

Waitomo District Council

Hearing on submissions on the Proposed Waitomo District Plan

Report and Decisions of the Independent Hearing Commissioners

Decision Report:

Chapter 33. Earthworks

19 June 2025

Commissioners

Greg Hill (Chair)

Wikitōria Tāne

Allan Goddard

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1. Introduction

1. This Decision Report relates to all the submissions received by the Waitomo District Council (Council) on Chapter 33 – Earthworks. This includes related provisions within the Proposed Waitomo District Plan (PDP) such as Definitions (Chapter 9).
2. The chapter seeks to 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.

2. Hearing arrangements

3. The hearing was held in person and online **on 16 and 17 July 2024 in Council's** offices at 15 Queen Street, Te Kuiti. All of the relevant information pertaining to this hearing (i.e., Section 42A Reports, legal submissions and evidence) is **contained on Council's website**.
4. The following parties submitted on this Chapter.

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

5. The Panel heard from Ms Terry Calmeyer appearing for Graymont and Sarah Knott and Luis Alejandro Cifuentes on behalf of the Waikato Regional Council (WRC) on 16 July 2024. No other appearances were made by other submitters wishing to present evidence on this Chapter. However, Mr Thomas Trevilla tabled evidence on behalf of the Fuel Companies.

3. Submitter evidence

6. In her written evidence and in response to questions from the Panel, Ms Calmeyer:
 - Generally agreed with the recommendations in the Section 42A Report and Section 42A Addendum. However, Ms Calmeyer did propose that the following sentence was added to the Chapter overview to provide additional clarity for plan users.

Provisions relating to quarrying activities in the industrial, rural production and general rural zones prevail over provisions in this Chapter.
 - The Section 42A Report writer acknowledged that he generally agreed that this was an appropriate amendment at the hearing.
7. In their evidence for the WRC and in response to questions from the Panel, Ms Knott and Mr Cifuentes:
 - Agreed with the recommendations in the Section 42A Report and the Section 42A Addendum in relation to this Chapter. There were no further matters raised at the hearing as the Section 42A Report writer agreed with the addition of the matters of discretion to EW-R7.
8. In his evidence, Mr Trevilla sought an amendment to EW-R7 to provide an exclusion drainage devices / **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. Mr Trevilla considered that drainage devices / systems should have their own exclusion to this rule, as he considers the tanks or devices may need to be in different locations than the existing due to operational or site requirements and may therefore not **necessarily fall to be considered as 'like for like'**.
9. This relief was rejected in the Section 42A Addendum, as the Section 42A Report writer considered that devices / systems may need to be in a different location than the existing due to operational or site requirements, and therefore may have different effects that need to be assessed and considered through the rule framework. Mr Trevilla did not attend the hearing to provide any further advice on this point at the hearing.

4. Panel decision

10. Having considered the analysis in the submissions and evidence presented, the Panel acknowledges the **general support for the PDP's amended provisions**.
11. The Panel agrees with the aim of Chapter 33 to set thresholds to enable earthworks, with standards to manage adverse environmental effects.

Overview

12. The Panel accepts the request from **Ms Calmeyer's to include** additional wording to the Chapter overview to clarify that the provisions relating to quarrying activities in the industrial, rural production and general rural zones prevail over provisions in this Chapter.

EW-R6 and EW-R7

13. The Panel accepts the request from Ms Knott and Mr Cifuentes to add the additional matters of discretion to EW-R6 and EW-R7 to provide for compaction of the fill material and geotechnical stability. Ms Knott and Mr Cifuentes highlighted that these matters are both currently provided for in the Waikato District Plan, so the addition would help create some consistency in approach across the Region. The Panel considers that the matters (f) and (i) in the Waikato District Council example could be added as a new performance standard, but clause (j) in the Waikato District Council example applies to Kauri and is not required in the Waitomo district.

EW-R7 – exclusions

14. The Panel notes the requested amendment by the Fuel Companies to EW-R7 to allow **'like for like' replacement of drainage devices / systems** to have their own exclusion from this rule. The Panel considers that this amendment would not be appropriate, as drainage devices / systems should not have their own exclusion as the devices or systems may need to be in a different location than the existing due to operational or site requirements, and would mean Council has no control in zones where it would need to control effects associated with device / system removal on sites that are generally identified as being a HAIL site.
15. Otherwise, unless stated in the Panel decision above, the Panel has elected to adopt the recommendations in the Section 42A Report and the Section 42A Addendum Report on this chapter.

5. Conclusion

16. The Panel accepts the recommendations in the section 42A reports and where noted above, the evidence filed by the submitters. The reasons for this are those set out in the section 42A reports, the evidence, and provided in this Decision; collectively forming the section 32AA assessment informing this Decision.
17. Overall, the Panel is satisfied that the provisions of the Chapter as amended will provide suitable thresholds to enable earthworks, with standards to manage any adverse effects.
18. The Panel accepts, accepts in part, or rejects the submissions as set out in the Section 42A Reports.

For the Hearing Panel



Greg Hill, Chair

Dated: 19 June 2025

6. Appendix 1 – Submission Table

Earthworks – Submission points in order of s42A report

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 Hauaauru (TRNMTH)	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
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

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
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
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

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
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
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
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</u>	Reject

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
				<u>with significant mineral resources</u> while minimising:	
FS23.200	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 submission points of this nature and requests that Waitomo District Council consider this when finalising the PDP review.</p>	Accept
43.70	GL	Oppose with amendment	EW-P5	<p>Amend EW-P5 as follows:</p> <p><u>Manage</u> Avoid earthworks where their scale and location have the potential to create or exacerbate natural hazards.</p>	Accept
FS23.201	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 submission points of this nature and requests that Waitomo District Council consider this when finalising the PDP review.</p>	Reject

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
30.18	New Zealand Forest Managers Association (NZFM)	Support with amendment	EW-Table 1- Activity Rules	<p>Amend the Earthworks chapter by adding a reference within 'EW-Table 1-Activity Rules' as follows:</p> <p><u>Earthworks associated with plantation forestry are regulated by the National Environmental Standards for Plantation</u></p>	Reject

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
				<u>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.	
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
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> Add a definition for Ancillary rural earthworks' as sought in submission point 27.17.	Reject
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, theresfore TNN oppose the points of this	Accept

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
				submission that are not aligned to our Taiao and cultural values, or those we have noted support for.	
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 the Biosecurity Act 1993</u> <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,</u> 	Accept in part

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
				<u>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 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.	Accept
14.02	NZPIB		Ancillary Rural Earthworks	Add definition as follows " <u>Ancillary Rural Earthworks</u> " Means any earthworks or disturbance of soil associated with: <u>(a) Crop cultivation and associated land preparation (including</u>	Accept in part.

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
				<u>establishment of sediment and erosion control measures);</u> <u>(b) Harvesting of agricultural and horticultural crops (farming);</u> <u>(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, water tanks and troughs, the maintenance of on-farm land drainage networks, and erosion and sediment control measures; and</u> <u>(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.</u>	
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</p>	Accept

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
				Council consider this when finalising the review.	
FS30.09	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 (such as airstrips), and how the definition would be applied to the National Grid Yard specific rule NEGT-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 NEGT-R1 to ensure that the effects can be managed near National Grid.	Accept
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	Reject

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
				<p>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</p> <p>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.</p>	
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. 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>	Reject

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
				And Delete EW-R6(3).	
FS12.12	Manulife Forest Management (NZ) Ltd	Support		Amend EW R6 as proposed.	Reject
FS23.73	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
27.47	Hort NZ	Oppose with amendment	EW-R6 Volume of Earthworks	<p>Amend EW-R6 as follows:</p> <p>5. Earthworks must not exceed a total volume of 1000<u>5000</u> m³ in a single activity or in cumulative activities in any one calendar year, per holding ...</p> <p>8. Earthworks must not exceed a total volume of 2000<u>5000</u> m³ in a single activity or in cumulative activities in any one calendar year, per holding.</p>	Reject

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
				<p>And</p> <p>Add a new point to EW-R6 as follows:</p> <p>10. <u>For any ancillary rural earthworks, there is no limit</u></p>	
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, theresfore 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	<p>Retain EW-R6 (subject to other points made in the submission).</p> <p>And</p> <p>Any consequential amendments required as a result of the relief sought.</p>	Reject
56.10	The Fuel Companies	Support	EW-R6	Retain Rule EW-R6 as notified.	Accept
46.69	FF	Support with amendment	EW-Table 2	<p>Add a new standard to EWR-R6 Volume of Earthworks for all zones and scheduled sites:</p> <p><u>This rule does not apply to land disturbance</u></p>	Reject

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
FS23.237	Te Nehenehenui	Oppose		Oppose where this conflicts with cultural values	Accept
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 interest, TNN opposes submission points of this nature and requests that	Reject

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
				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><u>(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</u></p> <p><u>(b) Land disturbance associated with the replacement and/or removal of underground fuel storage systems and drainage devices.</u></p>	Reject
FS23.265	Te Nehenehenui	Oppose		Te Nehenehenui seeks to enhance the	Accept

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

7. Appendix 2 – Decisions Version of the Chapter

Overview

Earthworks are integral to the use and development of land. Through earthworks, sites and areas of land are altered to create level platforms for buildings or for undertaking other activities. Depending on the site and its characteristics there is the potential for earthworks to generate adverse effects including effects on land stability, erosion and sedimentation, visual amenity values and effects on **people's** health and safety. This plan sets permitted 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. Any person undertaking earthworks is also advised to read the provisions of the relevant Regional Plan.

In addition to the provisions in this chapter, earthworks are also subject to additional provisions in the [natural character](#), [natural features and landscapes](#), [natural hazards](#) and [coastal environment](#) chapters. The provisions in these chapters relate to earthworks close to coastal and water body margins, on scheduled sites and features and in hazard areas and coastal hazard areas. Where the earthworks relate to sites and areas of significance **to Māori, historic heritage and network utilities**, the rules are contained within their relevant chapter. Provisions relating to quarrying activities in the industrial, rural production and general rural zones prevail over provisions in this Chapter.

A number of other regulations manage the effects of earthworks. Certain earthworks are subject to the New Zealand Building Code and may require a building consent under the Building Act 2004. Earthworks affecting archaeological sites may require an authorisation under the New Zealand Pouhere Taonga Act 2014 and some earthworks may also require a resource consent from the relevant Regional Council.

Objective

Refer also to the relevant objectives in Part 2 District - Wide Matters

EW-O1. Earthworks are undertaken in a safe and efficient manner that minimises adverse effects on people, property and the environment.

Policies

Refer also to the relevant policies in Part 2 District - Wide Matters

EW-P1. Enable earthworks where they maintain the stability of land, buildings, structures and network utilities while minimising:

1. Erosion and sediment loss from the site, including loss to reticulated stormwater systems; and
2. The effect of cut or fill faces and retaining structures on the visual amenity and character of the surrounding area; and
3. Significant alterations to natural landforms; and

4. Adverse effects on air quality from objectionable particulate matter.

- EW-P2. Encourage the integrated design of earthworks associated with subdivision, land use and development.
- EW-P3. Manage the adverse effects of earthworks through appropriate development design, mitigation measures and rehabilitation.
- EW-P4. Ensure any earthworks or vegetation removal activities focus on protecting existing indigenous vegetation in the first instance, minimise clearance in the second instance and undertake any measures necessary to rehabilitate the land including restoration and re-planting as a final resort.
- EW-P5. Avoid, remedy or mitigate earthworks where their scale and location has the potential to create or exacerbate natural hazards.

Rules

The rules that apply to earthworks are contained in the tables listed below. To undertake any activity, it must comply with the rules listed in:

- EW - Table 1 - Activities Rules; and
- EW - Table 2 - Performance Standards; and
- Any relevant provision in Part 2 District-Wide Matters; and
- Any relevant provision in Part 3 Area Specific Matters.

Where an activity breaches more than one rule, the most restrictive status shall apply to the activity.

[Refer to Part 1 - How the Plan Works](#) for an explanation of how to use this plan, including activity status abbreviations.

EW - Table 1 - Activities Rules

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 EXCEPT the rules for earthworks in sites and areas of significance to Māori and network utilities are contained within their relevant chapter.	
EW-R1.	Cross references

1. Earthworks must comply with the provisions of the following chapters:
 - (i) For earthworks in a Building Platform Suitability C, the High Risk Flood Zone or 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-R2.	Earthworks for internments in a burial ground, cemetery or urupa (within the burial plot for that interment)	
All zones	Activity Status: PER 1. This rule prevails over all earthworks rules in this plan.	Activity status where compliance is not achieved: N/A
EW-R3.	Earthworks associated with the maintenance or the installation of a park facility or park furniture or pedestrian accessways, walkways or cycleways	
EW-R4.	Earthworks associated with the maintenance and upgrading of existing sportsfields	
All zones	Activity Status: PER	Activity status where compliance is not achieved: N/A
EW-R5.	Earthworks for any other purpose	
All zones	Activity Status: PER Where: 1. All of the performance standards in EW - Table 2 are complied with.	Activity status where compliance is not achieved: RDIS Matters over which discretion is restricted: (a) The matters of discretion associated with any performance standard which cannot be complied with in EW - Table 2.

EW - Table 2 - Performance Standards

EW S1.	Volume of Earthworks	
All zones	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 commercial forestry, or to the construction and maintenance of farm silage pits and existing drains or to the maintenance and upgrading of farm tracks, however these activities must comply with the provisions of EW-R1.	
Residential, commercial, tourism, rural lifestyle, settlement & future urban zones	4. Earthworks must not exceed a total volume of 25 m ³ or a total area of 250 m ² in a single activity or in cumulative activities in any one calendar year, per holding.	Matters over which discretion is restricted: (a) The extent to which the earthworks will detrimentally affect adjoining or adjacent sites through changes in ground level soil drainage, noise, dust, and vibration; and

Industrial, rural production, open space, natural open space & Māori purpose zones	<p>5. Earthworks must not exceed a total volume of 1000 m³ in a single activity or in cumulative activities in any one calendar year, per holding; and</p> <p>6. The rules relating to quarrying activities in the industrial and rural production zones prevail over this rule; and</p> <p>7. ENGY-S7 existing hydroelectric power generation infrastructure prevails over this rule.</p>	<p>(b) The extent to which the earthworks will affect the ability to carry out permitted activities in the relevant zone; and</p> <p>(c) The extent to which erosion and sediment loss from the site will be managed, including sediment loss entering the Controlling Authority's stormwater systems; and</p> <p>(d) The extent to which cut or fill faces and retaining structures will affect the visual amenity of surrounding areas; and</p> <p>(e) The effects from anticipated traffic movements from the site; and</p> <p>(f) The time that the earthworks will be exposed for; and</p> <p>(g) How the site will be rehabilitated and or re-vegetated; and</p> <p>(h) The extent to which the earthworks will affect the natural contours on the site; and</p> <p>(i) The extent to which methods are used to prevent discharge of contaminants into the air; and</p> <p>(j) 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; and</p> <p>(k) Compaction of fill material; and</p> <p>(l) Geotechnical stability.</p>
General rural zone	<p>8. Earthworks must not exceed a total volume of 2000 m³ in a single activity or in cumulative activities in any one calendar year, per holding; and</p> <p>9. The rules relating to farm quarrying and quarrying activities in the general rural zone prevail over this rule.</p>	
EW-S2.	Excavation and Filling	
All zones	<p>1. The cut depth or fill height (measured vertically) must not exceed:</p> <p>(i) Outside the minimum building setback for the underlying zone - 1.5 m; and</p> <p>(ii) Inside the minimum building setback for the underlying zone - 0.5 m; and</p> <p>(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.</p> <p><i>Note: 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</i></p>	<p>Matters over which discretion is restricted:</p> <p>(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</p> <p>(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 or similar in character, intensity and scale to those that previously existed.

Note: The rules relating to quarrying activities in the industrial, general rural and rural production zones prevail over this rule.

Advice notes

Accidental discovery protocol

In the event that an unidentified archaeological site or a wāhi tapu site is located during works, the following applies:

- *Work must cease immediately at that place and within 20 m around the site;*
- *Heritage New Zealand Regional Archaeologist must be notified and apply for the appropriate authority if required;*
- *Notify the appropriate iwi groups or kaitiaki representative of the discovery and ensure site access to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under legislation are met (New Zealand Pouhere Taonga Act 2014);*
- *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;*
- *Works affecting the archaeological site and any human remains (koiwi) must not resume until appropriate authority and protocols are completed.*

If the protocol is not adhered to then Heritage New Zealand can take out prosecution proceedings under the New Zealand Pouhere Taonga Act 2014.

Caves and sinkholes

Check the provisions in the underlying zone, overlay, scheduled site or feature for rules relating to the creation of new entrances into caves, other modifications to cave features, earthworks within a 20 m radius of an entry or opening into any cave/sinkhole and the placement of fill into any cave/sinkhole or within a 20 m radius of an entry or opening into any cave/sinkhole.

Contaminated land

If the site is contaminated or potentially contaminated refer to the contaminated land chapter and the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) 2011.

Regional Council consents

A resource consent for some earthworks may also be required from the Waikato Regional Council or Manawātū Whanganui Regional Council. See the Waikato Regional Council Erosion and Sediment Control Guidelines:
<http://waikatoregion.govt.nz/assets/WRC/WRC2019/TR0902.pdf>

Works in close proximity to any electricity line

Works in close proximity to any electricity line can be dangerous. Compliance with the New Zealand Electrical Code of Practice for Electrical Safe Distances 34: 2001 is mandatory for all buildings, earthworks and mobile plant within close proximity to all electric lines. Compliance with the plan does not ensure compliance with the Code.

8. Appendix 3 – Section 32AA Evaluation

19. A Section 32AA evaluation is only required for any changes that are proposed to the provisions of this plan since the original Section 32 evaluation report for the proposal was completed. The Section 32AA evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes.

Amendments

Overview

In addition to the provisions in this chapter, earthworks are also subject to additional provisions in the natural character, natural features and landscapes, natural hazards and coastal environment chapters. The provisions in these chapters relate to earthworks close to coastal and water body margins, on scheduled sites and features and in hazard areas and coastal hazard areas. Where the earthworks relate to sites and areas of significance **to Māori, historic heritage and network utilities, the rules are contained within their** relevant chapter. The majority of the provisions relating to quarrying activities in the industrial, rural production and general rural zones prevail over provisions in this Chapter.

Effectiveness and efficiency

20. It is considered that the amendment to the overview section is effective and efficient as it will provide a useful signpost for plan users on the location of provisions relating to quarrying.

Costs and benefits

21. There will be no change in costs or benefits, as this is an amendment to the Overview only and does not have any bearing or implications on any other provisions of the Plan. It is simply to ensure greater clarity for plan users on the location of provisions for quarrying activities. It is considered that there are no economic, social, cultural or environmental costs or benefits as a result of this amendment.

Risk of acting or not acting

22. It is considered that there is sufficient information to justify the changes above and there is a need to provide additional clarity.

Decision about most appropriate option

23. The recommended amendment is the most appropriate way to achieve consistency across the Plan.

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

Effectiveness and efficiency

24. To ensure consistency of approach across the Plan and with the purpose of the RMA, the Section 42A Report proposed amending EW-P5 to include the words **remedy and mitigate (the be to replace 'avoid' with manage, noting that manage**

encapsulates the 'avoid, remedy and mitigate approach', however the amended wording will ensure more consistency across the Plan, as it provides consistency in terms of terminology used. Therefore, it is more efficient and effective than the notified policy.

Costs and benefits

25. On balance, there will be no change in cost or benefit, as the amendment is simply to ensure consistency of language used across the Plan.

Risk of acting or not acting

26. It is considered that there is sufficient information to justify the changes above and there is a need to provide for consistency.

Decision about most appropriate option

27. The recommended amendment is the most appropriate way to achieve consistency across the Plan.

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.

Section 32AA: It is considered that as the amendment is just to clarify a referencing error, the scale and significance of the change recommended as a result of the above amendment would not require a full section 32AA evaluation.

EW R6.	Volume of Earthworks
All zones	<ol style="list-style-type: none"> 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, however these activities must comply with the provisions of EW-R1.	
Residential, commercial, tourism, rural lifestyle, settlement & future urban zones	4. Earthworks must not exceed a total volume of 25 m ³ or a total area of 250 m ² in a single activity or in cumulative activities in any one calendar year, per holding.	Matters over which discretion is restricted: (a) The extent to which the earthworks will detrimentally affect adjoining or adjacent sites through changes in ground level soil drainage, noise, dust, and vibration; and (b) The extent to which the earthworks will affect the ability to carry out permitted activities in the relevant zone; and
Industrial, rural production, open space, natural open space & Māori purpose zones	5. Earthworks must not exceed a total volume of 1000 m ³ in a single activity or in cumulative activities in any one calendar year, per holding; and 6. The rules relating to quarrying activities in the industrial and rural production zones prevail over this rule; and 7. ENGY-R23 existing hydroelectric power generation infrastructure prevails over this rule.	(c) The extent to which erosion and sediment loss from the site will be managed, including sediment loss entering the Controlling Authority's stormwater systems; and (d) The extent to which cut or fill faces and retaining structures will affect the visual amenity of surrounding areas; and (e) The effects from anticipated traffic movements from the site; and (f) The time that the earthworks will be exposed for; and
General rural zone	8. Earthworks must not exceed a total volume of 2000 m ³ in a single activity or in cumulative activities in any one calendar year, per holding; and 9. The rules relating to farm quarrying and quarrying activities in the general rural zone prevail over this rule.	(g) How the site will be rehabilitated and or re-vegetated; and (h) The extent to which the earthworks will affect the natural contours on the site; and (i) The extent to which methods are used to prevent discharge of contaminants into the air; and (j) 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. (k) <i>Compaction of the fill material.</i> (l) <i>Geotechnical Stability.</i>

Effectiveness and efficiency

1. The volume of earthworks is controlled by EW-R6. It was proposed to include additional matters of discretion to ensure that the performance standards were similar to other Councils in the Waikato Region who have recently been through a full district plan review process. It is considered that the 2 additional matters of discretion are more effective and efficient as it provides greater certainty for applicants and decision-makers, as this enables a more structured and targeted assessment of effects and more expedient decision-making.

Costs and benefits

2. Financial costs should be reduced through the provision of clear performance standards and assessment matters. This will provide a benefit to Applicants who are applying for resource consent in terms of an assessment against the performance standards. There will also be environmental benefits as a result of the additional matters of discretion.

Risk of acting or not acting

3. It is considered that there is sufficient information to justify the changes above and there is a need to provide for consistency.

Decision about most appropriate option

4. The recommended amendment is the most appropriate way to achieve consistency across the Plan.

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. 2. 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. <p><i><u>Note: The rules relating to quarrying activities in the industrial, general rural and rural production zones prevail over this rule.</u></i></p>	<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.

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.

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)*

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.