

SECTION 42A REPORT

Report on submissions and further submissions

Topic: Chapter 33 – Earthworks

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Dated: 7 June 2024

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List of submitters and further submitters addressed in this report

Submitter No	Submitter name	Abbreviation
53	Department of Conservation	DOC
47	Royal Forest and Bird protection Society of New Zealand Incorporated	F&B
10	Waikato Regional Council	WRC
46	Federated Farmers	FF
17	Waka Kotahi NZ Transport Agency	Waka Kotahi
31	Transpower New Zealand Limited	Transpower
03	Heritage New Zealand Pouhere Taonga	NZHPT
38	Te Tokanganui-a-noho Whare	TTRMC
50	Te Nehenehenui Trust	TNN
35	Te Ruunanga o Ngaati Mahuta ki te Hauaauru	TRNMTH
14	New Zealand Pork Industry Board	NZPIB
FS03	Department of Conservation	DOC
FS19	PF Olsen	PF Olsen
FS20	Sheryl Paekau	Sheryl Paekau
FS23	Te Nehenehenui	TNN
FS05	Federated Farmers	FF
FS30	Transpower New Zealand Limited	Transpower

1. Introduction

1.1 Qualifications and Experience

1. My name is Alex Bell. I am employed by the Waitomo District Council as the General Manager – Strategy and Environment.
2. I hold the qualifications of Bachelor of Laws, Graduate Diploma in Environmental Planning and am completing my Post Graduate Diploma in Environmental Planning from the University of Waikato.
3. I have been employed in legal and planning roles in private practice, central government and local government for approximately 10 years. I have been employed by Council as the General Manager – Strategy and Environment since June 2021. In this role I am responsible for the Proposed Waitomo District Plan proceeding through the process under Schedule 1 of the RMA and the administration of the Operative Waitomo District Plan.

1.2 Code of Conduct

4. I confirm that I have read the Code of Conduct for Expert Witness in the Environment Court Practice Note 2014 and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
5. I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearings commissioners.

1.3 Conflict of Interest

6. I confirm that I have no real or perceived conflicts of interest.

1.4 Preparation of this report

7. I am the author of this report. The scope of evidence in this report relates to the evaluation of submissions and further submissions received in relation to the provisions related to Chapter 33 – Earthworks.
8. The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence. Where I have set out opinions in my evidence, I have given reasons for those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2 Scope of Report

2.1 Matters addressed by this report

9. The provisions of the earthworks chapter and associated definitions are covered by this report. The scope of my evidence relates to the evaluation of submissions and further submissions received in relation to the provisions related to the earthworks chapter.
10. This report is prepared in accordance with Section 42A of the Resource Management Act 1991. This report considers submissions and further submissions that were received by the Council in relation to the provisions of Chapter 33 Earthworks within the Proposed Waitomo District Plan. Earthworks are integral to the use and development of land. Other effects and activities are addressed in various Section 42A reports, such as ecosystems and indigenous biodiversity, Hapori whānui and the noise chapters.

2.2 Overview of the topic / chapter

11. Overall, this Chapter seeks set thresholds to enable earthworks, with standards to manage effects and the requirement to obtain a resource consent where the scale and potential effect requires more specific assessment.
12. The Chapter applies across all zones, unless stipulated otherwise.

2.3 Statutory Requirements

13. The PDP has been prepared in accordance with the Council's functions under the RMA, specifically section 31, Part 2 and the requirements of sections 74 and 75, and its obligation to prepare, and have particular regard to, an evaluation report under section 32. The section 32 report which addresses this Chapter sets out how the relevant national policy statements, national environmental standards, provisions of the Waikato Regional Policy Statement, the Manawatū-Whanganui One Plan, the Maniapoto Environmental Management Plan, the Waikato Tainui Environment Management Plan 2018 and Te Ture Whaimana o Te Awa o Waikato - The Vision and Strategy for the Waikato River have been assessed and considered.

2.4 Procedural matters

14. At the time of writing this Section 42A report there have not been any pre-hearing conferences, clause 8AA meetings or expert witness conferencing in relation to submissions on this topic.

3 Consideration of submissions received

3.1 Overview of submissions

15. A total of 40 submissions and 26 further submissions were received. 12 of the submissions supported the retention of various provisions as notified. The rest of the submissions have sought changes to various provisions.

3.2 Structure of this report

16. Given the relatively low number of submissions and further submissions received on this chapter, the Section 42A report is structured by submissions that have requested retention of the provisions as notified, and then those seeking relief thereafter.

17. The assessment of submissions generally follows the following format: submission information; relief sought by the submitter, the recommendation and if required, any amendments to the plan.

4 Analysis and recommendations

Topic 1: Submissions seeking retention of existing provisions

18. Thirteen submissions and four further submissions have been received seeking retention of various provisions in this Chapter.

Submission No	Submitter	Support / in part / oppose	Plan Provision	Relief Sought	Recommendation
03.152	Heritage New Zealand Pouhere Taonga (NZHPT)	Support	EW-O1	That objective EW-01 is retained.	Accept
03.153	NZHPT	Support	EW-P3	That policy EW-P3 is retained.	Accept
31.74	Transpower New Zealand Limited (Transpower)	Support	EW- P3	Retain EW-P3.	Accept
31.75	Transpower	Support	EW- P4	Retain EW-P4.	Accept
43.71	Graymont (NZ) Limited	Support	EW-P6	Retain EW-P6 as notified.	Accept
35.09	Te Ruunanga o Ngaati Mahuta ki te Hauaaaru (TRNMTH)	Support	EW- Table1- Activities Rule	Retain Exclusion of earthworks provision for SASM as notified.	Accept

Submission No	Submitter	Support / in part / oppose	Plan Provision	Relief Sought	Recommendation
FS20.09	Sheryl Paekau	Support		I seek that the whole of all submissions provided by the Ruuananga be allowed	Accept
03.154	NZHPT	Support	EW-R2	That the permitted activity, EW-R6, "Earthworks for internments in a burial ground, cemetery or urupa (within the burial plot for that interment") is retained.	Accept
38.82	TTRMC	Support	EW-R2	Retain EW-R2 as notified.	Accept
FS20.111	Sheryl Paekau	Support		I seek that the whole of all submissions provided by Te Kohanganui Whare be allowed and to take into account my support in part when applied to limiting numbers of dwellings on Maaori land.	Accept
50.24	Te Nehenehenui (TNN)	Support	EW-R2	Retain the following provisions in the Earthworks chapter: EW-R2.	Accept
FS20.222	Sheryl Paekau	Support		I seek that the whole of all submissions provided by Te Nehenehenui Trust be allowed and to take into account my support in part when applied to limiting numbers of dwellings on Maaori land	Accept
FS20.238	Sheryl Paekau	Support in part		I seek that this submission be given consideration and take into account the barriers that Maaori must overcome in order to use their land sustainably in the future.	Accept
14.17	NZPIB	Support in full	EW-R5	Retain rule as proposed.	Accept
03.155	NZHPT	Support	EW-R6	That assessment criteria (f) Effects on sites and areas of significance to Māori and sites of historic heritage where the earthworks are adjoining, or on the same holding as these sites, is retained.	Accept
17.77	Waka Kotahi	Support	EW-R6(c)	Retain as notified.	Accept
17.78	Waka Kotahi	Support	EW-R6(e)	Retain as notified.	Accept

19. It is considered that the relief sought by the submitters to retain these provisions as notified is accepted.
20. Section 32AA: No changes are recommended as a result of these submissions. A section 32AA evaluation is not required.

Topic 2: Whole Chapter and general comments

21. One submission has been received supporting the entire chapter. Specifically, the distinction between quarrying and general earthworks. This submission was supported by one further submission. Two submissions were received with general comments on the chapter and four further submissions were received in relation to those submission.

Submission No	Submitter	Support /in part /oppose	Plan Provision	Relief Sought	Recommendation
29.04	Aggregate and Quarry Association (AQA)	Support	Chapter	Retain the distinction between quarrying from general earthworks in the Earthworks chapter as notified.	Accept
FS08.01	Graymont (NZ) Limited (GL)	Support		Allowed	Accept
10.121	Waikato Regional Council (WRC)	Oppose	General comment - rules	Include environmental standards for permitted earthworks activities.	Reject
FS18.05	Omya	Support		Omya would like to be engaged in the outcome/decision of this submission point and have an opportunity to review any environmental standards proposed.	Reject
47.163	Royal Forest and Bird protection Society of New Zealand Incorporated (F&B)	Oppose	General – earthworks provisions	Amend provisions in the Earthworks chapter to ensure that any permitted earthworks within SNAs not otherwise restricted by rules in the ECO chapter are limited to no more than 250m ³ . Earthworks exceeding this volume should be a Discretionary activity within SNAs. And Any consequential changes or alternative relief to achieve the relief sought.	Reject
FS05.120	Federated Farmers	Oppose		Decline the relief sought	Accept
FS10.54	King Country Energy	Oppose		Disallow	Accept
FS19.99	PF Olsen	Oppose		Disallow submission point	Accept

22. The Aggregate and Quarry Association have submitted in support of the provisions in the earthworks chapter that make the distinction between quarrying from general earthworks. It is understood that the submitter is referring to EW-R6.6 (the rules relating to quarrying activities in the industrial and production zones prevail over this rule), and EW-R6.9 (the rules relating to farm quarrying and quarrying activities in the general rural zone prevail over this rule). The Aggregate and Quarry Association have supported this distinction as notified and this is accepted.
23. The Waikato Regional Council has provided a general comment in relation to the rules requesting that the rules be amended to include environmental standards for permitted earthworks activities. The environmental standards are found in the performance standards that are associated with the rule. This plan does not address matters specifically relating to slope and gradient as these are dealt with in both regional plans.
24. Forest and Bird request that the provisions are amended to ensure that any permitted earthworks within significant natural areas not otherwise restricted by rules in the ecosystems & indigenous biodiversity chapter are limited to no more than 250m³. The submitter considers earthworks exceeding this volume should be a discretionary activity within significant natural areas. Clearance of indigenous vegetation is set out in the ecosystems & indigenous biodiversity chapter. The earthwork rules are specifically for earthworks and not clearance of indigenous vegetation, which is a separate activity. This is signalled in EW-R1.1(v). It is recommended that this submission point is rejected as the matter is managed by another provision in this plan.
25. Section 32AA: No changes are recommended as a result of these submissions. A section 32AA evaluation is not required.

Topic 3: Earthworks Chapter – Overview

26. Two submissions and no further submissions have been received on the Overview of Chapter 33 – Earthworks.

Submission No	Submitter	Support / in part / oppose	Plan Provision	Relief Sought	Recommendation
10.120	Waikato Regional Council (WRC)	Amend	Overview/provisions	Include provisions that recognise integrated management and reference objective IM-O1 and policy IM-P1 of the WRPS.	Reject
31.72	Transpower New Zealand Limited (Transpower)	Support	Rules-Overview	Retain the overview and approach in the Earthworks chapter to manage earthworks in relation to the National Grid.	Accept

27. Waikato Regional Council request the chapter includes provisions that recognise integrated management and reference objective IM-O1 and policy IM-P1 of the Waikato Regional Policy Statement. It is considered that this request is already provided for as the provisions of the chapter

were drafted with the integrated management principles in mind. The submitter may wish to provide additional information at the hearing as to the aspects of the chapter that do not meet the provisions of IM-O1 and IM-P1 and the potential amendments to address this.

28. Transpower New Zealand Limited request that the provisions as notified are retained, specifically the approach in the earthworks chapter to manage earthworks in relation to the national grid. This submission is accepted, and the distinction is proposed to be retained.
29. Section 32AA: No changes are recommended as a result of these submissions. A section 32AA evaluation is not required.

Topic 4: EW-P1 - Enable earthworks where they maintain the stability of land, buildings, structures and network utilities

30. Three submissions and one further submission has been received on EW-P1.

Submission No	Submitter	Support / in part / oppose	Plan Provision	Relief Sought	Recommendation
31.73	Transpower	Support	EW-P1	Retain EW-P1.	Accept
51.40	KiwiRail Holdings Limited (KiwiRail)	Support	EW-P1	Retain as proposed.	Accept
43.69	GL	Oppose with amendment	EW-P1	Amend EW-P1 as follows: Enable earthworks where they maintain the stability of land, buildings, structures and network utilities, <u>or are associated with significant mineral resources</u> while minimising:	Reject
FS23.200	Te Nehenehenui	Oppose		Te Nehenehenui seeks to enhance the protection and maintenance of its people and taonga within the taiao as guided by Ko Tā Maniapoto Mahere Taiao – Maniapoto’s Environmental Management Plan. Where submission points do not align with this, or have the potential to negatively impact on iwi, hapu, whanau cultural values, sites, and all taonga within TNN area of interest, TNN opposes submission points of this nature and requests that Waitomo District Council consider this when finalising the PDP review.	Accept

31. EW-P1 enables earthworks where they maintain the stability of land, buildings, structures and network utilities while minimising erosion and sediment loss from the site, including loss to reticulated stormwater systems, and the effect of cut or fill faces and retaining structures on the visual amenity and character of the surrounding area, and significant alterations to natural landforms, and adverse effects on air quality from objectionable particulate matter.
32. Graymont (NZ) Limited have request EW-P1 is amended to include associated with significant mineral resources in the initial sentence of the policy. The amendment they have requested is as follows:
- Enable earthworks where they maintain the stability of land, buildings, structures and network utilities, or are associated with significant mineral resources while minimising:*
33. It is considered that this amendment would not be appropriate, as quarrying (which is associated with significant mineral resources) is excluded from this chapter and dealt with in the zone chapters (i.e. general rural zone, industrial and rural production zone).
34. As this amendment has been rejected, the further submission from Te Nehenehenui opposing the relief sought is accepted.
35. KiwiRail Holdings Limited and Transpower New Zealand Limited have both sought that EW-P1 is retained as notified. As the above amendment sought by Graymont (NZ) Limited is rejected, these submission points seeking retention as notified have been accepted.
36. Section 32AA: No changes are recommended as a result of these submissions. A section 32AA evaluation is not required.

Topic 5: EW-P5 Avoid earthworks where their scale and location have the potential to create or exacerbate natural hazards

37. One submission was received on EW-P5, and two further submissions were received.

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
43.70	GL	Oppose with amendment	EW-P5	Amend EW-P5 as follows: <u>Manage</u> Avoid earthworks where their scale and location have the potential to create or exacerbate natural hazards.	Accept

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
FS23.201	Te Nehenehenui	Oppose		Te Nehenehenui seeks to enhance the protection and maintenance of its people and taonga within the taiao as guided by Ko Tā Maniapoto Mahere Taiao – Maniapoto's Environmental Management Plan. Where submission points do not align with this, or have the potential to negatively impact on iwi, hapu, whanau cultural values, sites, and all taonga within TNN area of interest, TNN opposes submission points of this nature and requests that Waitomo District Council consider this when finalising the PDP review.	Reject

38. Policy EW-P5 seeks to ensure that where earthworks are at a scale or in a location that have the potential to create or exacerbate natural hazards they are avoided. Graymont (NZ) Limited have requested that the word avoid be amended to from 'avoid' to 'manage'. It is considered that this amendment could be made, as the word 'avoid' may place to higher threshold where the effects of natural hazards can be appropriately remedied or mitigated. The purpose of the RMA requires the avoidance, remedy or mitigation of any adverse effects of activities on the environment. In this instance, the term 'manage' encapsulates the 'avoid, remedy or mitigate' approach. It is considered that this amendment would be consistent with the provisions managing earthworks in natural hazard areas in Chapter 23 – Natural Hazards (i.e. NH-R11). The amended provisions could be as follows:

Avoid, remedy or mitigate earthworks where their scale and location hasve the potential to create or exacerbate natural hazards.

39. As Te Neheneheui have further submitted in opposition to this amendment, and the relief sought by the submitter is accepted, the further submission is rejected.
40. Section 32AA: It is considered that given the scale and significance of the change recommended as a result of the above submission, a section 32AA evaluation is not required.

Topic 6: EW New Policy

41. One submission was received from Horticulture New Zealand requesting the addition of a policy, and one further submission was received.

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
27.45	Horticulture New Zealand (Hort NZ)	New	New policy	<p>Add a new policy to the Earthworks chapter as follows:</p> <p><u>Enable earthworks necessary to provide for the district's social, economic and cultural well-being, and their health and safety where they provide for:</u></p> <ul style="list-style-type: none"> i. <u>urban land uses and development within urban zones</u> ii. <u>rural land uses and development including, farm tracks, land drainage, and other farming activities within the rural zones</u> iii. <u>conservation and recreation activities</u> iv. <u>land drainage and flood control works; and</u> v. <u>installation, upgrade and maintenance of infrastructure.</u> 	Reject
FS23.85	Te Nehenehenui	Oppose in part		<p>Te Nehenehenui have stated support for other submitters submission points that may be in conflict with this submission, therefore TNN oppose the points of this submission that are not aligned to our Taiao and cultural values, or those we have noted support for.</p>	Accept

42. Horticulture New Zealand's new policy seeks to specify that enabling earthworks supports economic and cultural wellbeing. It reads:

Enable earthworks necessary to provide for the district's social, economic and cultural wellbeing, and their health and safety where they provide for:

- i. urban land uses and development within urban zones
- ii. rural land uses and development including, farm tracks, land drainage, and other farming activities within the rural zones
- iii. conservation and recreation activities
- iv. land drainage and flood control works; and
- v. installation, upgrade and maintenance of infrastructure.

43. It is considered that this addition is not required, as this chapter relates to managing the effects of earthworks. The benefits derived from earthworks and the activities they support are provided for in the zone Chapters (i.e. general rural zone). These matters are already provided for the in zone

chapters as land use activities and accompanied by the required policy support (i.e. GRUZ-R1 and GRUZ-R2).

44. Section 32AA: No changes are recommended as a result of these submissions. A section 32AA evaluation is not required.

Topic 7: EW-Table 1 - Activities Rules

45. Three submissions were received on EW-Table 1, and three further submissions.

Submission No	Submitter	Support / in part / oppose	Plan Provision	Relief Sought	Recommendation
30.18	New Zealand Forest Managers Association (NZFM)	Support with amendment	EW-Table 1-Activity Rules	Amend the Earthworks chapter by adding a reference within 'EW-Table 1-Activity Rules' as follows: <u>Earthworks associated with plantation forestry are regulated by the National Environmental Standards for Plantation Forestry (NES-PF) are excluded from the rules within this section of the Waitomo District Plan, please refer to the NES-PF for detail.</u> or words to the same effect.	Reject
FS19.18	PF Olsen	Support		Allow submission point	Reject
FS23.112	Te Nehenehenui	Not stated		Oppose and support in part where the submission points align to the submissions supported by TNN	Reject
35.09	Te Ruunanga o Ngaati Mahuta ki te Hauaauru	Support	EW-Table1-Activities Rule	Retain Exclusion of earthworks provision for SASM as notified.	Accept
FS20.09	Sheryl Paekau	Support		I seek that the whole of all submissions provided by the Ruuananga be allowed	Accept
10.122	WRC	Amend	EW-R1.1.i	Amend the wording of 'Flood management area' so that it is consistent with terminology used throughout the plan.	Accept

46. EW-Table 1 specifies the that unless otherwise specified in a rule, the rules in this table apply to all zones, all precincts and all roads including new roads approved by way of resource consent. The New Zealand Forestry Managers Association have requested an amendment to Table 1 to specify:

Earthworks associated with plantation forestry are regulated by the National Environmental Standards for Plantation Forestry (NES-PF) and are excluded from the rules within this section of the Waitomo District Plan.

47. It is considered that the relief sought is already provided for in Rule EW-R6.3 and therefore the additional amendment is not required.
48. As the submission has been rejected, the further submission by PF Olsen is rejected and the further submission by Te Nehenehenui is accepted.
49. It is considered that the relief sought by Te Ruunanga o Ngaati Mahuta ki te Hauaauru to retain the wording specifying that the earthworks provision for Sites and Areas of Significance to Māori are contained in that chapter is retained. As this submission is accepted, the further submission from Sheryl Paekau supporting this relief is also accepted.
50. Waikato Regional Council have sought an amendment to Rule EW-R1.1, as the term flood management area is used, and it is not used elsewhere in the PDP. Rule EW-R1 deals with cross referencing for various chapters of the plan to specify that earthworks must comply with the provisions the chapters specified. An error has occurred during drafting and this provision should refer to 'building platform suitability area c' to be consistent with Chapter 23 – Natural Hazards. It is further noted that additional amendments need to be made to this provision to correct the terminology used for Landslide Susceptibility Area A or B to Building Platform Suitability Area A or B. The amended provision could read as follows:
1. *Earthworks must comply with the provisions of the following chapters:*
 - (i) For earthworks in a Flood Management Area Building Platform Suitability Area C, High Risk Flood Zone or Landslide Susceptibility Area A or B Building Platform Suitability Area A or B see the natural hazards chapter;
51. Section 32AA: It is considered that given the scale and significance of the change recommended as a result of the above submission, a section 32AA evaluation is not required.

Topic 8: EW-R5 - Earthworks for any other purpose

52. One submission was received on EW-R5, and one further submission.

Submission No	Submitter	Support / in part/ oppose	Plan Provision	Relief Sought	Recommendation
27.46	Hort NZ	Oppose with amendment	EW-R5 Earthworks for any other purpose Including Table 2	Amend EW-R5 as follows: <u>Activity status: PER</u> <u>Where:</u> <u>All of the performance standards in EW Table 2 are complied with.</u> <u>OR</u> <u>The activity is ancillary rural earthworks.</u>	Reject

Submission No	Submitter	Support / in part/ oppose	Plan Provision	Relief Sought	Recommendation
				Add a definition for Ancillary rural earthworks' as sought in submission point 27.17.	
FS23.86	Te Nehenehenui	Oppose in part		Te Nehenehenui have stated support for other submitters submission points that may be in conflict with this submission, therefore TNN oppose the points of this submission that are not aligned to our Taiao and cultural values, or those we have noted support for.	Accept
27.17	Hort NZ		Ancillary rural earthworks	<p>Add a new definition for 'ancillary rural earthworks' as follows:</p> <p><u>Ancillary rural earthworks is the disturbance of soil, earth or substrate land surfaces ancillary to primary production that includes:</u></p> <ul style="list-style-type: none"> <u>Land preparation and cultivation (including establishment of sediment and erosion control measures), for planting and growing operations and harvesting of agricultural and horticultural crops (farming)</u> <u>Burying of material infected by unwanted organisms as declared by Ministry for Primary Industries Chief Technical Officer or an emergency declared by the Minister under</u> 	Reject

Submission No	Submitter	Support / in part/ oppose	Plan Provision	Relief Sought	Recommendation
				<p><u>the Biosecurity Act 1993</u></p> <ul style="list-style-type: none"> • <u>Irrigation and land drainage</u> • <u>Maintenance and construction of facilities, devices and structures typically associated with farming activities including but not limited to farm tracks, driveways and unsealed parking areas, stock races, silage pits, farm drains, farm effluent ponds, and feeding lots, fencing, crop protection and sediment control measures.</u> 	
FS23.82	Te Nehenehenui	Oppose in part		Te Nehenehenui have stated support for other submitters submission points that may be in conflict with this submission, therefore TNN oppose the points of this submission that are not aligned to our Taiao and cultural values, or those we have noted support for.	Accept
FS30.12	Transpower	Oppose		While Transpower does not specifically oppose a definition for Ancillary Rural Earthworks, it does have concerns with the wide range and extensive nature of activities included within the definition with no parameters around size of scale or depth of the disturbance, and how the definition would be applied to the National	Accept

Submission No	Submitter	Support / in part/ oppose	Plan Provision	Relief Sought	Recommendation
				Grid Yard specific rule NEG-T-R1 relating to Earthworks, Vertical holes or land disturbance within the National Grid Yard. Should the definition be inserted as sought, it needs to be inserted into NEG-T-R1 so that effects on the National Grid Yard are able to be managed.	
14.02	NZPIB		Ancillary Rural Earthworks	<p>Add definition as follows "<u>Ancillary Rural Earthworks</u>"</p> <p>Means any earthworks or disturbance of soil associated with:</p> <p>(a) <u>Crop cultivation and associated land preparation (including establishment of sediment and erosion control measures);</u></p> <p>(b) <u>Harvesting of agricultural and horticultural crops (farming);</u></p> <p>(c) <u>Maintenance and construction of facilities associated with farming activities, including, but not limited to, farm tracks, roads and landings, stock races, silage pits, offal pits, farm drains, farm effluent ponds, feeding pads, fertiliser storage pads, airstrips, helipads, post holes, fencing, drilling bores, stock water pipes, water tanks and troughs, the maintenance of on-farm land drainage networks, and erosion and sediment control measures; and</u></p> <p>(d) <u>Burying of material infected</u></p>	Reject

Submission No	Submitter	Support / in part/ oppose	Plan Provision	Relief Sought	Recommendation
				<p>by unwanted organisms as declared by the Ministry for Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993.</p>	
FS23.56	Te Nehenehenui	Oppose		<p>Te Nehenehenui seeks to enhance the protection and maintenance of its people and taonga within the taiao as guided by Ko Tā Maniapoto Mahere Taiao – Maniapoto’s Environmental Management Plan.</p> <p>Where submission points do not align with this, or have the potential to negatively impact on iwi, hapu, whanau cultural values, sites, the taiao and all taonga within TNN area of interest, TNN opposes and requests that Waitomo District Council consider this when finalising the review.</p>	Accept
FS30.09	Transpower	Oppose		<p>While Transpower does not specifically oppose a definition for Ancillary Rural Earthworks, it does have concerns with the wide range and extensive nature of activities included within the definition (such as airstrips), and how the definition would be applied to the National Grid</p> <p>Yard specific rule NEG-T-R1 relating to Earthworks, Vertical holes or land disturbance within the National Grid Yard. Should the</p>	Accept

Submission No	Submitter	Support / in part/ oppose	Plan Provision	Relief Sought	Recommendation
				definition be inserted as sought, it needs to be inserted into NEG-T-R1 to ensure that the effects can be managed near National Grid.	

53. Rule EW-R5 specifies that earthworks for any other purpose in all zones are permitted provided the performance standards in EW Table 2 are complied with. Horticulture New Zealand have sought an amendment to include an additional rule stating that the activity be permitted if it is ancillary earthworks. This submission is rejected, as the definition for ancillary rural earthworks is not required, as the earthworks provision are based on volumes, and an additional class of activity is not necessary.

54. Horticulture New Zealand have requested a new definition for 'ancillary rural earthworks' as follows:

Ancillary rural earthworks is the disturbance of soil, earth or substrate land surfaces ancillary to primary production that includes:

- Land preparation and cultivation (including establishment of sediment and erosion control measures), for planting and growing operations and harvesting of agricultural and horticultural crops (farming)
- Burying of material infected by unwanted organisms as declared by Ministry for Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993
- Irrigation and land drainage
- Maintenance and construction of facilities, devices and structures typically associated with farming activities including but not limited to farm tracks, driveways and unsealed parking areas, stock races, silage pits, farm drains, farm effluent ponds, and feeding lots, fencing, crop protection and sediment control measures

55. New Zealand Pork Industry have also asked for an additional definition for ancillary rural earthworks as follows:

Ancillary rural earthworks Means any earthworks or disturbance of soil associated with:

- (a) Crop cultivation and associated land preparation (including establishment of sediment and erosion control measures);

- (b) Harvesting of agricultural and horticultural crops (farming);
- (c) Maintenance and construction of facilities associated with farming activities, including, but not limited to, farm tracks, roads and landings, stock races, silage pits, offal pits, farm drains, farm effluent ponds, feeding pads, fertiliser storage pads, airstrips, helipads, post holes, fencing, drilling bores, stock water pipes, watertanks and troughs, the maintenance of on-farm land drainage networks, and erosion and sediment control measures; and
- (d) Burying of material infected by unwanted organisms as declared by the Ministry for Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993.

56. The National Planning Standards definition of earthworks 'means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but excludes gardening, cultivation, and disturbance of land for the installation of fence posts'. EW-R6.8 permits earthworks up to a total volume of 2000 m³ (in a single activity or in cumulative activities in any one calendar year), per holding in the GRUZ.
57. Digging holes for fence posts and domestic gardening are permitted under the provisions of this plan (HW-R7). Cultivation is excluded from the earthworks rules under EW-R6. This is because it is an accepted part of agricultural, pastoral and horticultural activities which are permitted activities in the GRUZ. It is not considered that this definition is necessary to include in the plan. The provisions for earthworks are generous in the GRUZ because they are a known and accepted part of this working environment, and the topography of the district necessitates land disturbance for farming activities to operate. However, it is considered appropriate to provide for as a permitted activity, the burying of material infected by unwanted organisms as declared by Ministry for Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993. It is not considered appropriate for the provisions of this plan to hinder this activity in the district (subject to some limitations), given how serious the situation would be for New Zealand if unwanted organisms were to threaten agricultural or horticultural systems or indigenous biodiversity.
58. The amendment would need to apply across the plan and therefore the most appropriate location is the hāpori whānui chapter. Adding the provision to this chapter enables burials to be managed adjacent to waterbodies, the coastal marine area and within a 20 m radius of an entry or opening into any cave or sinkhole. It also ensures burials do not occur in the zones where people most commonly live and visit. The proposed amendment to that Chapter is set out below, and will be a consequential amendment to the Section 42A for Chapter 35 - Hāpori Whānui.

HW-R14.	<u>Burying of material infected by unwanted organisms as declared by Ministry for Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993</u>
Activity Status: PER Where: <ol style="list-style-type: none"> <u>The activity does not occur in the residential, settlement, tourism, Māori purpose or commercial zones; and</u> <u>The activity does occur not within 20 m of a water body or the coastal marine area or within a 20 m radius of an entry or opening into any cave or sinkhole.</u> 	Activity status when compliance is not achieved: NC

59. Section 32AA: No changes are recommended as a result of these submissions. A section 32AA evaluation is not required.

Topic 9: EW-R6 Volume of Earthworks

60. Seven submissions were received on EW-R6, and seven further submissions.

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Submission no
08.31	Manulife Forest Management New Zealand Ltd (MFMNZL)	Support and amend	EW-R6	Amend to say that the NES PF rules prevail.	Reject.
FS19.139	PF Olsen	Support		Allow submission points where there is alignment with the PF Olsen submission	Reject
FS23.38	Te Nehenehenui	Support in part		Support in part where the submission points do not conflict with TNN's submission or other supported submissions	Accept
14.19	New Zealand Pork Industry Board (NZPIB)	Support in full	EW-R6	Amend standard as follows: EW R6 Volume of Earthworks 1. This rule does not apply to earthworks incidental to an approved resource consent; and 2. This rule does not apply to the cultivation of land associated with the growing of crops where this activity is located at least 5 m from the edge of any water body (see NATC-R3); and	Reject

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Submission no
				3. This rule does not apply to plantation forestry, or to the construction and maintenance of farm silage pits and existing drains or to the maintenance and upgrading of farm tracks, ancillary rural earthworks, however these activities must comply with the provisions of EW-R1.	
19.19	PF Olsen	Oppose	EW-R6 (EW-Table 1)	<p>Include the following advice in EW - Table 1 - Activities Rules introduction that states (or words to similar effect):</p> <p><u>Earthworks associated with plantation forestry are regulated under the National Environmental Standards for Plantation Forestry 2017 (NES-PF) and are not managed through the District Plan except where district plan rules may be more stringent under Regulation 6 of the NES-PF. If the activity relates to earthworks associated with plantation forestry, refer to the NES-PF.</u></p> <p><u>However, if plantation forestry earthworks are located in [specify the sections where stringency has been applied e.g. the Coastal Environment or Natural Features and Landscape}, refer to the rules in the relevant chapter.</u></p> <p>And</p> <p>Delete EW-R6(3).</p>	Reject
FS12.12	Manulife Forest Management (NZ) Ltd	Support		Amend EW R6 as proposed.	Reject
FS23.73	Te Nehenehenui	Oppose		Te Nehenehenui seeks to enhance the protection and maintenance of its people and taonga within the taiao as guided by Ko Tā Maniapoto Mahere Taiao – Maniapoto’s Environmental Management Plan.	Accept

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Submission no
				Where submission points do not align with this, or have the potential to negatively impact on iwi, hapu, whanau cultural values, sites, the taiao and all taonga within TNN area of interest, TNN opposes and requests that Waitomo District Council consider this when finalising the review.	
27.47	Hort NZ	Oppose with amendment	EW-R6 Volume of Earthworks	Amend EW-R6 as follows: 5. Earthworks must not exceed a total volume of 1000 <u>5000</u> m ³ in a single activity or in cumulative activities in any one calendar year, per holding ... 8. Earthworks must not exceed a total volume of 2000 <u>5000</u> m ³ in a single activity or in cumulative activities in any one calendar year, per holding. And Add a new point to EW-R6 as follows: 10. <u>For any ancillary rural earthworks, there is no limit</u>	Reject
FS18.05	Omya	Support		Adopt this change	Reject
FS23.87	Te Nehenehenui	Oppose in part		Te Nehenehenui have stated support for other submitters submission points that may be in conflict with this submission, therefore TNN oppose the points of this submission that are not aligned to our Taiao and cultural values, or those we have noted support for.	Accept
46.67	FF	Support	EW-R6	Retain EW-R6 (subject to other points made in the submission). And Any consequential amendments required as a result of the relief sought.	Reject
56.10	The Fuel Companies	Support	EW-R6	Retain Rule EW-R6 as notified.	Accept

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Submission no
46.69	FF	Support with amendment	EW-Table 2	Add a new standard to EWR-R6 Volume of Earthworks for all zones and scheduled sites: <u>This rule does not apply to land disturbance</u>	Reject
FS23.237	Te Nehenehenui	Oppose		Oppose where this conflicts with cultural values	Accept

61. Rule EW-R6.1-.3 specifies the performance standards applying to volumes of earthworks in all zones. The rules then list the specific performance standards for volumes of earthworks in each zone.
62. Manulife Forest Management New Zealand Ltd have requested an amendment to EW-R6 to state that the NESPF rules prevail over the rules in the Plan. EW-R6.3 as notified states that "This rule does not apply to plantation forestry". It is considered that the relief sought in the submission is already provided for in this provision. As this submission point is rejected, it is considered that the further submission by PF Olsen is also rejected, and the further submission by Te Nehenehenui is accepted.
63. The New Zealand Pork Industry Board have requested the following amendment to EW-R6, to align with the proposed definition for ancillary rural earthworks, which they consider better provides for a broader range of farming earthwork activities that could reasonably be expected as part of primary production activity:

Amend standard as follows: EW- R6 Volume of Earthworks

1. *This rule does not apply to earthworks incidental to an approved resource consent; and*
 2. *This rule does not apply to the cultivation of land associated with the growing of crops where this activity is located at least 5 m from the edge of any water body (see NATC-R3); and*
 3. *This rule does not apply to plantation forestry, or to ~~the construction and maintenance of farm silage pits and existing drains or to the maintenance and upgrading of farm tracks,~~ ancillary rural earthworks, however these activities must comply with the provisions of EW-R1.*
64. It is considered that the relief sought is rejected for the same reasons in paragraph 53 to 57 above, as the ancillary rural earthworks definition has been rejected.
65. PF Olsen have requested that EW-R6.3 be deleted, and the following advice note be added to EW-R6:

Earthworks associated with plantation forestry are regulated under the National Environmental Standards for Plantation Forestry 2017 (NES-PF) and are not managed through the District Plan except where district plan rules may be more stringent under Regulation 6 of the NES-PF. If the activity relates to earthworks associated with plantation forestry, refer to the NES-PF. However, if plantation forestry earthworks are located in [specify the sections where stringency has been applied e.g. the Coastal Environment or

Natural Features and Landscape}, refer to the rules in the relevant chapter.

66. The request to delete EW-R6.3 and add the above advice note is rejected, as it is considered that the notified wording already provides for the relief sought, which specifies that this rule does not apply to plantation forestry. Therefore, this relief is rejected, and the further submission from Manulife Forest Management (NZ) Ltd supporting this amendment is also rejected, and the further submission by Te Nehenehenui opposing the relief sought is accepted.
67. Horticulture New Zealand have requested an amendment to the earthwork's volumes in EW-R6.5 which apply to industrial, rural production, open space, natural open space & Māori purpose zones and EW-R6.8 general rural zone and an additional EW-R6.10 as follows:
- 5. Earthworks must not exceed a total volume of ± 5000 m³ in a single activity or in cumulative activities in any one calendar year, per holding;*
- 8. Earthworks must not exceed a total volume of ± 25000 m³ in a single activity or in cumulative activities in any one calendar year, per holding.*
- 10. For any ancillary rural earthworks, there is no limit*
68. It is considered that these volumes requested are not appropriate, and the submitter has not provided specific justification for such a substantial increase in these zones. The volumes have been set at an appropriate volume to manage adverse effects associated with earthworks in these zones. In particular with regard to the general rural zone, this is the current volume provided in the rural zone in the Operative Waitomo District Plan and has been proven to provide for most rural activities and for small scale rural quarries. Anything larger than this it is appropriate that a consent be obtained, so that effects can be managed.
69. The request to add the additional EW-R6.10 is rejected for the same reasons as above for adding an additional activity – rural ancillary earthworks. As this submission point is rejected, it is considered that the further submission by Omya is also rejected, and the submission by Te Nehenehenui is accepted.
70. Federated Farmers have requested that an additional standard be added to EW-R6 stating that this rule does not apply to land disturbance. Land disturbance is defined in the national planning standards as follows:
- means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) that does not permanently alter the profile, contour or height of the land.*
71. It is considered that the activities that Federated Farmers are wanting to ensure are provided for in this submission point are digging holes for fence posts and domestic gardening, which are permitted under the provisions of this plan (HW-R7). Cultivation is excluded from the earthwork's rules under EW-R6.2. It is not clear what additional land disturbances that the submitter wishes to be provided for by including the exclusion. They may wish to provide further clarity at the hearing.

72. The Fuel Companies have requested that the EW-R6 as notified be retained. It is considered that this submission is accepted.
73. Section 32AA: No changes are recommended as a result of these submissions. A section 32AA evaluation is not required.

Topic 10: EW-R7 - Excavation and Filling

74. Three submission and two further submissions were received on EW-R7.

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
46.68	FF	Support	EW-R7	Retain EW-R7 (subject to other points made in the submission). And Any consequential amendments required as a result of the relief sought.	Reject
43.72	GL	Oppose with amendment	EW-R7	Amend EW-R7 as follows: ... This rule does not apply to lawfully established underground tanks and septic systems where the replacement is 'like for like'. That is a cut or fill that is in the same location and the effects are the same or similar in character, intensity and scale to those that previously existed. <u>The rules relating to quarrying activities in the industrial and rural production zones prevail over this rule.</u>	Accept
FS23.202	Te Nehenehenui	Oppose		Te Nehenehenui seeks to enhance the protection and maintenance of its people and taonga within the taiao as guided by Ko Tā Maniapoto Mahere Taiao – Maniapoto's Environmental Management Plan. Where submission points do not align with this, or have the potential to negatively impact on iwi, hapu, whanau cultural values, sites, and all taonga within TNN area of	Reject

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
				interest, TNN opposes submission points of this nature and requests that Waitomo District Council consider this when finalising the PDP review.	
56.11	The Fuel Companies	Support in part	EW-R7	<p>Amend the performance standards of Rule EW-R7 as follows:</p> <ol style="list-style-type: none"> 1. The cut depth or fill height (measured vertically) must not exceed: <ol style="list-style-type: none"> (i) Outside the minimum building setback for the underlying zone - 1.5 m; and (ii) Inside the minimum building setback for the underlying zone - 0.5 m; and (iii) Where no minimum building setback applies (eg in the road reserve), the cut depth or fill height shall not exceed 1.5 m vertically. <p>This rule does not apply to:</p> <p>(a) Lawfully established underground tanks <u>(excluding underground fuel storage systems)</u> and septic systems where the replacement is 'like for like'. That is a cut or fill that is in the same location and the effects are the same or similar in character, intensity and scale to those that previously existed.; and</p> <p>(b) <u>Land disturbance associated with the replacement and/or removal of underground fuel</u></p>	Reject

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
				<u>storage systems and drainage devices.</u>	
FS23.265	Te Nehenehenui	Oppose		<p>Te Nehenehenui seeks to enhance the protection and maintenance of its people and taonga within the taiao as guided by Ko Tā Maniapoto Mahere Taiao – Maniapoto’s Environmental Management Plan.</p> <p>Where submission points do not align with this, or have the potential to negatively impact on iwi, hapu, whanau cultural values, sites, and all taonga within TNN area of interest, TNN opposes and requests that Waitomo District Council consider this when finalising the review.</p>	Accept

75. Rule EW-R7 specifies the cut depth and fill height in all zones. It specifically seeks to manage the effects on the stability of land or structures, and potential to create new or exacerbate existing natural hazards, impact natural drainage patterns, redirect overland flow paths or flood flows and/or create instability, erosion, or scarring.
76. Federated Farmers have requested that EW-R7 (subject to other points made in the submission), and any consequential amendments required as a result of the relief sought. It is not clear what relief the submitter is requesting in this point in relation to EW-R7. The submitter may wish to provide additional clarity on this at the hearing.
77. Graymont (NZ) Limited have requested the following note be added to EW-R7:
- The rules relating to quarrying activities in the industrial and rural production zones prevail over this rule.*
78. The additional note requested by Graymont (NZ) Limited could be included as it provides consistent clarification and is consistent with the approach in other rules i.e. EW-R6.6.
79. The submission by Te Nehenehenui opposing this relief is rejected, as the above relief sought is accepted.
80. The Fuel Companies consider that the amendments are required to Rule EW-R7.1, as they consider that land disturbance associated with the

replacement and/or removal of underground fuel storage systems and drainage devices should have its own exclusion as the tanks or devices may need to be in a different location than the existing due to operational or site requirements and may therefore not necessarily fall to be considered as 'like for like'. They have proposed the following amendments:

1. The cut depth or fill height (measured vertically) must not exceed:
 - (i) Outside the minimum building setback for the underlying zone - 1.5 m; and
 - (ii) Inside the minimum building setback for the underlying zone - 0.5 m; and
 - (iii) Where no minimum building setback applies (eg in the road reserve), the cut depth or fill height shall not exceed 1.5 m vertically.

This rule does not apply to:

- (a) Lawfully established underground tanks (excluding underground fuel storage systems) and septic systems where the replacement is 'like for like'. That is a cut or fill that is in the same location and the effects are the same or similar in character, intensity and scale to those that previously existed; and
- (b) Land disturbance associated with the replacement and/or removal of underground fuel storage systems and drainage devices.

81. It is considered that the amendment to exempt underground fuel storage systems from this rule would not be appropriate, as it provides too much discretion in terms of location (i.e. ability to locate outside of the existing location on-site and relocate elsewhere on-site), and would mean Council would have no control in zones where it would need to control effects associated with tank removal, or tank location i.e. commercial and industrial zones. The purpose of the rule is to allow for 'like to like' replacement. Also, it is considered that removing and replacing fuel storage systems is also controlled under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

82. Section 32AA: As the only addition which is to be provided for is the addition of a note to EW-R7 it is considered that this amendment alone would not trigger the scale and significance requirements for a full section 32AA assessment on this provision.

Topic 11: EW- Table 2 – Performance Standards

83. Three submissions and one further submission on EW-Table 2 were received.

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
47.162	F&B	Support with amendment	EW-Table 2- Performance standards	Amend EW-Table 2- Performance Standards to Include an advice note that directs plan users to the WRC Erosion and Sediment control guidelines. And Any consequential changes or alternative relief to achieve the relief sought.	Accept

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
FS19.98	PF Olsen	Oppose		Disallow submission point	Reject
10.123	WRC	Amend	EW-Table 2 – Performance Standards	Include an advice note that directs plan users to the WRC Erosion and Sediment Control Guidelines:	Accept
14.18	NZPIB	Support in part	EW – Table 2 – Performance Standards	Amend numbering of standards in EW- Table 2 to clearly differentiate between standards and rules.	Accept in part

84. Both the Waikato Regional Council and Forest and Bird have requested an amendment to include an advice note adding a link to the Waikato Regional Council Erosion and Sediment control guidelines. It is considered that This is a useful addition. The amendment would read:

Advice notes

Regional Council consents

A resource consent for some earthworks may also be required from the Waikato Regional Council or Manawatū Whanganui Regional Council. [See the Waikato Regional Council Erosion and Sediment Control Guidelines: http://www.waikatoregion.govt.nz/assets/WRC/WRC2019/TR0902.pdf](http://www.waikatoregion.govt.nz/assets/WRC/WRC2019/TR0902.pdf)

85. As the relief sought in the submission has been accepted, the further submission by PF Olsen is rejected.
86. The NZPIB request that the numbering of standards in EW - Table 2 is amended to clearly differentiate between standards and rules. In drafting the PDP, the National Planning Standards were carefully followed to meet the format provisions. However, the numbering continuity between the activity rules and the performance standards is unhelpful. We note that other plans use 'XX-S' and consider that is a clearer way to format the plan. However, we advise that the renumbering will likely not occur until the operative version. Therefore, this submission is accepted in part.
87. Section 32AA: The recommended amendment refers readers to a document which will provide further information and guidance on erosion and sediment control. A section 32AA evaluation is not required.

5 Conclusion

88. Submissions have been received in support of, and in opposition to the notified provisions of the Proposed Waitomo District Plan. Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, it is recommended that the proposed district plan should be amended as set out in Appendix 1 of this report.
89. For the reasons set out in the section 32AA evaluations included throughout this report, it is considered 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 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 proposed district plan, in respect to the proposed provisions.

APPENDIX 1 RECOMMENDED AMENDMENTS

EW-P5. Avoid remedy or mitigate earthworks where their scale and location hasve the potential to create or exacerbate natural hazards.

EW-R1.	Cross references
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1. Earthworks must comply with the provisions of the following chapters:
 - (i) For earthworks in a Flood Management Area Building Platform Suitability Area C, the High Risk Flood Zone or Landslide Susceptibility Area A or B Building Platform Suitability Area A or B see the natural hazards chapter; and
 - (ii) For earthworks in outstanding natural landscapes, outstanding natural features, landscapes of high amenity value or the karst overlay see the natural features and landscapes chapter; and
 - (iii) For earthworks adjacent to a water body see the natural character chapter; and
 - (iv) For earthworks adjacent to the coastal marine area, in areas of outstanding natural character, areas of high/very high natural character, Coastal Erosion Hazard Area 1, Coastal Erosion Hazard Area 2 or the Coastal Flood Hazard Area see the coastal environment chapter; and
 - (v) In significant natural areas the provisions applicable to the underlying zone apply. However, the rules for clearance of vegetation are contained in the ecosystems and indigenous biodiversity chapter.

Note: In the coastal environment overlay the provisions of the underlying zone apply.

EW-R7.	Excavation and Filling	
All zones	<ol style="list-style-type: none"> 1. The cut depth or fill height (measured vertically) must not exceed: <ol style="list-style-type: none"> (i) Outside the minimum building setback for the underlying zone - 1.5 m; and (ii) Inside the minimum building setback for the underlying zone - 0.5 m; and (ii) Where no minimum building setback applies (eg in the road reserve), the cut depth or fill height shall not exceed 1.5 m vertically. (a) This rule does not apply to lawfully established underground tanks and septic systems where the replacement is 'like for like'. That is a cut or fill that is in the 	<p>Matters over which discretion is restricted:</p> <ol style="list-style-type: none"> (a) Effects on the stability of land or structures, and potential to create new or exacerbate existing natural hazards, impact natural drainage patterns, redirect overland flow paths or flood flows and/or create instability, erosion, or scarring; and (b) Impacts on character and amenity values, natural landforms and features, including whether the cut face and/or any retaining structures can be concealed behind development or effectively landscaped.

	<p>same location and the effects are the same or similar in character, intensity and scale to those that previously existed.</p> <p>(b) The rules relating to quarrying activities in the industrial and rural production zones prevail over this rule.</p>	
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Advice notes

Regional Council consents *A resource consent for some earthworks may also be required from the Waikato Regional Council or Manawatū Whanganui Regional Council. [See the Waikato Regional Council Erosion and Sediment Control Guidelines: http://waikatoregion.govt.nz/assets/WRC/WRC2019/TR0902.pdf](http://waikatoregion.govt.nz/assets/WRC/WRC2019/TR0902.pdf)*

APPENDIX 2 SECTION 32AA EVALUATION

Section 32AA

The evaluation of the recommended amendments to provisions since the initial section 32 evaluation was undertaken has been undertaken in accordance with section 32AA of the RMA.

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