; (duplicates NRP);~~*
- j. the stability of land, buildings and infrastructure;*
- k. natural character, landscape, historic heritage, spiritual and cultural values;*
- l. the life-supporting capacity of soils;*
- m. ~~the extent of indigenous vegetation clearance and its effect on biodiversity;~~ (duplicates the Ecosystems and Indigenous Biodiversity chapter as this controls indigenous vegetation clearance and associated land disturbance).*
- n. ~~impact on any outstanding natural character, outstanding natural landscapes and outstanding natural features;~~ (duplicates Coastal Environment and Natural Features and Landscape PDP chapters)*
- o. ~~riparian margins;~~ (duplicates PDP Natural Character chapters)*
- p. the location and use of infrastructure;*
- q. temporary or permanent nature of any adverse effect;*
- r. traffic and noise effects;*

¹¹ Which has the most comprehensive list of matters of discretion, along with EW-S4 and EW-S5.

¹² I consider that there is scope to recommend these amendments under Clause 16, Schedule 1 of the RMA as the effect of the PDP provisions will be the same (but unnecessary duplication is removed).



- s. *time of year earthworks will be carried out and duration of the activity; and*
- t. *impact on visual and amenity values.*

Recommendation

66. For the above reasons, I recommend Earthworks Chapter is amended to remove unnecessary duplication with the NRP, in particular to remove controls on the adverse effects of earthworks that are primarily a regional council function under section 30 of the RMA. This affects multiple provisions in the Earthworks Chapter and my recommendations on these more specific provisions are outlined below under Key Issue 2 to 8.

Section 32AA evaluation

67. I consider that my recommended amendments to a range of provisions in the Earthworks Chapter outlined above and below are more appropriate to achieve the relevant PDP objectives compared to the notified provisions. The intent of these recommended amendments is to remove unnecessary duplication between the PDP with controls on earthworks in the NRP that primarily fall within NRC’s functions under section 30 of the RMA. This will not change the effectiveness of the provisions to manage the effects of earthworks between the PDP and NRP in my view. However, these recommended amendments will be more efficient by removing duplication in regulatory controls and associated costs to applicants, landowners and developers. I therefore consider that my recommended amendments to the earthworks provision are appropriate in accordance with section 32AA of the RMA.

5.2.2 Key Issue 2: Objectives

Overview

Provision(s)	Officer Recommendation(s)
EW-O1	Retain with minor amendments to clarify intent and reduce duplication with earthworks controls in the NRP
EW-O2	Retain as notified
EW-O3	Retain as notified

Analysis of Submissions on Key Issue 2

Matters raised in submissions

EW-O1

68. Russell Protection Society (S179.081) supports EW-O1 and requests that it be retained as notified. Russell Protection Society notes the importance of managing the adverse effects of earthworks, particularly erosion and sediment control, on receiving environments. Russell Protection Society



supports EW-02 and EW-02 in the Earthworks Chapter for the same reasons.

69. Waiaua Bay Farm Limited (S463.067) and Federated Farmers (S421.190) support EW-01 and request that it is retained as notified. Waiaua Bay Farm Limited considers that it is appropriate to enable earthworks where adverse effects on the surrounding environment are appropriately managed.
70. A group of submitters, including P S Yates Family Trust (S333.073) and Setar Thirty Six Limited (S168.081), support EW-01 in part but request that it be amended to better provide for earthworks associated with rural land uses. The groups of submitters consider that EW-01 as drafted enables earthworks associated with subdivision and development, but neglects earthworks associated with rural activities which are also important and are provided for under EW-P1. To address this relief, the submitters request an amendment to EW-01 so that it specifically enables earthworks required for "*...for rural land uses and development and...*" in addition to earthworks required for the subdivision and development of land.

EW-02

71. Russell Protection Society (S179.110) and Federated Farmers (S421.191) support EW-02 and request that it be retained as notified.

EW-03

72. Russell Protection Society (S179.111), Federated Farmers (S421.192) and Transpower (S454.100) support EW-03 and request that it is retained as notified. Transpower supports the inclusion of an objective in the Earthworks Chapter to ensure the stability of infrastructure such as the National Grid is not compromised.

Analysis

73. All three objectives in the Earthworks Chapter are broadly supported by the limited number of submissions. The main substantive issue in submissions to respond to is the request from P S Yates Family Trust and others to amend EW-01 to explicitly refer to earthworks for rural land uses alongside subdivision and development.
74. While I consider that the notified wording of EW-01 is generally broad enough to capture earthworks within both urban and rural environments, I accept that it could be clearer that it is intended to capture earthworks associated with "*rural uses*" which the reference to "*subdivision and development*" arguably does not. However, I consider that the relief sought can be better achieved through simply adding the word "*use*" rather than specifically referring to "*rural land uses*". My recommended



amendments to EW-O1 to address the relief sought is as follows: *...to facilitate the efficient subdivision, use and development of land, while...".*

75. I also recommend a consequential amendment to EW-O1 to remove unnecessary duplication with NRC's functions under section 30 of the RMA and controls on earthworks in the NRP. More specifically, I recommend that the intent of the objective is clarified by replacing the reference to managing effects on "...*water bodies, the coastal marine area...*" with "...*amenity values...*". The rationale for this recommendation is outlined under Key Issue 1 and this recommendation responds to the relief sought by NRC and other submitters to focus the PDP Earthworks Chapter on FNDC's functions under section 31 of the RMA.

Recommendation

76. For the reasons above, I recommend that submissions on EW-O1, EW-O2 and EW-O3 are accepted and accepted in part as set out in **Appendix 2**. I recommend that EW-O1 is amended as follows:

Earthworks are enabled where they are required to facilitate the efficient subdivision, use and development of land, while managing adverse effects on ~~waterbodies, the coastal marine area,~~ amenity values, public safety, surrounding land and infrastructure.

Section 32AA evaluation

77. The amendments I recommend to EW-O1 are consistent with the policy intent and simply better clarify the outcome sought and reduce unnecessary duplication with the NRP. I therefore consider that my recommended amendments to EW-O1 are an appropriate way to achieve the purpose of the RMA in accordance with section 32AA of the RMA.

5.2.3 Key Issue 3: Policies

Overview

Provision(s)	Officer Recommendation(s)
EW-P1	Amend to clarify intent and improve interpretation
EW-P2	Delete clause c) to remove duplication with the NRP and the Natural Character and Coastal Environment chapters in the PDP
EW-P3	Amend clause e) to remove duplication and correct minor error
EW-P4, EW-P5, EW-P7	Retain as notified
EW-P6	Amend to direct that earthworks must be undertaken in a way that protects the operation of infrastructure
EW-P8	Amend chapeau to clarify intent and be consistent with other section 42A report recommendations



Analysis of Submissions on Key Issue 3: Policies

Matters raised in submissions

General

78. Transpower (S454.101) requests a new policy to protect nationally and regionally significant infrastructure from the adverse effects of earthworks, including within the National Grid Yard. Transpower notes that earthworks undertaken too close to National Grid infrastructure can have an adverse effect on the stability of electricity transmission structures which needs to be avoided. While acknowledging there are rules in the Earthworks Chapter to manage this issue, Transpower considers that supporting policy direction is also required within the Earthworks Chapter.

EW-P1

79. A number of submitters support EW-P1 and request that it be retained, including Russell Protection Society (S179.082), NZTA (S356.098), Federated Farmers (S421.193) and HortNZ (S159.078). HortNZ and Federated Farmers support the recognition in EW-P1 that earthworks are necessary for rural land uses and farming activities in rural zones.
80. Waiaua Bay Farm Limited (S463.068) oppose EW-P1 as they consider that the policy fails to recognise the need for earthworks to be undertaken in the range of special purpose zones in the PDP. To address this concern, Waiaua Bay Farm Limited request a new clause is inserted into EW-P1 than would also enable earthworks when this provides for "...Land uses, development and subdivision anticipated in a Special Purpose Zone".
81. Fish and Game (S436.039) request an amendment to clause c) in EW-P1 so that earthworks for restoration are specifically provided for/enabled. Fish and Game considers that encouraging and enabling wetland restoration and enhancement is vital to stop the loss and degradation of wetlands in the Far North District.
82. Manulife Forest Management (NZ) Ltd (S160.027) opposes EW-P1 due to it being overly focused on enabling earthworks associated with farming activities rather than primary production more generally. To address this concern, Manulife Forest Management (NZ) Ltd requests that clause b) in EW-P1 is amended to refer to "primary production" (which is defined in the PDP) rather than being limited to "farming" activities (which is also defined in the PDP).

Other policies

83. Russell Protection Society (S179.112 to S179.118) supports EW-P2 to EW-P8. Russell Protection Society supports the policies in the Earthworks Chapter, but considers that the rules and standards should contain more



specific erosion and sediment control standards and Council should not rely on NRC for managing these effects.

84. FNDC (S368.090) notes a drafting error in EW-P3 where the use of "or" in clause e)(i) should be amended to "and" to reflect the policy intent.
85. Waiaua Bay Farm Limited (S463.069) opposes EW-P8 on the basis that matters in (a) to (t) are a list of assessment matters that are not appropriate to include in a policy. Waiaua Bay Farm Limited considers that EW-P8 as notified does not provide direction about how to achieve the overarching objectives. Accordingly, Waiaua Bay Farm Limited requests that EW-P8 is deleted to rely on the other earthworks policies or, if necessary, the assessment criteria within EW-P8 should be relocated to the rules and standards.

Analysis

86. There are limited submissions on the policies in the Earthworks Chapter and the submissions received are generally in support. The outstanding issues in submissions on the earthworks policies to be addressed are:
 - a) The relief sought from Transpower for policy direction specific to protecting regionally significant infrastructure from earthworks.
 - b) Whether EW-P1 should be expanded to specifically provide for:
 - i. Earthworks for development anticipated within Special Purpose Zones;
 - ii. Earthworks for restoration; and
 - iii. Earthworks associated with primary production more generally rather than focusing on farming activities.
 - c) The drafting error in EW-P3.
 - d) The function of EW-P8 as a policy to "*consider the following matters*" vs assessment criteria.
 - e) Consequential amendments to the policies in the Earthworks Chapter to address overlap issues with NRC's regional council functions and the NRP with respect to earthworks (discussed under Key Issue 1 above).
87. I agree with Transpower that some policy direction to support EW-R15 (110kv Transmission Lines and National Grid Yard) is appropriate to ensure earthworks are undertaken in way that does not compromise the operation of this regionally significant infrastructure. However, I consider that this direction should apply to infrastructure more generally and the relief sought can be most effectively and efficiently addressed through an amendment to EW-P6 as follows:



Require that all earthworks are designed and undertaken in a manner that ensures:

- a. the stability and safety of surrounding land, buildings or structures; and*
- b. the safe, effective and efficient operation of infrastructure.*

88. I do not consider that it is necessary to refer to special purpose zones within EW-P1. This is because I consider that the reference to earthworks associated with urban and rural land uses is sufficiently broad to cover earthworks undertaken within the range of special purpose zones in the PDP, noting that these vary in character in terms of being primarily rural in nature through to more developed zones (or a mixture of both in the case of the Kauri Cliffs Special Purpose Zone, for example).
89. However, there are a number of issues with the PDP definition of "urban" zones in my view which I outlined in my section 42A report for the Coastal Environment topic (Hearing 4). Equally, I consider that the reference to rural zones in EW-P1 could cause some confusion in terms of the zones it refers to. I therefore recommend that clause a) and clause b) in EW-P1 are amended to refer to "...within urban areas zones ..." and "...within the rural areas zones". I consider that this will address the relief sought by Waiaua Bay Farm Limited to some extent, albeit in a less specific manner.
90. I agree that a specific reference to earthworks for restoration is appropriate for completeness¹³ and recommend that this is achieved through a minor amendment to clause c) in EW-P1 as follows "...restoration, conservation and recreation activities;...".
91. I agree in principle that clause b) in EW-P1 should not be limited to "farming" activities (which is defined in the PDP¹⁴) as earthworks associated with other primary production activities (e.g. plantation forestry) should be enabled within rural areas. I discuss the distinction between earthworks for "farming" activities and other primary production activities in more detail in relation to EW-R4 and EW-R5 (Key Issue 5) below. In this respect, I note that there are other PDP chapters (e.g. mineral extraction) and national regulations (i.e. NES-CF) to manage earthworks from these primary production activities that are intentionally not captured by the PDP definition of "farming". Accordingly, I consider that it is appropriate to retain reference to "farming" in clause b) of EW-P1.
92. I agree with FNDC that there should be an "and" between the two sub-clauses in e) in EW-P3 and recommend that this policy is amended

¹³ Noting that this does create with the PDP definition of "conservation activities" in EW-P1.

¹⁴ The PDP definition of farming is "means the use of land for the purpose of agricultural, pastoral, horticultural or apiculture activities, including accessory buildings, but excludes mining, quarrying, plantation forestry activities, intensive indoor primary production and processing activities. Note: this definition is a subset of primary production."



accordingly. I also recommend that the references to sediment entering waterbodies and the CMA are removed from clause e)ii) in EW-P3 for the reasons outlined under Key Issue 1.

93. I consider a similar submission from Waiaua Bay Farm Limited raising concerns with the function of EW-P8 as assessment criteria in the section 42A report for the Coastal Environment topic (Hearing 4)¹⁵. In that report, I conclude that the “*consideration*” policies at the end of the PDP chapters have value to ensure all relevant matters are considered when resource consent is required under the relevant chapter and that I support this consistent drafting approach across the PDP chapters.
94. However, I also recommend some amendments to the chapeau of the corresponding “*consideration*” policy (CE-P10) to clarify the intent of policy. I recommend that the chapeau of EW-P8 is amended in consistent same way as follows:

“Consider the following matters where relevant when assessing and managing the effects of earthworks ...”

95. For the reasons outlined under Key Issue 1, I also recommend consequential amendments to EW-P2, EW-P3 and EW-P8 to remove duplication with NRC’s functions under section 30 of the RMA and the NRP to manage earthworks and duplication with other PDP chapters with more stringent controls on earthworks.

Recommendation

96. For the reasons outlined above, I recommend that submissions on the policies in the Earthworks Chapter are accepted, accepted in part and rejected as set out in **Appendix 2**. I recommend that the EW-P1, EW-P2, EW-P3, EW-P6 and EW-P8 are amended as set out above and in **Appendix 1**.

Section 32AA evaluation

97. The amendments I am recommending to the policies in the Earthworks Chapter are consistent with the policy intent and aim to improve clarity, reduce unnecessary duplication with the NRP, and provide clear policy direction to support the earthworks rules (i.e. direction to ensure earthworks is undertaken in way that does not compromise the operation of infrastructure). I therefore consider that my recommended amendments to the earthworks policies are an appropriate way to achieve the relevant PDP objectives in accordance with section 32AA of the RMA.

¹⁵ Paragraph 213 to 216.



5.2.4 Key Issue 4: General comments on rules and advice notes

Overview

Provision(s)	Officer Recommendation(s)
EW-R1 to EW-R14	Consolidate rules into a single general earthworks rule that requires compliance with all earthworks standards

Analysis of Submissions on Key Issue 4

Matters raised in submissions

Replacing the earthworks rules with a general earthworks rule and EW-R14

98. Haigh Workman Limited (S215.036 to S215.047) notes that the rules enable earthworks associated with a number of activities subject to compliance with the earthwork standards. Haigh Workman Limited considers that the rules can be simplified, more efficient and effects-based by replacing these rules with one rule that permits earthworks for any purpose subject to compliance with the standards in EW-S1 to EW-S9. For these reasons, Haigh Workman Limited opposes EW-R1 to EW-R11 as notified and requests that these are replaced with a single permitted activity rule for earthworks.
99. The Fuel Companies (S335.009 to S335.021) raise similar issues and consider that it is unclear why all earthworks cannot be permitted subject to compliance with the earthworks standards irrespective of the purpose/activity they relate to. The Fuel Companies also consider that the notified drafting of the earthworks rules means it is unclear what rule would apply to typical operation, maintenance, and upgrade earthworks at petroleum industry sites. The Fuel Companies therefore request that EW-R1 to EW-R12 are deleted and are replaced with a single rule that provides for all earthworks to focus on effects not the activity the earthworks relate to. The requested rule from Fuel Companies is as follows: "EW-R1 All Zones Earthworks Activity Status: Permitted Where: Per-1 Compliance with standards EW-S1 to EW-S9 is achieved."
100. The Fuel Companies (S335.022) raise similar concerns with EW-R14 which is discretionary activity rule for earthworks not otherwise listed as a permitted activity. The Fuel Companies request that EW-R14 is either deleted or the activity status is amended to be a restricted discretionary activity.
101. A group of submitters, including P S Yates Family Trust (S333.074) and Setar Thirty Six Limited (S168.082) raise similar concerns that the effects of earthworks are mostly the same irrespective of the purpose of the earthworks and that these effects can be managed by the earthworks standards. The submitters consider that there is a risk that EW-R14 will result in resource consent being required for many activities not specifically provided for in EW-R1 to EW-R13 but anticipated in the



underlying zones. To address this concern and potential risk, the submitters request that EW-R14 is replaced with rule that permits earthworks not provided for under another rule, subject to compliance with relevant earthwork standards.

General submissions on the rules

102. Russell Protection Society (S179.083) supports the earthworks rules in part but considers that standard erosion control methods are largely ineffectual because parts of the Bay of Islands are characterised by heavy clay soils, steep topography and heavy rainfalls, which leads to heavy sediment loads in streams during storm events. Russell Protection Society considers that FNDC has primary responsibility for developing and implementing erosion and sediment control standards rather than simply relying on other agencies such as NRC. Accordingly, Russell Protection Society request new erosion and sediment control standards are inserted into the PDP.
103. John Andrew Riddell (S431.166) requests that all earthworks rules that do not specify an area or volume threshold are amended so that all earthworks are "*to be the minimum necessary*".
104. Fish and Game (S436.001) requests that the PDP is amended to provide for earthworks as a permitted activity within wetlands when it is for wetland maintenance and restoration work. Fish and Game considers that encouraging wetland restoration and enhancement is vital to stop the loss and degradation of wetlands in the Far North District.
105. New Zealand Defence Force (S217.026) considers that EW-R14 (activities not otherwise listed in this chapter) is onerous and inconsistent with other rules which specifically enable earthworks associated with other activities. New Zealand Defence Force requests a new permitted activity rule for earthworks associated with temporary military training, subject to compliance with some of the existing earthworks standards and a restricted discretionary activity status where compliance is not achieved.
106. Rueben Wright (S178.013) supports the earthworks rules in part, but notes that none of the rules prescribe any specific requirements for earthworks associated with subdivisions, which usually involves earthworks in some form. Rueben Wright requests that the Earthworks Chapter be amended to provide a direct link to the Subdivision chapter so that earthworks can be assessed as part of any subdivision application.
107. Summit Forests New Zealand Limited (S148.036) are concerned that, unlike farming activities, the earthworks rules do not specifically enable earthworks associated with plantation forestry. To address this concern, Summit Forests New Zealand Limited requests that the provisions are amended to provide for earthworks associated with plantation forestry activities as a permitted activity, subject to the provisions of the NES-PF.



108. Carrington Estate Jade LP and Carrington Farms Jade LP (S351.009) raises concern that ODP Rule 18.6.6.1.11 which enables earthworks and vegetation clearance within the Carrington Estate SPZ has not been replicated in the earthworks rules. Carrington Estate Jade LP and Carrington Farms Jade LP requests that the Earthworks Chapter is amended to replicate this rule with a reference the Carrington Estate Development Plan and Schedule or to provide an exemption for earthworks within the Carrington Estate Special Purpose Zone.

Advice notes

109. Te Hiku Iwi Development Trust (S399.069) considers that Advice Note 5 in the Earthworks Chapter which references the Northland Regional Plan and NES-F should be amended to specifically reference the setbacks in these rules and regulations. Te Hiku Iwi Development Trust requests that this is achieved through a reference to "*including setbacks*" to help plan users be aware of this connection.
110. The Fuel Companies (S335.007) note that the intent of Advice Note 6 appears to be to advise plan users that the NES-CS applies **in addition to** the earthworks rules in the PDP. To make this clear, the Fuel Companies request that this advice note is amended to state the NES-CS "*also*" applies rather than "will" apply.
111. The Fuel Companies (S335.008) also request a specific exemption for earthworks undertaken in relation to the removal or replacement of underground fuel storage systems, given this earthworks activity is specifically regulated under the NES-CS. The Fuel Companies request a new advice note in the Earthworks Chapter to provide for this exemption.
112. Haigh Workman Limited (S215.051) is concerned that EW-S7 is open to wide interpretation, is redundant and should be removed as the risk of instability of land at or beyond the property boundary is addressed by EW-S6 (setbacks). Haigh Workman Limited considers that the intent of EW-S7 may be to address the more general risk of earthworks being undertaken on land subject to instability. To address this issue, Haigh Workman Limited considers that there could be a new advice note added for earthworks on "*Land Susceptible to Instability*" as defined in the PDP. Haigh Workman Limited requests that this advice note states, if there is reason to suspect that the earthworks may result in instability, a site-specific geotechnical assessment, undertaken in accordance with engineering best-practice, may be required to demonstrate compliance with this standard.



Analysis

Replacing the earthworks rules with a general earthworks rule

113. I agree with Haigh Workman Limited and the Fuel Companies that there is considerable duplication in the earthworks rules and the reason for this duplication is unclear in my opinion. In particular, I note that:
- a) EW-R1 – EW-R11 provide for earthworks to be undertaken for a range of purposes/activities subject to compliance with the same earthworks standards (all earthworks standards except EW-S3 and EW-S5). The only difference is EW-R4 (Earthworks for farming activities on sites greater than 8 hectares) which is not subject to EW-S1 (maximum earthworks thresholds) or EW-S2 (maximum depth and slope) which I discuss further below under Key Issue 5. Therefore, in practical terms, these 11 earthworks rules are all the same with this one exception.
 - b) EW-R12 and EW-R13 only refer to a single standard, being "*EW-S3 - Accidental Discovery Protocol*" and "*EW-S5 – Erosion and Sediment Control*" respectively. The rules are drafted such that EW-S3 and EW-S5 apply to all earthworks – which I agree with. However, what is not clear to me is why they are standalone rules and why the same effect could not be more clearly and effectively achieved by referring to EW-S3 and EW-S5 within a general earthworks rule. Further, I note that the drafting of EW-12 and EW-R13 suggests that "*...accidental of suspected sediment material*" and "*...erosion and sediment control*" are earthworks activities in themselves which they are not – rather they are processes and methods to manage the effects of earthworks.
114. I therefore agree that the earthworks rules can be significantly simplified, more effective and effects-based by replacing EW-R1 to EW-R13 with a single rule that provides for earthworks to be undertaken as a permitted activity subject to compliance with all relevant earthworks standards (EW-S1 to EW-S9). This rule would then require resource consent as a restricted discretionary when any of the standards are not complied with, consistent with the notified drafting of EW-R1. I consider that a restricted discretionary activity status is appropriate when the earthworks standards are not complied with as the adverse effects of earthworks are generally well known and the matters of discretion in the earthworks standards are comprehensive (refer to Key Issue 1 for my recommended matters of discretion). For efficiency reasons, I recommend that the matters of discretion are moved from all the earthworks standards into consolidated EW-R1 to remove duplication and provide a single list of matters of discretion to consider as applicable when the earthworks standards are not complied with.
115. My recommendation to consolidate the earthworks rules into a single rule also means that EW-R14 is redundant, and I recommend that this rule is also deleted. The practical effect of this is that earthworks for a purpose not specified in EW-R1 to EW-R13 will need to comply with the earthworks



standard as a permitted activity otherwise resource consent will be required as a restricted discretionary activity.

General submissions on the rules

116. I acknowledge the concerns of Russell Protection Society about the effects of erosion and sediment from earthworks into streams and receiving marine environments in the Bay of Islands. However, as discussed above, I consider that NRC has the primary responsibility for managing the effects of earthworks on the quality of water bodies and coastal waters. For these reasons, the NRP (Rule C.8.3.1(3)) requires that erosion and sediment control measures equivalent to those set out in *Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016 (Auckland Council GD05)*¹⁶ must be implemented throughout the duration of the activity.
117. My understanding is that this Auckland Council Erosion and Sediment Control Guideline is comprehensive and is generally accepted as best practice for the selection, design and use of erosion and sediment control practices for earthworks, including to manage adverse effects on receiving water bodies and coastal waters. As outlined under Key Issue 1, I recommend the requirement in EW-S5 in the PDP to comply with this Auckland Council Erosion and Sediment Control Guideline is retained but refined to focus on FNDC's functions in relation to the effects of earthworks under section 31 of the RMA.
118. The submission from John Andrew Riddell requests amendments to require earthworks "*to be the minimum necessary*" where there is no maximum volume or area threshold. I am recommending that all earthworks (with limited exceptions) are subject to the maximum earthworks volume and area thresholds in EW-S1. Therefore, the relief sought by John Andrew Riddell is provided for and I recommend that this submission point is accepted.
119. I agree with the relief sought by Fish and Game to enable earthworks associated with the restoration of wetlands. However, I do not consider that this requires a specific permitted activity rule in the Earthworks Chapter as:
- a. I expect that earthworks for restoration of wetlands will be well below the earthworks area and volume thresholds specified in EW-S1.
 - b. Earthworks near wetlands would generally be managed through the Natural Character chapter in the PDP which has more stringent

¹⁶ Refer: [Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region \(aucklandcouncil.govt.nz\)](http://aucklandcouncil.govt.nz)



controls for earthworks in "*wetland, lake and river margins*" and/or the NES-F.

120. I consider that my recommendation above to consolidate the earthworks into a general earthworks rule that is neutral on the purpose will address the relief sought by New Zealand Defence Force, at least in part. More specifically, this will enable earthworks associated with temporary military training activities to be undertaken as a permitted activity where this complies with the earthworks standards.
121. I do not consider that a specific reference to the Subdivision Chapter is necessary within the Earthworks Chapter as requested by Rueben Wright. I am aware that subdivision generally involves earthworks (and that the scale of these earthworks can be significant), but earthworks are associated with a wide range of other activities managed through other PDP chapters (e.g. primary production, infrastructure). Specifically referring to earthworks associated with subdivision, but not other relevant activities which involve earthworks could therefore be confusing to plan users.
122. I agree with Summit Forest New Zealand Limited that earthworks associated with plantation forestry should be regulated under the NES-PF (now NES-CF) not the Earthworks Chapter. Advice Note 4 above the earthworks rules is intended to make that clear to all plan users, rather than state this throughout all the relevant earthworks rules and standards. From my experience, advice notes are a common approach to address duplication and conflict between plan rules and NES under section 44A of the RMA and I note that this is recognised as a valid method in the NES-PF guidance that I helped prepare¹⁷. However, I consider that the wording of Advice Note 4 can be improved to make it clearer none of the rules in the Earthworks chapter apply to commercial forestry earthworks. I also recommend that Advice Note 4 is amended to refer to the NES-CF (rather than NES-PF).
123. I do not consider that a specific rule to enable earthworks within the Carrington Estate Special Purpose Zone is necessary or appropriate. As outlined above, I consider that all earthworks should be subject to the same standards (with some exceptions) as the effects of earthworks are generally the same. I also note that Rule 18.6.6.1.11 in the Operative District Plan (ODP) refers to earthworks being undertaken in accordance with the conditions of the resource consent. My expectation is therefore that the earthworks provided for within the Carrington Estate Special Purpose Zone under Rule 18.6.6.1.11 in the ODP have already been undertaken.

¹⁷ Refer: [NESPf-Plan-Alignment-Guide-V1-.12.06.18-FINAL.pdf](#)



Advice notes

124. I do not recommend that Advice Note 5 is amended to specifically reference **the setbacks** in the NES-F and NRP. There are a range of requirements in these instruments and referencing setbacks, but not referencing other requirements could create unnecessary confusion for plan users in my view. However, I do recommend that the advice notes relating to the NRP and the NES-F are separated out to improve clarity and to be aligned with the recommended amendments to the Natural Character chapter in Hearing 4¹⁸.
125. I agree with the Fuel Companies that Advice Note 6 can be clarified to make it clear the NES-CS applies **in addition** to the PDP earthworks rules and recommend that it is amended accordingly. I also agree with the Fuel Companies that the NES-CS includes specific regulations and requirements for earthworks associated with the removal or replacement of fuel storage systems and it would be inefficient and contrary to section 44A of the RMA to duplicate those requirements in the Earthworks Chapter. I therefore a new advice note be added to the Earthworks Chapter to provide for this exemption as follows: "*The earthworks rules in this Chapter do not apply to the removal or replacement of an underground fuel storage system, which are regulated under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011.*"
126. I acknowledge the concerns about EW-S7 being potentially subjective and open to interpretation and consider these concerns further below under Key Issue 7 (other earthworks standards). However, I do not consider that an advice requiring a site-specific geotechnical assessment to be undertaken where earthworks is on "*land susceptible to land instability*"¹⁹ is an appropriate, efficient or effective way to address this concern. I therefore do not recommend any amendments in response to this request from Haigh Workman Limited.

Recommendation

127. I recommend that the general submissions on the earthworks rules are accepted, accepted in part and rejected as set out in **Appendix 2**. I recommend that EW-R1 to EW-R14 are replaced with a consolidated general earthworks rule (EW-R1) that permits earthworks subject compliance with all earthworks standards (EW-S1 to EW-S9). I recommend that the matters of discretion are moved from the earthworks

¹⁸ More specifically, the reporting officer for the Natural Character chapter recommended that this include the following advice note: *Earthworks and indigenous vegetation clearance in the margins of wetlands are controlled by the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F). Rule NATC-R3 does not apply to earthworks and indigenous vegetation clearance regulated by the NES-F.*

¹⁹ This term has a specific definition in the PDP and will be considered further through the Natural Hazards topic (Hearing 14) where the term is primarily used.



standards to this consolidated earthwork rule for drafting efficiency and consistency and that these are rationalised to reduce duplication as set out under Key Issue 1 above.

128. I recommend that submissions on the earthworks advice notes are accepted, accepted in part and rejected as set out in **Appendix 2**. I recommend that Advice Note 3 is deleted, Advice Notes 4, 5 and 6 are amended, and two new advice notes are added as set out in **Appendix 1**.

Section 32AA evaluation

129. I consider that my recommended amendments are an effective and efficient way to achieve the relevant PDP objectives in accordance with section 32AA of the RMA. My recommended amendments remove unnecessary duplication in the earthworks rules without changing the underlying intent to improve clarity for plan users and reduce the potential to unnecessary resource consent requirements (notified EW-R14). My recommended consolidated earthworks rule will provide a more effective and effects-based rule framework to achieve the relevant PDP objectives. My recommendations to the advice notes will also help improved clarity for plan users, including clarifying where other requirements apply and when the earthworks rules do not apply (e.g. for activities regulated under the NES-CF and NES-CS).

5.2.5 Key Issue 5: Rules

Overview

Provision(s)	Officer Recommendation(s)
EW-R1 to EW-R14	Consolidate rules into a single general earthworks rule where earthworks must comply with all relevant standards
EW-R15	Retain with amendments to improve clarity and workability

Analysis of Submissions on Key Issue 5

Matters raised in submissions

Submissions on multiple rules

130. Waiaua Bay Farm Limited (S463.070 to S463.077) support EW-R1 to EW-R12 as notified. Waiaua Bay Farm Limited considers that the earthworks rules are appropriate to enable earthworks to be undertaken as a permitted activity and a restricted discretionary activity consent process is an appropriate and efficient way to assess and manage non-compliance with the permitted activity standards.
131. John Andrew Riddell (S431.171 to S431.180) highlights an error in the text of the rules where "*Moturua Island Zone*" and "*Motoura Island*" is



referenced and that this should be replaced with "*Moturoa Island Zone*". This applies to all the earthworks rules where EW-S1 is referred to.

132. NZTA (S356.100, S356.101, S356.102) supports EW-R7, EW-R8 and EW-R10 as requests that these rules be retained as notified.

EW-R2 – Earthworks for creating fence lines, poles, piles and service connections

133. Northland Planning and Development Limited (S502.024) raises a range of concerns that the works permitted under EW-R2 are already exempt, covered by other rules, and/or compliance with these standards would create a perverse outcome. The concerns raised by Northland Planning and Development with EW-R2 include:
- a) The definition of earthworks under the PDP excludes the installation of fence posts but excavation works for fence lines are limited to the installation of fence posts and as such, there should not be additional provisions for fence lines.
 - b) The majority of fences are located on the boundary, including stock fences, and therefore resource consent will be required due to non-compliance EW-S6.
 - c) Poles and piles relate to construction of buildings or structures. Earthworks associated with these structures is therefore provided for under EW-R1 and is unnecessary under EW-R2.
 - d) Maximum earthworks thresholds, maximum depth and slopes are not relevant to the activities listed in EW-R2 as the scale of these earthworks will be very minor.
 - e) Site reinstatement and nature of filling material are considered irrelevant to these activities, as generally, the fill material will consist of the material used to excavate the post hole or service trench. Due to the minor nature of the volume of earthworks associated with these activities, no adverse effects are anticipated.
 - f) Requiring compliance with EW-S7 could lead to perverse outcomes which would technically require the creation of a hole deeper than 1.5m in many cases.
134. For these reasons, Northland Planning and Development Limited requests that EW-R2 be deleted or reworded such that it is enabling or specifically exempts activities of this nature from complying with the standards specified.



EW-R3 to EW-R5 – earthworks for rural industry and farming activities

135. Rules EW-R3, EW-R4 and EW-R5 provide for earthworks associated with rural industry activities and farming activities. Submitters on these rules from the primary sector are generally concerned that:
- a) The rules do not appropriately provide for all primary production activities; and
 - b) There is no clear reason for the differentiation between sites 8ha and over and under 8ha for the purposes of exempting earthworks from EW-S1 (maximum earthworks thresholds) and EW-S2 (maximum depth and slope).
136. The more specific issues raised in submissions, include:
- a) Manulife Forest Management (NZ) Ltd (S160.028, S160.029, S160.030) opposes EW-R3, EW-R4 and EW-R5 as the rules do not include all primary production activities, which creates uncertainty for landowners with plantation forestry and farming activities. To address this concern, Manulife Forest Management (NZ) Ltd requests that the rules are amended to include primary production more generally or plantation forestry activities.
 - b) New Zealand Pork Industry Board (S55.022, S55.023) support EW-R4 and EW-R5 in part but are concerned that the definition of farming excludes intensive indoor primary production. The submitter is concerned that this means any earthworks associated with intensive indoor primary production would require resource consent as a discretionary activity under EW-R14. The New Zealand Pork Industry Board notes that the earthworks typically required as part of intensive primary production activities would be similar to those required by any other farming activity and there is no clear reason why earthworks for an intensive primary production activity would create more risk than other farming activities. Accordingly, the New Zealand Pork Industry Board requests that the definition of farming is amended to include intensive primary production activities which would then provide for earthworks associated with these activities under EW-R4 and EW-R5.
 - c) HortNZ (S159.080, S159.081) oppose rules EW-R4 and EW-R5 on the basis it is unclear why the rules differentiate between earthworks for farming activities on sites 8ha and over or those under 8ha. HortNZ considers that that this differentiation is arbitrary, particularly for growers as many horticultural sites are smaller than 8ha. Accordingly, HortNZ requests that EW-R4 be deleted.
 - d) Federated Farmers (S421.194 and S421.195) support EW-R4 and EW-R5 as drafted, but query why the rules are based on the size of site rather than the potential effects of any earthworks being undertaken. More specifically, Federated Farmers consider that it is unclear why



sites that 8ha or greater will have potentially less adverse effects than those less than 8ha. Accordingly, Federated Farmers request that EW-R4 and EW-R5 are merged into one rule that deals with earthworks for farming activities and to delete the size of the site sizes from the rule. Federated Farmers also request that reference to "ancillary rural earthworks" is added to the rule as per their request for a new definition of "ancillary rural earthworks" (discussed under Key Issue 8 below).

137. HortNZ also has submission points allocated to EW-S1 which are relevant to the consideration of EW-R4 given the purpose of the rule is to exempt earthworks for a farming activity from the maximum thresholds in EW-S1 (and EW-S2). Specifically, HortNZ (S159.083) oppose the thresholds in EW-S1 on the basis that these are not reflective of the activities that take place in certain environments. To address this concern, HortNZ request that EW-S1 be amended to delete the 2,500m² area threshold.
138. As a separate submission point, HortNZ (S159.079) requests that EW-S1 is amended to include a new permitted activity standard that would permit "ancillary rural earthworks" (requested definition is considered under Key Issue 8 below) without being subject to the maximum area and volume thresholds in the General Rural, Rural Production, Horticulture and Rural Lifestyle Zones. More specifically, HortNZ a new permitted activity standard for ancillary rural earthworks within these zones as follows:

Activity status: Permitted

Where:

PER-1: For any ancillary rural earthworks, there is no limit;

PER-2: For other activities: 5,000m³ in any 12-month period per site.

Where standard is not met: Restricted Discretionary

Matters of discretion are restricted to:

- a. dust nuisance, sedimentation, land instability, erosion and contamination effects; and*
- b. the impact on the road network, of heavy vehicle and other vehicular traffic generated as a result of earthworks; and*
- c. the impact on visual amenity and landscape character; and the impact on any overland flow paths.*

EW-R7 and EW-R8 – earthworks for infrastructure

139. Top Energy (S483.178, S483.179) considers that there is no particular benefit to EW-R7 and EW-R8 when compared to earthworks for EW-R1 as the standards required to comply with are the same. To better provide for earthworks associated with infrastructure, Top Energy requests that EW-R7 is amended so that there is no requirement to comply with EW-S1. Top Energy consider that the volume of earthworks will be managed by NRC and amenity and stability issues are addressed by the remaining standards in the Earthworks Chapter and the more stringent controls for earthworks in the PDP overlay chapters.



140. The Telco Companies (S282.014) oppose EW-R8 as, although the rule permits earthworks undertaken by network utility operators, there is still a requirement to comply with standards relating to maximum earthworks thresholds, maximum depth and slope and setbacks from site boundaries. The Telco Companies note that earthworks undertaken by most telecommunications operators are relatively minor as works are generally for activities such as pole infrastructure, cabinet foundations and underground services. The Telco Companies therefore consider it is inappropriate to restrict earthworks for infrastructure that are typically of lesser effect when compared to other forms of development. To address this concern, the Telco Companies request that EW-R8 is amended to remove the need for earthworks associated with telecommunication pole foundations, service trenches and trenchless methods to comply with EW-S1, EW-S2 and EW-S6.

EW-R10 – Earthworks for the construction, or upgrade of walkways, cycle tracks and leisure activity

141. The Telco Companies (S282.026) support EW-R10 in part but request that it is amended to include access tracks for infrastructure activities.

EW-R13 – Earthworks for erosion and sediment control

142. Haigh Workman Limited (S215.048) supports the requirement for erosion and sediment control to be implemented on all earthworks in accordance with Auckland Council Erosions and Sediment Control Guidelines (GD05). Haigh Workman Limited considers that the GD05 guidelines are comprehensive and should be implemented. However, as EW-R13 and EW-S5 apply in addition to other rules, Haigh Workman Limited requests that the matters of discretion within EW-S5 are amended to be confined to erosion and sediment control issues only.

EW-R15 – 110kV Transmission lines and National Grid Yard

143. Transpower (S454.003) supports the PDP definition of earthworks, but notes that the NES-ETA also contains a definition of earthworks that is different from the definition in the PDP. Transpower notes that the key difference is that the NES-ETA definition of earthworks does not contain an exclusion for fence posts and the associated drilling of vertical holes, which can adversely affect the stability of electricity transmission facilities. To rectify this, Transpower request that EW-R15 is amended to ensure the drilling of vertical holes is captured where necessary rather than being excluded through the PDP definition of earthworks.
144. Transpower (S454.102) consider that EW-R15 contains performance standards which are unusual and request that the rule is replaced with a specific rule in the Infrastructure chapter. Transpower notes that they are not opposed to earthworks occurring within the National Grid Yard, provided that any earthworks are managed carefully to ensure effects on the stability of the National Grid structures. As a result of addressing this



issue across many jurisdictions in New Zealand, Transpower note that they have developed a specific permitted activity rules for the National Grid Yard which Transpower considers should be included in the Infrastructure Chapter. Transpower also provides specific wording for this requested permitted activity rule.

145. Top Energy (S483.180) generally supports the inclusion of reference to Top Energy in the wording of EW-R15. However, Top Energy considers that the notified wording of the rule does not work as a non-complying activity and needs to be redrafted so that the identified activities are permitted with a non-complying activity status when compliance not achieved. Top Energy also notes potential overlap with I-R12 which also applies to Top Energy's 110 kV lines, although as currently drafted the Infrastructure Chapter only applies to network utility operators. Accordingly, Top Energy requests that the provisions in the PDP relating to earthworks within proximity to the 110 kV distribution lines are amended to address the identified issues.
146. HortNZ (S159.082) considers that earthworks should be permitted under EW-R15 where these comply with the New Zealand Electrical Code of Practices for Electrical Safe Distances - NZECP34:2001.

Analysis

147. As outlined above under Key Issue 4, I recommend that the earthworks rules that are essentially the same are consolidated into a single rule. As such, many of the issues raised in submissions with specific rules outlined above are no longer relevant and/or the relief needs to be responded to in a different way. In terms of the substance of the relief sought in relation to specific earthworks rules, the main issues to consider in submissions are:
 - a) The need to exempt minor earthworks permitted under notified EW-R2 (fence lines, poles, piles and service connections).
 - b) How the rules apply to farming activities v other primary production activities (notified EW-R4 and EW-R5).
 - c) The exemption to EW-S1 for earthworks for a farming activity on sites 8ha or greater (notified EW-R4).
 - d) Exemptions to certain earthworks standards for earthworks associated with infrastructure (notified EW-R7 and EW-R8).
 - e) Earthworks near 110kv electricity transmission lines and the National Grid Yard (EW-R15).
148. I address each of these issues in turn below.
149. In terms of the other issues raised in submissions on the earthworks rules:



- a) As a result of my recommendation to consolidate the earthworks rules, there is no need to address the minor errors in the advice notes in relation to Moturoa Island Special Purpose Zone as identified by John Andrew Riddle. This is because the drafting of EW-S1 is such that it is clear the standard applies to all zones, except the Moturoa Island and Orongo Bay Special Purpose Zones.
- b) I recommend that the submission from the Telco Companies on EW-R10 is accepted in part as earthworks associated with access tracks for infrastructure would be captured by the consolidated general earthworks rule that I recommend above (i.e. permitted subject to compliance with the earthworks standards).
- c) I recommend that EW-R13 is deleted and EW-S5 apply to all earthworks as relevant for the reasons outlined above. I therefore recommend that the submission from Haigh Workman Limited on EW-R13 is accepted in part.

Exemptions for minor earthworks activities permitted under EW-R2

150. I agree with Northland Planning and Development Limited that EW-R2 as notified has a number of issues. For example, the rule refers to earthworks associated with fence lines and poles, but the PDP definition of earthworks (from the National Planning Standards) already excludes "*gardening, cultivation, and disturbance of land for the installation of fence posts*". This further demonstrates that EW-R2 serves limited useful purpose in my view.
151. Northland Planning and Development Limited has requested that EW-R2 is deleted or amended to provide exemptions for certain minor activities that are unlikely to comply with the earthworks standards. As I am recommending that EW-R2 is deleted and replaced with a general earthworks rule, I consider that the relief sought is addressed to some extent and recommend that this submission point is accepted in part. In terms of the requested exemptions for fence lines, poles, piles and service connections to certain earthworks standards:
 - a) In my view, earthworks associated with fence poles and fence lines are the same activity and therefore earthworks associated fence lines (which will naturally have posts) are already excluded from the PDP definition of earthworks.
 - b) My expectation is that earthworks associated with piles and service connections will be able to comply with the earthworks standards given their nature, and therefore specific exemptions are generally not required. However, I am recommending some exemptions to EW-S2 and EW-S6 to exempt "land disturbance" (as defined in the PDP) which would apply to these minor earthworks activities when relevant.

Earthworks for farming activities v other primary production activities



152. The distinction between earthworks for “*farming*” (as defined in the PDP) and other primary production activities is no longer relevant/necessary if my recommendation to consolidate the earthworks rules is accepted. However, for completeness, I note that earthworks associated with “*other*” primary production activities²⁰ are managed through a range of controls as follows:
- a) **Plantation forestry** - earthworks associated with plantation forestry are managed under the NES-CF which sets out a range of regulations and conditions targeted to the effects of these earthworks. As outlined above, Advice Note 4 in the Earthworks Chapter states that the NES-PF applies to these earthworks, not the PDP, and I recommend amendments to that advice note to improve clarity and align with the NES-CF.
 - b) **Mineral extraction** – the Mineral Extraction Overlay chapter manages “*mineral extraction activity*” which includes the extraction of minerals, including aggregate. The Mineral Extraction Overlay chapter also includes Advice Note 5 which states “*The Earthworks Chapter rules do not apply to Mineral Extraction Activities where they are located within the Mineral Extraction Overlay.*” There is no equivalent advice note in the Earthworks chapter.
 - c) **Farm quarries**²¹ – the Rural Production Chapter includes a permitted activity rule for a farm quarry (RPROZ-R12) subject to compliance with controls on the amount of material that can be extracted within a calendar year and setbacks to site boundaries, otherwise resource consent is required as a discretionary activity.
 - d) **Intensive indoor primary production** – earthworks associated with intensive indoor primary production would be captured under the consolidated general earthworks rule I am recommending. This would mean these earthworks are treated the same as earthworks for a farming activity consistent with the relief sought from New Zealand Pork Industry Board.

Exemption to EW-S1 and EW-S2 for farming activities on sites 8ha or greater

153. I understand that the intent of EW-R4 is to provide a more enabling rule framework for common earthworks associated with farming activities so that these do not need to comply with EW-S1 (maximum earthworks

²⁰ The PDP definition of primary production from the National Planning Standards includes “...any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities...”.

²¹ Farm quarry is defined in the PDP as “means the extraction of aggregates which are: a. taken for use ancillary to farming and horticulture, including for farm and forestry tracks, access ways and hardstand areas; and b. only used within the same production unit, where the extraction was undertaken; and c. not sold, exported or removed from the production unit of origin.”



thresholds) and EW-S2 (maximum depth and slope). The rule applies to sites 8ha or greater in certain zones.

154. The Earthworks Chapter Section 32 Report does not provide any explanation for the 8ha threshold. However, my understanding is that this is intended to align with SUB-S1 (minimum lot size) which provides subdivision with a lot size of 8ha as a discretionary activity within the Rural Production Zone.
155. The Rural Environment Section 32 Report states the following about using 8ha as a discretionary activity minimum lot size in the Rural Production Zone (**emphasis added**):

*Rural Production zone: 40ha was adopted as the minimum controlled lot size in the Rural Production zone as per the Rural report. However, it was considered important to put a lower cap on the minimum lot size that could be applied for as a discretionary activity. **8ha was adopted as the discretionary minimum lot size to recognise that sites with good access to water can still be productive at this scale.** The full discretionary activity status will allow Council to consider things like access to water when considering if the subdivision should be granted. It also means that subdivision of lots down to 8ha in the Rural Production zone will still be possible through the resource consent process should more irrigation and water storage schemes be developed over the life of the PDP.*

156. Federated Farmers and HortNZ argue that this 8ha distinction is arbitrary in respect to the effects of earthworks and is also potentially problematic and restrictive for smaller productive lots such as horticulture. I agree and recommend that the earthworks rules do not make any distinction between sites less than and greater than 8ha for the purposes of exempting earthworks from certain standards. This forms part of my general recommendation outlined above to consolidate the earthworks rules into a single earthworks rule. However, I also consider that it is important to retain the general intent of EW-R4 to not unnecessarily require resource consent for earthworks associated with common farming activities.
157. In my view, this intent can be more effectively achieved through targeted exemptions to the general earthworks rule/standards for certain types of common rural earthworks. This approach is aligned with the general relief sought by HortNZ and others to permit "ancillary rural earthworks" and/or exempt these earthworks from EW-S1 (maximum earthworks thresholds). I address the requested exemptions for these activities and others below under Key Issue 6, 7 and 8.
158. HortNZ request the 2,500m² area threshold for the Rural Production Zone (and others) be deleted from EW-S1 so that compliance is only required



for the 5,000m³ volume threshold. I do not agree because volume area thresholds are often more difficult to determine compliance with and area thresholds are an important control for managing the adverse effects of earthworks.

Exemptions for earthworks associated with infrastructure

159. Top Energy requests that EW-R7 is amended so that there is no requirement to comply with EW-S1 (maximum earthworks thresholds) for earthworks associated with infrastructure undertaken by network utility operators. Top Energy considers that the volume of earthworks will be managed by NRC and amenity and stability issues are addressed by the remaining standards in the Earthworks Chapter and the more stringent controls for earthworks in the PDP overlay chapters.
160. As discussed above, my view is that the earthworks rules should be effects-based, unless there is a clear policy reason to provide a more generous thresholds or exemption to certain earthworks standards for a particular purpose. In my view, Top Energy has not provided sufficient reasoning or examples for me to recommend that all earthworks for infrastructure are exempt from EW-S1. As noted above and discussed below, the maximum earthworks area and volume thresholds in EW-R1 are important controls in my view to manage the adverse effects of earthworks.
161. For similar reasons, I do not agree with the request from the Telco to exempt all earthworks for telecommunication facilities from the standards for maximum area and volume (EW-S1) and maximum depth and slope (EW-S2). The Telco Companies argue earthworks undertaken by most telecommunications operators are relatively minor as these earthworks are generally for activities such as pole infrastructure, cabinet foundations and underground services. However, it is not clear to me why such "*minor*" earthworks need to be exempt from these standards. Rather I would expect that these "*minor*" earthworks would comply with these standards. Specific examples of how earthworks for telecommunication facilities would unnecessarily require resource consent under the maximum area, volume, depth and slope standards are required in my view before these should be exempt.
162. However, I do acknowledge earthworks activities associated with infrastructure, including for telecommunication pole foundations, service trenches and trenchless, often need to be located near site boundaries. I therefore recommend an exemption for earthworks associated with infrastructure and utility connections from the site boundary setbacks in EW-S6 to avoid unnecessary resource consent requirements. I am also recommending an amendment to EW-S2 below under Key Issue 7 to exempt land disturbance (as defined in the PDP) and I expect that this will apply to some minor earthworks for infrastructure, including telecommunication facilities.



Earthwork within National Grid Yard and Critical Electricity Lines

163. I agree with Transpower and Top Energy that there are some issues with the notified wording of EW-R15. In particular, I agree with Top Energy that EW-R15 should be a permitted activity when earthworks comply with PER-1, PER-2 or PER-3 rather than a non-complying activity. A non-complying activity status should be applied for earthworks that do not comply with these permitted activity standards. I therefore recommend that EW-R15 is amended accordingly.
164. I am aware that Transpower has established nationally consistent rules in district plans for the National Grid Yard and the current drafting of EW-R15 does not align with this. I therefore recommend amendments to improve the drafting of EW-R15 in line with the requested amendments from Transpower. These results in the consolidation of PER-1 to PER-3 into a single PER-1 with three exemptions to this standard.
165. In terms of the submission from HortNZ, I note that notified PER-3(2) (which is now PER-1(4)) will provide for earthworks as a permitted activity within 110kv Top Energy or Transpower lines where this does not result in a reduction in the clearances required under NZECP:34. It is therefore unclear to me what further amendments are sought by HortNZ and I do not recommend any amendments to EW-R15 in response to this submission point.

Recommendation

166. I recommend that submissions on the earthworks rules are accepted, accepted in part and rejected as set out in **Appendix 2**. I recommend that EW-R1 to EW-R14 are replaced with a single earthworks rule that requires compliance with all relevant earthworks standards as set out in **Appendix 1**. I recommend that EW-R15 is amended to address identified issues and improve workability consistent with other district plan rules as set out in **Appendix 1**.

Section 32AA evaluation

167. The amendments I am recommending to the earthworks rules will be more effective and efficient to achieve the relevant PDP objectives than the notified rules. In particular, as noted above, I consider that my recommended consolidated earthworks rule will provide a more effective and effects-based rule framework to achieve the relevant PDP objectives. I also consider that my recommended amendments to EW-R15 will improve workability while retaining the intent to protect critical electricity transmission infrastructure from the adverse effects of earthworks.



5.2.6 Key Issue 6: EW-S1

Overview

Provision(s)	Officer Recommendation(s)
EW-S1	Amend the thresholds applying to the Light and Heavy Industrial Zone

Analysis of Submissions on Key Issue 6: EW-S1

Matters raised in submissions

168. A number of submitters support EW-S1 and request that it is retained as notified. These submitters include:
- a) Terra Group (S172.013) consider that the standard will achieve positive outcomes.
 - b) P S Yates Family Trust (S333.075) and others support the thresholds being applied per calendar year and the activity status.
 - c) IDF Developments Limited (S253.011) support the thresholds in the Rural Production Zone as these adequately manage the potential effect arising from the earthworks. However, IDF Developments Limited considers that the definition of earthworks needs to exclude work involving building foundations.
 - d) Waiaua Bay Farm Limited (S463.078) also consider that the standards provides appropriate allowances and a range of suitable assessment criteria to facilitate the assessment and processing of resource consent applications involving earthworks.
 - e) Federated Farmers (S421.196) specifically support the volume and area thresholds for the Rural Production Zone
169. Multiple submitters oppose the 200m³ volume threshold for the Light Industrial Zone and consider it should be increased. This includes Linda Gigger (S370.006), LD Family Investments Limited (S384.011), Ti Toki Farms Limited (S262.011) and Mangonui Haulage (S318.006) who request that the areas threshold of 2,500m² is retained and the volume threshold is increased to 500m³. The submitters consider that the 200m³ volume threshold conflicts with the intent of the Light Industrial Zone to enable industrial activities.
170. Puketone Business Park Limited (S45.016) requests the threshold for the Light Industrial Zone be increased to 2,500m³ on the basis the notified thresholds are unnecessarily restrictive.
171. Waipapa Pine Limited and Adrian Broughton Trust (S342.009) request that the volume threshold be increased to 500m³ for the Heavy Industrial Zone.



The submitter is concerned that the 200m³ threshold will automatically require a resource consent in the Waipapa commercial area.

172. Neil Construction Limited (S349.019) considers that a better outcome is to utilise the land more efficiently for rural residential use, adding much needed housing to Kerikeri in a way that does not impose any burden on the community in terms of providing or funding infrastructure. To provide for this outcome, Neil Construction Limited requests that the earthworks area and volume thresholds in EW-S1 are increased.
173. Waitangi Limited (S503.051) and Northland Planning and Development Limited (S502.025) support EW-S1 in part, but consider that it needs to be amended to exclude certain, common activities which do not create an adverse effect on the environment. More specifically, the submitters request and amended to EW-S1 so that the thresholds exclude:

...any excavation works associated with fence lines, posts, piles, trenching of drains or cables, dam maintenance, normal rural practices, such as maintenance of farm drains, service connections, excavations for building foundations, septic tanks and associated drainage fields...

Analysis

174. There is general support from most submitters with the maximum earthworks volume and area thresholds in EW-S1. The key issues to respond to in submissions relate to:
- a) Whether the thresholds are too restrictive in the Light and Heavy Industrial Zones.
 - b) Whether there should be exemptions for low-risk, common earthworks activities (fence lines, farm drains, septic tanks etc.).

Light and Heavy Industrial Zones

175. The maximum volume thresholds for the Light Industrial Zone and Heavy Industrial Zone notified in EW-S1 are 200m³, which is the same as the other more "urban" zones, including the General Residential Zone and Mixed Use Zone. This compares to a maximum volume threshold of 1,000m³ in the Rural Lifestyle Zone and 5,000m³ in Rural Production Zone, Horticulture Zone, Māori Purpose Zone – Rural and the Kauri Cliff and Ngawha Innovation Park Special Purpose Zones.
176. I generally agree that the industrial nature of the Light Industrial Zone and Heavy Industrial Zone means a greater volume of earthworks can be undertaken with a lower risk of adversely effecting surrounding properties (compared to the General Residential Zone, for example). I consider that an increase from 200m³ to 500m³ is appropriate as requested by a number of submitters and recommend that EW-S1 is amended accordingly. I



consider that the requested increase to 2,500m² by Puketone Business Park Limited is excessive and recommend that this submission is rejected.

Requested exemptions

177. The following is my assessment of the exemptions requested by Waitangi Limited and Northland Planning and Development Limited.

Requested exemption	Analysis
Fence lines and posts	As discussed above, these activities are already exempt as they are excluded from the PDP definition of earthworks.
Piles Service connections Trenching of drains or cables Excavations for building foundations	My expectation is that earthworks for these activities are generally likely to be of a scale well below the area and volume thresholds in EW-S1. Therefore, I do not recommend these are specifically exempt from EW-S1.
Normal rural practices, such as maintenance of farm drains	Earthworks associated with " <i>normal rural practices</i> " are discussed further in relation to the requested " <i>ancillary rural earthworks</i> " exemptions from primary sector submitters discussed below under Key Issue 8: Definitions.
Septic tanks and associated drainage fields	Northland Planning Limited state in their submission that: <i>"The excavations associated with the installation of the septic tank can be large, which would cause most sites zoned rural residential or settlement to breach the permitted earthworks threshold. Due to the nature of the excavations and the fact that they are temporary, noting that once the septic tank is installed, the open ground is filled over, it is considered this should be exempt from the maximum earthworks thresholds."</i> I agree that earthworks associated with septic tanks and associated drainage fields are common in the Far North District and these earthworks should not unnecessarily require



	resource consent. I also note that earthworks associated with septic tanks and associated drainage fields are currently exempt from the FNDC Control of Earthworks Bylaw 2019 (which the PDP is intended to replace). I therefore agree that earthworks associated with septic tanks and associated drainage fields should be exempt from EW-S1.
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Recommendation

178. I recommend that submissions on EW-S1 are accepted, accepted in part and rejected as set out in **Appendix 2**. I recommend a minor amendment to EW-S1 to increase the permitted earthworks volume in the Heavy and Light Industrial Zone and to exempt earthworks associated with septic tanks and associated drainage fields.

Section 32AA evaluation

179. The amendments I am recommending to EW-S1 are relatively minor and do not change the policy intent. On this basis, I consider that my recommended amendments to EW-S1 will be more effective and efficient to achieve the relevant PDP objectives than the notified EW-S1.

5.2.7 Key Issue 7: Other earthworks standards

Overview

Provision(s)	Officer Recommendation(s)
EW-S2	Amend to remove reference to issued building consent and to exempt land disturbance to avoid unnecessary consent requirements
EW-S3, EW-S4, EW-S7, EW-S8, EW-S9	Retain as notified
EW-S5	Amend to remove unnecessary duplication with the NRP and to replace "prevent" with "minimise"
EW-S6	Amend to delete CMA setbacks and to exempt certain earthworks activities to avoid unnecessary consent requirements

Analysis of Submissions on Key Issue 7

Matters raised in submissions

General submissions on standards

180. The Russell Protection Society (S179.084) supports the earthworks standards in part but considers that standard erosion control methods are largely ineffectual because parts of the Bay of Islands are characterised



by heavy clay soils, steep topography and heavy rainfalls leading to heavy sediment loads in streams during storm events. The submitter suggests that FNDC has primary responsibility for developing these standards rather than simply relying on other agencies, such as NRC. Accordingly, Russell Protection Society request new standards relating to erosion and sediment control are inserted into the Earthworks Chapter.

181. Summit Forests NZ (S148.037) and PF Olsen Limited (S91.017) raise similar concerns that the earthworks standards exceed, duplicate, and overlap with the regional rules in the NRP and, in the plantation forestry context, appear unworkable. Summit Forests NZ request plantation forestry earthworks do not need to comply with the requirements of standards EW-S1 to EW-S9 so that these earthworks are managed under the NES-PF. PF Olsen makes similar requests to delete any requirement that would frustrate plantation forestry to operate as a permitted activity and requests that EW-S6, EW-S8 and EW-S9 are deleted.
182. Summit Forests NZ makes a number of submissions points (S148.039 and S148.058 to S148.064) which have been allocated to different earthwork standards that request the same relief for all of the earthworks matters of discretion. Summit Forests NZ submitter considers that the matters of discretion listed under EW-S1 exceed the FNDC's functions under section 31 of the RMA and are therefore contrary to section 32 evaluation as these rules stray into the functions of NRC. The submitter requests that that any matters of discretion that exceed FNDC's functions under the section 31 of the RMA.
183. Reuben Wright (S178.012) requests an amendment to the earthworks standards to clarify the activity status when these are not complied with.

EW-S2 – Maximum depth and slope

184. A group of submitters, including P S Yates Family Trust (S333.076) and others, support EW-S2 and request that it be retained as notified. The submitters support the threshold and activity status in EW-S2.
185. Terra Group (S172.014) support EW-S2 in part, but request EW-S2(ii) is amended to read "*...engineered retaining wall, ~~which has had building consent issued~~ approved during building consent or land use consent stage*". Terra Group supports the intent of EW-S2 but considers that the notified wording restricts the potential for retaining structures to be addressed at land use consent stage, which often precedes building consent stage.
186. The Fuel Companies (S335.023) consider that EW-S2 does not provide for the type of temporary earthworks activities which may be involved in upgrading of drainage systems. The Fuel Companies raise concerns that the rationale for controlling maximum depth and slope is unclear and EW-S2 is likely to capture a range of works with limited potential for adverse effects. As a minimum, the Fuel Companies request temporary cuts and



fills are excluded from EW-S2 and request a note is inserted to this effect ("*Note: this standard does not apply to temporary cut and fills*").

EW-S3 – Accidental discovery protocol

187. There is only one submission on EW-S3 from Federated Farmers (S421.197) who support the standard and requests that it is retained.

EW-S4 – Site reinstatement

188. There is only one specific submission on EW-S4²² from FNDC (S368.041). This submission point notes a typo with the word "established" an "e" at the beginning and requests that this be corrected.

EW-S5 – Erosion and sediment control

189. Haigh Workman Limited (S215.049) support the requirement for erosion and sediment control to be implemented on all earthworks in accordance with the Auckland Council Erosion and Sediment Control Guidelines (GD05). Haigh Workman Limited note that GD05 may lack certainty as a permitted activity rule but considers that the guidelines are comprehensive and should be implemented. However, Haigh Workman Limited requests that the matters of discretion in EW-S5 to erosion and sediment control issues only given EW-R15 and EW-S5 apply in addition to other rules in the PDP.

EW-S6 – Setbacks

190. Terra Group (S172.015) support EW-S6 and requests that it be retained as notified as the standard will achieve positive outcomes.
191. FNDC (S368.084) note that EW-S6 does not exclude forming of an approved driveway or crossing or the installation and upgrading of utility connections and infrastructure. FNDC state that it is not the intention of EW-S6 to require unnecessary resource consent for these activities. To address this issue, FNDC request an advice note so that EW-S6 does not apply to boundary of legal road where:
- 1. The earthworks are for the formation of an approved driveway or crossing.*
 - 2. The earthworks are for the installation and upgrading of utility connections and infrastructure.*
192. Heritage New Zealand (S409.050) support EW-S6 in part but request amendments to the standard to include a 20m setback to an

²² There is also another submission point from Summit Forests New Zealand Limited (S148.059) on EW-S4 but this raises more general concerns with the scope of the matters of discretion and is addressed above.



archaeological site consistent with their requested amendments to earthworks rules in the Historic Heritage Chapter. Heritage New Zealand note that HA-S3 and EW-S3 already reference a 20m setback for works to cease upon the discovery of any suspected sensitive material. To provide for this relief, Heritage New Zealand request an additional condition is added to EW-R6 to require earthworks to be setback "*a minimum distance of 20m from the extent of the archaeological site*". Heritage New Zealand also requests that existing advice note is replaced with the following advice note:

In addition to the requirements of the District Plan, it should be noted that the Heritage New Zealand Pouhere Taonga Act 2014 ("HNZPTA") requires all applicants to obtain an authority from the HNZPTA before any archaeological site is modified or destroyed. This is the case regardless of whether the land on which the site is designated, or the activity is permitted under the District Plan or a resource or building consent has been granted.

193. A number of submissions query the practicality and enforceability of EW-S6 and request that it is deleted or amended to exclude activities that are minor in nature. The submissions that raise these concerns are:
- a) The Fuel Companies (S335.024) oppose EW-S6 on the basis that it could result in resource consent being required for minor earthworks undertaken as part of the normal maintenance, upgrade and operation of a range of activities. The Fuel Companies consider that the balance of earthworks standards provide adequate control for these activities.
 - b) Reuben Wright (S178.015) considers that EW-S6 is ambiguous and not enforceable. The submitter raises concern that it could require consent for very minor works (such as a forming a vehicular access) that have no adverse effects.
 - c) Robert Adams (S153.001) is concerned that the setbacks in EW-S6 are very arbitrary, especially for engineered walls. Robert Adams considers that engineers are well qualified to design retaining walls on or very close to boundaries to meet the needs of the designer and the client. Robert Adams is concerned that EW-S6 creates an unnecessary restriction on the rights of property owners and this standard restricts good design and will creates narrow 1.5m alleys up against houses, as damp, useless spaces. Robert Adams is also opposed to the 3m limit as it is too restrictive and unnecessary and does not take into account the reality of building in the Far North District where sites are often steep and narrow. Accordingly, Robert Adams requests that EW-S6 is deleted or, if necessary, replaced with a rule that gives not setback to the boundary and no limit on heights of retaining walls when this is designed by an engineer.



- d) Northland Planning and Development (S502.026) consider that the intent of EW-S6 is to provide additional controls on major cut/fill faces near boundaries. As such, Northland Planning and Development considers that EW-S6 needs to exempt minor and common earthworks activities. To provide for this relief, Northland Planning and Development requests the following is added to the end of EW-S6(1)(b):

“with the exception of any cut/fill faces less than 500mm in height/depth over an area of less than 50m² and a volume of less than 50m³ in any zone and with a cut/fill face of 1.5 metres in depth/height in the Rural Production Zone, which can be located within 3 metres from the boundary.”

- e) Northland Planning and Development also request a general exemption from EW-S6 through the following advice note

“This rule does not include any excavation works associated with fence lines, posts, piles, trenching of drains or cables, dam maintenance, normal rural practices, such as maintenance of farm drains, service connections, excavations for building foundations, septic tanks and associated drainage fields”.

EW-S7 – Land stability

194. Haigh Workman Limited (S215.050) opposes EW-S7 and requests that it be deleted. Haigh Workman Limited is concerned that EW-S7 it is open to wide interpretation and considers that the risk of instability of land at or beyond the property boundary is addressed by standard EW-S6. As noted above, Haigh Workman Limited considers that the intent of the standard may be to address the risk of earthworks being carried out on “land subject to instability” as defined in the PDP. If this is the case, then Haigh Workman Limited considers that an advice note as outlined above under Key Issue 4.
195. Reuben Wright (S178.016)²³ raises similar concerns and requests that EW-S7 is deleted. Rueden Wright is concerned that land stability is ambiguous and not enforceable where the definition of land stability is very detailed and onerous and relies on information that will not be contained in the PDP. In addition, Rueben Wright is concerned that it is not clear how earthworks could be assessed as resulting in any instability of land at or beyond any boundary and therefore when the standard has not been complied with. Reuben Wright considers that the common law of “the right of support for the land in its natural state” should apply rather than attempting to regulate land stability through the PDP.

EW-S9 – Flood and coastal hazards

²³ This submission point has been allocated to EW-S9 but relates to EW-S7.



196. There was only one specific submission on EW-S9 from Reuben Wright (S178.017)²⁴ who opposes the standard and requests that it be deleted. Reuben Wright considers that EW-S9 duplicates controls in the NRP, particularly Rule C.8.3.1, and should therefore be deleted.

Analysis

General submissions on standards

197. Summit Forests NZ and PF Olsen Limited raise concerns about the application of the standards to earthworks for plantation forestry. As discussed under Key Issue 4, the intent is that earthworks associated with plantation (commercial) forestry are regulated under the NES-CF not the PDP Earthworks Chapter and I recommend amendments to Advice Note 4 to clarify this intent. Accordingly, I recommend that these submission points are accepted.
198. I do not consider that the activity status needs to be referred to in all the earthworks standards as requested by Reuben Wright. In my view, the drafting of EW-R1 is clear that the activity status is restricted discretionary activity when any of the standards are not complied with, and I am recommending amendments to the earthworks standards to refer back to EW-R1.

EW-S2 – Maximum depth and slope

199. I agree with Terra Group that there could be a timing and compliance issue with EW-S2(2) requiring retaining walls to have a building consent issued. In my view, the intent of the standard can simply be achieved through simply requiring "*an engineered retaining wall*" without reference to a building or land use consent and I recommend that EW-S2 is amended accordingly.
200. I agree with the principle of the Fuel Companies request to exempt earthworks from the maximum depth and cut thresholds where the completed works will not result in any exposed face (cut or fill), such as burying a tank or installing a drainage system. In these circumstances there are no ongoing landscape effects, visual amenity effects or land stability issues associated with the earthworks. The Fuel Companies request an advice note is inserted in EW-S2 to the effect of: "*this standard does not apply to temporary cut and fills*". In my opinion, a more effective exemption to achieve the requested relief is:

"This standard does not apply to land disturbance"

²⁴ There is also another submission point from Summit Forests New Zealand Limited (S148.064) on EW-S9, but this raises more general concerns with the scope of the matters of discretion and is addressed above.



201. This aligns with the definition of "*Land disturbance*" which is defined in the PDP (and National Planning Standards) as:

"means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) that does not permanently alter the profile, contour or height of the land."

EW-S4 – Site reinstatement

202. I agree with the FNDC submission to correct the typo with the word "established", which is missing an "e" at the beginning. I understand that this error has already been addressed under Clause 16, Schedule 1.

EW-S5 – Erosion and sediment control

203. As discussed under Key Issue 1: General submissions, I recommend that EW-S3 is amended so it only references the aspects of the Auckland Council Erosion and Sediment Control Guidelines (GD05) that relate to impacts of sediment on stormwater systems, overland flow paths and roads. I also recommend that Condition 2 is amended replace "*prevent*" with "*minimise*". My recommended amendments to EW-S5 are as follows:

Earthworks

1. *must for their duration be controlled in accordance with the Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016 (Auckland Council Guideline Document GD2016/005); and*
2. *shall be implemented to minimise ~~prevent~~ silt or sediment from entering water bodies, coastal marine area, any stormwater system, overland flow paths, or roads.*

204. The scope for the recommended amendments to remove references to water bodies and the coastal marine area are the general submissions relating to duplication with NRC controls addressed under Key Issue 1 above. In my view, there is no change in effect from this amendment because sediment impacts from earthworks on water bodies and the coastal marine area are already addressed under the NRP which has a similar requirement for earthworks to be undertaken in accordance with the same Auckland Council Erosion and Sediment Control Guidelines.

205. In terms of the recommendation to replace "*prevent*" with "*minimise*" in EW-S5, I consider that there is scope to make this amendment under Clause 16, Schedule 1 of the RMA and within the general scope of submissions requesting less stringent provisions. In my view, this amendment will make EW-S5 more workable as the general purpose of erosion and sediment control is to "*minimise*" sediment runoff not "*prevent*" sediment runoff altogether, which is unachievable in some circumstances. This is reflected in the following statement from the



Auckland Council Erosion and Sediment Control Guidelines referred to in EW-S5:

This guideline's ultimate goal is to minimise erosion, sediment discharge and sedimentation that occurs as a consequence of land disturbance.

206. I generally agree with Haigh Workman Limited that the matters of discretion in EW-S3 are too broad for this standard. However, as discussed above under Key Issue 1 and 4, I recommend that the earthworks rules are consolidated into a single restricted discretionary rule with a single, rationalised list of matters of discretion to be considered as applicable when the earthworks standards are not complied with. In my view, this is more efficient and clearer to plan users rather than replicating the matters of discretion in all the earthworks standards.

EW-S6 – Setbacks

207. The purpose of the EW-S6 requirement for earthworks to be setback from property boundaries is to minimise land instability risks on the neighbouring property.
208. As identified by various submitters, the setbacks to site boundaries in EW-S6 will impact all types of earthworks, many of which would not result in a land instability risk (e.g. forming a driveway where there is no or minimal cut and installing a utility connection). I agree with these submissions that that the standard should not apply to earthworks where there is no or very low instability risk.
209. To ensure EW-S6 does not result in unnecessary resource consent requirements for low-risk earthworks, submitters have requested exemptions for a range of activities and small-scale earthworks. As outlined above under Key Issue 5, I recommend an exemption to EW-S6 for earthworks associated with infrastructure and recommend that this also specifically includes utility connections consistent with the relief sought by FNDC. I also recommend a specific exemption to EW-R6 for earthworks associated with an approved driveway or crossing as requested by FNDC.
210. Rather than list a range of other activities, I recommend that EW-S6 is amended so this "...does not apply to land disturbance" consistent with my recommended amendment to EW-S2. This will exempt earthworks from EW-R6 where the completed earthworks works do not alter the profile, contour or height of the land. In my view, this will exempt many of the examples identified by the various submitters as being unduly caught by the EW-S6 without the need to exempt a wide range of specific activities.
211. Regarding Heritage New Zealand's request to include a 20m setback from archaeological sites, I consider that the relief sought is best addressed through the Historic Heritage chapter. This is because the Historic



Heritage chapter already includes a rule requiring earthworks to be setback 20m from scheduled Heritage Resources (HH-R5), and Heritage New Zealand's submission includes a request for this rule to be amended to also require a 20m setback from archaeological sites. The intent is that the PDP does not duplicate rules across the relevant chapters and Advice Note 1 in the Earthworks Chapter already makes it clear that there are more stringent earthworks rules in the Heritage Area Overlay, Historic Heritage, and Sites and Areas of Significance to Māori chapters.

212. I do not agree with Heritage New Zealand that the existing advice note in EW-S6 relating to setbacks to waterbodies should be replaced with an advice note directing plan users to the Heritage New Zealand Pouhere Taonga Act 2014 requirements. In my view, EW-S3 makes it clear that there are processes to follow in the Heritage New Zealand Pouhere Taonga Act 2014 when there is discovery of any suspected sensitive materials and, as noted above, Advice Note 1 directs plan users to the earthworks rules in the PDP historic heritage chapters.

EW-S7 – Land stability

213. EW-S7 is as follows:

Earthworks must not result in any instability of land at or beyond the boundary of the property where the earthworks occurs.

214. Haigh Workman Limited and Reuben Wright request that EW-S7 be deleted as it is too ambiguous and open to interpretation.
215. I agree that EW-S7 may involve an element of judgement and best practice is to avoid any discretion in permitted activity rules. However, in my view, EW-S7 provides value as a standard to ensure earthworks do not result in land stability issues beyond the boundary of property. My expectation is that this standard will be used as a mechanism to address compliance issues where earthworks are clearly breaching the standard rather than a standard that needs to be assessed in detail for all types and scales of earthworks activities. Accordingly, I recommend that EW-R7 is retained.

EW-S9 – Flood and coastal hazards

216. There is only one submission on EW-R9 which is from Reuben Wright who opposes the standard and requests that it be deleted because it duplicates controls in the NRP. As discussed under Key Issue 1: General submissions, I recommend EW-S9 is retained on the basis it provides more specific direction (compared to the NRP) on how to not exacerbate the risks from flood and coastal hazards.



Recommendation

217. I recommend that submissions on the earthworks standards are accepted, accepted in part and rejected as set out in **Appendix 2**. I recommend that the following earthworks standards are amended as set out in **Appendix 1**:
- a) EW-S2 is amended to exempt land disturbance;
 - b) EW-S5 is amended to focus on FNDC's functions under section 31 of the RMA and to replace "prevent" with "minimise"; and
 - c) EW-S6 is amended to exempt land disturbance and earthworks for infrastructure, utility connections and formation of approved driveway or crossing.

Section 32AA evaluation

218. The amendments I am recommending to the earthworks standards will be more effective and efficient to achieve the relevant PDP objectives than the notified standards rules. In particular, I consider that my recommendations retain the general intent of the earthworks standards to manage a range of adverse effects associated with earthworks, while providing exemptions for specific activities and land disturbance to avoid unnecessary resource consent requirements for low-risk activities.

5.2.8 Key Issue 8: Definitions

Overview

Definition	Officer Recommendation(s)
Cultivation	Retain as notified
Earthworks	Retain as notified
Rural ancillary earthworks	Exempt certain rural activities from EW-S1 drawing on the requested definition of rural ancillary earthworks

Analysis of Submissions on Key Issue 8: Definitions

Matters raised in submissions

Cultivation

219. Forest and Bird (S511.004) and Kapiro Conservation Trust (S442.024) support the definition of "*cultivation*" and request that it be retained as notified.

Earthworks

220. Transpower (S454.002) supports the PDP definition of earthworks but notes that the NES-ETA contains a different definition of earthworks.



221. A number of submitters, including Linda Gigger (S370.002), Ti Toki Farms Limited (S262.002) and others, raise similar concerns that the definition of earthworks would capture land disturbance for creating building foundations and drilling holes for concrete piles. The submitters consider that this is an additional, unnecessary burden on developers, applicants and Council. As such, the submitters request that the definition of earthworks is amended to exclude earthworks associated with building foundations or, alternatively, the rules are amended to provide this exemption.
222. Summit Forests New Zealand Limited (S148.001) notes that the definition of earthworks captures the alteration or disturbance of land and lists some land disturbing activities along with exclusions for minor disturbance. Summit Forests is concerned that the definition of earthworks could capture disturbance caused by vehicles and / or machinery operating off a formed road and requests an exemption to the definition of earthworks for the disturbance of land caused by vehicles and/or machinery operating off a formed road.
223. Haigh Workman Limited (S215.035) support the definition of earthworks in the PDP compared to the use of “cutting” and “filling” in the ODP. However, Haigh Workman Limited considers it is unclear in the earthworks rules as to how earthworks volumes are to be calculated (i.e. as cut to fill or cut plus fill) and requests that this is clarified in the rules. Haigh Workman also raises concerns that there are inconsistencies between the PDP and the definition of earthworks in the NRP as the PDP captures the placing of aggregate which does not result in the same environmental risks as placing or moving soil. To address these concerns, Haigh Workman Limited requests that the definition of earthworks is amended to be the same as the NRP definition.

New definition – Ancillary Rural Earthworks

224. Federated Farmers (S421.003), NZ Pork (S55.001) and HortNZ (S159.001) all request a new definition of “*ancillary rural earthworks*” to support permitted activity rules/exemption, although the definitions requested by these submitters are all different.
225. Federated Farmers consider that there are common earthworks activities such as off-stream farm water storage dams and farm quarries that are important to support farming and primary production and these common earthworks activities should not be subject to resource consent requirements. Federated Farmers also notes that farm quarries are permitted in other district plans.
226. To provide to farm quarries and other rural activities, Federated Farmers requests a new definition of “*rural ancillary earthworks*” as follows:
- a. *any earthworks or disturbance of soil associated with cultivation, land preparation (including the establishment of sediment and*



erosion control measures), for planting and growing operations of crops and pasture;

- b. the harvesting of agricultural and horticultural crops (farming) and forests (forestry); and planting trees, removing trees and horticultural root ripping*
- c. the maintenance and construction of facilities typically associated with farming and forestry activities. This includes, but is not limited to²⁵...*

227. HortNZ request a different definition of “*ancillary rural earthworks*” or similar reasons. HortNZ consider that there is a need to provide for common earthworks activities that are integral to productive land use in rural areas and that a definition for ancillary rural earthworks and a supporting rule framework is an efficient approach to achieve this outcome. HortNZ acknowledge that cultivation activities are excluded from the PDP definition of earthworks but there are other activities which need to be provided for. Accordingly, HortNZ request a new definition of “*Ancillary rural earthworks*” as follows:

means earthworks associated with normal agricultural and horticultural practices, such as:

- 1. maintenance of drains, troughs and installation of their associated pipe networks, drilling bores and offal pits, burying of dead stock and plant waste, erosion and sediment control measures*
- 2. the burying of material infected by unwanted organisms as declared by the Ministry of Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993.*

Note: For clarity, it is noted that cultivation is not 'defined as earthworks'.

228. NZ Pork also request a different definition of ancillary rural earthworks for similar reasons. NZ Port notes the importance of allowing for the burying of material infected by unwanted organisms as declared by the Ministry for Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993. NZ Pork considers that this is important to allow farmers to undertake earthworks related to burying

²⁵ The requested definition from Federated Farmers also includes a long, non-exhaustive, list of activities including: a. *The tilling or cultivation of soil for the establishment and maintenance of crops and pasture.* b. *Harvesting of crops.* c. *The planting and removal of trees.* d. *Horticultural root ripping.* e. *The digging of offal pits.* f. *Burying dead stock and plant waste* g. *Digging post holes and drilling bores.* h. *Installing and maintaining services such as water pipes and troughs.* i. *Farm quarries where excavated material is not removed from the farm site.*



material in the event of a biosecurity incident without unnecessary consent requirements. As such, NZ Pork requests that the definition of ancillary rural earthworks enable earthworks associated with this biosecurity related activity and notes that this method has been included in a number of district plans.

229. The requested definition of “ancillary rural earthworks” from NZ Pork is broader/more generic and also includes:
- a. *Normal agricultural and horticultural practices.*
 - b. *Land preparation and vegetation clearance undertaken as part of horticultural plantings.*
 - c. *Maintenance of existing walking tracks, farm and forestry tracks, driveways, roads and accessways*

Analysis

Earthworks

230. Firstly, it is important to note that the PDP includes definitions of “cultivation”, “earthworks” and “land disturbance” from the National Planning Standards as follows:

Cultivation: *means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) for the purpose of sowing, growing or harvesting of pasture or crops.*

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

Land disturbance: *means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) that does not permanently alter the profile, contour or height of the land.*

231. The PDP must give effect to the National Planning Standards and the definition standard in the National Planning Standards requires that these definitions are to be used in plans with limited exceptions. Therefore, in my view, it is more appropriate and clearer to plan users to provide for exemptions for earthworks through amendments to the relevant rule/standards as I have recommended above rather than amending the PDP earthworks definition.
232. In respect to the request from various submitters to exempt earthworks associated with building foundations, I do not recommend an exemption to the earthworks definition, rule or standards for this activity. This is



because I expect that the scale of earthworks associated with building foundations is likely to be below the area and volume thresholds in EW-S1. The submitters have also not provided information as to why the other earthworks standards should not apply to earthworks associated with building foundations. However, I have recommended changes to EW-S2 and EW-S6 to exempt "*land disturbance*" which would mean that these standards would not capture earthworks for building foundations where the completed works do not permanently alter the profile, contour or height of the land.

233. I do not consider that land disturbance associated with vehicles and / or machinery operating off a formed road needs to be exempt from the earthworks definition, rule or standards as requested by Summit the Forests New Zealand Limited. Firstly, I expect that such disturbance will comply with all the relevant earthworks standards therefore a specific exemption is unnecessary. Secondly, as discussed above, earthworks associated with commercial forestry are to be regulated under the NES-CF not the Earthworks Chapter in the PDP.
234. In respect to Haigh Workman Limited's concerns that the placing of aggregate would be considered earthworks, I agree that the risk of adverse effects from this activity is lower compared to other types of earthworks. Haigh Workman point to the list of exceptions in the definition of earthworks NRP, which is as follows:

"The mechanical disturbance of earth by excavation, cutting and filling, blading, ripping, contouring, quarrying or placing or replacing earth or cleanfill material and includes associated revegetation, but does not include:

- 1) construction, repair, alteration or maintenance of bores, or*
- 2) the maintenance of walking and other recreational tracks and farm tracks, or*
- 3) the placement of roading aggregates during road and track works, or*
- 4) directional drilling, boring or thrusting up to 250mm diameter, or*
- 5) digging post holes, or*
- 6) planting trees, or*
- 7) land preparation, or*
- 8) vegetation clearance'.*



235. As discussed above, in my view, it is not appropriate to amend the PDP definition of earthworks as this gives effect to the National Planning Standards. My understanding is that the NRP was part way through the Schedule 1 process when the National Planning Standards came into effect, which is why the NRP earthworks definition differs from the National Planning Standards earthworks definition. However, there is some alignment as the PDP (and National Planning Standards) definition of earthworks also excludes cultivation (which captures land preparation) and earthworks associated with fence posts. I also recommend that:
- a) The "*the placement of aggregate*" for any purposes be exempt from the consolidated earthworks rule and associated standards.
 - b) Earthworks associated with the maintenance of existing tracks and roads be exempt from EW-S1 (discussed further below under "*ancillary rural earthworks*").
236. I do not agree with Haigh Workman that clarification is needed for whether earthworks volumes are calculated as cut to fill or cut plus fill. As I understand it, Haigh Workman are querying whether in a cut to fill situation, the volume calculation should be based on just the volume of earth moved or the volume of the cut plus the volume of the fill. In my view, it is clear that the volumes set out in EW-S1 are the total volume of earthworks (cut plus fill), as the PDP definition of earthworks includes excavation and filling.

Ancillary rural earthworks

237. As outlined above, Federated Farmers, HortNZ and NZ Pork all request different variations of a "*ancillary rural earthworks*" definition as basis for a permitted rule framework and/or exemptions to certain earthworks standards.
238. As noted above, I consider that the relief sought is generally a more certain and clearer way to enable earthworks associated with common farming activities compared to EW-R4 and EW-R5 which are based on 8ha lot size threshold. The table below therefore provides some commentary on the different activities within the requested definitions of ancillary rural earthworks and how these should be provided for in the earthworks rule/standards, taking into account the likely environmental effects from these common types of earthworks in rural areas.
239. This assessment has considered the scale and frequency of earthworks activities. Small-scale and frequent earthworks can collectively "use up" the maximum area and volume thresholds in EW-S1 (calculated per year per allotment). However, these cumulative, small scale and frequent earthworks activities are generally less likely to have adverse effects compared to a single earthworks activity of equivalent area and/or volume because they are dispersed.



Requested activity	Comment/ recommendation
<p><i>Cultivation and land preparation for sowing, planting and harvesting crops</i></p> <p><i>Planting trees, removing trees and horticultural root ripping</i></p>	<p>As noted above, cultivation is specifically excluded from the definition of earthworks and is therefore not captured by any of the rules in the Earthworks Chapter. The PDP definition of cultivation is as follows:</p> <p><i>means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) for the purpose of sowing, growing or harvesting of pasture or crops.</i></p> <p>My understanding is that this definition will generally provide for the listed activities (e.g. disturbing land when planting and harvesting crops and trees). I also note that mechanical land preparation and harvesting associated with commercial forestry is regulated under the NES-CF, not the PDP. Accordingly, I consider that these activities do not need to be specifically exempt from the earthworks rule or specific standards.</p>
<p><i>Farm quarries</i></p>	<p>Farm quarries are managed through the Rural Production Chapter as discussed above under Key Issue 5.</p>
<p><i>Normal agricultural and harvesting practices</i></p>	<p>In my view, this term is too broad and uncertain to be exempt from the earthworks rule/standards.</p>
<p><i>Maintenance of drains</i></p>	<p>While individually the maintenance of farm drains are unlikely to trigger the area and volume thresholds, cumulatively there is a likelihood that maximum area and volume thresholds in EW-S1 would be exceeded, particularly within larger productive allotments in rural areas. In my view, it is appropriate to provide for the maintenance of farm drains as a permitted activity. Accordingly, I recommend that these earthworks are exempt from the maximum area and volume thresholds in EW-S1.</p>
<p><i>Troughs and installation of their associated pipe networks</i></p> <p><i>Drilling bores</i></p> <p><i>Offal pits</i></p> <p><i>Burying of dead stock and plant waste</i></p>	<p>My expectation is that these activities will generally be under the area and volume thresholds, even cumulatively over a year on larger rural sites. Accordingly, in my opinion, there is no need for these activities to be exempt from the earthworks rule/standards.</p>
<p><i>The burying of material infected by unwanted organisms as declared by the Ministry of Primary Industries Chief</i></p>	<p>I agree that this type of earthworks should be provided for without constraint given its critical nature. I note that a similar request was considered at Hearing 4 and the reporting officers requested that earthworks associated with this activity be</p>



Requested activity	Comment/ recommendation
<i>Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993</i>	provided for as a permitted activity. Accordingly, I recommend that earthworks associated with this activity be exempt from EW-R1 consistent with the recommended amendments to the Hearing 4 chapters.
<i>Maintenance of existing walking tracks, vehicle tracks, driveways, roads and accessways within the same formation width.</i>	<p>In my opinion, it is appropriate to allow for all earthworks associated with the maintenance of these existing tracks, roads etc. to be exempt from the maximum area and volume thresholds (EW-S1).</p> <p>My expectation is that my recommended amendment to EW-S6 to exempt “land disturbance” from the site boundary setbacks will mean that earthworks associated with most track/road/accessway maintenance will be exempt from this standard.</p> <p>In my view, it is appropriate that the other earthworks standards apply – in particular EW-S6 (Erosion and sediment control) because of the risk of sediment impacting drainage and roading infrastructure.</p>

Recommendation

240. I recommend that submissions on the definitions are accepted, accepted in part and rejected as set out in **Appendix 2**. I recommend that the PDP definitions of earthworks, land disturbance and cultivation are retained as notified. I do not recommend a new definition for rural ancillary earthworks, but I recommend exemptions to EW-R1 for earthworks associated with an identified biosecurity risk and exemptions to EW-S1 for the maintenance of drains and maintenance of existing tracks and road etc.

Section 32AA evaluation

241. I consider that my recommendations in response to submissions on the definitions in the Earthworks Chapter are appropriate way to achieve the PDP objectives as the general intent is retained while providing some targeted exemptions to EW-R1 and EW-S1 to avoid unnecessary consent requirements.

6 Conclusion

242. This report has provided an assessment of submissions received in relation to the Earthworks Chapter. The primary amendments that I have recommended relate to:



- a) Removing unnecessary duplication with controls in the NRP that are primarily the responsibility of NRC under section 30 of the RMA.
 - b) Consolidating all the earthworks rules into a single earthworks rule that requires compliance with all the earthworks standard to reduce duplication, remove unnecessary consent requirements, and to provide a more effective and effects-based rule framework.
 - c) Providing exemptions to the earthwork rule/standards for certain common and/or low-risk activities to remove unnecessary consent requirements.
243. Section 5.2 considers and provides recommendations on the decisions requested in submissions. I recommend that the submissions on the Earthworks Chapter be accepted, accepted in part, rejected or rejected in part, as set out in my recommendations in this report and in **Appendix 2**.
244. I recommend that provisions for the Earthworks Chapter be amended as set out in **Appendix 1** below for the reasons set out in this report

Recommended by: Jerome Wyeth, Technical Director – Planning, SLR Consulting

Approved by: James R Witham – Team Leader District Plan, Far North District Council.

Date: 20 September 2024