EW – Ketuketu whenua - Earthworks

Response to questions

Peter Wilson, s42A reporting officer

Para 49	1. Firstly, is there a typo in the recommended amended wording (the word 'to' needs to be deleted)? 2. Secondly, please provide advice on whether it may be more efficient to include a policy in the UFD chapter regarding quarries not locating in urban environments rather than replicating identical policies in the urban zoning chapters. Yes, "to" should be deleted, with the amendment as follows: avoiding quarry, landfill, cleanfill area, mining, or dam activities within ~~to~~ urban environments As the primacy question for the UFD and SD chapters is not yet determined or resolved I consider that the policy needs to be duplicated across the relevant urban environment chapters. If the primacy question is resolved in favour of primacy, I consider that the UFD chapter would be an appropriate location to place this policy.
Para 76	1. If you are correct that the ordinary meaning of 'rehabilitation' is to restore something to its former condition, then would you not consider that is different to restoring it to "as near to pre-disturbance conditions as possible", and that the difference may be significant and outside of scope to delete the definition and rely on the dictionary definition? I have considered this for the purposes of the earthworks chapter and also coastal and natural character on which I was s42A author, and where the issue of rehabilitation also arises. This issue arises because of the lack of a generic definition of rehabilitation – the notified version applies only to rehabilitation in relation to earthworks activities. I note my discussion at paras 90-93 of my s42A on coastal environment on the meaning of restoration and rehabilitation. I agree that the s42A recommendation to only apply the definition to the earthworks chapter creates two definitions of earthworks – one is defined, and the other would default to a common English or dictionary definition. I agree that this lack of consistency could create an issue. To the best of my knowledge, there is no higher order definition of rehabilitation. I note DOC's NZCPS guidance document https://www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/policy-14.pdf para 7 which states that NZCPS Policy 14 does not specify a standard to which restoration and rehabilitation is to be achieved. "Rehabilitation" is contextual, although

	coloured by the relevant objectives, policies, rules, and standards where it appears. Regardless of the scope question, I would amend my recommendation in response to the question. My recommendation is to continue to accept the DOC relief [419.8] but to amend the definition as follows: Means restoring land that has been damaged by ~~earthworks~~ human activity, to as near to pre-disturbance conditions as possible My answer is in the context of the earthworks chapter, and also the CE and NATC chapters.
Para 91 – 95	1. Please evaluate the requests (NZ Pork, HortNZ, and Fed Farmers) for the objective to be more enabling (as is EW-P1) rather than focused on minimising adverse effects. 2. If you support that, would a new objective, specifically enabling earthworks, be preferable to adding the enabling component to EW-O1? Paragraph 93 I did evaluate the specific requests from NZ Pork, HortNZ, and Fed Farmers for the objective to be more enabling. I did not support amendment to the objective. My starting point for this assessment is that earthworks alter the surface of the land, and that as a result, all earthworks cause an effect, usually a permanent effect. The question is the nature and degree of that effect, which leads to a regime of minimising, based on assessment criteria within policies, rules and supporting standards. The objective does enable earthworks, just not explicitly, but within the overall context of minimising the effect. It specifically does not introduce an avoid test for this reason. My consideration of EW-O1 saw the objective as literally that, objective in the sense it recognised the reality of earthworks as permanent alteration of the land surface. Given this basic context, any enabling of earthworks will always be constrained by a policy, rule or standard. As such, I still consider that "minimise" in the objective appropriately describes the policy and rule framework.
Para 110 & 185	1. Please, as a refresher, take us through what you understand the recommended changes are to show the interrelationship between the EW and EI chapters at a policy level (also for the benefit of submitters). Mr Maclennan has recommended changes to the EI chapter to explain the relationship between it and the other chapters in the plan. Mr McLennan's recommendations are that the EI provisions and the EW provisions both apply. Earthworks are a fundamental component of other activities as well as an activity in itself, and I consider it impossible to carve out earthworks for energy

	and infrastructure activities into the EI chapter alone, and certainly not without duplicating many of the same provisions. Earthworks can also occur on their own. With specific regard to the interrelationship between EI and EW, at a policy level, the EI policies apply to EI activities overall. The earthworks policies similarly apply to the earthworks component of any EI activity. However, given the extensive nature of the permitted activity conditions, particularly for maintenance, I consider that consents are less likely to be needed. Where they are, the components of an activity would be treated in their relevant chapter.
Para 111	1. Would you not consider your changes to clause 6 might need to state the purpose, i.e. to state why it is a policy to "minimise the modification or disturbance of land" which in the vast majority of cases may not have the potential to destabilise support structures etc as Mainpower suggests? I accept that there is some confusion because land stability is part of both (5) and (6). Practically I understand the authors of the plan were dealing with height differential issues at a boundary. Given the recommendation to remove move the amenity clause from (6) to (1), if a clarity issue still exists one method is to combine the remainder of (5) and (6). This can be resolved following hearing evidence in the Right of Reply.
Para 125 and 126	1. Please consider the recommendation in respect to earthworks alongside ECan's requested relief in respect to NH-R4 – NH-R6 and their requested new aboveground earthworks rule in the NH chapter and any response from Mr Willis in respect to the management of earthworks within the Urban Flood Assessment Overlay and non-urban Flood Assessment Overlay. I answer this in a similar question below
Para 164	1. Please explain how EW-P6 relates to the matters of discretion for EW-S3. In answering this question, please explain your opinion through your s42A report that managing discharges of contaminants into water bodies is a territorial authority function under s31 of the RMA. Please also explain which rules implement EW-P6. 2. Please explain what "manage" means in a policy sense in the context of your recommended amendment to EW-P6. Manage to do what? 3. To which submission would you attribute the amendment to include 'Mahinga Kai' in EW-P1(2) and to delete it from EW-P6? The policy, rule and standard replicates a common consenting framework within operative district plan for earthworks. If it is deleted I would want to undertake a gap analysis to ensure nothing is lost. EW-P6 - water resources provides the support for EW-S3 – setbacks from waterbodies. EW-S3 triggers EW-MD7 when the permitted activity criteria for

	the setbacks are not met. EW-P6 is the only focused water resources specific policy within the 6 earthworks policies. I consider that EW-P6 undertakes the integrated management – ki uta ki tai – requirement of section 3.5 of the NPSFM, specifically: (1) Adopting an integrated approach, ki uta ki tai, as required by Te Mana o te Wai, requires that local authorities must: (a) recognise the interconnectedness of the whole environment, from the mountains and lakes, down the rivers to hāpua (lagoons), wahapū (estuaries) and to the sea; and (b) recognise interactions between freshwater, land, water bodies, ecosystems, and receiving environments; and (c) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems, and receiving environments; and (d) encourage the co-ordination and sequencing of regional or urban growth. Whilst freshwater is not an explicit function of s31 RMA, s31(f) RMA requires that district councils undertake any other functions specified in this Act, which includes the s74(1)(ea) requirements to prepare and change its district plan in accordance with a national policy statement. "Manage" was in response to the ECan submission, which I interpreted to be "avoid, remedy, and mitigate" – manage as in the full RMA mitigation hierarchy. I would attribute the amendment to remove Mahinga Kai from EW-P6 and amending it to EW-P1(2) to a combination of ECan and a cl 16(2) minor error, as mahinga kai is more closely linked to sites of significance to Maori and surface freshwater bodies. There is not necessarily a direct link between the water contamination in EW-P6 and mahinga kai, however it is a value to be assessed, more appropriately in my opinion alongside the other similar values in EW-P1(2).
Para 186	1. In previous sections you have recommended against parroting provisions of other statutory documents, so what value does the reference to needing to meet NESTF, as well as the EW-R1 matters, add? 2. Please explain your understanding between NESETA and NESTF and plan rules, and whether there is a need to specifically mention them within a rule or whether an advice note is sufficient. Please set out what the situation is under the NES-TF when NES-TF standards are not met. 3. In respect of your recommended amendment to clause 2, what is the formed area of a transmission line? How would this be applied in practice?

	The difference is to ensure that the plan implements higher order direction, and to continue to amend the plan in response to submissions to ensure that the need to step outside of the plan and assess off higher order documents alone is minimised. For instance, my response to submitters, usually infrastructure providers requesting a multitude of advice notes referencing higher order documents has been to say that the various plan provisions implement them, therefore usually there is no need for them. Usually, the energy and infrastructure chapter deals with this implementing higher order document issue. The challenge arises when chapters, such as the earthworks provisions, also apply alongside the EI chapter provisions. Whilst the EI provisions may be consistent and implement the higher order provisions, the notified EW provisions do not. This creates a plan inconsistency which I have attempted to address. I see two issues: 1. The fundamental question of how to handle matters in higher order documents. The plan has taken the step of integrating and implementing higher order direction as much as possible. The alternative approach is to advice note out NES matters. The plan does use advice notes for this purpose in some places, for instance in the overarching chapters (on which I was the s42A officer) 2. The EI provisions apply broadly to all energy and infrastructure activities, not just those listed within the various NESs. Because they apply more broadly, the EW provisions cannot just refer to an advice note referencing the NESs, the scope of the EW provisions has to be broadly consistent with the scope of the EI provisions. That leaves the often challenging task of integration without parroting or duplication. In the context of earthworks I do not consider that I am parroting the higher order documents, however, I was referencing them in a specific context to improve plan interpretation and plan efficiency – specifically to ensure integration between the EI and EW chapter. For instance, the term "NESTF regulated activity" comes from s2 of the NESTF itself – it is another way of saying 'telecommunications facility', in the scheme of those regulations. I accept it would be easier for rule drafting to say 'telecommunications facility' or something similar, however that is not the term used by that NES. My understanding of the NESETA and NESTF is that they do not usually need to be listed in a rule, however, plan rules should be consistent with them, noting the above discussion on whether or not the plan implements higher order direction in its provision design, or simply has the NESs (which have rules) functioning standalone. I consider that an advice note, or an addition to the introduction section of the EW could outline that the relevant NESs apply. There are submissions from infrastructure providers on this exact point. This would negate the need for my s42A changes to the rule clauses. That still leaves the issue of the broad scope of the EI provisions vs the narrower scope of the EW provisions. Not all energy and infrastructure activities have relevant NESs. The various EW permitted activity rules may need amendment accordingly to ensure consistent with the EI provisions. I have

	considered using the term "earthworks for energy and infrastructure activities" to achieve a clean linkage between the chapters. Such an approach would see rules EW-R1 and EW-R3 amended as follows: *EW-R1 Earthworks for the maintenance and repair of roads, footpaths, cycleways, tracks, carparks ~~and,~~ accessways, and earthworks for energy and infrastructure activities* *All Zones* *Activity status: PER* *Where:* 1. *EW-S4 and EW-S7 are met;* 2. *the earthworks are within the formed area of the road, footpath, cycleway, track, carpark or accessway; and* 3. *the earthworks are contained within ground previously disturbed through construction of the road, footpath, cycleway, track, carpark or accessway.* EW-R3 has a slightly different issue. The EI provisions enable the upgrading of a community scale irrigation scheme within an overall existing footprint, however the most equivalent EW rule R3 only enables the maintenance of such a scheme. I consider that this could be rectified as follows: *EW-R3 - Earthworks for maintenance of public water races or drains, and maintenance and upgrading of community scale irrigation schemes* *All Zones* *Activity status: PER* *Where:* 1. *EW-S1 to EW-S7 are met;* 2. *the disposal or stockpiling of any dredged material to land shall meet EW-S1, EW-R9 (stockpiling), EW-S2 and EW-R5 (overland flow paths), and* 3. *the activity is undertaken by the Crown, Regional Council, District Council or their nominated agent* Submitters will no doubt have more to raise on this with hearing evidence, and following that, I recommend that Mr Maclennan and I caucus, perhaps with submitters, prior to our Rights of Reply.
Para 197	Are earthworks associated with community scale irrigation and stockwater networks already addressed by rules under the EI chapter?

	The EI chapter permits the maintenance of community scale irrigation and stockwater networks, however, as the EW provisions still apply, and as there are no relevant or easily operable permitted activity earthwork standards for linear infrastructure like community irrigation schemes, the earthworks component would require a consent – even for maintenance. Thus, I have recommended additions to rule EW-R3 to ensure maintenance of these schemes is a permitted activity. I have recommended further amendments to ensure EW-R3 captures the same scope as the EI provisions. I did consider relying on the EI provisions alone, however because the EW provisions still apply, and the existence of the catch-all discretionary EW-R12 rule, the same problem would still occur without amendments to EW-R1.
Para 215	Given there are no conditions or standards that relate to NH-R8, please set out how it can be "met" in respect to your recommended amendments to EW-R4? In respect of NH-R10 not being met? Does that mean if the conditions for NH-R10 aren't met, it defaults to discretionary under this rule? If so, what would be the purpose of the default of NH-R10 being RDIS be? Please consider the relationship between EW-R4 and NH-R8 to 10, taking into account ECan's evidence presented during the NH chapter hearing. In considering this, please set out how do you intend for EW-R4 to work? Why do you need an EW rule if there are already NH rules that cover the same activity, and you recommend deleting the standards? What benefit does EW-R4 have in addition to the NH rules? After discussion with Mr Willis, who I understand is recommending the addition of ECan's proposed new NH rule for above ground earthworks for community scale natural hazard mitigation schemes, we have both considered the deleting EW-R4 in its entirety and adding NH-R8-NH-R10 to the exceptions in the EW-R11 catchall rule as follows: *Delete EW-R4 in its entirety* *EW-R11 - Earthworks not subject to Rules EW-R1 to EW-R10 and NH-R8 to NH-R10 and the new rule* *This is subject to and reliant on Mr Willis' Right of Reply recommending the new NH rule for above ground earthworks.*
Para 231	Your recommended changes to EW-R1 do not appear to add irrigation and stock water races into the permitted activity rule? I added irrigation and stockwater races into EW-R3, as this rule articulates much of the current operation of the Waimakariri Irrigation Limited network and seemed a more appropriate place for it – as EW-R3 is specific to open channel water conveyance. I note the issue with upgrading of races which is questioned in WIL's evidence and my updated changes. The EI provisions provide for upgrading within the

	footprint of an existing race as a permitted activity, but increases to the footprint are a discretionary activity. There is scope for capturing 'upgrading' whatever that resolves to be in EW-R3, noting that the scope of 'upgrading' in the EI provisions may change. My preference would be for upgrading to be upgrading within the existing footprint of a scheme.
Para 232	How does EW-R5 relate to NH-R4 – 6 which relate to infrastructure. (See paras 125 to 126 as well) I have recommended that the notified title scope of EW-R5, as applies to an overland flow path be changed to earthworks within a flood assessment overlay. However I do not consider that this changes the question. It is not intended that EW-R5 provide additional stringency above NH-R4 to NH-R6, and as such I consider that amendments to EW-R5 would be required, such as follows: *EW-R5 Earthworks within a flood assessment overlay ~~overland flow path~~* *This rule does not apply to above and below ground infrastructure covered by rules NH-R4 to R6 and any new rule proposed by Mr Willis* *Where:* *1. EW-S1 to EW-S7 are met; and;* *2. activity does not exacerbate flooding on any other property by displacing or diverting floodwater on surrounding land in a 0.5% AEP event.*
Para 254	Is this paragraph in the correct place (it assesses EI-MD3)? Yes, it is in the right location, and has the right assessment. It does not assess EI-MD3 as such, my assessment explains how EI-MD3 will be invoked by any consent under EI-R10 – if the permitted activity standards in EI-R10 are not met.
Para 262	As per paragraph 164, please explain how the discharge of soil as a contaminant is a territorial authority function under s31 of the RMA, and how this relates to the matters of discretion for EW-R9? EW-R9 -earthworks stockpiling sets setbacks for earthworks of 20m from the bank of any river or lake and 50m from the margin of any wetland. I consider that EW-R9 undertakes the integrated management – ki uta ki tai – requirement of section 3.5 of the NPSFM, specifically: (1) Adopting an integrated approach, ki uta ki tai, as required by Te Mana o te Wai, requires that local authorities must: (a) recognise the interconnectedness of the whole environment, from the mountains and lakes, down the rivers to hāpua (lagoons), wahapū (estuaries) and to the sea; and

	(b) recognise interactions between freshwater, land, water bodies, ecosystems, and receiving environments; and (c) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems, and receiving environments; and (d) encourage the co-ordination and sequencing of regional or urban growth. Whilst soil loss and discharge is not an explicit function under s31 RMA, soil loss can lead to contamination of freshwater. s31(f) RMA requires that district councils undertake any other functions specified in this Act, which includes the s74(1)(ea) requirements to prepare and change its district plan in accordance with a national policy statement. I consider that there is scope for it, the question is, is there a need for it in light of the regional rules and the NATC setbacks? Answering such a question would require a gap-analysis after having heard submitters' evidence, as earthworks setbacks of this nature have been a feature of the planning regime in the district for a long period, and are a requirement of the operative plan. I can provide such an analysis in my Right of Reply.
Para 267	How does your evaluation here relate to the advisory notes contained in the zone chapters? "additional activity standards applying to this activity are located within the earthworks chapter (see EW-R11)"? Noting that the reference should be to R10. Please also consider what the outcome would be of deleting EW-R10, whereby EW-R10 includes a maximum volume for earthworks and compliance with EW-R1 to 7, while for example GRUZ-R12 does not. This is needs to be rectified by recommending to the s42A author for the rural chapter, Mr Buckley, for GRUZ -R12 to apply earthworks standards EW-S1 to S7 and the 1500m2 per site maximum area limit, and to delete the advisory note. I have made this recommendation to him as follows: GRUZ-R12 Farm quarry Activity status: PER Where: 1. any farm quarry shall be set back a minimum of: a. 300m from the building footprint of any residential unit or minor residential unit on a site under different ownership; b. 100m from any site boundary of a site under different ownership; c. 100m from any road boundary of a public road; and

	d. 100m from any SNA; and e. EW-S1 to EW-S7 are met; and f. The maximum area of any farm quarry shall be 1500m^2 per site ~~Advisory Note~~ ~~Additional activity standards applying to this activity are located within the Earthworks Chapter (See EW-R11).~~
Para 274	You have addressed a Mainpower submission point, but the relief sought by them is not addressed under 7.12.1. Please set this out. I did not list them as on the face of it they were in support, however, as the support is qualified based on changes to EW-R8 which I did not agree with, their submission is therefore not supportive of EW-R11, and it should be listed as it is technically in opposition. An additional paragraph under 7.12.1 of my s42A could be added as follows: Mainpower [249.31] support EI-R11 if their amendments to EW-R8 activities to not comply with EW-S1 to S7 are made.
Para 296	What is the source of your amended rule threshold? I sourced these from Table EW-1 general standards for earthworks. The most lenient of the notified standards is 1000m2, which applies to industrial sites, and the most lenient of the site-based standards is 30m^3 per 100m^2 of site area. I have recommended increasing this to 50m2 per 100m2 of site area for industrial sites. There is no determinative evidence on the exact quantum for earthworks standards for each zone, however they should be consistent overall with each other and with the objectives and policies for their respective zones.
Para 297 and 358	You recommend the following AN: These standards do not apply during a state of emergency or transition period declared under the Civil Defence Emergency Management Act 2002 or where direction to undertake specific earthworks has been issued by the controller or recovery manager. In respect to the second part of the AN, please explain what directions you are referring to and who a controller or recovery manager is, if this part of the AN does not relate to either a state of emergency or transition period declared under the CDEMA? The controller is the appointed statutory official in charge of emergencies and emergency management. They have additional powers during declared emergencies and transition periods, whereby powers normally exercised by the Mayor and CEO are passed to that person however, controllers are a

	permanent feature of the CDEM system. The recovery manager is a similar position but which exists for the purposes of recovery management during a transition period. The reason for the *or* is occasionally there may be a need in the initial phases of an emergency prior to declaration of an emergency to undertake preemptive works which may otherwise trigger a consent. During an emergency, technically all decisions are those of the controller or during a transition period, of the recovery manager.
Paras 328 – 330	Is the purpose of setbacks (being to minimise discharge and associated contamination of freshwater bodies from earthworks) explained somewhere in the Plan? Please see earlier questions about the functions of territorial authorities. Please set out why these rules are required in addition to the CLRWP rules and what effects exactly EW-S3 are intended to manage, taking into account the matters of discretion set out in EW-MD7 and the rules in the ASW and NATC chapters. The purpose of the setback is to minimise discharge and contamination of freshwater bodies from earthworks. I do not believe this purpose is explained specifically in the plan, however, as the plan no longer has anticipated environmental results or outcomes there are no explanations on many similar matters. Instead of separate explanations, I consider that the purpose for rules and standards should flow from the objectives and policies. As with the previous questions on s31 function and scope, I consider that whilst sediment loss and discharge is not an explicit function of a district council under s31 RMA, sediment loss can lead to contamination of freshwater. s31(f) RMA requires that district councils undertake any other functions specified in this Act, which includes the s74(1)(ea) requirements to prepare and change its district plan in accordance with a national policy statement, and that includes the integrated management – ki uta ki tai – requirement of section 3.5 of the NPSFM. The CLRWP does not have any specific rules for earthworks and the discharge of contaminants from land use activities into freshwater, other than their rules near the active beds of lakes and rivers (a regional council s13 RMA function), such as CWLRP 5.167-5.171. These rules set 10m setbacks from rivers, lakes, and wetland boundaries for the use of land for earthworks in High Soil Erosion Risk areas and 5m for other land. I note that the CWLRP has not implemented the NESF and NPSFM, in particular the range of setbacks on natural wetlands that extend between 10m to 100m from the boundary. For instance, cl 45A NESF sets a discretionary activity for any earthworks within 100m of a natural inland wetland (but outside of the first 10m setback). Noting there are few natural inland wetlands within the District, the PDP 50m setbacks on wetlands are at the midrange of the NESF setbacks. The NESF does not set default setbacks for rivers and lakes. At para 331 of my s42A I considered the stringency of the earthworks setbacks against the PDP. I note my comments that the notified setbacks are "about as consistent as can

	be achieved, noting the wide variance in purpose and numerics of the higher order direction on setbacks". The earthworks setbacks are a third layer of setbacks, on top of the higher order direction within the NESF (which primarily applies to wetlands and only on specific activities for rivers and lakes, not earthworks in general), the CWLRP setbacks of 5m and 10m. I am also conscious of the NATC setbacks, which regulate structures, rather than earthworks, and which have a width based on both the underlying zone and the size of the river or freshwater body. I consider that there is a risk of confusion between the two types of setbacks. As outlined above, I will undertake a gap-analysis and final recommendation after the hearing evidence in my right of reply.
Para 339	Please set out the relationship between EW-S4 and TREE-S2, which does permit earthworks within any root protection area. Why have TREE-S2 as a permitted activity for earthworks if EW-S4 would automatically override it? There is no TREE-S2, but there is a TREE-R2, which I assume is what the question relates to. TREE-R2 is intended to provide for gardening (which is exempted from earthworks in the NPS). It outlines in further detail the nature of gardening activities which are exempt from the earthworks standards.
Para 350	If the submitter did not request the change to 1m depth where is the scope to do this? Please also explain what effects this standard is intended to manage, taking into account the matters of discretion in EW-S5. In doing so, please consider whether your argument that the CLRWP rule 5.175 is valid in respect of what effects the standard is intended to manage. s75(4)(b) requires that a district plan must not be inconsistent with a regional plan for any matter in s30(1). This includes water quality matters. I consider that EW-S5 is inconsistent with CLRWP 5.175 and requires amendment. My consideration of scope is that when submission relief addresses a matter within a rule or a standard it creates scope, whatever way the recommendation on that submission ultimately falls. The relief requested by a submitter and the scope opened up by that submission are two different things. Summerset [207.21] considered that EW-S5 was more stringent than the CLRWP rules, however, I assessed it and found that EW-S5 is less stringent than the CLRWP rules, on which, as outlined above, it should not be. Inconsistency and stringency can be different concepts, but in this case, when a regional plan limits the depth of excavations above an aquifer to 1m and a district plan enables them down to 2m, it is both inconsistent and more stringent, without a stated reason. Rule 5.175 requires there to be 1m of undisturbed material between the deepest part of the excavation and the coastal unconfined gravel aquifer

	system, and for unconfined and semiconfined aquifers, 1m between the deepest part of the excavation and the height of the seasonal water table. Most of the district is above an unconfined or semi confined aquifer, with the highest seasonal water table height across much of the district being less than 2m below ground. Most excavations in the district intercept groundwater. In practice, the interception of groundwater is the practical limit for permitted activity earthworks. Looking at the matters of discretion for EW-S5, they include land stability, natural hazards, coastal environment, and water bodies (EW-MD7). The link to water bodies, particularly MD7(3) – any effects on the natural character and water quality of any water body, includes groundwater in aquifers. There is thus an overlap between EW-S5 and CLWRP 5.175. I still consider that EW-S5 should be amended to 1m depth and that scope exists for it to be amended, however I also consider, that a cross-reference to the CLWRP rule 5.175 may assist as well.
Para 389	Please explain why transmission lines is needed to be added to clause 12 in light of your recommended new clause 14. Clause 12 and Clause 14 undertake different things. Clause 12 is specific to transmission lines, which are broader than the national grid, whereas clause 14 is specific to all infrastructure, as such broader again.
Para 418	Is this amendment necessary, if we are talking about re-vegetation then what value does referring to both 'indigenous' and 'non-indigenous' plant varieties add? 1(d) always included indigenous and non-indigenous plants, because it talks about including non-indigenous species but not limiting to non-indigenous. As notified, I consider that the MD incentivises non-indigenous planting over indigenous, as a result of the additional stringency on the indigenous planting. I consider that a matter of discretion should simply assess the type of the plants. Non-indigenous species are commonly used in earthworks such as ryegrass for immediate dust control and stability, and exotic tree planting, and were always intended to be available as an option, along with indigenous plants.
Para 421	Please consider whether it is appropriate to have EW-MD5 clause 2, if quarries are not to be covered by the EW provisions. I note that quarrying in the rural zones is a full discretionary activity, so this matter is no longer needed. EW-MD5 Rehabilitation 1. Any proposed site rehabilitation, considering: a. the location, gradient and depth of the earthworks;

	b. availability of clean fill material and time frames for rehabilitation; c. any adverse effects on traffic, dust, groundwater, drainage and landscape; d. any re-vegetation, including the use of indigenous plant varieties from seed sourced from the relevant ecological district within which the planting is to take place, and any weed and pest control proposed, and e. any mitigation or proposed mitigation. ~~Any quarry site rehabilitation plan, prepared by a person suitably qualified or experienced in site rehabilitation~~
Para 431	Would you agree that your recommended amendment seems to go outside the usual ambit for a Matter of Discretion, i.e. it requires the removal of vegetation "shall be in accordance with …". Para 431 is DOC's relief, which I have supported. I accept that "shall" is prescriptive, and not the usual drafting style for a matter of discretion. It could be amended to: Any removal of, or disturbance to, indigenous vegetation, including consistency with the provisions in the ECO chapter.