



## **SECTION 42A REPORT**

Officer's written right of reply – 18 November 2024

### **Hearing 6/7 – Earthworks**

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**Appendix 1: Officer's Recommended Amendments to Earthworks Chapter.**



## 1 Introduction

1. My name is Jerome Wyeth and I am the author of the section 42A report for the Earthworks Chapter in the Proposed Far North District Plan (**PDP**), which was considered at Hearing 6/7 held on 22 to 24 October 2024.
2. In the interest of succinctness, I do not repeat the information contained in Section 2.1 of the section 42A report and request that the Hearings Panel take this as read.

## 2 Purpose of Report

3. The purpose of this report is to respond to the evidence and statements of submitters that were pre-circulated and presented at Hearing 6/7 in relation to the Earthworks Chapter. It also provides a response to questions raised by the Panel during Hearing 6/7 relating to this topic.

## 3 Consideration of evidence received

4. The following submitters provided hearing statements, evidence and/or attended Hearing 6/7 raising issues relevant to the Earthworks Chapter:
  - a. Northland Federated Farmers (S421).
  - b. Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited ("**The Fuel Companies**") (S335).
  - c. Chorus New Zealand Limited, Spark New Zealand Trading Limited, One New Zealand Group Limited, Connexa Limited and FortySouth ("**The Telco Companies**") (S282).
  - d. Top Energy (S483).
  - e. Transpower New Zealand Limited (S454).
  - f. Waiaua Bay Farms Limited (S463).
  - g. Waitangi Limited (S503).
  - h. Heritage New Zealand Pouhere Taonga (S409)
5. A number of submitters generally support the recommendations in the Earthworks Section 42A Report (**the section 42A report**) and raise common issues. As such, I have only addressed evidence and statements presented at the hearing where I consider additional comment is required. Given the limited evidence received from submitters, I have grouped the submitters as follows:
  - a. Submitters generally in support of the section 42A report recommendations.



- b. Submitters with outstanding matters in contention.
6. For all other submissions not addressed in this report, I maintain my position as set out in my original section 42A Report.

### 3.1 Issue 1: General issues

#### Overview

Relevant Document	Relevant Section
Section 42A Report	Various
Evidence and hearing statements in support	Federated Farmers, Fuel Companies, Waiaua Bay Farms
Evidence and hearing statements with outstanding issues	Telco Companies, Top Energy, Transpower, Waitangi Limited

#### Matters raised in evidence

##### General support for section 42A report recommendations

7. A number of submitters broadly support the recommendations in the section 42A report and the recommended amendments to the Earthworks Chapter. This includes:
- a. The Fuel Companies, who note in their hearing statement that they support the section 42A report recommendations to:
    - i. Amend Advice Note 6;
    - ii. Insert new Advice Note 7;
    - iii. Consolidate the earthworks rules into a general earthworks rule; and
    - iv. Exempt "*land disturbance*" from EW-S2.
  - b. The hearing statement from Mr Tuck on behalf of Waiaua Bay Farms Limited, who accepts the section 42 report recommendations.
  - c. The hearing statement from Ms Cook-Munro on behalf of Federated Farmers, who accepts all the section 42A report recommendations.
  - d. Mr Horne on behalf of the Telco Companies and Mr Badham on behalf of Top Energy support the section 42A report recommendation to consolidate the earthworks rules into a single general rule that requires compliance with the earthworks standards.



However, both submitters have outstanding issues with the earthworks standards, which I respond to below.

Outstanding issues - setback to archaeological sites

8. Mr Butler on behalf of Heritage New Zealand does not agree that requirements for earthworks to be setback 20m to archaeological sites should be located in the Historic Heritage Chapter (as opposed to the Earthworks Chapter) as recommended in the section 42A report. The reasons given by Mr Butler include:
  - a. There is a difference between standards relating to discovering suspected sensitive material compared to a precautionary approach provided a 20m setback to archaeological sites as requested by Heritage New Zealand.
  - b. A degree of duplication is commonly accepted in new generation district plans, and this is reflected in the Earthworks Chapter advice notes that refer to earthworks rules in other PDP chapters.
  - c. The PDP Historic Heritage overview section states *'While this chapter only has rules for scheduled Heritage Resources, consideration of non-scheduled resources can occur at the time of processing a resource consent, or when undertaking earthworks.'*
  - d. HH-R4 in the Historic Heritage Chapter already requires that new buildings and structures are setback a minimum of 20m from a *'scheduled heritage resource'*<sup>1</sup>. The list of scheduled heritage resources in Schedule 2 are often pre-1900 in age and therefore there is already a *"de-facto 20m setback precedent"* from archaeological sites in Mr Butler's view.
  - e. The archaeological discovery protocol rules in the PDP (HA-S3 and EW-S3) will not achieve the objectives and policies of the Earthworks Chapter that seek to ensure earthworks are appropriately managed to protect historic and cultural values as unscheduled archaeological sites will not be protected. Further, Mr Butler states that the absence of earthworks setback rules can result in considerable delay and expense to applicants where there is site damage to archaeological sites under the Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPTA**).
9. On this basis, Mr Butler supports a requirement for earthworks to be setback 20m from an archaeological site.
10. Additionally, Mr Butler clarifies in his evidence that Heritage New Zealand did not request that the advice note for the setbacks to waterbodies in the

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<sup>1</sup> Defined in the PDP as *"means the historic buildings, sites, objects and places identified on the planning maps as a 'heritage item' and listed in Schedule 2 – Schedule of historic sites, buildings and objects"*.



Natural Character Chapter be deleted from EW-S6. Rather, Mr Butler considers that this appears to be an inaccurate summary of the original submission, particularly as archaeology is frequently found around waterbodies.

#### Exemptions to EW-S1 – infrastructure (Top Energy)

11. Mr Badham does not agree with the section 42A report recommendation to not exempt earthworks associated with infrastructure from EW-S1 (maximum earthworks thresholds). More specifically, Mr Badham considers that:
  - a. There is a strong policy rationale in the Strategic Direction Chapter of the PDP and the Infrastructure Chapter more broadly to provide more enabling provisions for earthworks associated with infrastructure.
  - b. The section 42A report recommendations appear to contradict recommendations in Hearing 4, including my recommended amendments to CE-R3 to enable earthworks associated with the operation, repair, maintenance or upgrade of existing network utilities to be undertaken as permitted activity (outside outstanding natural character and high natural character areas) with no volume or area thresholds.
12. Accordingly, Mr Badham recommends that EW-S1 is amended to also provide an exemption for *"earthworks for the operation, repair, maintenance and upgrading of existing lawfully established network utilities."*
13. At the hearing, this issue was discussed in terms of what scale of "upgrading" maybe enabled under this exemption given that this can vary significantly. It was also noted that "upgrading" is not defined in the PDP, but that Top Energy has a submission point requesting this.

#### Exemptions to earthworks standards for telecommunications (Telco Companies)

14. Mr Horne on behalf of the Telco Companies supports the section 42A report recommendation to exempt earthworks associated with infrastructure from EW-S6 (setbacks). Mr Horne supports this recommendation as it acknowledges that earthworks for localised pole foundations and underground lines do not need to meet boundary setbacks due to the nature of such work.
15. While the Telco companies also requested an exemption to EW-S1, Mr Horne notes that they are no longer pursuing this submission point as typical pole earthworks would not infringe these thresholds and earthworks associated with underground telecommunication lines are permitted under the Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2016 (NES-TF). However, Mr Horne considers that amendments to EW-S2 are required as:



- a. A typical pad foundation for 25m telecommunication pole is up to 1.5m therefore a minor exceedance of this standard would trigger the need for a resource consent.
  - b. He is unaware of any issues associated with earthworks associated with telecommunication pole foundations and therefore considers that there is no clear resource management purpose to require resource consent for these earthworks.
16. Accordingly, Mr Horne recommends that EW-S2 is amended to not apply to the foundations of telecommunication poles. Mr Horne also considers that there is no reason for EW-S2 to refer to slope in the title as the standard does not control slope.

Exemptions to EW-S1 for common activities (Waitangi Limited)

17. Ms Jacobs on behalf of Waitangi Limited reiterates their relief sought to exempt earthworks associated with a range of activities from EW-S1. While Ms Jacobs acknowledges that some of the activities listed in this request are unlikely to exceed the thresholds in the EW-S1, this may not be the case for sites with multiple activities operating or larger farms where various land disturbing activities are required throughout the year, meaning the thresholds may be "used-up" over a 12-month period. Ms Jacobs acknowledges that the recommendations to exempt land disturbances from EW-S2 and EW-S6 will cover many of the exemptions sought, but the total volume and area thresholds in EW-S1 will remain applicable.
18. In relation to earthworks at the Waitangi Estate, Ms Jacobs notes that the site is subject to various controls in the Earthworks Chapter and overlay chapters and a Special Purpose Zone for the Waitangi Estate could provide a single set of consolidated earthworks standards applicable to the Estate in one place. However, she acknowledges that this rezoning request will be considered through a future hearing scheduled for 2025.
19. In terms of the requested exemptions for fence lines and posts, Ms Jacobs acknowledges that the PDP earthworks definition excludes "*disturbance of land for the installation of fence posts*". However, Ms Jacobs notes that this exemption is specific to fences and therefore does not apply to similar activities with minor effects such as installing pou, mailboxes, or boardwalks. Ms Jacobs requests that earthworks associated with these activities are also exempt from EW-S1 given that the effects are minor and similar to fence posts.
20. Similarly, Ms Jacobs agrees that earthworks associated with piles, service connections, trenching of drains or cables and excavations for building foundations are unlikely to trigger the need for resource consent by themselves. However, in combination with other earthworks activities, Ms Jacobs is of the view that that these earthworks may need resource consent for exceeding the thresholds in EW-S1 (or earthworks controls in overlays), which may result in unnecessary resource consent requirements. As such,



Ms Jacobs requests that the earthworks associated with these activities are also exempt from EW-S1.

21. Ms Jacobs supports the recommended exemptions to EW-S1 for earthworks associated with the maintenance of farm drains and earthworks associated with septic tanks and associated drainage.

#### EW-P6 – amendments to provide for infrastructure

22. Ms Dines on behalf of Transpower considers that the section 42A report recommended amendments to EW-P6 do improve the drafting of the policy, but do not go far enough to give effect to Policy 10 in the National Policy Statement for Electricity Transmission 2008 (NPS-ET). Ms Dines notes that Policy 10 in the NPS-ET is a “relatively strong directive”, which requires that the operation of the National Grid is not compromised by third party activities such as earthworks.
23. Ms Dines notes that the submission from Transpower requests a new policy in the Infrastructure Chapter specific to earthworks in the National Grid Yard. To address her concerns, Ms Dines requests that either:
  - a. The policy requested from Transpower is inserted into the Earthworks Chapter; or
  - b. An advice note is added that directs plan users to this policy (or an alternative policy outcome) in the Infrastructure Chapter when a non-complying resource consent is required for earthworks in the National Grid Yard under new rule EW-R2.
24. Conversely, Mr Badham on behalf of Top Energy supports the section 42A report recommended amendments to EW-P6 as he considers that they provide for the protection of Top Energy’s earthworks assets.

#### EW-R2 – earthworks within the National Grid Yard and near transmission lines

25. Ms Dines broadly supported the section 42A report recommended amendments to EW-R11 (now EW-R2). However, Ms Dines has noted some errors and potential interpretation issues that she considers should be addressed as follows:
  - a. The wording needs to make it clear that the depth standards apply to all National Grid support structures, not just the 110kv transmission lines. Ms Dines considers that this can be addressed by deleting the reference to 110kv lines from the title of EW-R2.
  - b. The references to 66kV and 220kV lines should be removed as there are none of these assets in the Far North District.



- c. Additional minor grammatical and wording corrections as set out in Appendix 2 of her evidence (e.g. consistently referring to “*transmission line, tower or pole*”).
26. Mr Badham supports the section 42A report recommended amendments to EW-R2 that make it a permitted activity rule, with non-complying activity resource consent required when the standards are not complied with.
27. However, Mr Badham is concerned that the relationship between EW-R2 and I-R12 (buildings and earthworks within 10m of a Critical Electricity Lines Overlay) has not been specifically addressed. Mr Badham considers that this issue is symptomatic of integration issues that he has raised at previous hearings, and he considers that this issue is best addressed through expert caucusing on the Infrastructure Chapter. The relationship between EW-R2 and I-R12 was raised at the hearing, and it was agreed that I should undertake further correspondence with Mr Badham to clarify, and ideally, resolve this issue.

## Analysis

### Outstanding issues – archaeological sites

28. I understand that Heritage New Zealand is concerned that the archaeological discovery protocol in EW-S3 is reactive, whereas an earthworks setback standard from archaeological sites is a more conservative/precautionary approach to protecting these sites. However, I do not consider that a new requirement for all earthworks to be setback from archaeological sites (scheduled or not) is an appropriate, effective or efficient way to achieve the relevant PDP objectives. My reasons are as follows:
  - a. ‘Archaeological site’ has a broad definition in the HNZPTA<sup>2</sup> as it includes any building or structure associated with human activity that occurred before 1900. It would be difficult for plan users to understand with sufficient certainty whether the earthworks they are undertaking will be setback 20m from any unscheduled archaeological site.
  - b. The PDP includes a list of scheduled heritage resources in SCHED-2 and includes a range of rules to protect these sites (both within and outside Heritage Area Overlays), including, for example:

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<sup>2</sup> Defined as follows “**archaeological site** means, subject to section 42(3),—(a) any place in New Zealand, including any building or structure (or part of a building or structure), that— (i) was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and (ii) provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand; and (b) includes a site for which a declaration is made under section 43(1)





- i. HA-R5 and HH-R5, which require earthworks to be setback at least 20m from a scheduled heritage resource.
  - ii. HH-R4 and HA-S1, which require new buildings and structures to be setback a minimum of 20m from a scheduled heritage resource.
29. Accordingly, in my view, it is unnecessary to duplicate these controls in the Earthworks Chapter.
30. I acknowledge that this means that there are no setback standards for earthworks in relation to unscheduled archaeological sites. However, this needs to be balanced against the need to provide certainty in the application of the earthworks standards and the range of PDP protections relating to historic heritage. I also understand one of the purposes of identifying and mapping Heritage Overlay Areas is that these are the most likely locations for unscheduled archaeological sites to be found which will help ensure these unscheduled archaeological sites are better protected. I note that the adequacy of the list of scheduled heritage resources in SCHED-2 of the PDP and the boundaries of the Heritage Area Overlays will be considered as part of Hearing 12, and I understand that this is being informed by additional technical advice.

#### Exemptions to EW-S1 – infrastructure (Top Energy)

31. I agree in principle with Mr Badham that a more enabling approach for infrastructure is anticipated by the PDP, both through the strategic direction chapter<sup>3</sup> and the Infrastructure Chapter more broadly. I also acknowledge that retaining the earthworks thresholds for infrastructure in EW-S1 could seem contrary to the following recommendations in Hearing 4:
  - a. Amend CE-R3 to enable earthworks associated with the upgrading of existing above ground network utilities in the coastal environment (outside ONC and HNC areas) where that upgrade is permitted under CE-R1 (which sets some constraints on the scale of the upgrade).
  - b. Amend NFL-R3 to enable earthworks associated with existing network utilities permitted by rule NFL-R1 (which sets some constraints on the scale of the upgrade).
32. However, while these earthworks rules do not set a maximum area or volume threshold per se, the scale of earthworks is limited by the rules being linked back to the upgrading being permitted under the rule for buildings and structures. As such, a large-scale upgrade activity (e.g. replacing and realigning lines across a large area) is unlikely to be permitted under the

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<sup>3</sup> For example, SD-IE-01 "The benefits of infrastructure and renewable electricity generation activities across the district are recognised and provided for, while ensuring their adverse effects are well managed".



rules for buildings and structures and therefore the associated earthworks will also not be permitted.

33. On balance, I do not consider that there is sufficient policy justification, evidence or examples to provide a blanket exemption to the earthworks area and volume thresholds in EW-S1 for the upgrading of existing infrastructure. This is because the scale of earthworks could vary significantly, from the upgrading of a single pole (which is unlikely to exceed the thresholds) through to upgrading of an existing road, which could involve a significant area of disturbance and volume of earthworks. However, I do support an exemption to EW-S1 for the operation, maintenance and repair of existing infrastructure consistent with existing tracks and roads etc. and other earthworks rules in the PDP. This recommendation to EW-S1 is shown in Appendix 1 of this right of reply.
34. As noted above, questions were raised at the hearing about the scale of upgrading permitted under this exemption and whether upgrading needs to be defined. I am aware that Top Energy has a submission point (S483.021) requesting that a definition of upgrading be added to the PDP as follows (or words to the same effect): *"means an increase in the capacity, efficiency or security of existing infrastructure"*.
35. This submission point was allocated to the Interpretation hearing. However, given the term upgrading is used almost exclusively in relation to infrastructure in the PDP and has wider implication for numerous provisions relating to infrastructure, Council has determined that it is most appropriate to consider this submission point as part of upcoming expert causing and hearings on the Infrastructure Chapter.

#### Telco Companies – exemptions to EW-S3 for telecommunication pole foundations

36. Mr Horne on behalf of the Telco Companies has helpfully provided examples of where earthworks for telecommunication pole foundations may exceed the maximum depth standards in EW-S2. From my experience, I also agree with Mr Horne that earthworks associated with telecommunication pole foundations are low-risk and these facilities are commonly deployed throughout New Zealand in a range of soil conditions. On this basis, it would be inefficient to require a resource consent for these foundations and I agree with the requested relief from Mr Horne, as discussed at the hearing.
37. I also agree with Mr Horne that EW-E2 should be amended to only to refer to depth as the standard does not manage slope. These amendments to EW-S2 are shown in Appendix 1 of this right of reply.

#### Waitangi Estate – exemptions to EW-S1

38. In terms of the evidence from Waitangi Limited reiterating requests for additional exemptions to EW-S1, I acknowledge the concerns that assessing potential non-compliance with the earthworks area and volume thresholds could result in some unnecessary costs and uncertainty for common, low-



risk activities on larger sites like at the Waitangi Estate. However, I still consider that there is a lack of clear evidence that these activities will exceed the thresholds. Additionally:

- a. My expectation is that earthworks associated with pou, mailboxes, trenching of drains and cables will be able to comply the thresholds without needing to undertake detailed assessments.
- b. My understanding is the majority of the Waitangi Estate is zoned Rural Production Zone, with the exception of the golf course which is zoned Sport and Active Recreation Zone and the hotel area which is zoned Mixed Use Zone. This means that the more permissive earthworks standards in EW-S1 (5,000m<sup>3</sup> and 2,500<sup>2</sup>) will generally apply to within the Waitangi Estate within a calendar year.
- c. Where earthworks associated with boardwalks or building foundations exceed the area and volume thresholds in EW-S1, then there is no clear policy rationale as to why these should be treated differently to other types of earthworks that also exceed the thresholds.

39. On this basis, I do not recommend any further exemptions to EW-S1 in response to the evidence of Ms Jacobs on behalf of Waitangi Limited.

#### EW-P6 – amendments to provide for infrastructure

40. I agree with Ms Dines that Policy 10 in the NPS-ET is a strong directive for third party activities such as earthworks not to compromise the operation of the National Grid. However, I also consider that the recommended wording in EW-P6 to “require” that earthworks are undertaken in a manner that “ensures” “the safe, effective and efficient operation of infrastructure” already provides strong direction.
41. Notwithstanding the above, I am aware that Transpower has a submission point (S454.050) requesting a new policy to manage the effects of third parties on the National Grid, including specific policy direction relating to earthworks (clause 4 of the requested policy). That submission point is due to be considered at upcoming expert caucusing and hearings on the Infrastructure Chapter.
42. I do not consider that the Earthworks Chapter needs to be amended to either incorporate or cross-reference that policy direction (if accepted) as all PDP chapters need to be read together as relevant. However, I note that there may be consequential amendments to clarify the relationship between the Infrastructure Chapter and other PDP chapters as a result of upcoming expert caucusing and hearings on that chapter.

#### Infrastructure – earthworks within National Grid Yard and Transmission Lines/Critical Electricity Lines



43. The amendments to new EW-R2 requested by Ms Dines on behalf of Transpower are sensible amendments in my view to improve workability (e.g. consistently referring to “transmission, line or pole”) and to reflect the nature of Transpower’s assets in the Far North District (e.g. that there are 66kV or 220kV lines). However, as discussed at the hearing, I also see the benefit of “futureproofing” EW-R2 given that there may be 66kV transmission lines in the future to meet growing demand, even if there are no foreseeable plans for such lines<sup>4</sup>.
44. Following the hearing, I undertook further engagement with Mr Badham to resolve the integration/alignment issues between new EW-R2 and I-R12 (new buildings and earthworks within 10m of Critical Electricity Lines Overlay). The outcome of those discussions was agreement that:
  - a. New EW-R2 should continue to focus on earthworks within the National Grid Yard and near (within 10m) Top Energy’s transmission lines (110kV lines along with the potential for 66kV lines in the future).
  - b. The earthworks component of I-R12 is moved to the Earthworks Chapter and applied to Top Energy’s 33kV lines.
45. The rationale for this recommendation is that:
  - a. The earthworks rules for Critical Electricity Lines (CEL) in I-R12 are more visible to plan users in the Earthworks Chapter, particularly as the rule is primarily focused on earthworks undertaken by other parties.
  - b. The earthworks standards in EW-R2 are primarily designed to give effect to Policies 10 and 11 of the NPS-ET to protect the National Grid from the adverse effects of third parties (and these types of provisions are well established in district plans). EW-R2 also imposes additional requirements compared to I-R12 (including non-complying activity status when standards are not complied with v restricted discretionary). Therefore, in my opinion, it is appropriate to apply EW-R2 to Top Energy’s larger 110kV lines which are essentially the same as Transpower’s assets. However, Top Energy’s 33kV network of lines is more extensive in the district and applying the requirements in EW-R2 to these lines would have additional implications for landowners.
46. I note that the new rules relating to Top Energy’s CEL will affect a large number of landowners in the Far North District and there are a number of submissions on CEL which are allocated to the Infrastructure Chapter. This includes submissions from Top Energy requesting that the CEL also includes

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<sup>4</sup> I note that both Transpower and Top Energy indicated that 220kV lines are highly unlikely in the Far North District over the life of the PDP and therefore support removing the reference to these lines.



33kV lines<sup>5</sup>, submissions requesting the CEL be defined<sup>6</sup>, and request for a diagram to explain how the CEL applies on either side of the lines<sup>7</sup>. In my view, it would be beneficial to clarify how the CEL applies through a definition, diagram and/or mapping the full CEL overlay and this will also assist with the interpretation of EW-R2 and EW-R3. I will consider this issue and relevant submissions further as part of upcoming expert caucusing and hearings on the Infrastructure Chapter.

47. These amendments to EW-R2 and new EW-R3 are shown in Appendix 1 of this right of reply. I understand that Top Energy supports these recommendations.

### **Recommendation**

48. I recommend that:

- a. EW-S1 is amended to exempt earthworks associated with the operation, maintenance and repair of existing infrastructure.
- b. EW-S2 is amended to remove the reference to slope in the title and to exempt earthworks for telecommunication pole foundations.
- c. EW-R2 is amended to clarify how the rule applies within the National Grid Yard (as defined in the PDP) and to improve wording and workability.
- d. A new rule EW-R3 is inserted into the Earthworks Chapter, which essentially moves the controls on earthworks within 10m of Critical Electricity Lines (excluding 110kV lines) from I-R12 to improve visibility for plan users. I will also consider amendments to define and clarify the application of the Critical Electricity Lines overlay and associated rules as part of upcoming hearings on the Infrastructure Chapter.

### **Section 32AA Evaluation**

49. I consider that my recommended amendments to the Earthworks Chapter above are an appropriate, effective and efficient way to achieve the relevant PDP objectives in accordance with section 32AA of the RMA. These amendments are primarily to clarify the intent and improve the workability of the provisions to provide exemptions for certain earthworks activities that are low risk to avoid the potential for unnecessary consent requirements. This will have efficiency benefits and help ensure the provisions are implemented as intended.

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<sup>5</sup> This was a mapping error when the PDP was notified, and Council subsequently wrote to affected landowners advising of this mapping effort to inform potential further submissions. Refer: [Critical electricity infrastructure | Far North District Council](#)

<sup>6</sup> Including from Horticulture New Zealand (\$159.033) and Federated Farmers (\$421.040)

<sup>7</sup> Top Energy (\$483.069).



#### 4 Additional matters raised by the Hearing Panel

50. During the hearing, the Hearing Panel raised questions relating to the:
- a. Necessity of the earthworks area thresholds in EW-S1 given the other earthworks standards and Council Earthworks Bylaw.
  - b. The application of the maximum depth (cut and fill) standard (EW-S2) and whether it would be useful to clarify how the standard applies, potentially reinstating/refining diagrams from the ODP.

##### Issue 1 – earthworks area thresholds

51. The earthworks area thresholds in EW-S1 are an important control in my opinion to act as a trigger for when the scale and effects of earthworks should be assessed through a resource consent process. I note that area thresholds are commonly used in recent district plans to manage a range of potential adverse effects (amenity, character, dust, sediment etc.) including, for example, the Waikato, New Plymouth and Porirua proposed district plans (all at various stages, including appeals). I also note that submitters raising issues with EW-S1 are not opposing the use of controls on the maximum earthworks area per se, but are more focused on the volume threshold in certain zones and exemptions to the standard for certain activities.
52. In terms of the relationship with Council's Earthworks Bylaw, I understand that it is intended that the PDP Earthworks Chapter will remove the need for a separate bylaw once in force. This is clearly stated throughout the section 32 evaluation report for the Earthworks Chapter<sup>8</sup>.

##### Issue 2 – earthworks maximum depth standard

53. The PDP controls on earthworks maximum depth are based on controls in the ODP but have been updated to better align with the earthworks definition and requirements for the Earthworks Chapter in the National Planning Standards. Rather than defining earthworks, the ODP is based on definitions of "excavation" and "filling". The ODP also includes a definition of "cut and fill" as follows:

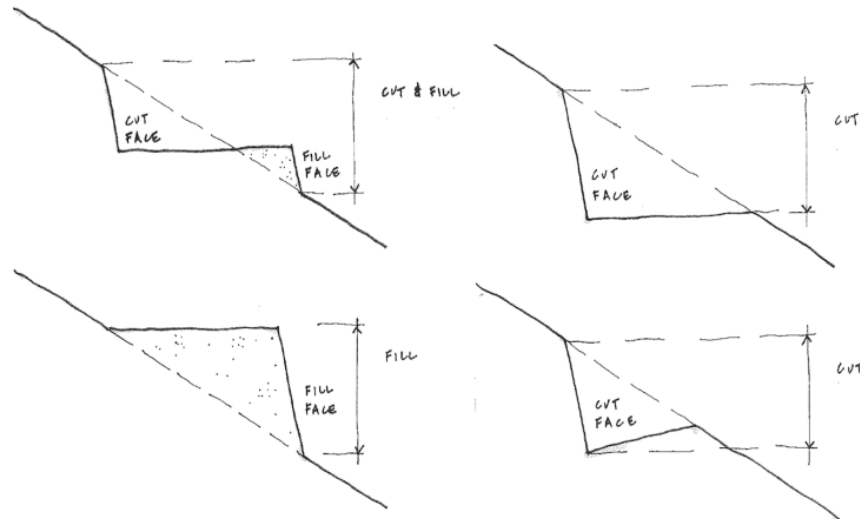
*Means the sloping or vertical exposed face resulting from earthworks (filling and/or excavation) but excludes any face of a height greater than 1.5 metres but no greater than 3 metres which is to be retained by a properly engineered retaining wall and for which a building consent has been issued.*

54. I am aware that the cut and fill rules in the ODP are similar to EW-S2, although some ODP rules apply an average 1.5m height requirement over the length of the face (e.g. Rule 12.3.6.1.1). The ODP definition of cut and

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<sup>8</sup> For example, the preferred option evaluated in the section 32 evaluation report is "Option 2: PDP provisions and no bylaw – Preferred approach". Refer: [Section-32-Earthworks.pdf](#)

fill is also supported by the following diagram to illustrate the height of the cut and fill:



55. In my view, a modified (improved) diagram could be useful to assist in the interpretation of EW-S2 provided there is scope in submission to do so. This could also clarify the measurement of multiple cuts on the same slope as discussed during the hearing. However, there are no specific submissions on EW-R2 raising interpretation issues with the standard therefore there is no clear scope within submissions for me to make this recommendation. I note that this does not preclude Council developing internal and external practice note to assist in the interpretation of the earthworks standards.