

OFFICER'S REPORT FOR:

Independent Hearing Commissioners:

Trevor Robinson

Miria Pomare

Mark St Clair

SUBJECT:

Proposed Porirua District Plan: Earthworks

PREPARED BY:

Rory Smeaton, Senior Policy Planner

REPORT DATED:

3 December 2021

DATE OF HEARING:

8-9, 11, 14 - 15 February 2022

Executive Summary

1. This report considers submissions received by Porirua City Council (the Council) in relation to the relevant objectives, policies, rules, definitions and appendices of the Proposed Porirua District Plan (PDP) as they apply to the EW - Earthworks chapter. The report outlines recommendations in response to the key issues that have emerged from these submissions.
2. There were a number of submissions and further submissions received on the EW - Earthworks chapter. The submissions received were diverse and sought a range of outcomes. The following are considered to be the key issues in contention in the chapter:
 - Whether all earthworks should be located within the EW - Earthworks chapter;
 - Earthworks provisions related to the National Grid;
 - Earthworks provisions specifically for rainwater tanks;
 - The integration with the NES-CS and specifically underground petroleum storage systems;
 - Specific amendments sought to the objectives, policies, rules and standards; and
 - Advice notes relating to archaeological sites and other NESs.
3. This report addresses each of these key issues, as well as any other issues raised by submissions.
4. Some changes to the PDP provisions are recommended to address matters raised in submissions and are summarised below:
 - Minor amendments to the chapter introduction;
 - Amendment to EW-O1 relating to protection of infrastructure;
 - Amendment to EW-P1-5 to include erosion;
 - Amendment to EW-P5 to include land disturbance activities more generally;
 - Amendment to the notes to the rules to include the NES-PF;
 - Amendment to EW-R1-2 to include reference to EW-S5;
 - Amendment to EW-R4 to include land disturbance more generally, additional requirements for compliance to ensure greater protection for National Grid support structures, and specific exclusions;
 - Amendment to the exemptions to EW-S1 to include earthworks up to 400m² in any 12 month period per site associated with the removal or replacement of a fuel storage system;
 - Amendment to the exemptions to EW-S2 to include a range of minor earthworks activities; and
 - Amendment to the advice notes relating to the Archaeological Authority process.
5. Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, it is recommended that the PDP should be amended as set out in Appendix A of this report.

6. For the reasons set out in the Section 32AA evaluation included throughout this report, it is considered that the amended provisions will be the most appropriate means for achieving the purpose of the Resource Management Act 1991 (RMA), the relevant objectives of the PDP, and other relevant statutory documents.

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Interpretation

7. Parts A and B of the Officers' reports utilise a number of abbreviations for brevity as set out in Table 1 below:

Table 1: Abbreviations

Abbreviation	Means
the Act / the RMA	Resource Management Act 1991
the Council	Porirua City Council
the Operative Plan	Operative Porirua District Plan 1999
the Proposed Plan	Proposed Porirua District Plan 2020
GWRC	Greater Wellington Regional Council
NES	National Environmental Standard
NES-AQ	National Environmental Standards for Air Quality
NES-CS	National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health
NES-ETA	National Environmental Standards for Electricity Transmission Activities
NES-FW	National Environmental Standards for Freshwater
NES-MA	National Environmental Standards for Marine Aquaculture
NES-PF	National Environmental Standards for Plantation Forestry
NES-SDW	National Environmental Standards for Sources of Drinking Water
NES-TF	National Environmental Standards for Telecommunication Facilities
NPS	National Policy Statement
NPS-ET	National Policy Statement on Electricity Transmission
NPS-FM	National Policy Statement for Freshwater Management
NPS-UD	National Policy Statement on Urban Development
NPS-REG	National Policy Statement for Renewable Electricity Generation
NZCPS	New Zealand Coastal Policy Statement
ODP	Operative Porirua District Plan 1999
PDP	Proposed Porirua District Plan 2020
PNRP	Proposed Natural Resources Plan
RMA	Resource Management Act 1991
RPS	Wellington Regional Policy Statement

Table 2: Abbreviations of Submitters' Names

Abbreviation	Means
Dept of Corrections	Ara Poutama Aotearoa the Department of Corrections
DOC	Department of Conservation Te Papa Atawhai
FENZ	Fire and Emergency New Zealand
Foodstuffs	Foodstuffs North Island Limited
Forest and Bird	Royal Forest and Bird Protection Society
GWRC	Greater Wellington Regional Council
Harvey Norman	Harvey Norman Properties (N.Z.) Limited
Heritage NZ	Heritage New Zealand Pouhere Taonga
House Movers Association	House Movers section of the New Zealand Heavy Haulage Association Inc
Kāinga Ora	Kāinga Ora – Homes and Communities
KiwiRail	KiwiRail Holdings Limited

NZDF	New Zealand Defence Force
Oil companies	Z Energy, BP Oil NZ Ltd and Mobil Oil NZ Limited
Oranga Tamariki	Oranga Tamariki – Ministry of Children
QEII	Queen Elizabeth the Second National Trust
RNZ	Radio New Zealand
Survey+Spatial	Survey+Spatial New Zealand (Wellington Branch)
Telco	Spark New Zealand Trading Limited, Chorus New Zealand Limited, Vodafone New Zealand Limited
Transpower	Transpower New Zealand Ltd
TROTR	Te Rūnanga o Toa Rangatira
Waka Kotahi	Waka Kotahi NZ Transport Agency
WE	Wellington Electricity Lines Limited
Woolworths	Woolworths New Zealand Limited

1 Introduction

1.1 Purpose

8. The purpose of this report is to provide the Hearing Panel with a summary and analysis of the submissions received on the EW- Earthworks chapter and to recommend possible amendments to the PDP in response to those submissions.
9. This report is prepared under section 42A of the RMA. It considers submissions received by the Council in relation to the relevant objectives, policies, rules, definitions and appendices as they apply to the EW- Earthworks chapter in the PDP. The report outlines recommendations in response to the key issues that have emerged from these submissions.
10. This report discusses general issues, the original and further submissions received following notification of the PDP, makes recommendations as to whether or not those submissions should be accepted or rejected, and concludes with a recommendation for changes to the PDP provisions or maps based on the preceding discussion in the report.
11. The recommendations are informed by both the technical information provided by Andreas Giannakogiorgos (Miyamoto International NZ Ltd), and the evaluation undertaken by the author. In preparing this report the author has had regard to the section 42A report on Strategic Objectives prepared by Ms Gina Sweetman and the Overview section 42A report that addresses the higher order statutory planning and legal context.
12. This report is provided to assist the Hearings Panel in their role as Independent Commissioners. The Hearings Panel may choose to accept or reject the conclusions and recommendations of this report, and may come to different conclusions and make different recommendations, based on the information and evidence provided to them by submitters.
13. This report is intended to be read in conjunction with Officer's Report: Part A – Overview which contains factual background information, statutory context and administrative matters pertaining to the district plan review and PDP.

1.2 Author

14. My name is Rory McLaren Smeaton. My qualifications and experience are set out in Appendix C of this report.
15. My role in preparing this report is that of an expert planner.
16. I was involved in the preparation of the PDP, and authored the Section 32 Evaluation Reports for the INF – Infrastructure, REG – Renewable Electricity Generation, SIGN – Signs, LIGHT – Light and NOISE – Noise, and AR – Amateur Radio chapters, and contributed to the report for the TR – Transport chapter.
17. Although this is a Council Hearing, I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court December 2014. I have complied with that Code when preparing my written statement of evidence and I agree to comply with it when I give any oral evidence.

18. I note in relation to the submission points from Z Energy, BP Oil NZ Ltd and Mobil Oil NZ Limited (submitter 123) that, prior to my role at PCC, I have previously worked as a planning consultant on behalf of Mobil Oil NZ Limited, preparing resource consents for underground storage tank (UST) replacement works. This included the resource consent application for the re-tanking at Mobil Porirua, 5 Kenepuru Drive, Kenepuru. I do not consider this to be a conflict of interest.
19. The scope of my evidence relates to the EW – Earthworks chapter. I confirm that the issues addressed in this statement of evidence are within my area of expertise as an expert policy planner.
20. Any data, information, facts, and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinions. Where I have set out opinions in my evidence, I have given reasons for those opinions.
21. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

1.3 Supporting Evidence

22. The expert evidence, literature, legal cases or other material which I have used or relied upon in support of the opinions expressed in this report includes expert geotechnical advice provided by Andreas Giannakogiorgos (Miyamoto International NZ Ltd).

1.4 Key Issues in Contention

23. A number of submissions and further submissions were received on the provisions of the EW – Earthworks chapter. The submissions received were diverse and sought a range of outcomes; including for example exclusion of certain activities from compliance with the earthworks provisions, deletion of the provisions relating to the National Grid and conversely strengthening those same provisions, and clarifying the requirements in relation archaeological sites.
24. The following are considered to be the key issues in contention in the chapter:
 - Whether all earthworks should be located within the EW - Earthworks chapter;
 - Earthworks provisions related to the National Grid;
 - Earthworks provisions specifically for rainwater tanks;
 - The integration with the NES-CS and specifically underground petroleum storage systems;
 - Specific amendments sought to the objectives, policies, rules and standards; and
 - Advice notes relating to archaeological sites and other NESs.
25. This report addresses each of these key issues, as well as any other issues raised by submissions.

1.5 Procedural Matters

26. At the time of writing this report there have not been any pre-hearing conferences, clause 8AA meetings or expert witness conferencing in relation to submissions on the EW – Earthworks chapter.

2 Statutory Considerations

2.1 Resource Management Act 1991

27. The PDP has been prepared in accordance with the RMA and in particular, the requirements of:
- Section 74 Matters to be considered by territorial authority; and
 - Section 75 Contents of district plans.
28. As set out in Section 32 Evaluation Report Part 1 - Overview to s32 Evaluation, there are a number of higher order planning documents and strategic plans that provide direction and guidance for the preparation and content of the PDP. These documents are discussed in detail within the Section 32 Evaluation Report Part 2: Earthworks. There is further discussion in the Section 32 Evaluation Report Part 1 – Overview to the s32 Evaluation on the approach the Council has taken to giving effect to the NPS-UD and NPS-FM. This is also discussed in the Officer's Report: Part A.

2.2 Section 32AA

29. All recommended amendments to provisions since the initial section 32 evaluation was undertaken must be documented in a subsequent s32AA evaluation. Section 32AA states:

32AA Requirements for undertaking and publishing further evaluations

(1) A further evaluation required under this Act—

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

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

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

(d) must—

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

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

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

30. The required section 32AA evaluation for changes proposed as a result of consideration of submissions with respect to the EW – Earthworks chapter and associated definition is contained within the assessment of the relief sought in submissions in section 3 of this report as required by s32AA(1)(d)(ii).

2.3 Trade Competition

31. Trade competition is not considered relevant to the EW – Earthworks chapter provisions of the PDP.
32. There are no known trade competition issues raised within the submissions.

3 Consideration of Submissions and Further Submissions

3.1 Overview

33. There were approximately 46 original submissions received on the EW-Earthworks chapter. Common themes that have arisen include the location of earthworks provisions within the Plan, the requirements for earthworks in proximity of the National Grid, sediment and erosion control requirements and integration with national environmental standards. There were approximately 31 further submissions which are also addressed within the report.

3.1.1 Report Structure

34. Submissions on the EW – Earthworks chapter raised a number of issues which have been grouped into sub-topics within this report. Some of the submissions are addressed under a number of topic headings based on the topics contained in the submission. I have considered substantive commentary on primary submissions contained in further submissions as part of my consideration of the primary submission(s) to which they relate.

35. In accordance with Clause 10(3) of the First Schedule of the RMA, I have undertaken the following evaluation on both an issues and provisions-based approach, as opposed to a submission by submission approach. I have organised the evaluation in accordance with the layout of chapters of the PDP as notified.

36. Due to the number of submission points, this evaluation is generic only and may not contain specific recommendations on each submission point, but instead discusses the issues generally. This approach is consistent with Clause 10(2)(a) of Schedule 1 to the RMA. Specific recommendations on each submission / further submission point are contained in Appendix B.

37. The following evaluation should be read in conjunction with the summaries of submissions and the submissions themselves. Where I agree with the relief sought and the rationale for that relief, I have noted my agreement, and my recommendation is provided in the summary of submission table in Appendix B. Where I have undertaken further evaluation of the relief sought in a submission(s), the evaluation and recommendations are set out in the body of this report. I have provided a marked-up version of the Chapter with recommended amendments in response to submissions as Appendix A.

38. This report only addresses definitions that are specific to this topic. Definitions that relate to more than one topic have been addressed in Hearing Stream 1.

3.1.2 Format for Consideration of Submissions

39. For each identified topic, the consideration of submissions has been undertaken in the following format:

- Matters raised by submitters;
- Assessment;
- Recommendations; and
- Section 32AA evaluation.

40. The recommended amendments to the EW-Earthworks chapter are set out in in Appendix A of this report where all text changes are shown in a consolidated manner.

41. I have undertaken a s32AA evaluation in respect to the recommended amendments in my assessment.
42. Note that there are further submissions that support submissions in their entirety:
 - The further submission from Forest and Bird [FS52] supports the submission from Director-General of Conservation [126], Queen Elizabeth II National Trust [216] and GWRC [137] in their entirety; and
 - The further submission from Queen Elizabeth II National Trust [FS06] supports the submission from Director-General of Conservation [126] and Forest and Bird [225] in their entirety
43. In these cases, recommendations in relation to these further submissions reflect the recommendations on the relevant primary submission.

3.2 General Submissions

3.2.1 Matters raised by submitters

44. Forest and Bird [225.251] seeks that provisions be added to recognise riparian margins within the earthworks and biodiversity chapters and other chapters as appropriate. The reasons given are that the NATC-Natural Character chapter is unclear, particularly in regard to the coastal environment, and it is unnecessary and confusing to separate this section out from the coastal environment section.
45. Forest and Bird [225.23] seeks that a new provision be included to ensure consistency with the 100 metre setback from wetlands in the NES-FW. No specific reasons are given.
46. Kāinga Ora [81.480 and 81.935] seeks the EW - Earthworks chapter be amended to be consistent with its overall submission including deletion of provisions relating to the National Grid, incorporating notification exclusion clauses, consequential changes to incorporate all earthworks provisions except those in the INF – Infrastructure Chapter, and the thresholds for triggering resource consent and associated matters of discretion. No specific reasons are given.
47. Robyn Smith [168.78] opposes any amendment to the provisions of the PDP by way of submissions by others, or by council officer evidence and/or recommendations, that would result in Council not having responsibility for managing adverse effects from erosion and sediment discharge, or would result in Council only having responsibility for small scale earthworks.
48. GWRC [137.65] seeks amendment to the provisions to require consultation with GWRC prior to earthworks occurring on flood protection structures, for the reason that such works could potentially compromise their effectiveness, and it is important that GWRC can assess any impacts on their structures.

3.2.2 Assessment

49. In relation to the submission from Forest and Bird [225.251], earthworks within coastal margins and riparian margins are managed under NATC-R2 in the NATC – Natural Character Chapter. The matter of the PDP structure is discussed in the Officer's Report: Part A – Overarching Report, including in relation to the NATC-Natural Character chapter, and states that the 'drafting of the

- PDP complies with the directions in the National Planning Standards which are clear on the matter'. I therefore disagree with the submission point from Forest and Bird [225.251].
50. I disagree with the submission from Forest and Bird [225.23] relating to consistency with the NES-FW for setbacks from wetlands. The NES-FW contains national regulations for earthworks within and in proximity to natural wetlands. While the NES-FW states in regulation 6 that district plans may be more stringent than the regulations, there is no requirement to include provisions in district plans that duplicate the NES-FW; rather, the converse applies. Section 44A of the RMA (Local authority recognition of national environmental standards), provides that in particular circumstances if a district plan rule duplicates or conflicts with a rule in a NES, then the local authority must amend its plan to remove the duplication or conflict without using the process in Schedule 1. As an example, the CL – Contaminated Land chapter of the Plan contains no rules as it relies on the NES-CS regulations.
 51. I also note, as addressed in the section 32 Evaluation report Part 2 – Earthworks, that regulation 5 of the NES-FW states that the regulations only deal with the functions of regional councils under section 30 of the RMA. Including provisions that duplicate the NES-FW would not be efficient or effective, and therefore I do not consider that this would be appropriate. This is consistent with the assessment and recommendations in the section 42A report 'Officer's Report: Part B - Ecosystems and Indigenous Biodiversity' which recommends that submissions from Forest and Bird [225.128, 225.129, 225.130, 225.133, 25.137] relating to setbacks from wetlands be rejected.
 52. In relation to the submissions from Kāinga Ora [81.480 and 81.935], these matters are addressed in response to the specific submission points from the submitter which reflect the outcomes sought in the general submission points, in sections 3.3, 3.4 and 3.11 below.
 53. In relation to the submission from Robyn Smith [168.78], no changes are proposed to the Plan that would result in Council not having responsibility for managing adverse effects from erosion and sediment discharge, or would result in Council only having responsibility for small scale earthworks.
 54. While I generally agree with GWRC [137.65] in relation to the wider concern of potential effects of earthworks on flood protection structures, I disagree with the specific relief sought that the provisions should 'require' consultation with GWRC where earthworks are proposed to be undertaken on flood protection structures. It is unclear as to what the submitter is actually seeking, as no proposed amendments to the Plan are provided. The submitter does not make clear whether this requirement would be associated with permitted activity standards or as part of a resource consent process (for example through a notification statement). The submitter also does not provide an indication of what should occur, or what consideration should be given, in situations where consultation with GWRC has occurred but approval or agreement has not been obtained. However, of greater importance are the provisions set out in section 36A of the RMA, which states that an applicant has no duty under the Act to consult any person about the application. While district plan provisions may refer to consideration of consultation undertaken with specific parties (for example in matters of discretion), the provisions in section 36A of the RMA make it clear that consultation cannot be required. Because of this, I do not consider it appropriate that the Plan require consultation to be undertaken with GWRC as sought by the submitter.

3.2.3 Recommendations

55. I recommend for the reasons given in the assessment, that the submissions from Forest and Bird [225.251 and 225.23], Kāinga Ora [81.480 and 81.935] and GWRC [137.65] be **rejected**.
56. I recommend for the reasons given in the assessment, that the submission from Robyn Smith [168.78], be **accepted in part**.
57. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submission.

3.3 All Earthworks Provisions in the EW Chapter

3.3.1 Matters raised by submitters

58. Kāinga Ora [81.934] seeks that all earthworks rules and standards be located within the Earthworks Chapter. The submitter opposes the approach of earthworks provisions, rules, and standards throughout various district wide chapters and overlays, stating that this makes navigation of the Plan and determining compliance cumbersome and prone to error.

3.3.2 Assessment

59. The Plan includes rules, and associated standards where relevant, for earthworks in the following district-wide chapters:
 - INF-Infrastructure;
 - NH-Natural Hazards;
 - HH-Historic Heritage;
 - SASM-Sites and Areas of Significance to Māori;
 - ECO-Ecosystems and Indigenous Biodiversity;
 - NATC-Natural Character;
 - NFL-Natural Features and Landscapes;
 - CE-Coastal Environment; and
 - EW-Earthworks.
60. Under section 75(3)(ba) a district plan must give effect to a national planning standard. The first set of national planning standards were published in April 2019. In relation to earthworks, the National Planning Standards state that:
 29. If provisions for managing earthworks are addressed, they must be located in the Earthworks chapter. This chapter may also include:
 - a. provisions for quarries and gravel extraction where managed on a district-wide basis
 - b. provisions for mining where they are managed on a district-wide basis.
 30. The Earthworks chapter must include cross-references to any relevant earthworks provisions under the Energy, infrastructure, and transport heading.

31. The Earthworks chapter must include cross-references to any provisions for mining, quarries and or gravel extraction in a Special purpose zone or zone chapter or section.
61. However, specific to energy, infrastructure and transport, the National Planning Standards state that:
5. Provisions relating to energy, infrastructure and transport that are not specific to the Special purpose zones chapter or sections must be located in one or more chapters under the Energy, infrastructure and transport heading. These provisions may include:
- [...]
62. Therefore, while clause 7(29) of the National Planning Standards state that provisions for managing earthworks must be located in the Earthworks chapter, clause 7(30) states that that chapter must include cross-references to any relevant earthworks provisions under the Energy, infrastructure, and transport heading. This indicates that the National Planning Standards anticipate that earthworks provisions relating to energy, infrastructure and transport are to be located in those chapters, rather than the Earthworks chapter.
63. The National Planning Standards also state in relation to a range of matters to be addressed as district-wide matters, that the provisions to protect and/or manage those matters are to be located in the relevant chapter. The relevant clauses are identified in Table 3 below.

Table 3: Relevant National Planning Standards clauses

Matter	National Planning Standard clauses
Natural Hazards	<i>10. If provisions relating to natural hazards are addressed (except coastal hazards), they must be located in the Natural hazards chapter.</i>
Historic Heritage	<i>15. If the following matters are addressed, they must be located in the Historic heritage chapter: [...] b. provisions to protect and manage historic heritage [...]</i>
Sites and Areas of Significance to Māori	<i>17. If the following matters are addressed, they must be located in the Sites and areas of significance to Māori chapter: [...] b. provisions to manage sites and areas of significance to Māori</i>
Ecosystems and Indigenous Biodiversity	<i>19. If the following matters are addressed, they must be located in the Ecosystems and indigenous biodiversity chapter: a. identification and management of significant natural areas, including under s6(c) of the RMA b. maintenance of biological diversity c. intrinsic values of ecosystems and indigenous biodiversity.</i>
Natural Character	<i>20. If provisions to protect the natural character of wetlands, lakes and rivers and their margins are addressed, they must be located in the Natural character chapter.</i>
Natural Features and Landscapes	<i>21. If the following matters are addressed, they must be located in the Natural features and landscapes chapter: [...] b. provisions to protect and manage outstanding natural features and landscapes c. provisions to manage other valued features and landscapes.</i>

Coastal Environment	<p><i>28. If the district has a coastline, a Coastal environment chapter must be provided that:</i></p> <p><i>a. sets out the approach to managing the coastal environment and giving effect to the NZCPS</i></p> <p><i>b. sets out provisions for implementing the local authorities functions and duties in relation to the coastal environment, including coastal hazards</i></p> <p><i>c. provides cross-references to any other specific coastal provisions that may be located within other chapters.</i></p>
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64. Where earthworks provisions are required in order to protect and/or manage the matters identified in Table 3, the clauses above therefore require that they be located within those chapters.
65. On this matter the Ministry for the Environment's document 'Guidance for District Plans Structure and Chapter Standards'¹ (MfE Guidance) states in relation to the earthworks chapter that:

The directions for the Earthworks chapter mainly require all earthworks provisions to be located in that chapter. This is because earthworks is an activity with effects that are common and occur or apply across a district. Therefore, we consider consolidating provisions with cross-referencing a better approach than separating and duplicating provisions. Two examples of where exceptions to this approach could apply are for provisions relating to energy, infrastructure or transport, and to sites of significance to Māori and archaeological sites.

- For the Energy, infrastructure and transport chapter(s), the intention of the planning standards structure is to locate infrastructure-related provisions in one place in a plan. This is to provide clarity regarding the location of infrastructure provisions for councils, plan users and infrastructure providers. Centralising these provisions makes it easier for landowners who live adjacent to infrastructure corridors to understand their responsibilities around earthworks on or near their property. Direction 30 requires cross-referencing in the subdivision chapters to the relevant provisions under the Energy, infrastructure, and transport heading when this occurs.
- For sites of significance to Māori and archaeological sites, earthworks provisions related to these are not placed in the Earthworks chapter. This is because the adverse effects being controlled by the provisions relate more directly to the effects on the sites than they do to the normal adverse effects of earthworks generally. Cross-referencing of these provisions to the Earthworks chapter should also be provided.

66. I consider that the reasoning given in the MfE Guidance being that 'the adverse effects being controlled by the provisions relate more directly to the effects on the sites than they do to the

¹ Ministry for the Environment, 2019 (updated 2020), Guidance for District Plans Structure and Chapter Standards. Available from: <https://environment.govt.nz/assets/Publications/Files/guidance-district-plan-structure-and-chapter-standards.pdf> Accessed on: 6 October 2020.

normal adverse effects of earthworks generally', is applicable the chapters listed in Table 3 above.

67. As such, I consider that the decision requested by Kāinga Ora [81.934] would not give effect to the National Planning Standards, and therefore would not be in accordance with section 75 of the RMA.

3.3.3 Recommendations

68. I recommend for the reasons given in the assessment, that the submission from Kāinga Ora [81.934] be **rejected**.
69. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submission.

3.4 National Grid

3.4.1 Matters raised by submitters

70. Transpower New Zealand Ltd and Kāinga Ora made extensive submissions on the provisions relating to the National Grid.
71. In relation to the EW - Earthworks chapter, Kāinga Ora generally seeks deletion of all provisions relating to the National Grid. The submitter states that 'the proposed National Grid provisions are overly restrictive and do not efficiently manage sensitive activities within close proximity to and under the National Grid.'
72. Transpower New Zealand Ltd generally seeks relocation of the provisions to the INF - Infrastructure Chapter and amendments to the relevant rule. The reason stated is that a standalone set of provisions within the INF – Infrastructure Chapter is preferred as it avoids duplication and provides a coherent set of rules which applicants can refer to and is also consistent with the National Planning Standards.
73. The specific amendments sought are set out below.
74. Transpower New Zealand Ltd seeks that:
- [60.91] the National Grid policies and rules (P4, P5, and R4) be relocated to the Infrastructure Chapter;
 - [60.92] the National Grid be removed from clause 5 of EW-O1, and a new clause 6 be included with adverse effects on the National Grid to be avoided, to better give effect to Policy 10 of the NPS-ET and Policy 8 of the RPS;
 - [60.93] deletion of EW-P4 in so far as it relates to the National Grid, as the policy is not clear and EW-P5 provides clearer policy direction;
 - [60.94] removing the National Grid from EW-P5 and relocation of a new policy to the INF – Infrastructure chapter. Wording amendments are also sought to reflect the NPS-ET particularly Policy 10. Inclusion of wording to address vertical holes is sought in recognition that the National Planning Standard definition of 'earthworks' excludes disturbance of land for the installation of fence posts; and

- [60.135] that EW-R4 is amended to include vertical holes, specific reference to the Electrical Code of Practice for Electrical Safe Distances 34:2001, require no permanent loss of vehicular access, a non-complying activity status for some breaches of the permitted activity standards, include a range of exemptions, and be relocated to the INF-Infrastructure chapter. The reasons include that the rule needs be clearer and also recognise that the risks to the National Grid extend beyond those addressed by NZECP34.

75. Kāinga Ora seeks that:

- [81.480] provisions relating to the National Grid are deleted;
- [81.482] the National Grid is deleted from clause 5 of EW-O1; and
- [81.486] EW-P4 is deleted;
- [81.487] EW-P5 is amended to remove the National Grid from the policy; and
- [81.491] EW-R4 is deleted.

3.4.2 Assessment

3.4.2.1 Deletion of National Grid provisions

76. The Officer's Report: Part B – Infrastructure addresses the decision sought by Kāinga Ora for deletion of the provisions for the National Grid [81.480, 81.482, 81.486, and 81.487].
77. Consistent with the recommendation in that report, I consider it is not appropriate to delete the provisions for the National Grid in the EW - Earthworks chapter.

3.4.2.2 All National Grid provisions in the INF-Infrastructure chapter

78. The Officer's Report: Part B – Infrastructure addresses the decision sought by Transpower New Zealand Ltd for relocation of the provisions for the National Grid to the INF-Infrastructure chapter [60.91, 60.92, 60.94, and 60.135].
79. Consistent with the recommendation in that report, I consider it is not appropriate to relocate all the provisions for the National Grid in the EW - Earthworks chapter to the INF - Infrastructure chapter.

3.4.2.3 Clause five of EW-O1

80. Transpower New Zealand Ltd [60.92] seeks that clause five of EW-O1 be amended to separate out the National Grid and to use the phrase 'avoid adverse effects' in relation to the National Grid.
81. The objective of the NP-SET includes managing the adverse effects of other activities on the network. Policy 10 of the NPSET gives effect to that objective and states:

In achieving the purpose of the Act, decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised.

82. Policy 8 of the RPS is for the protection of regionally significant infrastructure from incompatible new subdivision, use and development.

83. The wording of Policy 10 of the NPS-ET is for the avoidance of reverse sensitivity effects. Earthworks affecting the infrastructure would not be reverse sensitivity effects. In relation to the operation, maintenance, upgrading, and development of the electricity transmission network, the policy wording is to ensure that these are 'not compromised'.
84. For this reason, I do not agree that the objective wording should be to 'avoid adverse effects on the National Grid'.
85. However, I do accept that 'minimise' is not the correct terminology, which is discussed in section 3.9 below.

3.4.2.4 EW-P4

86. As discussed in section 3.10.3 below, EW-P4 sets up the permitted activity rules for earthworks within the vicinity of the National Grid, while EW-P5 provides policy consideration for earthworks which require consent as a restricted discretionary activity. As such, I consider that both policies are necessary, and EW-P4 should not be deleted or the National Grid removed from the Policy.

3.4.2.5 EW-P5

87. The relocation of National Grid provisions to the INF - Infrastructure chapter is addressed above. Consistent with that recommendation, I do not consider that a separate policy is required for the National Grid.
88. As noted above, EW-P5 provides policy consideration for earthworks requiring resource consent under EW-R3 and EW-R4. The wording 'only allow' therefore provides for these activities in the right circumstances where effects can be adequately avoided, remedied or mitigated, and the identified outcomes can be achieved. Additionally, as identified above, the term 'avoid' in the NPS-ET Policy 10 relates to reverse sensitivity effects. I consider that the use of 'only allow' is therefore appropriate and provides a clear policy directive.
89. In relation to vertical holes, I agree that the exclusion of the installation of fence posts from the definition of earthworks may create a potential issue in relation to the management of the disturbance of land in the vicinity of the National Grid. The depth of fence post foundations may be greater than 300 millimetres (the limit for depth in EW-R4 for earthworks within 6m of the outer visible edge of a tower support structure). I consider that, generally, the limited extent of the disturbance of land for the installation of fence posts would mean that any adverse effects on the National Grid would likely be very low; however, this may not always be the case. In my opinion, the importance of the protection of the National Grid, as expressed by the NPS-ET and the RPS, results in a precautionary approach being required.
90. I consider that instead of the term 'vertical holes', as sought by the submitter, it would be better to be replaced by the term 'land disturbance' as defined in the National Planning Standards and the Plan. Given the exclusion in the definition of 'earthworks' is 'disturbance of land for the installation of fence posts', the term 'land disturbance' would therefore include holes for fence posts.

3.4.2.6 EW-R4

91. I agree generally with the amendments sought by Transpower New Zealand Ltd [60.135] for the reasons stated by the submitter.

92. Specifically, I note that there are single pole support structures within Porirua², and therefore the reference only to tower support structures within the rule as notified is not appropriate. Additionally, the inclusion of provisions relating to the stability of National Grid support structures are appropriate to ensure that earthworks do not compromise the functioning and operation of the National Grid as sought through EW-P5. Additionally, a non-complying activity status for non-compliance with those requirements, or the requirement for ground-to-conductor clearances, is also consistent with other district plans.
93. However, I disagree with the requested compliance requirement relating to not compromising physical or practical access to National Grid support structures. I consider that this is not a practical standard to be implemented, as it would introduce a subjective assessment of 'practical' access. I also note, that, in contrast to the requirement around the stability of support structures, I am not aware of any operative district plans that include such a requirement. However, the submitter may wish to provide examples of where similar requirements have been successfully implemented through other district plans.
94. As discussed above, I consider that the use of the term 'land disturbance' would be better than 'vertical holes' as sought by the submitter, as this is defined in the Plan and would include fence post holes.
95. Additionally, I agree with the exemptions as set out by the submitter, with some wording changes to fit better with the wider drafting of the Plan. However, I note that earthworks in the vicinity of the National Grid undertaken by a network utility operator for the purpose of infrastructure (including roads) would be controlled by the provisions of the INF - Infrastructure chapter, and mining and quarrying are controlled as separate activities within the zone chapters.
96. However, I disagree with the deletion of the provision providing for earthworks up to three metres vertically in depth, between 6m and 12m of the outer visible edge of a tower support structure. The submitter states that this is specifically to address ongoing access and the stability of support structures. In relation to access, the provision would maintain a six-metre distance from the support structures. Earthworks deeper than 1.5 metres will already be managed under EW-R1, the matters of discretion for which include '[t]he stability of land or structures in or on the site or adjacent sites'.
97. Additionally, I note that a number of other district plans include a similar provision for earthworks of up to three metres in depth at a distance of more than six metres, and therefore the provision is generally consistent with those plans. As such, I do not consider that the deletion is appropriate.

3.4.3 Recommendations

98. I recommend for the reasons given in the assessment, that the Hearings Panel:

- a. **Amend** EW-P5 and EW-R4 as set out below and in Appendix A;

EW-P5	Other earthworks <u>or land disturbance</u> within the National Grid Yard and the Gas Transmission Pipeline Corridor
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² As identified on the Transpower website: <https://transpower.co.nz/our-work/maps-and-gis-data>

Only allow earthworks or land disturbance within the National Grid Yard and the Gas Transmission Pipeline Corridor where it can be demonstrated that the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid or the Gas Transmission Network will not be compromised, taking into account: [...]

EW-R4	Earthworks <u>and land disturbance</u> within the National Grid Yard
All zones	<p>1. Activity status: Permitted</p> <p>Where:</p> <p>a. Earthworks <u>and land disturbance</u> must not:</p> <ol style="list-style-type: none"> i. Exceed 300mm in depth within 6m of the outer visible edge of a tower support structure; ii. Exceed 3m in depth between 6m and 12m of the outer visible edge of a tower support structure; and iii. Result in a reduction of the <u>existing ground to conductor clearance distances as required in Table 4 of the New Zealand Electrical Code of Practice for Electrical Safe Distances 34:2001-;</u> or iv. <u>Compromise the stability of any National Grid support structures.</u> <p><u>Earthworks and land disturbance for the following activities are exempt from compliance with EW-R4-1.a:</u></p> <ul style="list-style-type: none"> • <u>Agricultural or domestic cultivation;</u> • <u>The repair, sealing or resealing of a vehicle access or farm track;</u> • <u>Vertical holes not exceeding 500mm in diameter that are more than 1.5m from the outer edge of a National Grid pole or stay wire, or are a post hole for a farm fence or horticulture structure more than 6m from the visible outer edge of a National Grid tower foundation; and</u> • <u>Any other activities subject to a dispensation from Transpower under New Zealand NZECP 34:2001.³</u>

99. I recommend that the submissions from Kāinga Ora [81.480, 81.482, 81.486, and 81.487] and Transpower New Zealand Ltd [60.91 and 60.93] be **rejected**;

100. I recommend that the submissions from Transpower New Zealand Ltd [60.92, 60.94 and 60.135] be **accepted in part**; and

³ Transpower New Zealand Ltd [60.135]

101. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submission.

3.4.4 Section 32AA evaluation

102. In my opinion, the amendments to EW-P5 and EW-R4 are more appropriate in achieving the objectives of the PDP than the notified provisions. In particular, I consider that:

- They will encompass activities slightly wider than those defined as 'earthworks' including other land disturbance activities that may affect the National Grid. To balance this, the specific exclusions recommended to be included make it clear what land disturbance activities can be undertaken without triggering compliance requirements under the rule. The recommended amendments also include clarifying that the requirements under clauses EW-R4-1.a.i and EW-R4-1.a.ii relate to any support structures, rather than just tower structures. Consequently, the recommended amendments better give effect to Policy 8 of the RPS and are more efficient and effective than the notified provisions in achieving the objectives of the PDP.
- The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be social and economic benefits at the community scale from greater protection of the National Grid, as well as economic benefits from improved plan interpretation and more efficient plan administration.

3.5 Rainwater Tanks

3.5.1 Matters raised by submitters

103. Kāinga Ora [81.485 and 81.489] opposes the specificity of EW-P3 and the associated EW-R2, stating that the works that would be enabled can be adequately undertaken and managed under EW-P1 and EW-R1, and seeks deletion of the policy and rule.

3.5.2 Assessment

104. Rainwater tanks are a method of achieving hydraulic neutrality, as sought through the objectives and policies of the THWT - Three Waters chapter. As noted in the Section 32 Evaluation Report – Part 2 – Earthworks, rainwater tanks are enabled in recognition of the benefits for achieving hydraulic neutrality.

105. The Plan as notified contains integrated provisions for achieving hydraulic neutrality in developments. THWT-R1 as notified permits rainwater tanks where these comply with THWT-S1, which sets out the required sizing of the tanks based on building roof area.⁴ Rules and standards in Residential Zones and Rural Zones chapters permit rainwater tanks. These provisions therefore work together, along with the EW - Earthworks chapter, to provide for the installation of rainwater tanks.

⁴ This rule and the associated standard are subject to submissions seeking amendments. This is addressed in the THWT – Three Waters Officers' Report.

106. EW-R2 permits earthworks for rainwater tanks where EW-S2 (height, location and slope) and EW-S4 (reinstatement) are met. Because of their relatively limited nature in terms of extent, and therefore actual and potential effects, these earthworks do not need to comply with the area, transport, or silt and sediment retention standards. As a separate permitted activity rule is included, earthworks for rainwater tanks would not need to be included in an assessment of wider earthworks for developments of sites, particularly in relation to the area limits under EW-S1.
107. If EW-R2 were to be removed, and reliance placed on compliance with EW-R1 for earthworks relating to rainwater tanks, as requested, this would increase the likelihood for the development of sites which include a rainwater tank to trigger the need for resource consent under that rule. This would be primarily due to the rainwater tank installation being included within the area limit under EW-S1 and therefore reducing the area available for other structures or activities on the site while remaining compliant with the standard.
108. I therefore consider that the requested deletion of EW-R1 has the potential to impose unnecessary financial and administrative costs for applicants and Council, through an increase in the number of developments requiring resource consent, without any associated identified benefits. The requested deletion is therefore less effective and efficient than the retention of the notified provisions.

3.5.3 Recommendations

109. I recommend for the reasons given in the assessment, that the submissions from Kāinga Ora [81.485 and 81.489] be **rejected**.

3.6 Underground Petroleum Storage Systems

3.6.1 Matters raised by submitters

110. The Oil Companies seek changes to EW-S1 [123.20] and EW-S2 [123.21] to include exclusions for the construction, replacement, maintenance and repair of underground petroleum storage systems (UPSSs).
111. In relation to EW-S1, the Oil Companies seek that an exemption be included for these activities for EW-S1-1, which applies within Residential Zones, Settlement Zone and the Neighbourhood Centre Zone and limits earthworks to 250 square meters in any 12 month period. The exemption would allow for earthworks associated with the construction, replacement, maintenance and repair of underground petroleum storage systems up to an area of 400 square metres.
112. In relation to EW-S2, an exemption is sought for the maintenance, replacement, or upgrade of underground petroleum storage systems, as well as an additional note identifying that temporary cut and fill is not captured by the standard where it does not result in a change to ground level once completed.

3.6.2 Assessment

113. The requests from the Oil Companies generally repeat the changes sought to the Draft District Plan in a submission on that document, as recorded in the Section 32 Evaluation Report part 2 – Earthworks, Appendix 3 Feedback on Draft Proposed District Plan 2019 – Earthworks Chapter. The recorded response to that request was that:

No changes made

The removal, replacement or repair of fuel storage systems is provided for under the NES-CS and duplication is not necessary. If the activity exceeds the standards in the NES it should go through a resource consent process due to the nature of the activity and the sensitivity of the environment to this.

114. In relation to the exemption sought to EW-S1-1, the Oil Companies consider that the standard is unreasonably onerous as earthworks associated with repair and replacement of fuel storage tanks are managed under the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS).
115. The NES-CS provides for removing or replacing a fuel storage system⁵ as a permitted activity under Regulation 8(1), where a range of requirements are met. These requirements include: the works being undertaken in accordance with the Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand (the 'Guidelines'), notification of the works to the territorial authority, disposal of soil to an authorised facility, works duration, reporting of investigation results, and limits on volumes of soil disturbance and volumes of soil taken off site.
116. It is important to note that the policy objective of the NES-CS is:
- [...] to provide a comprehensive framework to ensure that land affected by contaminants in soil is appropriately identified and assessed at the time of being developed and, if necessary, remediated, or the contaminants contained to make the land safe for human use.⁶
117. The focus of the standards is on the protection of human health.⁷ As such, while the NES-CS requirements provide controls on some matters relevant to district plan provisions, particularly through the requirement to comply with the Guidelines, they do not address all matters. For example, while dust management is included as a matter in Module 7 – Site Management due to dust being a potential pathway for ingestion of contaminants in soil, stability of earthwork cuts or fill is generally not a matter that is addressed. Additionally, the NES-CS only applies to soil, which has its ordinary meaning under the regulations, being the native substrate. Soil does not include 'bedding material associated with the tank and/or ancillary equipment, any concrete/steel, that form the tank pit, or any associated hardstanding.'⁸ This is in comparison to 'earthworks' as defined in the National Planning Standards, which is broader and means the alteration or disturbance of land.
118. It is also noted that the installation and operation of an Underground Petroleum Storage System (UPSS) is also subject to Hazardous Substances and New Organisms (HSNO) Act 1996 regulations and Codes of Practice (COPs). This includes HSNO COP 44 Below Ground Stationary Container

⁵ The NESCS uses the term 'fuel storage system' and defines this as including a system that has specified components located underground. The Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand, referred to in the NESCS, use the term 'underground petroleum storage system' (UPSS) and that is the term used here.

⁶ Ministry for the Environment, 2016, Proposed Amendments to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health: Consultation Document

⁷ Ministry for the Environment, 2011, Users' Guide: NES for Assessing and Managing Contaminants in Soil to Protect Human Health

⁸ Ibid, pg 23.

Systems for Petroleum – Design and Installation. The requirements under the Building Act 2004 are also relevant for construction activities.

119. I accept that the general premise of the NES-CS Regulation 8(1) is to allow for the removal or replacement of a UPSS without requiring a resource consent, where the potential effects on human health are appropriately managed by the associated requirements., It would be efficient and effective to also have district plan provisions for earthworks that work with the NES-CS to enable these activities to be undertaken, where the effects on the environment are acceptable.
120. While service stations and other locations where a UPSS may be present (such as a vehicle depot) may be located within Residential Zones, the Settlement Zone, or Neighbourhood Centre Zone due to historic development, these activities are generally commercial or industrial in nature. Service stations in particular are defined as a commercial activity in the Plan's nesting tables, and where existing are by their nature located on developed sites.
121. A UPSS generally includes a number of components, including underground storage tanks (USTs), below ground lines, dispensers, vents, and fill points.⁹ A tank pit itself may consist of multiple USTs, with a typical service station installation potentially consisting of three 50,000 litre tanks, and would generally have a tank pit area exceeding 100 square metres. With additional UPSS components and the broad definition of 'earthworks' required by the National Planning Standards taken into account, I accept the submitter's statement that repair and replacement works would typically require 250-400 square metres of earthworks as generally accurate.
122. I also note that there are significant economic drivers to limit excavations on such sites, including direct financial costs for disposal of any excavated material taken offsite to an approved facility, as required by the NES-CS.
123. For these reasons, I agree that the 250 square metre limit may be inadequate to undertake removal and replacement activities on existing sites within Residential Zones, the Settlement Zone, or Neighbourhood Centre Zone and that a higher threshold may be appropriate.
124. The exclusion sought by the Oil Companies of up to 400 square metres would align with the limit on earthwork extent for Commercial and Mixed Use Zones under EW-S1-2. I therefore consider the 400 square metre limit to be appropriate in the context of sites where existing UPSSs would generally be located, as the potential effects of earthworks on the sites relevant to the standard would generally already be existing, and any temporary effects will be addressed by other standards within the Plan.
125. However, the exclusion sought to be included in EW-S1-1 by the Oil Companies would also include construction of an UPSS. Unless the site itself is identified under Regulation 5(7) of the NES-CS, the construction of an UPSS would not be regulated by the standards. The argument put forward by the submitter that the earthworks would be managed and assessed under the requirements of the NES-CS is therefore not relevant to this activity. Additionally, construction of a new UPSS would generally be undertaken in association with wider site development activities, such as construction of a new service station. The effect of the amendment sought would therefore potentially result in a higher cumulative permitted earthworks extent for an

⁹ See Figure 10.9 in HSNO COP 44 Below Ground Stationary Container Systems for Petroleum – Design and Installation for a generalised diagram of a typical UPSS.

activity such as a new service station within Residential Zones, the Settlement Zone and the Neighbourhood Centre Zone. I consider that this is not appropriate and that any new activities should be subject to the 250 square metre limit and the effects of any exceedances assessed holistically.

126. For these reasons, I recommend that an exemption to EW-S1-1 is appropriate for the removal and replacement of a fuel storage system up to a maximum extent of 400 square metres.
127. In relation to exemption sought by the Oil Companies [123.21] to EW-S2 to include a note stating that the 'standard does not apply to temporary cut and fill if it does not result in a change to ground level once completed', it is noted in the Section 32 Evaluation Report Part 2 – Earthworks that this standard reflects geotechnical advice and addresses potential adverse effects on land stability. This advice noted that the criteria recommended in that report is applicable to permanent cut and fill earthworks, with a specific engineering assessment required where the requirements cannot be met. Specific to temporary earthworks, it notes that temporary cut or fill earthworks must be assessed by the contractor or their engineer.
128. Tank pit excavation often reaches 4.5 metres in depth for the installation or replacement of standard-sized USTs, and may be upwards of six metres in depth if large tanks are installed and/or adverse ground conditions are encountered.¹⁰ UPSS removal and replacement activities often include the use of temporary sheet piling to shore the tank pit excavation¹¹, which is generally the largest and deepest excavation associated with such activities; however, this is not always the case, for example on sites where the geology does not allow for sheet piles to be driven into the ground. As noted above, the NES-CS is aimed at protecting human health from the potential adverse effects of contaminants in soil; the stability of excavations is not addressed by these regulations, or documents referred to in the regulations.¹²
129. While there is a definition of 'temporary activities' in the Plan, there is no definition of 'temporary' itself. The submitter does not seek to include such a definition in the Plan or include any other duration limitations on 'temporary cut and fill'. The decision sought for the amendment of the standard would therefore introduce significant uncertainty as to what would be considered to be permanent, and what would be temporary.
130. While tank pit excavations for removal, replacement or installation of USTs are generally relatively quickly backfilled and reinstated, often open for around one week, and therefore would likely fit within a definition of 'temporary', there may be other activities which would be more questionable and therefore open to interpretation. The amendment sought to the standard would not be specific to any particular activity but would exclude all 'temporary' cut and fill earthworks. This may create consequential unanticipated perverse outcomes and potentially significant effects.
131. As such, I consider that the amendment sought to include a note stating that the standards do not apply to temporary cut and fill if it does not result in a change to ground level once completed, is not appropriate.

¹⁰ For example, where a deeper foundation is required in order to ensure stability of the tank pit.

¹¹ This is often also necessary to mitigate groundwater flow into the excavations.

¹² Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand

3.6.3 Recommendations

132. I recommend for the reasons given in the assessment, that the Hearings Panel:

- a. **Amend** standard EW-S1-1 as set out below and in Appendix A; and

EW-S1	Earthworks – Area	
Residential Zones Settlement Zone Neighbourhood Centre Zone	<p>1. The area of earthworks must not exceed 250m² in any 12 month period per site.</p> <p>The following are exempt from the maximum area standard:</p> <ul style="list-style-type: none"> • Earthworks for a swimming pool which do not extend further than 2m from the edge of the swimming pool; and • Earthworks for interments within existing cemeteries or urupā-; <u>and</u> • <u>Earthworks up to 400m² in any 12 month period per site associated with the removal or replacement of a fuel storage system.</u> 	<p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. The stability of land or structures in or on the site or adjacent sites; 2. The visual amenity values and character of the surrounding area; 3. The natural landform and the extent to which the finished site will reflect and be sympathetic to the surrounding landform; 4. Dust and vibration beyond the site; 5. The retention of silt and sediment on the site; 6. The staging of earthworks; and 7. The total area of exposed soils at any point in time.

- b. **Add** a new definition of 'fuel storage system' as set out below and in Appendix A;

<u>Fuel storage system</u>	<u>means a system in which at least one of the following is underground:</u> <u>(a) a storage tank for aviation kerosene, diesel, kerosene, lubricating oil, or petroleum;</u> <u>(b) the whole of the tank's ancillary equipment;</u> <u>(c) part of the tank's ancillary equipment.</u>
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133. I recommend that the submission from Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited [123.20 and 123.21] be **accepted in part**.

3.6.4 Section 32AA evaluation

134. In my opinion, the amendments to EW-S1-1 and the inclusion of an associated definition for fuel storage system is more appropriate in achieving the objectives of the PDP than the notified provisions. In particular, I consider that:

- They will ensure that activities undertaken in accordance with the NES-CS permitted activity regulations for fuel storage systems can be undertaken without unnecessarily triggering the earthworks area standard when undertaken within specific zones. Consequently, they better integrate with the NES-CS and the matters addressed by those regulations and are more efficient and effective than the notified provisions in achieving the objectives of the PDP.
- The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

3.7 Definitions

3.7.1 Earthworks

3.7.1.1 Matters raised by submitters

135. Firstgas Limited [84.34] seeks the definition exclude the construction, repair, upgrade or maintenance of pipelines. Survey+Spatial New Zealand [72.2] seek exclusion of trenching for the excavation of land to install foundation piles/posts, network pipes/cables and household connections to network pipes/cables with associated backfilling to original ground levels.

3.7.1.2 Assessment

136. As identified in the Definitions section of the Plan, the definition of 'Earthworks' is taken directly from the National Planning Standards. Section 14 of the National Planning Standards states that:

*Where terms defined in the Definitions List are used in a policy statement or plan, and the term is used in the same context as the definition, local authorities **must use the definition as defined in the Definitions List.** However if required, they may define:*

a. terms that are a subcategory of, or have a narrower application than, a defined term in the Definitions List. Any such definitions must be consistent with the higher level definition in the Definitions List.

b. additional terms that do not have the same or equivalent meaning as a term defined in the Definitions List.

[emphasis added]

137. The changes sought by Firstgas Limited and Survey+Spatial New Zealand are therefore not able to be made, as they would contradict the requirements of the National Planning Standards. However, for completeness the decisions requested are analysed below.

138. Firstgas Limited states that exclusion of the construction, repair, upgrade or maintenance of pipelines as this is the most efficient and effective method of enabling temporary earthwork related activities. Activities for the construction, repair, upgrade or maintenance of pipelines for infrastructure is addressed in the INF - Infrastructure chapter. That chapter includes a range of rules and standards for those activities, including exclusions from and provision of certain standards for earthworks for trenching for the construction, operation, maintenance and repair, removal or upgrade of underground infrastructure. As such, the outcome sought by the submitter is considered to be appropriately addressed by existing provisions in the Plan.

139. Similarly, the INF - Infrastructure chapter includes a specific rule for customer connection lines (outside of overlays), which addresses the activities identified by Survey+Spatial New Zealand, (other than installation of foundation piles/posts) and which requires compliance with specific earthworks standards. Those standards include specific exclusions and other provisions for trenching. Earthworks activities for the installation of foundation piles/posts are considered to be appropriately enabled by EW-R1 in the EW - Earthworks chapter. As such, the matters raised by Survey+Spatial New Zealand are considered to be appropriately addressed by existing provisions in the Plan.

3.7.1.3 Recommendations

140. I recommend for the reasons given in the assessment, that the submissions from Firstgas Limited [84.34] and Survey+Spatial New Zealand [72.2] be **rejected**.

141. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submission.

3.7.2 Minor earthworks

3.7.2.1 Matters raised by submitters

142. Kāinga Ora [81.106], Transpower New Zealand Ltd [60.9], Porirua City Council [11.2] and Forest and Bird [225.63] seek the definition be deleted as it is not used within the plan.

143. Powerco Limited [83.6] seeks the definition is retained due to the inclusion of service connections.

144. Survey+Spatial New Zealand [72.9] seeks amendment to include trenching for pipes and cables, and Spark New Zealand Trading Limited, Chorus New Zealand Limited, Vodafone New Zealand Limited [51.10] seek the inclusion of customer connection lines.

3.7.2.2 Assessment

145. The term 'minor earthworks' is not used within the Plan, except within the definitions section. There are no provisions relevant to 'minor earthworks'.

146. Deletion of the definition would therefore assist the efficiency and effectiveness of the Plan by reducing confusion for Plan users, while retention of the definition would continue this potential confusion and therefore not be efficient or effective.

3.7.2.3 Recommendations

147. I recommend for the reasons given in the assessment, that the Hearings Panel:

- a. **Delete** the definition of 'Minor earthworks' as set out in Appendix A;

148. I recommend that the submissions from Kāinga Ora [81.106], Transpower New Zealand Ltd [60.9], Porirua City Council [11.2] and Forest and Bird [225.63], be **accepted**.

149. I recommend that the submissions from Powerco Limited [83.6], Spark New Zealand Trading Limited, Chorus New Zealand Limited, Vodafone New Zealand Limited [51.10] and Survey+Spatial New Zealand [72.9], be **rejected**.

150. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submission.

3.7.3 Section 32AA evaluation

151. In my opinion, the amendments to delete the definition of 'minor earthworks' is more appropriate in achieving the objectives of the PDP than the notified provisions. In particular, I consider that:

- The deletion will remove a term that is not used in the Plan. Consequently, the amendment will clarify the Plan provisions, and will be more efficient and effective than the notified provisions in achieving the objectives of the PDP.
- The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

3.8 Chapter Introduction

3.8.1 Matters raised by submitters

152. Kāinga Ora [81.481] seeks a number of amendments to simplify the introduction, address terms considered to be too vague, and statements around consent requirements under regional plans and Porirua City Council's Bylaw processes as these references will likely become quickly outdated.

153. Heritage New Zealand Pouhere Taonga [65.54] seeks an amendment to refer to an appendix sought to be included outlining the Archaeological Authority Process under the Heritage New Zealand Pouhere Taonga Act 2014.

3.8.2 Assessment

154. I agree with Kāinga Ora [81.481] that the use of the term 'suburban' within the first paragraph is not in keeping with the rest of the Plan, and that this should be replaced with the word 'residential' as this is a more accurate and appropriate term.

155. However, I do not agree with the deletion of the references to the Proposed Natural Resources Plan, Regional Soil Plan and the Porirua City Council Bylaw 1991, as these are not included in provisions and therefore can be easily updated under Clause 20A Schedule 1. It is noted that Porirua City Council's Stormwater (Pollution Prevention) Bylaw 2021 came into force on 18 March 2021, replacing Part 24 - Silt and Sediment and Part 26 - Stormwater of the Porirua City Council General Bylaw 1991, and therefore this should be the bylaw referenced in the chapter.

156. I also agree with the request by Kāinga Ora [81.481] to delete the sentence explaining that activities which do not comply with the standards will require resource consent, as this information is generic and contained within the How the Plan Works section of the Plan.

157. I do not agree with the requested amendments by Kāinga Ora [81.481] to the paragraph addressing potential effects of earthworks on amenity values, as the wording of this paragraph directly links with the objectives and policies of the chapter, and therefore signals to plan users the inclusion of provisions addressing these matters.

158. Similarly, I do not agree the requested deletion by Kāinga Ora [81.481] of the listing of other chapters that contain earthworks provisions and the note providing information on unidentified

archaeological sites or wāhi tapu sites, as this text provides important information to the plan user and contributes to the efficient and effective implementation of the Plan.

159. The Officer's Report for Historic Heritage and Sites and Areas of Significance to Māori assesses the request by Heritage New Zealand Pouhere Taonga for an additional appendix outlining the Archaeological Authority Process [65.57]. I consider the requested cross-reference to this additional appendix in the EW – Earthworks chapter by the same submitter [65.54] is appropriate to provide additional information to plan users.

3.8.3 Recommendations

160. I recommend for the reasons given in the assessment, that the Hearings Panel:

- a. **Amend** the introduction to the EW – Earthworks chapter as set out below and in Appendix A;

[...] The scope and scale of earthworks range from large greenfield bulk earthworks, which can alter the landform and its topography, to small and discrete areas of works most often associated with minor ~~suburban~~ residential development.

[...]

[...] The ~~Porirua City Council Bylaw 1991, Part 24 Silt and Sediment Control, and Part 26 Stormwater~~ Porirua City Council Stormwater (Pollution Prevention) Bylaw 2021 also ~~applies~~ applies to silt, sediment, and stormwater run-off from earthworks and must be complied with.

The earthworks provisions of this chapter provide for earthworks at a scale that is appropriate for the anticipated development of the underlying zone. It applies standards relating to the area, height, location and slope of earthworks, the amount of earthworks material being transported to or from the site and the reinstatement of the site. ~~Any earthworks activities that do not comply with these standards will require more specific assessment as restricted discretionary activities to ensure that any adverse effects are adequately addressed.~~

Note: Earthworks have the potential to destroy, damage or modify unidentified archaeological sites or wāhi tapu sites within the City that are not managed by the Historic Heritage and/or Sites and Areas of Significance to Māori chapters. These sites associated with human activity that occurred before 1900 are protected under the Heritage New Zealand Pouhere Taonga Act 2014. Should an archaeological site or wāhi tapu site be discovered as a result of earthworks (either as a permitted activity or via a resource consent) an archaeological authority will be required from the Heritage New Zealand Pouhere Taonga, and in the case of a wāhi tapu site Ngāti Toa will need to be contacted. The Archaeological Authority Process under the Heritage New Zealand Pouhere Taonga Act 2014 is outlined in Appendix 16.

161. I recommend that the submissions from Heritage New Zealand Pouhere Taonga [65.54] be **accepted**; and

162. I recommend that the submissions from Kāinga Ora [81.481] be **accepted in part**.

3.9 EW-O1 Earthworks

3.9.1 Matters raised by submitters

163. Kenepuru Limited Partnership [59.25] seeks that clause 2 be amended to provide clarity on the meaning of the clause in relation to the effects of changes to natural landforms.
164. Kāinga Ora [81.482] seeks that amendments are made to delete visual amenity values from clause 2 and reword this to refer to the appearance of natural landforms.
165. Waka Kotahi NZ Transport Agency [82.164] seeks that clauses 4 and 5 be amended to refer to infrastructure and to replace the term 'minimises' with 'mitigates'.
166. Robyn Smith [168.79] seeks that the objective include avoidance of adverse effects on Taupō Swamp Complex and Te Awarua-o-Porirua Harbour to not be inconsistent with Policy P39 of the PNRP in accordance with section 75(4)(b) of the RMA.

3.9.2 Assessment

3.9.2.1 Effects on visual amenity values

167. The request from Kenepuru Limited Partnership [59.25] seeks to amend clause two be deleting 'including changes to natural landforms' and replacing it with 'and take into consideration the natural landform'
168. I do not consider this rewording to be appropriate as it does not achieve the desired outcome of providing greater clarity of what is sought to be achieved by the objective. The current wording is clear that any changes to natural landforms resulting from earthworks are to be considered as part of minimising the adverse effects on visual amenity values. Additionally, the proposed wording is not written as an objective, but rather more like a policy. The proposed rewording therefore does not meet the usefulness criteria which forms part of the basis for assessing the appropriateness of the objectives.
169. Kāinga Ora [81.482] considers 'visual amenity values', as used in clause two of the objective, is too vague in the context of earthworks assessment.
170. Clause 2 of EW-O1 is responding to Issue 1 as identified in the Section 32 Evaluation Report Part 2 – Earthworks, being "Earthworks can adversely impact on the City's amenity values". I note that 'amenity values' is defined in section 2 of the RMA as:

means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes
171. The current wording of the clause recognises that there are a range of potential visual effects from earthworks, which includes those from modification of natural landforms. Kāinga Ora's proposed wording of the clause would remove this wider perspective and focus solely on effects on natural landforms.
172. The Earthworks Management section of the Quality Planning website includes 'effects on local amenity' under the Issues and Effects heading. In relation to this, the website states:

Earthworks can have adverse effects on amenity values, including -

- Visual Impacts - earthworks involving cut and fill have the potential to affect the visual qualities in the immediate area, including natural landscapes and views. Large areas of fill have the potential to block views, while large cuts can create a 'scar' or a visually dominant face.

173. This description is generally consistent with the wording used in clause two of EW-O1, as it states that the potential effects include those on natural landscapes, while placing this within the wider context of the effects on the visual qualities on the immediate area.

174. I therefore consider that Kāinga Ora's proposed wording does not meet the relevance criteria which forms part of the basis for assessing the appropriateness of the objectives, as it would not fully address an identified resource management issue, and is therefore not appropriate.

3.9.2.2 Effects on infrastructure

175. The requested changes from Waka Kotahi NZ Transport Agency [82.164] would include infrastructure within clause four and replace specific reference to the National Grid and the Gas Transmission Pipeline in clause five with a reference to infrastructure more broadly.

176. In relation to clause four, I agree that the addition of 'infrastructure' is appropriate. This amendment would mean that the safety of infrastructure is also sought to be protected through the manner in which earthworks are undertaken, along with people and property.

177. The Section 32 Evaluation Report Part 2 – Earthworks includes within the issues analysis section, under Issue 2, that unmanaged earthworks can have adverse effects on the stability of land or structures and cause damage to underground services. The inclusion of infrastructure within clause four would therefore assist the objective in responding to an identified resource management issue by identifying that the safety of infrastructure is sought to be protected, and therefore increase its relevance.

178. I note that INF-O2 relates to the protection of regionally significant infrastructure and gives effect to Policy 8 of the RPS. I consider that the amendment to EW-O1 would appropriately support and integrate with INF-O2 by providing more specificity in relation to the potential effects of earthworks activities. The amendment would also support EW-P1 which includes at clause three, "[t]he stability of land is maintained, including the stability of adjoining land, *infrastructure*, buildings and structures" [emphasis added].

179. I therefore consider that Waka Kotahi's proposed wording better meets the 'relevance' and 'usefulness' criteria which forms part of the basis for assessing the appropriateness of the Plan's objectives, as it would more specifically address an identified resource management issue, give effect to a higher order resource management document, and better guide decision making.

180. In relation to Waka Kotahi's request for clause five of the objective to refer more generically to 'infrastructure' instead of specifically to the National Grid and the Gas Transmission Pipeline, this clause is aimed specifically at those key infrastructure networks to recognise their national significance and provide a direct link with EW-P4 and EW-P5 and EW-R3 and EW-R4. With the inclusion of infrastructure in clause four as discussed above, I do not consider that clause five also needs to be amended to apply to infrastructure more broadly.

181. Waka Kotahi also sought to replace the term 'minimise' in clause five with 'mitigate'. The reasons for this are stated in submission point 82.296, being interpretation and application difficulty, and alignment with the effects hierarchy of the RMA. The use of 'minimise' within the Plan is discussed more broadly within Part A – Overview. Consistent with that discussion, I consider that

'mitigate' is not an appropriate replacement for 'minimise' in this objective clause, as 'mitigate' is to make something milder or less intense or severe, while 'minimise' is to seek to reduce to the most extent possible. To require mitigation of the adverse effects of earthworks on the specified infrastructure may therefore be less stringent than requiring these to be minimised, and may allow unacceptable effects to be experienced by that infrastructure.

182. However, I agree with the submitter that the term 'minimise' is also not appropriate in this clause. In this case, the use of 'minimise' implies that earthworks may occur where the effects are reduced as far as possible. Due to the nature of the key infrastructure the clause refers to, this may not be the case. This is reflected in the wording of EW-P4 and EW-P5, which focus on earthworks not compromising the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the specified infrastructure, as well as limitation on earthworks set out in the associated EW-R3 and EW-R4.
183. As identified in section 3.4.2.3 above, Policy 10 of the NPS-ET states that activities are to be managed to ensure that the operation, maintenance, upgrading, and development of the electricity transmission network is 'not compromised'. I consider that this is also appropriate wording in relation to the gas transmission network.
184. As such, I consider that the clause should be amended to state that the objective is that earthworks are undertaken in a manner that does not compromise that specified infrastructure (noting that submission point 82.294 includes alternative relief to achieve the relief sought in the submission).
185. I consider that amending the objective as proposed would better meet the 'usefulness' criterion which forms part of the basis for assessing the appropriateness of the Plan's objectives, as it would better guide decision making by providing clearer direction on the intended outcome.

3.9.2.3 Effects on receiving environments

186. Submitter Robyn Smith [168.79] does not explicitly provide any changes sought to the objective, but states in the reasons for the decision requested that:

Objective EW-01 is insufficient as it does not explicitly acknowledge the requirement to avoid adverse effects on Taupō Swamp Complex as well as Te Awarua-o-Porirua Harbour, and it would make the PDP inconsistent with the pNRP thereby creating issues as far as section 75(4)(b) of the RMA is concerned.

187. Section 75(4) of the RMA requires a district plan to 'not be inconsistent' with a regional plan.¹³ The meaning of 'not be inconsistent with' was considered by the Environment Court in relation to the 2005 amendments to section 75(3):

Section 75(3) requires that the Plan Change "must give effect to" the operative Regional Policy Statement. We agree with Mr Allan, that with respect to Section 75(3) of the Act, the

¹³ I note that section 75(4)(b) refers to 'a regional plan for any matter specified in section 30(1)'. Under section 43AA a 'regional plan' is defined as:

regional plan—

(a) means an operative plan approved by a regional council under Schedule 1 (including all operative changes to the plan (whether arising from a review or otherwise)); and

(b) includes a regional coastal plan

Under section 74(2)(a)(i), a territorial authority must 'have regard to' a proposed regional plan.

change in the test from “not inconsistent with” to “must give effect to” is significant. The former test allowed a degree of neutrality. A plan change that did not offend the superior planning instrument could be acceptable. The current test requires a positive implementation of the superior instrument. As Baragwanath J said in *Auckland Regional Council v Rodney District Council*:

“This does not seem to prevent the District Plan taking a somewhat different perspective, although insofar as it would be inconsistent, it would be ultra vires. (The 2005 Amendment to Section 75, requiring a District Plan to ‘give effect to’ national policy statements, NZCPS and Regional Policy Statements, now allows less flexibility than its predecessor).”¹⁴

188. Therefore, the requirement for a district plan to ‘not be inconsistent with’ does not require repetition or duplication but rather provides a degree of flexibility compared to the stricter test of ‘give effect to’.
189. Policy P39 of the PNRP is quoted in the submission, and I therefore assume that it is this policy that the submitter is stating that EW-O1 would be inconsistent with. Policy P39 of the PNRP (Appeals Version) states:

Policy P39: Adverse effects on outstanding water bodies

The adverse effects of use and development on outstanding water bodies and their significant values identified in Schedule A (outstanding water bodies) shall be avoided, unless there is a functional need for operation, maintenance or upgrade of existing regionally significant infrastructure in which case adverse effects of activities shall be managed by:

- (a) avoiding adverse effects where practicable, and
- (b) where adverse effects cannot be avoided, minimising them, and
- (c) where adverse effects cannot be minimised, they are remedied where practicable, and
- (d) where residual adverse effects cannot be avoided, minimised, or remedied, offsetting is provided where possible.

Proposals for biodiversity mitigation and biodiversity offsetting will be assessed against the principles listed in Schedule G1 (biodiversity mitigation), and Schedule G2 (biodiversity offsetting). A precautionary approach shall be used when assessing the potential for adverse effects on outstanding water bodies.

Where more than minor adverse effects on outstanding water bodies cannot be avoided, minimised, remedied or redressed through biodiversity offsets, the activity is inappropriate.

190. Within Porirua, the PNRP includes the Pāuatahanui Inlet Saltmarsh, Pāuatahanui Inlet Tidal Flats, and Taupō Swamp Complex within Schedule A: Outstanding water bodies.
191. The relevant objectives of PNRP (Appeals Version) are set out in the Section 32 Evaluation Report Part 2 – Earthworks, and include, relevant to the effects of earthworks on receiving environments, O31 (relating to outstanding water bodies), O44 (relating to minimising adverse effects on soil and water from land use activities), and, specifically, objective O47, which states:

Objective O47

The amount of sediment-laden runoff entering water is ~~reduced~~ minimised.

¹⁴ *Clevedon Cares Inc v Manukau City Council* [2010] NZEnvC 211 at [50]

192. The other relevant policies of the PNRP (Appeals Version) include P38A which relates to restoring Te Awarua-o-Porirua Harbour, and Policy P98 which states:

Policy P98: Land use activities, erosion and associated discharges

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

- (a) minimise the risk of accelerated soil erosion, and
- (b) control silt and sediment runoff, and
- (c) ensure the site is stabilised and vegetation cover is restored.

193. EW-O1 as notified includes, relevant to the effects of earthworks on receiving environments, clause three, which states:

3. Minimises erosion and sediment effects beyond the site and assists to protect receiving environments, including Te Awarua-o-Porirua Harbour;

194. Clause three of EW-O1 gives effect to Policy 15 of the RPS, which sets out that district plans shall include policies, rules and/or methods that control earthworks and vegetation disturbance to minimise erosion and silt and sediment runoff into water, or onto land that may enter water, so that aquatic ecosystem health is safeguarded. The objective also gives effect to the Plan's strategic objectives NE-O3 and NE-O4 in specifically referring to Te Awarua-O-Porirua Harbour.

195. I consider that the wording of EW-O1 as notified is not inconsistent with objectives O31, O44 and O47, and policies P38A and P98 of the PNRP (Appeals Version). I note that Policy P98 of the PNRP (Appeals Version) is the only policy that specifically refers to earthworks.

196. I consider that the wording of EW-O1 is not inconsistent with Policy P39 of the PNRP (Appeals Version), as it includes the phrase 'and assists to protect receiving environments'. I consider that the word 'protect' provides sufficient strength to encompass the intention of Policy P39. This is shown by its use in the wording of other policies in the PNRP, such as P39A. Prefacing this with 'assists to' recognises that earthworks are one land use activity that may impact on outstanding waterbodies. The objective clause therefore sits alongside Policy P39 of the PNRP and is not in tension with it.

197. Additionally, as discussed in detail in the Section 32 Evaluation Report Part 2 – Earthworks, the PNRP addresses the use of land, and the associated discharge of sediment-laden runoff into water or onto or into land where it may enter water from earthworks, through rules R99 and R101.

198. For these reasons, I consider that EW-O1 is not inconsistent with Policy P39 of the PNRP and specific reference to the Taupō Swamp Complex within the objective, as sought by the submitter, is not necessary.

3.9.3 Recommendations

199. I recommend for the reasons given in the assessment, that the Hearings Panel:

- a. **Amend** objective EW-O1 as set out below and in Appendix A;

EW-01 Earthworks

Earthworks are undertaken in a manner that:

1. Is consistent with the anticipated scale and form of development for the zone;
2. Minimises adverse effects on visual amenity values, including changes to natural landforms;
3. Minimises erosion and sediment effects beyond the site and assists to protect receiving environments, including Te Awarua-o-Porirua Harbour;
4. Protects the safety of people, ~~and~~ property and infrastructure; and
5. ~~Minimises adverse effects on~~ Does not compromise the National Grid ~~and or~~ the Gas Transmission Pipeline.

200. I recommend that the submissions from Waka Kotahi NZ Transport Agency [82.164] be **accepted in part**.
201. I recommend that the submissions from Kenepuru Limited Partnership [59.25], Kāinga Ora [81.482] and Robyn Smith [168.79] be **rejected**.
202. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submission.

3.9.4 Section 32AA evaluation

203. In my opinion, the amendments to EW-01 are more appropriate in achieving the objectives of the PDP than the notified provisions. In particular, I consider that:
- They will better ensure that infrastructure is protected from earthworks activities, particularly regionally significant infrastructure. Consequently, they better give effect to Policy 8 of the RPS and are more efficient and effective than the notified provisions in achieving the objectives of the PDP.
 - The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

3.10 Policies**3.10.1 EW-P1***3.10.1.1 Matters raised by submitters*

204. Robyn Smith [168.80] seeks amendment to specifically state that erosion and sediment effects on effects on specific receiving environments are to be avoided.
205. Waka Kotahi NZ Transport Agency [82.165] seeks the normal operation of infrastructure should be included under point four and replacing 'minimise' with 'mitigate'.
206. Kāinga Ora [81.483] seeks amendments to remove reference to 'local amenity values' and 'visual amenity'.

3.10.1.2 Assessment

207. The amendments sought by Robyn Smith [168.80] is to include additional wording as below:

Enable earthworks associated with subdivision, use and development, subject to erosion and sediment effects on receiving environments including Taupō Swamp Complex, Taupō Stream and its tributaries, and Te Awarua-o-Porirua Harbour being avoided, where:

208. The reasons for the amendment sought include that:

These policy provisions of pDPC18 are couched in terms of providing for, or enabling, earthworks and minimising effects. If effects are minimised this will not achieve the avoidance required by Policy P39 of the pNRP.¹⁵

209. The test for a district plan 'not being inconsistent with' a regional plan is discussed under section 3.9.2.3 above. That discussion also addresses Policy P39 of the PNRP.

210. The wording sought by the submitter would result in adverse erosion and sediment effects from earthworks being required to be avoided on all receiving environments due to the use of the word 'including', rather than linking avoidance of these effects to specific receiving environments.

211. I also note that 'Taupō Stream and its tributaries' is not identified in the PNRP as an outstanding water body. Similarly, Te Awarua-o-Porirua Harbour includes both the Onepoto and Pāuatahanui Inlet arms, while only the Pāuatahanui Inlet Tidal Flats and Saltmarsh are identified as outstanding water bodies. The Taupō Stream and Onepoto arm of Te Awarua-o-Porirua Harbour are therefore not addressed by Policy P39 of the PNRP.

212. As identified above, the Section 32 Evaluation Report Part 2 – Earthworks addresses the relationship between the different RMA and LGA documents addressing the control of earthworks in Porirua. This identifies that the PNRP address the effects of silt and sediment from earthworks on water quality, while the district plan can provide assistance through the management of silt and sediment on site. This is supported by the technical advice provided to PCC prior to the notification of the PDP.¹⁶

213. In terms of higher order documents, as discussed above, minimising the effects of silt and sediment runoff into water gives effect to Policy 15 of the RPS.

214. For these reasons, I consider that the proposed amendment sought by Robyn Smith [168.80] would not be efficient or effective, and therefore is not appropriate.

215. In relation to the amendments sought by Waka Kotahi NZ Transport Agency [82.165] for the inclusion of the normal operation of infrastructure under clause four, I note that adverse effects on regionally significant infrastructure are addressed within the INF - Infrastructure chapter by INF-P5. EW-P1 also already includes infrastructure under clause three relating to maintaining the stability of land. Because of this, I do not consider it necessary to include an additional sub-clause addressing effects on the normal operation of infrastructure.

¹⁵ It is not clear why the submitter has referred to 'pDPC18'. This alphanumeric reference is not explained or used elsewhere in the submission. The submitter may wish to address this at the hearing.

¹⁶ Southern Skies Environmental Ltd, 2018, PCC Earthwork Provisions

216. In regard to the request to replace 'minimise' with 'mitigate', as discussed above under 3.9.2.2, this may have the unintended consequence of being less stringent in terms of reducing the potential effects of earthworks as listed in the sub-clauses under clause four. Additionally, use of the term 'minimise' is consistent with Policy 15 of the RPS. I therefore consider that the requested amendment would not be as effective in managing the potential effects from earthworks and is not appropriate.
217. The amendments sought by Kāinga Ora [81.483] to remove reference to 'local amenity values' and 'visual amenity' related to clauses EW-P1-4.e and EW-P1-5.
218. I consider that the amendment sought to EW-P1-4.e is not efficient or effective as the resulting policy wording would not respond to the resource management issue in relation to amenity effects from the transport of material as identified in the Section 32 Evaluation Report Part 2 – Earthworks. Movements of heavy vehicles to, from, and within sites can have adverse amenity effects through the generation of noise and vibration. This is particularly relevant to earthworks due to the number of vehicle movements often associated with such activities. The scale of potential effects from these movement will depend on the surrounding environment. I consider that the deletion of local amenity values from EW-P1-4.e is not appropriate.
219. I also consider that replacing 'traffic movements' with 'truck movements' within EW-P1-4.e, as also sought by the submitter, is not appropriate. The term 'truck' is not defined in the Plan, and therefore would introduce ambiguity into the policy. An alternative would be to refer to 'heavy motor vehicle' and/or 'heavy traffic' as defined in the Land Transport Act 1998. However, the term 'traffic movement' as used in the policy is defined in the Plan, which clarifies that these relate to a movement to or from a site. I note that noise and vibration from construction activities are addressed by the NOISE – Noise Chapter, specifically under NOISE-R2. Amending EW-P1-4.e as sought may result in unintended consequences as noise and vibration from 'truck' movements within the site may subsequently be able to be considered, resulting in duplication, which would not be efficient or effective.
220. In relation to EW-P1-5, I consider that the submitter's requested amendment to include 'erosion' within the clause is appropriate, as this will assist in giving effect to clause three of EW-O1. However, I consider the request to delete 'the visual amenity of the surrounding area' is not appropriate. The maintenance and enhancement of amenity values is a matter under section 7 of the RMA. Exposed cut of fill faces can result in significant adverse effects on the visual amenity of the surrounding environment. I note that this clause provides policy support for EW-S4, particularly matter of discretion three of the standard.¹⁷

3.10.1.3 Recommendations

221. I recommend for the reasons given in the assessment, that the Hearings Panel:
- a. **Amend** EW-P1-5 as set out below and in Appendix A;

EW-P1	Appropriate earthworks
	Enable earthworks associated with subdivision, use and development, where: [...]

¹⁷ I note that the submitter has opposed standard EW-S4. This is discussed in 3.12.4 below.

5. The area where earthworks have occurred is reinstated in a timely manner to minimise adverse effects on land stability, erosion and the visual amenity of the surrounding area.

222. I recommend that the submissions from Kāinga Ora [81.483] be **accepted in part**.

223. I recommend that the submissions from Robyn Smith [168.80] and Waka Kotahi NZ Transport Agency [82.165] be **rejected**.

3.10.1.4 Section 32AA evaluation

224. In my opinion, the amendments to EW-P1-5 is more appropriate in achieving the objectives of the PDP than the notified provisions. In particular, I consider that:

- They will include erosion as a matter for which adverse effects are to be minimised. Consequently, they better give effect to Policy 15 of the RPS and EW-O1-3 of the Plan, and are more efficient and effective than the notified provisions in achieving the objectives of the PDP.
- The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

3.10.2 EW-P2

3.10.2.1 Matters raised by submitters

225. Kāinga Ora [81.484] opposes the specificity of the policy, stating that the works that would be enabled can be adequately undertaken under EW-P1, and seeks deletion of the policy.

3.10.2.2 Assessment

226. I do not agree with the submitter's statement that works that would be enabled by EW-P2 can be adequately undertaken with EW-P1.

227. EW-P2 relates specifically to recreational and community activities, and includes recognition of the benefits of, as well as enablement of, earthworks required for the development, repair and maintenance of play equipment and recreational parks. This provides specific policy support for the exemptions under EW-S1 for topdressing of grassed areas with topsoil, and earthworks associated with the laying of a safety surface for children's play equipment, within the Open Space Zone and Sport and Active Recreation Zone.¹⁸

228. As noted in the Section 32 Evaluation Report Part 2 – Earthworks, these activities support social benefits, as these activities provide for the passive and active recreation of the community. Without the specific policy support, the activities undertaken to develop, repair and maintain recreational equipment and parks may be unnecessarily constrained by consenting processes.

¹⁸ I note that the submitter has sought amendments to standard EW-S1. This is discussed in 3.12.1 below.

229. I therefore consider that the requested deletion of EW-P2 would potentially impact on the realisation of social benefits from the Plan as written, and it is more efficient and effective to retain the policy.

3.10.2.3 Recommendations

230. I recommend for the reasons given in the assessment, that the submission from Kāinga Ora [81.484] be **rejected**.

3.10.3 EW-P4

3.10.3.1 Matters raised by submitters

231. Kāinga Ora [81.486] seeks that the policy is deleted, stating that works that would be enabled through this policy can be adequately considered through EW-P5.

232. The matters raised by Kāinga Ora [81.486] and Transpower New Zealand Ltd [60.93] relating to the National Grid are addressed in section 3.4 above.

3.10.3.2 Assessment

233. EW-P4 provides policy support for the inclusion of the permitted activity rules under EW-R3-1 and EW-R4-1. This is indicated by the wording of the policy using the term 'enable'. The earthworks permitted by these rules are of a scale and nature that will not compromise the relevant infrastructure.

234. EW-P5, in contrast, provides for earthworks that do not comply with the permitted thresholds under EW-R3-1 or EW-R4-1, and require consent under the restricted discretionary rules EW-R3-2 or EW-R4-2. The policy provides directive language that these earthworks are only to be allowed where it can be demonstrated that the proposed earthworks will not compromise the relevant infrastructure. The policy also acts as matters of discretion for determination of resource consent applications for these restricted discretionary activity rules under section 104C of the RMA.

235. I therefore consider that EW-P4 and EW-P5 serve quite separate roles within the chapter, and that the deletion of EW-P4 would not be appropriate.

3.10.3.3 Recommendations

236. I recommend for the reasons given in the assessment, that the submission from Kāinga Ora [81.486] be **rejected**.

3.10.4 EW-P5

3.10.4.1 Matters raised by submitters

237. Kāinga Ora [81.487] seeks that the policy is amended to delete 'Only allow' and replace this with 'Provide for'. No specific reasoning is given for this requested amendment.

238. The matters raised by Kāinga Ora [81.487] and Transpower New Zealand Ltd [60.94] relating to the National Grid are addressed in section 3.4 above.

3.10.4.2 Assessment

239. The wording of policies within the Plan is consistent based on the provisions that flow from the policy. The phrase 'only allow' is used for policies that provide for activities but only in the right circumstances where it is demonstrated through a consent process that effects can be adequately avoided, remedied or mitigated, and where key outcomes can be achieved; 'provide for' is used for policies that set up what is generally provided for or encouraged.
240. As discussed above, EW-P5 supports EW-R4 and implements Policy 10 of the NPS-ET. In this case, I consider that 'only allow' is the correct wording for the policy, as it indicates the strength of the protection required for the electricity and gas transmission networks from the adverse effects of earthworks activities.

3.10.4.3 Recommendations

241. I recommend for the reasons given in the assessment, that the submission from Kāinga Ora [81.486] be **rejected**.

3.11 Rules

242. One submission was received on EW-R2, which is addressed in section 3.5 above. The submissions on EW-R4 are addressed in section 3.4 above.

3.11.1 EW-R1

3.11.1.1 Matters raised by submitters

243. Kāinga Ora [81.488] seeks amendments to set out a range of exclusions, deletion of the note that the rule applies to all earthworks, except EW-R2 and EW-R3, and the introduction of a non-notification clause precluding both public and limited notification. The submitter states that this would ensure that site works will not negate non-notification clauses relevant to other matters of a development proposal requiring resource consent.
244. Survey+Spatial New Zealand [72.17] seeks that the rule includes non-compliance with EW-S5 and non-notification provisions.
245. Robyn Smith [168.81] seeks a new rule EW-R1-3 for non-compliance with ES-S5 with a non-complying activity status. The submitter states that this is to recognise Policy P39 of the PNRP and as 'realistically [bulk earthworks] will require consent because the permitted surface area under EW-S1 will be exceeded'.

3.11.1.2 Assessment

3.11.1.2.1 Note regarding other earthworks rules

246. In relation to the submission from Kāinga Ora [81.488] on the note regarding the application of all earthworks, I disagree that this should be deleted as I consider it provides important information for Plan users. However, I consider that the reference to EW-R3 should be deleted, as this rule only addresses the effects on the Gas Transmission Pipeline and does not require compliance with any relevant standards in the EW – Earthworks chapter. As such, earthworks may be able to be applied for under EW-R3, without consideration of relevant effects on the other matters covered by EW-R1. I therefore consider that the reference to EW-R3 within this note should be deleted.

3.11.1.2.2 Non-notification clauses

247. I consider that it is not appropriate to include a rule precluding public notification. Earthworks which exceed the standards listed in EW-R1 have the potential to have adverse effects on the wider environment. For example, cut or fill greater than EW-S2-1.a may result in adverse effects on natural landforms that are visually prominent from outside of the immediate surrounding area. In these instances, the consideration of public notification of resource consent applications through section 95A of the RMA is appropriate.
248. Similarly, I consider that preclusion of limited notification is not appropriate. Adverse effects may be experienced by owners or occupiers of adjoining properties due to non-compliance with the relevant standards. While Kāinga Ora [81.488] states that effects of earthworks can be adequately managed through the imposition of conditions and appropriate site management standards, I consider that this is not always the case. For example, earthworks proposed directly adjacent to a common boundary may compromise the stability of that property. Case law is clear that a consent authority may not impose conditions of consent to avoid, remedy or mitigate effects on an adjacent property so that no one would not be adversely affected, the latter being a section 95 assessment and the former a section 104 assessment, unless that condition is offered by the applicant in the first instance. Accordingly, the consideration of effects on adjacent properties and limited notification of resource consent applications through section 95B of the RMA is appropriate.

3.11.1.2.3 Exclusions to EW-R1

249. Kāinga Ora [81.488] seeks a range of exclusions to EW-R1 in addition to those activities exempted by the Earthworks definition. These exclusions are addressed in Table 4 below.

Table 4: Assessment of exclusions to EW-R1 sought by Kāinga Ora [81.488]

Exclusion sought	Assessment
Tree planting, or the removal of trees where they are not protected by the District Plan	The definition of 'earthworks' excludes gardening. This exclusion would include the planting and removal of trees. As such, this exclusion is unnecessary.
Test pits, wells or boreholes permitted under a regional plan or where all necessary regional resource consents have been obtained	<p>These activities are either temporary in nature or very limited in extent, and the effects of these activities in relation to earthworks, where they are undertaken appropriately, are generally negligible. I therefore agree that an exclusion for these activities should be included in the Plan where it specifies greater detail on the activities that are exempt than the wording sought, and any required definitions are included.</p> <p>However, I consider that the Plan appropriately provides for these activities to occur, other than EW-S2 which may be overly restrictive in relation to these activities. This standard would be triggered by these activities primarily due to the depth and slope restrictions. The other standards will either not be triggered by such activities (EW-S1, EW-S3 and EW-S4) or should apply to the activities to mitigate any associated potential effects (EW-S5). As such, I consider that the exclusions for these activities should be specific to EW-S2.</p>

Exclusion sought	Assessment
	<p>In relation to 'wells or boreholes', I consider that these should be referred to as 'bores', consistent with the definition in the National Planning Standards, which is included in the Plan. To ensure that the bores are constructed, altered or decommissioned appropriately and any potential adverse effects in terms of earthworks will be negligible, I also consider that the exclusion should specify that these need to be undertaken in accordance with the standards set out in NZS 4411:2001 Environmental Standard for Drilling of Soil and Rock.</p> <p>In relation to 'test pits', there is a potential for adverse effects on the safety of people and structures where these are undertaken in a manner that results in instability of the surrounding area, or on amenity values where they are left open for long periods of time. The stability of the surrounding area can be maintained while also providing appropriate flexibility for the required works by ensuring the depth of a test pit is not deeper than the distance to the closest site boundary. Similarly, the potential amenity effects and effects on future land uses can be mitigated by requiring backfilling and reinstatement and compaction upon completion. As such, I consider that an exclusion should specify that the test pit must be no deeper than the distance the test pit is from the nearest boundary and that these are to be backfilled and compacted, and the surface reinstated following completion of the works.</p> <p>I do not consider that a reference to the activities being permitted under a regional plan or to all necessary regional resource consents having been obtained, as regional consents are required for many activities also regulated by a district plan.</p>
Utility related earthworks provided for in Infrastructure chapter of the Plan	Earthworks associated with infrastructure are clearly addressed by the INF - Infrastructure chapter, and this is stated as such by the note included above the EW - Earthworks chapter rules. As such, this exclusion is unnecessary.
Installation and construction of service connections	'Service connections' are not defined in the Plan. The INF - Infrastructure chapter includes a permitted activity rule for customer connection lines, which relates to telecommunication and electricity connections. I consider that the standards included within the EW - Earthworks chapter sufficiently provides for other buried service connections (e.g. three waters and gas) within the permitted activity rule EW-R1-1 and the associated standards. As such, this exclusion is unnecessary.
Earthworks to install and/or remove effluent disposal systems	Effluent disposal systems are unlikely to be required within Urban Zones as defined in the plan. I consider that the standards included within the EW - Earthworks chapter sufficiently provide for effluent disposal systems within rural zones, which provides for 1,000m ² of earthworks per 12 month

Exclusion sought	Assessment
	period per site. As such, I consider that this exclusion is unnecessary.
Earthworks for a swimming pool which do not extend further than 2m from the edge of the swimming pool	This exclusion is already included under EW-S1. Earthworks for a swimming pool may have adverse effects if the standards under EW-S2 to EW-S5 are not met. As such, this activity is already appropriately addressed by the Plan.
Earthworks associated with the laying of a safety surface for children's play equipment	These earthworks are excluded under EW-S1 when undertaken within the Open Space Zone or Sport and Active Recreation Zone. As such, this activity is already appropriately addressed by the Plan.
Cemeteries, including pet cemeteries, urupā	Earthworks for interments within existing cemeteries or urupā is already excluded from EW-S1 and EW-S2. I do not consider there to be any need to exclude these earthworks from EW-S3, EW-S4 or EW-S5. As such, this exclusion is unnecessary.
Earthworks regulated under a national environment standard, including but not limited to, the National Environmental Standards for Electricity Transmission Activities 2009, National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011, National Environmental Standards for Telecommunication Facilities 2016 and National Environmental Standards on Plantation Forestry 2017, unless otherwise subject to a rule in this Plan	<p>Transmission lines, including associated earthworks, are addressed by the INF - Infrastructure chapter. Therefore, the NES-ETA is not relevant to the EW-Earthworks chapter.</p> <p>Telecommunication infrastructure, including associated earthworks, is addressed by the INF - Infrastructure chapter. Therefore, the NES-TF is not relevant to the EW - Earthworks chapter.</p> <p>The NES-CS addresses activities on a 'piece of land' where an activity or industry described in the HAIL is being or has been undertaken on it. The NES-CS standards do not address earthworks, but rather activities involving disturbance of soil on a 'piece of land'. The standards are specific to those activities and the potential for effects on human health, and do not address the effects of earthworks more generally. As such, I consider that the general exclusion sought is not appropriate. Specific exclusions relating to underground petroleum storage systems (as addressed by regulations) are discussed in section 3.6. In addition to these, I consider that for clarity an exclusion for sampling soil is appropriate which provides for activities permitted under Regulation 8(2), as any potential environmental effects of these activities are addressed by the NES-CS. Sampling activities will also be provided for by the exclusions discussed above in relation to temporary earthworks for bores and test pits.</p> <p>The NES-PF in Regulation 6 sets out where district plans may be more stringent than the standards. The relevant earthworks rules for those matters are set out in other chapters of the Plan (e.g. within the ECO-Ecosystems and Indigenous Biodiversity). Therefore, I consider that it is appropriate to include a statement within the EW - Earthworks chapter in relation to the primacy of the NES-PF for activities regulated by those standards.</p>

3.11.1.2.4 Non-compliance with EW-S5

250. I acknowledge that there is an error in EW-R1-2, as identified by Survey+Spatial [72.17] relating to EW-S5. EW-S5 is included in EW-R1-1 as a standard to be complied with for permitted earthworks activities, but EW-R1-2 does not include a reference to that standard. That submitter seeks that EW-S5 is included in EW-R1-2.a. I note that amendments sought to EW-S5 are addressed in section 3.12.5 below. I agree with Survey+Spatial [72.17] that rule EW-R1-2.a should be amended to include EW-S5, so that non-compliance with this standard is a restricted discretionary activity.
251. In relation to the additional rule sought by Robyn Smith [168.81] for non-compliance with EW-S5 to be a non-complying activity to reflect Policy 39 of the PNRP, that policy is discussed in detail in sections 3.9.2.3 and 3.10.1 above. As discussed in those sections, the PNRP address the effects of silt and sediment from earthworks on water quality. The district plan can provide assistance in the management of silt and sediment on sites. A district plan must not be inconsistent with a regional plan. As such, the Plan does not need to give effect to Policy P39 of the PNRP but must sit comfortably alongside it.
252. I also note that the permitted activity rules for earthworks in the PNRP elevate to a discretionary activity under Rule R101 of that plan. The decision requested by Robyn Smith [168.81] to include a non-complying activity for activities that do not meet EW-S5 would therefore be more stringent than the PNRP.
253. I consider that restricted discretionary is the appropriate activity status for non-compliance with EW-S5, as opposed to non-complying. Under the standard, the matter of discretion is '[t]he retention of silt and sediment on the site'. This gives effect to Policy 15 of the RPS, clause three of EW-O1, and clause 4.b of policy EW-P1. A restricted discretionary activity status allows for appropriate conditions to be placed on a resource consent, and if required for a consent to be refused. As the concerns of the effect of silt and sediment loss from sites where earthworks are being undertaken are well known, and the mitigation methods are also well known, a restricted discretionary activity status provides an appropriate level of control. Elevating to non-complying activity would mean that the activity would need to pass the 'gateway test', and resource consent would likely only be granted in exceptional circumstances. This would be disproportionate to the activity and its effects.

3.11.1.3 Recommendations

254. I recommend for the reasons given in the assessment, that the Hearings Panel:
- a. **Amend** EW-R1-2.a as set out below and in Appendix A;

EW-R1	General Earthworks
	<p>All zones 1. Activity status: Permitted</p> <p>Where:</p> <ol style="list-style-type: none"> a. Compliance is achieved with: <ol style="list-style-type: none"> i. EW-S1; ii. EW-S2; iii. EW-S3; iv. EW-S4; and v. EW-S5.

	<p><u>Note:</u> For the avoidance of doubt this rule applies to all earthworks, except EW-R2 and EW-R3.</p>
All zones	<p>2. Activity status: Restricted discretionary</p> <p>Where:</p> <p>a. Compliance is not achieved with EW-S1, EW-S2, EW-S3, or EW-S4 <u>or EW-S5</u>.</p> <p>Matters of discretion are restricted to:</p> <p>1. The matters of discretion of any infringed standard.</p>

- b. **Amend** the notes to the rules as set out below and in Appendix A;

Rules
<p>[...]</p> <p>Rules relating to earthworks for infrastructure activities are found in the Infrastructure chapter.</p> <p><u>The Resource Management (National Environmental Standard for Plantation Forestry) Regulations 2017 (“NESPF”) prevails over the rules (including standards) in this chapter for earthworks regulated by the NESPF.</u></p>

- c. **Amend** EW-S2 as set out below and in Appendix A; and

EW-S2	Earthworks – Height, location and slope	
All zones	<p>1. Earthworks must not:</p> <p>a. Exceed a cut height or fill depth of 1.5m measured vertically; or</p> <p>b. Be located within 1.0m of the site boundary, measured on a horizontal plane; or</p> <p>c. Be undertaken on an existing slope with an angle of 34° or greater.</p> <p>The following are exempt from the height, location and slope standard:</p> <ul style="list-style-type: none"> • Earthworks for interments within existing cemeteries or urupā; • <u>Earthworks for the construction, alteration or decommissioning of bores, including geotechnical investigation and monitoring bores, undertaken in accordance with NZS 4411:2001 Environmental Standard for Drilling of Soil and Rock;</u> • <u>Earthworks for sampling of soil permitted under Regulation 8(2) of the Resource Management (National Environmental Standard for Assessing and Managing</u> 	<p>Matters of discretion are restricted to:</p> <p>1. The stability of land or structures in or on the site or adjacent sites;</p> <p>2. The visual amenity values and character of the surrounding area;</p> <p>3. The natural landform and the extent to which the finished site will reflect and be sympathetic to the surrounding landform;</p> <p>4. Dust and vibration beyond the site;</p>

<p><u>Contaminants in Soil to Protect Human Health) Regulations 2011; and</u></p> <ul style="list-style-type: none"> • <u>Earthworks for test pits where the depth of the test pit does not exceed the distance of the test pit hole at ground level to the nearest site boundary, and the test pit is backfilled and compacted, and the surface reinstated upon completion of the sampling or investigative works.</u> 	<ol style="list-style-type: none"> 5. The retention of silt and sediment on the site; 6. The staging of earthworks; and 7. The total area of exposed soils at any point in time.
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- d. **Add** a definition for 'test pit' in the Definitions chapter as set out below and in Appendix A.

<p><u>Test pit</u></p>	<p><u>means a temporary hole in the ground excavated in order to investigate the conditions below the ground surface, including geological, hydrological, or soil contamination conditions.</u></p>
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255. I recommend that the submission from Survey+ Spatial [72.17] be **accepted in part**.
256. I recommend that the submission from Kāinga Ora [81.488] be **accepted in part**.
257. I recommend that the submission from Robyn Smith [168.81] be **rejected**.
258. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submission.

3.11.1.4 Section 32AA evaluation

259. In my opinion, the amendments to EW-R1-2.a, EW-S2, and inclusion of an associated definition of 'test pit', are more appropriate in achieving the objectives of the PDP than the notified provisions. In particular, I consider that:
- They will ensure that it is clear that EW-R3 applies in addition to EW-R1, non-compliance with EW-S5 triggers resource consent requirements, and provide clarity on earthworks activities that can be undertaken without requiring compliance with EW-S2. Consequently, they enable activities to be undertaken that will have negligible effects on the environment with having to go through a consenting process and are more efficient and effective than the notified provisions in achieving the objectives of the PDP.
 - The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be economic benefits for both the Council and Plan users from improved plan interpretation and more efficient plan administration.

3.12 Standards

3.12.1 EW-S1

3.12.1.1 Matters raised by submitters

260. Kāinga Ora [81.492]:

- Seeks amendments to delete the exclusions to align with the changes sought to EW-R1;
- Seeks deletion of 'the visual amenity values and character of the surrounding area' and 'staging of earthworks' as matters of discretion stating that these matters can be considered under other matters of discretion, and the phrase 'in or on the site or adjacent sites' for the matter of discretion relating to the stability of structures;
- Questions the Commercial Zones area limit of 400 square metres compared to the Open Space and Sport and Active Recreation Zone limit of 500 square metres and seeks alignment to simplify the implementation of the plan and seeks to amend the Commercial Zones earthworks area limit from 400 square metres to 500 square metres; and

261. The amendments requested to this standard by Z Energy, BP Oil NZ Ltd and Mobil Oil NZ Limited [123.20] are addressed in section 3.6 above.

3.12.1.2 Assessment

262. The amendments sought to EW-R1 in relation to exclusions are assessed in section 3.11.1 above. As assessed in Table 4, the exclusions sought to EW-R1 are generally not required or appropriate, other than for specific activities in relation to EW-S1. Amendments are recommended for additions to the exclusions to EW-S1 to respond to Kāinga Ora's submission point [81.488]. As such, I consider the deletion of the exclusions to EW-S1 as sought by Kāinga Ora [81.492] is not appropriate.

263. Kāinga Ora [81.492] states that matter of discretion six, 'The staging of earthworks', can be considered under matter of discretion seven, 'The total area of exposed soils at any point in time'. I consider that, while these matters are closely related, they are independent matters and should not be conflated.

264. The staging of earthworks may relate to both areas of the site subject to earthwork activities and the timing of the earthworks. More specifically, the area subject to the earthworks may be defined by its proximity to other features of the site, such as water bodies or other sensitive features, surrounding land uses, or natural hazards or other risks. The staging of earthworks in time or geographic area may be required to take these matters into account to mitigate potential adverse effects during initial and subsequent earthwork stages. For example, earthworks may need to be staged to ensure land stability is maintained throughout the works.

265. Related to this, but separate, is the matter of the area of earthworks open at any one time, which may be required to be limited to mitigate potential adverse effects such as dust or sediment runoff. A requirement to limit the area of open earthworks may need to be taken into account during each earthworks stage.

266. For these reasons I consider that matter of discretion six cannot always be considered under matter of discretion seven. Both matters are required to ensure comprehensive coverage of

- potential adverse effects of the activities, and therefore be retained in the Plan. I consider it to be better practice to include both, rather than risk one or the other being overlooked.
267. Similarly, in relation to the decision sought for the deletion of 'the visual amenity values and character of the surrounding area' as a matter of discretion, I consider that this is not appropriate. The submitter states in their reasons that this matter is adequately addressed through the matter of discretion relating to the natural landform. However, the visual amenity values and character of the surrounding area may not always be related to the natural landform. Visual amenity effects of earthworks may also relate to matters such as views and outlook of surrounding sites.
268. In relation to the decision sought for the deletion of the phrase 'in or on the site or adjacent sites' for the matter of discretion relating to the stability of structures, no reasons are provided by the submitter. I consider that the inclusion of the phrase provides clarity that the effects of the activity should be considered in relation to both the site on which they are being undertaken as well as surrounding sites, and that structures of concern may be on or in the land. I note that the meaning of 'adjacent' includes sites near or close to, and not necessarily touching, the site on which the activities are being undertaken. Deletion of this phrase would remove the clarity of the matter of discretion, and therefore I consider that its deletion is not appropriate.
269. In relation to the amendment sought to change the commercial zones (Local Centre Zone, Large Format Retail Zone, Mixed Use Zone, City Centre Zone, General Industrial Zone and Hospital Zone) the submitter seeks the area limit of 400 square metres be increased to 500 square metres and combined with the Open Space and Recreation Zones 'to simplify the implementation of the plan'. I note that the 400 square metre limit for the commercial zones reflects the limit in the City Centre Zone in the ODP.
270. I do not agree with the submitter that merging the two standards would assist in implementation of the Plan. The zones to which the standards relate are clearly identified in the standard. There does not appear to be any advantage for plan implementation from having three tiers of earthwork area thresholds, as opposed to four. The Plan user is still required to go through the same steps. In terms of the potential lower administration costs of a higher threshold (i.e. less resource consents likely to be triggered), I consider that this would likely be marginal and must be balanced against the environmental effects of the requested change.
271. The Section 32 Evaluation Report Part 2 – Earthworks notes that the thresholds for earthworks area under EW-S1 were determined as they 'are in alignment with the scale of development anticipated by the underlying zone'. I note that the anticipated scale of development within each zone is articulated through the relevant objectives and policies of the zone.
272. I also consider that the potential cumulative effects of multiple earthworks sites are a relevant consideration. As noted in the supporting report provided by Southern Skies Environmental, '[t]he management of the adverse effects of land disturbance needs to focus on both large and small disturbance areas, as the cumulative adverse effects from a number of small earthwork sites can be significant as can single large areas of exposed earth.'¹⁹ In relation to this, it is important to note that large areas of the Large Format Retail Zone, Mixed Use Zone, City Centre Zone, and General Industrial Zone are in close proximity to Te Awarua-O-Porirua Harbour. By

¹⁹ Southern Skies Environmental Limited, 2018, PCC Earthworks Provisions, pg 16.

increasing the maximum area threshold under EW-S1-3, there is potential for increased cumulative effects on downstream receiving environments, including the harbour. This would not be consistent with the Plan's strategic directions NE-O3 and NE-O4.

273. As such, I do not consider that increasing the threshold under EW-S1-2 to 500 square metres and combining this standard with EW-S1-2 is appropriate.

3.12.1.3 Recommendations

274. I recommend that the submissions from Kāinga Ora [81.492] be **rejected**.

275. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submission.

3.12.2 EW-S2

3.12.2.1 Matters raised by submitters

276. Kāinga Ora [81.493] seeks:

- Amendments to delete the exclusions to align with the changes sought to EW-R1;
- Enablement of works up to 2.5m in cut height or fill depth; and
- Alignment of the matters of discretion with the issue being managed by the standard being the stability and visual effects resulting from cut faces/retaining structures.

277. The amendments requested to this standard by Z Energy, BP Oil NZ Ltd and Mobil Oil NZ Limited [123.21] are addressed in section 3.6 above.

3.12.2.2 Assessment

278. The amendments sought to EW-R1 in relation to exclusions are assessed in section 3.11.1 above. As assessed in Table 4, the exclusions sought to EW-R1 are generally not required or appropriate, other than for specific activities in relation to EW-S1. Amendments are recommended for additions to the exclusions to EW-S1 to respond to Kāinga Ora's submission point [81.488]. As such, I consider the deletion of the exclusions to EW-S1 as sought by Kāinga Ora [81.492] is not appropriate.

279. Kāinga Ora [81.493] considers a 2.5 metre cut height and/or fill depth strikes a 'more reasonable balance' between enabling site development while managing adverse effects of stability and visual amenity resulting from retaining structures. As discussed above, the limits in EW-S2 were developed based on expert geotechnical engineering advice.²⁰ Mr Giannakogiorgos has considered this submission point and does not support a 2.5 metre cut/fill height. The submitter has not provided any evidence to support the relief sought for increasing the permitted cut depth or fill height limit in relation to the actual or potential effects of the changes, either positive or adverse.

²⁰ Miyamoto, 2019, PCC Proposed Permitted Activity Standards - Slope Stability
Miyamoto, 2019, Supplementary Review of PCC Proposed Permitted Activity Standards

280. In relation to the changes sought to the matters of discretion, I consider that the addition sought for 'mitigation landscaping' is unnecessary as this matter can be considered through matter two relating to visual amenity values. For same reasons stated above in relation to EW-S1, I consider that the deletion sought of 'in or on the site or adjacent sites' within matter one is not appropriate.
281. The relief sought to replace 'The visual amenity values and character of the surrounding area' with 'Visual amenity as a result of cut or fill faces and retaining structures' is not appropriate in my opinion. Exceeding the cut/fill depth may have adverse effects on visual amenity values other than those generated by cut or fill faces or the construction of retaining structures. The current wording allows for a broader consideration and takes the character of the surrounding area into account which will enable the control of earthworks to reflect the existing amenity values.
282. The submitter also seeks that matters of discretion four to seven are deleted from the standard. I consider that this is not appropriate as the matters relate to potential adverse effects of non-compliance with the standard, particularly the requirements for earthworks to be no closer than one metre to the site boundary and not be undertaken on slopes of 34 degrees or greater.

3.12.2.3 Recommendations

283. I recommend that the submission from Kāinga Ora [81.493] be **rejected**.
284. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submission.

3.12.3 EW-S3

3.12.3.1 Matters raised by submitters

285. The Aggregate and Quarry Association [104.3] seeks that the volume of fill aligns with the GWRC permitted cleanfill rule of 400 cubic metres and that the standard is amended to increase threshold from 200 cubic metres to 400 cubic metres.

3.12.3.2 Assessment

286. The purpose of EW-S3 is to give effect to clause four of EW-O1 and clause 4.e of EW-P1 relating to the safe and efficient operation of the transport network and on local amenity values, consistent with section 31(1) of the RMA.
287. Rule R70 of the PNRP allows for the discharge of cleanfill material onto or into land as a permitted activity provided a range of conditions are met, including a volume limit of up to 400 cubic metres per site per 12 month period. This rule is in accordance with the functions of a regional council under section 30(1)(f) relating to discharges of contaminants.
288. EW-S3 is for a different purpose than PNRP Rule R70. While they are both controlling the volume of material able to be deposited on a site, the effects being managed are different. I therefore do not consider that there is a need for these provisions to be aligned. For completeness, I note that EW-S3 is not inconsistent with Rule R70 of the PNRP, in accordance with section 75(4) of the RMA.
289. The number of truck movements required to and from a particular site where earthworks are being undertaken will vary considerably depending on a range of factors, such as the volume of

cut and fill on the site, whether the material being cut can be reused on site for fill, the type and capacity of trucks being used, and material volume being taken off site and its density. Based on a rough average of 10 cubic metres per truck load, EW-S3 would allow for approximately 20 truck movements over the course of the earthworks. Increasing this to 400 cubic metres would double this to approximately 40 truck movements.

290. The potential effects of such increasing the permitted standard to 400 cubic metres on the safety and efficiency of the transport network and any associated nuisance effects will also depend on the site access characteristics and the surrounding environment. These are matters that would be considered through a resource consent process. The submitter has not provided any evidence to support the increase in relation to the acceptability of any actual or potential effects. Because of the dependencies of the effects on the particular characteristics of a site, I consider that the consent process is the appropriate method for evaluating these effects.

3.12.3.3 Recommendations

291. I recommend that the submission from Aggregate and Quarry Association [104.3] be **rejected**.

3.12.4 EW-S4

3.12.4.1 Matters raised by submitters

292. Kāinga Ora [81.495] opposes this standard and seeks its deletion. The submitter states that the issues being managed are matters of discretion under EW-S1 and EW-S2 with appropriate conditions of consent being able to be imposed.

3.12.4.2 Assessment

293. EW-S4 applies to permitted activities. The standard ensures that the duration of adverse visual amenity effects of earthworks is limited, as well as the potential for silt and sediment to leave the site.
294. EW-S1 and EW-S2 are also permitted activity standards, with the matters of discretion only being considered through resource consent processes when the standards are not met. This means that conditions of consent will not be able to be imposed for surface reinstatement under the matters of discretion where EW-S1 and EW-S2 are met. I therefore consider that a separate standard specifying the maximum duration of exposed earthwork areas following completion of the works is appropriate.

3.12.4.3 Recommendations

295. I recommend that the submission from Kāinga Ora [81.495] be **rejected**.
296. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submission.

3.12.5 EW-S5

3.12.5.1 Matters raised by submitters

297. The submission from Robyn Smith [168.81] is addressed in relation to the changes sought to rule EW-R1 in section 3.11.1 above. I note that the submitter supports the outcome sought by EW-

S5 but raises concerns about the effect it will have for bulk earthworks, stating that they will likely require consent due to non-compliance with EW-S1.

298. Survey+Spatial New Zealand [72.19] states that it is impossible to retain all silt and sediment on the site during all rainfall events and seeks deletion of EW-S5-1.
299. Kāinga Ora [81.496] states that EW-S5-1 is too onerous and the standard as drafted is unrealistic and does not adequately recognise the realities of site development.

3.12.5.2 Assessment

300. I note that no submitters have opposed or sought amendments to EW-S5-2, which requires silt and sediment devices to be installed in accordance with Appendix 15.
301. Both Survey+Spatial New Zealand [72.19] and Kāinga Ora [81.496] seek deletion of EW-S5-1 and have similar arguments in that the standard is too onerous and unachievable.
302. In terms of the achievability of the standard, it is important to note that clause one and two of the standard work together, along with the other standards in the chapter, in an integrated way. I note that the EW-S1 and EW-S2 include a maximum area based on the underlying zone, one metre setback from site boundaries, and a maximum slope. When these standards are viewed as an integrated package, I consider that, where sediment retention devices are installed on a site as required by EW-S5-2 and all the other standards are met, silt and sediment will effectively be retained on site and therefore that EW-S1-1 will be achieved. As such, I do not agree that the standard places an overly onerous or unachievable benchmark. I also note that EW-S5-1 is similar to that adopted in the operative Hamilton City District Plan.²¹
303. Where retention of silt and sediment on the site is considered to not be able to be achieved, this will elevate to a restricted discretionary activity.²² This is the same as for all other standards in the EW -Earthworks chapter.
304. While the submitters seek deletion rather than amendment, for completeness I note that EW-S5-1 is drafted in absolute terms. This provides clarity for plan users and more straightforward implementation by Council.
305. An alternative to deletion to achieve a less onerous benchmark would be to introduce subjective terms such as 'as far as practicable'. I do not consider that this would be appropriate, as the standards must be measurable and not involve discretion, interpretation or room for doubt. While such wording ostensibly provides more flexibility when undertaking activities, it simply shifts the responsibility of interpretation onto site management and Council enforcement.

3.12.5.3 Recommendations

306. I recommend for the reasons given in the assessment, that the submissions from Survey+Spatial New Zealand [72.19] and Kāinga Ora [81.496] be **rejected**.
307. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submission.

²¹ See standard 25.2.4.1 (c).

²² Noting the recommendation correct an error to include EW-S5 in rule EW-R1-2.

3.13 Advice Notes

3.13.1 Matters raised by submitters

308. Kāinga Ora [81.496] seeks the removal of all advice notes. The submitter states that the management of silt and sediment can be addressed through the PDP and not further deferred to a Council Bylaw, the Silt and Sediment Devices at APP15 provide adequate guidance and further deferral to Greater Wellington Regional Council's guidance is unnecessary, and the note relating to unidentified archaeological sites or waahi tapu is not relevant to a standard controlling silt and sediment run-off.
309. Heritage New Zealand Pouhere Taonga [65.55] suggests that the information in Advice Note 3 is put into an appendix in the plan and provide cross reference from relevant sections.

3.13.2 Assessment

310. Based on the decision sought, Kāinga Ora [81.496] has assumed that the advice notes relate only to EW-S5. This is not the case, as they provide additional information for Plan users in relation to earthworks activities generally.
311. These statements are advice notes and do not form part of the objectives, policies, or methods of the EW - Earthworks chapter. They are intended to provide additional information for plan users to alert them to other regulations or legislation relevant to earthworks activities. I therefore consider that they are a useful addition to the plan which provide benefits in achieving integrated management of the effects of earthworks consistent with the functions of territorial authorities under section 31(1) of the RMA, and therefore should not be deleted in their entirety as sought.
312. Consistent with the recommendation on the introduction of a cross-reference to an appendix containing the accidental discovery protocol in the Introduction in section 3.8 above, I consider that a separate appendix to the plan containing the accidental discovery protocol would be beneficial for plan clarity and consistency. I therefore agree with the submission from Heritage New Zealand Pouhere Taonga [65.55] seeking to replace Advice Note 3 with a cross-reference to a new appendix containing the accidental discovery protocol.

3.13.3 Recommendations

313. I recommend for the reasons given in the assessment, that the Hearings Panel:
- a. **Delete** Advice Note 3 and replace this with wording cross referencing to a new Appendix 16 which sets out the accidental discovery protocol as set out below and in Appendix A.

Advice notes:

[3. Information on accidental discovery protocol and Archeological Authority Process under the Heritage New Zealand Pouhere Taonga Act 2014 is outlined in Appendix 16](#) ~~In the event that an unidentified archaeological site or a waahi tapu site is located during works, the following applies:~~

- ~~a. Work must cease immediately at that place and within 20m around the site;~~
- ~~b. Heritage New Zealand Regional Archaeologist must be notified and apply for the appropriate authority if required;~~

- ~~c. Appropriate iwi groups or kaitiaki representative must be notified of the discovery. Site access must be granted to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under legislation are met (Heritage New Zealand Pouhere Taonga Act 2014);~~
- ~~d. If human remains (koiwi) are uncovered then the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate iwi groups or kaitiaki representative must be notified. Remains are not to be moved until such time as iwi and Heritage New Zealand have responded; and~~
- ~~e. Works affecting the archaeological site and any human remains (koiwi) must not resume until appropriate authority and protocols are completed.~~

314. I recommend that the submission from Kāinga Ora [81.496] be **rejected**.

315. I recommend that the submission from Heritage New Zealand Pouhere Taonga [65.55] be **accepted**.

316. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submission.

4 Conclusions

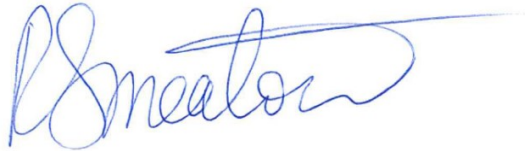
317. Submissions have been received in support of, and in opposition to the PDP. Submissions seek a range of amendments, including that all the earthworks provisions throughout the Plan be consolidated into the earthworks chapter, while other submissions conversely seek that provisions for earthworks relating to the National Grid be located within the INF - Infrastructure chapter. A number of submissions seek relatively small changes to the provisions to address specific issues.
318. Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, I recommend that PDP should be amended as set out in Appendix A of this report.
319. For the reasons set out in the Section 32AA evaluation included throughout this report, I consider that the proposed objectives and provisions, with the recommended amendments, will be the most appropriate means to:
- achieve the purpose of the Resource Management Act 1991 (RMA) where it is necessary to revert to Part 2 and otherwise give effect to higher order planning documents, in respect to the proposed objectives, and
 - achieve the relevant objectives of the PDP, in respect to the proposed provisions.

Recommendations:

It is recommended that:

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

Signed:

Name and Title		Signature
Report Author	Rory Smeaton Senior Policy Planner	

Appendix A. Recommended Amendments to the EW – Earthworks Chapter and Definitions

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

- Text recommended to be added to the PDP is in red and underlined.
- Text recommended to be deleted from the PDP is in red and ~~struckthrough~~.

EW - Earthworks

Earthworks are often an essential prerequisite for development. Earthworks are the physical works that modify land so that it can be used for living, business, and recreation purposes, farming and forestry and the construction and maintenance of infrastructure. The scope and scale of earthworks range from large greenfield bulk earthworks, which can alter the landform and its topography, to small and discrete areas of works most often associated with minor ~~suburban residential~~²³ development.

Earthworks can adversely affect amenity values (visual, dust nuisance, noise and traffic) and result in changes to natural landforms. Earthworks can cause changes to the appearance and character of the neighbourhoods they are located in and can impact on people's experience of their environment.

Earthworks can also result in land instability, increasing risk to people and property. Poorly engineered excavations or areas of earthworks fill can cause landslips on the site, on neighbouring properties or on roads.

All earthworks have the potential to increase erosion and generate sediment loss. While the Greater Wellington Regional Council has the primary role in respect of managing discharges to air and into waterbodies, the District Plan can assist by ensuring the effects of earthworks are minimised beyond the site where works are occurring. The Proposed Natural Resources Plan for the Wellington Region and the Regional Soil Plan for the Wellington Region include provisions for earthworks, and consent may be required from Greater Wellington Regional Council. The ~~Porirua City Council Bylaw 1991, Part 24 Silt and Sediment Control, and Part 26 Stormwater~~ Porirua City Council Stormwater (Pollution Prevention) Bylaw 2021 also applies to silt, sediment, and stormwater run-off from earthworks and must be complied with.

The earthworks provisions of this chapter provide for earthworks at a scale that is appropriate for the anticipated development of the underlying zone. It applies standards relating to the area, height, location and slope of earthworks, the amount of earthworks material being transported to or from the site and the reinstatement of the site. ~~Any earthworks activities that do not comply with these standards will require more specific assessment as restricted discretionary activities to ensure that any adverse effects are adequately addressed.~~²⁴

This Earthworks chapter covers general earthworks provisions in all zones. Additional earthworks provisions may apply within Overlays. These earthworks provisions have been included in the respective Overlay chapters because they address the Overlay related effects of earthworks on the identified values, characteristics, risks or features. The earthworks provisions within Overlays apply in addition to the provisions of this chapter. However, all provisions relating to earthworks associated with infrastructure are contained in the Infrastructure chapter.

The following chapters contain provisions for earthworks:

1. Infrastructure;

²³ Kāinga Ora - Homes and Communities [81.481]

²⁴ Kāinga Ora - Homes and Communities [81.481]

2. Natural Hazards;
3. Historic Heritage;
4. Notable Trees;
5. Sites and Areas of Significance to Māori;
6. Ecosystems and Indigenous Biodiversity;
7. Natural Character;
8. Natural Features and Landscapes;
9. Public Access; and
10. Coastal Environment.

Note: Earthworks have the potential to destroy, damage or modify unidentified archaeological sites or wāhi tapu sites within the City that are not managed by the Historic Heritage and/or Sites and Areas of Significance to Māori chapters. These sites associated with human activity that occurred before 1900 are protected under the Heritage New Zealand Pouhere Taonga Act 2014. Should an archaeological site or wāhi tapu site be discovered as a result of earthworks (either as a permitted activity or via a resource consent) an archaeological authority will be required from the Heritage New Zealand Pouhere Taonga, and in the case of a wāhi tapu site Ngāti Toa will need to be contacted. [The Archaeological Authority Process under the Heritage New Zealand Pouhere Taonga Act 2014 is outlined in Appendix 16.](#)²⁵

Objective

EW-O1 Earthworks

Earthworks are undertaken in a manner that:

1. Is consistent with the anticipated scale and form of development for the zone;
2. Minimises adverse effects on visual amenity values, including changes to natural landforms;
3. Minimises erosion and sediment effects beyond the site and assists to protect receiving environments, including Te Awarua-o-Porirua Harbour;
4. Protects the safety of people, ~~and~~ property ~~and infrastructure~~²⁶; and
5. ~~Minimises adverse effects on~~ [Does not compromise](#) the National Grid ~~and or~~ the Gas Transmission Pipeline.²⁷

Policies

EW-P1 Appropriate earthworks

Enable earthworks associated with subdivision, use and development, where:

1. They occur in a coordinated and integrated manner;
2. The scale of the earthworks is consistent with the scale and form of development anticipated within that zone;
3. The stability of land is maintained, including the stability of adjoining land, infrastructure, buildings and structures;
4. The area, height or depth, location and slope of the earthworks are of an appropriate scale that will ensure the following potential adverse effects are minimised:
 - a. Visual amenity as a result of cut or fill faces and retaining structures;
 - b. Silt and sediment loss from the site;
 - c. The alteration of natural landforms and features;

²⁵ Heritage New Zealand Pouhere Taonga [65.54]

²⁶ New Zealand Transport Agency (Waka Kotahi) [82.164]

²⁷ New Zealand Transport Agency (Waka Kotahi) [82.164] and Transpower New Zealand Ltd [60.92]

<p>d. Dust and vibration beyond the site; and</p> <p>e. The safe and efficient operation of the transport network and on local amenity values as a result of traffic movements; and</p> <p>5. The area where earthworks have occurred is reinstated in a timely manner to minimise adverse effects on land stability, <u>erosion</u>²⁸ and the visual amenity of the surrounding area.</p>
<p>EW- P2 Earthworks for recreational and community activities</p>
<p>Recognise the benefits of and enable earthworks required for the development, repair and maintenance of, play equipment and recreational parks, particularly within the Open Space Zone and the Sport and Active Recreation Zone.</p>
<p>EW- P3 Earthworks required for the installation of rainwater tanks</p>
<p>Enable earthworks for the installation of rainwater tanks, recognising the benefits of rainwater tanks to achieving hydraulic neutrality measures.</p>
<p>EW- P4 Appropriate earthworks within the National Grid Yard and the Gas Transmission Pipeline Corridor</p>
<p>Enable earthworks within the National Grid Yard and the Gas Transmission Pipeline Corridor where they are of a scale and nature that will not compromise the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid or the Gas Transmission Network.</p>
<p>EW- P5 Other earthworks <u>or land disturbance</u>²⁹ within the National Grid Yard and the Gas Transmission Pipeline Corridor</p>
<p>Only allow earthworks <u>or land disturbance</u>³⁰ within the National Grid Yard and the Gas Transmission Pipeline Corridor where it can be demonstrated that the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid or the Gas Transmission Network will not be compromised, taking into account:</p> <ol style="list-style-type: none"> 1. The extent to which the earthworks may compromise the safe access to and operation, maintenance and repair, upgrading and development of the National Grid or the Gas Transmission Pipeline; 2. The stability of land within and adjacent to the National Grid or the Gas Transmission Pipeline Corridor; 3. Risks relating to health or public safety, including the risk of property damage; and 4. Technical advice provided by the owner and operator of the National Grid or the Gas Transmission Network.
<p>Rules</p>
<p>Note: There may be a number of provisions that apply to an activity, building, structure or site. Resource consent may therefore be required under rules in this chapter as well as other chapters. Unless specifically stated in a rule, resource</p>

²⁸ Kāinga Ora - Homes and Communities [81.483]

²⁹ Transpower New Zealand Ltd [60.94]

³⁰ Transpower New Zealand Ltd [60.94]

consent is required under each relevant rule. The steps to determine the status of an activity are set out in the General Approach chapter.

Rules relating to earthworks for infrastructure activities are found in the Infrastructure chapter.

The Resource Management (National Environmental Standard for Plantation Forestry) Regulations 2017 (“NESPF”) prevails over the rules (including standards) in this chapter for earthworks regulated by the NESPF.³¹

EW-R1	General Earthworks
	<p>All zones 1. Activity status: Permitted</p> <p>Where:</p> <p style="padding-left: 40px;">b. Compliance is achieved with:</p> <p style="padding-left: 80px;">i. EW-S1; ii. EW-S2; iii. EW-S3; iv. EW-S4; and v. EW-S5.</p> <p style="padding-left: 40px;"><u>Note:</u> For the avoidance of doubt this rule applies to all earthworks, except EW-R2 and EW-R3.³²</p>
	<p>All zones 2. Activity status: Restricted discretionary</p> <p>Where:</p> <p style="padding-left: 40px;">b. Compliance is not achieved with EW-S1, EW-S2, EW-S3, or EW-S4 <u>or EW-S5</u>.³³</p> <p>Matters of discretion are restricted to:</p> <p style="padding-left: 40px;">2. The matters of discretion of any infringed standard.</p>
EW-R2	Earthworks required for the installation and construction of rainwater tanks
	<p>All zones 1. Activity status: Permitted</p> <p>Where:</p> <p style="padding-left: 40px;">a. Compliance is achieved with:</p> <p style="padding-left: 80px;">i. EW-S2; and ii. EW-S4.</p>
	<p>All zones 2. Activity status: Restricted discretionary</p> <p>Where:</p> <p style="padding-left: 40px;">a. Compliance is not achieved with EW-S2 or EW-S4.</p> <p>Matters of discretion are restricted to:</p>

³¹ Kāinga Ora [81.488]

³² Ibid

³³ Survey And Spatial New Zealand [72.17]

	<p>1. The matters of discretion of any infringed standard.</p> <p>Notification: An application under this rule is precluded from being publicly or limited notified in accordance with sections 95A and 95B of the RMA.</p>
EW-R3	Earthworks within the Gas Transmission Pipeline Corridor
All zones	<p>1. Activity status: Permitted</p> <p>Where:</p> <p>a. Earthworks undertaken within the Gas Transmission Pipeline Corridor do not exceed a depth of 400mm.</p>
All zones	<p>2. Activity status: Restricted discretionary</p> <p>Where:</p> <p>a. Compliance is not achieved with EW-R3-1.a.</p> <p>Matters of discretion are restricted to:</p> <p>1. The matters in EW-P5.</p> <p>Notification</p> <ul style="list-style-type: none"> • An application under this rule is precluded from being publicly notified in accordance with section 95A of the RMA. • When deciding whether any person is affected in relation to this rule for the purposes of section 95E of the RMA, the Council will give specific consideration to any adverse effects on First Gas Limited.
EW-R4	Earthworks <u>and land disturbance</u>³⁴ within the National Grid Yard
All zones	<p>1. Activity status: Permitted</p> <p>Where:</p> <p>b. Earthworks <u>and land disturbance</u> must not:</p> <ol style="list-style-type: none"> Exceed 300mm in depth within 6m of the outer visible edge of a tower support structure; Exceed 3m in depth between 6m and 12m of the outer visible edge of a tower support structure; <u>and</u> Result in a reduction of the <u>existing ground to conductor clearance distances as required in Table 4 of the New Zealand Electrical Code of Practice for Electrical Safe Distances 34:2001-</u>; or <u>Compromise the stability of any National Grid support structures.</u> <p><u>Earthworks and land disturbance for the following activities are exempt from compliance with EW-R4-1.a:</u></p> <ul style="list-style-type: none"> • <u>Agricultural or domestic cultivation;</u>

³⁴ Transpower New Zealand Ltd [60.135]

	<ul style="list-style-type: none"> • <u>The repair, sealing or resealing of a vehicle access or farm track;</u> • <u>Vertical holes not exceeding 500mm in diameter that are more than 1.5m from the outer edge of a National Grid pole or stay wire, or are a post hole for a farm fence or horticulture structure more than 6m from the visible outer edge of a National Grid tower foundation; and</u> • <u>Any other activities subject to a dispensation from Transpower under New Zealand NZECP 34:2001.</u>³⁵
All zones	<p>2. Activity status: Restricted discretionary</p> <p>Where:</p> <p>a. Compliance is not achieved with EW-R4-1.a.</p> <p>Matters of discretion are restricted to:</p> <p>1. The matters in EW-P5.</p> <p>Notification</p> <ul style="list-style-type: none"> • An application under this rule is precluded from being publicly notified in accordance with section 95A of the RMA. • When deciding whether any person is affected in relation to this rule for the purposes of section 95E of the RMA, the Council will give specific consideration to any adverse effects on Transpower New Zealand Limited.
Standards	
EW-S1	Earthworks – Area
<p>Residential Zones</p> <p>Settlement Zone</p> <p>Neighbourhood Centre Zone</p>	<p>1. The area of earthworks must not exceed 250m² in any 12 month period per site.</p> <p>The following are exempt from the maximum area standard:</p> <ul style="list-style-type: none"> • Earthworks for a swimming pool which do not extend further than 2m from the edge of the swimming pool; and • Earthworks for interments within existing cemeteries or urupā-; <u>and</u> • <u>Earthworks up to 400m² in any 12 month period per site associated with the</u> <p>Matters of discretion are restricted to:</p> <p>8. The stability of land or structures in or on the site or adjacent sites;</p> <p>9. The visual amenity values and character of the surrounding area;</p> <p>10. The natural landform and the extent to which the finished site will reflect and be sympathetic to the surrounding landform;</p> <p>11. Dust and vibration beyond the site;</p> <p>12. The retention of silt and sediment on the site;</p> <p>13. The staging of earthworks; and</p>

³⁵ Transpower New Zealand Ltd [60.135]

	<u>removal or replacement of a fuel storage system.</u> ³⁶	14. The total area of exposed soils at any point in time.
Local Centre Zone Large Format Retail Zone Mixed Use Zone City Centre Zone General Industrial Zone Hospital Zone	<p>2. The area of earthworks must not exceed 400m² in any 12 month period per site.</p> <p>The following are exempt from the maximum area standard:</p> <ul style="list-style-type: none"> • Earthworks for a swimming pool which do not extend further than 2m from the edge of the swimming pool; and • Earthworks for interments within existing cemeteries or urupā. 	<p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. The stability of land or structures in or on the site or adjacent sites; 2. The visual amenity values and character of the surrounding area; 3. The natural landform and the extent to which the finished site will reflect and be sympathetic to the surrounding landform; 4. Dust and vibration beyond the site; 5. The retention of silt and sediment on the site; 6. The staging of earthworks; and 7. The total area of exposed soils at any point in time.
Open Space Zone Sport and Active Recreation Zone	<p>3. The area of earthworks must not exceed 500m² in any 12 month period per site.</p> <p>The following are exempt from the maximum area standard:</p> <ul style="list-style-type: none"> • Topdressing of grassed areas with topsoil; • Earthworks associated with the laying of a safety surface for children's play equipment; • Earthworks for a swimming pool which do not extend further than 2m from the edge of the swimming pool; and • Earthworks for interments within existing cemeteries or urupā. 	<p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. The stability of land or structures in or on the site or adjacent sites; 2. The visual amenity values and character of the surrounding area; 3. The natural landform and the extent to which the finished site will reflect and be sympathetic to the surrounding landform; 4. Dust and vibration beyond the site; 5. The retention of silt and sediment on the site; 6. The staging of earthworks; and 7. The total area of exposed soils at any point in time.
General Rural Zone	4. The area of earthworks must not exceed 1000m ² in any 12 month period per site.	Matters of discretion are restricted to:

³⁶ Z Energy, BP Oil NZ Ltd And Mobil Oil NZ Ltd [123.20]

<p>Rural Lifestyle Zone</p> <p>Special Purpose Zone (BRANZ)</p> <p>Future Urban Zone</p> <p>Māori Purpose Zone (Hongoeke)</p>	<p>The following are exempt from the maximum area standard:</p> <ul style="list-style-type: none"> • Earthworks for a swimming pool which do not extend further than 2m from the edge of the swimming pool; and • Earthworks for interments within existing cemeteries or urupā. 	<ol style="list-style-type: none"> 1. The stability of land or structures in or on the site or adjacent sites; 2. The visual amenity values and character of the surrounding area; 3. The natural landform and the extent to which the finished site will reflect and be sympathetic to the surrounding landform; 4. Dust and vibration beyond the site; 5. The retention of silt and sediment on the site; 6. The staging of earthworks; and 7. The total area of exposed soils at any point in time.
EW-S2 Earthworks – Height, location and slope		
<p>All zones</p>	<ol style="list-style-type: none"> 1. Earthworks must not: <ol style="list-style-type: none"> d. Exceed a cut height or fill depth of 1.5m measured vertically; or e. Be located within 1.0m of the site boundary, measured on a horizontal plane; or f. Be undertaken on an existing slope with an angle of 34° or greater. <p>The following are exempt from the height, location and slope standard:</p> <ul style="list-style-type: none"> • Earthworks for interments within existing cemeteries or urupā; • <u>Earthworks for the construction, alteration or decommissioning of bores, including geotechnical investigation and monitoring bores, undertaken in accordance with NZS 4411:2001 Environmental Standard for Drilling of Soil and Rock;</u> • <u>Earthworks for sampling of soil permitted under Regulation 8(2) of the Resource Management (National Environmental</u> 	<p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 8. The stability of land or structures in or on the site or adjacent sites; 9. The visual amenity values and character of the surrounding area; 10. The natural landform and the extent to which the finished site will reflect and be sympathetic to the surrounding landform; 11. Dust and vibration beyond the site; 12. The retention of silt and sediment on the site; 13. The staging of earthworks; and 14. The total area of exposed soils at any point in time.

	<p><u>Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011; and</u></p> <ul style="list-style-type: none"> • <u>Earthworks for test pits where the depth of the test pit does not exceed the distance of the test pit hole at ground level to the nearest site boundary, and the test pit is backfilled and compacted, and the surface reinstated upon completion of the sampling or investigative works.</u>³⁷ 	
EW-S3	Transport of cut or fill material	
All zones	<p>1. The transport of material resulting from or required for earthworks (including earth, soil, clay, sand and rock) off or onto the site must not exceed 200m³.</p>	<p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. The safe and efficient operation of the transport network; 2. Any nuisance effects; and 3. The retention of silt and sediment on the site.
EW-S4	Site reinstatement	
All zones	<p>1. As soon as practical, but no later than three months after the completion of earthworks or stages of earthworks, the earthworks area must be stabilised with vegetation or sealed, paved, metalled or built over.</p>	<p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. The timing and duration of the works; 2. Land stability; and 3. The visual amenity of the surrounding area.
EW-S5	Silt and sediment retention	
All zones	<p>1. All silt and sediment must be retained on the site.</p> <p>2. Silt and sediment devices must be installed in accordance with APP15 - Silt and Sediment Devices prior to the commencement of earthworks and must be retained for the duration of the earthworks.</p>	<p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. The retention of silt and sediment on the site.

³⁷ Kāinga Ora - Homes and Communities [81.488]

This standard does not apply to the transport of cut and fill material.

Advice notes:

1. The Porirua City Council Bylaw 1991, Part 24 Silt and Sediment Control, and Part 26 Stormwater may apply to silt, sediment, and stormwater run-off from earthworks.
2. The Erosion and Sediment Control Guidelines for the Wellington Region (prepared by Wellington Regional Council) provides guidance for the management of silt and sediment from earthwork activities.
3. Information on accidental discovery protocol and Archeological Authority Process under the Heritage New Zealand Pouhere Taonga Act 2014 is outlined in Appendix 16 ~~In the event that an unidentified archaeological site or a waahi tapu site is located during works, the following applies:~~
 - a. ~~Work must cease immediately at that place and within 20m around the site;~~
 - b. ~~Heritage New Zealand Regional Archaeologist must be notified and apply for the appropriate authority if required;~~
 - c. ~~Appropriate iwi groups or kaitiaki representative must be notified of the discovery. Site access must be granted to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under legislation are met (Heritage New Zealand Pouhere Taonga Act 2014);~~
 - d. ~~If human remains (koiwi) are uncovered then the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate iwi groups or kaitiaki representative must be notified. Remains are not to be moved until such time as iwi and Heritage New Zealand have responded; and~~
 - e. ~~Works affecting the archaeological site and any human remains (koiwi) must not resume until appropriate authority and protocols are completed³⁸.~~

³⁸ Heritage New Zealand Pouhere Taonga [65.55]

Definitions

[...]

Freshwater	has the same meaning as fresh water in section 2 of the RMA: means all water except coastal water and geothermal water.	NPS definition
<u>Fuel storage system</u>	<u>means a system in which at least one of the following is underground:</u> <u>(a) a storage tank for aviation kerosene, diesel, kerosene, lubricating oil, or petroleum:</u> <u>(b) the whole of the tank's ancillary equipment:</u> <u>(c) part of the tank's ancillary equipment.</u> ³⁹	
Functional need	means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.	NPS definition

[...]

Mining	has the same meaning as in section 2 of the RMA and Crown Minerals Act 1991: means to take, win, or extract, by whatever means— a. A mineral existing in its natural state in land; or b. A chemical substance from a mineral existing in its natural state in land; and Includes— a. The injection of petroleum into an underground gas storage facility; and b. The extraction of petroleum from an underground gas storage facility; but Does not include prospecting or exploration for a mineral or chemical substance referred to in paragraph (a)	
Minor earthworks	means earthworks for the installation and construction of service connections, effluent disposal systems, and interments in cemeteries or urupā. ⁴⁰	

³⁹ Z Energy, BP Oil NZ Ltd And Mobil Oil NZ Ltd [123.20] [123.20]

⁴⁰ Kāinga Ora [81.106], Transpower New Zealand Ltd [60.9], Porirua City Council [11.2] and Royal Forest and Bird Protection Society [225.63]

Minor residential unit	means a self-contained residential unit that is ancillary to the principal residential unit, and is held in common ownership with the principal residential unit on the same site.	NPS definition
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[...]

Tertiary education services	means a facility used for education at a post-secondary level, and associated secondary-tertiary programs (section 31A-L of the Education Act 1989). It includes: a. universities; b. polytechnics and institutes of technology; c. teachers' and other specialist colleges; d. any other institution within the meaning of section 159 of the Education Act 1989; and e. ancillary accommodation, administrative, cultural, health, retail and communal facilities.
<u>Test pit</u>	<u>means a temporary hole in the ground excavated in order to investigate the conditions below the ground surface, including geological, hydrological, or soil contamination conditions.</u> ⁴¹
Three waters network	means the reticulated water network, the reticulated wastewater network and stormwater management systems.

⁴¹ Kāinga Ora - Homes and Communities [81.488]

Appendix B. Recommended Responses to Submissions and Further Submissions

The recommended responses to the submissions made on this topic are presented in Table B 1 below.

Table B 1: Recommended responses to submissions and further submissions

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
General Chapter Submissions							
225.251	Royal Forest and Bird Protection Society	Whole of Plan	Add provisions to recognise riparian margins within the earthworks and biodiversity chapters and other chapters as appropriate.	3.2	Reject	See body of the report.	No
225.23 ⁴²	Royal Forest and Bird Protection Society	New Provision	Amend to ensure that earthworks are consistent with the 100m setback in the NESFW from wetlands.	3.2	Reject	See body of the report.	No
81.935	Kāinga Ora – Homes and Communities	General	Seeks amendments to the thresholds in the Earthworks Chapter for triggering resource consent when undertaking earthworks and the matters of discretion relevant to the resulting assessment.	3.2	Reject	See body of the report.	No
137.79	Greater Wellington Regional Council	General	[Not specified, refer to original submission] The submitter's reasons are that: <i>Sediment discharges have been identified as possibly the most significant issue for the health of the harbour. Acknowledges that the regional council has primary responsibility for sediment discharges into waterways including controlling earthworks for that purpose. Supports the earthworks provisions that prevent all sediment leaving the site, noting that Greater Wellington is responsible for consenting earthworks over 3000 square metres for sediment and erosion control.</i>	Not applicable	Accept.	EW-S5 is recommended to be retained.	No
137.65	Greater Wellington Regional Council	General	Amend provisions so that earthworks occurring on flood protection structures are required to consult with Greater Wellington prior to works occurring.	3.2	Reject	See body of the report.	No
168.78 ⁴³	Robyn Smith	Earthworks	Opposes any amendment to the provisions of the PDP by way of submissions by others, or by council officer evidence and/or recommendations, that would result in PCC not having responsibility for managing adverse effects from erosion and sediment discharge, or would result in PCC only having responsibility for small scale earthworks.	3.2	Accept in part	See body of the report.	No
All Earthworks Provisions in the EW Chapter							
81.934 ⁴⁴	Kāinga Ora – Homes and Communities	How the Plan Works	Seeks that all earthworks rules and standards to be located within the Earthworks Chapter.	3.3	Reject	See body of the report.	No
National Grid							
60.91 ⁴⁵	Transpower New Zealand Ltd	General	Relocate the relevant National Grid policies and rules (P4, P5, and R4) to the Infrastructure Chapter.	3.4	Reject	See body of the report.	No

⁴² Opposed by Milmac Homes Ltd [FS59.27] and Kāinga Ora [FS65.271]

⁴³ Supported by Kenepuru Limited Partnership [FS20.7]; opposed by John Carrad [FS43.5], The Neil Group Limited and the Gray Family [FS44.5] and Pukerua Property Group Limited [FS45.5]

⁴⁴ Supported by Kenepuru Limited Partnership [FS20.4]; supported in part by [Name withheld for privacy reasons] [FS32.3]

⁴⁵ Opposed by Kāinga Ora [FS65.272]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			And Any consequential amendments.				
60.92 ⁴⁶	Transpower New Zealand Ltd	EW-O1	Amend EW-O1 as follows: Earthworks are undertaken in a manner that: 1. Is consistent with the anticipated scale and form of development for the zone; 2. Minimises adverse effects on visual amenity values, including changes to natural landforms; 3. Minimises erosion and sediment effects beyond the site and assists to protect receiving environments, including Te Awarua-o-Porirua Harbour; 4. Protects the safety of people and property; and 5. Minimises adverse effects on the National Grid and the Gas Transmission Pipeline. <u>6. Avoid adverse effects on the National Grid.</u> And Relocate Clause 6 of Objective O1 to the Infrastructure Chapter. And Any consequential amendments	3.4	Accept in part	See body of the report.	Yes
60.93	Transpower New Zealand Ltd	EW-P4	Delete Policy EW-P4 in so far as it relates to the National Grid. And Any consequential amendments	3.4	Reject	See body of the report.	No
60.94 ⁴⁷	Transpower New Zealand Ltd	EW-P5	Amend Policy EW-P5 as follows: EW-P5 Other earthworks within the National Grid Yard and the Gas Transmission Pipeline Corridor Only allow earthworks within the National Grid Yard and the Gas Transmission Pipeline Corridor where it can be demonstrated that the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid or the Gas Transmission Network will not be compromised, taking into account: 1. The extent to which the earthworks may compromise the safe access to and operation, maintenance and repair, upgrading and development of the National Grid or the Gas Transmission Pipeline ;	3.4	Accept in part	See body of the report.	Yes

⁴⁶ Opposed by Kāinga Ora [FS65.273]; supported by Greater Wellington Regional Council [FS40.29]

⁴⁷ Supported by Firstgas Ltd [FS63.34]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			<p>2. The stability of land within and adjacent to the National Grid or the Gas Transmission Pipeline Corridor;</p> <p>3. Risks relating to health or public safety, including the risk of property damage; and</p> <p>4. Technical advice provided by the owner and operator of the National Grid or the Gas Transmission Network.</p> <p>EW-P5 INF-Pxxx Other Earthworks or vertical holes within the National Grid Yard</p> <p>Only allow other Avoid earthworks <u>or vertical holes</u> within the National Grid Yard and the Gas Transmission Pipeline Corridor where it can be demonstrated that the which may compromise the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid or the Gas Transmission Network will not be compromised, taking into account:</p> <ol style="list-style-type: none"> 1. The extent to which the earthworks <u>or vertical holes</u> may compromise the safe access to and operation, maintenance and repair, upgrading and development of the National Grid or the Gas Transmission Network; 2. The stability of land within and adjacent to the National Grid, <u>and the structural intent of support structures</u> the Gas Transmission Pipeline; 3. Risks relating to health or public safety, including the risk of property damage; and 4. Technical advice provided by the owner and operator of the National Grid or the Gas Transmission Network. <p>And</p> <p>Relocate the National Grid policy to the Infrastructure Chapter.</p> <p>And</p> <p>Any consequential amendments.</p>				
60.135 ⁴⁸	Transpower New Zealand Ltd	EW-R4	<p>Amend Rule EW-R4 as follows:</p> <p>EW-R4 INF-Ryy Earthworks <u>or vertical hole/s</u> within the National Grid Yard</p>	3.4	Accept in part	See body of the report.	Yes

⁴⁸ Opposed by Kāinga Ora [FS65.276]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			<p>All zones</p> <p>1. Activity status: Permitted</p> <p>Where:</p> <p>Earthworks or vertical hole/s must not:</p> <p>1. Exceed 300mm in depth within <u>12.6m</u> of the outer visible edge of a National Grid tower support structure;</p> <p>2. Exceed 3m in depth between 6m and 12m of the outer visible edge of a tower support structure;</p> <p>iiij. Result in a reduction of the existing in the ground to conductor clearance distances as required in Table 4 of the New Zealand Electrical Code of Practice for Electrical Safe Distances 34:2001 ISSN 0114-0663;</p> <p>iii. Result in the permanent loss of vehicular access to a National Grid support structure; and</p> <p>1. <u>Compromise the stability of a National Grid transmission line tower or pole.</u></p> <p><u>The following earthworks or vertical hole/s are exempt from Rules INF-Ryy.1 i</u></p> <p>1. <u>earthworks or vertical holes/s, excluding mining and quarrying, that are undertaken by a network utility operator (other than for the reticulation and storage of water for irrigation purposes) as defined by the Resource Management Act 1991;</u></p> <p>2. <u>earthworks or vertical hole/s, excluding mining and quarrying, as part of agricultural or domestic cultivation, or for the repair, sealing or resealing of a road, footpath, driveway or farm track;</u></p> <p>3. <u>vertical holes not exceeding 500mm in diameter that:</u></p> <p>4. <u>are more than 1.5m from the outer edge of a National Grid pole or stay wire, or</u></p> <p>5. <u>are a post hole for a farm fence or horticulture structure more than 6m from the visible outer edge of a National Grid tower foundation;</u></p> <p>6. <u>earthworks subject to a dispensation from Transpower under New Zealand Electrical Code of Practice for Safe Electrical Distances (NZECP 34:2001) ISSN 01140663.</u></p> <p>All zones</p>				

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			<p>1. Activity status: Restricted discretionary</p> <p>Where:</p> <p>Compliance is not achieved with EW-R4-1-a INF-Ryy.1 i. but complies with INF-Ryy.1 ii., iii., and iv.</p> <p>Matters of discretion are restricted to:</p> <p>The matters in EW-P5.</p> <p><u>All zones</u></p> <p>1. <u>Activity status: Non-Complying</u></p> <p><u>Where:</u></p> <p>Compliance is not achieved with Inf-Ryy.1 ii., iii., or iv.</p> <p>Notification</p> <p>An application under this rule is precluded from being publicly notified in accordance with section 95A of the RMA.</p> <p>When deciding whether any person is affected in relation to this rule for the purposes of section 95E of the RMA, the Council will give specific consideration to any adverse effects on Transpower New Zealand Limited.</p> <p>And</p> <p>Relocate the National Grid rule to the Infrastructure Chapter.</p> <p>And</p> <p>Any consequential amendments.</p>				
81.480	Kāinga Ora – Homes and Communities	Notification preclusion, National Grid	<p>Amend to be consistent with its overall submission on the Plan. Key areas of concern are (but not limited to):</p> <ol style="list-style-type: none"> 1. Deletion of provisions relating to the National Grid; 2. Incorporate notification exclusion clauses; and 3. Consequential changes to incorporate all earthworks provisions, except those in the Infrastructure Chapter 	3.4	Reject	See body of the report.	No
81.482 ⁴⁹	Kāinga Ora – Homes and Communities	EW-O1	Earthworks are undertaken in a manner that:	3.4	Reject	See body of the report.	No

⁴⁹ Opposed by Transpower New Zealand Ltd [FS04.47]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			<p>1. Is consistent with the anticipated scale and form of development for the zone;</p> <p>2. Minimises adverse effects on visual amenity values, including changes to the appearance of natural landforms;</p> <p>3. Minimises erosion and sediment effects beyond the site and assists to protect receiving environments, including Te Awarua-o-Porirua Harbour;</p> <p>4. Protects the safety of people and property; and</p> <p>5. Minimises adverse effects on the National Grid and the Gas Transmission Pipeline.</p>				
81.486 ⁵⁰	Kāinga Ora – Homes and Communities	EW-P4	<p>Delete:</p> <p>Enable earthworks within the National Grid Yard and the Gas Transmission Pipeline Corridor where they are of a scale and nature that will not compromise the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid or the Gas Transmission Network.</p>	3.4	Reject	See body of the report.	No
81.487 ⁵¹	Kāinga Ora – Homes and Communities	EW-P5	<p>Amend:</p> <p>Only allow earthworks Provide for earthworks within the National Grid Yard and the Gas Transmission Pipeline Corridor where it can be demonstrated that the safe and efficient functioning, operation, maintenance and repair, upgrading and development of the National Grid or the Gas Transmission Network will not be compromised, taking into account:</p> <ol style="list-style-type: none"> 1. The extent to which the earthworks may compromise the safe access to and operation, maintenance and repair, upgrading and development of the National Grid or the Gas Transmission Pipeline; 2. The stability of land within and adjacent to the National Grid or the Gas Transmission Pipeline Corridor; 3. Risks relating to health or public safety, including the risk of property damage; and 	3.4	Reject	See body of the report.	No

⁵⁰ Opposed by Firstgas Ltd [FS63.33]; supported by Transpower New Zealand Ltd [FS04.49]

⁵¹ Opposed by Transpower New Zealand Ltd [FS04.50]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			4. Technical advice provided by the owner and operator of the National Grid or the Gas Transmission Network.				
81.491 ⁵²	Kāinga Ora – Homes and Communities	EW-R4	<p>Delete:</p> <p>1. Activity status: Permitted</p> <p>Where:</p> <p>a. Earthworks must not:</p> <p>i. Exceed 300mm in depth within 6m of the outer visible edge of a tower support structure;</p> <p>ii. Exceed 3m in depth between 6m and 12m of the outer visible edge of a tower support structure; and</p> <p>ii. Result in a reduction of the existing conductor clearance distances.</p> <p>2. Activity status: Restricted discretionary</p> <p>Where:</p> <p>a. Compliance is not achieved with EW-R4-1.a.</p> <p>Matters of discretion are restricted to:</p> <p>1. The matters in EW-P5.</p> <p>Notification</p> <p>• An application under this rule is precluded from being publicly notified in accordance with section 95A of the RMA.</p> <p>When deciding whether any person is affected in relation to this rule for the purposes of section 95E of the RMA, the Council will give specific consideration to any adverse effects on Transpower New Zealand Limited.</p>	3.4	Reject	See body of the report.	No
Rainwater Tanks							
81.485	Kāinga Ora – Homes and Communities	EW-P3	<p>Delete:</p> <p>Enable earthworks for the installation of rainwater tanks, recognising the benefits of rainwater tanks to achieving hydraulic neutrality measures.</p>	3.5	Reject	See body of the report.	No
81.489	Kāinga Ora – Homes and Communities	EW-R2	<p>Delete:</p> <p>1. Activity status: Permitted</p> <p>Where:</p> <p>a. Compliance is achieved with:</p>	3.5	Reject	See body of the report.	No

⁵² Opposed by Transpower New Zealand Ltd [FS04.51]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			i. EW-S2; and ii. EW-S4. 2. Activity status: Restricted discretionary Where: a. Compliance is not achieved with EW-S2 or EW-S4. Matters of discretion are restricted to: 1. The matters of discretion of any infringed standard. Notification: An application under this rule is precluded from being publicly or limited notified in accordance with sections 95A and 95B of the RMA.				
Underground Petroleum Storage Systems							
123.20	Z Energy, BP Oil NZ Ltd and Mobil Oil NZ Limited	EW-S1	Retain the intent of this standard. Amend the standard to provide an exemption for the repair, maintenance and installation of anticipated works within the residential, settlement and neighbourhood centre zone, as follows: [Within the] Residential Zones; Settlement Zone; Neighbourhood Centre Zone: 1. The area of earthworks must not exceed 250m ² in any 12 month period per site. The following are exempt from the maximum area standard: <ul style="list-style-type: none"> • Earthworks for a swimming pool which do not extend further than 2m from the edge of the swimming pool; and • Earthworks for interments within existing cemeteries or urupa. • <u>Earthworks up to 400m² associated with the construction, replacement, maintenance and repair of underground petroleum storage systems.</u> 	3.6	Accept in part	See body of the report.	Yes
123.21	Z Energy, BP Oil NZ Ltd and Mobil Oil NZ Limited	EW-S2	Retain the intent of this standard. Amend the standard to provide clarity that this does not apply to temporary cut and fill that does not change ground levels once completed. This could be achieved by the following amendments: 1. Earthworks must not: <ul style="list-style-type: none"> a. Exceed a cut height or fill depth of 1.5m measured vertically; or 	3.6	Accept in part	See body of the report.	Yes

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			<p>b. Be located within 1.0m of the site boundary, measured on a horizontal plane; or</p> <p>c. Be undertaken on an existing slope with an angle of 34° or greater.</p> <p>The following are exempt from the height, location and slope standard:</p> <ul style="list-style-type: none"> • Earthworks for interments within existing cemeteries or urupa. • <u>Earthworks for the maintenance, replacement or upgrade of underground petroleum storage systems</u> <p><u>Note: This standard does not apply to temporary cut and fill if it does not result in a change to ground level once completed.</u></p>				
Definitions							
84.34	Firstgas Limited	Earthworks	Exclude the construction, repair, upgrade or maintenance of pipelines.	3.7.1	Reject	See body of the report.	No
60.4	Transpower New Zealand Ltd	Earthworks	Retain	Not applicable	Accept	Agree with the submitter	No
72.2 ⁵³	Survey+Spatial New Zealand (Wellington Branch)	Earthworks	The definition of 'earthworks' should provide an exclusion for trenching works involving the excavation of land to install foundation piles/posts, network pipes/cables and household connections to network pipes/cables with associated backfilling to original ground levels.	3.7.1	Reject	See body of the report.	No
81.106	Kāinga Ora – Homes and Communities	Minor earthworks	Delete definition: Minor earthworks means earthworks for the installation and construction of service connections, effluent disposal systems, and interments in cemeteries or urupa.	3.7.2	Accept	See body of the report.	Yes
83.6	Powerco Limited	Minor earthworks	Retain as notified.	3.7.2	Reject	See body of the report.	Yes
60.9 ⁵⁴	Transpower New Zealand Ltd	Minor earthworks	Delete definition.	3.7.2	Accept	See body of the report.	Yes
51.10	Spark New Zealand Trading Limited, Chorus New Zealand Limited, Vodafone New Zealand Limited	Minor earthworks	Amend definition as follows: Minor earthworks means earthworks for the installation and construction of service connections (including customer connection lines), effluent disposal systems, and interments in cemeteries or urupa.	3.7.2	Reject	See body of the report.	Yes
11.2 ⁵⁵	Porirua City Council	Minor earthworks	Delete the definition as follows: Minor earthworks	3.7.2	Accept	See body of the report.	Yes

⁵³ Supported by Kenepuru Limited Partnership [FS20.12]

⁵⁴ Supported in part by Kāinga Ora [FS65.41]

⁵⁵ Supported by Heritage New Zealand Pouhere Taonga [FS14.9]; Supported in part by Kāinga Ora [FS65.42]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			means earthworks for the installation and construction of service connections, effluent disposal systems, and interments in cemeteries or urupa.				
72.9	Survey+Spatial New Zealand (Wellington Branch)	Minor earthworks	Also include trenching for pipes and cables.	3.7.2	Reject	See body of the report.	Yes
225.63	Royal Forest and Bird Protection Society	Minor earthworks	Delete or amend to address concerns, for example by placing volume and location parameters around what constitutes 'minor'.	3.7.2	Accept	See body of the report.	Yes
Introduction							
81.481	Kāinga Ora – Homes and Communities	Introduction	<p>Amend:</p> <p>Earthworks are often an essential prerequisite for development. Earthworks are the physical works that modify land so that it can be used for living, business, and recreation purposes, farming and forestry and the construction and maintenance of infrastructure. The scope and scale of earthworks range from large greenfield bulk earthworks, which can alter the landform and its topography, to small and discrete areas of works most often associated with minor suburban residential development.</p> <p>Earthworks can adversely affect amenity values (visual, dust nuisance, noise and traffic) and result in changes to natural landforms. Earthworks can cause changes to adversely affect the appearance and character of the neighbourhoods through changes to the natural landform they are located in and, which can impact on people's experience of their environment. Earthworks can also result in land instability, increasing risk to people and property. Poorly engineered excavations or areas of earthworks fill can cause landslips on the site, on neighbouring properties or on roads.</p> <p>All earthworks have the potential to increase erosion and generate sediment loss. While the Greater Wellington Regional Council has the primary role in respect of managing discharges to air and into waterbodies, the District Plan can assist by ensuring the effects of earthworks are minimised beyond the site where works are occurring. The Proposed Natural Resources Plan for the Wellington Region and the Regional Soil Plan for the Wellington Region include provisions for earthworks, and consent may be required from Greater Wellington Regional Council. The Porirua City Council Bylaw 1991, Part 24 Silt and Sediment Control, and Part 26 Stormwater also apply to silt, sediment, and stormwater run-off from earthworks and must be complied with.</p>	3.8	Accept in part	See body of the report.	Yes

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			<p>The earthworks provisions of this chapter provide for earthworks at a scale that is appropriate for the anticipated development of the underlying zone. It applies standards relating to the area, height, location and slope of earthworks, the amount of earthworks material being transported to or from the site and the reinstatement of the site. Any earthworks activities that do not comply with these standards will require more specific assessment as restricted discretionary activities to ensure that any adverse effects are adequately addressed.</p> <p>This Earthworks chapter covers general earthworks provisions in all zones. Additional earthworks provisions may apply within Overlays. These earthworks provisions have been included in the respective Overlay chapters because they address the Overlay related effects of earthworks on the identified values, characteristics, risks or features. The earthworks provisions within Overlays apply in addition to the provisions of this chapter. However, all provisions relating to earthworks associated with infrastructure are contained in the Infrastructure chapter.</p> <p>The following chapters contain provisions for earthworks:-</p> <ol style="list-style-type: none"> 1. Infrastructure; 2. Natural Hazards; 3. Historic Heritage; 4. Notable Trees; 5. Sites and Areas of Significance to Māori; 6. Ecosystems and Indigenous Biodiversity; 7. Natural Character; 8. Natural Features and Landscapes; 9. Public Access; and 10. Coastal Environment. <p>Note: Earthworks have the potential to destroy, damage or modify unidentified archaeological sites or wāhi tapu sites within the City that are not managed by the Historic Heritage and/or Sites and Areas of Significance to Māori chapters. These sites associated with human activity that occurred before 1900 are protected under the Heritage New Zealand Pouhere Taonga Act 2014. Should an archaeological site or wāhi tapu site be discovered as a result of earthworks (either as a permitted activity or via a resource consent) an archaeological authority will be required from the Heritage New Zealand Pouhere Taonga, and in the case of a wāhi tapu site Ngāti Toa will need to be contacted.</p>				
60.90	Transpower New Zealand Ltd	Introduction	Retain the chapter introduction.	Not applicable	Accept in part	Agree with submitter, subject to recommendations in response to other submitters.	No

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
51.49	Spark New Zealand Trading Limited, Chorus New Zealand Limited, Vodafone New Zealand Limited	Introduction	Retain as notified.	n/a	Accept in part	Agree with submitter, subject to recommendations in response to other submitters.	No
65.54	Heritage New Zealand Pouhere Taonga	Introduction	Amend as follows: The Archaeological Authority Process under the Heritage New Zealand Pouhere Taonga Act 2014 is outlined in Appendix 16.	3.8	Accept	See body of the report.	Yes
Objective							
59.25 ⁵⁶	Kenepuru Limited Partnership (KLP)	EW-O1	Amend clause to read: 2. Minimises adverse effects on visual amenity values <i>and take into consideration the natural landform including changes to natural landforms</i> ;	3.9	Reject	See body of the report.	No
81.482 ⁵⁷	Kāinga Ora – Homes and Communities	EW-O1	Earthworks are undertaken in a manner that: 1. Is consistent with the anticipated scale and form of development for the zone; 2. Minimises adverse effects on visual amenity values, including changes to the appearance of natural landforms; 3. Minimises erosion and sediment effects beyond the site and assists to protect receiving environments, including Te Awarua-o-Porirua Harbour; 4. Protects the safety of people and property; and 5. Minimises adverse effects on the National Grid and the Gas Transmission Pipeline.	3.9	Reject	See body of the report.	No
82.164 ⁵⁸	Waka Kotahi NZ Transport Agency	EW-O1	Amend provision: Earthworks are undertaken in a manner that: 4. Protects the safety of people, and property and infrastructure; and 5. Minimises Mitigates adverse effects on the National Grid and the Gas Transmission Pipeline infrastructure.	3.9	Accept in part	See body of the report.	Yes
126.64	Director-General of Conservation	EW-O1	Retain as notified.	n/a	Accept in part	Agree with submitter, subject to recommendations in response to other submitters.	No

⁵⁶ Opposed by Greater Wellington Regional Council [FS40.22]

⁵⁷ Opposed by Transpower New Zealand Ltd [FS04.47]

⁵⁸ Opposed by Transpower New Zealand Ltd [FS04.48]; supported in part by Firstgas Ltd [FS63.32], supported by Kāinga Ora [FS65.274]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
123.19	Z Energy, BP Oil NZ Ltd and Mobil Oil NZ Limited	EW-O1	Retain the intent of EW-01	n/a	Accept in part	Agree with submitter, subject to recommendations in response to other submitters.	No
168.79	Robyn Smith	EW-O1	Amend EW-01 to explicitly acknowledge the requirement to avoid adverse effects on Taupō Swamp Complex as well as Te Awarua-o-Porirua Harbour.	3.9	Reject	See body of the report.	No
Policies							
168.80	Robyn Smith	EW-P1	Amend Policy EW-P1 so it includes additional text as outlined below: <i>"Enable earthworks associated with subdivision, use and development, subject to erosion and sediment effects on receiving environments including Taupō Swamp Complex, Taupō Stream and its tributaries, and Te Awarua-o-Porirua Harbour being avoided, where:"</i>	3.10.1	Reject	See body of the report.	No
82.165	Waka Kotahi NZ Transport Agency	EW-P1	Amend provision: 4. The area, height or depth, location and slope of the earthworks are of an appropriate scale that will ensure the following potential adverse effects are minimised <u>mitigated</u> : f. Effects to the normal operation of infrastructure.	3.10.1	Reject	See body of the report.	No
81.483	Kāinga Ora – Homes and Communities	EW-P1	Enable earthworks associated with subdivision, use and development, where: 1. They occur in a coordinated and integrated manner; 2. The scale of the earthworks is consistent with the scale and form of development anticipated within that zone; 3. The stability of land is maintained, including the stability of adjoining land, infrastructure, buildings and structures; 4. The area, height or depth, location and slope of the earthworks are of an appropriate scale that will ensure the following potential adverse effects are minimised: a. Visual amenity as a result of cut or fill faces and retaining structures; b. Silt and sediment loss from the site; c. The alteration of natural landforms and features; d. Dust and vibration beyond the site; and e. The safe and efficient operation of the transport network and on local amenity values as a result of traffic truck <u>movements</u> ; and 5. The area where earthworks have occurred is reinstated in a timely manner to minimise adverse effects on land stability and erosion. the visual amenity of the surrounding area.	3.10.1	Accept in part	See body of the report.	Yes
81.484	Kāinga Ora – Homes and Communities	EW-P2	Delete: Recognise the benefits of and enable earthworks required for the development, repair and maintenance of, play equipment and	3.10.2	Reject	See body of the report.	No

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			recreational parks, particularly within the Open Space Zone and the Sport and Active Recreation Zone.				
Rules							
60.95	Transpower New Zealand Ltd	Note	Retain	Not applicable	Accept	Agree with submitter.	No.
81.488 ⁵⁹	Kāinga Ora – Homes and Communities	EW-R1	<p>Amend:</p> <p>1. Activity status: Permitted</p> <p>Where:</p> <p>Compliance is achieved with:</p> <ol style="list-style-type: none"> EW-S1; EW-S2; EW-S3; EW-S4; and EW-S5. <p>For the avoidance of doubt this rule applies to all earthworks, except EW-R2 and EW-R3</p> <p><u>Note: In addition to those activities exempted by the Earthworks definition, the rules in this chapter do not apply to:</u></p> <ul style="list-style-type: none"> <u>tree planting, or the removal of trees where they are not protected by the District Plan;</u> <u>test pits, wells or boreholes permitted under a regional plan or where all necessary regional resource consents have been obtained;</u> <u>utility related earthworks provided for in Infrastructure chapter of the Plan;</u> <u>installation and construction of service connections;</u> <u>earthworks to install and/or remove effluent disposal systems;</u> <u>earthworks for a swimming pool which do not extend further than 2m from the edge of the swimming pool;</u> <u>earthworks associated with the laying of a safety surface for children's play equipment;</u> <u>cemeteries, including pet cemeteries, urupā; and</u> <u>earthworks regulated under a national environment standard, including but not limited to, the National Environmental Standards for Electricity Transmission Activities 2009, National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health</u> 	3.11.1	Accept in part	See body of the report.	Yes

⁵⁹ Supported by Wellington Electricity Lines Limited [FS28.8]; supported in part by Z Energy Ltd, BP Oil NZ Ltd and Mobil Oil NZ Ltd [FS49.3]; opposed by Te Rūnunga o Toa Rangatira [FS70.18]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			<p><u>2011, National Environmental Standards for Telecommunication Facilities 2016 and National Environmental Standards on Plantation Forestry 2017, unless otherwise subject to a rule in this Plan.</u></p> <p>2. Activity status: Restricted discretionary</p> <p>Where:</p> <p>a. Compliance is not achieved with EW-S1, EW-S2, EW-S3 or EW-S4.</p> <p>Matters of discretion are restricted to:</p> <p>1. The matters of discretion of any infringed standard.</p> <p>Notification:</p> <p><u>An application under this rule is precluded from being publicly or limited notified in accordance with sections 95A and 95B of the RMA.</u></p>				
72.17 ⁶⁰	Survey + Spatial New Zealand (Wellington Branch)	EW-R1	Include EW-S5 as a matter of non-compliance. Add non-notification provisions.	3.11.1	Accept in part	See body of the report.	Yes
81.490	Kāinga Ora – Homes and Communities	EW-R3	Retain as proposed.	Not applicable	Accept	Agree with submitter.	No
84.23	Firstgas Limited	EW-R3	Retain as proposed.	Not applicable	Accept	Agree with submitter.	No
168.81	Robyn Smith	EW-S5	<p>Include a new rule - Rule EW-R1(3) to read:</p> <p>All Zones 3. Activity status: Non-complying</p> <p>Where:</p> <p>a. Compliance is not achieved with:</p> <p>i. EW-S5</p>	3.11.1	Reject	See body of the report.	No
Standards							
81.492 ⁶¹	Kāinga Ora – Homes and Communities	EW-S1	<p>Amend:</p> <p>Residential Zones, Settlement Zone, Neighbourhood Centre Zone:</p>	3.12.1	Reject	See body of the report.	No

⁶⁰ Supported by Kāinga Ora [FS65.275]

⁶¹ Opposed by Greater Wellington Regional Council [FS40.84]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			<p>1. The area of earthworks must not exceed 250m² in any 12 month period per site.</p> <p>The following are exempt from the maximum area standard:</p> <ul style="list-style-type: none"> • Earthworks for a swimming pool which do not extend further than 2m from the edge of the swimming pool; and • Earthworks for interments within existing cemeteries or urupā. <p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. The stability of land or structures in or on the site or adjacent sites; 2. The visual amenity values and character of the surrounding area; 3. The natural landform and the extent to which the finished site will reflect and be sympathetic to the surrounding landform; 4. Dust and vibration beyond the site; 5. The retention of silt and sediment on the site; and 6. The staging of earthworks; and 7. The total area of exposed soils at any point in time. <p>Local Centre Zone, Large Format Retail Zone, Mixed Use Zone, City Centre Zone, General Industrial Zone, Hospital Zone:</p> <p>2. The area of earthworks must not exceed 400m² in any 12 month period per site.</p> <p>The following are exempt from the maximum area standard:</p> <ul style="list-style-type: none"> • Earthworks for a swimming pool which do not extend further than 2m from the edge of the swimming pool; and • Earthworks for interments within existing cemeteries or urupā. 				

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			<p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. The stability of land or structures in or on the site or adjacent sites; 2. The visual amenity values and character of the surrounding area; 3. The natural landform and the extent to which the finished site will reflect and be sympathetic to the surrounding landform; 4. Dust and vibration beyond the site; 5. The retention of silt and sediment on the site; 6. The staging of earthworks; and 7. The total area of exposed soils at any point in time. <p><u>Local Centre Zone, Large Format Retail Zone, Mixed Use Zone, City Centre Zone, General Industrial Zone, Hospital Zone, Open space Zone, Sport and Active Recreation Zone:</u></p> <p>3. The area of earthworks must not exceed 500m² in any 12 month period per site.</p> <p>The following are exempt from the maximum area standard:</p> <ul style="list-style-type: none"> • Topdressing of grassed areas with topsoil; • Earthworks associated with the laying of a safety surface for children's play equipment; • Earthworks for a swimming pool which do not extend further than 2m from the edge of the swimming pool; and • Earthworks for interments within existing cemeteries or urupā. <p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. The stability of land or structures in or on the site or adjacent sites; 2. The visual amenity values and character of the surrounding area; 				

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			<p>3. The natural landform and the extent to which the finished site will reflect and be sympathetic to the surrounding landform;</p> <p>4. Dust and vibration beyond the site;</p> <p>5. The retention of silt and sediment on the site; <u>and</u></p> <p>6. The staging of earthworks; and</p> <p>7. The total area of exposed soils at any point in time.</p> <p>General Rural Zone, Rural Lifestyle Zone, Special Purpose Zone (BRANZ), Future Urban Zone, Māori Purpose Zone (Hongoeka):</p> <p>4. The area of earthworks must not exceed 1000m² in any 12 month period per site.</p> <p>The following are exempt from the maximum area standard:</p> <ul style="list-style-type: none"> • Earthworks for a swimming pool which do not extend further than 2m from the edge of the swimming pool; and • Earthworks for interments within existing cemeteries or urupā. <p>Matters of discretion are restricted to:</p> <p>1. The stability of land or structures in or on the site or adjacent sites;</p> <p>2. The visual amenity values and character of the surrounding area;</p> <p>3. The natural landform and the extent to which the finished site will reflect and be sympathetic to the surrounding landform;</p> <p>4. Dust and vibration beyond the site;</p> <p>5. The retention of silt and sediment on the site; <u>and</u></p> <p>6. The staging of earthworks; and</p> <p>7. The total area of exposed soils at any point in time.</p>				

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
81.493 ⁶²	Kāinga Ora – Homes and Communities	EW-S2	<p>Amend:</p> <p>1. Earthworks must not:</p> <p>a. Exceed a cut height or fill depth of 2.5m <u>1.5m</u> measured vertically; or</p> <p>b. Be located within 1.0m of the site boundary, measured on a horizontal plane; or</p> <p>c. Be undertaken on an existing slope with an angle of 34° or greater.</p> <p>The following are exempt from the height, location and slope standard:</p> <ul style="list-style-type: none"> • Earthworks for interments within existing cemeteries or urupā. <p>Matters of discretion are restricted to:</p> <p>1. The stability of land or structures in or on the site or adjacent sites;</p> <p>2. <u>Visual amenity as a result of cut or fill faces and retaining structures</u> The visual amenity values and character of the surrounding area;</p> <p>3. The natural landform and the extent to which the finished site will reflect and be sympathetic to the surrounding landform; <u>and</u></p> <p>4. <u>Mitigation landscaping</u></p> <p>5. Dust and vibration beyond the site; and</p> <p>6. The retention of silt and sediment on the site;</p> <p>7. The staging of earthworks; and</p> <p>8. The total area of exposed soils at any point in time.</p>	3.12.2	Reject	See body of the report.	No
81.494	Kāinga Ora – Homes and Communities	EW-S3	Retain as notified	n/a	Accept	Agree with submitter	No

⁶² Opposed by Greater Wellington Regional Council [FS40.85]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
82.166	Waka Kotahi NZ Transport Agency	EW-S3	Retain as notified.	n/a	Accept	Agree with submitter	No
104.3	Aggregate and Quarry Association	EW-S3	Amend standard to increase threshold from 200m ³ to 400m ³ .	3.12.3	Reject	See body of the report.	No
81.495 ⁶³	Kāinga Ora – Homes and Communities	EW-S4	<p>Delete:</p> <p>1. — As soon as practical, but no later than three months after the completion of earthworks or stages of earthworks, the earthworks area must be stabilised with vegetation or sealed, paved, metalled or built over.</p> <p>Matters of discretion are restricted to:</p> <p>1. — The timing and duration of the works;</p> <p>2. — Land stability; and</p> <p>3. — The visual amenity of the surrounding area.</p>	3.12.4	Reject	See body of the report.	No
72.19 ⁶⁴	Survey + Spatial New Zealand (Wellington Branch)	EW-S5	Delete item 1 in EW-S5	3.12.5	Reject	See body of the report.	No
81.496 ⁶⁵	Kāinga Ora – Homes and Communities	EW-S5	<p>Amend:</p> <p>1. All silt and sediment must be retained on the site.</p> <p>2. Silt and sediment devices must be installed in accordance with APP15 - Silt and Sediment Devices prior to the commencement of earthworks and must be retained for the duration of the earthworks.</p> <p>This standard does not apply to the transport of cut and fill material.</p> <p>Matters of discretion are restricted to:</p> <p>1. The retention of silt and sediment on the site.</p> <p>Advice notes:</p>	3.12.5	Reject	See body of the report.	No

⁶³ Opposed by Greater Wellington Regional Council [FS40.86]

⁶⁴ Opposed by Greater Wellington Regional Council [FS40.39]; supported by Kāinga Ora [FS65.278]

⁶⁵ Supported by Kenepuru Limited Partnership [FS20.53] and Survey + Spatial New Zealand [FS67.4]; opposed by Greater Wellington Regional Council [FS40.87] and Te Rūnunga o Toa Rangatira [FS70.19]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			<p>1. The Porirua City Council Bylaw 1991, Part 24 Silt and Sediment Control, and Part 26 Stormwater may apply to silt, sediment, and stormwater run-off from earthworks.</p> <p>2. The Erosion and Sediment Control Guidelines for the Wellington Region (prepared by Wellington Regional Council) provides guidance for the management of silt and sediment from earthwork activities.</p> <p>3. In the event that an unidentified archaeological site or a waahi tapu site is located during works, the following applies:</p> <p>a. Work must cease immediately at that place and within 20m around the site;</p> <p>b. Heritage New Zealand Regional Archaeologist must be notified and apply for the appropriate authority if required;</p> <p>c. Appropriate iwi groups or kaitiaki representative must be notified of the discovery. Site access must be granted to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under legislation are met (Heritage New Zealand Pouhere Taonga Act 2014);</p> <p>d. If human remains (koiwi) are uncovered then the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate iwi groups or kaitiaki representative must be notified. Remains are not to be moved until such time as iwi and Heritage New Zealand have responded; and</p> <p>e. Works affecting the archaeological site and any human remains (koiwi) must not resume until appropriate authority and protocols are completed.</p>				
81.496 ⁶⁶	Kāinga Ora – Homes and Communities	Advice Note	<p>Amend:</p> <p>1. All silt and sediment must be retained on the site.</p> <p>2. Silt and sediment devices must be installed in accordance with APP15 - Silt and Sediment Devices prior to the</p>	3.13	Reject	See body of the report.	No

⁶⁶ Supported by Kenepuru Limited Partnership [FS20.53] and Survey + Spatial New Zealand [FS67.4]; opposed by Greater Wellington Regional Council [FS40.87] and Te Rūnunga o Toa Rangatira [FS70.19]

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			<p>commencement of earthworks and must be retained for the duration of the earthworks.</p> <p>This standard does not apply to the transport of cut and fill material.</p> <p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. The retention of silt and sediment on the site. <p>Advice notes:</p> <ol style="list-style-type: none"> 1. The Porirua City Council Bylaw 1991, Part 24 Silt and Sediment Control, and Part 26 Stormwater may apply to silt, sediment, and stormwater run-off from earthworks. 2. The Erosion and Sediment Control Guidelines for the Wellington Region (prepared by Wellington Regional Council) provides guidance for the management of silt and sediment from earthwork activities. 3. In the event that an unidentified archaeological site or a waahi tapu site is located during works, the following applies: <ol style="list-style-type: none"> a. Work must cease immediately at that place and within 20m around the site; b. Heritage New Zealand Regional Archaeologist must be notified and apply for the appropriate authority if required; c. Appropriate iwi groups or kaitiaki representative must be notified of the discovery. Site access must be granted to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under legislation are met (Heritage New Zealand Pouhere Taonga Act 2014); d. If human remains (koiwi) are uncovered then the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate iwi groups or kaitiaki representative must be notified. Remains are not to be moved until such time as iwi and Heritage New Zealand have responded; and 				

Sub. Ref.	Submitter / Further Submitter	Provision	Decision Requested	Section of this Report	Officer's Recommendation	Officers' Reasons/Comments	Recommended Amendments to PDP?
			e. — Works affecting the archaeological site and any human remains (koiwi) must not resume until appropriate authority and protocols are completed.				
65.55	Heritage New Zealand Pouhere Taonga	EW-S5	Amend as follows: Information on accidental discovery protocol and the Archaeological Authority Process under the Heritage New Zealand Pouhere Taonga Act 2014 <u>is outlined in Appendix 16.</u>	3.13	Accept	See body of the report.	Yes
APP15 - Silt and Sediment Devices							
81.889	Kāinga Ora – Homes and Communities	General	Retain as notified.	Not applicable	Accept	Agree with submitter	No

Appendix C. Report Author's Qualifications and Experience

My name is Rory McLaren Smeaton.

I hold the following qualifications:

- Master of Planning Practice (First Class Honours) (University of Auckland);
- Postgraduate Diploma in Science in Geography (with Distinction) (University of Canterbury);
and
- Bachelor of Science in Geography (University of Canterbury).

I am a full member of the New Zealand Planning Institute. I have nine years' experience working as a planner for local and central government organisations, and a multi-disciplinary consultancy.

I have been employed by the Porirua City Council since April 2020 as a Senior Policy Planner within the Environment and City Planning Team. My work at PCC has included finalising PDP chapters and preparing the associated section 32 reports, summarising submissions, and preparing section 42A reports.