

WELLINGTON CITY COUNCIL

Hearing of Submissions and Further Submissions

on

Proposed District Plan

Report and Recommendations of Independent Commissioners

Hearing Stream 5

Report 5C

**Three Waters
Subdivision
Earthworks**

Commissioners

**Robert Schofield (Chair)
Jane Black
Lindsay Daysh
Rawiri Faulkner**

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EXECUTIVE SUMMARY

1. This report addresses submissions on the provisions of the PDP on the three District-wide matters of three waters, subdivision and earthworks. Submissions on the noise provisions of the PDP are addressed in Panel Report 5A, while Panel Report 5B addresses submissions on the PDP's natural hazards provisions.
2. Three waters, subdivision and earthworks are inter-related matters; for instance, where subdivision provisions trigger consideration of three waters provisions or where earthworks are required to enable a subdivision to be developed. Subdivision and earthworks both have provisions requiring consideration of historical and cultural values, natural and environmental issues, coastal environment and natural and coastal hazards.
3. Apart from a range of minor matters, the key issues in contention in relation to the three waters, subdivision and earthworks provisions were:
 - Hydraulic neutrality (Three Waters)
 - Water sensitive design (Three Waters)
 - Subdivision design guide (Subdivision)
 - Definition of cut height (Earthworks)
4. In relation to hydraulic neutrality, submitters were concerned about the proposed shift in policy that would require existing development to achieve stormwater neutrality in addition to any new development of a site. The proposed provisions sought to have any development of a site for four or more buildings achieve stormwater neutrality as if the site was completely undeveloped (just grassed), whether or not the site was already developed (in part or in its entirety). Thus, where there is an existing building(s) on the land being subdivided (such as an infill development), or where an existing development is to be replaced by multiple buildings, the proposal must seek to achieve hydraulic neutrality as if the site were totally undeveloped.
5. We agreed with the submitters in considering that this was an unreasonable requirement and an inequitable shift from the well understood meaning of hydraulic neutrality: that the site should be considered in its current state so that the proposed development does not increase current levels of stormwater discharge. We were not satisfied there had been sufficient assessment of the benefits and costs of widening

the current hydraulic neutrality policy to understand the potential impacts on development costs. Accordingly, we recommend changes to the definitions, the objective, the policy and the rule to clarify the policy approach. We also recommended that the CCZ should be excluded from achieving hydraulic neutrality due to site constraints and costs, which we do not consider having been appropriately assessed.

6. We agreed with the provisions for promoting water sensitive design and, while submitters opposed the application of these provisions in the CCZ, we considered that there is a range of measures that can be taken including in the CCZ to reduce stormwater discharges.
7. We recommend that the subdivision design guide be deleted and that a new policy be included that addresses matters covered by the design guide. The overall review of the PDP Design Guides, addressed in Panel Report 2, informed our considerations.
8. In regard to the earthworks provisions, we recommend a revised definition of 'cut height' so that the point of measurement is at the maximum vertical height of the cut. We preferred the definition of the ODP with some minor amendment.

1. INTRODUCTION

1. Hearing Stream 5 covered the Noise, Natural and Coastal Hazards, Three Waters, Subdivision and Earthworks chapters in the Proposed District Plan.
2. This report (Report 5C) covers the Three Waters, Subdivision and Earthworks Chapters. Most of these matters were the subject of three separate Section 42A Reports authored by Ms Hannah van Haren-Giles (Subdivision and Earthworks) and Ms Maggie Cook (Three Waters). Some provisions were addressed by Ms Anna Stevens in relation to the Subdivision design guides.
3. Our Report follows the general layout of Ms van Haren-Giles' and Ms Cook's 42A Reports and needs to be read in conjunction with Report 5A and 5B as these reports address matters that are also related to this report in addition to proposed recommendations for Plan consistency reasons.
4. It should also be read in conjunction with Report 1B, which addresses strategic objectives, and Report 1A, which sets out:
 - a. Appointment of commissioners
 - b. Notification and submissions
 - c. Procedural directions
 - d. Conflict management
 - e. Statutory requirements
 - f. General approach taken in reports
 - g. Abbreviations used.

2. THREE WATERS

2.1 Introduction and Overview

5. The Section 42A report on the Three Waters provisions of the PDP was prepared by Ms Maggie Cook. This Panel report follows the structure of the Section 42A Report for ease of reference.
6. The provisions of the Three Waters Chapter sit within the ISPP process, and are interrelated with other chapters in the PDP, particularly the Subdivision Chapter. As identified by Ms Cook in the introduction to her Report, the main issues in contention are:
 - a. Inclusion of a definition of Undeveloped State
 - b. Inclusion of Permeable surfaces provisions
 - c. Opposition to amendments to Hydraulic Neutrality
 - d. Constraints for development based on infrastructure capacity
 - e. Opposition or amendments to Water Sensitive Design
 - f. The inclusion of Financial Contributions for stormwater management
7. There were 271 submission points and 66 further submission points.
8. We have focused our evaluation on the principal matters in contention. If we do not refer specifically to an individual submission or group of submissions on a particular point, that is because, having reviewed the submissions, and the commentary in the relevant Section 42A Report, we accept and adopt the recommendations in the latter.

2.2 Hydraulic Neutrality

9. The most contentious matter of the Three Waters Chapter were the provisions relating to hydraulic neutrality. Submissions in relation to this matter raised a number of questions: is what the Council attempting to achieve in terms of managing stormwater flow reasonable? What does 'hydraulic neutrality' mean? What does 'undeveloped state' mean?
10. Given the scope of this issue and the number and nature of the submissions, we are addressing this at the front of this report. The key issue at the basis of the provisions designed to achieve hydraulic neutrality relates to the Council's requirement that new subdivision and development must manage discharge of

stormwater from the site so that “it is reduced as far as practicable to be at or below the modelled peak flow and volume for each site in an undeveloped state”¹

11. This would mean that existing stormwater discharge from a site would potentially have to be improved to achieve hydraulic neutrality at the time of a subdivision affecting that site.
12. In order to address this issue we have addressed the definition of Hydraulic Neutrality, along with the relevant objectives, policies and rules.
13. Rimu Architects² requested that the definition of ‘Hydraulic Neutrality’ be amended as the proposed definition refers to a “*site in an undeveloped state*” which is not the same as ‘pre-development’ as used in the WWL guidance except for greenfield sites. Survey & Spatial supported this submission³. Survey & Spatial⁴ also submitted that the definition as proposed removes the existing use rights for any building to discharge stormwater from a site, as it requires the rate of stormwater discharge to be the same as that of an undeveloped site. The submitter proposed the following amendment:
 9. Hydraulic Neutrality
 10. Means managing stormwater runoff from subdivision, use and development through either on-site disposal or storage, so that peak stormwater flows and volumes are released from the site at a rate that does not exceed the modelled peak stormwater flows and volumes from the site in ~~an undeveloped~~ its existing state prior to subdivision, use or development.
 14. Council⁵ also made a submission on this definition, which was supported by GWRC⁶ but opposed by Survey & Spatial⁷, seeking clarification of the meaning of ‘undeveloped state’.
 15. Ms Cook disagreed that existing use rights would be removed by the definition as existing use rights are established by Section 10 of the RMA. In her opinion, a rule that requires hydraulic neutrality for new developments “*is no different from any other rule that imposes a new and more stringent requirement as compared to a*

¹ THW-P5

² Submission #318.11

³ Further Submission #116.3

⁴ Submission #439.7

⁵ Submission #266.53

⁶ Further Submission #84.2

⁷ Further Submission #16.1

*previous plan*⁸. She did, however, go on to say that: *“The use of the phrase ‘undeveloped’ state’ within the definition will, however, limit an applicant’s ability to use an existing environment arguments in the resource consent process”*.

16. The basis for her argument is that requiring modelling to an undeveloped state for the purposes of the policies and rules relating to hydraulic neutrality is to give effect to the NPSFM, which she quoted in her Section 42A Report⁹:
11. Every territorial authority must include objectives, policies and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (Including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.’
17. She added that the WWL guidance document ‘Managing Stormwater Runoff’ defines pre-development as the site before it was developed. As a consequence, she agreed with Council’s submission that ‘undeveloped state’ needed to be defined in order to provide clarity and consistency to the application of rules THW-R5 and THW-R6. Ms Nitsche, the Council’s advisor from WWL, also considered that it was important to model sites as if they were a grassed space.
18. We note that, in our reading, the WWL document referred to, addresses greenfield sites rather than the situations we are considering on this matter. However, Ms Cook proposed that a definition for undeveloped state be added and this would read:
 12. Undeveloped State
 13. The modelled grass (pastoral or urban open space) state of the site prior to urban development
 - 14.
19. On the one hand, Survey & Spatial considered that it is too onerous to require a new development to also improve the stormwater runoff from an existing development. An example is an infill development on an existing residential property, which, under the Council’s proposed approach would be required to lessen the stormwater runoff from the existing development as well as achieve neutrality from the proposed development. The Council wants to see improvements in stormwater treatment and runoff from existing developed sites, and is proposing

⁸ Section 42A Report paragraph 100

⁹ Section 42A Report paragraph 101

to use the trigger of new development to improve on-site stormwater management overall and retrospectively:

15. The intention of requiring modelling to an undeveloped state within the hydraulic neutrality policy framework is to manage onsite stormwater in order to mitigate the effects that stormwater runoff can have on the stormwater network, and the wider receiving environment (giving effect to 3.5(4) of the NPS-FM 2020).¹⁰
20. While we accept and agree that the proposed provisions are lawful, the question to us is whether it is reasonable, having regard to the costs and benefits, equity issues and efficiency and effectiveness. Improvements to stormwater management would likely be piecemeal and sporadic rather than a strategic approach across the city.
21. We heard from Craig Stewart and Mitch Lewandowski from Stratum Management Ltd¹¹ that the requirement will add significant costs, particularly for the types of apartment buildings his company builds in the City Centre. David Gibson from Survey & Spatial¹² also commented on the added costs that a pre-development approach to hydraulic neutrality would incur to address existing situations.
22. In our view, the added costs to redevelopment are likely to be a disincentive to redevelop sites, which has implications for achieving the objectives and policies of the NPSUD.
23. The two critical objectives for three waters are THW-O1 and THW-O3:
16. THW-O1: Protecting water bodies and freshwater ecosystems
17. Subdivision and development contributes to an improvements in the health and wellbeing of water bodies and freshwater ecosystems.
- 18.
19. THW-O3: Hydraulic neutrality
20. There is no increase in offsite stormwater peak flows and volumes as a result of subdivision, use and development in urban areas.
24. Ryman and RVA sought that objective THW-O3 be deleted on the basis that it is inappropriate to require hydraulic neutrality in all cases, and that it was inconsistent

¹⁰ Section 42A report, at paragraph 152

¹¹ Stewart Submission #249 Evidence

¹² Survey & Spatial speaking notes

with Policy THW-P5¹³ which allowed for some flexibility through the use of “as far as practicable”: Survey & Spatial and Stratum Management also opposed THW-03 on similar grounds and sought amendment to THW-03 so that it referred to no increase.....“from current levels”.

25. However, through the planning evidence of Ms Williams, RVA and Ryman sought to ‘soften’ this objective by adding “*unless environmental effects from stormwater can be appropriately managed*” at the end, to align it with Policy THW-P5.
26. Ms Cook did not recommend any changes to the wording of THW-O3. However, in her rebuttal evidence in response to the planning evidence for RVA and Ryman, Ms Cook recommended that the objective be reworded to ‘align it’ with Policy THW-P5 Hydraulic Neutrality as follows:
 21. ~~The There is no increase in~~ offsite stormwater peak flows and volumes as a result of subdivision, use and development in urban areas are reduced to be at or below peak flows and volumes of each site in an undeveloped state.
 27. This proposed change appears to be in response to the issue identified by Ms Williams that the “*reduce as far as practicable*” intent of Policy THW-P5 did not align with the “*no increase*” approach of objective THW-O3. It did not, however, change Ms Cook’s support for the overall existing approach, which is that it is reasonable to require retrospective changes to stormwater management from already developed sites.
 28. In summary, the Panel does not agree with this approach. We consider that it is not reasonable to require a developer to improve an existing situation, when subdividing and/or developing a related site. While we agree that objective THW-O3 is a subset of objective THW-O1 in that hydraulic neutrality is one way to have development contribute to an improvement in the health and wellbeing of water bodies and freshwater ecosystems, the nexus between the volume of stormwater runoff with the improvement in the health and wellbeing of water bodies and freshwater ecosystems was not clearly established.
 29. In particular, we were not aware of any evidence that reducing stormwater runoff in a piecemeal ad hoc approach would improve the health and wellbeing of freshwater

¹³ THW-P5 – Hydraulic Neutrality

Require new subdivision and development to be designed, constructed and maintained to sustainably manage the volume and rate of discharge of stormwater to the receiving environment so that the rate of offsite stormwater discharge is reduced as far as practicable to be at or below the modelled peak flow and volume for each site in an undeveloped state.

systems. We found no evidential link between these in the Section 32 evaluation, but demonstrating this connection is critical in our view to supporting the reasonableness of the reduction approach. Put simply, the required evidence was not put to us.

30. Further, there was no compelling economic evidence either as to the costs and benefits of imposing a regulatory framework requiring that redevelopment reduces existing stormwater runoff. We note that there has been no s32 evaluation of the costs of changing the notified version of objective THW-O3. On the other side of the argument, we heard evidence from a submitter, Craig Stewart for Stratum Management. Harrison Greenwood, a Lead Structural Engineer at Aurecon, provided supporting evidence of how the requirements could be implemented in an 18-level apartment building with ground floor retail. He said that this was a typical building that Stratum would construct. He had calculated the attenuation volume and the size of the tank that would be required as well as the design parameters to accommodate the tank. In speaking at the hearing, he said that it is likely to add a \$1million to the costs of a new building in the CCZ. He cited a development he has an interest in, a proposed apartment building on the corner of Victoria/Dixon Street, as an example. These costs would include large retention tanks, and the consequential structural costs, as well as the opportunity of lost useful space. Stratum therefore sought the exclusion of the CCZ from this rule.
31. TRoTR¹⁴ considered that it was unclear how financial contributions can be used when stormwater treatment is needed offsite, how this can be incorporated into a Stormwater Management plan, and how costs can be determined.
32. The economic evidence of the Council's adviser, David Norman, did not assist us with any greater understanding of the costs. Dr Norman referred to work by Wellington Water that suggests the cost of a centralised response would be prohibitive, at between \$72,000 and \$124,000 per additional new dwelling added just for stormwater management to meet Three Waters quality standards. He added that if more localised solutions are available that are more efficient, they should be enabled¹⁵.
33. This evidence seems to indicate that the only option to recover the costs of a centralised response is to impose the full costs on new development whereas many of the existing discharges are generated by existing development. We note no

¹⁴ Submission #488.39

¹⁵ Norman evidence, at paragraph 17.

economic advice was presented on the development costs of complying with a stormwater improvement policy (that is, the costs of the “localised solutions” referred to by Dr Norman). Further Dr Norman advised that development contributions can only be charged where new development adds to existing burdens on infrastructure: *“Economic principles are clear that growth should pay for itself, and so DCs should be set at a level that accurately reflects the additional network impacts of growth.”*¹⁶. We consider that the same economic principle should apply to the concept of adding costs to new development through additional requirements for stormwater mitigation over and beyond those created by the new development.

34. Further, when the piecemeal nature of the proposed regulatory approach was put to Mr Norman, his response is that it ‘was only one piece of the jigsaw puzzle’. It occurs to us that, given the sporadic and variable nature of development within the existing urban area, any remediation is likely to be sporadic and variable.
35. We also considered the recommended amendment to objective THW-O3 was that it would skew the common meaning and understanding of ‘hydraulic neutrality’. Neutrality is commonly understood as neither negative nor positive in effect. As explained in the Wellington Water Guidance document referred to us by Council advisers *“a hydraulically neutral development will not cause additional stress to the stormwater network and will not increase flooding.”*¹⁷
36. Another problem we have with amending as recommended by the reporting officer is the question of scope. Ms Cook’s recommendation to amend objective THW-O3 was in response to the submission from RVA and Ryman. However, their amended submission sought to soften the objective rather than widen its scope to improve stormwater management in existing development as proposed by Ms Cook.
37. We were also concerned that the reasonableness of ‘retrofitting’ this objective to align with a policy is contrary to the evaluative process under Section 32 RMA, where the policies are determined in terms of their appropriateness of achieving the objectives, and not vice versa.
38. We have therefore concluded that imposition of the provisions on development would be unreasonable and likely to increase the costs of development and result in only a sporadic ad hoc and possibly relatively minor level of overall improvement to

¹⁶ At paragraph 19(a)

¹⁷ Wellington Water, *Managing Stormwater Runoff – The Use of Approved Solutions for Hydraulic Neutrality*, V.4, at page 6

stormwater runoff. We are uncomfortable with the prospect of exercising our 'out-of-scope' recommendatory powers under Clause 99 of RMA Schedule 1 based on the evidence before us on this particular matter, which is not sufficient to justify the amendments at the expense of potential impacts on persons who have not had the opportunity to fairly contest them.

39. We recommend objective THW-O3 be amended as follows which better clarifies the meaning of hydraulic neutrality:
22. There is no increase in offsite stormwater peak flows and volumes from current levels as a result of subdivision, use and development in urban areas.
40. Consistent with the view we have taken at that high level, we recommend policy THW-P5 be amended as follows:
- ~~23. Require new subdivision and development to be designed, constructed and maintained to sustainably manage the volume and rate of discharge of stormwater to the receiving environment so that hydraulic neutrality is achieved ~~the rate of offsite stormwater discharge is reduced as far as practicable to be at or below the modelled peak flow and volume for each site in an undeveloped state.~~~~
41. With regard to the rule that implements this policy, THW-R6.1.b we accordingly recommend that it be amended as follows:
24. Stormwater management measures are incorporated which achieve post development peak stormwater flows and volumes which are the same or less than the modelled peak flows and volumes for the site in ~~an undeveloped~~ its current state.
42. And to implement those changes, we recommend the definition of 'hydraulic neutrality' be amended as follows:
25. means managing stormwater runoff from subdivision, use and development through either on-site disposal or storage, so that peak stormwater flows and volumes are released from the site at a rate that does not exceed the modelled peak flows and volumes from the site in its current ~~an undeveloped~~ state, prior to any proposed subdivision, use or development.
43. We prefer "current state" to "undeveloped state" as this better aligns with the meaning of hydraulic neutrality, and avoids some of the ambiguity involved with the latter term.

44. In respect of Ms Cook’s recommendation that a definition of ‘undeveloped state’ be included, we note that this term is used three times in the chapter:
- a. In the Introduction;
 - b. In THW-P5;
 - c. In THW-R6.
45. The second use would be removed as a result of our recommended amendment to THW-P5. The remaining two can be replaced by “*in its current state*” to be made consistent with the approach we have taken. As the term ‘undeveloped state’ will no longer be in the PDP, there is then no need for a definition.
46. With respect to the Stratum submission¹⁸ seeking the exclusion of the CCZ from the hydraulic neutrality provisions, we conclude based on the evidence we heard that the provisions in relation to development in the CCZ were onerous and likely to add significant costs to development due to site constraints and the building standards in the CCZ allowing full site development in coverage and bulk. We consider that the costs of imposing this on development in the CCZ have not been properly evaluated, nor the benefits. The option of financial contributions for stormwater upgrades which could be more strategically applied across the CCZ has not been adequately evaluated. While Mr Norman assessed the funding options, there has not been a broader assessment across the CCZ of the cost implications. We therefore recommend the removal of the CCZ from the requirements of THW-R6.

2.3 Definitions

47. CentrePort Ltd¹⁹ sought amendment to the definition of ‘three waters infrastructure’ to remove the list of agencies responsible for three waters infrastructure.
48. Ms Cook disagreed with this amendment on the basis that the Council only has authority over the infrastructure it owns, not privately owned infrastructure, nor connections to privately owned infrastructure. The Panel agrees with this assessment for the reasons given.
49. Council²⁰ sought to provide greater clarification to different types of wetlands, and in particular to distinguish between ‘constructed wetlands’ and ‘natural inland wetlands’. To this end, it proposed new definitions for both terms.

¹⁸ Submission #249.12

¹⁹ Submission #402.29

²⁰ Submission #266.49 and #266.52, Further Submission #84.1

50. Ms Cook agreed that the definitions were necessary to be consistent with the NPSFM and the NES-FM. We agree that this is necessary to provide a distinction between the two types of wetlands.
51. Council also sought a new definition of 'first flush' to provide clarity in association with amendments to THW-P1 that the Council were also seeking²¹.
52. Ms Cook agreed that a definition for 'first flush' should be included as it is a term used in the Introduction. It is also consistent with other district plans. She did not recommend an amendment to THW-P1 as sought by Council, however.

2.4 Submissions on Three Waters Chapter

General Chapter-wide Matters

53. The key matters in this section relate to permeable surfaces.
54. Trelissick Park Group²² sought that the offset requirements of sites would need to be funded by the developer as part of the consent.
55. TRoTR²³ considered that it was unclear how financial contributions can be used.
56. GWRC sought that inclusion of permeable surface requirements be considered in this chapter. It also sought that consideration be given to the inclusion of permeable surfaces for more than four units.²⁴
57. In respect of the submissions from Trelissick Park Group and TRoTR, Ms Cook did not agree that a policy framework should be developed for financial contributions for off-site stormwater treatment and management of specific developments as the costs for addressing the wider issues of stormwater management are addressed through development contributions which the Council already charges. While we agree that the practice for Councils is to apply either development contributions or financial contributions but not both, to provide predictability for developers, we were not fully satisfied that financial contributions could not be applied for addressing separate components of the public stormwater management system from those components funded through development contributions. However, this matter is beyond our ambit to address.

²¹ Submission #266.50

²² Submission #168.2

²³ Submission #488.39

²⁴ Submission #351.73

58. Ms Cook agreed with GWRC that a permeable surfaces requirement be included in the Three Waters Chapter. She also agreed that it should be applied to four or more units and non-residential activities. This reflects the fact that the PDP has a requirement for a minimum area of permeable surface for 1-3 residential units, but not for four or more units and non-residential activities. Ms Cook considered that a more flexible approach was required to these activities because of the range in types of developments. As a result, her preferred option was to include it as a matter of discretion in THW-R4:Water sensitive design methods which would read *“the maximum feasible area of permeable surfacing”*.
59. Related to this submission point, Council made submissions seeking that provisions for permeable surfaces be added to the Three Waters chapter, rather than being located in the Residential Chapter. As a result, Ms Cook recommended introducing a complete rule framework to implement this relief. These recommendations were accepted by the Panel and are addressed in the sections on New Policies and New Rules of this report. The complete rule framework, including the recommendation in respect of GWRC’s submission, provide a comprehensive approach to permeable surfacing, and in our view assist the plan user.

Three Waters Introduction

60. Council²⁵ sought amendments to the chapter Introduction to align with the wording of the NPSFM.
61. Survey & Spatial²⁶ sought changes to reflect its submission points relating to hydraulic neutrality.
62. Taranaki Whānui²⁷ sought amendment to mention the role of Taranaki Whānui transitioning to Entity C and Three Waters reform. No wording was provided.
63. The Sustainability Society²⁸ sought clarification to ensure that robust retention of stormwater can be achieved when referring to peak runoff flow rates and overall stormwater volumes.
64. Kāinga Ora²⁹ sought an amendment to replace Natural Hazard Overlays with Natural Hazard Areas.

²⁵ Submission #266.58

²⁶ Submission #439.8

²⁷ Submission #389.54

²⁸ Submission #339.2

²⁹ Submission #391.92-93

65. Ms Cook agreed with the Council's submission seeking to align the text with NPSFM wording, and to delete repetitive wording. She did not agree with the submission of Survey & Spatial as we addressed in the previous section. She agreed in part with the points raised by Sustainable Society where the amendments added clarity, but disagreed where they caused repetition. She did not agree with Taranaki Whānui as its request relates to a separate legislative process. Lastly, Ms Cook did not agree with Kāinga Ora as the term 'overlay' is used throughout the PDP, and is the correct term used in the National Planning Standards.
66. With the exception of the submission by Survey & Spatial, we adopt the recommendation of the Section 42A Report for the reasons given. We have addressed the submission points of Survey & Spatial in the preceding section of our report. While not agreeing with the wording proposed, the changes we have made are in large part consistent with the intention of the submission.

Three Waters Objectives

THW-02 Protecting water bodies and freshwater ecosystems

67. Survey & Spatial sought an amendment to include reference to Development Contributions to fund infrastructure upgrades.
68. Ms Cook did not agree with this submission as this objective is about enabling development where there is existing or planned capacity or an alternative means of servicing. The matter of levying Development Contributions is not material to this.
69. The Panel agrees with the assessment of the Section 42A Report and adopts its recommendations.

THW-03 Hydraulic Neutrality

70. We have addressed this matter and the submissions in section 2.2.

Three Waters Policies

THW-P1 Water Sensitive Design

71. There were a number of submissions that sought the retention of this policy, as well as one from Stratum Management³⁰ seeking its deletion.
72. Council sought the addition of 'first flush' measures, and this was supported by GWRC³¹.

³⁰ Submission #249.4

³¹ Further Submission #84.7

73. Phillipa O'Connor and Woolworths sought the replacement of the words "Water sensitive design methods are incorporated into..." with "Water sensitive design methods are promoted..."
74. RVA and Ryman³² sought to remove parts of the policy that are not linked to the effects of the particular development, although no specific relief was mentioned.
75. GWRC³³ sought inclusion of an additional sub-clause to achieve other amenity, recreational, climate and cultural outcomes. GWRC³⁴ also requested an amendment to specify the extent of reduction in wastewater overflows sought, and any consequential amendments.
76. WCC Environmental Reference Group³⁵ sought to amend the policy to clarify if the provision is trying to reduce wastewater overflows city wide, or reduce wastewater overflows in comparison to the status quo. This was opposed by RVA and Ryman³⁶.
77. Survey & Spatial³⁷ sought removal of the sub-clause to reduce wastewater flows.
78. TRoTR³⁸ requested addition of reference to Te Whanganui a Tara and Porirua Whaitua Implementation.
79. Mr Stewart from Stratum was concerned with requirements for water sensitive design activities that are uncertain in terms of outcome. In particular, he was concerned with the ability of apartments in the City Centre to achieve the requirements. THW-R4, which implements this policy, requires a site by site assessment, which lacks certainty for a developer. Mr Lewandowski gave planning evidence on behalf of Stratum and he concluded that the policy was uncertain in what it was requiring, and would impact both on the design of the development, and its capacity to address this. As a result, it would cause cost and time delays. He considered that, if the policy and rule cannot be more certain and measurable, then it should be deleted.
80. Ms Cook agreed that the extent to which this can be achieved will vary from site to site, and that there will be additional costs and she said that the overall benefits were assessed as part of the section 32 report. The benefits outweighed the economic, social, environmental and cultural costs. She said that a report had been

³² Submissions #350.29, #350.30

³³ Submission #351.84

³⁴ Submission #351.85

³⁵ Submission #377.28

³⁶ Further Submission #126.215, Further Submission #128.215

³⁷ Submission #439.12

³⁸ Submission #488.40, #488.41

commissioned³⁹ that identified that the additional costs are offset by a value uplift. In addition, she said that the costs should also be compared with otherwise significant development contribution costs that would be required to upgrade the stormwater system to meet growth projections. As quoted earlier the report estimated these as between \$72,000 and \$124,000 per dwelling.

81. This matter is further addressed in the section on THW-R4 below.
82. The Panel considers that the policy as it is worded is appropriate and that it provides the basis for implementation through the rule.
83. In relation to the request to add a clause to address the effects of ‘first flush’, Ms Cook considered that this is addressed in clauses 1 and 2 of the policy. This is also our view on the matter, and so we agree with Ms Cook.
84. Survey & Spatial sought the deletion of clause 5 – to reduce wastewater flows. Ms Cook referred to the problems with Wellington’s wastewater infrastructure and how it is designed to overflow into the stormwater system during high rainfall events. This causes beaches to be closed because of pollution at the sea. Therefore, through management of stormwater amounts, there will be a reduction in wastewater overflows.
85. She maintained that there are other wastewater overflows caused by events unrelated to stormwater management, and these are difficult to quantify. She therefore disagreed that it would be beneficial to state the extent of reduction sought by GWRC. Ms Cook also applied this reasoning in her response to WCC Environmental Reference Group. However, they were also suggesting amendments to the wording as follows:

“5. ~~Reduce~~ Avoid wastewater overflows wherever practicable.”
86. In our view, this seems a reasonable amendment as the overall objective and policy relate to not reducing off site stormwater flows and there does not appear to be related provisions for reducing wastewater flows other than through a reduction in stormwater flows. It seems consistent with the wording of other clauses in THW-P1 therefore to agree to the wording proposed by WCC Environmental Reference Group.
87. The Panel recommends that THW-P1.5 be amended in accordance with the submission point from WCC Environmental Reference Group.

³⁹ GHD (2023) Economic assessment – Requirements for water sensitive design for four-plus unit developments – sections 5.3.1 and 5.3.2.

88. Ms Cook agreed with GWRC that there would be other benefits from water sensitive design, but as the relief sought was to be consistent with proposed RPS-Change 1, which has little legal weighting, she did not recommend these amendments. We agree with that, with proposed RPS-Change 1 still in hearings, little weight can be put on it at present.
89. In response to RVA and Ryman's request, we agree with Ms Cook that the policy is aimed at improving stormwater management from sites to address problems with the existing situation.
90. We agree also with Ms Cook that the wording of the policy is appropriate, and that replacing "*incorporated into*" with "*promoted in*" is not sufficiently directive.
91. The Panel adopts the recommendations of the Section 42A Report, for the reasons given above with the exception of the submission of WCC Environmental Reference Group and we recommend the rewording of the policy as outlined above.

THW-P2 Building Materials

92. Rimu Architects Ltd⁴⁰ sought an amendment to recognise that copper roofing and downpipes enhance the safety of roof water when it is used for drinking water.
93. Kāinga Ora⁴¹ requested rewording to acknowledge that it may be appropriate to use copper and zinc where there is no impact on the stormwater system.
94. Ms Cook agreed with Kāinga Ora's suggestion, with a minor amendment that broadens the policy to apply to all building materials. In response to Rimu Architects, she stated (correctly in our view) that drinking water safety is not a matter within the scope of the PDP although copper pipes may well be used for that purpose.
95. We adopt the recommendations of the Section 42A Report on this matter, and for the reasons outlined.

THW-P3 Infrastructure-enabled urban development

96. Tyers Stream Group⁴² sought an amendment to the policy to require that sufficient capacity is in place prior to subdivision, use and development. No relief was sought, but in our view the policy does address this matter.

⁴⁰ Submission #318.14

⁴¹ Submission #391.98

⁴² Submission #221.16

97. Survey & Spatial⁴³ sought addition of “*including via development contributions*” to the wording of the policy. We agree with Ms Cook that this is not the place for reference to a method for funding. Development contributions are outside the PDP process.
98. RVA and Ryman sought that THW-P3 be amended to remove overlap with THW-P4.
99. Ms Cook maintained that while there were similarities, THW-P3 refers to the short to medium term and THW-P4 refers more to servicing, and where development should be limited.

THW-P4 Three waters infrastructure servicing

100. GWRC⁴⁴ sought that the chapter provide for decentralised wastewater re-use and treatment of grey and black water and disposal using alternative wastewater systems, where there are constraints on the existing network capacity. This was supported by RVA and Ryman⁴⁵. Ms Cook responded that there is no national direction on whether the responsibility for requirements for installing wastewater recycling systems falls under Section 31 of the RMA, and whether it is the best method for managing effects on drinking water networks. Drinking water infrastructure requires improvements to address water loss, before addressing the end use.
101. WCC Environmental Reference Group⁴⁶ requested that the words ‘urban areas’ be removed. Ms Cook pointed out that this term needs to remain as Three Waters outside urban areas are managed by GWRC.
102. Kāinga Ora⁴⁷, Rimu Architects⁴⁸ and Thorndon Society⁴⁹ sought reference be made to providing for infrastructure to increase capacity. As Ms Cook pointed out, it is outside the scope of the PDP to direct public investment.
103. Survey & Spatial⁵⁰ sought removal of reference to limiting development unless there is sufficient infrastructure capacity or an alternative solution. We agree with Ms Cook that the Plan enables capacity to meet expected demand for housing and business land over short, medium and long terms. It also requires development to provide additional Three Waters infrastructure capacity to service the development.

⁴³ Submission #439.13

⁴⁴ Submission #351.87

⁴⁵ Further Submission #126.60, Further Submission #128.60

⁴⁶ Submission #377.3

⁴⁷ Submission 391.101

⁴⁸ Submission #318.15

⁴⁹ Submission #487.3

⁵⁰ Submission #439.14

In addition, the process by which Council funds investment in infrastructure sits outside the PDP. The emphasis of the policy is therefore on limiting subdivision and development where there is insufficient capacity. The PDP does not encourage development, which would create demands for unplanned investment. Through its provisions, it does however enable development where specific District Wide standards are met.

104. We accordingly adopt the Section 42A Report recommendations for the reasons given. For those submissions not specifically addressed, we adopt the Section 42A Report recommendations and the reasons provided in that report.

THW-P5 Hydraulic Neutrality

105. Rod Halliday submitted that the policy should be amended to note that some areas of the City can achieve the intent of this policy, due to the presence of Stebbings Dam and Seton Nossiter Detention Structure. Ms Cook responded that the provisions of the PDP seek to ensure that Three Waters infrastructure services new development, but to achieve this, on-site mitigation measures may be required. She also advised that WWL would require more evidence that the Dam had sufficient capacity for 1 in 100 year storm events to be able to say that the area above could be exempted from achieving hydraulic neutrality.
106. We addressed the submission of Stratum⁵¹ in section 2.2. Stratum⁵² also sought that THW-P5 exclude the CCZ, and that the policy only apply where there is insufficient infrastructure capacity. RVA⁵³ submitted on the same matter.
107. Ms Cook stated that on-site mitigation measures may be required to support the level of service provided by Three Waters infrastructure.
108. We agree with Ms Cook's assessment of the submissions and her recommendations, which we adopt with the exception of the recommendations relating to 'undeveloped state' which are addressed in section 2.2.

New Policies

109. Council⁵⁴ sought a new policy for permeable surfaces. Ms Cook agreed that the Three Waters Chapter is the appropriate location for a policy on this matter. She recommended an amendment to the Council relief to better align with the Three

⁵¹ Submission #249.6

⁵² Submission #249.7

⁵³ Submission #350.36

⁵⁴ Submission #266.59

Waters Chapter by changing “to provide a minimum level of permeable surfaces” to “provide permeable surfaces”.

110. GWRC⁵⁵ sought a new policy to encourage water use efficiency, and for development design to manage water demand. It also sought a new policy requiring development to ensure there is an adequate available water supply, including consideration of climate change effects. Ms Cook responded, and we agree that these matters are dealt with through other methods than the PDP. For example, GWRC is responsible for managing water supply.
111. We agree with the recommendations in this section of the Section 42A Report and adopt them for the reasons outlined.

Three Waters Rules

THW-R1 Connection to existing three waters infrastructure – new residential buildings

112. Trellissick Park Group⁵⁶ sought amendment to the Restricted Discretionary Activity rule to delete reference to stormwater. It apparently understood that the effect of so doing would be that the activity would be Prohibited, but this is incorrect. As Ms Cook pointed out, the default status would be a Permitted Activity. Ms Cook went on to set out her view that Prohibited Activity status would be too restrictive and not consistent with NPSUD. We agree with her that the rule framework and the proposed activity status is appropriate to achieve neutral or lesser stormwater runoff, compared with the current position.
113. Tyers Stream Group⁵⁷ also sought to include the requirement that there is capacity within the relevant part of the Three Waters network as a Permitted Activity condition, as in THW-R2. Ms Cook responded that this would not be consistent with the direction of Section 77F of the RMA in relation to the MDRS and the PDP, as the consideration of infrastructure capacity would potentially limit development, which is contrary to the direction of the MDRS. It would therefore have needed to be evaluated as a qualifying matter and we did not have sufficient evidence to undertake our own evaluation of this as a potential qualifying matter.
114. Survey & Spatial⁵⁸ sought the removal of reference to the Regional Standard for Water Services (**RSWS**), and that the specific provisions be included in the Plan. At the hearing, Mr Gibson said that there were technical tables that could be included

⁵⁵ Submissions #351.76, #351.822

⁵⁶ Submission #168.8

⁵⁷ Submission #221.30

⁵⁸ Submission #439.16

in the PDP, such as the Regional Standard for maximum and minimum water pressure limits for new water supply connections. Ms Cook responded that reference to an external document to meet Permitted Activity standards is provided for by the RMA. As the RSWS is over 120 pages long, and contains specific technical requirements and methods, it was appropriate that it is referenced through the Plan. The Panel agree that this is an appropriate reference, and consistent with the RMA.

115. We agree with the assessment of the Section 42A Report for the reasons given and adopt the recommendations of the Report.

THW-R2 Connection to existing three waters infrastructure – four or more residential units and non-residential development

116. The Thorndon Society Inc⁵⁹, supported by Thorndon Residents' Association Inc⁶⁰ and Historic Places Trust⁶¹, sought removal of reference to non-residential buildings as it was concerned about non-residential buildings in residential zones. Ms Cook responded that the rule applies to all zones except General Rural and Large Lot Residential zones, and rules relating to non-residential buildings in residential zones are found in the residential zone chapters. We agree that the aim of the rule is to address the effects of non-residential buildings on Three Waters infrastructure. We accordingly adopt the Section 42A Report recommendation in this respect.

THW-R4 Incorporation of water sensitive design methods- four or more residential units and non-residential activity

117. The Trelissick Park Group⁶², Philippa O'Connor⁶³, Woolworths⁶⁴ and Ryman⁶⁵ sought deletion of the rule. Presenting evidence for Ryman, Ms Williams contended that it was not appropriate to require water sensitive design methods within a rule where THW-R2 provides for connections to Three Waters infrastructure where there is capacity.⁶⁶
118. Ms Cook responded that water sensitive design allows for better stormwater management, and is consistent with the NPSFM. We agree that this is a consistent approach across the chapter, which seeks to not increase the demand on the network.

⁵⁹ Submission #487.4, #487.5

⁶⁰ Further Submission #69.86, Further Submission #69.87

⁶¹ Submission Further Submission #111.77, Further Submission #487.5

⁶² Submission #168.11

⁶³ Submission #289.7

⁶⁴ Submission #359.26

⁶⁵ Submission #128.60

⁶⁶ Williams evidence paragraph 13

119. Stratum Management Ltd⁶⁷ sought to either amend the rule to exclude its application in the City Centre Zone, or to delete the rule. Ms Cook addressed this matter in the Section 42A Report when she assessed the policy where she stated that:
- The proposed matters of discretion recognise that the extent to which this can be achieved will vary between sites. The onus is on the applicant to show how they've complied*⁶⁸.
120. She also agreed that there would be additional costs in meeting this requirement, but that this was assessed in the s32 report, and the overall benefits were assessed as outweighing the economic, social, environmental and cultural costs.⁶⁹
121. At the hearing, Mr Stewart presented evidence as the director of Stratum Management Ltd. He explained that he had been involved in property development for over 30 years and has completed 15 inner city buildings and many multi-unit housing developments ranging from 4 to 95 units per site. He said that they have included water sensitive design methods in their multi-unit developments, and while they are often as a result of requirements, their buyers also expect these methods in the design of the developments.
122. His concern is that the requirements of THW-R4 are uncertain in terms of the outcome. In particular, he was concerned that developments in the City Centre have limited ability to include these methods. He said too that the lack of certainty, the need for a site by site assessment, and likely negotiation to follow that, would result in an uncertain consenting environment. Mr Lewandowski reiterated his view, as expressed in relation to the policy, which was that it lacked certainty. He referred to Wellington Water's 'Water Sensitive Design for Stormwater' referenced in the rule for guidance as a matter of discretion. His concern was that the listed methods are all space intensive and particularly impractical to apply in the City Centre Zone. He did add, however, that there were other methods available that may be able to be applied in City Centre developments, but the rule lacks clarity as to what extent these methods are required, and when an applicant would know they had achieved what was sought.
123. Ms Cook commented further in her supplementary evidence that the intention of the provisions is to avoid prescriptive solutions based on zones and that enable constraints to be taken into account.

⁶⁷ Submission #249.8, #249.9

⁶⁸ Cook evidence paragraph 166

⁶⁹ Cook evidence paragraph 167

The provision framework for WSUD [Water Sensitive Urban Design] was written in a way to strike the balance between enabling development with acknowledging the current infrastructure limitations and the Council's obligations under NPS-FM 2020. The intent is to cause a shift in best practice for the consenting process with a greater emphasis put on working collaboratively with Council and Wellington Water in the pre-application process.⁷⁰

124. The Panel agrees to a certain extent with Mr Stewart and Mr Lewandowski that the rule lacks clarity, and has the potential to increase costs for developments. We also agree, however, with the intent of the provisions, and that the direction is consistent with the obligations of the NPSFM. In terms of the consenting process, we note that multi-unit applications are Restricted Discretionary Activities in residential zones, and therefore the process already involves pre-application discussions and negotiations, and that this is only an additional consideration as part of that process.
125. It appears to us that the lack of certainty is deliberate to enable flexibility in what and how these measures are employed, depending on the development and the site. We agree with the submitters that, in the City Centre Zone, this rule presents challenges to development in terms of the developer's ability to include many of the methods. However, as Mr Lewandowski pointed out, there are methods that would be suitable for a city centre development and which would contribute to stormwater management on the site. We consider that the rule enables flexibility in the application of the matters of discretion relative to the site circumstances. We therefore agree with Ms Cook's and adopt the recommendations of the Section 42A Report.
126. We have outlined our reasons for this decision in the discussion.

THW-R5 Hydraulic Neutrality – 1-3 residential units

127. Stratum Management Ltd⁷¹ sought amendments to the rule to provide greater certainty, and to limit the requirement to apply only where existing infrastructure is under capacity. Ms Cook responded that the provisions seek to ensure that new development is serviced by Three Waters infrastructure, but other on-site measures may be required to maintain the level of service of Three Waters infrastructure. The Panel agrees with the desire to enable other measures to be applied in circumstances where the infrastructure is at risk of being degraded.

⁷⁰ Cook supplementary evidence paragraph 31

⁷¹ Submission #249.11

128. Tyers Stream Group⁷² submitted that it is unclear whether the standards apply to both the short term site development and the long term effects of the development, and that both need to be considered. Ms Cook responded that the rule framework applies to both the short term and long term effects of development. We agree with her assessment.
129. We adopt the Section 42A Report recommendations for the reasons outlined.

THW-R6 Hydraulic Neutrality – four or more residential units

130. This is addressed in section 2 above.

New Rules

131. Council⁷³ sought addition of two new rules to include provisions for permeable surfaces, rather than as a standard, which in its view was not appropriate as provision for permeable surfaces is not a building provision. This was supported by GWRC⁷⁴ and opposed by RVA⁷⁵ and Ryman⁷⁶.
132. We agree that it is consistent with the rule framework to move the requirements for permeable surfaces from the standards to rules in the Three Waters Chapter. We also agree with Ms Cook's amendments to remove as matters of discretion, "*any measures used to mitigate stormwater runoff*" and "*the capacity of, and effects on, the stormwater network...*" as the policy, THW-P6, specifically requires provision of permeable surfaces. Therefore, the matters of discretion must be within the scope of this requirement.
133. The second amendment Ms Cook recommended was the inclusion of a matter of discretion that provides for an assessment of the degree of non-compliance with the rule. This enables a site by site assessment of the scale of the development, its impact on the environment and the need to offset with, amongst other measures, permeable surfaces. We agree that this is a necessary addition to the rule to enable assessment of the effect of non-compliance.
134. The Panel adopts the recommendation off the Section 42A Report for the reasons given above.

⁷² Submission #Submission #221.25

⁷³ Submission #266.60, #266.61, Further Submission #84.5, Further Submission #112.13, Further Submission #126.239, Further Submission #128.239, Further Submission #84.6, Further Submission #112.4, Further Submission #126.240, Further Submission #128.240

Further Submission #84.6

⁷⁵ Further Submission #126.240

⁷⁶ Further Submission #128.240

Amendments to Chapter not in Scope of Submissions

135. Ms Cook recommended an amendment to the chapter to correct an oversight. As the definition of multi-unit housing (four or more residential units on a site), excludes the area covered by Oriental Bay Height Precinct, this area has been omitted from the THW rules that relate to four or more residential units and non-residential activity. The amendment sought was to add to the rules THW-R2, THW-R4 and THW-R6:

For the construction of four or more residential units or non-residential building in the Oriental Bay Height Precinct Area...

136. The Panel agrees that this is not within the scope of submissions, but that Schedule 1, clause 99 (2b) of the RMA provides for the panel to make recommendations in relation to the IPI that are not within the scope of a submission. We agree with this amendment as it ensures that the Three Waters Chapter applies as intended by the objectives and policies of the chapter.

3. SUBDIVISION

3.1 Introduction and Overview

137. This decisions report follows the structure of the Section 42A Report for ease of reference. The Council’s reporting planner for the topic and author of the Section 42A report, was Ms Hannah van Haren-Giles.
138. Ms van Haren-Giles noted that the provisions of the Subdivision Chapter differ from other chapters in that they relate to other zone specific and district wide matters. For clarity therefore, the Section 42A Report is structured around the zone or district wide matters to which they relate. The Section 42A Report usefully includes a table to demonstrate this and to also set out which provisions are assessed under the ISPP (shown in purple) and the Part 1 Schedule process (shown in black).

Report section	Zone/ District wide matter / theme	Objectives	Policies	Rules	Standards
Section 3.4	Subdivision Design Guide				
Section 3.5	General Points on the Chapter as a whole				
Section 3.6	Recurring submission points relating to multiple provisions				
Section 3.7	General Subdivision provisions	SUB-O1	SUB-P1 SUB-P2 SUB-P3 SUB-P4 SUB-P5 SUB-P6 SUB-P7	SUB-R2 SUB-R3 SUB-R4 SUB-R5 SUB-R31	SUB-S1 SUB-S2 SUB-S3 SUB-S4 SUB-S5 SUB-S6
Section 3.8	Residential			SUB-R1	
Section 3.9	Esplanade	SUB-O2	SUB-P8		SUB-S7
Section 3.10	Historical and Cultural Values		SUB-P9 SUB-P10 SUB-P11 SUB-P12 SUB-P13	SUB-R6 SUB-R7 SUB-R8 SUB-R9 SUB-R10	
Section 3.11	Natural Environmental Values		SUB-P14 SUB-P15 SUB-P16	SUB-R11 SUB-R12 SUB-R13	

			SUB-P17 SUB-P18 SUB-P19 SUB-P20		
Section 3.12	Coastal Environment		SUB-P21 SUB-P22 SUB-P23 ⁷⁷ SUB-P24	SUB-R14 SUB-R15 SUB-R16	
Section 3.13	Natural Hazards and Coastal Hazards		SUB-P25 SUB-P26	SUB-R17 SUB-R18 SUB-R19 SUB-R20 SUB-R21 SUB-R22 SUB-R23 SUB-R24 SUB-R25 SUB-R26	
Section 3.14	National Grid and Gas Transmission Pipeline Corridor			SUB-R27 SUB-R28 SUB-R29	
Section 3.15	Air Noise Boundary			SUB-R30	

The inter-related nature of the Subdivision chapter also has implications for other chapters and we have endeavoured to ensure consistency across these chapters.

⁷⁷ SUB-P23 and SUB-P24 were noted in the S42A report as also being relevant to this section on Natural Environmental Values but were grouped within the Coastal Environment Section of the report, page 18

3.2 Subdivision Design Guide

139. Submissions variably sought retention of design guides as notified⁷⁸, amendment to the guides⁷⁹ and deletion in full⁸⁰.
140. In Hearing Stream 2, in April 2023, the Panel asked urban design experts who had given evidence on the Residential, and Commercial and Mixed Use Design Guides, to participate in a Council-led review of the design guides. The purpose of this was to address the points made in submissions seeking clarification, removal of duplication and improved workability and report back to the Wrap up hearing.
141. Subsequently, by minute dated 21 June, the Subdivision Design Guide was added to the review process.
142. Following Hearing Stream 5, where the Subdivision Chapter was considered, at the Wrap up hearing in September 2023, the Panel became aware that there were some outstanding matters in relation to the Subdivision Guide. Minute 36 was issued and directed further review of the Subdivision Design Guide. We also sought clarification on the alignment between the application of the Guides and the rules that trigger their application as follows:

“The stated intent of the Subdivision Design Guide is:

The intent of the Subdivision Use Design Guide is to facilitate well-designed subdivision of greenfield land and subdivision providing over 20 allotments.

As we understand, the only triggers for the application of the Subdivision Design Guide in the rules are those in Rule SUB-R3.3 for boundary adjustments that are a restricted discretionary activity and Rule SUB-R5.2 for the creation of vacant lots as a restricted discretionary activity. These triggers do not appear to fully align with the stated intent of the Subdivision Design Guide. Accordingly, the Panel is seeking clarification from the Council on this matter.”⁸¹

143. Ms Stevens and Ms van Haren-Giles issued their reply on this matter⁸². They noted that the review had been carried out with the involvement of Mr Rae representing Kāinga Ora. Their conclusion was that the matters in the Subdivision Design Guide were largely dealt with elsewhere in the Plan. This led the Review team to recommend that the Design Guide be removed from the PDP and replaced with amendments to relevant policies and the introduction of a new policy for ‘vacant

⁷⁸ Submissions #412.99, #412.100, #435.12

⁷⁹ Submission #414.51, #135.120, #266.187

⁸⁰ Submission #391.196 and #391.197 opposed by Further Submission #9.3 and Further Submission #9.4 and Further Submission #80.24

⁸¹ Minute #36

⁸² ISSP Wrap-up hearing- Subdivision Design Guide Review Right of Reply 20 October 2023.

allotment subdivision design'. In addition, the Reporting Officers recommended that related rules be amended to ensure there were links back to the policy when considering applications.

144. The Panel was satisfied that these recommendation would address the submitter's concerns with the Design Guide and provided clarity and consistency with other related deign guides. We appreciate the work and careful assessment and consideration of the issues done by the Council officers. We also acknowledge the contribution of the Kāinga Ora team, and in particular Mr Rae, who provided a memo indicating that Kāinga Ora was generally supportive of the amendments to SUB-P4 and SUB-P5. He provided some minor amendments to the new policy that the Panel has reviewed and we have accepted some of these amendments. The following wording of the Policy we recommend is⁸³:

26.

27. SUB-PX Vacant allotment subdivision design

Provide for subdivision where, appropriate to the scale of the subdivision, it results in allotments that:

1. *Are adequately served by public open space that is accessible and useable;*
2. *Respond to site topography by ensuring any contour modification or large retaining structures are minimised to be sympathetic to existing natural ground form and landscaped to soften visual impacts;*
3. ~~*Achieve a connected, accessible, and legible street network structure;*~~
4. *Provide safe, accessible and legible street network structure and connections to and through open spaces, key routes and local destinations;*
5. ~~*Demonstrate best practice for*~~ *Are designed using crime prevention through environmental design principles;*
6. ~~*Respond to*~~ *Recognise the amenity value of views or landmarks and respond to these by aligning streets and designing public spaces to focus on these;*
7. *Orient lot frontages towards streets and other public spaces to create quality streetscapes and where possible combine accessways to rear lots; and*
8. *Achieve high quality landscape outcomes, including encouraging the retention and integration of mature trees and native vegetation that positively contribute to an area's visual amenity.*

⁸³ Purple text – WCC proposal, Green text Kāinga Ora proposed amendments.

145. We agree with the other changes made to the chapter as a result of this review, and adopt the recommendations of Ms Stevens and Ms van Haren-Giles.

3.3 Submissions on the Subdivision Chapter

General Chapter-wide Matters

146. WIAL and Kāinga Ora sought amendments to provide clarity and remove repetition⁸⁴. Ms van Haren-Giles agreed that improvements could be made to the provisions for ease of understanding. This included relocating policies relating to subdivision in the Natural Hazard Overlays and Coastal Hazard Overlays to the Subdivision Chapter. As this is a minor change, Ms Haren-Giles considered that it was within the scope of Clause 16 of Schedule 1 to make this change. We agree it comes within the scope of Clause 16.
147. Ms van Haren-Giles agreed with Kāinga Ora that adding headings in the chapter would aid usability and ordering the policies in the same order as the rules would also assist usability. The Panel agreed that legibility would be improved with these minor changes.
148. Waka Kotahi sought the inclusion of at least a Restricted Discretionary Activity consent for subdivision within 100m of a State Highway⁸⁵. KiwiRail supported the concept and sought to include the same for the rail corridor. This was opposed by Stride Investment Management and Investore Property.
149. Waka Kotahi, supported by KiwiRail, sought the inclusion of an additional standard which subdivision activities within specified distance of the State Highway network shall be assessed against⁸⁶. This was opposed by Stride Investment Management and Investore Property.
150. In the Section 42A Report, Ms van Haren-Giles noted her view that this was a blanket approach that lacked necessary nuance, that it was potentially onerous, and that it would be more appropriately addressed in the Noise chapter. Matters of reverse sensitivity in relation to proximity to the State Highway are already addressed in that chapter. She also noted that the Noise Section 42A Report included assessment of potential levels of traffic noise within areas 40m-100m from the highway, showing that if lower speed limits (less than 70km/hr) were in place, it

⁸⁴ Submission #406.259, supported by Further Submission #139.72, Submissions #391.190-191

⁸⁵ Submission #370.189, supported by Further Submission #72.56, opposed by Further Submission #107.27 and Further Submission #108.27

⁸⁶ Submission #370.190, supported by Further Submission #72.56, opposed by Further Submission #107.28 and Further Submission #108.28

was unlikely that significant adverse highway noise effects would be caused. Buildings located at the edge of the highway, which are common in Wellington, also help buffer noise received by sites further away.

151. Dr Stephen Chiles, acoustic expert, presented evidence on behalf of Waka Kotahi and KiwiRail. He said that he had reviewed noise modelling conducted by AECOM⁸⁷ and concluded that controls should apply to areas predicted to be exposed to road noise above 54dB. His summary was that: “In some areas, such as where there is screening by buildings or the terrain, the modelled distance is less than 100 metres and in some areas, the modelled distance is larger than 100m. Applying land use controls to all areas within 100m of state highways would cover the most affected areas. Technically there could be scope to reduce the distance in some locations. The modelled noise contours provide clarity regarding the areas where that reduction would be appropriate.”
152. Ms Heppelthwaite gave planning evidence for Waka Kotahi and KiwiRail. She did not provide any further clarification of the issue or the extent of the issue. She did suggest, however, that noise walls and bunds along the length of the state highway and rail corridors would reduce noise and provide amenity for outdoor areas.
153. In Ms van Haren-Giles' view there was insufficient evidence and lack of specificity to support a new rule. The submitter had provided no analysis of the scope of the issue in terms of sites potentially affected or costs for a more onerous consenting process. In the absence of this, she undertook an exercise to map the requested setbacks from the State Highway and railway corridor. This demonstrated that the affected areas are mostly in the developed urban area where the speed limits were less than 70km/h. She added that there was no evidence provided that there were any reverse sensitivity issues or complaints received.
154. The Panel agrees with Ms van Haren-Giles on this matter. While we note that Policy 8 of the RPS requires District Plans to include provisions “that protect regionally significant infrastructure from incompatible new subdivision, use and development occurring under, over or adjacent to the infrastructure”, we are not satisfied that there is an issue that needs solving as evidence was not provided in this regard. As Ms van Haren-Giles noted, we did not hear any evidence on any reverse sensitivity issues. There also appears to be a lack of consideration for the Wellington context, and the fact that it is mostly developed. Dr Chiles evidence lacked the specificity needed to support the proposal and in our view a blanket

⁸⁷ Chiles evidence para 7.3

100m distance is not justified. The suggestion of noise walls and bunds would not be relevant or workable in the urban setting due to other effects such as streetscape and visual amenity. We consider the key issue relating to development adjoining the State Highway and rail corridors is noise, and this is more effectively addressed through the noise provisions of the PDP (refer to Panel Report 4A).

155. We therefore adopt the recommendations of the Section 42A Report.
156. Trelissick Park Group sought that subdivision should not be allowed in significant natural areas (SNAs)⁸⁸. Ms van Haren-Giles agreed with this, and said that this was reflected in the PDP in SUB-P15 and SUB-P16, addressed later in this report.
157. Kāinga Ora sought the inclusion of a notification preclusion statement (for both public and limited notification) for Restricted Discretionary Activities be included in all rules in the Subdivision chapter due to the technical nature of the breaches requiring technical and/or engineering assessments where public participation would be unlikely to add anything to the consideration of the effects of the breaches⁸⁹. This was opposed by KiwiRail and WCCT.
158. Ms Woodridge agreed with the Section 42A Report recommendations that all Restricted Discretionary Activity rules in the Subdivision chapter should not preclude public or limited notification. She did, however, continue to seek preclusion for the natural hazard rules SUB-R17-SUB-R26 where the hazard is low to medium risk, or the subdivision is for a specific purpose in the City Centre, Airport or Port. In her view, the effects would be on a narrow and specific range of groups – future occupants or the specific parties who may be affected. She therefore considered that public notification was not warranted.
159. In her supplementary evidence, Ms van Haren-Giles disagreed with this opinion and preferred to rely on a site specific assessment as to notification requirements, due to the potential risk within natural hazard areas.
160. The Panel agree with this assessment and adopts the recommendations of the s42 report.
161. Transpower sought the inclusion of reference to the National Grid as a qualifying matter within the introductory/plan relationship text of the Subdivision chapter in order to assist with plan interpretation and application⁹⁰.

⁸⁸ Submission #168.17

⁸⁹ Submission #391.197 and #391.193 opposed by Further Submissions #72.57-58 and Further Submission #82.136

⁹⁰ Submission #315.166

162. This matter was addressed in Report 1A, where we recommended addition of an explanatory note in the Plan advising of the role of qualifying matters.
163. Transpower supported the guidance as to the applicability of the rule and policy provisions and sought to amend reference from 'topic specific' to 'district wide'⁹¹. Ms van Haren-Giles agreed with this, and recommended that the wording be amended accordingly.
164. Kāinga Ora sought to amend the Introduction to the Subdivision chapter to clarify how the effects of poorly designed subdivisions are related to vacant lot subdivisions, where land use activities have not yet been designed. Further amendments were sought to clarify that the Plan seeks to provide a more enabling framework for combined land use and subdivision resource consents, clarity around the application of the objectives, policies and rules, and that the objectives, policies and rules themselves should clearly describe how they apply⁹².
165. Ms van Haren-Giles agreed in part with this submission point. She disagreed with the need to add a statement in the introduction specifically about vacant subdivisions on the basis that vacant lot subdivisions are not the only focus of the Subdivision chapter. She did, however, agree that acknowledging the more enabling framework for combined subdivision and land use applications was helpful.
166. The Panel agrees with her assessment and adopts all of the remaining recommendations of the Section 42A Report in this section.

Recurring Submission Points Relating to Multiple Provisions

167. There were a number of submission points that were related to multiple provisions or recurring points throughout the chapter. Following the Section 42A Report lead, we address them together to avoid repetition.
168. FENZ sought to have the extent to which firefighting water supply, and access to that supply has been provided in accordance with New Zealand Fire Service Firefighting Water Supplied Code of Practice SNA PAS 4509:2008 as a matter of discretion in eight rules in the Subdivision chapter⁹³.
169. Ms van Haren-Giles responded that this matter is already addressed in the chapter by way of the general subdivision rules, which trigger SUB-S2 and which requires access to firefighting water supply.

⁹¹ Submission #315.167-168

⁹² Submission #391.187-189

⁹³ Submissions #273.112-127

170. Council, supported by Survey & Spatial, sought to delete “Any consent notices, covenants, easement or other legal instruments necessary” from all relevant rules⁹⁴.
171. Kāinga Ora similarly sought the removal of that matter of control/discretion from all rules in the Subdivision chapter⁹⁵.
172. Kāinga Ora also sought the removal of reference to “whether covenants or consent notices can be imposed on new allotment to management any anticipated development” from four policies⁹⁶. This was opposed by HNZ, LIVE WELLington and Roland Sapsford.
173. The Section 42A Report summarises why these are not appropriate as matters of control, as follows:
- a. Provides Council staff with an opportunity to negotiate restrictions that exceed those in the district plan without recourse to public scrutiny;
 - b. Relies on private versus Council enforcement of compliance;
 - c. Potentially binds future councils in a way that a normal resource consent cannot;
 - d. Provides Council with unconstrained discretion to impose any legal instrument available to it for any purpose it deems necessary, a position contrary to the intended discretionary scope of a restricted discretionary or controlled activity rule. Removing this clause returns Council control/discretion back to the list of matters in the rule, with reliance on legal mechanisms outside of the district plan to deal with such matters as consent notices, covenants, and/or easements⁹⁷.
174. We agree with Ms van Haren-Giles’ assessment of this matter. In short, these legal instruments are subject to too much external influence outside the PDP. We are satisfied that the PDP contains sufficient matters to control to achieve the outcomes it seeks.
175. Kāinga Ora sought that the reference to overlays be removed from all relevant rules and standards and replaced with reference to the relevant hazard. These submission points were opposed by GWRC, EQC and TRoTR for various reasons.

⁹⁴ Submissions #266.95-96, #266.99-109, supported by Further Submission #116.4

⁹⁵ Submissions #391.194-195

⁹⁶ Submission #391.212, #391.213, #391.214, #391.215, #391.216, #391.217, #391.218, #391.219 opposed by Further Submission #9.8-10, Further Submission #96.15-16, Further Submission #117.14-15

⁹⁷ At paragraph 112

The Section 42A Report usefully includes a table showing the Kāinga Ora submission points and the further submission points:

Rules	Submission points	Further submission points in opposition
SUB-R17	391.228 391.229	GWRC [FS84.59] GWRC [FS84.60] and EQC [FS70.57]
SUB-R18	391.230 391.231	GWRC [FS84.61] GWRC [FS84.62] and EQC [FS70.58]
SUB-R19	391.232 391.233	GWRC [FS84.63] GWRC [FS84.64] and EQC [FS70.59]
SUB-R20	No submission point tagged to SUB-R20 but is identified in Kāinga Ora's original submission.	
SUB-R21	391.235	EQC [FS70.60]
SUB-R22	391.236 391.237	GWRC [FS84.65] and Te Rūnanga o Toa Rangatira [FS138.76] GWRC [FS84.66] and Te Rūnanga o Toa Rangatira [FS138.77]
SUB-R23	391.238 391.239	GWRC [FS84.67] and Te Rūnanga o Toa Rangatira [FS138.78] GWRC [FS84.68] and Te Rūnanga o Toa Rangatira [FS138.79] and EQC [FS70.61]
SUB-R24	391.240 391.241	GWRC [FS84.69] and Te Rūnanga o Toa Rangatira [FS138.80] GWRC [FS84.70] and Te Rūnanga o Toa Rangatira [FS138.81]
SUB-R25	391.242 391.243	

It is noted that some of the submission points and further submission points identified in this table also raise and respond to other matters that are addressed separately in this report under the relevant rule section.

28.

29.

176. We agree with the advice of Ms van Haren-Giles, who in turn was relying on the advice of Mr Sirl in his Section 42A Report on Natural and Coastal Hazards that the flood overlays should be included in the PDP, as opposed to being held outside the PDP. Ms Heppelthwaite considered that their location outside the PDP enabled information to be updated without going through a plan change process.

177. Mr Sirl considered that it is important that they are located in the plan as the risk and effects of flooding warrant management through the Plan, and the overlays are essential to this.

178. The Panel agrees that the effects of flooding are significant and that inclusion of the overlays in the PDP is critical to management of the effects. We therefore adopt the recommendations of the Section 42A Report.

179. WIAL, supported by BARNZ, sought that further guidance is added to circumstances where it is necessary for building platforms to be identified as a part of subdivision activity⁹⁸.

⁹⁸ Submission #406.260 supported by Further Submission #139.73

180. WIAL sought that there be no requirement for building platforms to be identified within the Airport Zone⁹⁹.
181. The specific rules and submission points relevant to the relief sought by WIAL were usefully included in a table in the Section 42A Report:

Rules	Submission points
SUB-R17	406.267 and 406.268
SUB-R19	406.269 and 406.270
SUB-R20	406.271 and 406.272
SUB-R21	406.273 and 406.274
SUB-R23	406.275 and 406.276
SUB-R24	406.277 and 406.278
SUB-R25	406.279 and 406.280

182. Ms van Haren-Giles stated in her Section 42A Report that it is clear where building platforms are required, through SUB-P4 in particular. In respect of the creation of an allotment for infrastructure, including the airport, this would be considered under SUB-R4 as a Controlled Activity, and in those circumstances, a building platform would not be required. Ms O'Sullivan did not address this further in her evidence on behalf of WIAL.
183. In our assessment, it is clear that the circumstances under which a building platform is required are articulated through the chapter.
184. There were no further contentious issues, or evidence given in respect of the submission points above unless specifically addressed. The Panel accordingly adopts the recommendations of the Section 42A Report.

Subdivision Objectives

New Objective

185. Kāinga Ora, supported by HNZ, sought the inclusion of an additional objective that identifies the outcomes sought for subdivision within or on land identified as having historical values, natural environmental values and coastal values¹⁰⁰.
186. Ms van Haren-Giles stated in her Section 42A Report that the approach to the PDP is that the objectives for the district wide matters are located in the relevant parent chapter. This ensures consistency between the parent chapter and the rule framework of the district wide matter. In her view, having a specific objective in the Subdivision chapter could give rise to conflicting directions between it and the parent chapter objective. She added that the 'Other relevant District Plan

⁹⁹ Submission #406.261

¹⁰⁰ Submission #391.198 supported by Further Submission #9.5

provisions' section of the Subdivision chapter provides the necessary cross referencing.

187. Ms Woodbridge supported a new objective in her evidence, as she considered that where there are policies in the subdivision chapter that relate to the matter, there needs to be an overarching objective. She added that if the Panel did not agree with her, then SUB-O1 should be amended accordingly¹⁰¹. Ms van Haren-Giles reiterated her view in her supplementary evidence, and maintained that the objective for areas of special value are most appropriately provided in the parent chapter, and that this is consistent with the National Planning Standards guidance.¹⁰²
188. The Panel supports structuring the PDP as required by the National Planning Standards. We consider that an objective relating to the management of subdivision in areas of special value is not necessary or desirable, as it would likely result in conflicting directions, and be inconsistent with the structural approach of the PDP. We accordingly adopt the recommendations of the Section 42A Report.

SUB-O1: Efficient Pattern of Development

189. John Tiley and Churton Park Community Association sought that SUB-O1 be rewritten to provide greater balance between efficient development and the preservation of landscape amenity values¹⁰³.
190. Heidi Snelson, Aman Hunt, Chia Hunt, Ela Hunt sought to amend SUB-O1 to give further protection to Marshall's Ridge, and other ridgelines in the area¹⁰⁴.
191. Wellington Electricity Lines was neutral on SUB-O1, noting that while the electricity distribution network is clearly identified as being associated with efficient development, it had concerns in relation to the need for a separate definition of development infrastructure¹⁰⁵.
192. Waka Kotahi, supported by KiwiRail and opposed by LIVE WELLington, Stride Investment Management and Investore Property, sought an additional outcome to ensure that development considers land use and transport in an integrated manner

¹⁰¹ Woodbridge evidence para 8.6-8.8

¹⁰² H van Haren-Giles supplementary evidence paragraphs 51-54

¹⁰³ Submissions #142.13 and #189.13

¹⁰⁴ Submission #276.20

¹⁰⁵ Submission #355.50

throughout both the urban and rural areas, as all development should consider the connections to the movement of people¹⁰⁶.

193. KiwiRail, opposed by Stride Investment Management and Investore Property, sought amendments to SUB-O1 to recognise the value of the transport network, and the need to maintain the safety and efficiency of this network¹⁰⁷.
194. Kāinga Ora opposed by WCCT sought amendments to SUB-O1 to recognise that the zone purpose, form and function along with amenity values will change over time¹⁰⁸.
195. WIAL, supported by KiwiRail and opposed by Kāinga Ora, sought amendments to SUB-O1 to avoid development that would be incompatible with regionally significant infrastructure¹⁰⁹.
196. In relation to the submissions of John Tiley and Churton Park Community Association, and that from Heidi Snelson, Aman Hunt, Chia Hunt and Ela Hunt, this is the same issue as the preceding submission point. The amendments sought are found in the objective of the parent chapter: in this case, that is NFL-01: The characteristics and values of outstanding natural features and landscapes are protected from inappropriate subdivision, land use and development. This is consistent with the framework of the PDP as we referred to above.
197. In relation to Wellington Electricity Lines' submission point, Ms van Haren-Giles noted that there are definitions in the PDP for 'development infrastructure' and 'additional infrastructure', which include reference to electricity infrastructure.
198. Ms van Haren-Giles noted in respect of the submission points of Waka Kotahi and KiwiRail that the relief sought is already addressed in the PDP in other chapters: UFD-07, SCA-01, SCA-02, INF-04. Ms Heppelthwaite maintained that there was still a need to specifically provide a clause in SUB-01 as in her experience, plan users generally only look to the objectives of the infringement chapter for guidance.¹¹⁰ In addition, she preferred the wording provided by WIAL in relation to this matter.

¹⁰⁶ Submissions #370.191-192, supported by Further Submission #72.59 and opposed by Further Submission #96.91, Further Submission #107.29 and Further Submission #108.29

¹⁰⁷ Submission #408.97, opposed by Further Submission #107.19 and Further Submission #108.19

¹⁰⁸ Submission #391.199-200, opposed by Further Submission #82.137

¹⁰⁹ Submission #406.264-265 supported by Further Submission #72.60 and opposed by Further Submission #89.123

¹¹⁰ Heppelthwaite evidence para 11.2

199. The Panel's view on this is that the PDP structure is different from than the ODP, and that Plan users will adapt to its structure in time. The National Planning Standards require the approach taken by the PDP and these are being applied nationally. We agree with Ms van Haren-Giles on this matter.
200. The Panel agrees also with Ms van Haren-Giles' response to Kāinga Ora's submission point requesting that 'local context' be deleted. Local context is an important consideration, and a finer scale than the underlying zone. It is relevant to assessments particularly where the character and function of a zone evolves over time. It also enables assessment of development that was not anticipated by the zone. Ms Woodbridge maintained that the underlying zoning is a more appropriate assessment measure than local context¹¹¹.
201. In relation to the Kāinga Ora submission point seeking to add to clause 5 "flexibility, innovation and choice" for future development and use of land or buildings, Ms van Haren-Giles considered that these words are more appropriate at a policy level, and not at the higher level of the objective. Ms Woodbridge supported the addition of the words on the basis that all subdivision should be innovative, flexible and provide choices¹¹². In her response to Ms Woodbridge, Ms van Haren-Giles considered that these words are more qualitative than the wording of the objective, which uses words such as 'appropriate' and 'compatible'. This type of wording leaves a finer interpretation to the policies and rules and design guidelines. The Panel agrees with Ms van Haren-Giles on this point.
202. We agree with Ms van Haren-Giles that the relief sought by WIAL is related to reverse sensitivity, and this is dealt with in other chapters, namely Noise and Infrastructure.
203. For the reasons given above, the Panel does not consider that any amendments should be made to SUB-01, and we adopt the recommendations of the Section 42A Report.

Subdivision Policies

SUB-P2: Boundary Adjustments and Amalgamation

204. Kāinga Ora, opposed by WCCT, sought to replace 'local context' in SUB-P2 with 'underlying zone'¹¹³.

¹¹¹ Woodbridge evidence para 8.1-8.3

¹¹² Woodbridge evidence para 8.4-8.5

¹¹³ Submissions #391.202-203, opposed by Further Submission #82.138

205. This submission point is in the same vein as that made above in paragraph 200, and the Panel adopts the recommendations of the Section 42A Report in this respect.

SUB-P3: Sustainable Design

206. GWRC sought an amendment to align with proposed RPS-Change 1 with respect to the efficient use of water, cycling opportunities, providing for public transport, and supporting greenhouse gas emission reductions¹¹⁴.

207. Waka Kotahi sought an additional clause be added, providing for Local and other Centres in proposed subdivisions to support reduced reliance on private vehicle travel and reduced emissions¹¹⁵.

208. Kāinga Ora, opposed by GWRC and Forest and Bird, sought amendments to provide flexibility where practicable, as not all developments can achieve and attain all aspects in design and layout, and to avoid unnecessary duplication by removing reference to renewable energy¹¹⁶.

209. KiwiRail, opposed by Kāinga Ora, Stride Investment Management and Investore Property, sought an amendment to address the potential for adverse effects on infrastructure, including the rail corridor¹¹⁷.

210. In relation to Kāinga Ora's request to include an additional matter: "encourage the efficient use of water", Ms van Haren-Giles considered that SUB-P3.2 and SUB-P3.3 adequately address this matter, and provide the direction for Three Waters management. These are consistent with the Three Waters chapter. She also noted that the wording requested is set out in the NPSFM is more a regional council matter.

211. She considered GWRC's proposed amendments in relation to providing for public transport were inappropriate, given that it is GWRC's responsibility. The role of the PDP is to enable opportunities for it to be delivered. She noted that the PDP does refer to public transport outcomes in the Urban Development chapter.

212. In relation to GWRC's request to add a new clause "Support greenhouse gas emission reduction", Ms van Haren-Giles said that the outcomes in the

¹¹⁴ Submissions #351.179-180

¹¹⁵ Submission #370.193

¹¹⁶ Submissions #391.204-205, opposed by Further Submission #84.80 and Further Submission #85.11

¹¹⁷ Submission #409.98, opposed by Further Submission #89.30, Further Submission #107.20 and Further Submission #108.20

Sustainability, Resilience and Climate Change Chapter address this. Mr Sheild on behalf of the GWRC did not raise these matters in his statement at the hearing.

213. Ms van Haren-Giles did not agree with Waka Kotahi's submission to add a new clause: "consider the ability of future residents to meet their daily needs within the immediate area". In her view, it lacked clarity, and the issue is already addressed in SUB-P3.5.
214. In relation to Kāinga Ora's submission point regarding rewording of clauses to provide more flexibility in achieving the outcomes, she also did not agree that the words proposed by Kāinga Ora were sufficiently directive. They sought amendment to the wording as follows:

SUB-P3 Sustainable design

~~Provide~~ Encourage and promote for subdivision design and layout that makes efficient use of ~~renewable energy and other~~ natural and physical resources, and delivers well-connected, resilient communities including development patterns that:

1. Maximise solar gain;
2. Incorporate effective water sensitive design where practicable;
3. ~~Achieve~~ Provide for hydraulic neutrality;
4. Provide for safe vehicle access;
5. Support walking, cycling and public transport opportunities and enhance neighbourhood and network connectivity and safety;
6. Are adaptive to the effects of climate change.

215. In her evidence, Ms Woodridge took a slightly different approach and agreed that the policy should be directive to achieve sustainable design outcomes. However she considered that SUB-P3 should elevate the importance of resilience to climate change, as this would better align with NPSUD Objective 8 and RPS Policies. She also considered that 'safe vehicle access' was not consistent with this policy but would be better located in SUB-P7 which focuses on servicing.
216. In her supplementary evidence, Ms van Haren-Giles disagreed with Ms Woodridge and maintained her opinion. She argued that resilience is wider than response to climate change, and she referred to Strategic Objective CC-03, which talks about physical and social resilience. She added that Ms Woodbridge's amendments diminished renewable energy. On other points in contention, she emphasised that the policy does not bind applicants to meet all matters of the policy, but it is "*binding*"

on the Council to provide 'for' subdivisions that achieve the matters set out under this policy"¹¹⁸.

217. She supported the retention of 'safe vehicle access' as it is part of well-connected communities and development patterns. SUB-P7, where Ms Woodridge suggested locating this, is more directive in its requirements for servicing. It is not about layout and design. We agree with Ms van Haren-Giles that the wording of SUB-P3 seeks the appropriate consideration of sustainable design matters.
218. In response to KiwiRail, Ms van Haren-Giles disagreed that the effects on infrastructure needed to be included. This matter is addressed in INF-03 and INF-07.
219. The Panel agree with the Section 42A Report assessment and recommendations, and accordingly adopt them.

SUB-P5: Subdivision for Residential Activities

220. Peter Kelly sought an amendment to include "*and minimises vegetation clearance within SNAs until 1 July 2027*" should any SNAs be returned to residentially zoned land¹¹⁹.
221. Ms van Haren-Giles noted that this matter will be dealt with in Hearing Stream 8, and any consequential changes to the PDP as a result will be addressed then.
222. The Panel agrees with her recommendations for the reasons provided.

SUB-P7: Servicing

223. GWRC sought to amend SUB-P7 to provide for decentralised wastewater re-use and treatment (of grey and black water) and disposal using alternative wastewater systems (but not septic tanks due to their existing issues with contamination and leaching) anywhere there are constraints on the existing network capacity, as well as where connections are not available¹²⁰.
224. Wellington Electricity Lines sought to amend the policy to refer to providing suitable connections to telecommunications and electricity¹²¹.
225. Ms van Haren-Giles commented in her Report that the matter relief sought by GWRC is more appropriately dealt with in the Three Waters Report, as it has been raised in submissions on that chapter.

¹¹⁸ Ms van Haren-Giles' supplementary evidence 25 July 2023 paragraph 58.

¹¹⁹ Submission #16.5

¹²⁰ Submissions #351.181-183

¹²¹ Submissions #355.52-53

226. Ms van Haren-Giles agreed with Wellington Electricity that the addition of the words “suitable connections” to the supply of telecommunications and electricity would be more accurate as it is referring the need to connect to existing networks rather than supply those services.
227. We agree with the recommendations and reasoning of the Section 42A Report, and accordingly adopt them.

Subdivision Rules

SUB-R2: Subdivision Around an Existing Lawfully Established Building Which Does Not Result in the Creation of Any New Undeveloped Allotment

228. Kāinga Ora supported SUB-R2 subject to relief sought elsewhere in their submission¹²².
229. Survey & Spatial sought to amend all proposed subdivision rules to have the ability to assess and claim existing use rights for standards that are not met for existing buildings or situations¹²³. It sought specifically that the words “lead to” be removed from SUB-R2.1.c. It also sought the same relief for SUBR3.1.c.
230. We agree with Ms van Haren-Giles in relation to the submission point by Kāinga Ora that there is insufficient detail in the relief sought to make any assessment and consequently any recommendation.
231. Ms van Haren-Giles opposed the change requested by Survey & Spatial on the grounds that as a subdivision results in a change to the existing environment R2.1.c triggers an assessment of both the existing and proposed development after the subdivision. Her argument was that clause c: “The subdivision will not lead to or increase the degree of, non-compliance with land use standards of the applicable Zone”, is deliberately there to pick up existing non-compliances, and avoid the situation where the subdivision makes the non-compliance worse.
232. Mr Gibson from Survey & Spatial spoke to its submission. In his assessment of the rule, “this would require existing buildings to be provided with new three water services where these existing services are not up to current standards. We do not see what adverse effect is being addressed by this rule”¹²⁴. Mr Gibson noted that to assess and determine compliance with this standard would incur significant costs.

¹²² Submission #391.223

¹²³ Submission #439.28

¹²⁴ Gibson speaking notes page 2.

233. Ms van Haren-Giles responded in her supplementary evidence and reiterated her position on this matter. In her view, the process is similar to the current position where Wellington Water often requires CCTV assessments to determine if existing pipes need to be replaced. Under the PDP a Discretionary Activity consent would be required if the applicant did not want to upgrade existing connections.
234. The Panel considered the issue raised by Spatial & Survey NZ (David Gibson) regarding the application of the standards to existing houses which may meet previous standards, but would have to be upgraded to the current standards upon subdivision of the property. As an example, a house that is connected to the water supply network with piping that met the standards in 2004 could have to have the piping dug up and replaced to meet current standards if the site is subdivided, for infill development for instance. We agree that retrofitting an existing perfectly adequate connection does not seem equitable. We could not identify the external environmental effect that should necessitate imposing a retrofitting standard, given the costs this would incur. While we understand that the Council would like improvements to be made to existing water infrastructure on private land, we do not agree that applying standards to existing connections through the subdivision rules is a reasonable or legitimate method.
235. We therefore agree with Survey & Spatial and accept its submission and recommend rewording of SUB-R2.1.c to be amended accordingly as follows:

'The subdivision will not lead to or increase the degree of, non-compliance with land use standards of the applicable zone'

SUB-R3: Boundary Adjustments

236. Rod Halliday sought the deletion of SUB-R3.2.e in its entirety. He considered that the 100m setback is arbitrary, and any risk created by adjusting a boundary of one allotment being incapable of having an appropriate building platform should be borne by the applicant. He also suggested that the time that has elapsed from the deposit of the title is irrelevant for a boundary adjustment where no new allotments are being created¹²⁵.
237. Survey & Spatial sought to amend all subdivision rules to allow for the ability to assess and claim existing use rights for standards that are not met for existing buildings or situation¹²⁶.

¹²⁵ Submission #25.23

¹²⁶ Submission #439.29

238. In her assessment of Mr Halliday’s submission, Ms van Haren-Giles commented that 100m was considered to be consistent with expectations of separation in a Rural or Large Lot Residential Zone. She stated that this clause is also important as subdivision is a Controlled Activity, and there would be no further opportunity to manage the location of a dwelling following consent being granted.
239. The issues raised by Survey & Spatial in relation this rule are addressed in SUB-R2 above.
240. We adopt the recommendations of the Section 42A Report on the basis of the reasons summarised above with the exception of the submission by Survey & Spatial which we accept in accordance with our recommendation in relation to SUB-R2. We recommend that SUB-R3.1.c be amended to read:

‘The subdivision will not ~~lead to or~~ increase the degree of, non-compliance with land use standards of the applicable zone’

SUB-R4: Subdivision to Create a New Allotment for Infrastructure

241. Waka Kotahi, supported by KiwiRail, sought that SUB-R4 be amended to reflect that the subdivision consent must be sought by a Network Utility Operator, and should not be subject to SUB-S6 requiring a minimum allotment size¹²⁷.
242. WIAL sought the retention of the rule as notified, that complex and duplicating consenting requirements for activities within the Airport Zones be removed, and that other subdivision methods be deleted insofar as they relate to infrastructure and/or clarification is provided that the other provisions are not applicable to infrastructure¹²⁸.
243. Responding to the submission by Waka Kotahi, Ms van Haren-Giles pointed out that developers also create and upgrade infrastructure as part of a subdivision, and so it would not be correct to limit SUB-R4 to only Network Utility Operators. She did agree that reference to SUB-S6 should be removed, as it is not appropriate to require a lot created for infrastructure purposes to be subject to number, size or shape requirements.
244. Ms van Haren-Giles agreed with WIAL’s submission. She considered that there is an ambiguity between SUB-R4 and SUB-R5, because while SUB-R4 is directly applicable to lots created for infrastructure, SUB-R5 could also apply. She recommended that the heading of SUB-R5 be amended to exclude infrastructure. She also recommended that SUB-R4.a be amended to remove reference to “any

¹²⁷ Submissions #370.196 and #370.197 supported by Further Submission #72.62

¹²⁸ Submission #406.262

balance allotment” because these would then fall into SUB-R2 or SUB-R5, which is not intended to apply to lots created for infrastructure.

245. The Panel agrees with Ms van Haren-Giles’ assessment and adopts the recommendations of the Section 42A Report on the basis of the reasons summarised above.

SUB-R5: Subdivision that Creates a Vacant Allotment

246. Kāinga Ora sought to amend SUB-R5.4 to provide that where a vacant lot subdivision does not meet the proposed minimum lot size and shape standard, Discretionary Activity status applies¹²⁹.
247. Ms van Haren-Giles did not agree with Kāinga Ora on the basis that non-compliance with SUB-S6 can be adequately dealt with as a Restricted Discretionary Activity.
248. The Panel agrees with Ms van Haren-Giles’ assessment and adopts the recommendations of the Section 42A Report on the basis of the reasons summarised above.

Subdivision Standards

SUB-S1: Access

249. Survey & Spatial sought the deletion of SUB-S1 in its entirety as it is a replication of S106(1)(c) of the RMA¹³⁰.
250. FENZ, opposed by Survey & Spatial, sought an amendment to SUB-S1 to ensure sufficient access for firefighting appliances is provided to sites in unreticulated areas, or areas where the driveway exceeds hose run distances¹³¹.
251. Waka Kotahi opposed by LIVE WELLington sought to amend SUB-S1 to include a note in relation to Waka Kotahi requirements and the Government Rounding Powers Act 1989 with regard to vehicle entrances onto State Highways¹³².
252. Ms van Haren-Giles agreed that s106 of the RMA applies but she maintained that it is important to include this in the PDP as it goes further than s106. The Panel agreed that a plan user would expect to find all relevant requirements in the PDP.

¹²⁹ Submissions #391.226-227

¹³⁰ Submission #439.31

¹³¹ Submissions #273.128-129, opposed by Further Submission #116.5

¹³² Submissions #370.198-199, opposed by Further Submission #96.21

253. In response to FENZ, Ms van Haren-Giles stated that the requirements of SNZ PAS 4509:2008 are included in SUB-R2.1.b and therefore do not need repeating in SUB-S1.
254. Similarly, she disagreed with Waka Kotahi that a note be added referencing the relevant legislation in respect of State Highways. In her view, this is adequately addressed as under the Government Roadway Powers Act, legal access to a site is required including requirements in relation to entrances onto State Highways.
255. The Panel agrees with Ms van Haren-Giles assessment and adopts the recommendations of the Section 42A Report on the basis of the reasons given above.

SUB-S2: Water Supply

256. AdamsonShaw, supported by Survey & Spatial, sought an amendment to SUB-S2 to specifically refer to new vacant lots¹³³.
257. AdamsonShaw sought to clarify that existing water supply arrangements continuing to serve an existing dwelling as part of the subdivision can be retained in full¹³⁴.
258. FENZ sought amendments to specifically reference the necessity to provide access to water supply in accordance with the Code and, where the standard is infringed, that it is necessary for consultation with FENZ to be undertaken¹³⁵.
259. GWRC sought to amend SUB-S2 to require new lots connecting to the Council's water supply system include alternative supplies for non-potable use, such as roof water collection systems among other possible sources¹³⁶.
260. Survey & Spatial sought to remove cross references to the Regional Standard for Water Services (RSWS) and instead specify the minimum water pressure requirements at the point of supply¹³⁷.
261. In relation to the submission by AdamsonShaw and further submission by Survey & Spatial, our discussion on SUB-R2 and SUB-R3 is relevant here too. The standard as it is worded would also apply to a subdivision around an existing building and Ms van Haren-Giles noted in her report that an existing dwelling/allotment has existing use rights and the intention is to capture new allotments including subdivision of a building. Mr Gibson provided some wording that would clarify this so that the

¹³³ Submission #137.1 supported by Further Submission #116.6

¹³⁴ Submission #137.2

¹³⁵ Submissions #273.130-131

¹³⁶ Submission #351.191

¹³⁷ Submission #439.32

standard only applies to freehold vacant lots and principal units and cross lease buildings. We agree with the submitters that this clarifies the standard.

262. In respect of the submission by FENZ, we agree with Ms van Haren-Giles that the PDP adequately provides for access for firefighting purposes (SUB-P7, SUB-R1) and it is not necessary to specifically refer to it in this standard. We adopt the Section 42A Report recommendation for the reasons outlined.
263. Ms van Haren-Giles responded to the submission by GWRC, saying that there is no standard that can be referred to on this issue as Wellington Water has insufficient technical guidance on alternative water supplies. This also addressed in relation to the Three Waters Chapter.
264. In response to the submission by Survey & Spatial, Ms van Haren-Giles maintained that it was valid to reference the RSWS. She quoted from the Section 42A Report of Ms Cook on the Three Waters chapter in relation to the same submission point. This referred to the RMA and referencing external material. Inclusion of reference to the RSWS is consistent with the direction of the RMA in regard to the use of external technical documents.
265. The Panel agrees with Ms van Haren-Giles' assessment and adopts the recommendations of the Section 42A Report on the basis of the reasons given above with the exception of the submissions by AdamsonShaw and Survey & Spatial which we accept. We recommend that the wording of SUB-S2.1 be amended to read:

' Where a connection to Council's reticulated water systems is available, all new vacant freehold allotments, principal units and cross lease buildings must.....;'

SUB-S3: Wastewater Disposal

266. AdamsonShaw sought to amend SUB-S3 to specifically refer to new vacant lots, and to clarify that existing wastewater system/connections continuing to serve an existing dwelling as part of the subdivision can be retained in full¹³⁸.
267. GWRC sought to amend the reference to septic tanks or soakage fields, substituting "on-site domestic wastewater treatment and disposal"¹³⁹.
268. GWRC sought to amend SUB-S3 to provide for the use of approved alternative wastewater systems for decentralised wastewater re-use and treatment (of grey

¹³⁸ Submissions #137.3-4

¹³⁹ Submission #351.192

and black water) and disposal anywhere where there are constraints on the existing network capacity, as well as where connections are not available, and that additional requirements for on-site wastewater discharge under the Natural Resources Plan are referred to¹⁴⁰.

269. Survey & Spatial sought to remove cross references to the RSWS and instead specify the minimum requirements for a wastewater connection¹⁴¹.
270. In relation to the submission by AdamsonShaw, our discussion and recommendation on SUB-S2 applies here too, and the Panel recommends accepting this submission.
271. Ms van Haren-Giles agreed with GWRC that reference to septic tanks and soakage fields should be replaced by reference to “on-site wastewater systems”. She agreed that septic tanks have contamination and leaching issues, and that it is more appropriate to refer to generic alternative wastewater systems.
272. Ms van Haren-Giles did not agree with GWRC that it was necessary to include reference to the Natural Resources Plan in relation to additional requirements for on-site wastewater discharge. She did, however, consider that advice of GWRC’s responsibilities could be included in the Introduction to the Subdivision Chapter, as they are in the Introduction to the Earthworks Chapter.
273. The Panel agrees with Ms van Haren-Giles assessment and adopts the recommendations of the Section 42A Report on the basis of the reasons given above with the exception of the submission by AdamsonShaw which we accept. We recommend that the wording of SUB-S3.1 be amended to read:

‘ Where a connection to Council’s reticulated water systems is available, all new vacant freehold allotments, principal units and cross lease buildings must.....;’

SUB-S4: Stormwater Management

274. Rod Halliday, opposed by Heidi Snelson, sought the inclusion of an exemption or permitted activity standard that would not require hydraulic neutrality for sites upstream of the Stebbings or Seton Nossiter detention structures, which are designed to hold back the 1 in 100 year storm event¹⁴².
275. AdamsonShaw sought to amend SUB-S4 to specifically refer to new vacant lots, and to clarify that existing stormwater system/connections continuing to serve an

¹⁴⁰ Submissions #351.193-194

¹⁴¹ Submission #439.33

¹⁴² Submission #25.24, opposed by Further Submission #24.8

- existing dwelling as part of the subdivision can be retained in full, and a note be added stating that existing dwellings do not need to achieve hydraulic neutrality¹⁴³.
276. Trelissick Park Group sought that all assessment criteria are deleted where the standard is infringed, as it is essential that all building developments, including infill housing, produce at least neutral or lesser stormwater runoff compared with pre-development rates¹⁴⁴.
277. Tyers Stream Group sought that subdivider contributions necessary for any upgrades are in proportion to the extent of upgrade required from the subdivision¹⁴⁵.
278. GWRC sought an amendment to include additional requirements for stormwater discharge under the Natural Resources Plan¹⁴⁶.
279. Survey & Spatial sought an amendment to remove cross references to the RSWS and instead specify the minimum requirements for a stormwater connection¹⁴⁷.
280. In her report, Ms van Haren-Giles disagreed with Mr Halliday on the basis that she had sought advice from Wellington Water, which said that they would need evidence that the Dam had a detention allowance for the level of development enabled under the PDP for storm events up to 1 in 100 years with climate change. She considered that in the absence of this evidence, she could not agree that the relief sought by Mr Halliday.
281. In response to AdamsonShaw's submission, the Panel consider that this is the same issue as we have addressed in SUB-S2 and SUB-S3. In addition, AdamsonShaw sought that SUB-S4.2 requiring hydraulic neutrality be amended to apply only to the creation of vacant allotments. We agree with the submitter as we outlined in the discussion and recommendations SUB-S2 and SUB-S3 above.
282. We note that the matter of hydraulic neutrality is also addressed in our report on the Three Waters Chapter. In this regard, we agree with Ms van Haren-Giles that a cross reference to the Three Waters Chapter should be made in the Other Relevant District Plan provisions section of the Subdivision Chapter to improve linkages between chapters and more helpfully guide plan users.
283. In relation to the submission by Trelissick Park Group, we agree with Ms van Haren-Giles that the criteria are required to enable assessment where the hydraulic

¹⁴³ Submissions #137.5, #137.6 and #137.7

¹⁴⁴ Submissions #168.21 and #168.22

¹⁴⁵ Submissions #221.70 and #221.71

¹⁴⁶ Submission #351.195

¹⁴⁷ Submission #439.34

neutrality requirement is not met. We note that Ms van Haren-Giles took the opportunity to recommend the addition of a clause to SUB-R5.2 to require consideration of the “the extent and effect of non-compliance with any relevant standard as specified in the associated assessment criteria for the infringed standard” as a matter of discretion. While this amendment is not within the scope of the relief sought by the submission we consider that it is necessary for consistency with the requirements of related rules. We therefore recommend that SUB-R5.2 be amended accordingly.

284. The matter raised by Tyers Stream Group is addressed in our report on the Three Waters Chapter.
285. Ms van Haren-Giles did not agree with the submission point by GWRC seeking reference to additional requirements for stormwater discharge. We agree and recommend that the same reference as recommended in paragraph 268 above be adopted.
286. The final matter raised by Survey & Spatial is the same as our decision on the similar matter at paragraph 110 above.
287. The Panel agrees with Ms van Haren-Giles’ assessment and adopts the recommendations of the Section 42A Report on the basis of the reasons summarised above, with the exception of the submission by AdamsonShaw which we accept. We consider that the term ‘principal units and cross lease buildings’ could be simplified by using the term ‘residential units’. We therefore recommend that SUB-2.1 and SUB-S4.1 be amended to read:

‘Where a connection to Council’s reticulated water systems is available, all new vacant freehold allotments and residential units must.....;’

and that SUB-S4.2 be amended to read:

‘All subdivisions creating vacant allotments must achieve hydraulic neutrality;.....’

SUB-S6: Number, Size and Shape of Allotments

288. Ron Halliday, opposed by Glenside Progressive Association and Heidi Snelson, sought that SUB-S6.8 be deleted as use of the phrase “capable of providing a platform within the ‘built’ area” is ambiguous and subject to misinterpretation¹⁴⁸.
289. Kāinga Ora sought a number of amendments to SUB-S6, including that the minimum lot size in the MCZ, LCZ, NCZ, MUZ, and GIZ be nil, along with a

¹⁴⁸ Submission #25.25, opposed by Further Submission #4.11 and Further Submission #24.10

minimum shape factor standard for vacant allotments, and deletion to any reference to legal instruments in the assessment criteria¹⁴⁹. It also sought amendments to the assessment criteria SUB-S6.1.

290. In relation to the submission point by Mr Halliday, Ms van Haren-Giles noted that this was a matter more appropriately addressed in Hearing Stream 6 on Development Areas.
291. We agree with Ms van Haren-Giles' recommendation on the submission point by Kāinga Ora that a minimum lot size is not appropriate in the MCZ, LCZ, NCZ, MUZ, and GIZ. This is more consistent with the policy direction of SUB-P1 and SUB-P5 in relation to flexibility, innovation and choice in housing supply. We therefore agree that SUB-S6 be amended to remove the minimum lots size from the MCZ, LCZ, MUZ, and GIZ.
292. Ms van Haren-Giles recommended that there was also no need for a minimum allotment shape for vacant lots, as sought by Kāinga Ora, as there is no need to control shape. Ms Woodbridge said in her evidence that as there was no minimum lot size in Residential Zones, a shape factor was necessary to achieve high quality urban design outcomes. She said that with Wellington's topographical constraints and increased density, it has the potential to lead to poor outcomes for creation of vacant allotments without control over size and shape.¹⁵⁰
293. Ms van Haren-Giles reiterated her opinion in her supplementary evidence, and noted that Ms Woodbridge did not provide any analysis in relation to her comments about topography, or why this would be difficult. Nor had she referred to flatter sites, and whether a shape factor would therefore be less necessary. We have considered this matter and it seems to us that the need for a shape factor has not been established. It would also be in the developer's interests to ensure that the lots could in fact provide space for a dwelling that would reasonably meet the provisions of the Plan and that there are policies that address this.
294. This matter became somewhat wrapped up in the consideration of the Subdivision Design Guide, and whether it was required. As Ms Woodbridge commented, the shape factor is relevant to the urban design outcomes of the subdivision. As discussed at paragraph 135 there was conferencing between the Council and Kāinga Ora's urban design advisors, where it was jointly agreed that the Subdivision Design Guide was not necessary, and that amendments could be made

¹⁴⁹ Submissions #391.244-245

¹⁵⁰ Woodbridge evidence paragraph 8.22

to the Subdivision Chapter to address the key matters in the Subdivision Design Guide. We note that a shape factor was not included in the agreed amendments, but we consider that the amended policies go some way to achieving the outcome sought by Ms Woodbridge.

295. The recommended change flowing from the Design Guide review to SUB-P4-Integration and layout of subdivision and development would state:

4. Ensuring allotments are of a size, shape and orientation that is compatible with the nature, scale and intensity anticipated for the underlying zone or activity area's objectives.

296. This addresses the shape of the lot, and connects it with the expectations of the zone. In addition, SUB-P4.3 states:

3. Ensuring standalone subdivision proposals provide allotments that can be feasibly developed and are fit for purpose.

297. This directly addresses the issue that residential lots need to be able to contain a dwelling.

298. Ms van Haren-Giles recommended a minor amendment to SUB-P4.5 that is relevant to this:

5. Ensuring enabled land use outcomes will be able to be achieved following subdivision.

299. This also requires that the land use outcomes of the PDP can be achieved following the subdivision.

300. As Ms Woodbridge and Mr Rae, acting on behalf of Kāinga Ora, were both party to the conferencing and agreements, we infer that they were largely satisfied with the Council's recommendations (we note that there were minor differences, and this is addressed in the Subdivision Design Guide section above).

301. The Panel considers that there is no need for a minimum allotment shape factor based on the reasons given above. We therefore adopt the recommendations of the Section 42A Report on this matter.

302. Ms van Haren-Giles agreed with the amendment to assessment criterion 1 to add "anticipated zone purpose, form and function" sought by Kāinga Ora in order to reference the underlying zoning, which may not be consistent with the local context. She did, however, maintain that "local context" should not be deleted, as it may differ from the zoning but still be relevant when considering other activities that may not have been anticipated.

303. A minor amendment was recommended to clause 5 in response to Kāinga Ora's submission point on this clause.
304. We adopt the recommendations of the Section 42A Report in this section for the reasons given above and for the additional reasons set out in Ms van Haren-Giles' rebuttal evidence.

Residential Subdivision

305. Peter Kelly sought an amendment to SUB-R1 to add "8. Minimising vegetation loss within a Significant Natural Area" if SNAs are returned to residentially zoned land¹⁵¹.
306. Rachel Marr sought the removal of the non-notification clauses on the basis that subdivision can cause problems and judicial review is often too late to rectify the issue. However, by allowing notification, the consent process is more open when neighbours (not just direct neighbours) will obviously be adversely affected by the work¹⁵².
307. Design Network Architecture sought an amendment to clarify that, where a standard does not apply to multi-unit housing, it is not highlighted as being necessary to consider under a notification preclusion¹⁵³.
308. Council sought the removal of the gavel for SUB-R1 as the rule does not have immediate legal effect¹⁵⁴.
309. Wellington Electricity Lines sought that the rule be more robust regarding the degree of electricity connection¹⁵⁵. It sought an amendment to require connections that are safe and secure.
310. Waka Kotahi, supported by KiwiRail and opposed by Kāinga Ora, sought for the inclusion of an additional matter of control relating to the management of adverse effects on the safe and efficient use and operation of the roading and state highway network¹⁵⁶.
311. Kāinga Ora, opposed by FENZ, sought amendments to the matters of control to be consistent with other rules in the Subdivision chapter, including the removal of matters 4-9 and revised matters of control 2 and 3¹⁵⁷.

¹⁵¹ Submission #16.6

¹⁵² Submission #89.1

¹⁵³ Submission #259.1

¹⁵⁴ Submission #266.98

¹⁵⁵ Submissions #355.54-55

¹⁵⁶ Submission #370.195, supported by Further Submission #72.61 and opposed by Further Submission #89.18

¹⁵⁷ Submissions #391.221-222, opposed by Further Submission #14.1

312. Survey & Spatial sought removal of reference to MRZ-S2, as the first notification status statement appears to be related to subdivision of 1-3 units, along with the removal of the need to comply with MRZ-S1 in relation to the notification status statement for subdivisions related to 4 or more units¹⁵⁸.
313. Kāinga Ora sought an amendment to the notification statuses for SUB-R1 as they generally relate to land use activity and associated standards, and the subdivision itself is not generating additional effects that should trigger notification¹⁵⁹.
314. Ms van Haren-Giles addressed the matter raised by Waka Kotahi, noting that the effects associated with noise are addressed in the Noise Chapter, and any traffic safety effects or impact of development on the transport network can be addressed under the Infrastructure and Transport Chapters. We agree with that view and with her additional point that where a development may impact on the State Highway (or rail corridor) because of a non-compliance with standards, Waka Kotahi or KiwiRail would be notified.
315. We agree with Ms van Haren-Giles in respect of the Kāinga Ora's request, and consider that as subdivision is a Controlled Activity, it is appropriate and necessary that the matters of control are listed in the rule. We also agree that the notification preclusions are consistent with Clause 5(3) of Schedule 3A of the RMA.
316. The Panel agrees with Ms van Haren-Giles' assessment of the submissions and adopts the recommendations for the reasons given in the report and the reasons summarised above in respect of specific submissions.

Esplanades

317. Tyers Stream Group sought the inclusion of an esplanade provision for the margins of Tyers Stream, and other waterways, whenever subdivision occurs (as required by the RMA), to create better linkages and facilitate more liveable spaces and lower energy/runoff intensity use of areas¹⁶⁰.
318. Ron Halliday sought that SUB-S7 be amended to only apply to lots less than 4ha in the General Rural Zone as per ODP Rule 15.4.5, and to streams and tributaries identified in ODP Rules 15.4.5¹⁶¹.
319. In her response to the submission point from Tyers Stream Group, Ms van Haren-Giles outlined the provisions of the PDP that direct and require the provision of an

¹⁵⁸ Submission #439.27

¹⁵⁹ Submission #391.193

¹⁶⁰ Submission #221.66

¹⁶¹ Submissions #25.26-27

esplanade reserve. These are SUB-O2 and SUB-P8, in addition to the provisions in the Public Access Chapter. We agree with Ms van Haren-Giles that the provisions of the PDP already address the submitter's concerns.

320. We agree with Ms van Haren-Giles also in relation to the submission from Rod Halliday. The PDP is seeking to increase the esplanade reserve network and thereby improve public access to the City's streams. The provisions also allow for a Restricted Discretionary Activity application where there is non-compliance with SUB-S7.
321. The Panel agrees with Ms van Haren-Giles' assessment of the submissions and adopts the recommendations in this section for the reasons given in the report.

3.4 Historical and Cultural Values

322. WHP sought the conversion of SUB-P10, SUB-P11 and SUB-P12 to Restricted Discretionary Activity rules with an overarching policy, as there are no rules or standards to achieve the outcomes of the policies as notified¹⁶².
323. WHP, supported by HNZ, sought the addition of a policy similar to 20.2.1.4 of the ODP¹⁶³.
324. TRoTR, supported by GWRC, sought an amendment to SUB-P9 to require partnership and engagement with mana whenua, rather than just having regard to the extent of consultation with mana whenua¹⁶⁴.
325. Council, supported by HNZ, sought to amend SUB-P10 to include the requirement to have regard to the extent to which the subdivision and any anticipated development would detract from the identified heritage values¹⁶⁵.
326. WHP sought two amendments to SUB-P10 to include a requirement to have regard to associated buildings and structures, and advice by a suitably qualified heritage professional¹⁶⁶.
327. WHP sought to amend SUB-P11 to include having regard to advice by a suitably qualified heritage professional¹⁶⁷.
328. In relation to the first submission point from WHP, Ms van Haren-Giles outlined the approach of the PDP as required by the National Planning Standards. This means

¹⁶² Submissions #412.60, #412.62 and #412.64

¹⁶³ Submission #412.57, supported by Further Submission #9.6

¹⁶⁴ Submissions #488.55-56, supported by Further Submission #84.116 and Further Submission #84.117

¹⁶⁵ Submission #266.97, supported by Further Submission #9.7

¹⁶⁶ Submissions #412.58-59

¹⁶⁷ Submission #412.61

that the strategic direction for the district wide matters is located in the relevant parent chapters. The policies in the Subdivision Chapter then provide further direction and the subdivision rules implement these. We agree that this is a consistent approach throughout the PDP. We also agree that SUB-P10, SUB-P11 and SUB-P12 do not need to be converted to Restricted Discretionary Activity rules as there are existing rules - SUB-R7, SUB-R8 and SUB-R9 - that already implement the policies and are in fact full Discretionary Activities.

329. We agree with the suggested rewording of SUB-P15 (as renumbered) in response to the submission point by TRoTR as it provides clarity and direction that consultation has to be undertaken. The terminology is consistent with other related provisions in the Plan. We note that while section 36A of the RMA does not require consultation on resource consent applications, it does enable consultation if the applicant or Council choose to do so.

330. We agree with Ms van Haren-Giles that the submission point of WHP seeking an amendment to SUB-P10.1 to include “associated buildings and structures” is addressed by the amendment sought by Council to include a new clause:

The extent to which the subdivision and any anticipated development would detract from the identified heritage values.

331. This would include consideration of the any associated buildings and structures on the site if they have heritage values.

332. WHP also sought the addition of a clause ‘the findings of any advice by a suitably qualified heritage professional’. Ms van Haren-Giles agreed with the intent of the submission point but recommended that the wording should be consistent with the related policy on the Historic Heritage Chapter. She noted that that wording was subject to a recommended change in Hearing Stream 3 and that the wording recommended to be added to SUB-P10 should be the same as in that chapter. We agree with this subject to the recommendation from Hearing Stream 3 being adopted.

333. The Panel agrees with the Section 42A Report assessment of the submissions and adopts the recommendations in this section for the reasons given in the report.

3.5 Natural Environmental Values

334. Ms van Haren-Giles acknowledged that submissions relating to the broader issues of the Natural Environmental Values will be addressed as part of Hearing Stream 8.

Accordingly, we may make recommendations in relation to this chapter that will need to be reconsidered in Stream 8.

335. GWRC, supported by EQC, sought to amend SUB-P14 in its entirety to only allow for subdivision in riparian margins where adverse effect on natural character are avoided, and other adverse effects on natural character are avoided, remedied or mitigated¹⁶⁸.
336. Trelissick Park Group sought the deletion of SUB-P15 and SUB-P16 in their entirety, as subdivision should not be allowed in significant natural areas¹⁶⁹.
337. Tyers Stream Group submitted that SUB-P15 and SUB-P16 have no effect in the absence of any SNAs on private residential land, and do not meet the requirements of s6(d) of the RMA. They also submitted that 'avoid' is a high policy bar for subdivision to cross, except for the 'where practicable' qualifier. They further noted that the effects management hierarchy is very similar to that proposed in the NPSIB, and that some kind of accounting is necessary where offsetting and compensation is contemplated – this could be by putting resources into a fund to deliver more or better biodiversity elsewhere, on a 'net gain' basis¹⁷⁰.
338. Forest and Bird submitted that the subdivision introduction states that it contains policies and rules that implement the objective in the ECO chapter, where subdivision affects an SNA. However, the subdivision chapter has taken the approach of replicating some of the policies from the ECO chapter, although not exactly. It submitted that, because the ECO policies already apply to subdivision (e.g. ECO-P1, ECO-P3), it may be simpler to cross reference the ECO policies in the subdivision chapter, but that, with either approach, care needs to be taken to be clear which policies apply to subdivision, and to ensure that all relevant policies are included in the subdivision chapter¹⁷¹.
339. Forest and Bird sought to amend the subdivision policies framework to either¹⁷²:
 - a. Remove duplication of ECO policies by deleting and replacing SUB-P15 and SUB-P16 with a new policy that references ECO-P1, ECO-P3, ECO-P5 and its proposed new ECO policy – 'Maintenance of biodiversity'.
 - b. Or, if the duplication of policies approach is retained, that:

¹⁶⁸ Submissions #351.184-185, supported by Further Submission #70.32

¹⁶⁹ Submissions #168.19-20

¹⁷⁰ Submissions #221.6769

¹⁷¹ Submission #345.270

¹⁷² Submissions #345.271-273

- i. ECO-P5 and their proposed new 'Maintenance of biodiversity' policy are also duplicated in the Subdivision chapter; and
 - ii. That amendments sought to ECO=P1 and ECO-P3 are applied to SUB-P15 and SUB-P16.
340. John Tiley and Churton Park Community Association opposed SUB-P17 due to the concept of subdividing on ridgelines doing a disservice to the City's landscape values as expressed in other plans and policies over the last 20 years¹⁷³.
341. Heidi Snelson, Aman Hunt, Chia Hunt, and Ela Hunt sought to amend SUB-P17 to give further protection to Marshall's Ridge and other ridgelines in the area¹⁷⁴.
342. Forest and Bird submitted that SUB-P18 broadly replicates NFL-P3 and NFL-P4 and sought to amend SUB-P18 to align with its relief sought on NFL-P3 and NFL-P4.¹⁷⁵
343. Forest and Bird sought that that SUB-P19 be amended to align with its relief sought on NFL-P5¹⁷⁶.
344. Forest and Bird requested that SUB-P20 be aligned with its relief sought on NFL-P5¹⁷⁷.
345. Forest and Bird sought to amend SUB-R11 to also apply to building platform access, and include as matters of discretion ECO policies or their replicas in the SUB chapter. It also sought that where the Restricted Discretionary Activity standards will not be met, the activity should become Non-Complying¹⁷⁸.
346. Forest and Bird sought that SUB-R12 be amended to include NFL-P3 and NFL-P4 as matters of discretion, and cross reference new ECO and NFL policies it sought aimed at the maintenance of biodiversity outside of SNAs, as well as ensuring policy 11 of the NZCPS is given effect to, outside of SNAs. The reference to 'identified values' was opposed as per relief sought in relation to SCHED11¹⁷⁹.
347. Forest and Bird sought to amend SUB-R13 to also apply to the access to building platforms and include as matters of discretion, policies aimed at protecting ONFLs and the indigenous biodiversity located within them, including new ECO and NFL

¹⁷³ Submissions #142.14 and #189.14

¹⁷⁴ Submission #276.21

¹⁷⁵ Submission #345.275

¹⁷⁶ Submission #345.276

¹⁷⁷ Submission #345.277

¹⁷⁸ Submission #345.284

¹⁷⁹ Submission #345.285

policies sought as part of its wider submission aimed at ensuring the maintenance of biodiversity outside of SNAs¹⁸⁰.

348. In relation to the submission point by GWRC, we agree with Ms van Haren-Giles that strengthening the wording in SUB-P14 - from 'Provide for' to 'Only allow'— better reflects the outcome sought and the direction given to the rules. We do not agree with GWRC, however, that SUB-P14 should be amended as requested. As currently worded, it provides the policy direction required to provide for Controlled Activity subdivision in areas where the riparian margins are highly modified (SUB-R15), and a higher/more restrictive status for those areas where the margins are more sensitive to change.
349. We agree with Ms van Haren-Giles in relation to the Trelissick Park Group submission point that subdivision is provided for in these areas, and that the policy and rule framework will protect the natural environmental values. These provisions are implementing the parent chapter objectives which seek that these values be protected.
350. In relation to the submission point from Tyers Stream Group, the issue of SNAs on private residential land will be addressed later in the hearing programme.
351. In respect of the submission by Forest and Bird, the National Planning Standards direct the structure of the PDP objectives, policies and rules framework, and all subdivision provisions must be in the subdivision chapter. Ms van Haren-Giles acknowledged, however, that there were some drafting errors that resulted in ECO-P1 and ECO-P3 including reference to subdivision. These will be removed as part of Hearing Stream 8. Forest and Bird also raised other cross chapter issues that are better addressed in that hearing stream.
352. Ms van Haren-Giles agreed with John Tiley, Churton Park Community Association and Heidi Snelson, Aman Hunt, Chia Hunt, and Ela Hunt that the policy direction for subdivision could be made stronger. The Panel agrees and notes that this is consistent with the amendments made in the Earthworks Chapter. As this area is not currently managed in the Subdivision Chapter, Ms van Haren-Giles recommended an amendment to SUB-P17 and a new rule to control subdivision in this area. We agree that strengthening the policy and including the ridgetop area is consistent with the associated policy DEV-P4.6 that directs the protection of the

¹⁸⁰ Submission #345.286

natural ridgetop around the Upper Stebbings valley from inappropriate subdivision and development. The addition of the 'ridgetop area' to the policy will address this.

353. In addressing this submission, Ms van Haren-Giles identified a gap in the rule framework. She noted that there needed to be a rule that implemented SUB-P17. To that end, she recommended the addition of a rule that would be consistent with DEV-R33 and recommended amendments to EW-R15. We agree that these changes will strengthen the provisions for protection of this area in keeping with the direction of the related provisions in the PDP. While the addition of a new rule is not within the scope of the submission point, it is within the authority given to the Panel under Schedule 1, clause 99(2)(b) of the RMA, which we consider it is appropriate to apply in this situation.

354. Forest and Bird referred to the relief it sought to their submissions on NFL-P3 and NFL-P4 and sought that SUB-P18 be aligned with this. Its first point was that SUB-P18 should be reworded to "Only consider providing for subdivision" instead of "Provide for...". We agree with Ms van Haren-Giles that this wording is too unclear and insufficiently directive in its approach. Its second relief was to add a clause to SUB-P18:

"Any activity ensures the maintenance and enhancement of the quality of the environment."

355. Ms van Haren-Giles considered that this matter would be better dealt with in Hearing Stream 8, with any consequential amendments made to SUB-P18 as a result. In our view, however, we consider that this is adequately addressed by the wording of SUB-P18 which refers to:

"The subdivision is designed to ensure that adverse effects of future use and development enabled by the subdivision on the identified values are avoided, remedied or mitigated; and

The identified landscape values and characteristics are maintained"

356. Forest and Bird referred to the relief it sought to their submission on NFL-P5 and sought that SUB-P19 be aligned with this. Its first point was that SUB-P19 should be reworded to "Only consider providing for subdivision" instead of "Provide for...". We agree with Ms van Haren-Giles that this wording is too unclear and insufficiently directive in its approach. Its second request was to delete reference to 'identified' in relation to 'identified values'. In agreement with Ms van Haren-Giles, we consider that this is a deliberate word indicating that there is a schedule of researched and assessed values that have been determined to be of such value they should be protected.

357. Forest and Bird referred to the relief it sought to their submission on NFL-P6, and sought that SUB-P20 be aligned with this. The matter of 'identified values' is addressed above and the same assessment and recommendation is applicable to this submission point. In respect of the request to use "only consider providing", this is also addressed above.
358. As regards its further request to add 'and other effects are avoided, mitigated or remedied', we agree with Ms van Haren-Giles that this is less stringent than the wording of SUB-P20, which uses 'avoid' and 'protected'. We agree that this direction is most appropriate to the management of activities in ONFLs.
359. Ms van Haren-Giles agreed with Forest and Bird that SUB-R11 be amended to apply to building platform access as it would ensure that vehicle access can be provided without encroaching into SNAs. Vehicle accessways can have an impact on space requirements and these need to be shown on subdivision plans. We agree that accessways need to be shown on plans as part of an application, and the appropriate rule framework will apply. This also applies to SUB-R13, as requested by Forest and Bird.
360. Ms van Haren-Giles also recommended that a policy equivalent to ECO-P5 be added to the subdivision policies so that SNAs in the coastal environment are managed to the same extent as the parent chapter. We agree that this would provide consistency with the parent chapter. Consequential with the addition of a new policy that directs to 'avoid adverse effects' on SNAs in the Coastal Environment, it would be appropriate for a Non-Complying Activity status to be applied where an SNA is located within the coastal environment.
361. The relief sought by Forest and Bird seeking that NFL-P3 and NFL-P4 be added to SUB-R12 as matters of discretion is unnecessary as SUB-P18 addresses subdivision within special amenity landscapes and it is a matter of discretion for SUB-R12.1.
362. The Panel agrees with the Section 42A Report assessment of the submissions and adopts the recommendations in this section for the reasons given in the Report.

3.6 Coastal Environment

363. Ms van Haren-Giles acknowledged that submissions relating to the broader issues of the Coastal Environment will be addressed as part of Hearing Stream 8. Accordingly, we may make recommendations on this chapter that will need to be reconsidered in Stream 8.

364. Forest and Bird submitted that SUB-P21 broadly replicates NFL-P6 and sought to amend the policy to align with its relief sought on NFL-P6¹⁸¹.
365. Forest and Bird submitted that SUB-P22 broadly replicates CE-P5 and sought to amend the policy to align with its relief sought on CE-P5¹⁸².
366. Forest and Bird submitted that SUB-P23 broadly replicates CE-P6 and sought to amend the policy to align with its relief sought on CE-P6¹⁸³.
367. Forest and Bird submitted that SUB-P24 broadly replicates CE-P7 and sought to amend the policy to align with its relief sought on CE-P7.¹⁸⁴
368. Forest and Bird sought to amend the activity status of SUB-R14 from controlled to restricted discretionary as provisions which only protect areas of high natural character do not give effect to NZCPS policy 13. It was also sought that matters of discretion policies aimed at the protection of natural character (generally) be included¹⁸⁵.
369. Forest and Bird sought to amend the activity status from Controlled to Restricted Discretionary as the requirement to protect natural character applies regardless of zoning. Also, policies aimed at the protection of natural character should be included as matters of discretion¹⁸⁶.
370. Forest and Bird sought that SUB-R16 be amended to apply to all areas of natural character in the Coastal Environment, also apply to the access to the building platform, and include, policies aimed at the protection of natural character as matters of discretion¹⁸⁷.
371. We agree with Ms van Haren-Giles that NFL-P6 addresses use and development within outstanding natural features and landscapes within the Coastal Environment, while SUB-P21 applies to all subdivision within the Coastal Environment.
372. In relation to the first four submission points by Forest and Bird, some of these issues have been addressed in preceding sections and some are matters that will be addressed in Hearing Stream 8. In respect of the remaining issues, we agree with the assessment in the Section 42A Report and adopt the recommendations.

¹⁸¹ Submission #345.278

¹⁸² Submission #345.279

¹⁸³ Submission #345.280

¹⁸⁴ Submission #345.281

¹⁸⁵ Submission #345.287

¹⁸⁶ Submission #345.288

¹⁸⁷ Submission #345.289

373. In respect of the submission point of Forest and Bird with regard to SUB-R14, Ms van Haren-Giles helpfully clarified in her assessment that this rule is about providing for subdivision in areas that are outside both the high coastal natural character areas and the coastal and riparian margins. This rule is therefore managing activities on land on the landward side of the Coastal Environment and SUB-P21 directs that the provisions enable subdivision where it consolidates existing urban areas and does not establish new urban sprawl along the coastline". We agree with this assessment and agree that the existing activity status is appropriate to this matter.
374. In relation to Forest and Bird's submission point in relation to SUB-R15, we note that Controlled Activity status only applies to subdivision in the Port, Stadium, Waterfront and City Centre Zones. These are areas of highly modified environments and there to be significant adverse effects caused on natural character are unlikely in these areas. SUB-P14 stipulates that subdivision within riparian margins is only allowed where the natural area is protected and designed to minimise the adverse effects of future use and development enabled by the subdivision on the natural character. We are satisfied that these provisions are appropriate to provide for these bodies to carry out work without impacting on the Coastal Environment.
375. Forest and Bird requested the addition of "access to the building platform" to be included in SUB-R16. This is the same issue that was addressed in paragraph 354 above and our recommendation on this is the same; that is, that the rule should be amended to include this activity.
376. The Panel agrees with the Section 42A Report assessment of the submissions and adopts the recommendations in this section for the reasons given above, and in the Section 42A Report .

3.7 Natural Hazards and Coastal Hazards

377. Ms van Haren-Giles introduced this section by saying that she had considered the National Planning Standards and that they require 'subdivision provisions' to be in a subdivision chapter. This implies that this chapter should be the home for provisions relating to subdivision relevant to natural and coastal hazards. To implement this, she recommended principally that the policies in the Natural Hazard and Coastal Hazard chapter be relocated to the subdivision chapter with subsequent amendments to bring policies into line with the Section 42A Report

recommendations in the Section 42A Report for the Natural Hazard and Coastal Hazards chapter, with updated cross referencing. In her opinion this restructuring would be more in line with the National Planning Standards and as a result be more efficient and effective. She said that these changes could be done by way of Clause 16 of Schedule 1.

378. However, in her supplementary evidence, she said that she and Mr Sirl, who was the author of the Section 42A Report for the Natural Hazard and Coastal Hazards Chapter, had given further consideration to how the rule framework in the Subdivision chapter could be simplified. We also asked Mr Sirl in Minute 33: *to consider whether, if enabled by the National Planning Standards, the natural hazard rules could be restructured to improve their ease of understanding and use; in particular, by collating all rules relating to each natural hazard together to show the 'cascade' of activity statuses*". To this end, Ms van Haren-Giles has recommended an approach that each hazard overlay has its own rule with the activity status hierarchy reflecting the sensitivity of that environment to subdivision.
379. We appreciate that this is a complex issue with a matrix-like structure of different hazards and levels of sensitivity to them. Simplifying these into the hazard areas will greatly improve readability and assist the plan user. As a result, we consider this restructure better addresses the issue and our recommendation is in accordance with the authority given to the Panel under Schedule 1 clause 99(2)(b) of the RMA.
380. Forest and Bird sought amendments to SUB-P25 to align with its amendments to CE-P11¹⁸⁸.
381. CentrePort sought the deletion of SUB-P26 in its entirety, as the policy does not equate the process of subdivision with increased risk from the Wellington Fault¹⁸⁹.
382. GWRC, supported by EQC, sought amendments to bring the policy in line with Objectives 19 and 20 and Policies 51 and 52 of the RPS-Change 1¹⁹⁰.
383. GWRC sought to amend the activity status of subdivision that creates building platforms for less hazard sensitive activities in the stream corridors within the flood overlays (that is, does not comply with SUB-R17.1.b) from Discretionary under Rule SUB-17.3 to Non-Complying where the activity, in order to allow full scrutiny of the

¹⁸⁸ Submission #345.282

¹⁸⁹ Submission #402.110

¹⁹⁰ Submission #351.187, supported by Further Submission #70.33

application, and send a message to applicants that consents generally will not be granted¹⁹¹.

384. Poneke Architects opposed the Coastal Environment and Coastal Inundation and Tsunami Hazard Overlays and provisions in relation to subdivision as they are considered to be too broad, and will effectively stop development in Wellington¹⁹².
385. GWRC sought to amend the activity status of the rule SUB-R18 from Controlled to Restricted Discretionary to give Council the ability to decline an application if it is considered inappropriate or mitigation measures are inadequate¹⁹³.
386. Kāinga Ora, opposed by GWRC and EQC, sought to amend the activity status from Non-Complying to Discretionary to allow potential for managing the hazard risk for residential activities, given that SUB-R21 prevents subdivision for residential activities in existing urban areas subject to coastal hazard such as Kilbirnie¹⁹⁴.
387. GWRC sought to amend SUB-R23.1.1 to include reference to SUB-P25¹⁹⁵.
388. Kāinga Ora, opposed by GWRC and EQC, sought to amend the activity status from Non-Complying to Discretionary to allow for the potential for managing the hazard risk for residential activities on the basis that SUB-R25 prevents subdivision for residential activities in existing urban areas subject to coastal hazard such as Kilbirnie¹⁹⁶.
389. WIAL sought amendments to the rule, subject to the relief sought to CE-P20, or otherwise sought that SUB-R26.1.5 be deleted¹⁹⁷.
390. In her assessment of Forest and Bird's submission point requesting that SUB-P25 should be amended to align with the relief it sought on CE-P11, Ms van Haren-Giles recommended rejecting the point. Consistent with the recommendation of Mr Sirl, her view was that the addition of the "protection of natural character, natural landscape and biodiversity values" was beyond the scope of this policy and the issue is in fact dealt with in other policies. We agree with this conclusion.
391. In relation to submissions on SUB-P26, Ms van Haren-Giles noted that this policy delivers on the direction of NH-O4, in the parent chapter. Mr Sirl has recommended that NH-O4 be amended to "...minimise [for emphasis] the risk to people, property

¹⁹¹ Submission #351.188

¹⁹² Submission #292.3

¹⁹³ Submission #351.189

¹⁹⁴ Submissions #391.234-235, opposed by Further Submission #84.81 and Further Submission #70.60

¹⁹⁵ Submission #351.190

¹⁹⁶ Submissions #391.242-243, opposed by Further Submission #84.82 and Further Submission #70.62

¹⁹⁷ Submission #406.281

and infrastructure.” This provides the direction for SUB-P26 and it is therefore consistent to use the word ‘minimise’ as opposed to ‘reduce’. We recommend that the wording of SUB-P26 be amended accordingly.

392. Given the role of SUB-P26 in implementing NH-O4, we therefore agree that it should not be deleted as requested by CentrePort.
393. In addressing the submission point from GWRC on SUB-R17, we first note that the rule framework has been recommended by Officers to be restructured, as referred to above, with consequential changes to the rule numbering. Rule SUB-R17 has been recommended to be split into separate rules to address subdivision that creates building platforms in the Fault and Liquefaction Hazard Overlays (now SUB-R17 to R20), Flood Hazard Overlays (now SUB-R21 to R23), and Coastal Hazard Overlays (now SUB-R24 to R26).
394. Ms van Haren-Giles’s response to the GWRC submission to have subdivision creating building platforms for less hazard sensitive activities in a stream corridor made a Non-Complying Activity is that it is appropriate that they require a consent for a Discretionary Activity (under renumbered rule SUB-R23.1). Her argument was that this is consistent with the rule of the parent chapter NH-R1.2 where less hazard sensitive activities within the stream corridor are Restricted Discretionary. We agree insofar as, in our view, given that the activity is a less hazard sensitive activity, it would be inconsistent for it to be a Non-Complying Activity. However, we question why it then should fall to be a Discretionary Activity, given less hazard sensitive activities in stream corridors are Restricted Discretionary Activities under Rule NH-R1.2. We consider that this subdivision rule should align with the hierarchy under the natural hazards rules and be a Restricted Discretionary Activity status would be more consistent and therefore more appropriate. We therefore recommend making a cl99(2) amendment on this point. However, we agree with the reporting officer that non-complying activity status is appropriate for subdivision for potentially hazard sensitive and hazard sensitive activities in stream corridors, to be consistent with the natural hazards rules, and to send a strong signal that subdivision to accommodate these types of activities should be generally discouraged.
395. GWRC also agreed with the response from Ms van Haren-Giles in the Section 42A Report in relation to SUB-R18.
396. In relation to Kāinga Ora’s submission opposing the Non-Complying rule in SUB-R21, and seeking instead that subdivision for potentially hazard sensitive activities

or hazard sensitive activities be a Discretionary Activity. We note that Ms Woodbridge did not consider that this matter was a key matter of interest to Kāinga Ora as it was not addressed in her evidence. We agree with Ms van Haren-Giles that this is an appropriate activity status to manage the effects in hazard areas.

397. Kāinga Ora also submitted on SUB-R25, which raised the same issue as SUB-R23. The same response is relevant to this.
398. While the recommended restructure of the rule framework has altered where this matter sits, we agree with Ms van Haren-Giles that the subject of SUB-R26 should not be deleted, as it protects people and activities in these areas. We support the addition of references to relevant policies as recommended by Ms van Haren-Giles as they are necessary to make the appropriate link to the direction sought by the Plan.
399. The Panel adopts the recommendations in this section of the Section 42A Report for the reasons outlined above and if not specifically addressed above, the reasons provided in the Section 42A Report.

3.8 Subdivision in the National Grid and Gas Pipeline Corridor

400. Transpower and Council, supported by Transpower, sought that the rule be deleted in its entirety¹⁹⁸.
401. Transpower sought that, on the basis that the National Grid is a qualifying matter, that the rule should be assessed as part of the ISPP process¹⁹⁹.
402. Transpower sought amendments to the matters of discretion to include support structures, the impact of landscaping on the operation, maintenance, upgrade and development (including access) of the National Grid and the risk of electrical hazards affecting public safety and the risk of property damage²⁰⁰.
403. Firstgas, opposed by Kāinga Ora, sought the deletion of SUB-R29.1 and amendments to SUB-R29.2 to include location requirements and reference the Gas Transmission Network, as opposed to the Gas Transmission Pipeline²⁰¹.
404. Ms van Haren-Giles agreed with the submission by Transpower seeking to amend SUB-R28 matters of discretion for subdivision in the National Grid subdivision corridor. These amendments added 'support structures' as an affected part of the

¹⁹⁸ Submissions #315.170 and #266.110, supported by Further Submission #29.39

¹⁹⁹ Submission #315.171

²⁰⁰ Submissions #315.172-173

²⁰¹ Submissions #304.39-40, opposed by Further Submission #89.64

National Grid infrastructure, the impact of landscaping, and the risk of electrical hazards to people and property.

405. Ms van Haren-Giles agreed with the majority of amendments sought by Firstgas to SUB-R29, and Mr Roberts agreed with Ms van Haren-Giles' recommendations in his evidence on behalf of Firstgas .
406. The Panel adopts the recommendations in this section of the Section 42A Report for the reasons outlined above and if not specifically addressed above, the reasons provided in the Section 42A Report.

3.9 Air Noise Boundary

407. WIAL, supported by BARNZ, made a number of submission points in relation to the Air Noise Boundary. It sought to amend the Subdivision chapter to align with other relief sought, and discourage the intensification of noise-sensitive activities through subdivision within the various air noise boundaries/overlays²⁰².
408. WIAL, supported by BARNZ and opposed by Kāinga Ora, sought the addition of a policy to address subdivision within the Air Noise Boundary and 60dB Ldn Noise Boundary²⁰³.
409. WIAL, supported by BARNZ and opposed by Kāinga Ora, sought that the rule be amended to also apply to the 60dB Ldn Noise Boundary, with a notification statement specifying that WIAL is an affected person in respect of applications made under this rule²⁰⁴.
410. While acknowledging that the Noise Chapter addresses land use matters in the Air Noise Boundary, there are rules and policies for subdivision in the Subdivision Chapter and WIAL's specific submission points request some changes to these.
411. WIAL sought a new policy to address subdivision of land affected by the Air Noise Boundary or 60dB Ldn Noise Boundary. Ms van Haren-Giles agreed that a policy was required but she considered that the area within the 60dB Ldn would affect too many properties. She questioned whether the future levels of outdoor aircraft noise received at sites located between 60dB Ldn and 65dBLdn contours would be significant enough to warrant subdivision controls for noise sensitive reasons. Ms O'Sullivan considered that "subdivision activities are often one of the main enablers

²⁰² Submissions #406.255-258, supported by Further Submission #139.68, Further Submissions #136.69-71

²⁰³ Submission #406.263, supported by Further Submission #139.74 and opposed by Further Submission #89.122

²⁰⁴ Submissions #406.282-283, supported by Further Submission #139.75 and opposed by Further Submission #89.124

of future development and intensification”²⁰⁵ We agree with Ms van Haren-Giles that it is unrealistic and too restrictive to limit subdivision within this wide and already urbanised area.

412. Ms van Haren-Giles recommended a reworded policy that was generally agreed by Ms O’Sullivan, although there remained a disagreement regarding appropriate wording for a policy that leads to a Discretionary Activity rule. The question being should it be “*provide for...*”, “*only allow...*”, or “*avoid...*”? In her supplementary evidence, Ms van Haren-Giles maintained that “*provide for...*” is appropriate as it is commonly used for policies that “set up a generally permissive rule regime”²⁰⁶. We agree with Ms van Haren-Giles that the words “provide for” are consistent with Plan terminology.
413. Ms van Haren-Giles agreed with WIAL’s request for a notification clause identifying WIAL as an affected person within the Air Noise Boundary (but not within the 60dB Ldn Noise Boundary). She considered it appropriate and consistent with the approach of the Plan to discourage noise sensitive development within this area. Subsequently, Ms O’Sullivan agreed with Ms van Haren-Giles that the area covered by the policy should be the Air Noise Overlay (which is the 60dB Ldn area).
414. The Panel adopts the recommendations in this section of the Section 42A Report for the reasons outlined above, and if not specifically addressed above, the reasons provided in the Section 42A Report.

²⁰⁵ O’Sullivan evidence paragraph 5.87

²⁰⁶ Haren-Giles supplementary evidence paragraph 35

4. EARTHWORKS

4.1 Introduction and Overview

415. This Panel report follows the structure of the Section 42A Report for ease of reference.
416. The Council's reporting planner, Ms Hannah van Haren-Giles, explained in her Section 42A Report that the earthworks provisions relate to a number of zone specific and districtwide matters. As such the provisions are interrelated to other District Plan chapters yet to be heard by the Panel. These are:
- a. Airport Zone – to be heard in Hearing Stream 6
 - b. Natural Environment Values – to be heard in Hearing Stream 8
 - i. Ecosystems and Indigenous Biodiversity (ECO)
 - ii. Natural Character (NATC)
 - iii. Natural Features and Landscapes (NFL)
 - c. Coastal Environment – to be heard in Hearing Stream 8
 - d. Development Areas – to be heard in Hearing Stream 6
 - e. Infrastructure – to be heard in Hearing Stream 9
417. There are also interrelated matters between the earthworks provisions and other chapters also heard in Hearing Stream 5 and amendments have been aligned with the provisions and decisions of other chapters. This is particularly relevant to the Natural and Coastal Hazards Chapter.
418. There were 284 submission points received on the Earthworks chapter. The main issues in contention are:
- a. Definition of 'cut height'
 - b. Protection of the hilltop area
 - c. The rule framework in the Airport Zone
 - d. Area and volume thresholds within the standard

4.2 Definitions

419. Spatial & Survey opposed the definition of 'cut height' and sought that it be amended "to measure the vertical change in height of the excavation. That is, the vertical distance between the existing ground surface and excavated surface"²⁰⁷.

420. The notified definition is worded:

30. Means the maximum height of the cut at the completion of earthworks, measured vertically from the highest point at the top of the cut to the bottom of the cut.

421. Mr Gibson submitted that this was a significant change from the ODP, which is worded:

31. Means the maximum height of the earthworks cut at any time, measured vertically and includes any working cut height during the course of the earthworks.

2. He usefully provided a diagram to demonstrate the difference between the operative and proposed definitions:

32.

33.

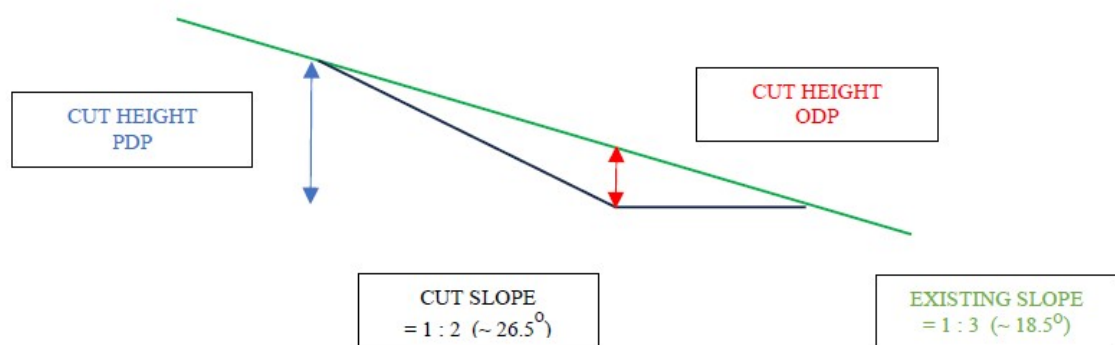


Figure 1: Comparison of PDP and ODP definitions of "cut height"

34.

422. Mr Gibson was concerned that the proposed definition would result in more earthworks requiring resource consent. He also contended the proposed definition was inconsistent with the Section 32 Report that had concluded that the operative definition should be retained.

423. The Panel requested that Ms van Haren-Giles address this in her Reply, including a further evaluation of the proposed change to the definition of 'cut' in response to the

²⁰⁷ Speaking notes, David Gibson, Spatial & Survey [Submission #439.4]

evidence of David Gibson for Spatial & Survey: in particular, we sought an additional explanation of the reasons for the recommended change. Ms van Haren-Giles responded that the Section 32 Report was referring to the thresholds in for depths of cuts and heights of fills carried over from the ODP into EW-S1 and EW-S2 when it indicated support for the ODP approach. However, we understood that Mr Gibson was implying that the definition was a necessary part of the interpretation of the standards. Ms van Haren-Giles explained that there had been some ambiguities in the interpretation of the standards in the ODP and that the definition of 'cut height' and 'fill depth' needed resolving.

424. The Panel did not hear any further explanation as to the nature of those ambiguities and the Section 32 Report was unclear on this matter. We were concerned, as was Mr Gibson, that the proposed definition results in a broad measurement of height that would be likely to give rise to the need for many more resource consents. We agree with Mr Gibson that the critical point of the cut is the point at which it is the highest as shown in red in his diagram above. The proposed definition, and the diagram that Ms van Haren-Giles has recommended be included in the PDP for clarification, is intended to extend the point from which the height is measured beyond this point and extend to the top of the cut to the bottom. Two examples illustrate our concern with this approach:
- a. An excavation on a sloping section to provide for a driveway of say 250mm of depth of concrete/asphalt would ostensibly have a cut height from the highest point of the slope to the bottom of the slope; or
 - b. A 600mm trench for an electricity cable on a sloping site could have a 'cut' height of many metres.
425. We understand the need for greater clarity than the ODP provided, but it seems to us that the PDP has made a significant substantive change with little or no justification. In particular, the Section 32 Report does not assess the costs and benefits of the change in the way cut heights are calculated.
426. As a result of our consideration of the matter, we have provided a rewording of the definition. We consider that the wording of the ODP definition with some amendment can provide better clarity, while focussing correctly on the point at which the cut height is measured.
427. We therefore recommend that the definition in the PDP be replaced by:

35. Cut height – means the maximum height of the earthworks cut at any time and at any point measured vertically from ground level and includes any working cut height during the course of the earthworks.
- 36.
428. There were a number of submissions on the definition of earthworks²⁰⁸. Some submitters supported the definition, and others considered it was too restrictive, and required some exclusions such as topsoil removal and trenching.
429. Ms van Haren-Giles pointed out that the definition is provided by the National Planning Standards and must be used. No changes are therefore possible. Ms van Haren-Giles did however provide some guidance as to how the matters raised were otherwise addressed in the PDP and these are outlined in the Section 42A Report.
430. The Panel agrees with her conclusion for the reasons provided and adopts Ms van Haren-Giles' recommendation.
431. Survey & Spatial²⁰⁹ submitted that the definition of 'Existing Slope Angle' should have a minimum length over which the slope angle should extend in order to not include short changes in gradient that have no effect on the overall slope of a site. Mr Gibson sought that a minimum 3m distance be added to the definition.
432. Ms van Haren-Giles explained in her report that EW-S3, which sets the standard for existing slope angle, already specifies a 3m horizontal distance as sought by Survey & Spatial. She added that a better connection could be made between the definition and the standard by incorporating the distance in the definition. She therefore recommended that the definition be amended to include:
37.A slope segment is a segment of sloping ground that falls generally at the at the same angle to the horizontal (slope segment angle) sustained over a distance of at least 3m, measured horizontally.
433. The Panel agrees with this recommendation, and adopts it for the reasons given as it adds clarity and assists usability of the Plan.

²⁰⁸ Submissions #271.1, #303.1, #304.1, #315.1 #372.2, FS #25.1, #24.1, #25.2, #24.2,

²⁰⁹ Submission #439.5

434. Two submissions were received on the definition of 'Fill Depth'. One was in support²¹⁰ and one from Survey & Spatial²¹¹ sought an amendment to the definition as follows:

38.

39. Means the maximum depth of the fill at the completion of the earthworks, measured vertically from the highest point on the top of the fill to the bottom of the fill placement vertical alteration of the ground by filling measured vertically.

435. Ms van Haren-Giles' assessment was that the definition as proposed is clearer to the plan user than that proposed by Survey & Spatial. Her recommended definition is the same as the one in the ODP and this implies that, unlike the definition of 'Cut Height', there have been no or few ambiguities with this definition. The Panel therefore agrees with Ms van Haren-Giles and the definition is retained as notified.

4.3 Submissions on the Earthworks Chapter

General Chapter-wide Matters

436. There were a range of general points raised in submissions in relation to the whole chapter²¹². The matters can be summarised:

- a. Support for retention of the chapter as it was notified
- b. Concern that the provisions favour development over visual amenity and open space and a request that an explanation of sustainable management be provided
- c. A lack of requirement to avoid or mitigate harmful effects including earthworks to ridgelines
- d. Greater recognition of the effects of climate change
- e. WIAL sought that the chapter does not apply to the Airport Zone.
- f. There should be provisions relating to earthworks in wetlands and their margins.

²¹⁰ Submission #372.10

²¹¹ Submission #439.6

²¹² Submissions #349.32, #290.43, #290.44, #303.17, #370.204, #142.15, #189.15, #142.16, #189.16, #142.17, #189.17, #271.51, #294.13, #294.14, #406.360, FS105.17, #406.361, FS105.18, #406.362, #406.364, #345.361.

437. As a side matter, Ms van Haren-Giles noted that reference to sustainable management in the introduction is not linked to the e-plan definition and this would be rectified as a minor correction.
438. In more general terms, Ms van Haren-Giles' view was, and the Panel agrees, that the Plan provides an appropriate balance between development interests while requiring avoiding, remedying or mitigating adverse effects of earthworks.
439. John Tiley and the Churton Park Community Association were also concerned about the effects of earthworks and construction of structures on ridgelines. Mr Tiley spoke at the hearing in support of these submissions and presented photos demonstrating their concerns with the effect of development on ridgelines visible from Churton Park. Ms van Haren-Giles responded to the submission pointing out that construction of buildings and structures on identified Ridgetops are a non-complying activity. This matter is dealt with further on in this report under Development Areas (section 4.8). The Panel agrees with Ms van Haren-Giles that the non-complying activity status is appropriate to control the buildings in the identified Ridgetops.
440. We agree with Ms van Haren-Giles also in relation to provisions in the PDP relating to climate change and that the strategic direction provides objectives specifically aimed at managing risks caused by climate change. These are outlined in her report and the Panel is satisfied that the Plan provides appropriate guidance to avoid and mitigate these risks.
441. In respect of the WIAL submission seeking amendments to the application of the earthworks provisions in relation to the Airport Zone, this is addressed further in this report under the Airport Zone section (paragraphs 522 to 534).
442. Forest and Bird sought amendments to include provisions on earthworks in wetlands and their margins, at least to the extent that setbacks from natural wetlands are required. Ms van Haren-Giles explained in her report that the NES-FW contains national regulations for earthworks within and in proximity to natural wetlands. We agree that there is also no requirement to duplicate these regulations in the Plan. Furthermore, the introduction to the Natural Character chapter sets this out, and is explicit that the Council does not replicate these in the Plan and that these activities are not managed through that chapter. The Panel agrees that this is clear in the Plan and requires no further explanation or that the provisions require duplication.

443. Ms van Haren-Giles did, however, conclude that it would be beneficial to Plan users to add the same explanatory note to the Earthworks chapter as is in the introduction to the Natural Character chapter. The Panel agrees that this would be helpful.
444. The Panel adopts the recommendations of the Section 42A Report for the reasons provided in the preceding discussions on these points.

Recurring submission points relating to multiple provisions

445. There were a number of submission points from Heidi Snelson, Aman Hunt, Chis Hunt, Ela Hunt²¹³ on the provisions in relation to climate change and natural hazard resilience of development in the Upper Stebbings and Glenside West Development Area.²¹⁴ This was particularly pertinent to significant earthworks on escarpments, removal of hilltops resulting in landform changes, and the infilling of gullies and water courses.
446. Ms van Haren-Giles referred to a number of provisions in the Plan that directly address these matters in relation to the areas of concern²¹⁵. For example, EW-P3 in relation to slope failure and EW-P20 in relation to earthworks in development areas and minimising risk in managing flood waters. Also, at a strategic level, SRCC-O3 and SRCC-O4 are relevant in relation to managing risks associated with climate change and building resilience in the natural and built environments. The provisions in the Development Areas chapter also address these matters. These will be addressed further in Hearing Streams 6 and 8.
447. At this point, the Panel is satisfied that the concerns of the submitter are appropriately addressed through the provisions of the PDP.
448. Forest and Bird made a number of points seeking deletion of the term ‘identified values’ on the basis that this will not necessarily protect all relevant values.²¹⁶
449. Ms van Haren-Giles explained that the term was used in relation to specific values identified through engagement, research and assessment, and is a term consistently used throughout the PDP: for example, in regard to historical and cultural values, and biodiversity values. The submitter also raised related matters which will be addressed in Hearing Stream 8. However, we agree that retention of

²¹³ Submissions #276.22, 276.24-27, 276.29-30

²¹⁴ Section 42A Report at paragraph 106

²¹⁵ Section 42A Report at paragraph 111

²¹⁶ Submissions #345.363,366,369,370

this term is important where it relates to specific values that the policies and rules hierarchies are seeking to maintain.

450. Forest and Bird²¹⁷ sought deletion of 'operational need' on the basis that it considered the term too broad.
451. In response, Ms van Haren-Giles outlined that the objectives and policies of the NZCPS address this matter, and that this is reflected in the provisions of the PDP. The NZCPS refers to the need to provide for the functional needs of some uses and developments. It also refers specifically to the provision of infrastructure in order to provide for populations' needs without compromising the other values of the coastal environment. She said that EW-P11 and EW-P12 reflect this direction while acknowledging that the terms 'functional need' and 'operational need' were not defined at that time in the NZCPS (they are now defined in the National Planning Standards).
452. For the reasons given by Ms van Haren-Giles, and based on our interpretation of the provisions, we consider that there is sufficient clarity around the use of the terms and their definitions to provide clarity to the desired end result.
453. One submitter²¹⁸ sought further protection to Marshall's Ridge and the ridges and spurs into Stebbings Valley and Middleton Road. Ms van Haren-Giles noted that the need to protect the ridgetop area is recognised through the provisions of DEV3 and that the construction of buildings and structures in the ridgetop area is a non-complying activity. In relation to other more specific matters on Future Development Areas and hilltops and ridgelines, Hearing Stream 6 will address Development Areas and Hearing Stream 8 will address Natural Features and Landscapes. However, in relation to earthworks, this is addressed in this report in the Development Areas section (4.8).
454. The Panel adopts the recommendations of the Section 42A Report for the reasons provided in that report and the preceding discussions on these points.

²¹⁷ Submissions #345,366,367,368

²¹⁸ Submission #276

Earthworks Objectives

EW-O1 Management of Earthworks

455. HNZ²¹⁹ supported by Onslow Historical Society²²⁰ and HPW²²¹, sought that EW-O1 be amended to allow for a broader range of adverse effects, and not be limited to visual amenity.
456. Kāinga Ora²²² submitted that the term ‘visual amenity values’ is too vague in the context of earthworks assessment and sought that EW-O1 be amended to be more specific as to the effect to be managed. This was opposed by WCCT²²³.
457. Mr Raymond, giving evidence on behalf of HNZ, stated that EW-O1 should be broadened to include reference to all effects on the environment, particularly as it is the only objective relating to earthworks. Ms van Haren-Giles responded that the relief sought would mean that the scope of the objective was so wide that it would not provide meaningful direction to decision-makers. In her view, the PDP needs to be read as a whole and that other relevant objectives will be considered when matters such as historic heritage are pertinent. In that regard, HH-02 would be relevant.
458. The Panel was concerned, however, that there were insufficient links and triggers to other chapters that would assist the plan user. In our Minute 33, we asked Ms van Haren-Giles:
40. “(2)(ii) Whether the introduction should make more explicit reference to earthworks objectives in other chapters of the PDP (as an alternative to the relief sought by HNZPT in relation to EW-01?”²²⁴
459. Ms van Haren-Giles responded that a reference to earthworks objectives in other chapters could be made in the Introduction. She noted that this would be consistent with the Subdivision chapter and that the same statement could be added to the Introduction of the Earthworks chapter. This would read:
- This chapter includes objectives, policies and rules that relate to earthworks generally. It also includes policies and rules that implement objectives in other chapters, specifically as they relate to the management of earthworks.

²¹⁹ Submission #70.22-23

²²⁰ FS6.12-13

²²¹ FS.111.11-12

²²² Submission #391.269-270

²²³ FS.139

²²⁴ Van Haren-Giles reply 28 August 2023.

460. The Panel agree with this suggestion and consider that it will be of assistance to plan users. We think that this will address the concerns of HNZ by providing reference to broader considerations in respect to earthworks.
461. In relation to Kāinga Ora's concern about 'visual amenity values' being too vague, we agree with Ms van Haren-Giles that this is an RMA concept and widely accepted.
462. The Panel agrees with the recommendations of Ms van Haren-Giles and adopts these for the reasons she provided.

Earthworks Policies

New Policies

463. GWRC²²⁵ sought a new policy to recognise the potential adverse effects of earthworks on water bodies and mahinga kai, and that this should also be a matter of discretion for Restricted Discretionary Activity rules in this chapter.
464. TRoTR²²⁶ submitted that the potential impacts of earthworks and sedimentation on sites of significance to Māori need to be recognised through a separate policy.
465. Ms van Haren-Giles' response to these submissions was that these matters are adequately addressed elsewhere in the PDP, notably at a districtwide level through NE-02 and NE-05. For larger scale earthworks, these are dealt with at a regional level through GWRC, and this is referenced in the Introduction to the Earthworks chapter. In particular, the Natural Resources Plan Policy P109 addresses these matters. The Panel agrees that there is sufficient reference to the effects of earthworks on water bodies and there is no need for additional policies.
466. The Panel adopts the recommendations of the Section 42A Report for the reasons provided in the preceding discussions on these points.

EW-P2 Provision for minor earthworks

467. GWRC²²⁷, supported by EQC²²⁸, sought amendment to the policy to have regard to Objectives 19 and 20 and Policies 51 and 52 of the RPS-Change 1. Its request was that the wording be amended to read:

EW-P2 Provision for minor earthworks

²²⁵ Submission #351.228

²²⁶ Submission #488.67

²²⁷ Submissions #351.230-231

²²⁸ Submission #FS70.40

Enable the efficient use and development of land by providing for earthworks and associated structures where:

- 1. The risk associated with instability is minimised ~~not increased~~;*
- 2. Erosion, dust and sedimentation effects on land and water bodies will be minimal; and*
- 3. Effects on visual amenity would be insignificant.*

468. Ms van Haren-Giles agreed that this change would be more consistent with the terminology used in the PDP. She agreed with the reasoning given by GWRC and EQC that that use of the word ‘minimise’ provides a clearer direction, and is consistent with standard risk-based hazard management approaches. The Panel agrees with this assessment and recommends that EW-P2 is amended accordingly.

469. Kāinga Ora²²⁹ submitted that the term ‘visual amenity’ is too vague and sought that the clause should read:

3. ~~Effects on visual amenity~~ The appearance of earthworks would be insignificant.

470. This matter has been addressed above in paragraph 456 above.

471. The Panel adopts the recommendations of the Section 42A Report for the reasons provided in the preceding discussions on these points.

EW-P3 Maintaining Stability

472. Kāinga Ora²³⁰ sought that the policy should be amended to remove reference to examples, as follows:

EW-P3 Maintaining stability

~~44. Require earthworks to be designed and carried out in a manner that maintains slope stability and minimises the risk of slope failure associated with natural hazards such as earthquakes and increased rainfall intensities arising from climate change.~~

473. Ms van Haren-Giles considered that the examples were directly relevant to the types of hazards that affect stability.

474. Ms Woodbridge for Kāinga Ora addressed this in her evidence²³¹. In her view, the use of examples is not necessary as the definition of natural hazards is provided in the PDP and easily accessed through a hyperlink.

²²⁹ Submissions #391.271- 272

²³⁰ Submissions #391.273-274

²³¹ V Woodridge evidence at paragraphs 7.1, 7.2

475. In her reply, Ms van Haren-Giles agreed with Ms Woodbridge's comments in relation to the definition of natural hazards being hyperlinked to the plan provisions, and that the reference to earthquakes is not necessary as it is specifically mentioned in the definition. She did, however, consider that reference should still be made to the risk of slope failure associated with the effects of climate change.
476. The Panel considered the definition of natural hazards (which is from the National Planning Standards). In our view, the effects of climate change are implicitly indicated in the definition through reference to 'atmospheric occurrences'. Climate change is not an effect on its own, but rather it results in the effects listed. In our view, this is still consistent with the strategic direction referred to in SRCC-03. We therefore recommend that the examples be deleted, and the submission point by Kāinga Ora be accepted.
477. The Panel adopts the recommendations of the Section 42A Report for the reasons provided in the preceding discussions on these points, with the exception of the submission of Kāinga Ora we recommend is accepted in part in relation to the exclusion of reference to examples in EW-P3.

EW-P4 Erosion, dust and sediment control

478. GWRC²³² sought amendment to the policy to the effect that erosion and sediment control be designed and managed in accordance with the GWRC's *Erosion and Sediment Control Guide for Land Disturbing Activities in the Wellington Region 2021*. GWRC sought that the policy be strengthened to better protect waterways and the coastal environment, having regard to RPS-Change 1 and give effect to the NPSFM. Mr Sheild, giving evidence for GWRC, did not raise these matters at the hearing.
479. Ms van Haren-Giles assessed the submission in her report and stated that reference is made in the earthwork standards to the GWRC document. She also noted that EW-P2.2 and EW-P4 give effect to the policies of the RPS as required. The Panel agrees with her and considers that these matters are adequately addressed in the PDP.
480. The Panel adopts the recommendations of the Section 42A Report for the reasons provided in the preceding discussions on these points.

²³² Submission #351.233, 234

EW-P5 Effects of earthworks on landform and visual amenity

481. John Tiley²³³ and the Churton Park Community Association²³⁴ submitted that the wording of the policy is misleading in that modification to ridgeline or hilltop cannot be minimised, mitigated or remedied.
482. The matters relating to minimising effects on natural landforms are addressed in EW-S2.1.9 and EW-S3.1.9, which require consideration of the effects of visual prominence and mitigation. The broader discussion is found in the section on Development Areas later in this report and will be addressed further in Hearing Stream 8.
483. Horokiwi Quarries²³⁵ opposed the reference to hilltops and ridgelines as they are addressed in NFL-P2. Ms van Haren-Giles explained that the structure of the PDP is that the relevant chapters relate to each other, and that this is necessary for consistent decision making. This is not duplication but consistency.
484. Kāinga Ora²³⁶ submitted that 'visual amenity' is too vague in earthworks assessment and sought that it be amended as follows:

EW-P5 Effects on earthworks on landform and visual amenity

Require earthworks and associated structures, including structures used to retain or stabilise landslips, to be designed and constructed to minimise adverse effects on the appearance of natural landforms and visual amenity and where located within identified ridgelines and hilltops ensure the effects are mitigated or remedied.

485. This has been addressed above in paragraph 456.
486. The Panel agrees with Ms van Haren-Giles assessment and reasoning in relation to this policy and adopts her recommendations.

Earthworks Rules

EW-R1 Earthworks for Specific Activities

487. Rule EW-R1 enables earthworks for the purposes of piling, trenching, maintaining sports fields, undertaking geotechnical investigations and grave digging, the replacement or removal of underground petroleum storage systems associated with service stations

²³³ Submission #142.18

²³⁴ Submission #189.18

²³⁵ Submissions #271.52-53

²³⁶ Submissions #391.275-276

488. The Oil Companies²³⁷ submitted that the provisions for replacement or removal of petroleum storage tanks should also apply to other sites and activities that need to replace or remove underground petroleum storage systems (i.e. not just service stations).
489. Ms van Haren-Giles agreed with this submission point as she acknowledged that there were other activities that required underground fuel storage, such as rental car facilities and transport depots. The Panel agrees and adopts her recommendation.

EW-R6 General Earthworks

490. Survey & Spatial²³⁸ submitted that the limited and public notification preclusion should be broadened to include all standards EW-S1 to EW-S6 as follows:

...
Applications under this rule ~~which result from non-compliance with EW-R6.1.a.i and EW-R6.1.a.iii-vi~~ are precluded from being publicly or limited notified.

~~Applications under this rule that result from non-compliance with EW-R6.1.a.ii are precluded from being publicly notified.~~

491. Ms van Haren-Giles addressed this submission point. In her view, limited notification should be retained where there could be effects of stability on adjoining properties. Written approval could also be needed for earthworks where cut and fill depth are close to the boundary. The Panel agrees we adopt her recommendations, for the reasons provided in her Report.

Earthworks Standards

EW-S1 Area

492. Phillipa O'Connor²³⁹ and Woolworths²⁴⁰ submitted that the earthworks triggers are too low and sought the same provisions as in the Auckland Unitary Plan:

EW-S1 Area 1. *The total area of earthworks must not exceed ~~250m²~~ 500m² per site in any 12-month period.*

²³⁷ Submissions #372.92-93

²³⁸ Submission #439.35

²³⁹ Submission #289.11

²⁴⁰ Submission #359.34

493. Phillipa O'Connor²⁴¹ and Woolworths²⁴² sought deletion of criterion 5 as it is too broad and requires a resource consent where there are no ecological features.
494. Kāinga Ora²⁴³ also sought the deletion of criterion 5, and that the criteria should be amended to reflect the effects that are sought to be managed and to better align with the objectives and policies of the chapter. It also submitted that the thresholds for permitted activity earthworks recognise the differences between zones as follows:

EW-S1 Area

Medium Density Residential Zone, High Density Residential Zone, and Neighbourhood Centre Zone 1. *The total area of earthworks must not exceed 250m² per site in any 12-month period.*

Local Centre Zone, Commercial Zone, Mixed Use Zone, Metropolitan Zone, City Centre Zone, General Industrial Zone, Open Space Zone, Natural Open Space Zone, and Sport and Recreation Zone, All Special Purpose Zones 2. *The total area of earthworks must not exceed 500m² per site in any 12-month period.*

General Rural Zone, Large Lot Residential Zone, All Development Areas 3. *The total area of earthworks must not exceed 1000m² per site in any 12month period.*

495. The Oil Companies²⁴⁴ submitted that the 250m² limit should be increased to relate to the volumes in EW-S4.
496. CentrePort²⁴⁵ sought that the Port Zone be excluded from EW-S1 on the basis that the threshold is too low for large sites such as at CentrePort.
497. In her report, Ms van Haren-Giles stated that there was no justification to increase the area threshold. In her view, this was reasonable in terms of the management of the risks and effects as a Permitted Activity. She said that this had been tested with the Council's own consents and compliance staff and GWRC staff, and that there was agreement that this was a manageable threshold. The location of earthworks in terms of what zones they occur in did not appear to make any material difference in terms of managing the risks. Similarly, she did not agree that the location of

²⁴¹ Submissions #289.12-13

²⁴² Submission #359.33

²⁴³ Submissions #391.280-281

²⁴⁴ Submissions #372.94-95

²⁴⁵ Submission #402.132

earthworks in CentrePort made any difference to the management of the effects of earthworks.

498. The Panel agrees with Ms van Haren-Giles for the reasons she outlined, and we recommend rejection of those submission points.
499. Ms van Haren-Giles assessed the submissions requesting that EW-S1.5 be deleted. She considered that it lacked clarity as to the requirements and that these matters can either be addressed at criterion 4 for aquatic ecology or if the site is in a significant natural area, there are rules to address terrestrial ecology. She accordingly recommended criterion 5 be deleted.
500. The Panel agrees with this assessment and therefore recommends acceptance of the submission points relating to EW-S1.5.

EW-S2 Cut Height and Fill Depth

501. Kāinga Ora²⁴⁶, opposed by GWRC²⁴⁷, sought that this standard be amended to address what it considered the only issue being managed by this standard, namely stability and visual effects. It sought deletion of all criteria with the exception of those relating to the two effects that it considered were relevant.
502. Ms van Haren-Giles recommended no change on the basis that these were useful matters for plan users to consider as methods to address visual prominence. Ms Woodridge for Kāinga Ora stated in her evidence²⁴⁸ that while guidance is useful for the plan user, the criteria are overly prescriptive, and potentially result in lengthy assessments for applicants. In her view, it would be sufficient to rely on the chapeau statement of criteria 9.
503. Ms van Haren-Giles responded in her Reply and reiterated her argument that it was useful for plan users to consider the listed measures. She did, however, think that there could be some clarification that indicated that the listed measures are 'options' to indicate a choice between measures depending on the specific circumstances. In this regard she recommended that criteria 9 be amended to read:

9. The need for, and effectiveness of, measures options to reduce the visual prominence and particularly visual intrusiveness of the earthworks, and any buildings and other structures associated with or subsequently located on them, potentially including (But not limited to):

²⁴⁶ Submissions #391.282-283

²⁴⁷ FS #84.87

²⁴⁸ V Woodridge evidence at paragraphs 7.3-7.5

504. Ms van Haren-Giles said her recommended changes would equally apply to EW-S3.9 and EW-S8.7. This goes some way to addressing Ms Woodbridge's concern that it could result in an overly onerous assessment for a small earthworks.
505. The Panel agrees with this assessment and the recommended changes on the basis that they provide improved clarity to assist plan users. The Panel adopts the recommendations of the Section 42A Report for the reasons provided in the preceding discussions on these points.

EW-S3 Existing Slope Angle

506. GWRC²⁴⁹ sought that the slope angle be less steep and that it be reduced to 20 degrees for consistency with the Natural Resources Plan. It considered that 34 degrees, as specified in the standard, has the potential to create more effects than anticipated and that it is difficult to calculate on the ground.
507. Ms van Haren-Giles assessed the submission, and did not agree with GWRC. As she noted, 34 degrees had been applied in the ODP with no apparent issues. GWRC accepted her reasoning and recommendation to retain the angle to 34 degrees.

EW-S4 Transport of Cut or Fill Material

508. Rod Halliday²⁵⁰ sought that the volume of material to be transported as a permitted activity be increased. He also submitted that the 200m³ limit on volume to be transported was too low for the scale of earthworks occurring in outer residential areas.
509. GWRC²⁵¹ sought the inclusion of an advice note referring to similar rules in the Natural Resources Plan.
510. Waka Kotahi²⁵² sought an amendment to require stabilisation of clean fill material in the truck bed to prevent fill spilling on to the road.
511. The Oil Companies²⁵³ submitted that the Section 32 analysis indicated that the standard only seeks to restrict the material transported to and from the site, without any restriction on the volume of material on the site. While supporting the approach, they sought clarification.

²⁴⁹ Submission #351.244, .245

²⁵⁰ Submission #25.28, .29

²⁵¹ Submission #351.246

²⁵² Submission #370.209, 210

²⁵³ Submission #372.97,.98

512. Ms van Haren-Giles agreed with Mr Halliday as the volumes of earth to be transported will increase in the Future Urban Zone and Development Areas and that it would be appropriate for the volume to be increased to 2000m² to reflect this. In relation to the volume of cut material to be transported in zones other than the City Centre, Centres, Mixed Use and General Industrial zones, she said that this had been tested with Council consents and compliance staff. They were satisfied that this is appropriate taking into account the risk factors such as steep and narrow roads, and the need to manage adverse effects such as noise and vibration.
513. In response to GWRC Ms van Haren-Giles noted that the responsibilities of GWRC are outlined in the Introduction to the chapter.
514. In response to Waka Kotahi, she did not consider it practical to impose standards on small earthworks on how to manage the transport of material. However, if the volumes are exceeded and consent is required under EW-R6, there are measures that are required to be taken to avoid risk of material being deposited on the road in the assessment criteria.
515. Ms Haren-Giles considered in response to the Oil Companies that the standard is clear in terms of 'off the site' and 'onto the site'.
516. She recommended the addition of 'Future Urban Zone' to EW-S4.1.a., and no other changes.
517. The Panel adopts the recommendations of the Section 42A Report for the reasons provided in the preceding discussions on these points.

Earthworks in Specific Areas

General Rural Zone and Open Space and Recreation Zones

518. Zealandia²⁵⁴ submitted on EW-R2 relating to earthworks for the purposes of maintaining tracks associated with permitted activities in Rural Zones. Although Zealandia is not located in the General Rural Zone (GRUZ) but in the Natural Open Space Zone, it was concerned that the rule may prevent maintenance work on bridges and associated infrastructure in the sanctuary, and sought a clause that would enable Zealandia to continue by listing the Karori Sanctuary Trust as an approved operator.
519. Ms van Haren-Giles considered that earthworks associated with the work carried out by Zealandia are adequately provided for in EW-R4 and EW-R5. Other work of

²⁵⁴ Submission #486.7

a larger scale, like building construction, is provided for through other rules. Accordingly, in her view, Zealandia does not have to be listed specifically.

520. Ms van Haren-Giles took the matter a step further by considering that the wording of Rule EW-R2 as it is, would apply to all permitted activities in the GRUZ when the intent was that it apply to conservation work. She suggested rewording the rule so that it was specific to permitted rural and conservation activities in the GRUZ. She also recommended that rule EW-R2 and rule EW-R3 be amalgamated so that rule EW-R2 addresses 'construction and maintenance'. Her suggested rewording was:

42. EW-R2 Earthworks for the purposes of constructing and maintaining tracks associated with permitted rural and conservation activities in the General Rural Zones.

521. In our view, Zealandia's submission does not provide the scope for such a change as they only sought confirmation that their activities are permitted (albeit that their activities are not in that zone) and there is no scope to make restrictions more restrictive. However, putting that fact aside, we do not think there is an issue to resolve. There does not seem any reason why all permitted activities in the GRUZ could not construct and maintain tracks. We therefore concluded that the recommended rewording is not required even if it was within scope to do so and the words 'rural' and 'conservation' should be removed. We do however, consider that the rules EW-R2 and EW-R3 should be amalgamated so that rule EW-R2 provides for both construction and maintenance of tracks and rule EW-R3 becomes redundant and can therefore be deleted. Rules EW-R4 and EW-R5 can also be similarly amended. These changes can be made as a minor amendment as they do not alter the provisions.

Airport Zone

522. WIAL²⁵⁵ made a number of submissions on the Earthworks section. It opposed EW-R20 and sought that it be deleted in its entirety, or requested amendments, as follows:

EW-R20 (Earthworks in the Airport Zone)

1. Activity status: Permitted

Where:

- a. Compliance is achieved with EW-S14.1 to EW-S14.4 and EW-S14.2; and*

²⁵⁵ Submission #406

- ~~b. Compliance is achieved with EW-S14.3; and~~
- ~~c. Earthworks are for the purposes of the upgrade or maintenance of existing formed roads and public accessways; or~~
- ~~d. Earthworks are for the purposes of construction, upgrade, maintenance or repair of the Airport pavement (apron and taxiway surfaces); or~~
- ~~e. Earthworks permitted by any other rule.~~

2. Activity status: Restricted Discretionary

Where:

- a. Compliance with any of the requirements of EW-20.1a cannot be achieved; or
- b. Earthworks associated with the construction of new legal roads.

Matters of discretion are:

1. The extent and effect of non-compliance with any relevant standard as specified in the associated assessment criteria for the infringed standards;
2. Relevant matters in AIRPZ-P3 and AIRPZ-P4. AIRPZ-P4 and AIRPZ-P5;
3. Visual appearance and mitigation; and
4. Geomorphological impacts.
5. Traffic impacts caused by transporting earth and construction fill material.

~~2. Activity status: Discretionary~~

~~Where:~~

- ~~a. Compliance with EW-R20.1.b, c or d cannot be achieved.~~

43. Notification Status: an application for resource consent made in respect of rule EW-R20.3 must be publicly notified.
523. WIAL²⁵⁶ submitted that it was inappropriate and unjustified that all Discretionary earthworks activities within the Airport Zone be publicly notified.
524. WIAL²⁵⁷ also sought clarification on the earthworks that do not comply with the requirements of EW-R20.1.e.
525. WIAL²⁵⁸ sought clarification between the rule allowing earthworks in the Airport Zone as a Permitted Activity where they comply with other provisions in the chapter and EW-20.3.a requiring earthworks that are not for the purpose of the upgrade or maintenance of existing formed roads and public accessways or for the purpose of construction, upgrade, maintenance, or repair of the Airport pavement obtain consent as a Discretionary Activity.

²⁵⁶ Submission #406.73

²⁵⁷ Submissions #406.376-377

²⁵⁸ Submission #406.378

526. WIAL²⁵⁹ sought the removal of provisions that do not relate to the implementation of the NPSUD from the ISPP. We note that we discuss the allocation of provisions to the ISPP in Report 1A.
527. WIAL²⁶⁰ sought either the deletion of EWR-20.4 or that it be amended to specify which aspects of geomorphology require consideration.
528. WIAL²⁶¹ sought that EW-S14 be deleted or amended:

EW-S14 Earthworks in the Airport Zone

1. In the Rongotai Ridge Precinct, ~~or in relation to the Hillock at the south end of the Terminal precinct~~ earthworks shall not:

- a. Alter the existing ground level by more than 2.5 metres measured vertically.*
- b. Disturb more than 250m² of ground surface.*
- c. Be undertaken on slopes of more than 34° in relation to the Hillock and 45° in relation to the Rongotai Ridge Precinct.*

2. ~~In the Miramar South Precinct, earthworks must be undertaken in accordance with an Erosion and Sediment Control Plan prepared in accordance with the Erosion and Sediment Control Guidelines for the Wellington Region (or equivalent)~~

3. In all areas, a structure used to retain or stabilize a slope must be no higher than 2.5m measured vertically.

4. No earthwork shall create a dust nuisance.

5. As soon practicable, but not later than three months after the completion of earthworks or stages earthworks, the earthworks area must be stabilised with vegetation or sealed, paved, metalled or built over.

~~Except: a. The construction, upgrade or maintenance of:~~

- ~~i. Apron and taxiway surfaces.~~*
- ~~ii. Road and accessway surfaces.~~*

Assessment criteria where the standard is not met ~~infringed~~:

1. Rongotai Ridge Precinct:

- a. Extent of cut faces;*
- b. ~~Enhancement of pedestrian and cycle networks;~~*
- c. Impact on views of, through and within the site; and*
- d. ~~Connections to community and recreation resources.~~*

2. ~~Miramar South Precinct:~~

a. ~~Erosion and Sediment Control Guidelines for the Wellington Region (or equivalent).~~

3. ...

²⁵⁹ Submission #406.379

²⁶⁰ Submission #406.380

²⁶¹ Submissions #406.381-384

4. ...

5. With respect to EW-S14(4):

a. The effectiveness of temporary measures to avoid the creation of dust nuisance.

6. With respect to EW-S14(5):

a. The effectiveness of permanent measures to avoid erosion, the creation of dust nuisance, to filter silt and sediment and reduce the volume and speed of runoff from the site.

529. GWRC²⁶² sought reduction of the slope angle to 20 degrees on the basis that it would be consistent with the Natural Resources Plan.
530. Z Energy²⁶³ supported EW-S14.3, but sought clarification on whether it applied to temporary and/or above ground structures.
531. Ms O'Sullivan presented evidence on behalf of WIAL and outlined issues with the rule framework in the provision for earthworks in the Airport Zone.²⁶⁴ In particular, she considered they lacked clarity and were confusing in their meaning and intent. Ms O'Sullivan proposed an amended framework²⁶⁵ and Ms Van Haren-Giles agreed with these amendments in her reply²⁶⁶.
532. The Panel are satisfied that the amendments proposed and agreed will improve the clarity and useability of the PDP. We recommend acceptance of the submission points seeking amendment to these provisions.
533. WIAL sought additional amendments to EW-S14 and Ms Van Haren-Giles agreed with most of the proposed changes. Ms O'Sullivan did not address these further in her evidence. The Panel agrees that the amendments largely address the submission points. Where Ms Van Haren-Giles has not agreed to the changes, the Panel agree with her reasoning.
534. In all respect of other submissions on this matter, the Panel adopts the recommendations of the Section 42A Report for the reasons provided in the preceding discussions on these points.

²⁶² Submission #351.247

²⁶³ Submissions #361.14-15

²⁶⁴ O'Sullivan evidence at paragraphs 7.2-7.10

²⁶⁵ Appendix E, O'Sullivan evidence

²⁶⁶ Van Haren-Giles Reply 25 July 2023

4.4 Earthworks Affecting Historical and Cultural Values

535. There were a number of submissions²⁶⁷ on the provisions seeking amendments to policies and rules in relation to earthworks affecting historical and cultural items. The main request was for the inclusion of archaeological sites and Sites and Areas of Significance to Māori in provisions relating to earthworks on heritage sites. Ms Van Haren-Giles summarised the submissions on these points. Her response was that these matters are specifically provided for in the Historic Heritage chapter, and the Sites and Areas of Significance to Māori Chapter of the PDP, and therefore no change is required in the Earthworks provisions.
536. As part of the Panel's deliberations on the matter and in response to the submissions from Heritage NZ, Onslow Historical Society, Historic Places Wellington and TRoTR seeking additional policies to be added to the Earthworks Chapter to address archaeological sites and Sites and Areas of Significance to Māori, we asked Ms Van Haren-Giles to provide "*The proposed wording of a proposed standalone Earthworks section policy on Site of Significance to Māori*" on the basis that we considered it would be useful to provide a clearer link between the SASM and Earthworks chapters²⁶⁸. Ms Van Haren-Giles responded²⁶⁹ that while she thought there was adequate cross referencing with reference made to SASM-P5 as a matter of discretion in rule EWR-21, a standalone policy would be useful to plan users. She provided the wording for a new policy that reflects the wording of SASM-P5:

EW-PX Earthworks within a site or area of significance to Māori

Provide for earthworks within a Category A or B site or area of significance to Māori where it can be demonstrated that the spiritual and cultural values of the site will be protected and maintained, having regard to:

1. Consultation undertaken with mana whenua;
2. The extent to which the values of mana whenua have been incorporated into the proposal;
3. Whether alternative methods, locations or designs are available that would avoid or reduce the impact on the identified site or area of significance;
4. Any positive effects for mana whenua or opportunities to enhance the cultural values of the site; and
5. The extent or ability for mana whenua to access and use the site or area.

²⁶⁷ Submissions #70.21, FS #6.11, 111.10, 138.9.

²⁶⁸ Minute 33

²⁶⁹ Officer's reply 28 August 2003

537. We agree that this additional policy provides a better link between the chapters of the PDP and therefore greater clarity. We therefore accept Ms van Haren-Giles' assessment and adopt her recommendation.

538. In relation to other submission points in this section, we agree with Ms van Haren-Giles' assessment of the matters raised, and adopt her recommendations.

4.5 Natural Environmental Values

539. Ms van Haren-Giles noted in her Report that while she assessed submissions in relation to this matter, they are related to submissions on the Natural and Coastal Environment, which will be heard in Hearing Stream 8.

540. The principal matters addressed in this section were raised by Forest and Bird²⁷⁰ and the WCC Environmental Reference Group²⁷¹ who sought strengthening of the provisions that would, in their view, better protect the natural environment. In response, Ms van Haren-Giles agreed that some provisions should be added, either to better protect the environment, or for consistency with other recommendations she made. In respect of the latter for example, she recommended, and we agreed to amendments in relation to earthworks for the purposes of construction and maintenance of tracks²⁷².

541. In relation to the more substantive matter of the 'weight' of the provisions, Ms Van Haren-Giles summarised the submissions in her Section 42A Report, and assessed the points raised. This resulted in her recommending that some changes be made to strengthen and better provide for earthworks in relation to this matter. She agreed with Forest and Bird that a new non-complying rule EW-R7 for earthworks within a significant natural area was appropriate to give effect to the NZCPS and for consistency with the related provision ECO-R1.6. As a consequential amendment to EW-R7, Ms van Haren-Giles recommended that the rule include an additional clause so that the Restricted Discretionary status applies where "*The significant natural area does not include matters identified in policy 11(a) of the NZ Coastal Policy Statement in the coastal environment.*" This provides the connection to the new non-complying activity.

542. At the hearing, on behalf of Horokiwi Quarries Limited who supported Ms van Haren-Giles' recommendations, Ms Whitney tabled evidence seeking an

²⁷⁰ Submission #345

²⁷¹ Submission #377

²⁷² Paragraph 516

amendment to this new clause to provide greater clarity and consistency with ECO-R1.4.b. In her Reply dated 25 July 2023, Ms van Haren-Giles agreed that this would add clarity.

543. John Tiley²⁷³ and the Churton Park Community Association²⁷⁴ sought greater protection for ridgetop areas and Ms van Haren-Giles responded that she addressed this matter by recommended strengthening EW-R15 to provide better protection for the ridgetop area.

544. The Panel adopts Ms van Haren-Giles' recommendations for the reasons provided in the preceding discussions on these points.

4.6 Coastal Environment

545. Ms van Haren-Giles again prefaced her assessment of submissions on the effects of earthworks on the coastal environment by noting that submissions relating to the Coastal Environment chapter will be heard in Hearing Stream 8. We note that there could therefore be a flow on effect of the recommendations made following that hearing, on this section.

546. Forest and Bird²⁷⁵ sought greater clarity on the application of EW-P12 Earthworks within coastal margins and riparian margins in the coastal environment. Its submission stated that it was unclear whether the policy applies or does not apply to the specified zones – Port, Airport, Stadium, Waterfront, and City Centre. Ms van Haren-Giles' view was that the policy is clear in the way it is phrased. She did, however, suggest that, if the Panel agreed with the submitter on this matter, the policy could be split into two, so that one policy related to areas inside those zones, and another policy related to areas outside those zones. The Panel considered that the way the policy is phrased now requires several readings to understand what is included, and what is excluded. Two separate policies would indeed make it clearer and be consistent with the structure of other policies in the PDP, such as those in the Coastal Environment chapter – CE-P6 and CE-P7. We therefore adopt Ms Van Haren-Giles' suggestion that EW-P12 be split into two policies.

547. Forest and Bird also submitted that to be consistent with the NZCPS, there should be no distinction between 'high natural character areas' and any other natural character areas. Ms van Haren-Giles pointed out that this distinction is made by the

²⁷³ Submission #142

²⁷⁴ Submission #189

²⁷⁵ Submission #345

NZCPS, as it makes the distinction between ‘outstanding natural character’ and natural character more broadly. She stated that the distinction follows through to policies where effects in the former are avoided whereas effects on the broader natural character of the coastal environment are required to be avoided, remedied or mitigated. The PDP then reflects this through its provisions and the difference between EW-P11 – high natural character areas and EW-P12 – all other areas of natural character in the coastal environment. She did, however, note that that definition was not entirely clear as it refers to areas of “*very high or high...*” In her view, this is a matter for resolution in Hearing Stream 8. The Panel agrees that this needs to be clarified, but overall, we agree with Ms van Haren-Giles that the policies are consistent with the NZCPS.

548. Matters raised by WIAL²⁷⁶ in relation to EW-P12 and EW-R11, seeking that the provisions allow the on-going maintenance, repair, and replacement of its hard engineering structures within the coastal margins between Lyall Bay and Moa Point, were addressed in evidence by Ms O’Sullivan, appearing on behalf of WIAL²⁷⁷. She was satisfied that Ms van Haren-Giles had recommended a number of changes to other policies and rules that would achieve the outcomes they were seeking.
549. In all other matters relating to this section, the Panel agrees with Ms Van Haren-Giles assessment and therefore adopt her recommendations.

4.7 Natural and Coastal Hazards

550. Ms van Haren-Giles made recommendations in her report in the light of recommendations from Mr Sirl, who wrote the Section 42A Report for the Natural and Coastal Hazards chapter. The consequential amendments she has recommended provide consistency with those in that chapter.
551. In this regard, Mr Sirl recommended that the definition of ‘Community Natural Hazard Mitigation Structures’ which is only referenced in the PDP in the earthworks chapter, be deleted, and the specific entities it refers to be included in the relevant provisions. As a result, EW-P17 relating to this matter can accordingly be deleted, as EW-P18 and EW-P19 both list the entities and the work that the policy is addressing. It follows that EW-R19 can also be deleted as the rule implements EW-P17.

²⁷⁶ Submission #406

²⁷⁷ Evidence of K. O’Sullivan at paragraphs 7.11-7.14

552. The Panel agrees with this recommended amendment but we disagree with Ms van Haren-Giles that the submission by Forest and Bird²⁷⁸ that sought that EW-P17 be retained, provides scope to do. However, we consider that the policy can be deleted as a minor amendment as the overlap between the policies means that it can be deleted without altering the substance of the policy.
553. CentrePort²⁷⁹ sought recognition as one of the entities that carries out natural hazard mitigation works. Ms van Haren-Giles reported that Mr Sirl also considered this as part of his report, and agreed that CentrePort should be included. The removal of reference to 'Central Government Agency' can also be deleted as a result. We agree that consistency across chapters is necessary and clarity and specificity in relation to the entities undertaking this work. We therefore adopt Ms van Haren-Giles recommendation in relation to EW-P18 and EW-P19. We consider that this is within scope as consequential amendments to CentrePort's submission.
554. CentrePort also sought the same relief in relation to EW-R18, which is the same as EW-R17 except that it refers to 'soft engineering natural hazard mitigation works'. Similarly, Ms van Haren-Giles recommended that CentrePort be identified as an entity for the purposes of this rule. However, she went on to comment that in her view, EW-R18 should be deleted in its entirety as it duplicates EW-R17, soft engineering being one type, or a subset of, the more general natural hazard mitigation works. It is therefore captured by EW-R17. We agree that this is unnecessary duplication and can be deleted. We therefore adopt Ms van Haren-Giles' recommendation.
555. Kāinga Ora²⁸⁰ also sought identification as an entity undertaking natural hazard mitigation works within the Flood Hazard Overlays and Coastal Hazard Overlays. Ms van Haren-Giles' assessment was that Kāinga Ora does not have a mandate for this type of work, and should work with other appropriate agencies to undertake these earthworks. Kāinga Ora did not present evidence in respect of this matter. We agree with Ms van Haren-Giles that it is not appropriate for Kāinga Ora to be identified as an entity in this regard, and adopt her recommendation.

²⁷⁸ Submission #345

²⁷⁹ Submission #402

²⁸⁰ Submission #391

4.8 Development Areas

556. Ms van Haren-Giles noted that while she has made recommendations in respect of earthworks in Development Areas, the submissions on the broader matters of Development Areas will be heard in Hearing Stream 6. Recommendation made following that hearing may have a bearing on the decisions made in this report.
557. Submitters on this section, the Glenside Progressive Association²⁸¹, John Tiley²⁸² and Churton Park Community Association²⁸³, were most concerned about earthworks within the ridgetops of Upper Stebbings and Glenside. Ms van Haren-Giles noted that their main concerns in relation to this would be more appropriately addressed in Hearing Streams 6 and 8. She said that the approach of the earthworks provisions in relation to these areas is to enable development consistent with the direction of the Development Area - Upper Stebbings and Glenside West Development Area (DEV3) chapter. Her recommendations in response to submissions were therefore made in light of consistency with the provisions of that chapter. For example, where GWRC sought a more restrictive approach to EW-P20 Earthworks in development areas by seeking replacement of the words: “*Enable earthworks.....*” with “*Only allow for earthworks...*”. Ms van Haren-Giles maintained that the directive in the Development Area supports enablement of development in that Area, including earthworks. She did add that development of ridgetops is, however, not enabled, and this is reflected in EW-P20 and DEV3-P4.6 and the rule framework that implements this direction. The Panel supports this approach and adopts her recommendations and reasoning
558. TRoTR sought an additional clause to EW-P20 to address the downstream effects of earthworks on Porirua Stream. Ms van Haren-Giles referred to EW-P4, which requires effective management of erosion and sediment run-off. In her view, this, in addition to the general earthworks policies, rules and standards, adequately address these matters. We agree that the policy and rule framework is appropriate to manage these effects.
559. In relation to EW-R15, Council²⁸⁴ sought to amend the wording to clarify the specific areas within Upper Stebbings and Glenside West that are controlled, namely the hilltops overlay and within the ridgetop area. It also sought a Non-Complying Activity rule for earthworks (except those for public footpaths and tracks) in these

²⁸¹ Submission #374

²⁸² Submission #142

²⁸³ Submission #189

²⁸⁴ Submission #266

areas. Ms van Haren-Giles considered that these amendments were necessary to address a gap in the rule framework that was a result of the lack of clarity as to the relationship between the ridgeline and hilltops overlay and the ridgetop area. We agree with this change as it provides clarity to the rule framework. It makes a clear distinction between permitted earthworks in these areas for constructing public footpaths and tracks, and more restrictive provisions for earthworks for other purposes. It is also consistent with the strategic direction NE-O1 and NE-O3 to protect the ridgetop area, while enabling development in these areas, and aligns with the direction of the Development Areas chapter.

560. We also agree with Ms van Haren-Giles that these changes address the concerns of John Tiley and the Churton Park Community Association by providing stronger protection for the ridgetop area. In addition, we agree with her recommendation to broaden the matters of discretion to include all of EW-P20, and not just EW-P20.5, which refers only to ridgetop areas, to provide greater protection. While John Tiley spoke to the Panel during the hearing, he did not respond to this matter directly, but he did speak about the need to protect the ridgetop area.
561. In all other matters, we adopt Ms Van Haren-Giles recommendations based on her assessment of the submissions.

4.9 Infrastructure

562. The Infrastructure Chapter will be the subject of Hearing Stream 9 and there may be recommendations made as a result of that hearing that have a bearing on the recommendations made in this report.
563. Transpower²⁸⁵ sought a number of amendments to the earthworks provisions. It submitted that EW-R22 Earthworks in the National Grid Yard lacked a supporting policy. Ms Van Haren-Giles agreed that this was necessary, but she considered that this link is made through the PDP by way of an introductory statement to the Infrastructure chapter and in the Earthworks chapter, noting:
44. "a. The introduction to the Infrastructure chapter states: "The provisions within this chapter apply on a City-wide basis. As such the rules in the zone chapters and earthworks chapter do not apply to infrastructure unless specifically stated within an infrastructure rule or standard."

²⁸⁵ Submission #315

45. b. The Earthworks chapter 'Application of rules in this Chapter' section states that: "The provisions of this Chapter do not apply in relation to activities provided for in the Infrastructure Chapter, unless specifically stated in the rule or standard concerned." "
564. She noted that Transpower had sought a total package of additional provisions in relation to the National Grid within the Infrastructure chapter, including policies. In her view, whether there is a policy and how it is connected to the Earthworks chapter is a matter to be decided in Hearing Stream 9. The Panel agrees that this is the correct process, but also considers that there does need to be a policy developed to provide a link to the rule, and at this stage, it seems logical that the Earthworks chapter contains some clear policy direction.
565. Ms van Haren-Giles did recommend, however, that a statement be added to the Other Relevant District Plan provisions of the Earthworks chapter that makes a link to the Infrastructure chapter in relation to earthworks in the National Grid Yard and Gas Transmission Corridor. We support this addition, and adopt her recommendation.
566. In her evidence on behalf of Transpower, Ms Whitney commented on two outstanding matters that remain unresolved in relation to earthworks. One was to move the depth standards from EW-S15 to EW-R22 for clarity and ease of use. Ms van Haren-Giles supported this move for the reasons given by Transpower. Ms Whitney did, however, comment²⁸⁶ that there were two omissions in Ms van Haren-Giles' recommendation. Transpower sought that 'vertical holes' be added to the rule in conjunction with 'earthworks'. The second omission was in relation to the depth standards and a minor addition of a metric. Ms van Haren-Giles agreed with these changes in her Reply²⁸⁷. The Panel agrees that these are improvements to the clarity and usability of the PDP, and adopts these recommendations. We note, however, in the Appendix A to the Reply is not complete in that the words 'vertical holes' have not been added to the title of the rule, and this requires amendment.
567. The second outstanding matter that Transpower submitted on was a change in the default status from Restricted Discretionary to Non-Complying activity status where the standards are not met. Ms Whitney stated that Policy 10 of the NPSET "is very directive in requiring the management of activities to ensure the "operation, maintenance, upgrading and development of the electricity transmission network is

²⁸⁶ Whitney evidence at paragraph 6.14

²⁸⁷ Van Haren-Giles reply 25 July 2023

not compromised”²⁸⁸. She contended that Non-Complying activity status was therefore required for third party earthworks inside the transmission line corridor. Ms van Haren-Giles did not agree that this was required, and considered it would lead to a very onerous consenting pathway. In addition, consent could only be given in exceptional circumstances, which would be out of scale with the likely nature of the earthworks activity and its effects.

568. Ms Whitney also argued that the matters of discretion in the existing rule were “incredibly wide and in effect meaningless”²⁸⁹. She argued that consent should only be granted in exceptional circumstances, and therefore Non-Complying status would be most appropriate. In her reply, Ms van Haren-Giles reiterated her view that the matters of discretion were specific and sufficient for an activity to be assessed on its merits. In her opinion, Non-Complying Activity status was unnecessary and overly burdensome. She gave examples to illustrate her point: “if a residential fence relying on posts with vertical hole depths of 320mm were proposed 5.5m from the outer edge of a support structure foundation, the amendment sought by Ms Whitney would result in these earthworks being a non-complying activity due to non-compliance with EW-R2218.1.a.i.”.
569. The Panel agrees with Ms van Haren-Giles and considers that Restricted Discretionary Activity status is appropriate for considering applications that do not meet the standards. We consider that the matters of discretion are quite specific, and will give sufficient opportunity to assess the effects. We also note that they require consideration of the technical advice provided by Transpower, so this enables Transpower to have input to the process and the outcome. We therefore adopt Ms van Haren-Giles’ recommendation.
570. In respect of all other Infrastructure matters, we agree with Ms van Haren-Giles’ assessment, and adopt her recommendations accordingly.

²⁸⁸ Whitney evidence at paragraph 6.18

²⁸⁹ Whitney evidence para6.24

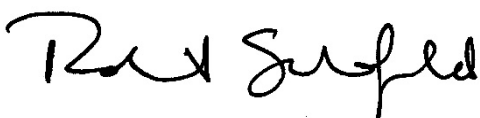
5. MINOR AND INCONSEQUENTIAL AMENDMENTS

571. There were a number of minor amendments that the Council sought to make under Schedule 1, clause 16(2) of the RMA to correct minor matters. We agree that these are minor and can be made without following the process in Schedule1, with the exception of one. This is the amendment to THW-R6 to use 'undeveloped state' instead of 'pre-development', which has now become redundant as a result of our recommendation to reword this rule. This is also not a minor change.

6. CONCLUSIONS

572. We have recommended that a number of changes be made to the Three Waters (THW), Earthworks (EW) and Subdivision (SUB) chapters. These are included in Appendix 1 to this report (including amendments made in respect of other recommendations where only the affected provisions are shown), with Appendix 1A being the Three Waters chapter, Appendix 1B being the Subdivision chapter, and Appendix 1C being the Earthworks chapter.
573. We have sought to address all material issues of the parties who have appeared before us put in contention in relation to these three chapters.
574. To the extent that we have not discussed submissions on this topic, we agree with and adopt the reasoning of the Section 42A Reports prepared by Ms Cook (Three Waters) and Ms van Haren-Giles (Subdivision and Earthworks), as amended in their supplementary evidence and final written Replies.
575. To the extent that the Section 42A Reporting Officers have recommended amendments to the Plan requiring evaluation in terms of Section 32AA, we adopt their evaluations for this purpose.
576. Where we have discussed amendments, in particular where we have identified that further amendments should be made, our reasons in terms of Section 32AA of the Act are set out in the body of this Report.
577. Appendix 2 sets out in tabular form our recommendations for decisions on the submissions allocated to Hearing Stream 5C topics, with Appendix 2A being the submissions on the Three Waters chapter, Appendix 2B submissions on the Subdivision chapter, and Appendix 2C being submissions on the Earthworks chapter. Our recommendations on relevant further submissions reflect our decisions on the primary submission to which they relate.

For the Hearing Panel:



Robert Schofield
Chair, Hearing Stream 5

Dated: 8 February 2024