

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Section 42A Hearing Report Hearing Stream three

Topic: Earthworks

Process: Freshwater Planning Process/Schedule 1, Part 1 Process

Prepared by: Alisha Vivian

Report Date: 15 April 2025

Hearing Date: 19 May 2025

Contents

Executive Summary.....	1
Interpretation	3
1.0 Introduction.....	4
1.1 Purpose	4
1.2 Scope of this Report	4
1.3 Author.....	4
1.4 Key Issues	5
2.0 Statutory Considerations	6
2.1 Resource Management Act 1991	6
2.2 National Direction	6
2.3 National Policy Statement for Freshwater Management 2020	6
2.4 New Zealand Coastal Policy Statement 2010	8
2.5 National Environmental Standard for Freshwater	8
2.6 Resource Management (National Environmental Standards for Commercial Forestry (NES-CF)).....	8
2.7 National Planning Standards	8
2.8 Regional Policy Statement for the Wellington Region 2013 (Operative)	9
2.9 Proposed Change 1 to the Regional Policy Statement for the Wellington Region	9
2.10 Approach to identifying the freshwater planning instrument	12
2.11 Section 32AA	13
2.12 Trade Competition	13
3.0 Consideration of Submissions and Further Submissions.....	13
3.1 Report Structure	13
3.2 Issue 1: Categorisation of Provisions to the Freshwater Planning Process.....	14
3.2.1 <i>Analysis</i>	14
3.2.2 <i>Recommendations</i>	15
3.3 Issue 2: Earthworks definition.....	15
3.3.1 <i>Analysis</i>	15
3.3.2 <i>Recommendations</i>	21
3.4 Issue 3: Management of earthworks – The practicality of retaining all soil on site during earthworks activities.....	21
3.4.1 <i>Analysis</i>	21
3.4.2 <i>Recommendations</i>	25
3.0 Issue 4: The Discharge Standard.....	25

3.4.3	<i>Analysis</i>	25
3.4.4	<i>Recommendations</i>	29
3.5	Issue 5: Winter shutdown of earthworks	29
3.5.1	<i>Analysis</i>	29
3.5.2	<i>Recommendations</i>	31
4.0	Conclusions	31

Executive Summary

1. This report considers submissions received by Greater Wellington Regional Council ('the Council') in relation to the provisions of Plan Change 1 to the Natural Resources Plan for the Wellington Region ('PC1') as they apply to earthworks.
2. This topic is following the Freshwater Planning Process and Schedule 1, Part 1 Process of the Resource Management Act 1991 ('the RMA').
3. A total of 449 submissions and 762 further submissions were received on this topic. The submissions on this topic seek a range of different outcomes. The following key issues are raised in submissions and are covered by this report:
 - Earthworks definition – The earthworks definition was updated to reflect the National Planning Standards (2019). The definition for earthworks within the NRP excluded a number of activities from being considered earthworks. The new definition consequently results in a number of these activities being subject to consideration under the earthworks rule framework. Submissions seek exclusions to be reinserted into the definition or a rule to provide clear consenting pathway for these activities.
 - Management of earthworks – The practicality of retaining all soil on site during earthworks activities.
 - Discharge standard – The practicality of using total suspended sediments (TSS) as a measure of water quality on earthworks sites and the evidence basis for using 100mg/m³ TSS concentration as an appropriate discharge standard.
 - Winter shut down period – A significant number of submissions state that the winter shut down period does not take into account the scale, nature and duration of works, and do not support the non-complying activity status of works.
4. Other issues raised by submitters in relation to this topic are also covered in the report, along with a range of consequential amendments that have arisen in responding to submissions.
5. As a result of analysing the submissions and key issues, I have recommended a number of amendments to the PC1 provisions to address concern raised.
6. Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, I recommend that PC1 be amended as set out in Appendix 4 of this report. The following key changes are recommended:
 - Earthworks and Stabilisation Interpretations are amended to correctly reference the National Environmental Standards for Commercial Forestry (NES-CF).
 - A new permitted activity rule to provide for a number of activities previously excluded from the earthworks definition of the NRP.
 - Amendments to the "Management of Earthworks Sites" Policies WH.P29 and P.P27 and consequently the permitted and restricted discretionary activity earthworks rules to acknowledge discharges associated with earthworks activities and provide for an associated discharge under the earthworks rule framework.

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

- Policies P.P28 and WH.P30 are amended to reference Nephelometric turbidity units (NTU) as a unit of measure to reflect the nature of earthworks activities. Consequential amendments have been made to the earthworks rules which reference the discharge standard to reflect this.
 - The activity status of activities regulated by Rules WH.R25 and P.R24 “Earthworks” is changed from ‘noncomplying’ to ‘discretionary’. This is reflective of the risk activities of this nature pose to the environment. Changing to a discretionary activity status recognises that the activity is capable of generating a wide range of effects and will still provide Council the ability to decline consent or impose consent conditions to manage any potential adverse effects.
 - That Policies P.P29 and WH.P31 “Winter shut down of earthworks” are deleted. Given the shift in activity status above, this is no longer necessary policy direction.
 - The conditions of ‘Earthworks - Restricted Discretionary’ Rules WH.R24 and P.R23 are amended to provide an opportunity for earthworks located within freshwater management units where target attribute states for total suspended solids are met, to be undertaken during winter as a restricted discretionary activity (as opposed to defaulting to discretionary), subject to conditions imposed during the consenting process.
7. I have also undertaken a section 32AA evaluation for the amendments I have recommended, and this is attached to this report as Appendix 4.
8. For the reasons outlined in the section 32AA evaluation in Appendix 4 and outlined in this report, I consider that the proposed policies and rules with the recommended amendments, are the most appropriate.

Interpretation

9. This report utilises a number of abbreviations and should be read in conjunction with the document 'Plan Change 1 to the Natural resources Plan – List of Abbreviations of Terms and Submitter Names' available on the Plan Change 1 website.¹

¹ [Proposed-Plan-Change-1-to-the-Natural-Resources-Plan-List-of-Abbreviation-of-Terms-and-Submitter-Names-.pdf](#)

1.0 Introduction

1.1 Purpose

10. This report is prepared under section 42A of the RMA. The purpose of this report is to provide the Freshwater Hearings Panel and the Part 1, Schedule 1 Hearings Panel ('the Hearing Panels') with an analysis of submissions received by the Council in relation to the earthworks topic of PC1. I make recommendations as to whether or not those submissions should be accepted or rejected, and where appropriate, provide recommendations for amendments to the PC1 provisions.
11. I have had regard to other section 42A reports including:
 - Hearing Stream 1 'Overarching Matters'
 - Hearing Stream 2 'Ecosystem Health and Water Quality Policies'
 - Hearing Stream 2 'Objectives'
 - Hearing Stream 3 'Rural land use'
 - Hearing Stream 3 'Forestry'
12. This report should be read in conjunction with the Officer's report "Overarching Matters" which provides the background to PC1, the statutory context, scope of the plan change, the approach to the categorisation of provisions, and administrative matters relating to PC1.²

1.2 Scope of this Report

13. PC1 has been notified via two plan-making processes under Schedule 1 of the RMA:
 - The Freshwater Planning Process (FPP) under Part 4, Schedule 1 for the provisions that form the Freshwater Planning Instrument. These provisions are marked in the PC1 document with the freshwater icon.
 - The standard plan-making process in Part 1, Schedule 1 ('P1S1').
14. This report addresses submission points and provisions under both the FPP and P1S1 processes.
15. The provisions of PC1 that are addressed by this report are set out in Appendix 1. This table also includes the relevant page number in the notified plan change document, the relevant plan change process for each provision (FPP or P1S1), and the number of submissions received for each provision.

1.3 Author

16. My name is Alisha Catherine Vivian and I am employed by the Council as Senior Resource Advisor in the Environmental Regulation team. I hold a Bachelor of Science (Geography and Environmental Management) from the University of Otago.

² <https://www.gw.govt.nz/assets/Plans-policies-bylaws/PNRP/Hearing-Documents/HS1/Overarching/Section-42A-Hearing-Report-Overarching-Matters.pdf>

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

17. I have 4 years of experience in resource management and planning. During this time I have predominantly worked in resource consent planning. My work has particularly focused on land development including large earthworks, and urban development and associated discharges.
18. I was not involved in the development of the provisions for PC1, however I have familiarised myself with the process that was followed and with the section 32 evaluation report.
19. I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court (January 2023). I have complied with that Code when preparing my written statement of evidence and I agree to comply with it when I give any oral evidence.
20. The scope of my evidence relates to submission on the policies and rules for each Whaitua chapters in PC1, relating to earthworks. Other than when I state that I am relying on the evidence of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise.
21. Any data, information, facts and assumptions I have considered in forming my opinions are set out. Where I have set out opinions in my evidence, I have given reasons for those opinions.
22. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

1.4 Key Issues

23. A number of submitters raised issues with the range of provisions relating to earthworks. A total of 449 submission points and 762 further submission points were received on the provisions relating to this topic.
24. The following are considered to be the key issues in contention:
 - Earthworks definition – The earthworks definition was updated to reflect the National Planning Standards (2019). The definition for earthworks within the NRP excluded a number of activities from being considered earthworks. The new definition consequently results in a number of these activities being subject to consideration under the earthworks rule framework. Submissions seek exclusions to be reinserted into the definition or a rule to provide clear consenting pathway for these activities.
 - Management of earthworks – The practicality of retaining all soil on site during earthworks activities.
 - Discharge standard – The practicality of using total suspended sediments (TSS) as a unit of measure of water quality on earthworks sites and the evidence basis for using 100mg/m³ TSS concentration as an appropriate discharge standard for works being undertaken as restricted discretionary activity.
 - Winter shut down period – A significant number of submissions state that the winter shut down period does not take into account the scale, nature and duration of works, and do not support the non-complying activity status of works.
25. This report addresses each of these key issues, as well as any other issues raised by submissions.

2.0 Statutory Considerations

The section 42A report for the Overarching topic in Hearing Stream 1 sets out the statutory considerations for PC1 as a whole and this is not repeated here⁴. However, it is necessary to provide the Hearing Panels with more detailed information with regard to how the provisions within the Earthworks topic give effect to national direction, specifically the National Policy Statement for Freshwater (NPS-FM).

2.1 Resource Management Act 1991

26. PC1 has been prepared in accordance with the RMA and in particular, the requirements of:

- Part 2 Purpose and principles
- Section 30 Functions of regional councils
- Section 32 Requirements for preparing and publishing evaluation reports
- Section 32AA Requirements for undertaking and publishing further evaluations
- Section 63 Purpose of regional plans
- Section 64 Preparation and change of regional coastal plans
- Section 66 Matters to be considered by regional council (plans)
- Section 67 Contents of regional plans
- Section 68 Regional rules
- Section 80A Freshwater planning process
- Part 1 and Part 4 of Schedule 1

2.2 National Direction

27. The main purpose of Plan Change 1 is to give effect to the NPS-FM including the implementation of the National Objectives Framework (NOF) within TAoP and TWT of the Wellington Region, in order to give effect to these documents changes are required to be made to policies and rules that manage a range of activities including earthworks to achieve the objectives and target attribute states within TAoP and TWT.

2.3 National Policy Statement for Freshwater Management 2020

28. The National Policy Statement for Freshwater Management 2020 (**NPS-FM**) sets the direction for management of natural and physical resources to achieve healthy waterbodies and freshwater ecosystems. In doing so, it seeks to improve the management of freshwater quality and quantity in New Zealand. The core direction of the NPS-FM is that the health and wellbeing of waterbodies and freshwater ecosystems (applying to both freshwater quality and quantity) must be maintained (where it meets stated environmental outcomes) or improved over time (where it does not meet stated environmental outcomes).

29. The NPS-FM provides key direction for the objectives included in PC1 through the National Objectives Framework (**NOF**) guiding the steps to be undertaken. The NPS-FM also provides a mandatory requirement to include limits as rules in the plan in certain situations. Further

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

detail about the NOF and the NPS-FM can be found in Ms O'Callahan's s42A report for the 'Overarching Matters' topic in Hearing Stream 1³.

30. The NOF sets a framework of attributes representing components of water quality and allows communities to select the state ('band') to be targeted (known as target attribute states (**TASs**)). Councils are not permitted to set TASs below the baseline state or below any specified national bottom line (**NBL**). Where water quality is below a TAS or an NBL, improvement is required. Clause 3.12 of the NPS-FM outlines that limits on resource use must be specified (as rules) to achieve the TASs and Clause 3.14 outlines how limits on resource use can be set.
31. The Council must implement the NOF in a way that reflects Te Mana o te Wai. The concept of Te Mana o te Wai recognises that protecting the health of freshwater protects the health and wellbeing of the wider environment. Included within this is a 'hierarchy of obligations' which prioritises:
 - first, the health and wellbeing of water bodies and freshwater ecosystems
 - second, the health needs of people (such as drinking water)
 - third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.
32. Ensuring this hierarchy is applied to the management of natural and physical resources is the sole objective of the NPS-FM.
33. PC1 gives effect to the NPS-FM by (of relevance to this topic):
 - Including tables of TASs in Objectives WH.P.O9 (Table 8.2 (Whanganui-a-Tara) and P.PO6 and Table 9.2 (Te Awarua-o-Porirua). The relevant attribute state for this topic is suspended fine sediment, otherwise known as visual clarity.
 - Designing regulatory provisions that aim to achieve those TASs within the specified timeframes, either by themselves, or in conjunction with action plans (setting out non regulatory methods).
34. The discussion about the NPS-FM in Ms O'Callahan's s42A report for Overarching Matters topic in Hearing Stream 1⁴ highlighted the government had announced intentions to amend the NPS-FM. More recent announcements from government indicate that a discussion document on an amended NPS-FM will be released in early 2025 but at the time of writing no discussion document has been released.
35. In October 2024 the Resource Management (Freshwater and Other Matters) Amendment Act was passed which (amongst other things) due to changes to section 80A of the RMA barred regional councils from notifying plans or plan changes to give effect to the NPS-FM. PC1 had already been notified prior to that amendment taking effect. .

³ Section-42A-Hearing-Report-Overarching-Matters.pdf (section 2.2)

⁴ [Section-42A-Hearing-Report-Overarching-Matters.pdf](#) (paragraph 69)

2.4 New Zealand Coastal Policy Statement 2010

36. The New Zealand Coastal Policy Statement 2010 (NZCPS) sets the national policy framework for the management of activities in the coastal environment and CMA. The NZCPS is relevant to this plan change, with objectives along with policies and rules of PC1 implementing NZCPS provisions seeking to manage sedimentation and water quality in the coastal environment. Of particular relevance, Policy 22 of the NZCPS requires subdivision, use, or development to not result in a significant increase in sedimentation in the coastal marine area, or other coastal water and to control the impacts of earthworks on sedimentation.

2.5 National Environmental Standard for Freshwater

37. The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) are regulations made under the RMA and which regulate certain activities that pose risks to freshwater and freshwater ecosystems. Anyone carrying out these activities will need to comply with the standards. Each of New Zealand's regional councils are responsible for the consenting and consent monitoring associated with these regulations. The latest version of the NES-F came into effect on 21 September 2023.

2.6 Resource Management (National Environmental Standards for Commercial Forestry (NES-CF))

38. The Resource Management (National Environmental Standards for Commercial Forestry) Regulations (**NES-CF**) 2017 (formerly the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (**NES-PF**)) regulate commercial forestry activities for both carbon and timber production (plantation) forests. The NES-CF is an updated set of regulations following amendments made in 2023 to the NES-PF. These amendments included requirements for exotic continuous-cover forests (permanent or carbon forests) that are deliberately established for commercial purposes and other changes, including management plans for replanting and afforestation and a new permitted activity standard for managing forestry slash at harvest.

39. PC1 proposes new provisions for forestry to reduce sediment from forestry sites entering freshwater. The PC1 provisions prevail over the NES-CF rules. Although PC1 was prepared and notified while the NES-PF was still in place, the Council anticipated that any amendments that may be required to align with the NES-CF could be managed through the submissions and decision-making process for PC1. As noted in the legal submissions in the Right of Reply for Hearing Stream 1⁵, based on the transitional clause in Regulation 4 of the NES-CF, references within the NRP and PC1 to the NES-PF need to be read as references to the NES-CF, unless the context provides otherwise.

2.7 National Planning Standards

40. The National Planning Standards Gazetted in April 2019 mandate a structure and format for planning documents and consistent definitions for commonly used planning terms. Any new

⁵ <https://www.gw.govt.nz/assets/Plans-policies-bylaws/PNRP/Hearing-Documents/HS1/RoR/20241129-GWRC-legal-submissions-in-reply-HS1.pdf>

definitions required for PC1 were intended to be incorporated using definitions from the National Planning Standards where relevant to the scope of PC1 and where able to be used without extending the impact of any changed definitions to affect objectives, policies and rules outside the scope of PC1.

2.8 Regional Policy Statement for the Wellington Region 2013 (Operative)

41. The Regional Policy Statement for the Wellington Region 2013 (**RPS**) sets out the framework and priorities for resource management in the Wellington Region. The RMA requires regional councils to produce a RPS for their region and review it every 10 years. The RPS was made operative on 24 April 2013. The RPS identifies the regionally significant issues for the management of the region's natural and physical resources and sets out what needs to be achieved (objectives) and the way in which the objectives will be achieved (policies and methods).
42. There are four provisions in the Operative RPS relevant to this topic:
- **Objective 29:** *land management practices do not accelerate soil erosion.*
 - **Policy 15:** *Regional and district plans shall include policies, rules and/or methods that control earthworks and vegetation disturbance to minimise:*
 - (a) erosion; and*
 - (b) silt and sediment runoff into water, or onto land that may enter water, so that aquatic ecosystem health is safeguarded.*
 - **Policy 41** (consideration): *When considering an application for a resource consent, notice of requirement, or a change, variation or review of a regional or district plan, particular regard shall be given to controlling earthworks and vegetation disturbance to minimise:*
 - (a) erosion; and*
 - (b) silt and sediment runoff into water, or onto or into land that may enter water, so that healthy aquatic ecosystems are sustained.*
 - **Policy 68** (non-regulatory): *To minimise soil erosion by encouraging sustainable land management practices and take a whole of catchment approach.*

2.9 Proposed Change 1 to the Regional Policy Statement for the Wellington Region

43. Proposed Change 1 to the Regional Policy Statement (RPS Change 1) was notified on 19 August 2022. RPS Change 1 makes changes to the operative RPS primarily in anticipation of significant increases in urban development activity as the National Policy Statement on Urban Development (NPS-UD) and the medium density residential standards (MDRS) take effect in the Region. The Council sought to take an integrated approach to managing resource management issues associated with this increase in urban development activity and RPS Change 1 includes a number of amended and new policies relating to climate change adaptation and resilience, freshwater management, and indigenous biodiversity.
44. Ms O'Callahan provided a summary of how the RPS and Proposed Change 1 to the RPS (**RPS Change 1**) relate to PC1 in her section 42A report for Overarching Matters in Hearing Stream

1⁶. Since that report was published, the Council has made decisions on RPS Change 1 and Ms O'Callahan has provided the Panel with a diagram of how PC1 gives effect to the RPS, including an indication of which provisions are beyond the point of legal challenge and those which are subject to appeal, in her Right of Reply⁷ for Hearing Stream 1. That diagram has been updated to reflect that Council now has no appeals on the Freshwater Chapter provisions in RPS Change 1, as Wellington Water Ltd withdrew its appeal. Accordingly, freshwater provisions noted on the earlier version of this diagram are all now beyond challenge. An updated diagram was provided in Ms O'Callahan's section 42A report for the Objectives topic in Hearing Stream 2. I understand a Council decision to make the freshwater provisions of RPS Change 1 fully operative is pending.

45. The following provisions of the RPS Change 1 are relevant to this topic:

- **Objective TWT:** *Long-term freshwater vision for Te Whanganui-a-Tara*

By the year 2100 a state of wai ora is achieved for Te Whanganui-a-Tara in which the harbour, awa, wetlands, groundwater estuaries and coast are healthy, accessible, sustainable for future generations, and:

1. Mana Whenua practices and tikanga associated with Te Whanganui-a-Tara are revitalized and protected; and

2. Mahinga kai are abundant, healthy, diverse and can be safely gathered by Taranaki Whānui and Ngāti Toa Rangatira and served to Taranaki Whānui and Ngāti Toa Rangatira uri and manuhiri to uphold manaakitanga; and

3. Have mauri/mouri that is nurtured, strengthened and able to flourish and restored natural form and character, and ecosystems that support an abundance and diversity of indigenous species; and

4. Where appropriate, provide for safe access and healthy water quality for the use of all rivers, lakes, wetlands, estuaries, harbours, and the coast for a range of recreational activities including waka ama, swimming, and fishing, fostering an appreciation of and connection to these waterbodies; and

5. Are taken care of in partnership with Taranaki Whānui and Ngāti Toa Rangatira giving effect to the rights, values, aspirations and obligations of Ngāti Toa and Taranaki Whānui that respects the mana of Te Whanganui-a-Tara and the whakapapa connection with Taranaki Whānui and Ngāti Toa Rangatira; and

6. Are resilient to the impacts of climate change; and

7. The use of water and waterways provide for social and economic use benefits, provided that the vision for the ecological health and well-being of waterbodies, freshwater ecosystems and coastal waters is not compromised.

- **Objective TAP:** *Long-term freshwater vision for Te Awarua-o-Porirua*

Te Awarua-o-Porirua harbour, awa, wetlands, groundwater estuaries and coast are progressively improved to become healthy, wai ora, accessible, sustainable for future generations by the year 2100, and:

⁶ [Section-42A-Hearing-Report-Overarching-Matters.pdf](#), paras 41-50

⁷ [Tech Review of Right of reply.docx](#), page 8.

1. *The values of Ngāti Toa Rangatira are upheld by way of revitalising and protecting Ngāti Toa Rangatira practices and tikanga associated with Te Awarua o Porirua; and*
2. *Mahinga kai are abundant, healthy, diverse and can be safely gathered by Ngāti Toa Rangatira and served to Ngāti Toa Rangatira uri and manuhiri to uphold manaakitanga; and*
3. *Have restored and healthy ecosystems that support an abundance and diversity of indigenous species, and have natural form and character and energy that demonstrate kei te ora te mauri (the mauri of the place is intact); and*
4. *Where appropriate, provide for safe access and healthy water quality for people and communities to enjoy a range of recreational activities including waka ama, swimming, and fishing, fostering a strong connection to these waterbodies; and*
5. *Are taken care of in partnership with Ngāti Toa Rangatira giving effect to the rights, values, aspirations and obligations of Ngāti Toa as kaitiaki for the mana of Te Awarua-o-Porirua as a taonga; and*
6. *Are resilient to the impacts of climate change; and*
7. *The use of water and waterways provide for social and economic use benefits, provided that the vision for the ecological health and well-being of waterbodies, freshwater ecosystems and coastal waters is not compromised*

- **Objective 12**

The mana of the Region's waterbodies and freshwater ecosystems is restored and protected by ongoing management of land and water that:

(a) returns the Region's water bodies and freshwater ecosystems to, and thereafter maintains them, in a state of tūhauora/good health; and

(b) improves the health and wellbeing of the Region's degraded waterbodies and freshwater ecosystems; and

(c) applies the Te Mana o te Wai hierarchy of obligations by prioritising:

i. first, the health and wellbeing of waterbodies and freshwater ecosystems,

ii. second, the health needs of people

iii. third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future; and

(d) recognises and provides for the individual natural characteristics and processes of waterbodies including their natural form, and their associated ecosystems; and

(e) incorporates and protects mātauranga Māori and acknowledges and provides for the connections and relationships of mana whenua / tangata whenua with freshwater; and

(f) provides for the ability of mana whenua / tangata whenua to safely undertake their cultural and spiritual practices associated with freshwater, including mahinga kai; and

(g) actively involves mana whenua / tangata whenua in decision-making in relation to the Region's waterbodies; and

(h) includes engagement with communities, stakeholders, and territorial authorities; and

(i) supports the wellbeing and safety of the community, by providing for the ability to carry out recreational activities, in and around freshwater environments; and

(j) supports and protects an abundance and diversity of freshwater habitats for indigenous freshwater species and, where appropriate, the habitat of trout and salmon; and

(k) supports the reasonable, sustainable and efficient use of water for activities that benefit the Region's economy, including primary production activities, innovation and tourism.

- **Policy 15:** *Regional and district plans shall include policies, rules and/or methods to manage the effects of earthworks and vegetation clearance as follows:*

(a) regional plans shall include policies, rules and/or methods that:

(i) control the effects of earthworks and vegetation clearance including through setbacks from wetlands and riparian margins, to achieve the target attribute states for water bodies and freshwater ecosystems, including receiving environments; and

(ii) in the absence of target attribute states, minimise silt and sediment runoff into freshwater and receiving environments, or onto land that may enter water; and

(iii) minimise erosion; and

(iv) manage sediment associated with earthworks except as specified in clause (b)iv.

(b) district plans shall include policies, rules and/or methods that:

(i) require urban development to follow existing land contours, to the extent practicable; and

(ii) minimise the extent and volume of earthworks required for urban development; and

(iii) require setbacks from waterbodies and other receiving environments for vegetation clearance and earthworks activities; and

(iv) manage sediment associated with earthworks less than 3000m²; and

(v) manage subdivision layout and design.

2.10 Approach to identifying the freshwater planning instrument

46. As noted above, part of PC1 has been notified as a FPI. The section 32 report sets out in detail the process the Council followed to determine which provisions constitute the FPI (page 22-32). In summary, a stepped assessment was undertaken in accordance with section 80A of the RMA. I address the categorisation of the relevant provisions to this report in Issue 1 below.

2.11 Section 32AA

47. I have undertaken an evaluation of my recommended amendments to provisions since the initial section 32 evaluation was undertaken in accordance with section 32AA of the RMA.
48. The required section 32AA evaluation for changes proposed as a result of consideration of submissions with respect to this topic is set out in Appendix 4.
49. The section 32AA further evaluation contains a level of detail that corresponds to the scale and significance of the anticipated effects of the amendments that have been recommended in this report. Recommendations on editorial, minor and consequential changes that improve the effectiveness of provisions without changing the policy approach or intent are not re-evaluated.

2.12 Trade Competition

50. Trade competition is not considered relevant to this topic within PC1. There are no known trade competition issues raised within the submissions.

3.0 Consideration of Submissions and Further Submissions

3.1 Report Structure

51. The issues raised in submissions are addressed by sub-issues within this report. Some submissions cross several sub-issues and are therefore addressed under more than one sub-issue heading. Appendix 2 provides a description of the matters raised for each issue in table format, along with the relevant submission point references.
52. The RMA allows the Hearing Panels to address submissions by grouping them either by the provisions to which they relate, or the matters to which they relate.⁸ On this basis, I have undertaken my analysis and evaluation on an issues- and provisions-based approach, rather than a submission-by-submission approach.
53. Appendix 3 sets out my assessment of the categorisation of provisions within the Freshwater Planning Instrument component of PC1 in support of my analysis of submissions seeking re-categorisation to the P1S1 process.
54. Appendix 4 sets out the amendments I am recommending to PC1 as a result of my analysis of submissions. These recommended amendments are supported by an evaluation in accordance with section 32AA of the RMA, which is also provided in Appendix 4.
55. This report should be read in conjunction with the submissions and the summary of those submissions as published on the Council's website⁹. Appendix 5 includes a table setting out all submission points relevant to this hearing topic. In that table I have identified whether I recommend accepting/accepting in part or rejecting/rejecting in part the relief sought by submitters or make no recommendation. My reasons for these recommendations are explained in the body of this report.

⁸ Clause 49(4)(c) of Schedule 1, Part 4 of the RMA for the Freshwater Hearings Panel and Clause 10(3) of Schedule 1, Part 1 of the RMA for the P1S1 Hearings Panel.

⁹ [Greater Wellington — Proposed Change 1 to the Natural Resources Plan Submissions \(gw.govt.nz\)](https://www.gw.govt.nz/greater-wellington-proposed-change-1-to-the-natural-resources-plan-submissions)

3.2 Issue 1: Categorisation of Provisions to the Freshwater Planning Process

3.2.1 Analysis

56. At the time of notification of PC1, section 80A of the RMA provided the relevant tests for determining which parts of PC1 should form part of the FPI. While an amendment to section 80A(4)(b) was made post notification of PC1,¹⁰ and a further amendment to section 80A was then made through the insertion of section 80A(4A),¹¹ those amendments do not have retrospective effect to PC1. Regardless, the amendment to section 80A(4)(b) of the RMA related to the date by which the Council was to notify a freshwater planning instrument to give effect to the NPS-FM 2020 (a change from 31 December 2024 to 31 December 2027) and the addition of section 80A(4A) prevented new freshwater planning instruments being notified, as opposed to the content of an FPI or categorisation of provisions.
57. I have not considered the amended version of section 80A as part of this assessment and instead have assessed the relevant FPI provisions against the version of section 80A as it was when PC1 was notified.
58. Section 80A of the RMA provided that:
- regional coastal plan provisions are not part of a freshwater planning instrument (section 80A(8));
 - any part of PC1 that relates to objectives that give effect to the NPS-FM 2020 are part of a freshwater planning instrument (sections 80A(2)(d)(i) and 80A(6B)(a));
 - any part of PC1 which relates to freshwater, where the Council has decided to use the freshwater planning process is part of a freshwater planning instrument (section 80A(2)(d)(ii)); and
 - a proposed regional plan relates to freshwater if (section 80A(6A)):
 - i. it relates (in whole or in part) to an objective of the NRP or the RPS; and
 - ii. the objective relates to the performance of a function in section 30(1)(c), (e), (f), (fa), (g) or (ga).
59. The process the Council followed in determining which provisions should be notified as part of the FPI and which provisions should be part of the P1S1 process is set out in section 6.1 of the Section 32 report that was prepared in support of PC1¹².
60. I have assessed each provision addressed by this report according to the tests that were applied to categorise each provision in PC1 to either the FPP or to the P1S1 process at the time of notification, consistent with the Council's understanding of section 80A at the time.
61. The result of my assessment is provided in Appendix 3. In summary, I agree with the categorisation of the freshwater provisions to the FPP undertaken when PC1 was notified.
62. I note the submission of Winstone Aggregates [S206.022] raises concern with provisions being subject to the FPP where freshwater is only a peripheral issue to which the provision

¹⁰ Section 80A(4)(b) was amended on 12 December 2023 by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023.

¹¹ Resource Management (Freshwater and Other Matters) Amendment Act 2024, section 21(2)

¹² [Proposed-Plan-Change-1-Section-32-report.pdf \(gw.govt.nz\), from page 22.](#)

relates, and the submitter considers this scenario represents an inappropriate use of the FPP, resulting in restricted appeal rights. As part of my assessment of the provisions addressed by this report in terms of the tests applied to categorise to either the FPP or to the P1S1 process at the time of notification, I have also considered whether the freshwater issue is peripheral or not for each of the provisions of this topic.

63. In specifically addressing the Winstone Aggregates submission, the only provisions within this topic that have been assigned to the FPP process are permitted activity earthworks Rules WH.R23 and P.R22. Additionally, there are three submissions by Horokiwi Quarries Ltd [S2.037], Transpower New Zealand Limited [S177.041] [S177.067], Winstone Aggregates [S206.0059] [S206.087], which raise concerns regarding the categorisation of these provisions into the FPP, given the rules do not permit any discharges associated with the activity. I disagree with these submissions, the provisions, (at notification of PC1) while not permitting a discharge, are related to the wider objectives of controlling sediment discharges to freshwater and therefore give effect to the NPS-FM. Accordingly, I recommend these submissions should be rejected in so far as they relate to the provisions contained within the earthworks topic.
64. The result of my assessment in Appendix 3 and here is that I agree with the categorisation of the freshwater provisions to the FPP undertaken when PC1 was notified.
65. However I note that I recommend amendments to Rules WH.R23 and P.R22 that would expand the application of those rules beyond discharges to freshwater to also regulate discharges to coastal water. As such, I note that if the Panel were to accept my recommended amendments to these provisions in section 3.3 and 3.4 below, these provisions would therefore need to be recategorised into the P1S1 process. This is due the provisions then applying in the coastal marine area, resulting in the provisions forming part of the regional coastal plan component of the Natural Resources Plan, which would result in the provisions' exclusion from being considered a freshwater planning provision by virtue of section 80A(8) of the RMA.

3.2.2 Recommendations

66. I recommend that the Winstone Aggregates submissions [S206.022], [S206.0059] [S206.087], Transpower New Zealand Limited submissions [S177.041] [S177.067] and Horokiwi Quarries Ltd submission [S2.037], and associated further submissions be rejected, as detailed in Appendix 5, subject to the outcomes in respect of my recommendations in Issue 3 below, and of subsequent hearing reports that may address the same submission point number in relation to other PC1 provisions.

3.3 Issue 2: Earthworks definition

3.3.1 Analysis

Submissions in Support

67. I acknowledge submissions by Wellington City Council [S33.007], Yvonne Weeber [S183.013], Guardians of the Bay Inc [S186.008], New Zealand Carbon Farming Group [S263.012] and Pareraho Forest Trust [213.001] who have written in support of the new definition. I recommend that these submissions are accepted in part, as the amendments

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

to this definition I have recommended below will be minor without substantially changing the intent.

Natural Resources Plan earthworks exclusions:

68. I acknowledge the 71 submissions which raise concern regarding the consequences of updating the earthworks definition to reflect that of the National Planning Standards (2019). The earthworks definition within the NRP excluded a number of activities from the definition, which consequently resulted in the following activities being able to be carried out, without being subject to the earthworks rule framework.

- Cultivation of the soil for the establishment of crops or pasture, and
- The harvesting of crops, and
- Thrusting, boring, trenching or mole ploughing associated with cable or pipe laying and maintenance, and
- The construction, repair, upgrade or maintenance of:
 - (i) Pipelines, and
 - (ii) Electricity lines, and
 - (iii) Telecommunication structures or lines, and
 - (iv) Radio communication structures, and
 - (v) Firebreaks or fence lines, and
 - (vi) A bore or geotechnical investigation bore, and
- Repair or maintenance of existing roads and tracks, and airfield runways, taxiways, and parking aprons for aircraft, and
- Maintenance of orchards and shelterbelts, and
- Domestic gardening, and
- Repair, sealing or resealing of a road, footpath, driveway, and
- Discharge of cleanfill material.

69. Submissions have identified that due to the removal of these exclusions from the earthworks definition, the following activities are now likely to require a resource consent to continue due to the linear nature of the activity, or requirement for regular maintenance:

- repair or maintenance of existing roads and tracks, and airfield runways, taxiways, and parking aprons for aircraft
- repair, sealing or resealing of a road, footpath, driveways
- thrusting, boring, trenching or mole ploughing associated with cable or pipe laying and maintenance
- the construction, repair, upgrade or maintenance of pipelines, electricity lines and their support structures, telecommunication structures or lines, radio communication structures

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

70. These activities enable the operation, maintenance and upgrade of lifeline utilities and regionally significant infrastructure. Submissions raise concern that the consequential recategorisation as 'earthworks' has the potential to delay the ongoing and timely maintenance of transport and water infrastructure networks and add an unnecessary and potentially costly consenting burden for activities that form part of ongoing operational requirements. Submissions consider no justification has been provided for this change and seek retention of the Natural Resources Plan definition of earthworks for all Whaitua.
71. The National Planning Standards Gazetted in April 2019 mandate a structure and format for planning documents and consistent definitions for commonly used planning terms. Any new definitions required for PC1 were intended to be incorporated using definitions from the National Planning Standards where relevant to the scope of PC1 and where able to be used without extending the impact of any changed definitions to affect objectives, policies and rules outside the scope of PC1.
72. I believe the incorporation of the earthwork's definition from the National Planning Standards has had an unintended impact on the ability for the above activities to be carried out as permitted activities. These activities are linear in nature and often expand over multiple properties, therefore are unlikely able to meet the permitted activity rule for earthworks within these Whaitua.
73. These submissions seek for the exclusions to be reinstated into the earthwork's definition. I believe the definition proposed in PC1 is suitable, and the result sought by these submissions can be addressed with the insertion of a new permitted activity rule to allow these activities to continue subject to conditions. I therefore recommend these submissions are accepted in part and the new permitted activity rule below is recommended to address these submissions.

Earthworks and the associated discharge of sediment and/or flocculant into a surface water body or coastal water or onto or into land where it may enter a surface water body or coastal water, including via a stormwater network, associated with:

(a) thrusting, boring, trenching or mole ploughing associated with cable or pipe

laying and maintenance, and

(b) the construction, repair, upgrade or maintenance of:

(i) pipelines, and

(ii) electricity lines and their support structures, including the National Grid, and

(iii) telecommunication structures or lines, and

(iv) radio communication structures, and

(v) firebreaks or fence lines, and

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

(c) repair or maintenance of existing roads and tracks, and airfield runways, taxiways, and parking aprons for aircraft;

Is a permitted activity provided the following conditions are met:

- 1. the earthworks shall not occur within 5m of a surface water body or the coastal marine area;*
 - 2. soil or debris from earthworks is not placed where it can enter a surface water body or the coastal marine area, including via a stormwater network, and*
 - 3. the area of earthworks must be stabilised within six months after completion of the earthworks, and*
 - 4. erosion and sediment control measures shall be used to prevent a discharge of sediment where a preferential flow path connects with a surface water body or the coastal marine area, including via a stormwater network.*
74. I also acknowledge the submission from Forest and Bird [S216.014] which seeks the full text definition from the National Environmental Standards is included in the new earthworks definition to assist plan users. As discussed in paragraph 71, the new earthworks definition has come from the The National Planning Standards Gazetted in April 2019, which mandated a structure and format for planning documents and consistent definitions for commonly used planning terms. The new definition is included in full text from the National Planning Standards 2019. I therefore recommended accepting this submission and relief sought.

Variability across Whaitua

75. 56 submissions and numerous further submissions in support raised concerns about multiple definitions being used across Whaitua. Seven submissions seek to retain the operative definition across all Whaitua, and one seeks to apply the new definition across all Whaitua.
76. The Council has taken a two-staged approach to implement the NPS-FM, which began in 2012 under the NPS-FM 2011. The first stage involved reviewing all 5 regional plans (Regional Soil Plan, Regional Coastal Plan, Regional Freshwater Plan, Discharges to Land Plan) and combining these into one integrated regional plan, the Natural Resources Plan.
77. Stage two of the programme is development of catchment-specific plans for each Whaitua to fully implement the NPS-FM with the community and mana whenua.
78. Each Whaitua process is run by a committee of community members, mana whenua and local authorities' representatives appointed by the Council. Each Whaitua Committee is tasked with developing a Whaitua Implementation Programme (WIP) outlining the goals for the health of waterways and recommendations on the regulatory and non-regulatory settings for integrated land and water management within their Whaitua, including measures to implement the NPS-FM.
79. Each Committee's recommendations to Council have informed, and continue to inform, investment and programme design and delivery, as well as driving changes to statutory planning documents. The Council will undertake a series of changes to the NRP based on the recommendations of each WIP, of which PC1 is the first.

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

80. The Council will undertake further changes to the NRP to incorporate the recommendations of the WIPs from the Ruamāhanga, Kāpiti and upcoming Wairarapa Coast Whaitua processes, as well as for water quantity issues in TWT, in order to implement the NPS-FM in full.
81. Consequently, provisions across Whaitua will vary based on aspirations and recommendations of each Whaitua committee based on aspirations for health of waterways within the Whaitua.
82. I also note that PC1 definition for 'earthworks' aligns with the National Planning Standards, and only applies to the TWT and TAoP geographic areas. The existing earthworks definition continues to apply to all other whaitua. Councils are required to implement the National Planning Standards either 10 years from when the standards come into effect, or notification of a proposed regional plan (But not a proposed change or variations) under clause 5, Schedule 1 of the RMA. While not required at this stage due to this being a Plan Change as opposed to a new plan, this presents a useful point to begin progressively implementing the NPS 2019 definitions through each of the Whaitua processes, particularly given that the NRP is relatively recent (July 2023). I therefore recommend these submissions are rejected.

Cleanfill

83. Civil Contractors New Zealand [S285.006] considered the addition of "to a cleanfill area" to (i) of the earthworks definitions is problematic as there are constraints around the availability of cleanfill sites, the submitter states that this insertion could hamper the ability to deliver infrastructure projects. The insertion of "to a cleanfill area" is only an administrative change to provide clarity regarding this clause and does not change the meaning of that which currently exists within NRP, or the management of discharge of cleanfill controlled by Rule R80 of the NRP. Accordingly, I recommend rejecting this submission.

Gardening exclusion

84. Christine Stanley [S26.009] seeks for an amendment to be made to expressly allow gardening, cultivation and fence maintenance as permitted activities, to avoid unintended interpretation. Rules WH.R23 and P.R22 already enable these activities to be undertaken as a permitted activity within Whaitua Te Whanganui-a-Tara and Te Awarua-o-Porirua Whaitua, subject to meeting the conditions of the respective rule. Where the activities are unable to meet the conditions of the rule, they are likely to pose a risk to freshwater and therefore should be subject to resource consent in the same way as other earthworks activities due to the scale and nature of the activity. I note for completeness that gardening, cultivation and fence maintenance is excluded from the earthworks definition for all other Whaitua. I recommend rejecting this submission and relief sought.

Forestry

85. I also acknowledge the submissions from China Forest Group Company New Zealand Limited [S288.030] [S288.058] [S288.059] [S288.100] [S288.101] [S288.102] [S288.117] [S288.073] [S288.073] and PF Olsen Ltd [S18.056] [S18.037] [S18.038] [S18.064] [S18.065] [S18.066] which request clarification regarding the earthworks rules and interpretation and whether they apply to plantation forestry related earthworks.
86. I note that the new PC1 earthworks definition for Whaitua Te Whanganui-a-Tara and Te Awarua-o-Porirua Whaitua explicitly states that for the purposes of Rules WH.R20, WH.R21

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

and P.R19 and P.R20 (Plantation forestry) 'earthworks' has the same meaning as given in section 3 of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017. Plantation forestry related earthworks operating under Rules WH.R20, WH.R21 and P.R19 and P.R20 are therefore not defined by the PC1 definition of earthworks and are not subject to the standard earthworks rules or interpretation.

87. I note that the S42 Report "Forestry and Vegetation Clearance" has recommended significant changes to the forestry and vegetation clearance provisions, including the deletion of WH.R21 and P.R20. I have therefore recommended changes to the earthworks definition to reflect these recommendations by deleting reference to these rules and inserting the wording '*forestry related activities*' to clarify that the PC1 earthworks definition does not apply to forestry related earthworks.
88. I am of the opinion that the removal of this reference in the earthworks definition provides the clarification sought by PF Olsen and China Forest Group Company New Zealand Limited and therefore recommend accepting these submissions and relief sought, as detailed in Appendix 5, subject to the outcomes in respect of subsequent hearing reports that may address the same submission point number in relation to other PC1 provisions.
89. I acknowledge the submission from Guildford Timber Company Limited, Silverstream Forest Limited and the Goodwin Estate Trust [S210.006] received which identifies that the incorrect National Environmental Standard is referred to in the definition. The definition at notification refers to The National Environmental Standards for Plantation Forestry (NES-PF) which was the correct title at the time of notification. This National Environmental Standard has been replaced by the National Environmental Standard for Commercial Forestry (NES-CF). For the reasons discussed in section 2.6 of this report, references within the NRP and PC1 to the NES-PF need to be read as references to the NES-CF, unless the context provides otherwise. I recommend these submissions are accepted and have made recommendation to reflect the changes sought.

Stabilisation definition

90. Four submitters including Kāinga Ora - Homes and Communities [S257.007], Guildford Timber Company Limited, Silverstream Forest Limited and the Goodwin Estate Trust [S210.010], Upper Hutt City Council [S225.042] and Yvonne Weeber [S183.042] have expressed support for the new definition and seek for it to be retained as notified. I therefore recommending accepting these submissions and relief sought.
91. Woodridge Holdings Ltd [S255.015] consider that by only applying this definition to part of the region, it is confusing and inequitable and seek relief through providing one definition for the entire region.
92. As discussed in Paragraph 65-71, each Whaitua Committee is tasked with developing a Whaitua Implementation Programme (WIP) outlining the goals for the health of waterways and recommendations on the regulatory and non-regulatory settings for integrated land and water management within their Whaitua, including measures to implement the NPS-FM.
93. Each Committee's recommendations to Council have informed, and continue to inform, investment and programme design and delivery, as well as driving changes to statutory planning documents. The Council will undertake a series of changes to the NRP based on the recommendations of each WIP, of which PC1 is the first.

94. The Council will undertake further changes to the NRP to incorporate the recommendations of the WIPs from the Ruamāhanga, Kāpiti and upcoming Wairarapa Coast Whaitua processes, as well as for water quantity issues in TWT, in order to implement the NPS-FM in full. Consequently, provisions across Whaitua will vary based on aspirations and recommendations of each Whaitua committee based on aspirations for health of waterways within the Whaitua. I therefore recommend rejecting the relief sought by Woodridge Holdings Ltd [S255.015]
95. I also acknowledge the submissions from PF Olsen [S18.009] and China Forest Group Company New Zealand Limited [S288.030] which seek clarification regarding the new definitions for “*Stabilisation*” and whether this applies to forestry related earthworks. The Stabilisation interpretation only applies to “earthworks” within Whaitua Te Whanganui-a-Tara and Te Awarua-o-Porirua Whaitua. Given forestry related activities are not considered earthworks under this definition as explained in paragraphs 75 – 76 above, this interpretation does not apply to forestry related activities operating under Rules WH.R20, WH.R21 and P.R19 and P.R20 (Commercial forestry) of PC1. I therefore these submissions and subsequent further submissions be accepted (Subject to change following subsequent hearing reports that may address the same submission point number in relation to other PC1 provisions.

3.3.2 Recommendations

96. I recommend that the earthworks definition is amended to correctly reference to the NES-CF and reflect recommendations of the “S42A Hearing report “Forestry and Vegetation Clearance” as shown in Appendix 4.
97. I also recommend that a new permitted activity rule (as shown in paragraph 75) is inserted to allow for those activities that have been unintentionally affected by the new earthworks definition.
98. I recommend that the submissions and further submissions be accepted, accepted in part, rejected, or noted as no recommendation as detailed in Appendix 6.

3.4 Issue 3: Management of earthworks – The practicality of retaining all soil on site during earthworks activities

3.4.1 Analysis

Use of term “risk” in the chapeau of Policies WH.P29 and P.P27

99. Eight submissions and 12 further submissions suggested the word “risk” should be replaced with “adverse effects” in the chapeau in WH.P29 and P.P27, on the basis that resource management policies should seek to manage actual and potential adverse effects of an activity, as opposed to risks generally. I agree with these submitters that the word ‘risk’ is not appropriate terminology to be using in this circumstance and therefore recommend accepting the relief sought by these submitters. This change has been reflected in the recommended amendments to provision in Appendix 4.

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

Submissions in support of Policies WH.P29 and P.P27

100. Taranaki Whānui, Civil contractors New Zealand, Porirua City Council, Guildford Timber Company Limited, Silverstream Forest Limited and the Goodwin Estate Trust, Enviro NZ Services Limited, Yvonne Weeber, Fulton Hogan, and Wellington City Council support these policies and seek no changes. I recommend accepting these submissions in part.

Submissions in general opposition of Policies WH.P29 and P.P27

101. Wairarapa Federated Farmers [S193.089] [S193.198] (Opposed by Forest and Bird [FS23.1045] [FS23.094]) and supported by Meridan Energy Limited [FS47.319], considers matters addressed by these policies are already addressed by the existing NRP provisions and subsequent mediated agreements and seeks the deletion of Policies WH.P29 and P.P27. I disagree with this submission, PC1 involves the development of catchment-specific plan provisions for each Whaitua to fully implement the NOF aspect of the NPS-FM. The existing NRP provisions do not act in this way. I therefore recommend rejecting this submission.

NPSFM Setbacks

102. Environmental Defence Society [S222.049] [S222.092] [S222.063] [S222.105] and Forest and Bird [S261.090] [S261.169] consider setback distances from waterways (of 10m or more) are an effective method of ensuring fine sediment particles from earthworks are prevented from entering waterbodies. Forest and Bird's submission seeks to add a new clause requiring setback distances for earthworks of no less than 10 metres from surface water bodies, ephemeral watercourses, and the coastal marine area. Environmental Defence Society seeks an amendment be made to WH.P29 and P.P27 to give effect to the NPS-FM via 10m setbacks.

103. Wellington Fish and Game and Wellington Regional Council's [S188.064] [S188.065] submission considers that if the Erosion Sediment Control Guidelines (2021) were sufficient, compliance with these guidelines would be adequate in ensuring no sediment entered waterways from earthworks, the submitters seek increased measures to control sediment inputs into waterways.

104. Policies WH.P29 and P.P27 relate to managing all earthworks activities, including those within close proximity to waterbodies. The erosion sediment control guidelines provide clear guidance on controlling sediment during earthworks activities and I believe that these policies in combination with the rule framework is sufficient in managing earthworks related discharges. The NPS-FM does not require 10m setback distances to be included in regional plans. I note that the National Environmental Standards – Freshwater requires setback distances of 10m for earthworks within proximity to Natural Wetlands but not all waterbodies.

105. The submissions from Forest and Bird [S261.090] [S261.169] also seek for permitted activity earthworks rules WH.R23 and P.R22 to require setback distances from ephemeral watercourses in addition to surface water bodies. Ephemeral watercourses are defined in the NRP as a watercourse that:

- Has a bed that is predominantly vegetated, and
- Only conveys or temporarily retains water during or immediately following rainfall events, and

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

- Does not convey or retain water at other times, and
- Is not a wetland.

106. Six further submissions [FS8.024] [FS25.044] [FS26.023] [FS9.443] [FS20.032] were received in opposition of this submission, all raising concern regarding the consequences including ephemeral watercourses would have on the application of the rule, particularly highlighting that ephemeral watercourses are not mapped and due to the broad definition are difficult to clearly define, and therefore will lead to significant uncertainty in the spatial application of these rules.

107. In addition to the above, the Permitted Activity rules for earthworks (WH.R23 and P.R22) require no soil or debris from earthworks to be placed where it can enter a surface water body or the coastal marine area as a condition of the rule. I therefore recommend rejecting these submissions, as in my opinion the proposed rules as notified provide the appropriate level of safeguard to freshwater during earthworks without increasing the setback distances and therefore recommend rejecting the submissions of Environmental Defence Society, Wellington Fish and Game Regional Council and Forest and Bird.

Impracticality of retaining all soil and sediment on site

108. A large number of submitters have discussed through submissions the inability for all soil to be retained on site during earthworks, and that the new policies P.P29 and P.P27 and related rules WH.R23 and P.R22 do not account for any soil and sediment that may need to be removed from site in a controlled manner.

109. Submissions seek for clause (a) of Policies WH.P29 and P.P27 and condition (g) of Rules WH.R23 and P.R22 be amended to refer to uncontrolled loss of soil and sediment, rather than requiring all soil and sediment to be retained on site

110. Due to the natural topography of earthworks sites across the region, the likelihood of a discharge during rainfall events is high, I am of the opinion that it can be impracticable in some circumstances (E.g steep driveways) to retain all discharges on site, even when operating in accordance with best practice guidelines, for this reason erosion sediment control devices are often designed to manage discharges during certain weather events and are constructed to allow for discharges during extreme weather events and rainfall. In addition to this, it is widely acknowledged that erosion sediment control devices when performing well, are still unlikely to achieve 100% removal of sediment, particularly in clay soils seen widely across the Wellington Region.

111. As a consequence of not allowing any discharge from earthworks activities undertaken as a permitted activity, the inevitable discharges of sediment associated with earthworks are unintendedly assessed under R91 of the NRP (Minor Discharges). This rule permits 100g/m³ of suspended solids to freshwater. I note that this is an unintended consequence of the PC1 provisions, as they were drafted intentionally to disallow any discharges from small earthworks sites as a mechanism for reducing total suspended sediment from entering surface water bodies.

112. I recommend accepting these submissions and relief sought by inserting the wording "*the associated discharge of sediment and/or flocculant into a surface water body or coastal water or onto or into land where it may enter a surface water body or coastal water, including via a stormwater network*" into the chapeau of rules WH.R23 and P.R22.

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

113. I also acknowledge the submission from David McKeivitt [S190.001] [S190.005] supported by Orogen Limited [FS34.044] [FS34.045] that highlights the technical reports for PC1 reference studies which specify that the removal of all sediment from devices is less than 100%.
114. Kāinga Ora – Homes and Communities [S257.024] [S257.052] submission support the inclusion of Policies WH.P29 and P.P27, however question whether the practices set out in the document and related rule framework are capable of delivering the outcomes set out in these policies.
115. Upper Hutt City Council [S225.091] (opposed by Forest & Bird [FS23.919] and supported by Wellington City Council [FS36.045]) consider that the contents of the policy is reasonable for larger projects but may not be reasonable for smaller projects such as maintenance of driveways and footpaths. The submission sees an amendment to identify a scale or threshold this policy should apply at.
116. I agree that it is impracticable to require no discharges of sediment from earthworks sites and have made recommendations in Section 3.4.2 below to provide for inevitable discharges associated with earthworks undertaken at all scales. This amendment also addresses the unintended consequences identified in paragraph 86, and ensures earthworks associated discharges are assessed under the activity related provisions.
117. I acknowledge the submission of Taranaki Whānui [286.060] [286.088], (Supported by Rangitāne o Wairarapa [FS24.060] Wellington City Council [S33.053] [S33.103], Fulton Hogan Limited [S43.024] [S43.012], which support the inclusion of these policies and seek for them to be retained as notified. I recommend these submissions are accepted in part. The minor amendment to the policies will not change the intent or application of these policies.
118. I also acknowledge the submissions by Winstone Aggregates [S206.075] which raises concern regarding the wording of policies and WH.P30 and P.P28 which refers to discharges to "an existing or new stormwater network" and "artificial watercourse" as a receiving environment. The submitted considers the policy can only regulate discharges where they enter "water", in accordance with RMA s15, and that water within a stormwater network is not subject to Regional Council jurisdiction and therefore seeks for this to be deleted from the policies. This policy should refer to discharges 'via' an existing or new stormwater network". I have recommended changes to the policy to reflect this. I therefor recommend accepting these submissions in part.

Restricted Discretionary activity status

119. I acknowledge the submissions from Forest and Bird [S261.117] [S261.194] which raise concern regarding the 'restricted discretionary activity' status of Rules WH.R24 and P.R23 as the 'matters of discretion are not wide enough'. I am of the opinion that the potential adverse effects of earthworks related activities are well understood and the matters of discretion listed in the rule are robust and will ensure sediment related effects are a managed appropriately. I therefore recommend rejecting these submissions.
120. I acknowledge the submission of Taumata Arowai which raises concern regarding the failure of Rules WH.R24 and P.R23 to recognise proximity to drinking water supply (community drinking water supply and group drinking water supply). The submission seeks for the provisions to be amended to reflect the appropriate legislative changes. I acknowledge that the reference 'community drinking water supply and group drinking water supply' reference

was sourced from the Health (Drinking Water Amendment Act) 2007 which has now been repealed. I am of the opinion that these references are still suitable and are defined in the definitions section of the NRP.

3.4.2 Recommendations

121.I recommend that the "Management of Earthworks Sites" Policies WH.P29 and P.P27 are amended to refer to "*uncontrolled*" soil, to provide for any associated discharge of sediment in relation to earthworks activities and clarify that these policies refer to the uncontrolled loss of soil, and not those remaining in discharges following appropriate treatment via erosion sediment control devices. These amendments will also ensure that all discharges associated with earthworks activities are managed under the earthworks rule framework.

122.I also recommend inserting the wording "*the associated discharge of sediment and/or flocculant into a surface water body or coastal water or onto or into land where it may enter a surface water body or coastal water, including via a stormwater network*" into the chapeau of rules WH.R23 and P.R22 to ensure that any discharges from small earthworks sites are provided for and accessed under the appropriate provisions specific to the nature of the activity.

123.I also recommend that the word "risk" should be replaced with "adverse effects" in the chapeau in Policy WH.P29 and P.P27, on the basis that resource management policies should seek to manage actual and potential adverse effects of an activity, as opposed to risks generally.

124.I recommend that the submissions and further submissions be accepted, rejected, or noted as no recommendation as detailed in Appendix 6.

125.I recommend amending policies Policy WH.P29 and P.P27 to manage discharges to surface water bodies including *via "an existing or new stormwater network"* to ensure that discharges are being regulated in accordance with S15 of the RMA.

3.0 Issue 4: The Discharge Standard

3.4.3 Analysis

Appropriateness of the discharge standard

126.Kāinga Ora - Homes and Communities [S257.025] [S257.053] [S257.037] [S257.065], David McKevitt [S190.001] [S190.005] [S190.008], Orogen Limited [S239.010] [S239.018] supported by PCL Contracting Ltd [FS32.033] [FS32.051] have questioned the 100g/m³ discharge standard referenced policies WH.P30, P.P28 and Rules WH.R24 and P.R23 of PC1. Concerns are related to the lack of technical publications to support the standard; submitters seek a review of the standard and practicality of use relative to earthworks activities.

127.11 submissions identify that the S32 technical reports refer to a reduction in annual sediment load of 40% per year but no connection has been made between this target reduction and the proposed standard. I note that the evidence of Mr Blyth¹³ recommends

¹³ [HS2-GWRC-Technical-Evidence-of-Mr-James-Blyth-280225-Load-reductions-to-meet-visual-clarity-TAS-3.pdf](#)

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

that Table 8.5 and Table 9.4 in PC1 be updated to remove sediment loads (Tonnes/year) from CP1, and focus instead on a relative (%) reduction in suspended sediment load as determined by established relationships of paired suspended sediment and visual clarity. The reasons and updates to the technical approach at paragraphs 20 – 29 of his evidence provides further clarification on the reduction target and its appropriateness in both TWT and TAoP Whaitua. I recommend accepting the submissions on the basis. The clarification sought has not been provided through the evidence of Mr Blyth.

128. Under the existing NRP, there are no specific standards included in the NRP which manage discharge of sediment associated with earthworks. Any discharge standards are imposed through conditions of consent. Works undertaken under R101 (Permitted Activity Earthworks) must be in accordance with the Erosion Sediment Control Guidelines for Land Disturbing Activities in the Wellington Region, which sets the standard for implementing methods and devices for minimising erosion and sedimentation. The guidelines are representative of best practice and therefore small-scale earthworks which are able to meet all other conditions of the permitted activity rule, should be able to be undertaken in a manner that ensures effects on the environment, particularly sediment laden discharges, are minimised.
129. BP Oil NZ Ltd, Mobil Oil NZ Ltd, Z Energy Ltd - The Fuel Companies [S258.045] [S258.0 in addition to raising concerns regarding the appropriateness of the discharge standard, consider some sites may automatically not comply due to natural factors including soil type, slope, rain intensity and nature and scale of the works, and consequently fall into a non-complying activity status. In my opinion, sites that are of a nature in which contractors are unable to control the sediment discharging from the site due to the factors listed above would potentially result in more than minor adverse effects and therefore consider it is appropriate to require measures are put in place through a consent process to ensure these effects are mitigated. However, I agree that a discharge of sediment off-site does not necessarily result in effects being minor or more than minor and therefore do not agree that activities of this nature must automatically cascade to a non-complying activity. I therefore recommend accepting the submission and relief sought by The Fuel Companies in part and have recommended amendments to these provisions to address these concerns.
130. I acknowledge the submission from Wellington Fish and Game Regional Council [S188.065] which raises concern regarding the clause 'C' of WH.P30 and P.P28 which states that the discharge standard shall be monitored by a suitably qualified person, and the results reported to the Wellington Regional Council. The submitter considers the requirements for reporting rather than stating practical methodologies for remedial action while valuable for record keeping, do little to protect waterways from immediate harm. I am of the opinion that adaptive monitoring and remedial actions following exceedances of the discharge standard should be dealt with through conditions of consent and is not appropriate to be required through policy. I therefore recommend rejecting this submission.
131. I also acknowledge the submissions from Upper Hutt City Council [S255.092] and further submissions from Woodridge Holdings Limited [FS16.090] which consider that the discharge standard policies are written in the form of a rule or standard rather than how an objective will be implemented. I am of the opinion that discharge standard policies WH.P30 and P.P28 provide clear guidance as to how the reduction in annual sediment loads required by 8.5 and Table 9.4 and the NPS-FM limits framework will be achieved and is therefore

appropriate to be included as policy. I therefore recommend rejecting this submission and relief sought.

Total Suspended Sediments versus Nephelometric Turbidity Units Practicalities

132.PC1 has introduced Total Suspended Sediments (TSS) as the unit of measure for discharge standards relating to earthworks. In the operative Natural Resources Plan, discharge quality is measured by Nephelometric Turbidity Units (NTU) via condition of consent.

133.I understand that Total Suspended Solids was chosen as a unit of measure as it is a means of measuring visual clarity. Visual clarity is a new attribute introduced by the NPS-FM 2020 and is influenced by sediment load. The plan change development process involved a technical work programme to assess the sediment load reductions required to achieve the sedimentation rate objectives and load reduction targets.

134.Submissions by Kāinga Ora - Homes and Communities [S257.025] [S257.053] [S257.037] [S257.065], David McKevitt [S190.001] [S190.005] [S190.008], Orogen Limited [S239.010] [S239.018] supported by PCL Contracting Ltd [FS32.033] [FS32.051] and The fuel Companies [S258.045] [S258.0] and Civil Contractors New Zealand [S258.018] raise concerns regarding the practicality of this unit of measure. To determine TSS, samples must be sent to a laboratory for analysis. In my opinion this is impractical given the nature of earthworks activities and poses further risk to the environment due to the delay in receiving results. NTU can be measured in-situ, and therefore remedial actions are able to be undertaken immediately in the event of an exceedance of the discharge standard.

135.I am of the opinion that the application of Total Suspended Solids as unit of measure for the discharge standard during earthworks activities has not taken into considered the nature of these activities and the practicality of its use to manage effects on the environment. It is important that those undertaking such activities are able to assess effectiveness of measures in-situ and take remedial actions where necessary within a reasonable time frame.

136.Thirteen submitters have requested that the discharge standard is re-evaluated, or a NTU proxy is provided to allow for in situ discharge measurements to be taken.

137.There is no direct proxy for NTU to TSS, however I acknowledge that the contribution of TSS's from earthworks activities is of value in ensuring we are working towards meeting the load reduction targets per FMU.

138.I agree with the submission points regarding the impracticality of measuring TSS on site, and the risk it poses to the environment in the event of a discharge.

139.I have recommended that the discharge standard for earthworks is amended to 170 NTU, and the measure of TSS within the discharge is included as a matter of discretion to give council the ability to impose TSS measurements where appropriate, for example in part FMU's where the TAS for suspended sediment is not met. 170 NTU is the current standard imposed though condition of consent under the operative NRP, the insertion of this into policy will provide direction for plan users.

140.I have recommended amendments to the earthworks provisions to reflect these. Including the discharge standard Polices WH.P30 and P.P28,and Rules WH.R24 and P.R23.

141.Monitoring and reporting requirements are a matter of discretion for the Council for activities seeking resource consents as a restricted discretionary activity under Rules WH.R24 and

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

P.R23. This will provide an opportunity to impose TSS measurements to be taken in scenarios where it is considered necessary to ensure adverse effects are managed.

Monitoring data

142. I also acknowledge the submission from Pareraho Forst Trust [S213.024] seeking for wording to be added into the discharge standard policies which requires that monitoring results are published and community catchment groups are informed of where to view them. I am of the opinion that while this may be of interest to the community, it is not appropriate to be included as policy as it is not a course of action required to achieve or implement an objective. I therefore recommend rejecting this submission and relief sought.

Non-notification clause

143. Rosco Ice-cream Limited [S220.018] consider that the Restricted Activity Rules WH.R24 and P.R23 for earthworks should include a non-notification clause and seeks an amendment to reflect this. It is my understanding that non notification clauses are appropriate where the adverse effects of an activity are known. Earthworks activities vary in scale and can occur in most places across the Wellington Region. Assessing the adverse effects of earthworks and associated discharges and making a decision on notification in each case is important to ensure effects are appropriately understood on a case-by-case basis. I therefore recommend rejecting this submission and relief sought.

Discharges to coastal water

144. Wellington International Airport [S101.068] consider that Rules WH.R24 and P.R23 are not clear in how they relate to coastal water when the visual clarity indicators only relate to freshwater bodies. The visual clarity indicators (a)(i) and (a)(ii) of permitted activity Rules WH.R23 and P.R22 are not intended to apply to discharges to coastal water.

145. I recommend the wording "*where the discharge is to freshwater,*" is inserted into WH.R24(a) and P.R23(a) to clarify that this requirement only applies to discharges to freshwater. I therefore recommend accepting this submission.

Deposited sediment

146. I acknowledge the submission from Forest and Bird [S261.170] [S261.091] which considers additional controls to be placed on deposited sediment and seek the addition of a new clause in Policies P.P28 and WH.30 which ensure earthworks do not result in a change in deposited sediment cover or volume in the bed of rivers. I am of the opinion that the discharge standard will prevent deposited sediment from accumulating within the bed of rivers, and that the clause sought to be inserted by Forest and Bird is not appropriate at a policy level. I therefore recommend rejecting these submissions and relief sought.

Proportion of unconsolidated land in the catchment as a matter of discretion

147. Woodridge Holdings Limited [S255.039] supported by Orogen Limited and Meridian Energy Limited consider that the matter for discretion, "*The proportion of unconsolidated land in the catchment*" does not provide an applicant any idea as to what percentage may be considered acceptable per catchment and makes the applicant reliant upon the action of others.

148. I agree with the submission from Woodridge Holdings Limited, I do not believe this matter of discretion is practicable for a consent authority to consider during the processing of consent. Consents are granted with a duration period; the consent authority has no ability

to determine when in that period a Consent Holder may wish to use their consent to undertake works. While there is benefit in limiting the extent of unstabilised land in a catchment at any given time, it would be difficult to determine during the consent process when areas of a catchment may be unstabilised, and it would be inappropriate to control a consent holders ability to use their consent based on another consent holder or permitted activities users. I am confident that the matters of discretion listed in WH.R24 and P.R23 will allow council to control potential effects relating to unstabilised land, particularly by imposing conditions relating to the timing and staging of works. I therefore recommend accepting submission [S255.039] and all relief sought.

Construction of new farm tracks

149. I acknowledge the submissions from Wairarapa Federated Farmers [S193.008] [S193.041] and further submission from Horticulture New Zealand [FS23.997] which do not support R102 and R103 (Earthworks for the construction of new farm tracks) no longer applying in TAoP and TWT whitua. The submitter questions reasons for their removal and states that the rules in the operative NRP were prescriptive in terms of managing effects. I note that farm tracks constructed to implement an action in accordance with a Farm Environment Plan will be considered a permitted activity under WH.R23(b) and P.R22(b) of PC1. Earthworks required to construct new farm tracks which are not to implement a farm environment plan will have to meet the requirements of WH.23(c) and P.R22(c) to be undertaken as a permitted activity, limiting the area of works to 3000m². I note this is a significant decrease from the 10,000m² area provided for by Rule 102, however I am of the opinion that works required for the construction of farm racks do not pose any lesser risk to the environment than other earthworks of similar scale and therefore should be limited in area, and subject to resource consent if unable to meet the permitted activity requirements. I therefore recommend rejecting these submissions and relief sought.

3.4.4 Recommendations

150. I recommend that Policies WH.P30 and P.P28 are amended to provide a discharge standard with NTU as a unit of measure to ensure the policy is implementable to those undertaking such activities.

151. I recommend the wording “*where the discharge is to freshwater,*” into WH.R24(a) and P.R23(a) to clarify that this requirement only applies to discharges to freshwater.

152. I recommend the “*The proportion of unstabilised land in the catchment*” is deleted as a matter of discretion from Rules WH.R24 and P.R23.

153. I recommend that the submissions and further submissions be accepted, rejected, or noted as no recommendation as detailed in Appendix 6.

3.5 Issue 5: Winter shutdown of earthworks

3.5.1 Analysis

Non-complying activity status

154.82 submissions have raised concern regarding the non-complying activity status for any earthworks which are to be undertaken during the winter shut down period. Submitters are

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

concerned that the Policies WH.P31 and P.P29 "Winter Shut down of Earthworks" are written in the form of a standard rather than outlining how an objective will be met.

155. Submitters consider that the current method of mitigating effects during the winter shut down period through conditions of consent and site-specific erosion sediment controls during this period are sufficient in ensuring that earthworks activities are contributing to water quality improvements and the objectives of the NPS-FM.

156. I note that recommended amendments to earlier provisions will allow for a wider range of activities (including those listed in Paragraph 66) to be undertaken as permitted and restricted discretionary, particularly those within part FMUs where the TAS for TSS is met. There is higher risk that works within the winter period pose a higher risk of sediment discharges to freshwater, the shutdown period is mechanism to reduce sediment discharges and therefore contribute to water quality objectives and implementing the NOFS, particularly those within part FMU's where the TAS for suspended sediment is not being met.

157. I have recommended changes to provisions which recognise that earthworks within part FMU's where suspended sediment loads are above baselines, pose lesser risk to impact overall environmental outcomes than those within part FMU's currently not meeting target attribute states. These amendments will allow works in winter within part FMU's where target attribute states for suspended sediment are met, to apply for resource consent under the restricted discretionary rule and therefore only be subject to assessment against the specified matters of discretion.

158. I have recommended that the Winter works shut down policies are deleted. In my opinion the winter works shut down period and heightened risk of sediment discharges during this period can be managed through the rule framework. Policy WH.P31 and P.P29 as notified indicates that earthworks undertaken during this period have the potential to result in adverse effects that are unable to be mitigated to a level in which they are less than minor. As set out above, I do not consider this to be the case. I have therefore recommended the deletion of this policy and subsequent changes to the activity status of Rules WH.R24 and P.R23 for this reason and for the reasons set out in Paragraphs 143-145 below.

Quarrying

159. I also acknowledge the submissions of Horokiwi Quarries Limited [S2.038] and Winstone Aggregates [S206.060] which consider that Policies WH.P31 and P.P29 (Winter Shut down of Earthworks) and Rules WH.R24 and P.R23 do not account for quarrying activities which are required to undertake earthworks year round to enable them to operate. Both Submitters seek a discretionary activity status for works undertaken outside of the winter shut down period.

160. PC1 as notified, requires any earthworks over 3000m² being undertaken between 1st June to 30th September to obtain resource consent as a non-complying activity under WH.R25 and P.R24 "Earthworks – non complying". This activity status indicates that earthworks undertaken outside of this period are considered to have a high level of potential adverse effects.

161. I am of the opinion that earthworks activities that are unable to meet the requirements of the Rules WH.R24 and P.R23, may still be managed in a way in which the effects are less than minor, particularly through a winter works certification process such as that currently used to manage earthworks activities during this period under the NRP, where necessary. I

consider a discretionary activity status is more appropriate for earthworks unable to meet the restricted discretionary rule than non-complying activity status and therefore recommend accepting this submissions and relief sought by Winstone Aggregates and Horokiwi Quarries Limited.

Maintenance and operation of regionally significant infrastructure and lifeline utilities

162. Transpower New Zealand [S177.042] [S177.053] and Ara Poutama Aotearoa [S248.042] [S248.065], Kainga Ora – Homes and Communities [S257.053], Wellington International Airport [S101.069], Civil Contractors New Zealand [S285.033] [S285.031], Wellington Water Limited [S151.131] [S151.122] and Chorus New Zealand Limited, Connexa Limited, Aotearoa Towers Group (trading as FortySouth), One New Zealand Group Limited and Spark New Zealand Trading Limited [S41.009] have raised concerns that the winter works shut down period imposed by PC1 does not recognise circumstances where earthworks need to occur over those months in order to provide for safe and efficient operation, maintenance, upgrading, or development of regionally significant infrastructure (including the National Grid). I acknowledge these concerns and believe they will be addressed through the insertion of a new rule providing for works of this nature to be undertaken as a permitted activity for the reasons outlined in paragraph 67, given the lineal nature of these works, they pose a lesser risk to waterbodies than that of a bulk earthworks site.

3.5.2 Recommendations

163. I recommend that the activity status of Rules WH.R25 and P.R24 “Earthworks” is changed from ‘non-complying’ to ‘discretionary’. This is reflective of the risk activities of this nature pose to the environment, a discretionary activity status recognises that the activity is capable of generating a wide range of effects and will still provide the Council the ability to decline consent or to impose consent conditions to manage any potential adverse effects.

164. I recommend that Policies WH.P31 and P.P29 “Winter shut down of earthworks” is deleted. There is no technical evidence base to suggest that disabling works entirely during this period will result significantly contribute to water quality objectives in the NOF being met. In scenarios where it may be appropriate to allow for works to be undertaken during winter, potential adverse effects can be managed through the rule and consenting framework and impositions of appropriate erosion sediment controls.

165. I recommend that the conditions of ‘Earthworks - Restricted Discretionary’ Rules WH.R24 and P.R23 are amended to provide an opportunity for earthworks located within freshwater management units where target attribute states for total suspended solids are met, to be undertaken during the winter period as a restricted discretionary activity, subject to conditions imposed during the consenting process.

166. I have also recommended amendments to the Management of earthworks policies WH.P29 and P.P27 to require that the adverse effects of sediment discharges from earthworks shall be managed by also ‘*minimising works required during the close-down period (from 1st June to 30th September each year)*’ to provide policy direction for the amendments to these rules.

4.0 Conclusions

167. A range of submissions have been received in support of, and in opposition to the provisions relating to earthworks of PC1.

Plan Change 1 to the Natural Resources Plan for the Wellington Region

Hearing Stream: 3

Officer's Report: Earthworks

168. After considering all the submissions and reviewing all relevant statutory and non-statutory documents, I recommend that PC1 should be amended as set out in Appendix 3 of this report.

169. I consider that the amended provisions will be the most appropriate in achieving the purpose of the RMA, the relevant objectives of PC1 and other relevant statutory documents, for the reasons set out in the Section 32AA evaluations undertaken.

Recommendations:

I recommend that:

1. PC1 is amended in accordance with the changes recommended in Appendix 4 of this report; and
2. The Hearing Panels accept/accept in part, or reject/reject in part submissions (and associated further submissions) as outlined in Appendix 6 of this report.

These appendices can be found in the Greater Wellington Regional Council website along with the section 42A report.

Appendix 1: Table of Provisions within Earthworks topic and supporting information

Appendix 2: Description of matters raised by Submitters

Appendix 3: Assessment of the categorisation of provisions in the Freshwater Planning Instrument component of PC1

Appendix 4: Recommended Amendments to Provisions and Section 32AA Evaluation

Appendix 5: Table of Recommendations on Submissions