

# APPENDIX 1

## DISTRICT PLAN CHANGE 70 – EARTHWORKS

### REPORT OF HEARING COMMISSIONER

#### Appendix 2 - Recommendations on Submissions.

#### General Submissions

<i><b>Recommendations</b></i>	<i><b>Reasons</b></i>
<b>Accept</b> the support of Submissions 1/1, 2/1, 2/2, 3/1, 9/1, 5/1 and 8/1 .	The support reinforces the approach taken in DPC70 to create a stand-alone chapter for earthworks and provide a balance between allowing minor earthworks as permitted activities while controlling the adverse effects of earthworks, including stability.
<b>Reject</b> submission 14/12 and 18/1 and 14/8 <b>accept</b> the further submission of Wellington Airport insofar as they request that the district plan specify design working life and importance levels for retaining walls and that a section be added that addresses periodic inspection sign off and future monitoring of resource consent conditions.	DPC70 establishes appropriate limits for activities as permitted activities and provides a for the consideration of the more significant effects of earthworks through resource consents when these limits are exceeded. An applicant for resource consent will be required to provide appropriate information from a suitably qualified professional that the proposed structures or earthworks are designed to the appropriate or relevant standard. The consideration of design working life and durability are all matters which can be assessed as part of a resource consent application. It is not necessary for the District Plan to specify the matters requested as they are covered by the general term “stability.”  Matters relating to periodic inspection, monitoring and sign off, of resource consents are all matters that are provided for and addressed through the resource consent process and it is not necessary for them to be included in the District Plan.
<b>Reject</b> submission 23/1 insofar that the Plan Change is not recommended to be postponed.	There is an imperative for DPC70 to be implemented promptly as the bylaw previously governing earthworks has been removed and it is not practical or desirable to wait until a separate plan change covering archaeology, historic sites and Maori heritage is completed before proceeding with DPC70.
<b>Reject</b> submission 10/1 that all references to "associated structures" and “any associated structures" be changed to "associated free standing retaining wall structures” and "any	In many circumstances proposed earthworks will be retained by an actual building rather than a free standing structure and it is important that where

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<p>associated free standing retaining wall structures".</p>	<p>this is the case the exemptions relating to cut and fill height and obtaining a building consent still apply. The submitter's concern that the proposed earthworks rules could be used to assess the visual impact of buildings is not substantiated.</p>
<p><b>Accept</b> submission 14/3, 15/1 and 15/6 insofar that Council already has access to independent geotechnical, geological and engineering expert advice and reports when required and undertakes appropriate processing procedures for resource consents.</p>	<p>These submissions support existing Council access to expert reports and advice when processing resource consents.</p>
<p><b>Reject</b> Submission, 15/2, 15/4, 15/6, 15/7, 15/8 and 15/9 and <b>accept</b> the further submission of Wellington Airport Ltd.</p>	<p>The proposed earthworks rules provides a balance between allowing minor earthworks activities while ensuring that any issues associated with larger scale earthworks can be taken into consideration at the resource consent stage. The GWRC holds information on slope stability and hazards and this can be used to indicate when further information should be sought. Further work on hazard identification is not considered necessary.</p> <p>It is not necessary to include potential conditions of consent in the District Plan as these can be imposed on resource consents without being specified, provided discretion is retained over the particular aspect of the activity. Under DPC70 discretion is retained over "stability" which provides the scope to seek additional engineering, geological or geotechnical information should it be required and to impose appropriate resource consent conditions. Conditions imposed on a resource consent need to be specific to the particular consent under consideration and the issues relevant to the site. Conditions may also contain a provision for review in certain circumstances.</p> <p>Disclaimers are a normal part of any contractual arrangement or report and it is considered that it is unrealistic to expect them not to be part of engineering reports.</p> <p>DPC70 requires in the new paragraph to section 3.2 of the District Plan that information is to be provided by: <i>"an appropriately qualified and experienced person for example, a chartered</i></p>

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	<p><i>engineer practicing in the field of civil/geotechnical engineering”.</i></p> <p>In respect of the inclusion of performance criteria and/or “end results” in the earthworks provisions, it is well established RMA law that Permitted Activity conditions must be measurable in order to determine with certainty whether an activity is permitted activity or not. The criteria provided by the submitter do not achieve this. Neither are they practical as they would require all earthworks no matter how minor to be designed and undertaken by a geotechnical engineer or geologist. The proposed provisions adequately address the issue of stability by either requiring earthworks to be retained by a structure that obtains a building consent or requiring earthworks that are more than minor to obtain a resource consent.</p>
<p><b>Accept</b> submission 16/5 insofar as it is considered that the Council has retained sufficient discretion to assess each case for earthworks activities and associated structures on its merits.</p>	<p>The proposed rules retain sufficient discretion to deal with individual cases and the potential adverse effects of instability, erosion, dust and sediment control, visual amenity, flooding hazard, earthworks and structures associated with a stream, and the transport of material.</p>
<p><b>Reject in part</b> submission 16/8 and <b>accept in part</b> the further submission by CentrePort insofar as no special rule is included to control sprayed concrete.</p>	<p>It is not necessary to have a specific rule to ensure batters are not held in place by sprayed concrete as visual impact can be considered at the time of assessment of a resource consent and must be balanced against stability and security of the proposed earthworks.</p>
<p><b>Accept in part</b> submission 23/2 insofar as the effects on heritage value are included as a matter over which Council has retained discretion in Rule 30.2.1.</p>	<p>The effects of earthworks activities on heritage value need to be adequately assessed when a resource consent is considered.</p>
<p><b>Accept in part</b> submission 26/1 (Foodstuffs) insofar as a new rule has been included for the Central Area.</p>	<p>Because of the distinct characteristics of the land and buildings (including potential developments) within the Central Area it is considered unnecessary to have limits on cuts and fills within the Central Area for the purpose of managing visual amenity. However earthworks rules are necessary in the Central Area for sediment control and the transport of material.</p> <p>The Suburban Centre areas of the City are extremely diverse in topography and design and the level of development proposed within these areas is often not</p>

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	<p>as intensive as that in the Central Area. As a result there is more opportunity for space around buildings where earthworks may be visible or exposed. It is therefore appropriate to retain provisions in Suburban Centres that allow the consideration of visual amenity.</p> <p>The Section 32 analysis properly evaluates the benefits and costs associated with the policies, rules and methods of the various options available and concludes correctly that the chosen option is the most appropriate.</p>
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## Objectives and Policies

### Introduction 29.1 Earthworks

<i><b>Recommendations</b></i>	<i><b>Reasons</b></i>
<b>Accept</b> submission 23/3 insofar as additional wording is included in the Introduction.	The additional wording proposed by the submitter provides a background and context to the advice notes as well as highlighting the need for people to comply with the archaeological provisions of the Historic Places Act 1993.
<b>Reject</b> submission 26/2 and the further submission by Wellington Airport insofar as the additional wording requested is not recommended to be included in the Introduction.	In response to this submission a specific rule has been provided for the Central Area, but the Suburban Centre Area remains subject to Rule 30.1.1. As the request includes wording that states that the earthworks rules do not apply to Central and Suburban Centre Areas it is not appropriate to include the wording requested. Also it is not necessary to describe individual Areas within this general introductory passage.

### Earthworks Objective 29.2.1

<i><b>Recommendations</b></i>	<i><b>Reasons</b></i>
<b>Reject</b> submission 16/1 and <b>accept</b> the further submission of Mighty River Power and CentrePort.	The outcomes sought to be achieved by the submitter are already addressed in the relevant Area based Chapters of the District Plan. The proposed objective accurately reflects the intent and focus of the Chapter and its strategic direction to manage earthworks activities while avoiding remedying or mitigating any adverse effects. The earthworks provisions seek to achieve a balance

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	between providing for development and managing adverse effects.
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## Earthworks Policies - General

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Reject</b> submission 16/2 and 16/3 (Yvonne Legarth) and <b>accept</b> the further submissions by Mighty River Power and CentrePort insofar that no additional policies are recommended to be included.	Activities within the coastal marine area, the bed of rivers and water bodies are the responsibility of the Regional Council, therefore it is not possible for the district plan to contain rules or policies that address the appropriateness or otherwise of activities within these locations.  DPC70 does address through proposed policies and rules the effects of earthworks on the margins of rivers, water bodies and land adjacent to coastal marine area. The policies of the Area and topic based Chapters; provide the framework for determining the character, local amenity or purpose of an area within the City, and therefore the appropriateness of any earthworks.
<b>Reject</b> submission 16/4 and accept the further submission by CentrePort insofar as it is not recommended that a policy and rule be included that states the Wellington Regional Council's Guidelines for Culverts will be complied with.	The GWRC is responsible for consents relating to culverts therefore it is not necessary for the district plan to contain any policies or rules in relation to the culverting of streams.
<b>Reject</b> submission 22/8 (GWRC) and the further submission by NZHPT insofar as it is not recommended that a new policy be included that controls the effects of earthworks on unidentified archaeological sites.	Addressing the issues of unidentified archaeological sites is beyond the scope of DPC70. However, DPC70 does contain advice notes directing readers to the relevant provisions of the Historic Places Act as well as Policy 29.2.1.12 that seeks to continue to advise applicants of their responsibilities under the Historic Places Act. This provides a mechanism for including conditions relating to the discovery of archaeological sites on resource consents should archaeological sites be discovered during earthworks.

## Earthworks Policy 29.1.1.1 and associated Explanation

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Accept</b> Submission 5/3 and retain the explanation to Policy 29.1.1.2 without further modification.	The explanation is necessary and appropriate.
<b>Reject</b> Submission 21/1 insofar as the requested changes are not recommended.	The explanation is necessary and appropriate. It is necessary to know the

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	<p>future use of the land to determine appropriate design and compaction standards and what are the relevant issues relating to visual amenity. A coordinated approach to the assessment of effects on the environment will result in a better environmental outcome and is to be encouraged. This is consistent with the Council's functions under section 31 of the RMA and with the promotion of sustainable management of natural and physical resources.</p>
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## Earthworks Policy 29.2.1.2

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Accept</b> the support of submission 21/2.	The support reinforces the approach taken by DPC70 for minor earthworks.
<b>Accept</b> submission 5/4 and the further submission by Mighty River Power to minor wording change to the explanation.	The minor wording changes requested are appropriate.

## Earthworks Policy 29.2.1.3

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Reject</b> submission 14/6 insofar that it is not necessary to list the matters requested in the district plan as they can be included as conditions of consent.	It is not practical or necessary to make the standards referred to mandatory because to have a binding effect the full standard would need to be incorporated into the District Plan. Relevant standards can be used as conditions of resource consents where appropriate.
<b>Accept in part</b> Submission 14/7 insofar that user friendly information be provided when the Plan Change becomes operative.	Such information can be provided when the DPC70 becomes operative.
<b>Reject</b> submission 21/2 to amend Policy 29.2.1.3 to refer to "large" earthworks	Even small cuts or fills on steep slopes can result in instability, and there may be other circumstances when the proposed earthworks are only small but are still inappropriate due to their potential risk to stability. It is not appropriate to differentiate between large and small earthworks in the manner requested.

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## Earthworks Policy 29.2.1.4

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Accept</b> submission 8/2 that the term “coastal marine area” be used throughout the policy and explanation.	This is the appropriate RMA term for use in the circumstances.
<b>Accept in part</b> submission 22/2 insofar that the methods be retained and that the policy refer to “rivers” and “streams”.	The methods are appropriate in the circumstances as are the references to ‘rivers’ and ‘streams’.
<b>Accept in Part</b> submission 17/1 that a number of changes to the text of the explanation be made.	The requested changes assist with clarity of the text.

## Earthworks Policy 29.2.1.5

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Accept</b> submission 22/5 that amendments be made to the explanation to Policy 29.2.1.5	The additional explanation will assist with compliance with the Policy.

## Earthworks Policy 29.2.1.6

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Accept</b> submission 22/6 that supports the policy.	The support reinforces the appropriateness of the Policy.
<b>Accept in part</b> submission 17/2 that requests a number of changes to the policy explanation.	With the exception of references to the biodiversity values of streams which are the responsibility of the Regional Council, the amendments will assist with compliance with the Policy.

## Earthworks Policy 29.2.1.7

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Accept</b> submission 8/3 and the further submission of Mighty River Power and Wellington Airport to include additional wording that recognises the contribution earthworks make to social and economic wellbeing.	The additional information recognises the contribution earthworks make to social and economic wellbeing. Reference to the Area or other topic based objectives and policies of the district plan recognises that earthworks are often part of wider developments.
<b>Accept in part</b> submission 23/4 insofar as amendments be made to the policy and explanation of Policy 29.2.1.9 to recognise heritage values.	The omission of Heritage Areas and sites containing Heritage Items from the Policy framework of the Earthworks Chapter needs to be rectified. The appropriate place to recognise Heritage values is in Policy 29.2.1.9 and its explanation.

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## Earthworks Policy 29.2.1.9

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Accept</b> submission 25/1 and the further submission of NZHPT that amendments be made to the policy to include reference to Heritage Areas.	The omission of Heritage Areas and sites containing Heritage Items from the Policy framework of the Earthworks Chapter needs to be rectified. The appropriate place to recognise Heritage values is in Policy 29.2.1.9 and its explanation.

## Earthworks Policy 29.2.1.11

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Reject</b> submission 8/4 insofar as it is considered that the Policy already focuses on the offsite transportation of material.	It is considered that the Policy does focus on the transport of material to and from a site rather than the transportation of material within a site as the policy clearly states “to and from a site”. In the situation that may pertain in respect of the submitter’s land holdings where transport is between adjoining sites, the Policy is also relevant, but not all of the assessment matters will be relevant.

## Earthworks Policy 29.2.1.12

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Accept in Part</b> submission 22/7 insofar that amendments be made to Policy 29.2.1.9 to include reference to Heritage Areas and sites containing Heritage Items, as well as the effect on heritage values (as a result of a submission 25/1) and that additional assessment criteria are included in Policy 29.2.1.9	The omission of Heritage Areas and sites containing Heritage Items from the Policy framework of the Earthworks Chapter needs to be rectified. The appropriate place to recognise Heritage values is in Policy 29.2.1.9 and its explanation.
<b>Accept</b> submission 23/6 and amend the explanation to Policy 29.1.1.12 to delete reference to “Maori and non-Maori sites” and simply refer to “archaeological sites” and change the word “disturb” to “destroy, damage or modify”.	The wording requested better reflects the purposes of the Historic Places Act.

## Earthworks Rules

### Permitted Activity Rules 30.1.1

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Accept in part</b> Submission 12/1 that supports the exclusion of wind energy facilities	The exclusion is appropriate to clarify which rules apply.
<b>Accept in part</b> Submission 5/5 to include a number of new permitted activity conditions in Rules 30.1.1, 30.1.2 and 30.1.3	The National Policy Statement on Electricity Transmission 2008 requires that decision makers recognise and provide for the

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<p>to consider the potential effects of earthworks on high voltage transmission lines.</p>	<p>effective operation (among other things) of the electricity transmission networks and manage activities to avoid reverse sensitivity and to ensure that the operation and maintenance of the electricity network is not compromised. In respect of Rules 30.1.1 and 30.1.2 the standards requested will assist the district plan comply with the National Policy Statement. A lesser clearance of 10 metres between ground level and transmission lines than the 12 metres requested was accepted by the submitter.</p> <p>However it is not necessary for the additional standards be added to Rule 30.1.3 because this rule relates only to facilitating the stabilisation of landslips and does not envisage additional earthworks being required. In addition, network utilities are already exempt from the earthworks rules except in relation to compliance with permitted activity conditions relating to erosion, dust and sediment control, flooding hazard and location adjoining the coastal marine area, streams and wetlands as specified in Chapter 23, Utilities.</p>
<p><b>Accept in part</b> and otherwise <b>Reject</b> submission 20/1 insofar as the definition of trench includes in its purpose reference to “electricity cables”.</p>	<p>Submitter 20 requested that underground network utilities be excluded from complying with the square metre requirement imposed by Conditions 30.1.1.1(a) (iv) and 30.1.1.1(b) (iii) and Condition 30.1.2.1(a) (iv) and Condition 30.1.2.1(b) (iii) or that network utilities are included in the list of exclusions that are not required to comply with the earthwork rules (under 30.1). The majority of underground network utilities will be placed within a trench and therefore be excluded from complying with the earthworks rules, including the square metre area requirement. The definition of “trench” has been expanded to include reference to underground electricity cables.</p>
<p><b>Accept</b> Submission 6/1, the further submission by Wellington Airport and <b>accept in part</b> the further submission by NZHPT to exclude the removal of underground petroleum storage systems from complying with the earthworks rules.</p>	<p>The removal of underground petroleum systems is controlled by Rules in Chapter 32 Contaminated Land.</p>
<p><b>Accept in Part</b> submission 8/5 that requests an additional advice note be included that states “Refer to specific Rules applying to utility network infrastructure under Chapter 23”.</p>	<p>The submission has been satisfied by providing an exemption for network utilities from certain earthworks rules under Rule 30.1 except in respect. This is more appropriate than the inclusion of a marginal note.</p>

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<p><b>Reject</b> submission 16/6 and <b>accept</b> the further submission by Mighty River Power that the rules for permitted earthworks activities in for Open Space A or B; Conservation Sites; areas of high natural character; land adjacent to the coastal marine area; land adjacent to a waterway or stream, or within the coastal environment; land held subject to the Reserves Act or the coastal marine area be deleted.</p>	<p>The requested alterations cannot be agreed to because activities within the coastal marine area, including earthworks, are under the jurisdiction of the Regional Council not the City Council or the District Plan. Also areas of “high natural character” and the “coastal environment” are not specifically defined in the district plan and would need to be mapped in some way before it is possible to apply rules to them. District Plan rules are based on Areas (sometimes referred to as zones) not whether land is held under the Reserves Act.</p> <p>Earthworks are necessary to maintain active recreational areas, including Open Space A and C Areas, and some provision must be made for this activity. The permitted activity rules contain provisions that require resource consents for earthworks within 5m of streams, the coastal marine area and wetlands, and more restrictive earthworks rules apply to “visually sensitive areas” including Open Space B and Conservation Areas. There are other rules in the district plan relating to these areas that restrict the construction of buildings and structures to maintain their relatively undeveloped state. However, these areas still need to be managed and maintained for access and passive recreation and this may involve minor earthworks.</p> <p>It is entirely appropriate to have permitted activity rules that will provide for various levels of earthworks in the areas referred to by the submitter.</p>
<p><b>Reject</b> Submission 16/9 and <b>accept</b> the further submission of CentrePort insofar as there is no rule that states that the cut and fill rules does no apply within 20m of Ridgelines and Hilltops, Conservation Sites and Open Space B Area.</p>	<p>Support cannot be recorded for a rule that does not exist.</p>
<p><b>Accept</b> submission 13/1 (Wellington Airport) to exclude the Airport and Golf Course Precinct from the Earthworks Rules.</p>	<p>The majority of the Airport area is flat and highly modified. Chapter 11A of the District Plan provides comprehensively for the provision of airport related activities and includes conditions related to the movement of dust and the avoidance of the siltation of water bodies. In addition, specific provisions are included for earthworks on the Rongotai Ridge Area. For these reasons it is appropriate to exempt the Airport and Golf Course Precinct from the Earthworks Chapter. The appropriate location for the</p>

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	exemption is under 30.1 Permitted activities.
<b>Accept</b> submission 17 /3 that “measured on a horizontal plane” be added to permitted activity conditions 30.1.1.2 and 30.1.2.2 and the relevant restricted discretionary standard and terms.	The requested submission clarifies the intent and execution of the rules.
<b>Accept in part</b> submission 21/4 that amendments be made to Diagram 1 Proximity of Earthwork Area to Boundary, buildings and structures so far as the Diagram is deleted and the relevant rules are rewritten to more clearly relate the cut height and/or fill depth to the distance.	The setback from a site boundary for earthworks can be regulated by a 45 degree recession plane. This means that an excavation could commence at the site boundary, where its height would be zero, and continue at a 45 degree slope. To achieve this result, amendments to both the rule and the definition of height of cut are necessary. In the case of fills the definition of depth of fill should remain as notified, that is, the vertical distance between the top and bottom of the fill. In this way the setbacks relate to the bulk of the fill placed, rather than its vertical depth at any point, which is relevant to considerations of slope failure and adverse effects on adjoining properties.
<b>Accept in part</b> submission 21/5 in so far as the rule should be amended to include “buildings” as well as structures.	The rule is required as notified to ensure that all situations are adequately covered. However, the rule should refer to “buildings” as well as “structures” to ensure that where earthworks are retained by a building the second part of the rule also applies.
<b>Accept in Part</b> submission 22/4 insofar as an increase in riparian margin has been provided in the Suburban Centre Area adjacent to Porirua Stream.	<p>The submitter requested clarification of the permitted activity standards 30.1.2.3 that requires that there shall be no cut/fill in a Hazard (Flooding Area) and standard 30.1.2.2 which provides that there be no earthworks closer than 5m to a stream and wetland or coastal marine area. It is not considered that there is any conflict between the permitted activity standards and that they are not mutually exclusive. Therefore while there will be circumstances where only one standard applies there will also be circumstances where they both apply. No change to the rule is required.</p> <p>In respect of the riparian margins It is considered that it would be appropriate to bring the riparian margin requirement into line with the recently notified Plan Change 73 (Suburban Centres) which requires a greater margin of 10m in the Suburban Centre Area along the Porirua Stream. However, a riparian margin of 10m is unrealistic for residentially zoned properties which will on the whole be smaller than</p>

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	those in the Suburban Centre Zone. In addition, both the Operative District Plan and DPC 72, which is a review of the provisions relating to Residential Areas, allow buildings as a Permitted Activity to within 5 metres of a water body. It would be inconsistent to require a greater setback for earthworks. It is considered that 5m is adequate for the remaining residentially zoned area along the stream (that is not within the flood hazard area) and for the remaining streams within Wellington City.
<b>Accept</b> submission 23/7 that a number of wording changes be made to the advice note adjacent to Rule 30.1.1 and 30.1.2.	The amendments suggested are considered appropriate as they better reflect the obligations of people undertaking earthworks in relation to archaeological sites under the Historic Places Act.
<b>Reject</b> submission 23/8 and the further submission of NZHPT and <b>accept in part</b> the further submission by Transpower, PowerCo and The Oil Companies that additional permitted activity conditions be included that require the effects on listed historic sites to be considered.	Permitted activity conditions must be measurable and the condition proposed does not meet this basic requirement. The wording suggested is more appropriate for restricted discretionary activity, as a matter over which discretion has been retained, should the permitted activity conditions not be meet.  The schedule of archaeological sites referred to is not currently part of the district plan. In order for the district plan to apply earthworks rules to these sites a further Plan Change would need to be undertaken to include the schedule of archaeological sites in the district plan. It is considered that the Archaeological Authority provisions of the Historic Places Act address the issue of undiscovered archaeological sites. These provisions require people undertaking earthworks to notify the Historic Places Trust if archaeological sites are found and obtain an archaeological authority before continuing work.
<b>Accept in Part</b> submission 8/6 insofar as a new earthworks rule for the Central Area has been included including the exclusion of the maintenance of reclamation facings from complying with the 5m from the coastal marine area permitted activity standard.	Given the specialised nature of Port activities it is reasonable to provide an exception from the Permitted Activity Rules for certain earthworks near the coastal marine area. It is appropriate in the circumstances that activities such as piling, trenching for network utilities and maintenance of paved surfaces be excluded from the definition of earthworks.
<b>Accept</b> submission 25/2 that a minor amendment to change the “and” to an “or” to be consistent with all of the other permitted activity conditions in permitted activity condition 30.1.1.1(c)(i).	The wording is required for consistency and clarity of meaning.

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<p><b>Reject submission 18/2</b> which requests that the limiting cut face slope be defined.</p>	<p>The permitted activity standards and the definition of cut height establish that a cut face is limited to a 45 degree angle and this is considered adequate. If this condition is not met a resource consent is required.</p>
<p><b>Accept submission 25/4</b> that specific provisions relating to the Churton Park Concept Area be included in the Earthworks Chapter. As a result of the inclusion of the Churton Park Concept Area within the recently notified Suburban Centres Chapter a number of provisions relating to earthworks were considered to be more appropriately located in the Earthworks Chapter.</p>	<p>These provisions which have recently been settled by a Consent order of the Environment Court are considered to be appropriately located within the proposed earthworks chapter.</p>

### Permitted Activity Rules – Visually Sensitive Areas

<i><b>Recommendations</b></i>	<i><b>Reasons</b></i>
<p><b>Accept</b> submission 11/1 and 11/3 that the provisions for visually sensitive areas be retained.</p>	<p>The support reinforces the approach taken in DPC70 to provide separate rules for visually sensitive areas.</p>
<p><b>Reject</b> submission 24/1 that the limits for cuts and fills in the Urban Coastal Edge be the same as for other areas of the City.</p>	<p>The Urban Coastal Edge is a highly visible part of the City that contributes much to the City’s character and sense of place. For that reason it is important that new development be undertaken in a way that is sensitive to the character and amenity of these areas and that the earthworks rules reflect that. It is considered that the proposed permitted activity conditions of 1.5m maximum height and 100m<sup>2</sup> maximum surface area are justified for this “visually sensitive areas” and provides a balance between allowing for minor earthworks activities “as of right” while ensuring adverse effects are avoided, remedied or mitigated.</p>
<p><b>Reject</b> submission 10/2 that all references to the Urban Coastal Edge be removed and that Maps 62 and 63 be deleted.</p>	<p>The Urban Coastal Edge is a highly visible part of the City that contributes much to the City’s character and sense of place. For that reason it is important that new development be undertaken in a way that is sensitive to the character and amenity of these areas and rules adopted to achieve that.</p>
<p><b>Reject</b> submissions 4/1 and <b>accept in part</b> the further submission by Transpower, PowerCo and the Oil Companies that an additional condition be included that allows an increase in the height of the cut/fill providing it is covered by the footprint of the building.</p>	<p>The proposed permitted activity rule will cover the majority of small scale earthworks, which is appropriate, while large developments in these areas will require a resource consent, of which earthworks will only be one element. The permitted activity conditions work as a package to address a number of effects of which only one is visual amenity. Other effects such as erosion, dust and the creation of sediment are also addressed by these conditions and need to be addressed when these limits are</p>

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	<p>exceeded. While it is accepted that the location of a building over earthworks can mitigate visual effects, it is considered that this is best assessed through a resource consent application. Providing an exemption to the earthworks rules on the basis that the earthworks are to be covered by a building ignores the fact that earthworks have effects other than those on visual amenity.</p>
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## Discretionary (Restricted) Activity Rules

<i>Recommendations</i>	<i>Reasons</i>
<p><b>Accept</b> submission 5/6 that a new discretionary restricted activity rule be included for activities that do not comply with permitted activity conditions, relating to earthworks in close proximity to electricity lines and support structures.</p>	<p>With the acceptance of the new permitted activity conditions relating to distance from the foundations and centreline of high voltage transmission it will be necessary to include an appropriate restricted discretionary activity rule to address the activities that do not meet these standards.</p>
<p><b>Accept in Part</b> Submission 8/7 (CentrePort) insofar as the Pipitea and Port Redevelopment Precincts are exempt from the 200m<sup>3</sup> transport of material up to 2000m<sup>3</sup>, and that 30.2.1.1(vi) and 30.2.1.2(vi) refers to the off site transport of material.</p>	<p>The effect of removing 'structures' from 30.2.1.1 would be that Council would not have the discretion to comment on the structures used to retain cuts or fills in areas close to the coastal marine area or streams. While the type and extent of any proposed cut and fill in these areas is the trigger for the rule, the type of structure (if any) proposed to retain the proposed cuts and fills is an important part of the proposal as it may have the potential to either mitigate or exacerbate any potential adverse effects.</p> <p>The Port area is located on a major arterial (Aotea Quay) with access to and from the site controlled by traffic lights. This provides a different traffic environment from the majority of the Central City where the movement of material to and from the Port Area does not have the same potential to impact on the roading and pedestrian network. The higher limit of 2000m<sup>3</sup> is considered to be appropriate.</p>
<p><b>Accept</b> submission 11/2 supports the rule that requires activities in the urban coastal edge that do not meet the permitted activity standards to be restricted discretionary activities.</p>	<p>The support reinforces the efficacy of the proposed rule.</p>
<p><b>Reject</b> submission 16/7 and <b>accept</b> the further submission of CentrePort insofar that all earthworks in Open Space A or B Areas, Conservation Sites, Areas of High Natural Character, or within the coastal environment and land held subject to the</p>	<p>For the same reasons as specified in respect of the submitter's similar request relating to permitted activities, the request is not considered to be practical, necessary or conducive to managing the adverse effects of earthworks within the City.</p>

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Reserves Act or the Coastal Marine Area are restricted discretionary activities.	
<b>Reject</b> submission 14/3 and 14/4 and <b>reject</b> the further submission by Transpower, PowerCo, the Oil Companies, Wellington Airport and Cardno TCB insofar as no changes are proposed to the non-notification statement.	<p>In order to maintain consistency with the way notification decisions are made across the district plan no changes should be made to the non-notification clause. Any changes would need to result from a comprehensive review of all the non-notification clauses within the district plan.</p> <p>Under the RMA, the determination of who is an affected party is done on a case by case basis. It is entirely inappropriate to predetermine who may be an affected party by a rule in a plan.</p>
<b>Accept</b> submission 18/3 to correct a numbering error.	The numbering of rules needs to be consistent.
<b>Reject</b> submission 18/4 and <b>accept in part</b> the further submission of Cardno TCB that that major earthworks (under rule 30.2.1 and 30.2.3) be publicly notified and that affected parties should be informed of all applications, affected parties should include those downstream in the catchment.	<p>In order to maintain consistency with the way notification decisions are made across the district plan no changes should be made to the non-notification clause. Any changes would need to result from a comprehensive review of all the non-notification clauses within the district plan.</p> <p>Under the RMA, the determination of who is an affected party is done on a case by case basis. It is entirely inappropriate to predetermine who may be an affected party by a rule in a plan.</p>
<b>Accept in Part</b> submission 21/6 insofar as the non-notification clause remains without change. <b>Reject</b> the request to amend the matters over which Council has retained its discretion.	<p>In order to maintain consistency with the way notification decisions are made across the district plan no changes should be made to the non-notification clause. Any changes would need to result from a comprehensive review of all the non-notification clauses within the district plan.</p> <p>Specifically mentioning the matters over which Council has retained discretion indicates to applicants the matters that will need to be addressed in a resource consent application. Also a reasonable degree of specificity in restricted discretionary rules is particularly helpful in administering the rule because of the statutory constraints on refusal of consents and the imposition of conditions</p>
<b>Accept in part</b> submission 23/9 and <b>reject</b> the further submission by Transpower, PowerCo and The Oil Companies insofar as the effect on the heritage values, as a matter over which Council has retained discretion, is included in Rule 30.2.1.2.	The additional matter of the effect on heritage values has been included as a matter over which Council has retained its discretion, in Rules 30.2.1.1 and 30.2.1.2. Heritage Areas and sites containing heritage items have been included in the permitted activity rule that applies to visually sensitive areas. In order to be able to consider the

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	effect of earthworks on the heritage values of a site or item it is necessary to retain discretion over this matter, but in Rule 30.2.1.2 only.
<b>Accept</b> submission 23/11 requests the inclusion of an amended advice note alongside Rule 30.2.	The amendments better reflect the duties of people under the Historic Places Act in relation to archaeological sites.
<b>Accept</b> submission 25/3 that requests the amendment of 30.2.1.1(iii) to include consideration of visual amenity when the 250m <sup>2</sup> or 100m <sup>2</sup> limit is exceeded.	The area over which the earthworks are undertaken can have an adverse effect on visual amenity. Therefore, the inclusion of the area limits of 250m <sup>2</sup> and 100m <sup>2</sup> in the relevant matters over which Council has restricted its discretion is considered appropriate.

### Discretionary (Unrestricted) Activity Rules

<i><b>Recommendations</b></i>	<i><b>Reasons</b></i>
<b>Reject</b> submission 5/7 that requests that a new discretionary unrestricted activity rule be included for earthworks in close proximity to transmission lines.	Because there are no such conditions in the new discretionary (restricted) activity rule all activities that do not meet the permitted activity conditions will automatically become discretionary restricted activities. There is, therefore, no need for a further rule as requested.
<b>Accept</b> submission 25/5 that additional rules be included that address earthworks specifically in the Churton Park Village Concept Area.	These provisions which have recently been settled by a Consent order of the Environment Court are considered to be appropriately located within the proposed earthworks chapter.

### Urban Coastal Edge Maps

<i><b>Recommendations</b></i>	<i><b>Reasons</b></i>
<b>Accept</b> submission 10/3 that the properties at 87 & 85 Hutt Rd (including 52 and 58 Sar St) and 54 and 56 Sar St be removed from the Urban Coastal Edge Area.	The lots requested to be removed from the Urban Coastal Edge are the only lots zoned Suburban Centre on the Hutt Rd to have been included in the Urban Coastal Edge. The lots have already been developed and contain residential units accessed off Sar St and commercial premises accessed off Hutt Rd. Although highly visible, they are no more visible than the adjoining commercial properties to the south. It is appropriate to remove these properties and have the Urban Coastal Edge begin at the adjoining Open Space B Area.

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## Changes to Existing Chapters of the District Plan

### 3.10 Definitions

<i><b>Recommendations</b></i>	<i><b>Reasons</b></i>
<b>Reject</b> Submission 7/1 (PowerCo) to maintain the definition of Earthworks unchanged.	For practical reasons the definition of earthworks requires amendment.
<b>Accept</b> Submission 8/8 (CentrePort) supported by PowerCo and Transpower to amend the definition of Earthworks, change “Trench to “Trenching”.	The change better reflects the nature of the earthworks that are to be subject to district plan control.
<b>Reject</b> Submission 10/4 (Tony Flynn) to exclude a 2.5m hole and excavations under a building from the definition of earthworks and cut height.	No change to the definition is necessary on the basis that permitted activity conditions adequately provide for minor earthworks and would not preclude the creation of a 2.5m wide hole or excavations under a building, providing the conditions relating to cut height and slope angle are met. However, once the thresholds are reached a number of effects can arise that need to be addressed through the resource consent process, including stability, visual amenity, erosion and sedimentation effects.
<b>Reject</b> Submission 15/5 (Michael Fleming) to define track.	The definition of ‘track’ requested to be included does not add value to the rule or assist with its interpretation. In this context the term is given its ordinary dictionary meaning and does not require further explanation.
<b>Accept in part</b> but otherwise <b>Reject</b> Submission 21/7, 21/8, 21/9 (Cardno TCB) to amend the definition of cut height, fill depth and existing slope angle.	<p>The setback from a site boundary for earthworks can be regulated by a 45 degree recession plane as requested. This means that an excavation could commence at the site boundary, where its height would be zero, and continue at a 45 degree slope. To achieve this result amendments to both the rule and the definition of height of cut are necessary. In the case of fills, while the recession technique is still applicable, the definition of depth of fill should remain as notified, that is, the vertical distance between the top and bottom of the fill. In this way the setbacks relate to the bulk of the fill placed rather than its vertical depth at any point, which is relevant to considerations of slope failure and adverse effects on adjoining properties.</p> <p>The definition of existing slope ensures the management of stability by considering the steepness of the slope above or below the area of cut or fill. For cuts it is necessary to consider the slope of the ground above the cut and for fills it is necessary to consider the slope of the ground below the fill. The</p>

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	<p>definition ensures the area around the earthworks is taken into consideration in order to avoid cuts and fills inappropriate situations.</p> <p>An alternative approach would be to take the average slope angle within either the cut/fill area or within a designated area either side of the cut/fill. However, an average slope angle ignores an overly steep section within the area of the cut; above the cut; or below the fill. In such situations the proposed cut may only be removing a small section of a particularly steep slope, which when taken as an average with the remainder of the sloping ground, may not result in the slope angle standard being triggered. If the area to be cut is at the toe of a hillside (or fill placed at the top of a steep slope) the result can be a large area becoming unstable.</p>
<b>Accept</b> Submission 22/3 (GWRC) to delete the definition of streams and replace with the RMA definition of “rivers”.	The RMA definition should be used wherever possible.
<b>Reject</b> Submission 25/7 (WCC) and accept the further submissions PowerCo and The Oil Companies.	While it is considered that a maximum width could be helpful in some circumstances it is also recognised that it is difficult to determine what the maximum dimensions of a trench should be, as it will vary according to the needs of the utilities being installed and the ground conditions.

## Information to be supplied with a Resource Consent Application

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Accept</b> submission 5/8 that additional bullet points be included that requires applicants to show the location of high voltage transmission line.	Including information on the location of existing high voltage electricity transmission lines in applications for resource consents is good resource management practice.
<b>Reject</b> submission 15/3 that requests that a checklist be included in the district plan which contains a list of fundamental site investigations and testing.	It is not necessary for the district plan to specify what the investigations should be undertaken as it is expected that an “appropriately qualified person” would comply with all the necessary requirements of their profession and undertake the necessary site investigations and testing necessary to determine the appropriateness or otherwise of the earthworks. In addition the extent and scale of the proposed work and the particular characteristics of the site will determine what testing and investigation is necessary.
<b>Accept</b> Submission 17/4 that information about the location of streams wetlands and water bodies be provided.	Including information on the location of streams and wetlands in applications for resource consents is good resource management practice

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<b>Accept</b> submission 23/5 that the location of Heritage Items and Areas be included.	Including information on the location of Heritage items and Areas in applications for resource consents is good resource management practice
<b>Reject</b> submission 18/5 that an additional bullet point be included that requires information to be provided on the control of sediment and slowing of stormwater run-off.	Sediment control is a matter over which discretion is specifically retained under the earthworks restricted discretionary activity rules it would therefore be necessary for applicants to address this matter in any assessment of effects on the environment. This would include any proposed mitigation measures.
<b>Accept</b> submission 14/10 and 14/11 that grammatical errors be corrected	District Plan should be grammatically correct.

### Changes to Other District Plan Chapters

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Accept in part</b> Submissions 8/9 and 8/10 that Rules 13.1.6 and 13.14.4 are altered to include the paved areas of the Operational Port Area.	The paved areas within the Port are extensive and it is appropriate that their upgrade and maintenance be provided for as a permitted activity.
<b>Accept</b> submission 14/9 that requests that number referencing be corrected.	The numbering of District Plan Rules should be consistent.
<b>Reject</b> submission 14/5 that the non-notification statement for Rule 5.2.5 be amended.	This non-notification statement does not form part of the Plan Change and can not be considered a consequential amendment.
<b>Accept in part</b> submission 21/10 which supports the exception provided for in the assessment criteria in Rule 5.2.5, but <b>reject in part</b> the request that the reference be amended to 30.1.1.1(a).	The earthworks stability provisions of Rule 30.1.1.1 include both (a) and (b) parts of the rule and therefore it is appropriate that the reference in Assessment Criteria 5.2.5.11 be 30.1.1.1. For consistency however, the assessment criteria should also refer to 30.1.2.1 which relates to the Urban Coastal Edge area (which includes Residential Areas).
<b>Accept</b> submission 23/12 requests that an advice note be included alongside the permitted activity rules 7.1.5, 9.1.4, 11.1.4, 11.5.3, 13.1.6, 13.14.4, 13.20.4, 15.1.7, 17.1.14 and 19.1.4.	The advice note will be useful in that agencies undertaking work on legal roads are made aware of their obligations under the Historic Places Act.
<b>Accept</b> submissions 14/1 and 14/2 that request that the Residential Appendices 12 and 17 be retained.	The Appendices are a necessary part of the Residential Area provisions.

### Chapter 23 Utilities

<b><i>Recommendations</i></b>	<b><i>Reasons</i></b>
<b>Accept</b> submission 5/2 (Transpower) and Submission 7/2 (PowerCo) that request that the proposed amendments to Chapter 23 Utilities be retained without further modification.	Support for amendments reinforces the efficacy of the proposed amendments.
<b>Reject</b> submission 8/11 that the references that require network utilities to comply	When earthworks exceed the maximum area requirement there is the potential for

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<p>with the square metre area be deleted and that the reference to the Te Ara Haukawakawa Precinct be changed to the Pipitea Precinct and that the last paragraph be amended to refer to Contaminated and Potentially Contaminated land.</p>	<p>adverse effects in relation to erosion, dust and sediment. In particular, exposure of large areas by earthworks can result in sediment entering and blocking Council's stormwater system as well as creating a nuisance effect on the roading network. While network utility operators do not need to comply with a number of the permitted earthworks conditions it is considered appropriate that they comply with the maximum area requirement to avoid potential adverse effects. In this regard, trenching is not considered to be earthworks and would not need to comply with this provision.</p> <p>The changes requested to include reference to Contaminated and Potentially Contaminated land in the last paragraph can not be made as this paragraph was not amended by Plan Change 70. If such a change is necessary it may be able to be made as a consequential amendment to Plan Change 69 Contaminated sites. In relation to the reference to the Te Ara Haukawakawa Precinct once Plan Change 48 becomes operative this line will no longer be relevant and will be able to be deleted as a consequential amendment to Plan Change 48.</p>
<p><b>Accept</b> Submission 25/6 (WCC) requests that a referencing error be corrected.</p>	<p>The District Plan text requires accurate cross-referencing.</p>