

## **Before the Hearings Commissioners**

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Under the Resource Management Act 1991 (the **RMA**)

In the matter of a submission by NZ Transport Agency Waka Kotahi  
(Submitter S275 and Further Submission FS28) on Plan  
Change 1

and in the matter of Wellington Natural Resources Plan

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**Primary statement of evidence of Catherine Lynda Heppelthwaite for NZ Transport  
Agency Waka Kotahi regarding Plan Change 1**

**Hearing Stream 3 – Rural land use activities, Forestry and vegetation clearance and  
Earthworks.**

**on the Wellington Natural Resources Plan**

Dated 1 May 2025

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## **1. INTRODUCTION, QUALIFICATIONS AND EXPERIENCE**

- 1.1 My full name is Catherine Lynda Heppelthwaite. I am a principal planner for Eclipse Group Limited. I am presenting this planning evidence on behalf of the NZ Transport Agency Waka Kotahi (**NZTA**).
- 1.2 I hold a Bachelor Degree in Resource Studies obtained from Lincoln University in 1993. I am a full member of the New Zealand Planning Institute, a member of the Resource Management Law Association and the Acoustical Society of New Zealand. I have more than 25 years' experience within the planning and resource management field which has included work for local authorities, central government agencies, private companies and private individuals. Currently, I am practicing as an independent consultant planner and have done so for the past 18 years.
- 1.3 I have extensive experience with preparing submissions and assessing district and regional plan and policy statements in relation to infrastructure. I am currently assisting infrastructure providers in relation to planning processes for the NPS-UD, MDRS and Proposed Otago Regional Policy Statement. I have also provided evidence for NZTA on the Wellington Regional Policy Statement.

## **2. CODE OF CONDUCT**

- 2.1 I have read the Environment Court's Code of Conduct for Expert Witnesses (2023) and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my areas of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

## **3. SCOPE OF EVIDENCE**

- 3.1 My evidence will address the following:
  - a. The statutory and higher order planning framework;
  - b. NZTA submissions and further submissions;

- c. Council's s42A recommendations and evidence; and
  - d. Further amendments required.
- 3.2 In preparing my evidence, I have considered the Section 42A Hearing Report's prepared by:
  - a. Mr Shannon Watson on Forestry and vegetation clearance<sup>1</sup>; and
  - b. Ms Alisha Vivian on Earthworks<sup>2</sup>.
- 3.3 As none of NZTA's submissions are addressed in the Rural land use activities Section 42A Hearings Report, I do not consider this further. I use the abbreviations (as set out in the Section 42 reports) for Te Awarua-o-Porirua (**TAoP**) and Te Whanganui-a-Tara (**TWT**).

#### **4. THE STATUTORY AND HIGHER ORDER PLANNING FRAMEWORK**

- 4.1 In preparing this evidence I have specifically considered the following:
  - a. The purpose and principles of the RMA (sections 5-8);
  - b. Provisions of the RMA relevant to plan-making and consenting;
  - c. National Policy Statement for Indigenous Biodiversity 2023;
  - d. National Policy Statement Freshwater 2020 (updated February 2023);
  - e. Resource Management (National Environmental Standards for Freshwater) Regulations 2020;
  - f. New Zealand Coastal Policy Statement 2010; and
  - g. Wellington Regional Policy Statement (RPS).
- 4.2 Mr Watson's report contains a clear description of the relevant statutory provisions<sup>3</sup> with which I generally agree or accept and will not repeat here.

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<sup>1</sup> Dated 15 April 2025.

<sup>2</sup> Dated 15 April 2025.

<sup>3</sup> S42A Report Forestry and Vegetation, Section 2.1 to 2.7 and 2.9.

4.3 Key objectives of the RPS include:

***Integrated management of the region's natural and physical resources:***

***Integrated Management Objective A:***

(a) [...]

(i) recognises the role of both natural and physical resources, including highly productive land and regionally significant infrastructure, in providing for well-functioning urban and rural areas and improving the resilience of communities to climate change; and

***Objective TAoP: 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:*

1.[...]

*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 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.[...]

*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 10*** *Regionally significant infrastructure and renewable energy generation activities that meets the needs of present and future generations are enabled in appropriate places and ways.*

***Objective 12*** *The mana of the Region's waterbodies and freshwater ecosystems is restored and protected by ongoing management of land and water that: [...]*

***Objective 29:*** *land management practices do not accelerate soil erosion.*

4.4 Key policies the RPS include:

***Policy 7: Recognising the benefits from renewable energy and regionally significant infrastructure – regional and district plans***

*District and regional plans shall include objectives, policies, rules and/or other methods that:*

(a) recognise the social, economic, cultural and environmental benefits of regionally significant infrastructure, including:

*(i) people and goods can travel to, from and around the Wellington Region efficiently and safely and in ways that support the transition to low or zero-carbon multi-modal transport modes;*

*(ii) public health and safety is maintained through the provision of essential services: - supply of potable water, the collection and transfer of sewage and stormwater, and the provision of emergency services; [...]*

**Policy 15** (PC1 Decisions version): *Regional and district plans 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) [...]*

*(iv) manage sediment associated with earthworks less than 3000m<sup>2</sup>; and*

*(v) [...]*

**Policy 39** consideration (PC1 Decisions version): *Recognising the benefits from renewable energy and regionally significant infrastructure*

*When considering an application for a resource consent, notice of requirement or a change, variation or review of a district or regional plan*

*(a) [...]*

*(b) recognise the social, economic, cultural, and environmental benefits of other regionally significant infrastructure, including where [...]; and [...]*

## **5. NZTA SUBMISSIONS**

5.1 NZTA made a range of submissions which are summarised below. I have noted where these have been clearly resolved by the S42A Authors and I accept their recommendation.

- a. **Rules WH.R17<sup>4</sup>, WH.R18<sup>5</sup>, P.R16<sup>6</sup> and P.R17<sup>7</sup> Vegetation clearance on highest erosion risk land:** Provide for vegetation removal as a permitted activity when associated with the maintenance of a transport network (including consequential/ alternative relief).

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<sup>4</sup> S275.027.

<sup>5</sup> S275.028.

<sup>6</sup> S275.029.

<sup>7</sup> S275.030.

b. **Schedule 33 Vegetation Clearance Erosion and Sediment Management**

**Plan**<sup>8</sup>: Move to a guideline and/or reassess the detail within Schedule 33 with inclusion of prefacing statements indicating that the Management Plan should reflect likely effects of the proposal (including consequential/ alternative relief). Mr Watson recommends deletion of Schedule 33<sup>9</sup> and I do not address this submission further.

- c. Amend definition<sup>10</sup> of **earthworks** to provide an exclusion (as per (d) “for all other whaitua”) to enable construction, repair, upgrade or maintenance of infrastructure where standards are met (including consequential/ alternative relief).
- d. Amend<sup>11</sup> **Rule WH.R23, Rule WH.R24, Rule WH.R25, Rule P.R22, Policy P.P29** earthwork to provide for some sediment and/or flocculant discharge where appropriate sediment control methods are in place (including consequential/ alternative relief).
- e. Amend<sup>12</sup> **Policy P.P29** and **Policy WH.P31** to remove the control on winter works or, at a minimum, provide for a process for ‘winter works’ approval without the need for a further resource consent (including consequential/ alternative relief).
- f. Modify<sup>13</sup> **Policy WH.P30** and **Policy P.P28** rules to provide for 100g/m<sup>3</sup> and associated 20% and 30% visual clarity as matters of discretion/assessment. Adjust policy framework to set 100g/m<sup>3</sup> (including consequential/ alternative relief).
- g. Provide<sup>14</sup> further consideration of the feasibility and costs of **Policy P.P29** targets.

5.2 NZTA made a range of further submissions which are summarised below:

- a. in support<sup>15</sup> of Kainga Ora who considers a definition of ‘High and Highest Erosion Risk Land’ is more appropriate than high level maps. Seeks deletion of

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<sup>8</sup> S275.049.

<sup>9</sup> S42A Report Forestry and Vegetation, paragraphs 146-148.

<sup>10</sup> S275.003.

<sup>11</sup> S275.031, S275.032, S275.033, S275.034, S275.035.

<sup>12</sup> S275.036, S275.037.

<sup>13</sup> S275.038, S275.039.

<sup>14</sup> S275.040.

<sup>15</sup> FS28.104, FS28.107, FS28.105, FS28.106, FS28.108, FS28.109 and S257.072, S257.075, S257.073, S257.074, S257.076, S257.077.

**Maps 90, 91, 92, 93, 94, 95** and to instead provide a definition for 'High and Highest Erosion Risk Land' to more accurately capture such sites which are then subject to the associated rules;

- b. in opposition<sup>16</sup> to Forest and Bird who seek to reclassify **Rule P.R17** as a discretionary activity; or reclassify as a restricted discretionary activity and include "adverse effects on the environment" as a matter of discretion (including consequential/ alternative relief);
- c. in opposition<sup>17</sup> to Forest and Bird who seek to reclassify **Rule WH.R18** as a discretionary activity; or reclassify as a restricted discretionary activity and include "adverse effects on the environment" as a matter of discretion (including consequential/ alternative relief);
- d. in support<sup>18</sup> of Transpower who seek amendments to **Policy WH.R23**;
- e. in support<sup>19</sup> of Hutt City Council who seek that road maintenance be excluded from **Rule WH.R23 Earthworks**;
- f. in support<sup>20</sup> of Civil Contractors NZ who propose to amend **Rule WH.R23** to reinstate the exemptions for certain earthworks activities as exist for 'other Whaitua';
- g. in support<sup>21</sup> of Chorus (et al) who propose to amend **Rule WH.R23 Earthworks**;
- h. in opposition<sup>22</sup> to Forest and Bird who seek amendments to **Rule WH.R23**: to provide for a greater setback and application of rule to ephemeral watercourses;
- i. in support<sup>23</sup> of Fulton Hogan Ltd who propose to alter **Rules WH.R23, WH.R24** and **WH.R25** to provide for low level activities.
- j. in support<sup>24</sup> of Wellington Water Ltd who seek an exemption for regionally significant infrastructure from **Rule WH.R24 Earthworks** and **Rule P.R23 Earthworks**;
- k. in opposition to<sup>25</sup> Environmental Defence Society Inc. who seek changes to Rule **WH.R24: Earthworks** to give effect to the NPSFM and RMA;

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<sup>16</sup> FS28.080 and S261.188.

<sup>17</sup> FS28.079 and S261.111.

<sup>18</sup> FS28.118 and S177.041.

<sup>19</sup> FS28.004 and S206.023.

<sup>20</sup> S285.024 and FS28.010.

<sup>21</sup> S41.004 and FS28.006.

<sup>22</sup> FS28.081 and S261.116.

<sup>23</sup> S43.018 and FS28.090.

<sup>24</sup> FS28.165, FS28.174 and S151.100, S151.131.

<sup>25</sup> S222.064 FS28.056.

- l. in opposition<sup>26</sup> to Forest and Bird who seek to reclassify **Rule WH.R24** Earthworks – restricted discretionary activity as a discretionary activity rule;
- m. in support<sup>27</sup> of Ara Poutama Aotearoa the Department of Corrections seeking to amend **Rule WH.R25 Earthworks** and **Rule P.R24: Earthwork** to a discretionary activity;
- n. in support<sup>28</sup> of Transpower who seek amendments to **Policy WH.P29**;
- o. in opposition<sup>29</sup> of Wellington Fish and Game Regional Council who propose amendments to **Policy WH.P29**;
- p. in support<sup>30</sup> of Winstone Aggregates who seeks changes to the TAT and TAoP definition of **earthworks**;
- q. in opposition to<sup>31</sup> Environmental Defence Society Inc. who appear to seek (unspecified) relief in relation giving effect to NPS-FM by **Policy WH.P31 Winter shut down of earthworks**;
- r. in support<sup>32</sup> of Chorus (et al) who propose to delete **Policy WH.P31 Winter shut down of earthworks**;
- s. in opposition to<sup>33</sup> Environmental Defence Society Inc. who seek changes to Rule **P.P27: Management of Earthworks sites** to give effect to the NPSFM;
- t. in support<sup>34</sup> of Ara Poutama Aotearoa the Department of Corrections seeking to amend **Policy P.P27**;
- u. in support<sup>35</sup> of Transpower who seek amendments to **Policy P.P27**;
- v. In opposition to<sup>36</sup> Environmental Defence Society Inc. who seek changes to Rule **P.R22: Earthworks permitted activity** to give effect to the NPSFM;
- w. in opposition<sup>37</sup> to Forest and Bird who seek amendments to **Rule P.R22**: to provide for a greater setback and application of rule to ephemeral watercourses;

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<sup>26</sup> FS28.083 and S261.11.

<sup>27</sup> S248.043 and FS28.018, FS28.017.

<sup>28</sup> FS28.117 and S177.025.

<sup>29</sup> FS28.062 and S188.064.

<sup>30</sup> FS28.201 and S206.023.

<sup>31</sup> S222.050 FS28.052.

<sup>32</sup> S41.002 and FS28.005.

<sup>33</sup> S222.092 and FS28.053.

<sup>34</sup> S248.050 and FS28.015.

<sup>35</sup> FS28.120 and S177.051

<sup>36</sup> S222.105 and FS28.055.

<sup>37</sup> FS28.082 and S261.193.



- x. in support<sup>38</sup> of The Fuel Companies who propose amendments to **Rule P.R22**, and **Rule P.R23** Earthworks;
- y. in support<sup>39</sup> of Ara Poutama Aotearoa the Department of Corrections general submission points;
- z. in support<sup>40</sup> of Kainga Ora who opposes **Policy P.P29** and **Rule P.R24: Earthworks** Winter shut down of earthworks and the non-complying rule framework;
- aa. in opposition<sup>41</sup> to Forest and Bird who seek to additional provisions within Policy **WH.P30 Discharge standard for earthworks**;
- bb. in opposition<sup>42</sup> to Forest and Bird who seek to additional provisions within **Policy P.P28** Discharge standard for earthworks sites; and
- cc. in opposition<sup>43</sup> to Forest and Bird who seek to reclassify **Rule P.R23** Earthworks – restricted discretionary activity as a discretionary activity rule.

## 6. S42 RECOMMENDATIONS AND ASSESSMENT

- 6.1 I have considered the S42A Report Authors assessment and recommendations and address each of the submission points as follows.

### **Earthworks**

#### **Definition of earthworks / New Rules WH.R23A and P.R22A**

- 6.2 Ms Vivian<sup>44</sup> supports the National Planning Standards definition of earthworks as notified (which relate to the TWT and TAoP) but accepts it has unintended consequences, particularly for linear infrastructure. To resolve this, she proposes a new permitted activity rules WH.R23A and P.R22A. I have reviewed the proposed permitted activity rules which include permitted activity standards. I am concerned that permitted activity standard (d) appears to contain a preclusion on any sediment or flocculant discharge and does not reflect some of the 'exemptions'. I recommend the following amendments:

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<sup>38</sup> S258.044, S258.045 and FS28.094, FS28.095.

<sup>39</sup> S248.003 and FS28.012.

<sup>40</sup> S257.054, S257.066 and FS28.101, FS28.103.

<sup>41</sup> FS28.073 and S261.091.

<sup>42</sup> FS28.074 and S261.170.

<sup>43</sup> FS28.084 and S261.194.

<sup>44</sup> S42A Report Earthworks, paragraphs 70-73 and 82.

- a. Adding bores or geotechnical investigation bores, which were previously covered under the earthworks exclusions, to WH.R23A and P.R22A. In my opinion, these are essential for regionally significant infrastructure and should be included.
- b. Replacement of (d) with a modified version of WH.R23 and P.R22 (v) to recognise that, as explained by Ms Vivian<sup>45</sup>, even with sediment control in place, due to topography and rainfall events, it is impractical to retain all discharge on site.

(d) (new) erosion and sediment control measures shall be used to prevent to the extent practicable, and otherwise to minimise, the discharge of sediment from earthworks and/or flocculant into a surface water body, the coastal marine area, or onto land that may enter a surface water body or the coastal marine area, including via a stormwater network.

#### **Policy WH.P31 and Policy P.P29: Winter Shut Down of Earthworks**

- 6.3 Ms Vivian<sup>46</sup> proposes to delete WH.P31 and P.P29 as she considers effects can be managed by the (amended) provisions including subsequent changes to the activity status of Rules WH.R25 and P.R24. Subject to the further changes I recommend, I support the deletion of WH.P31 and P.P29.

#### **Policy WH.P29 and Policy P.P27 Management of earthworks sites**

- 6.4 I agree with Ms Vivians' amendments which replace 'risk' with 'adverse effects'<sup>47</sup> and also to confine the policy to 'uncontrolled'<sup>48</sup> discharges within the chapeau clauses of WH.P29 and P.P27. I support the inclusion of *minimise the risk* of combined with the deletion of *prevent* as, even with sediment control in place, due to topography and rainfall events, it is impractical to retain all discharge on site.

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<sup>45</sup> S42A Report Earthworks, paragraph 110 '*...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.*'

<sup>46</sup> S42A Report Earthworks, paragraph 158.

<sup>47</sup> S42A Report Earthworks, paragraph 100.

<sup>48</sup> S42A Report Earthworks, paragraph 109.

- 6.5 Ms Vivian<sup>49</sup> recommends rejecting Forest and Bird submissions which seek inclusion of ephemeral watercourses and a 10m setback. I support her opinion on this in that there are other plan provisions and uncertainty as to determining ephemeral waterways.
- 6.6 Ms Vivian also proposes a new (e) *minimising works required during the closedown period (from 1st June to 30th September each year)* limb to the policies. I do not consider (e) is necessary as the matters covered in (a) to (d) already provide a complete framework for managing earthworks effects, regardless of the time of year. The rules, standards and matters of discretion along with subsequent consent conditions will set details of sediment treatment required.
- 6.7 Finally, I refer to submissions from Transpower and the Fuel Companies (on which NZTA is a further submitter) seeking a further minor, but necessary, amendment.
- 6.8 Transpower's submission seeks an amendment to clause (b) (in P.27 and WH.P29) by including *where practicable*:

(b) limiting, where practicable, the amount of land disturbed at any time, and

- 6.9 I support the change proposed by Transpower it reflects that, particularly for infrastructure, that the nature of some earth disturbing activities may not be conducive to limiting the extent of land disturbance in every circumstance.

#### **Rule WH.R23: Earthworks and Rule P.R22: Earthworks – Permitted Activity**

- 6.10 The Fuel Companies propose amendments to Rule P.R22 and WH.R23 (v). The Fuel Companies seek to refine (v) further as follows:

(v) best practice erosion and sediment control measures shall be used to minimise the risk of 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.

- 6.11 For the reasons set out in paragraph 6.4, I support inclusion of minimise the risk of and deletion of prevent. I do not consider the words 'best practice' are required

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<sup>49</sup> S42A Report Earthworks, paragraphs 105-107.

6.12 I agree with Ms Vivian’s explanation<sup>50</sup> regarding the combined effects WH.R23 and P.R22 (and WH.P29 / P.P27) (as notified) which effectively precluded any sediment discharge and result in Rule R91 of the NRP applying. Including the words “*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 and concurrently deleting (iv) from WH.R23 and P.R22 will resolve this; I support Ms Vivian’s recommendation.

6.13 A consequential matter arises in relation to WWLs primary relief seeking an exemption for regionally significant infrastructure from WH.R24 and P.R23. I raise it in relation to WH.R23 and P.R22 as the relief sought (for WH.R24 and P.R23) is proposed within WH.R23 and P.R22.

6.14 While Ms Vivian’s proposed WH.R23A and P.R22 provides for maintenance and repair of existing roads, it does not address the 3000m<sup>2</sup> threshold for other (not maintenance or repair) earthworks in WH.R23 and P.R22 which limits permitted activities to:

*(c) the area of earthworks does not exceed **3,000m<sup>2</sup> per property** in any consecutive 12-month period.* (bold added)

6.15 For NZTA (and likely other lineal networks / road controlling authorities) the manner in which ‘title’ for roads are held means that they fall within the definition of a single ‘property’. The definition of ‘property’ is:

***Any contiguous area of land including adjacent land separated by a road or river, held in one ownership and may include one or more records of title. Except that in the case of land subdivided under the Unit Title Act 1972 or 2010 or a cross lease system, a property is the whole of the land subject to the unit development or cross lease.*** (bold added)

6.16 This effectively means that the 3000m<sup>2</sup> permitted activity trigger is applied across the entire state highway network as a single property. As a result, over a 12 month

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<sup>50</sup> S42A Report Earthworks, paragraphs 112-118.

period, the cumulative volume of earthworks is subject to a 3000m<sup>2</sup> limit, regardless of where the works are undertaken (ie. notwithstanding the works could be in different catchments and/or discrete projects).

- 6.17 To address this, I recommend an additional clause to follow WH.R23(b) and P.R22(b).

*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, is a permitted activity, provided the following conditions are met:*

(a) [...], or

(b) [...] or

(bb) for network utility, a 3000m<sup>2</sup> threshold applies to the individual area of work being undertaken at any one time at a particular location such that, where practicable, progressive closure and stabilisation of works could be adopted to maintain the activity within the threshold; or

(c) where (bb) does not apply, the area of earthworks does not exceed 3,000m<sup>2</sup> per property in any consecutive 12-month period, and

(i) [...], and

(ii) [...], and

(iii) [...], and

(iv) erosion and sediment control measures shall be used to minimise the risk of 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.

- 6.18 I also consider an amendment to (v) to recognise that sediment control cannot prevent (in all circumstances) some discharges.
- 6.19 I consider this provides an appropriate method for managing effects of earthworks commensurate with the controls applied to individual property owners and overcomes what I consider a likely unintended consequence of the definition of 'property'. In my opinion, this change will assist in implementing RPS Integrated Management Objective A and Policy 7 by recognising the benefits of regionally significant infrastructure.

**Rule WH.R24: Earthworks and P.R23: Earthworks – Restricted Discretionary Activity**

6.20 Ms Vivian<sup>51</sup> also proposes a change in approach on Winter Works which mean that Winter Works are provided for as a discretionary activity where target attribute state (TAS) for suspended fine sediment in Tables 8.4 (WH.R24) / Table 9.2 (P.R23) are not met. Whilst this provides for a consenting pathway, I am uncertain what extra ‘benefits’ (eg additional matters for consideration, ability to decline, consent conditions) a discretionary activity process provides GRWC relative to a restricted discretionary activity status.

6.21 It is my opinion that, with amendments to standards, works in Part Freshwater Management Units can be managed by a restricted discretionary activity. I propose the following amendments to WH.R24 and P.R23 (which I have discussed and agreed with Ms Christine Forster, planning consultant assisting Meridian Energy).

*Earthworks and the associated discharge of sediment and/or flocculant into a surface water body [...] that does not comply with Rule P.R22 [WH.R24] is a restricted discretionary activity, provided the following conditions are met:*

(a) the water quality [...]

(b) ~~earthworks shall not occur between 1st June and 30th September in any year where works are located within a Part Freshwater Management Unit where the target attribute state for suspended fine sediment in Table 8.4 [Table 9.2 for WH.R24] is not met,~~

*Matters for discretion*

1 [...]

2 [...]

3 [...]

4. [...]

5. *The adequacy and efficiency of stabilisation devices for sediment control*

5A. Where earthworks are proposed to occur between 1st June and 30th September in any year within a Part Freshwater Management Unit where the target attribute state for suspended fine sediment in Table 8.4 [Table 9.2 for WH.R24] is not met:

i. the potential effects of discharges of sediment on suspended sediment concentrations in any surface water receiving environment; and

ii. the need for restrictions on any earthworks activities during the period 1st June to 30th September to avoid or minimise adverse effects on surface water receiving environments; and

iii. requirements for site preparation and mitigation measures in the period preceding 1st June to 30th September

6. *Any adverse effects on: [...]*

#### **Rule WH.R25: Earthworks (over 3000m<sup>2</sup> – non-complying)**

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<sup>51</sup> S42A Report Earthworks, paragraph 151.

- 6.22 Ms Vivian recommends<sup>52</sup> that WH.R25 (and P.R24) are altered to ‘discretionary’ as she considers this reflects the risk of the activities. I agree that the risks of earthworks are well understood and would further suggest, as set out in my paragraph 6.18, effects are well understood (regardless of the environment sensitive) that restricted discretionary should be considered. I consider consent conditions are the most appropriate place to detail differing treatment levels to manage specific effects.

### **Vegetation**

#### **Definition of Vegetation Clearance and Rules WH.R17<sup>53</sup>, WH.R18<sup>54</sup>, P.R16<sup>55</sup> and P.R17<sup>56</sup> Vegetation clearance on highest erosion risk land**

- 6.23 Mr Watson<sup>57</sup> has relied on the definition of vegetation clearance in the NRP (which also applies to PC1) as resolving NZTA’s submission point in that it excludes vegetation clearance associated with the repair and maintenance of existing roads and tracks.
- 6.24 The NRP definition reads (bold added):
- The clearance or destruction of woody vegetation (exotic or native) by mechanical or chemical means, including felling vegetation, spraying of vegetation by hand or aerial means, hand clearance, and the burning of vegetation. **Vegetation clearance does not include:***
- (a) any vegetation clearance, tree removal, or trimming of vegetation associated with the Electricity (Hazards from Trees) Regulations 2003, **and***
  - (b) any vegetation clearance or vegetation disturbance covered by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017, **and***
  - (c) any vegetation clearance associated with the repair and maintenance of existing roads and tracks, **and***
  - (d) the removal of an individual shrub or tree or a standalone clump of trees or shrubs no larger than 20m<sup>2</sup>.*

- 6.25 While (c) appears to provide an exemption for some road activities, all clauses have to be met as the “and” is conjunctive (ie. are cumulative; not alternatives). It is

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<sup>52</sup> S42A Report Earthworks, paragraphs 160-162.

<sup>53</sup> S275.027.

<sup>54</sup> S275.028.

<sup>55</sup> S275.029.

<sup>56</sup> S275.030.

<sup>57</sup> S42A Report Forestry and Vegetation, paragraph 88.

unlikely that road maintenance would satisfy (a) and (b) . Further, (d) limits clearance to 20m<sup>2</sup> and is not determinative as to whether this applies for example, per project, per property (which includes *Any contiguous area of land including adjacent land separated by a road or river, held in one ownership...*), or per single clearance activity. A strict interpretation for NZTA could be one 20m<sup>2</sup> clearance area over the entire NZTA network was all that was permitted.

- 6.26 This contrasts to the Decision Version of the Greater Wellington Regional Policy Statement where clauses (a) to (d) are “or” clauses and would indeed provide for vegetation clearance associated with the repair and maintenance of roads as a permitted activity.

*The clearance or destruction of woody vegetation (exotic or native) by mechanical or chemical means, including felling vegetation, spraying of vegetation by hand or aerial means, hand clearance, and the burning of vegetation. **Vegetation clearance does not include:***

- (a) any vegetation clearance, tree removal, or trimming of vegetation associated with the Electricity (Hazards from Trees) Regulations 2003,*
- (b) any vegetation clearance or vegetation disturbance covered by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017,*
- (c) any vegetation clearance associated with the repair and maintenance of existing roads and tracks, **or***
- (d) the removal of an individual shrub or tree or a standalone clump of trees or shrubs no larger than 20m<sup>2</sup>.*

- 6.27 I am uncertain as to how the NRP and RPS (subsequent to PC1 becoming operative) will be aligned. However in the interim the NRP definition will apply and be ineffectual at enabling vegetation clearance for road maintenance.
- 6.28 Regardless, without certainty that the RPS Decisions version of *vegetation clearance* would be adopted, further changes to WH.R17 and P.R16, are necessary to give effect to the RPS definition and enable vegetation clearance for repair and maintenance of road networks. In this regard I propose adding the wording from clause (c) of the RPS Decisions Version to permitted activity rules WH.R17.
- 6.29 For WH.R18 and P.R17 (controlled activities as notified), Mr Watson proposes to reinstate an amended version of Operative NRP R106 *Earthworks and vegetation clearance for renewable energy generation* and Operative NRP 107 *Earthworks and vegetation clearance – discretionary activity*.



- 6.30 Operative NRP R.106 and PWH.R18 both relate to renewable energy generation so I do not address this further.
- 6.31 For vegetation removal related to road maintenance, reverting to NRP R.107 is unhelpful as it continues the same constraints (via the *vegetation clearance* definition) as described in my paragraphs 6.21-6.25 and I do not support this as it will likely not be consistent with the RPS approach to vegetation clearance (again, assuming it becomes operative in the ‘decisions version’ format). However, if my proposed amendment to P.R16 is adopted, no further relief is required as P.R17 will simply not apply.

### **Maps 90 -95**

- 6.32 Mr Watson<sup>58</sup> recommends that:

*Maps 91 and 94 (highest erosion risk land (woody vegetation)) and 92 and 95 (highest erosion risk land (plantation forestry)) be amalgamated into a simplified map showing the top 10th percentile erosion risk land for all land use categories replacing Maps 90 and 93 [...]*

- 6.33 I have reviewed Mr Watson’s proposed Maps 90 and 93 and note that the *potential erosion prone land* has reduced in some locations relative to notified Maps 90-95. As NZTA’s ability to undertake vegetation removal for maintenance is unchanged by PC1, my discussions with Mr Pocock indicate the Maps are of lesser significance and any new projects will address limitations imposed by Maps 90 and 93 at consent stage.
- 6.34 More broadly, I acknowledge Kainga Ora’s submission that Maps should be deleted outright and erosion prone areas identified (and rules applied) based on whether a site meets a specific definition/s. I agree this is a potential approach and there are benefits (only relevant sites are identified) but also that this reduces certainty for plan users. I consider Mr Watson has sought to balance the certainty benefits of mapping (acknowledging that the Maps are high level) and cost/uncertainty if a definition is relied on and a specialist assessment is required to determine if land

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<sup>58</sup> S42A Report Forestry and Vegetation, paragraph 334.

falls within the definition. On balance, I favour the mapped approach adopted by Mr Watson.

## 7 CONCLUSION

6.35 In conclusion, I consider the following further amendments should be made to the S42A Report Author's recommended provisions:

a. Earthworks: Amend Policies **WH.P29** and **Policy P.P27**

*The adverse effects of sediment discharges from earthworks shall be managed by:*

(a) [...]

(b) [...]

(c) [...]

(d) [...]

~~(e) minimising works required during the closedown period (from 1st June to 30th September each year):~~

b. Earthworks: Amend **P.27** and **WH.P29** by including where practicable in clause (b) of both policies:

*(b) limiting, where practicable, the amount of land disturbed at any time, and*

c. Earthworks: Amend (proposed) Rules **WH.R23A** and **P.R22A** (d) to include:

*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) [...]

(b) [...]

(c) [...]

~~(d)~~ a bore or geotechnical investigation bore

*is a permitted activity provided the following conditions are met:*

(a) [...]

(b) [...]

(c) [...]

~~(d) there is no discharge of sediment from earthworks and/or flocculant into a surface water body, the coastal marine area, or onto land that may enter a surface water body or the coastal marine area, including via a stormwater network, and 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.~~

(da) erosion and sediment control measures shall be used to prevent to the extent practicable, and otherwise to minimise, the discharge of sediment from earthworks and/or flocculant into a surface water body, the coastal marine area, or onto land that may enter a surface water body or the coastal marine area, including via a stormwater network.

d. Earthworks: Amend Rules **P.R22** and **WH.R23** as follows:

*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, is a permitted activity, provided the following conditions are met:*

(a) [...], or

(b) [...] or

(bb) for network utility, a 3000m<sup>2</sup> threshold applies to the individual area of work being undertaken at any one time at a particular location such that, where practicable, progressive closure and stabilisation of works could be adopted to maintain the activity within the threshold; or

(c) where (bb) does not apply, the area of earthworks does not exceed 3,000m<sup>2</sup> per property in any consecutive 12-month period, and [...]

i. [...]

ii. [...]

iii. [...]

iv. [...]

v. erosion and sediment control measures shall be used to minimise the risk of 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.

e. Earthworks: amend **WH.R24** and **P.R23**

*Earthworks and the associated discharge of sediment and/or flocculant into a surface water body [...] that does not comply with Rule P.R22 [WH.R24] is a restricted discretionary activity, provided the following conditions are met: the water quality [...]*

(a) [...]

~~(b) earthworks shall not occur between 1st June and 30th September in any year where works are located within a Part Freshwater Management Unit where the target attribute state for suspended fine sediment in Table 8.4 [Table 9.2 for WH.R24] is not met,~~

*Matters for discretion*

1 [...]

2 [...]

3 [...]

4. [...]

5. The adequacy and efficiency of stabilisation devices for sediment control

5A. Where earthworks are proposed to occur between 1st June and 30th September in any year within a Part Freshwater Management Unit where the

target attribute state for suspended fine sediment in Table 8.4 **[Table 9.2 for WH.R24 ]** is not met:

- i. the potential effects of discharges of sediment on suspended sediment concentrations in any surface water receiving environment; and
- ii. the need for restrictions on any earthworks activities during the period 1st June to 30th September to avoid or minimise adverse effects on surface water receiving environments; and
- iii. requirements for site preparation and mitigation measures in the period preceding 1st June to 30th September

6. Any adverse effects on: [...]

- f. Vegetation: Amend **WH.R17**: Vegetation clearance on erosion prone land – permitted activity

*WH.R17: Vegetation clearance on erosion prone land – permitted activity*

*The use of land, and the associated discharge of sediment into water or onto or into land where it may enter water from vegetation clearance on erosion prone land is a permitted activity where:*

(a) [...]

Or

(aa) any vegetation clearance associated with the repair and maintenance of existing roads and tracks, or

(b) [...]

- g. Vegetation: Amend **P.R16**: Vegetation clearance on erosion prone land – permitted activity

*P.R16 Vegetation clearance on erosion prone land – permitted*

*The use of land, and the associated discharge of sediment into water or onto or into land where it may enter water from vegetation clearance on erosion prone land is a permitted activity where:*

(a) [...]

Or

(aa) any vegetation clearance associated with the repair and maintenance of existing roads and tracks, or

(b) [...]

**Cath Heppelthwaite**

1 May 2025