



**SECOND  
GENERATION  
DISTRICT PLAN**

# **Earthworks Hearing Decision of Hearings Panel**

**Proposed Second Generation Dunedin City  
District Plan (2GP)**

**7 November 2018**





## **User guide to the decision reports and the marked-up decisions version of the 2GP**

The decisions of the 2GP Hearings Panel are presented in 29 decision reports (one report per hearing topic).

The reports include the Panel's decisions and reasons and incorporate the requirements under s32AA.

At the end of each report a table has been included summarising all the decisions on provisions (Plan text) in that decision report.

### **Marked-up version of the Notified 2GP (2015)**

The decisions include a marked-up version of the notified 2GP, which shows the amendments made to the notified plan in ~~strike-through~~ and underline. Each amendment has a submission point reference(s) or a reference to 'cl.16' if the amendment has been made in accordance with Schedule 1, clause 16(2) of the Resource Management Act. Schedule 1, clause 16(2), allows minor and inconsequential amendments to be made to the Plan.

Amendments to the Schedules below are not marked up as in other sections of the plan as they are drawn from a different source. Any changes to Schedules are detailed in the decision report for the relevant section.

Some very minor clause 16 changes such as typographical errors or missing punctuation have not been marked up with underline or strikethrough. More significant cl. 16 changes (such as where provisions have been moved) are explained using footnotes, and in some cases are also discussed in the decision.

### **Hearing codes and submission point references**

As part of the requirement of the DCC to summarise all original submissions, all submission points were given a submission point reference, these references started with 'OS'. Further submissions were also summarised and given a submission point that started with 'FS'.

The submission points are made up of two numbers the first is the submitter number, which is followed by a full stop, the second part is the submission point number for that submitter.

For example, OS360.01 is submitter 360 and their first submission point.

The 2GP Hearings Panel has used these same submission point references to show which submission points different amendments were attributed to. However, to enable these changes to be linked to different decision reports, the reference code was changed to start with a decision report code, e.g. Her 308.244.

A list of hearing codes can be found on the following page.

It should be noted that in some cases where several submitters sought a similar change, the submission point reference may not include all of these submission points but rather include only one or say, for instance, "PO 908.3 and others".

### Master summary table of all decisions

In addition to the summary table at the end of each decision report there is a master summary table that lists all decisions on provisions (Plan text), across all hearing topics, including details of the section(s) of the decision report in which that decision is discussed, and the relevant section(s) of the s42A reports. The s42A report sections will be helpful for appellants needing to identify which other parties have submitted on that provision, as notices of the appeal must be served on every person who made a submission on the provision or matter to which the appeal relates. The master summary table of decisions can be found on the decisions webpage of the 2GP website ([2gp.dunedin.govt.nz](http://2gp.dunedin.govt.nz)).

### List of hearing codes

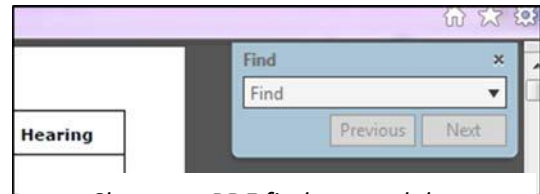
Hearing topic	Code
Commercial Advertising (cross plan hearing topic)	CP
Commercial and Mixed Use Zones	CMU
Community Correction Facilities (cross plan hearing topic)	CP
Defence Facilities and Emergency Services (cross plan hearing topic)	CP
Designations	Des
Earthworks	EW
Heritage	Her
Industrial Zones	Ind
Major Facilities (without Port and Mercy Hospital)	MF
Manawhenua	MW
Mercy Hospital	Mer
Natural Environment	NatEnv
Natural Hazards	NatHaz
Natural Hazard Mitigation	HazMit
Network Utilities	NU
Plan Overview and Structure	PO
Port Zone	Port
Public Amenities	PA
Public Health and Safety (PHS)	PHS
Quarries and Mining Activities (cross plan hearing topic)	CP
Recreation Zone	Rec
Residential Zones	Res
Rural Zones	RU
Rural Residential Zones	RR
Scheduled Trees	ST
Service Stations (cross plan hearing topic)	CP
Temporary Activities	TA
Transportation	Trans
Urban Land Supply	ULS

## How to search the document for a submitter number or name

1. If you want to search for particular submitter name, submission point or Plan provision in any of the reports (decision report, marked-up version of the Plan, or s42A report) the easiest way to do this is to use the 'Find' function.
2. When you have the document open, press the keys CTRL and F (Windows) or CMND and F (Mac) to bring up the 'PDF Finder'.



*Chrome – PDF finder search box*



*Chrome – PDF finder search box*

3. Once the PDF search box appears (in the top left or right corner of your browser) type in the submission number or submitter name and press enter on your keyboard.
4. The PDF finder will search for all instances of this term. Depending on the size of the document and your internet connection it may take a minute or so.
5. Press on the up or down arrows (Chrome) or 'next' (Internet Explorer) in the search box to view the different instances of the term until you find the one you are looking for.
6. An 'advanced search' function is available under the Edit tab in some PDF viewers, this allows you to search 'whole words' only to look for exact strings of letters or numbers



# Table of Contents

1.0	Introduction	6
1.1	Scope of Decision	6
1.1.1	Section 42A Report	7
1.1.2	Structure of Report	7
1.2	Section 32AA Evaluation	7
1.3	Statutory Considerations	7
1.3.1	Resource Management Act 1991 (RMA)	7
1.3.1.1	National Policy Statement on Electricity Transmission (NPSET)	8
1.3.1.2	National Environment Standards for Electricity Transmission Activities (NESETA)	8
1.3.1.3	National Policy Statement for Freshwater Management	9
1.3.1.4	New Zealand Coastal Policy Statement 2010	9
1.3.1.5	National Environmental Standard for Sources of Human Drinking Water 2005	9
1.3.1.6	National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NESCS)	9
1.3.2	Building Act 2004	10
1.3.3	Heritage New Zealand Pouhere Taonga Act 2014	10
1.3.4	National Environmental Standards for Plantation Forestry	11
2.0	Hearing appearances and evidence presented	12
3.0	Key topics discussed at the Hearing or covered in tabled evidence	15
3.1	Overview	15
3.2	Structure of the Earthworks Section	15
3.3	Activities that are not managed as earthworks	17
3.3.1	Background	17
3.3.2	Earthworks for Mining Activities	18
3.3.2.1	Decision and reasons	18
3.3.3	Earthworks that are part of the definition of Farming	19
3.3.3.1	Background	19
3.3.3.2	Submissions	19
3.3.3.3	s42A Report Recommendations	20
3.3.3.3.1	Request to provide for track and other maintenance activities	20
3.3.3.3.2	Request to provide for earthworks associated with construction of fences as a permitted activity	21
3.3.3.3.3	Request to provide for the construction of farm tracks as a permitted activity	22
3.3.3.3.4	Request to provide for earthworks for silage pits and drains as a permitted activity	22
3.3.3.3.5	Request to provide for earthworks associated with dams	22
3.3.3.3.6	Request to provide for harvesting activity	23
3.3.3.3.7	Request to provide for all earthworks ancillary to farming as permitted activities	23
3.3.3.4	Decision and reasons	23
3.3.3.4.1	Request to provide for track and other maintenance activities	23

3.3.3.4.2	Request to provide for earthworks associated with construction of fences and farm tracks as a permitted activity	24
3.3.3.4.3	Request to provide for earthworks for silage pits, drains and dams as a permitted activity	25
3.3.3.4.4	Request to provide for harvesting activity	25
3.3.3.4.5	Request to provide for all earthworks ancillary to farming as permitted activities	25
3.3.3.4.6	Overall reasons and amendments	25
3.3.4	Requests to exempt foundation earthworks approved by building consent from earthworks standards	27
3.3.4.1	Decision and reasons	29
3.3.5	Request to exempt earthworks associated with the Biosecurity Act 1993	30
3.3.5.1	Decision and reasons	30
3.4	Request for amendment to earthworks small scale thresholds standards	31
3.4.1	Background	31
3.4.1.1	Request to provide for underground storage tanks	31
3.4.1.2	Decision and reasons	32
3.5	Other earthworks standards	33
3.5.1	Batter Gradient Performance Standard	33
3.5.1.1	Background	33
3.5.1.2	Submissions	33
3.5.1.3	Decision and reasons	34
3.5.2	Maximum change in ground level	34
3.5.2.1	Background	34
3.5.2.2	Clarification of how ground level is measured	34
3.5.2.3	Decision and reasons	34
3.5.3	Maximum permitted ground level in Mercy Hospital Zone	35
3.5.3.1	s42A Report	35
3.5.3.2	Evidence from hearing	35
3.5.3.3	Decision and reasons	36
3.5.4	Request to exempt network utilities from 'maximum change in ground level'	36
3.5.4.1	Decision and reasons	36
3.5.5	Maximum volume of cut and fill	36
3.5.5.1	Requests to amend the maximum volume of earthworks in the Port Zone and exempt this zone from threshold in proximity to MHWS	36
3.5.5.2	Decision and reasons	37
3.5.6	Request relating to the Residential Zones	38
3.5.6.1	Decision and reasons	38
3.5.7	Time Period and Distance Restrictions	39
3.5.7.1	Background	39
3.5.7.2	Submissions	39
3.5.7.3	Decision and reasons	40
3.5.8	Submissions to Amend Thresholds over Hazard Overlays of the DIA Zone	41
3.5.8.1	Decision and reasons	42



3.5.9	Setback from property boundaries, buildings, structures and cliffs performance standard	42
3.5.9.1	Background	42
3.5.9.2	Submissions	43
3.5.9.3	Decision and reasons	43
3.6	Earthworks Objective and Policies	43
3.6.1	Background	43
3.6.2	Earthworks Objective	43
3.6.2.1	Submissions	44
3.6.2.2	S42A Report	44
3.6.2.3	Hearing	45
3.6.2.4	Decision and reasons	45
3.6.3	Earthworks 'Policy 1'	45
3.6.3.1	Submissions	46
3.6.3.2	S42A Report	47
3.6.3.3	Hearing	47
3.6.3.4	Decision and reasons	47
3.6.4	Earthworks 'Policy 2'	48
3.6.4.1	Submissions	48
3.6.4.2	S42A Report	49
3.6.4.3	Hearing	50
3.6.4.4.	Reconvened Plan Overview and Structure Hearing	50
3.6.4.5.	Decision and reasons	50
3.6.5	Earthworks 'Policy 3'	51
3.6.5.1	Submissions	52
3.6.5.2	Section 42A Report	53
3.6.5.3	Hearing	54
3.6.5.4	Decision and reasons	54
3.7	Earthworks Activity Status	55
3.7.1	Request to add a tier of controlled earthworks	55
3.7.1.1.	Decision and reasons	55
3.8.	Special information requirements	56
3.8.1.	Background	56
3.8.2.	Submissions	56
3.8.3.	Decision and reasons	57
3.9.	Groundwater Protection Mapped Area (GPMA)	57
3.9.1.	Background	57
3.9.2.	Submissions	58
3.9.3.	Decision and reasons	60
3.10.	Assessment Rule 16.10.3.1.a (Rule 8A.7.1)	61
3.10.1.	Decision and reasons	61
3.11.	Request for a 2GP Dust Control Standard	62

3.11.1.	Submission	62
3.11.2.	Decision and reasons	62
4.0	Suggestions for future plan change	63
5.0	Minor and inconsequential amendments	63
Appendix 1 – ePlan amendments		64
Appendix 2 – Summary of Decisions		

## 1.0 Introduction

1. This document details the decision of the Proposed Dunedin City District Plan Hearings Panel/Te Paepae Kaiwawao Motuhake O Te 2GP, based on the submissions and evidence considered at the Earthworks Hearing held on 14-16 September 2016, at the 2GP Hearings Centre.

## 1.1 Scope of Decision

2. This Decision Report addresses the 106 original and 41 further submission points addressed in the Earthworks s42A Report, except as follows.
  - *Alex Charles and Jackie St John* (OS876.5), the *Oil Companies* (OS634.70) *Federated Farmers of New Zealand* (OS919.45, OS919.46), and *Otago Business Park Limited* (FS2178.5) sought amendments to policies related to swale mapped areas (Policy 11.2.1.15) and large-scale earthworks in Hazard Overlays (Policy 11.2.1.16). We address these requests in the Natural Hazards Decision Report.
  - *Robert George and Sharron Margaret Morris* (OS355.9), *Timothy George Morris* (OS951.53) and Timothy Morris (on behalf of *RG and SM Morris Family Trust* (OS1054.53) sought that earthworks be permitted in dune system mapped areas and that thresholds be increased. We address these requests in the Natural Hazards Decision Report.
  - *Forest and Bird NZ* (OS958.100) sought that the earthworks objective in the Rural Zone 16.2.5 (new Objective 8A.2.1) be amended to ensure earthworks do not occur in areas of indigenous vegetation or habitats. We address this request in the Natural Environment Decision Report.
  - *Nigel Harwood* (OS96.6) sought that earthworks be permitted within Significant Natural Landscape and/or Natural Coastal Character overlays in a Rural Residential Zone (Rule 17.6.1.1.a.i-vi). We address this request in the Natural Environment Decision Report.
  - *Timothy Morris* (OS951.56) and *Timothy George Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.56) and *Geoff Scurr Contracting Limited* (FS2391.30) sought that Rule 16.6.1.1.h. exempt some farming activities in the Rural Zone from the change in ground level standard, by removing reference to 'an overlay zone or mapped area'. We address these requests in the Natural Environment Decision Report.
  - *Christopher Dean Valentine* (OS464.5) sought an amendment to earthworks – small scale thresholds in Outstanding Natural Landscape Overlay Zones in the Rural Zones (Rule 16.6.1.1) to allow greater depths and volumes. We address this request in the Natural Environment Decision Report.
  - *Kāti Huirapa Rūnaka ki Puketeraki* and *Te Rūnanga o Ōtākou (the Rūnaka)* (OS1071.103, OS1071.105) sought amendment to Objective 30.2.3 and Policy 30.2.3.3 to add 'adverse effects on cultural values of Manawhenua' to the list of potential adverse effects from earthworks that are to be avoided, or adequately mitigated. We address these requests in the Manawhenua Decision Report.
3. This decision also addresses a number of submission points transferred from other topics, as follows (note that when an original submission point is transferred between topics, all associated further submission points are transferred with it).
  - *Horticulture NZ* (OS1090.4, in part) and *Geoff Scurr Contracting Limited* (OS794.5) sought an amendment to the definition of farming to add earthworks associated with cultivation, harvesting and tilling; and rural airstrips and landing areas for agricultural aviation activities. This submission point was originally included in the Rural s42A Report, however the part of this point relating to earthworks associated with cultivation, harvesting and tilling is now addressed in this decision report.

### **1.1.1 Section 42A Report**

4. The Earthworks s42A Report deals primarily with plan provisions included in the Earthworks City-wide section of the 2GP. The Earthworks section contains provisions which link to most other parts of the 2GP; of particular relevance are Natural Hazards (Section 11), Rural (Section 16) and Natural Environment (Section 10). The decisions on those topics should be read in conjunction with this decision.

### **1.1.2 Structure of Report**

5. The Decision Report is structured by topic. The Report does not necessarily discuss every individual submitter or submission point; instead it discusses the matters raised in submissions, and records our decisions and reasons on the provisions relevant to each topic<sup>1</sup>. Appendix 2 at the end of the report summarises our decision on each provision where there was a request for an amendment. The table in Appendix 2 includes provisions changed as a consequence to other decisions.
6. Schedule 1 of the RMA outlines key aspects of the process that must be used to prepare and make decisions on a plan change (including the submission and hearing process).
7. Clause 16(2) of that schedule allows a local authority to make an amendment where the alteration "is of minor effect", and to correct any minor errors, without needing to go through the submission and hearing process.
8. This decision includes some minor amendments and corrections that were identified by the DCC Reporting Officers and/or by us through the deliberations process. These amendments are referenced in this decision report as being attributed to "cl.16". These amendments are summarised in Section 5.0.

## **1.2 Section 32AA Evaluation**

9. Section 32 of the Resource Management Act 1991 (RMA) establishes the framework for assessing proposed objectives, policies and rules. Section 32AA of the RMA requires a further evaluation to be released with decisions, outlining the costs and benefits of any amendments made after the proposed Plan was notified.
10. The evaluation must examine the extent to which each objective is the most appropriate way to achieve the purpose of the RMA and whether, having had regard to their efficiency and effectiveness, the policies and rules proposed are the most appropriate for achieving the objectives. The benefits and costs of the policies and rules, and the risk of acting or not acting must also be considered.
11. A Section 32AA evaluation has been undertaken for all amendments to the notified plan. The evaluation is incorporated within the decision reasons in section 3.0 of this decision.

## **1.3 Statutory Considerations**

### **1.3.1 Resource Management Act 1991 (RMA)**

12. The matters that must be considered when deciding on submissions on a district plan review are set out in Part 2 (sections 5–8, purpose and principles) and sections 31, 32 and 72–75 of the RMA. District plans must achieve the purpose of the RMA and must assist the DCC to carry out its functions under the RMA.

---

<sup>1</sup> In accordance with Schedule 1, section 10 of the RMA.

13. The s42A Report provided a broad overview of the statutory considerations relevant to this topic. These include:
- Section 75(3) of the RMA, which requires us to ensure the 2GP gives effect to any National Policy Statement (NPS) or National Environmental Standard (NES) that affects a natural or physical resource that the Plan manages. We note the following NPS or NES directly relevant to this particular topic are outlined below.
  - Section 74(2)(a) of the RMA, which requires us to have regard to the proposed Otago Regional Policy Statement (pRPS) and section 75(3)(c) of the RMA, which requires us to ensure the 2GP gives effect to the operative Otago Regional Policy Statement (oRPS). We note that the proposed RPS was notified on 23 May 2015, and decisions released on 1 October 2016. At the time of making these decisions on 2GP submissions some of the proposed RPS decisions are still subject to appeal, and therefore it is not operative.
  - Section 74(2)(b)(i), which requires us to have specific regard to any other key strategies prepared under the Local Government Act. The s42A Report highlighted the Dunedin Spatial Plan 2012 as needing to be considered as this DCC strategic document sets the strategic directions for Dunedin's growth and development for the next 30 plus years.

#### 1.3.1.1 National Policy Statement on Electricity Transmission (NPSET)

14. The National Policy Statement on Electricity Transmission (NPSET) provides broad level policy guidance, which requires local authorities to provide for electricity transmission activities at the local level. The NPSET provides a regulatory framework, which works in tandem with the National Environmental Standards for Electricity Transmission Activities (NESETA) discussed below. Both guidance documents are to be used in conjunction for a comprehensive approach for managing activities which occur in relation to the operation of the high voltage National Grid network by the operator, Transpower. The objective of the NPSET is to recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:
- managing the adverse environmental effects of the network; and
  - managing the adverse effects of other activities on the network.
15. The proposed earthworks rules aim to accommodate the operation and maintenance of the electricity networks through explicit exemptions for network utilities, while also requiring other earthworks activities to be set back from network utilities. We consider the proposed provisions (and recommended amendments) discussed in this report give effect to the NPSET.

#### 1.3.1.2 National Environment Standards for Electricity Transmission Activities (NESETA)

16. The NESETA are developed to fulfil the objectives and policies of the NPSET and apply to existing National Grid transmission lines. Specifically, NESETA identifies that the rules contained in the regulation apply "only to the operation, maintenance, upgrading, relocation, or removal of an existing transmission line". In order to fulfil s75(3) of the Act, district plans must address National Grid activities with respect to ensuring earthworks do not adversely affect the operation of the National Grid, while ensuring that earthworks necessary for its operation are permitted.
17. The 2GP earthworks provisions have addressed the NESETA through exemptions provided for earthworks ancillary to network utilities providers, and a requirement for all other earthworks activities to be set back from the National Grid. We consider that

the proposed provisions (and recommended amendments) discussed in this report give effect to the NESETA.

#### 1.3.1.3 National Policy Statement for Freshwater Management

18. The National Policy Statement for Freshwater Management 2014 (NPS-FM 2014) sets out the objectives and policies for freshwater management under the Resource Management Act 1991. This national policy statement provides a National Objectives Framework to assist regional councils and communities to more consistently and transparently plan for freshwater objectives. The policy seeks to safeguard the life-supporting capacity, ecosystem processes and indigenous species of freshwater, and the health of people and communities, at least as affected by secondary contact with fresh water. This NPS requires councils to recognise the national significance of fresh water for all New Zealanders and, therefore, ensure earthworks are managed in this regard.
19. The 2GP earthworks provisions recognise the significance of fresh water by limiting permitted excavation and fill within 5–20m of a water body, and requiring all earthworks to prevent sediment entering water bodies. We consider that the proposed provisions (including any relevant amendments recommended) discussed in this report give effect to the NPS-FM 2014.

#### 1.3.1.4 New Zealand Coastal Policy Statement 2010

20. Under section 75(3)(b) of the RMA, a district plan must give effect to any New Zealand Coastal Policy Statement (NZCPS). The NZCPS uses policies to achieve the purpose of the RMA, addressing aspects of the coastal environment to manage activities, natural character, species, habitats, ecosystems, infrastructure, water quality, natural and built heritage, and erosion.
21. The 2GP seeks to ensure that effects from earthworks on these aspects are minimised by requiring sediment control performance standards to be met and using the earthworks – small scale thresholds performance standard to limit permitted earthworks within 5–20m of the Mean High-Water Springs (MHWS). We consider that the proposed provisions (and recommended amendments) discussed in this report give effect to the NZCPS.

#### 1.3.1.5 National Environmental Standard for Sources of Human Drinking Water 2005

22. The NES requires regional councils to ensure that effects of activities on drinking water sources (natural water bodies such as lakes, rivers and groundwater used to supply communities) are considered in decisions on resource consents and regional plans.
23. While this is primarily a regional council issue, small scale earthworks standards in the 2GP limit permitted earthworks near water bodies and groundwater along with sediment control standards to protect these drinking sources from contamination. We consider the proposed provisions (including any relevant amendments recommended) discussed in this report give effect to the NES for Sources of Human Drinking Water 2005.

#### 1.3.1.6 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NESC)

24. The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply

with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.

25. All district and city councils are required to observe and enforce the requirements of the NESCS. The NESCS is managed outside of the 2GP: s43B of the RMA applies to the relationship between NES and rules or consents.

### **1.3.2 Building Act 2004**

26. The Building Act 2004 regulates building work, which includes 'site work', and, therefore, covers earthworks carried out in preparation for, or associated with, the construction, alteration, demolition or removal of a building. All building work requires a building consent unless it is included in the list of exempt work in Schedule 1 of the Building Act. Exempt work includes retaining walls that retain no more than 1.5m depth of ground, and that do not support any additional load (e.g. traffic).
27. Section 71 of the Building Act states that building consents must not be granted on land that is subject to natural hazards, or where the building work is likely to worsen or result in a natural hazard, unless adequate provision is made to protect the land, the building work, and any other affected property from the hazard. The term 'natural hazard' is used to refer to erosion, falling debris, subsidence, inundation or slippage.
28. The Building Act 2004 and the 2GP earthworks provisions manage different aspects of earthworks projects. The purpose of the building consent process is to ensure that earthworks are safe, stable, and undertaken in accordance with the Building Code. 2GP Earthworks provisions have been designed to manage the potential effects of earthworks on visual amenity and character, effects on the stability of land, buildings and structures, and effects on surrounding properties (for example via sediment run-off, or via changes to drainage patterns). Not all earthworks that require resource consent under 2GP provisions will require building consent, and vice versa.

### **1.3.3 Heritage New Zealand Pouhere Taonga Act 2014**

29. Under Section 42 of the Heritage New Zealand Pouhere Taonga Act 2014, it is unlawful to destroy, damage or modify all or part of a site that is known or suspected to be archaeological, unless granted an authority to do so under section 48, 56 or 62 of the Heritage New Zealand Pouhere Taonga Act 2014.
30. When considering an application to damage, destroy or modify an archaeological site, Heritage New Zealand Pouhere Taonga take account of the archaeological, Maori and any other relevant values of the site, and the effect of the proposal on those values. Where appropriate, the applicant must consult tangata whenua, and any other person likely to be affected, on the proposal.
31. The 2GP Earthworks provisions complement the Heritage New Zealand Pouhere Taonga Act 2014 by requiring any earthworks in a scheduled archaeological site to first gain archaeological authority if required.
32. The statutory requirements outlined above have provided the foundation for our consideration of submissions. We note:
  - where submissions have been received seeking an amendment of a provision and that provision has not been amended, we accept the advice in the original s42A Report that the provision as notified complies with the relevant statutory considerations.
  - where a submitter has sought an amendment in order to better meet the statutory considerations, we have discussed and responded to these concerns in the decision reasons.

- in some cases, while not specifically raised, we have made amendments to the Plan as the evidence indicated this would more appropriately achieve these statutory considerations, in these cases we have explained this in our decision reasons.
- where we have amended the Plan in response to submissions and no parties have raised concerns about the provisions in terms of any statutory considerations, and we have not discussed statutory considerations in our decision, this should be understood to mean that the amendment does not materially affect the Plan's achievement of these statutory considerations.

#### **1.3.4 National Environmental Standards for Plantation Forestry**

33. The National Environmental Standards for Plantation Forestry were enacted on 31st of July 2017 and came into force on the 1st May 2018. Earlier draft standards consulted on in 2011 and 2015 were incorporated in some provisions of the notified 2GP. Now that the standards are finalised they have been incorporated into the 2GP as far as is practical in the time available, but this is a complex exercise where the National Standards allow for more stringent requirements to recognise local circumstances, for example where areas with significant natural values have been identified. Further work is required to fully incorporate and integrate all the NES provisions into the 2GP. This does not require a public consultation process.



## 2.0 Hearing appearances and evidence presented

34. Submitters that appeared at the Hearing, and the topics under which their evidence is discussed, are shown below in Table 1. All evidence can be found on the 2GP Hearing Schedule webpage under the relevant Hearing Topic <https://2gp.dunedin.govt.nz/2gp/hearings-schedule/index.html>

**Table 1: Submitters and relevant topics**

Submitter (Submitter Number)	Represented by	Expert evidence, submissions or evidence tabled at the Hearing	Topics covered
<i>AgResearch Limited (OS924)</i>	Mr Graeme Mathieson (Environmental Consultant – Environmental Management Services)	Expert evidence	<ul style="list-style-type: none"> <li>• Legislation Overlap</li> <li>• Earthworks Performance Standards (farming)</li> </ul>
<i>Alex Charles and Jackie St John (OS876)</i>	Mr Alex Charles and Ms Jackie St John	Tabled evidence	<ul style="list-style-type: none"> <li>• Natural Hazard Zone policies</li> </ul>
<i>Aurora Energy Limited (OS457)</i>	Ms Joanne Dowd (Network Policy Manager-Delta Utility Services Limited)	Tabled evidence	<ul style="list-style-type: none"> <li>• Definitions (Network Utilities)</li> </ul>
<i>BP Oil NZ Ltd and Mobil Oil NZ Ltd and Z Energy Ltd (The Oil Companies) (OS634)</i>	Mr Mark Laurenson (Senior Planner, Burton Consultants)	Expert evidence	<ul style="list-style-type: none"> <li>• Definitions (Network Utilities)</li> <li>• Natural Hazard Zone (small scale thresholds)</li> </ul>
<i>Christopher Dean Valentine (OS464)</i>	Mr Christopher Valentine	Appeared at Hearing and tabled evidence	<ul style="list-style-type: none"> <li>• Earthworks Performance Standards (small scale thresholds)</li> </ul>
<i>Federated Farmers of New Zealand (OS919)</i>	Mr David Cooper (Senior Policy Advisor, Federated Farmers of New Zealand)	Appeared at Hearing and tabled evidence	<ul style="list-style-type: none"> <li>• Activity Status</li> <li>• Natural Hazard Zone (Policies)</li> <li>• Earthworks Performance Standards (farming)</li> </ul>
<i>Geoff Scurr Contracting Limited (OS794)</i>	Ms Tracy Scurr	Appeared at Hearing	<ul style="list-style-type: none"> <li>• Earthworks Performance</li> </ul>

			Standards (farming)
<i>Helen Skinner and Joseph O'Neill</i> (OS312)	Ms Helen Skinner and Mr Tony Devereux	Appeared at Hearing and tabled evidence	<ul style="list-style-type: none"> <li>Earthworks Performance Standards (small scale thresholds)</li> </ul>
<i>Horticulture New Zealand</i> (OS1090)	Ms Lynette Wharfe	Tabled evidence	<ul style="list-style-type: none"> <li>Definitions</li> <li>Earthworks Performance Standards (farming)</li> </ul>
<i>Ludgate Sharp Family Trust</i> (FS2436)	Mr Nigel Bryce (Principal Planning and Policy Consultant, 4Sight Consulting)	Appeared at Hearing and tabled expert planning evidence	<ul style="list-style-type: none"> <li>Definitions (finished ground level)</li> </ul>
<i>Mercy Dunedin Hospital Limited</i> (OS241)	Mr Steven Tuck (Resource Management Consultant, Mitchell Partnerships Limited)	Appeared at Hearing and tabled expert planning evidence	<ul style="list-style-type: none"> <li>Definitions</li> <li>Earthworks Objectives and Policies</li> <li>Activity status</li> <li>Earthworks Performance Standards (finished ground level)</li> </ul>
<i>Nigel Harwood</i> (OS96)	Mr Nigel Harwood	Appeared at Hearing	<ul style="list-style-type: none"> <li>Earthworks Performance Standards (small scale thresholds and batter gradient)</li> </ul>
<i>Otago Regional Council</i> (OS908)	Mr Warren Hanley	Tabled evidence	<ul style="list-style-type: none"> <li>Legislation Overlap</li> <li>Groundwater Protection Mapped Area</li> </ul>
<i>Port Otago Limited</i> (OS737)	Len Andersen (Legal Counsel)	Appeared at Hearing and tabled legal submission	<ul style="list-style-type: none"> <li>Port Zone (small scale thresholds)</li> </ul>

<i>Ravensdown Limited (OS893)</i>	Mr Chris Hansen	Tabled evidence	<ul style="list-style-type: none"> <li>• Earthworks Activity Status</li> </ul>
<i>Robert Andrew Van Turnhout (OS388)</i>	Mr Robert Andrew Van Turnhout	Appeared at Hearing	<ul style="list-style-type: none"> <li>• Earthworks performance standards</li> </ul>
<i>Robert George &amp; Sharron Margaret Morris (OS355)</i>	Mr Rob Morris	Appeared at Hearing and tabled evidence	<ul style="list-style-type: none"> <li>• Earthworks performance standards (farming)</li> </ul>
<i>Timothy George Morris (OS951)</i>	Mr Rob Morris	Appeared at Hearing and tabled evidence	<ul style="list-style-type: none"> <li>• Earthworks performance standards (farming)</li> </ul>
<i>Timothy Morris (on behalf of RG and SM Morris Family Trust) (OS1054)</i>	Mr Rob Morris	Appeared at Hearing and tabled evidence	<ul style="list-style-type: none"> <li>• Earthworks performance standards (farming)</li> </ul>
<i>University of Otago (OS308)</i>	Murray Brass	Appeared at Hearing and tabled evidence	<ul style="list-style-type: none"> <li>• Legislation Overlap</li> <li>• Earthworks performance standards (Campus Zone)</li> </ul>

35. Appearances for the Dunedin City Council were:

- Paul Freeland, Reporting Officer
- Lee Paterson, Geotechnical Engineer, Stantec (formerly MWH)
- Barry Knox, Senior Landscape Architect

36. Evidence provided by Mr Freeland included:

- Section 42A Report organised primarily under topic heading where each submission point was responded to
- opening statement (tabled and verbal)
- revised recommendations (tabled and verbal) responded to each submitter

37. Planning assistance to the hearing was provided by:

- John Sule, Senior Planner

### **3.0 Key topics discussed at the Hearing or covered in tabled evidence**

#### **3.1 Overview**

38. This section explains how issues dealt with in this Decision Report are addressed in the 2GP.
39. The earthworks provisions are essentially an updated version of the operative District Plan provisions contained within the Hazards, Hazardous Substances and Earthworks Section which were introduced through Plan Change 11. As notified the earthworks provisions were dispersed through the individual Management and Major Facilities Zone sections. For administrative reasons they have been coalesced into a separate section (8A) for the decisions on the 2GP.
40. The 2GP excludes the following activities from the definition of earthworks:
- earthworks associated with quarrying or mining, which is included as part of the definition of mining
  - vegetation clearance that is associated with earthworks, which is included as part of the definition of vegetation clearance; and
  - earthworks associated with the maintenance of sports fields, landscaping or gardens, which are not managed by the Plan.
41. Earthworks are managed at two scales in the 2GP, small-scale and large-scale. Small-scale earthworks are permitted activities subject to performance standards controlling the amount, location, change in ground level, cut or fill, batter gradient, setbacks, sediment control and removal of high class soils associated with earthworks. Large-scale earthworks are a restricted discretionary activity. Several activities are always considered as small-scale earthworks, including post holes for the erection of fences, driving of piles for building foundations, and earthworks as part of harvesting, cultivation and tilling.

#### **3.2 Structure of the Earthworks Section**

42. While not a topic that was addressed at the Earthworks Hearing, one of the key changes related to this topic are structural changes to the earthworks provisions.
43. While it was clear that the Plan had been written to provide consistency across the sections in terms of earthworks provisions, other than where certain zones or overlays required a different approach, we found that the approach of repeating provisions across the Plan led to duplication, and created a risk of provisions becoming disjointed over-time where there were no resource management reasons for a different approach.
44. Therefore, we decided to consolidate the earthworks provisions into a single new city-wide activities section. This involves moving all the earthworks provisions in the management and major facility zones (but not the city-wide provisions) into a new Section 8A in the city-wide activities part of the 2GP.

45. This decision was made after seeking advice from the Senior Planner assisting the Panel on the merits of this option. This change is being made as a clause 16 amendment, and is being done prior to considering submissions on different provisions, to enable consideration of submissions on a provision in one section to be considered as a submission on all like provisions (e.g. provisions that managed issues similarly across different zones).
46. As part of moving the provisions into a new city-wide activities Section 8A we have also split the performance standard for earthworks small scale into its three component parts:
- Maximum change in ground level
  - Maximum area
  - Maximum volume of combined cut and fill.
47. This was done as combining all the standards across all zones would have created a table which was difficult to read.
48. The following amendments, shown below in Table 2, were made under clause 16 to transfer the existing provisions into the new section.

**Table 2: Amendments**

<b>Notified</b>	<b>New</b>
Nested table location – Development activities category	Nested table location – In city wide activities
Earthworks objective in each section e.g. for Rural Zone – Objective 16.2.5	Objective 8A.2.1
First earthworks policy in each section e.g. for Rural Zone – 16.2.5.1	8A.2.1.1
Second earthworks policy in each section e.g. for Rural Zone – 16.2.5.2	8A.2.1.2
Third earthworks policy in each section e.g. for Rural Zone – 16.2.5.3	8A.2.1.3
Fourth earthworks policy in specified section e.g. for Rural Zone – Policy 16.2.5.4  (only in rural, rural residential, recreation, and Invermay and Hercus zones)	8A.2.1.4
Activity status of Earthworks – small scale and Earthworks - large scale: e.g. for Rural Zone – 16.3.4.15 and 16.3.4.16	8A.3.2 Activity status table – earthworks activities
Earthworks performance standards – Earthworks – small scale thresholds: e.g. for Rural Zone – Rule 16.6.1.1	8A.5.1 Earthworks – small scale thresholds
Earthworks performance standards – Archaeological sites: e.g. for Rural Zone – Rule 16.6.1.2  (only in zones that intersect with an overlay)	Rule 8A.5.2 Archaeological sites

Earthworks performance standards – Batter gradient: e.g. for Rural Zone – Rule 16.6.1.3	Rule 8A.5.3 Batter gradient
Earthworks performance standards – Setback from property boundary, buildings, structures and cliffs: e.g. for Rural Zone – Rule 16.6.1.4	Rule 8A.5.4 Setback from property boundary, buildings, structures and cliffs
Earthworks performance standards – Setback from national grid (earthworks): e.g. for Rural Zone – Rule 16.6.1.5  (only in zones that intersect with an overlay)	Rule 8A.5.5 Setback from National Grid (earthworks)
Earthworks performance standards – Setback from network utilities: e.g. for Rural Zone – Rule 16.6.1.6	Rule 8A.5.6 Setback from network utilities
Earthworks performance standards – Sediment control e.g. for Rural Zone – Rule 16.6.1.7	Rule 8A.5.7 Sediment control
Earthworks performance standards – Removal of high class soils: e.g. for Rural Zone – Rule 16.6.1.8  (only in zones that intersect with an overlay)	Rule 8A.5.8 Removal of high class soils
Earthworks performance standards – NZ Environmental Code of Practice for Plantation Forestry: e.g. for Rural Zone – Rule 16.6.1.9  (only in Rural, Rural Residential, Recreation, Invermay and Hercus Zones)	Rule 8A.5.9 NZ Environmental Code of Practice for Plantation Forestry
Setback from coast and water bodies: e.g. for the Rural Zone – Rule 16.6.11.6	8A.5.10
Setback from scheduled tree: e.g. for Rural Zone – Rule 16.6.11.5	8A.5.11
Assessment of Restricted Discretionary Activities (Performance Standard Contraventions): e.g. for Rural Zone – 16.9	8A.6
Assessment of Restricted Discretionary Activities: e.g. for Rural Zone - 16.10	Rule 8A.7
Assessment of Non-complying Activities: e.g. for Rural Zone – 16.12	Rule 8A.8
Special Information Requirements – Geotechnical Investigation Report: e.g. for Rural Zone – Rule 16.13.2	Rule 8A.9 Special Information Requirements Geotechnical Investigation Report

### 3.3 Activities that are not managed as earthworks

#### 3.3.1 Background

49. The definition of earthworks is as follows:

*"The disturbance and alteration of the land surfaces by the re-contouring of land and/or the excavation or deposition of materials including clean fill, soil, or rock."*

*This definition excludes:*

- *earthworks associated with cultivation and tilling, which is included as part of the definition of farming;*
- *earthworks associated with quarrying or mining, which is included as part of the definition of mining;*
- *vegetation clearance that is associated with earthworks, which is included as part of the definition of vegetation clearance; and*
- *earthworks associated with the maintenance of sports fields, landscaping or gardens."*

50. The definition of farming is as follows:

*"The use of land and buildings for the purpose of the commercial production of vegetative matter or livestock."*

For the sake of clarity, this also includes:

- *"on-farm extraction and processing of aggregate for the sole purpose of constructing and maintaining access within the property;*
- *the processing of animals or plants, or the produce of animals or plants, that are grown on the property; and*
- *farm landfills, offal pits, silage pits and silage stacks".*

This definition excludes factory farming, domestic animal boarding and breeding, rural ancillary retail, forestry, and activities defined as earthworks.

51. Submissions on the types of earthworks associated with farming and which are included under the definition of earthworks versus what are provided for under the definition of farming were considered in both the Rural and the Earthworks hearings.

### **3.3.2 Earthworks for Mining Activities**

52. *Saddle Views Estate Limited* (OS458.33) supported the definition of earthworks, particularly the exclusion of mining from this definition.

53. *Blackhead Quarries Ltd* (OS874.39) and *Tussock Top Farm Limited* (OS901.32) sought that the earthworks standards in the rural zones (Rule 16.6.1) be amended so that they do not apply to mining activities. These submission points were opposed by *Otago Regional Council* (FS2381.1, FS2381.4 and FS2381.5) who stated that earthworks standards and/or rules should apply to all mining activities to ensure effects on natural resources are managed.

#### **3.3.2.1 Decision and reasons**

54. We accept the submissions by *Saddle Views Estate Limited* (OS458.33), *Blackhead Quarries Ltd* (OS874.39) and *Tussock Top Farm Limited* (OS901.32) to maintain the exclusion of mining from the definition.

55. We note that as earthworks that are part of mining are not covered by Rule 16.6.1 the submitter's request is already provided for by the Plan. This also means that the request by *Otago Regional Council* to amend the provisions to apply the earthworks provisions to mining activities is beyond the scope of what can be sought through a further submission, therefore, we have disregarded this request. However, we note that as mining is a fully discretionary activity the issues managed by Rule 16.6.1 will be considered as part of that discretionary consent process.

### 3.3.3 Earthworks that are part of the definition of Farming

#### 3.3.3.1 Background

56. Multiple submissions were heard at the Earthworks Hearings that sought to provide for earthworks ancillary to farming as permitted activities in the 2GP, covering a variety of land uses; for example, maintaining tracks, fences, dams, and other infrastructure commonly found on a farm.
57. Two submissions that were heard at the Rural Hearing on the definition of farming (OS1090.4 and OS794.5) are now discussed in this decision because they also relate to the management of earthworks. Note that the definition of farming in relation to other matters is also addressed in the Rural Decision Report (Section 3.4.3).

#### 3.3.3.2 Submissions

58. *Robert Andrew Van Turnhout* (OS388.4) requested that the maintenance of tracks, private roads, dams, farmyards and farm service areas, along with the erection and maintenance of fences be permitted activities. His request related to the inclusion of his farm in a Significant Natural Landscape area and his concerns about his ability to maintain his land under the new provisions (see Natural Environment Decision report for discussion on the submitters submission points OS388.1 and OS388.2, in relation to SNL and vegetation clearance). This submission was supported by *Horticulture New Zealand* (FS2452.71) who stated that provision needs to be made for earthworks ancillary to rural production activities, to enable these activities and to achieve the outcomes sought in the Plan.
59. *Federated Farmers of New Zealand* (OS919.4,) supported the exclusion of cultivation and tilling from the definition of earthworks. However, the submitter also requested that small scale track maintenance is specifically provided for in the definition. The submitter noted that the "maintenance of existing farm tracks is an important, expected and necessary component of farming, with minimal adverse effects", and suggested the following exclusion be added:

*"This definition excludes: earthworks associated with the maintenance of farm tracks, sports fields, landscaping or gardens".*

60. In relation to this request *Federated Farmers of New Zealand* (OS919.60) also sought that the "maintenance of existing farm tracks" be added to the exclusions in the Rural Earthworks – small scale thresholds performance standard (Rule 16.6.1.1). The latter of the above points was supported by *Horticulture New Zealand* (FS2452.72), while both of *Federated Farmers'* points were opposed by *Forest and Bird NZ* (FS2482.4 and FS2482.34).
61. *Rural Contractors New Zealand Incorporated* (OS911.1) and *AgResearch Limited* (OS924.1) sought to amend the definition of earthworks to exclude "Earthworks associated with the construction, maintenance and upgrading of farm tracks, silage pits and drains" because the submitters considered that such activities were a fundamental requirement of farming and requiring resource consent would impose unnecessary costs. *Federated Farmers* (FS2449.359 and FS2449.360) supported the submissions of both *Rural Contractors New Zealand Incorporated* (OS911.1) and *AgResearch Limited* (OS924.1), while *Horticulture New Zealand* (FS2452.70) supported the latter submission point by *AgResearch Limited* (OS924.18).
62. *Bruce Wayne Taylor* (OS664.3) sought that earthworks associated with farm tracks and fence lines be permitted to enable the maintenance and installation of new farm tracks.
63. *Clifton Trust* (OS720.7) sought that a new rule is inserted into the Rural Earthworks Standards performance standard (Rule 16.6.1) to exempt earthworks related to the construction of farm tracks from the earthworks small scale thresholds performance



standard (Rule 16.6.1.1). The submitter explained that working farms need farm tracks for vehicle access over the whole property and were concerned that the proposed earthworks standards limited this and were unduly restrictive.

64. *Geoff Scurr Contracting Limited* (OS794.2, OS794.3, OS794.4 and OS794.5) sought three changes to the 2GP to provide for earthworks associated with farming and dams, specifically:
- An exemption from the small-scale thresholds performance standard where the earthworks are ancillary to farming within the Rural and Rural Residential zones. The submitter proposed that the exemption would read as follows: "Earthworks ancillary to farming are exempt from the performance standard earthworks – small scale thresholds so long as they are undertaken in accordance with the New Zealand Environmental Code of Practice for Plantation Forestry 2007." The submitter suggested that this would negate the need for Rule 16.6.1.1.h, which could be deleted (OS794.2 and OS794.4).
  - That earthworks relating to dams are exempted from 2GP control via amendment to the earthworks definition to exclude earthworks in relation to dams or by inserting an example into the earthworks development standards (OS794.3 and OS794.4).
  - That the definition of farming is amended to specifically include construction and maintenance of fences and farm tracks. The submitter noted that earthworks ancillary to forestry are exempted from complying with the small-scale thresholds and that the farming definition was uncertain, with some activities being specifically referred to and others not (OS794.5).
65. *Horticulture New Zealand* (OS1090.2) sought that the definition of earthworks be amended to provide for an exemption for earthworks associated with harvesting and for these to be included in the definition of farming (OS1090.4). They also sought, like *Geoff Scurr Contracting Limited* that (OS1090.10) a new activity of 'earthworks ancillary to farming' to be included in the rural activities category and consequentially excluding these from the definition of earthworks.

### 3.3.3.3 s42A Report Recommendations

#### 3.3.3.3.1 *Request to provide for track and other maintenance activities*

66. In relation to the submissions by *Mr Van Turnhout* (OS388.4), *Geoff Scurr Contracting Limited* (OS794.4 and OS794.5) *Rural Contractors New Zealand Incorporated* (OS911.1) *AgResearch Limited* (OS924.1) and *Federated Farmers* (OS919.4), with respect to providing for earthworks for the maintenance farm tracks, private roads, dams, farmyards and farm service areas of tracks as permitted activities, the Reporting Officer considered that existing use rights should be sufficient to provide for farm maintenance activities. However, he agreed that specific exemptions for these activities would help clarify that these earthworks do not require consent. He therefore recommended that the definition of earthworks be amended to indicate that earthworks associated with the maintenance of existing farm tracks, private roads, private ways, dams, farmyards, farm service areas, silage pits and fences, alongside maintenance of sports fields, landscaping and gardens be excluded from the definition, and not managed by the Plan.
67. *AgResearch* tabled evidence at the Earthworks hearing in relation to their request to add 'maintenance of drains' to the list of exclusions proposed in the definition of earthworks. In response to *AgResearch Ltd* the Reporting Officer recommended that either the 'maintenance of drains' be added to the types of maintenance that are listed as exclusions in the definition of earthworks, or that the definition of Earthworks –scale be amended to include the maintenance of drains. He also suggested that definitions for 'maintenance' and 'drain' could be added as consequential changes. He provided us with the following definitions to consider: "The conservation of a lawfully established activity or asset to its original condition" and 'drain': ORC Regional Plan: Water defines it as

follows: "Artificial channel or subsurface conduit (e.g. mole drain, tile drain or drainage tunnel) constructed to either lower the water table or divert water, excluding a water race".

68. We note that the submissions of *Geoff Scurr Contracting Ltd* were partly allocated to the Rural hearing, where the Reporting Officer agreed with the Reporting Officer for the Earthworks hearing. However, the Rural Section Reporting Officer suggested that the proposed drafting would not provide clarity as by only removing these activities from the definition of earthworks, the Plan did not clarify what these activities were then classed as in terms of the Plan's definitions. She agreed with the submitter that clarification was needed and explored three potential options to explore this:
- Amending the definition of earthworks to indicate that these maintenance activities are included in the definition of farming and that the farming activity definition is likewise amended to show them as included (similar to what was requested by the submitter).
  - Instead of including the exclusion in the definition of earthworks, including it in the list of exclusions in the definition of earthworks – small scale which would therefore make them permitted activities (this is similar to how post holes for fences is provided for in the Plan).
  - Adding the exclusions to the 'Earthworks – small scale thresholds' performance standard (Rule 8A.5.1), which is done in the Plan for "as part of a farming activity for the construction of offal pits, silage pits and farm landfills" (though these are only exempt from some, not all, thresholds).

#### 3.3.3.3.2 Request to provide for earthworks associated with construction of fences as a permitted activity

69. In relation to *Bruce Taylor's* (OS664.3) and *Geoff Scurr Contracting Limited's* (OS 794.5) submissions to provide for the construction of fences, the Reporting Officer noted that post holes for the erection of fences were included in the definition of earthworks – small scale and were therefore a permitted activity (now included in Earthworks – small scale thresholds (Rule 8A.5.1)). Furthermore, he recommended that earthworks associated with the maintenance of existing farm tracks, dams, farmyards, farm service areas and fences also be excluded from the earthworks definition. However, he noted that there are other types of earthworks ancillary to farming that are not excluded from the definition of earthworks, for example earthworks for the establishment of farm tracks (s42A Report, pp. 107–109).
70. We note that the submissions of *Geoff Scurr Contracting Ltd* were partly allocated to the Rural Hearing, where the Reporting Officer for that hearing did not consider it to be appropriate to include the construction and maintenance of fences in the definition of farming but recommended that the clarity of provisions could be improved by moving the 'exemption' from the scale threshold for "post holes for the erection of fences", which currently sits in the definition of earthworks – small scale, to the earthworks – small scale thresholds performance standard. As a consequential change, she also recommended that the other exemptions that are included in the earthworks – small scale definition (i.e. post holes for permitted or approved buildings or signs, and the driving of piles for building foundations) were moved to the performance standard, again to improve clarity.
71. *Robert Van Turnhout* attended the Earthworks Hearing and suggested a new performance standard for new fence lines as follows: 1km long, 2.5m wide, and 0.5m change in ground level. He considered this was necessary to enable good farm management. In his revised recommendation, the Reporting Officer agreed that the request of *Mr Van Turnhout* with respect to providing for earthworks as part of new fences as a permitted activity had merit. He recommended that the new rule be drafted in consultation with DCC's landscape architect, and that revegetation through sowing of

grass seed or similar be required. In response to the discussion and evidence presented at the hearing, we requested a re-evaluation of the s42A Report recommendation pertaining to new fence lines and suggested that a new standard be considered to permit earthworks associated with erecting a new fence. Any such standard was to be developed in consultation with Mr Barry Knox.

#### 3.3.3.3.3 *Request to provide for the construction of farm tracks as a permitted activity*

72. In relation to *Mr Taylor* (OS 664.3), the *Clifton Trust's* (OS720.7), *Rural Contractors New Zealand Incorporated* (OS911.1), *AgResearch Limited* (OS924.1) and *Geoff Scurr Contracting Limited* (OS794.5), requests to provide for the construction of farm tracks, the Reporting Officer considered that this activity could lead to significant effects on the landscape, environmental damage or exacerbation of existing hazard risks.
73. The Reporting Officer noted that Mr Lee Paterson had indicated that the proposed earthworks standards were appropriate and that uncontrolled activity beyond these levels may lead to detrimental or hazardous outcomes. With regard to potential visual and landscape effects, the DCC's Landscape Architect, Mr Barry Knox, advised that there should be restrictions on earthworks associated with the construction of farm tracks because if they are undertaken without care and good design there may be adverse effects on rural character or visual amenity. Given the advice from both experts, the Reporting Officer recommended against amending the earthworks provisions to provide for the construction of new tracks as a permitted activity. While *Geoff Scurr Contracting Limited's*, submissions were also considered at the Rural hearing, the Reporting Officer there relied on the evidence from the Earthworks hearing and did not offer an alternative view.

#### 3.3.3.3.4 *Request to provide for earthworks for silage pits and drains as a permitted activity*

74. In relation to *Rural Contractors NZ* (OS911.1) and *AgResearch's* (OS924.1) request to exclude earthworks for silage pits, the Reporting Officer noted that under Rule 16.6.1.1.h (now Rule 8A.5. earthworks – small scale thresholds) the construction of silage pits does not need to meet performance standards either for maximum change in ground level or, within the Hazard 2 (Land Instability) Overlay Zone, for the maximum combined volume of cut and fill.
75. However, in relation to the submitter's request to exclude earthworks for drains, he felt that given that large or poorly located earthworks could have significant adverse effects, both in terms of stability and amenity, he did not recommend that earthworks for the construction and upgrading of drains are excluded from the definition as requested. As with farm track earthworks, he considered that these should be subject to performance standards and the resource consent process.

#### 3.3.3.3.5 *Request to provide for earthworks associated with dams*

76. With respect to *Geoff Scurr Contracting Limited's* (OS794.3 and OS794.4) request to provide for earthworks associated with dams, the Reporting Officer noted that dams required for the purposes of hydroelectric generation would be treated as "earthworks ancillary to network utilities activities" and would therefore be exempt from earthworks thresholds, with the exception of the maximum change in ground level threshold. However, these dams would be subject to 2GP provisions that manage the effects of hydro generators. With regard to dams for the purposes of irrigation, while these are managed primarily through the Regional Plan: Water for Otago and the Building Act, he noted that these may have effects that are not managed via either of these mechanisms, including effects on visual amenity and character, effects on surrounding properties (for example via sediment run-off, or via changes to drainage patterns) and, within ASBVs (Areas of significant biodiversity values, formerly ASCVs), effects on biodiversity values. Therefore, he did not consider that the construction of dams should be exempt from the 2GP earthworks rules.

#### 3.3.3.3.6 *Request to provide for harvesting activity*

77. Mr Freeland recommended that the submission by *Horticulture New Zealand* (OS1090.2) be accepted in part and the definition of earthworks be amended to add 'harvesting' because it is a normal part of farming (s42A Report, Section 5.1.1, p. 27).
78. Mr David Cooper, for *Federated Farmers of New Zealand*, expressed his support for this change at the Rural hearing "so it is clear that those activities are considered, and these are expected in the rural areas"; and Ms Lynette Wharfe, who was called by *Horticulture New Zealand*, also gave evidence in support of this change.

#### 3.3.3.3.7 *Request to provide for all earthworks ancillary to farming as permitted activities*

79. The Reporting Officer also recommended rejecting the request by *Geoff Scurr Contracting Limited* and *Horticulture New Zealand* for all earthworks ancillary or associated with farming to be exempt from earthworks rules and instead, like forestry, be required to comply with a Code of Practice. Relying on the advice from Mr Paterson and Mr Knox, the Reporting Officer did not consider that this approach would be sufficient to manage the potential effects from all farming earthworks. He noted that farming activities are far more widespread than forestry and, therefore, have a greater potential to cause adverse effects such as visual impacts, sedimentation and exacerbation of land instability. In addition, unlike farming, he noted that plantation forestry is generally undertaken by only a few large organisations, all of which he understood had committed to following the New Zealand Environmental Code of Practice for Plantation Forestry 2007.

### 3.3.3.4 Decision and reasons

#### 3.3.3.4.1 *Request to provide for track and other maintenance activities*

80. We accept in part the submissions by *Robert Van Turnhout* (OS388.4), *Geoff Scurr Contracting Limited* (OS794.5), *Rural Contractors New Zealand Incorporated* (OS911.1), *AgResearch Limited* (OS924.1) and *Federated Farmers* (OS919.4) to provide for track and other maintenance activities. We agree with the Reporting Officer that existing use rights should be sufficient to provide for farm maintenance activities.

81. We have therefore amended the definition of earthworks, as follows:

##### Earthworks

The disturbance and alteration of the land surfaces by the re-contouring of land and/or the excavation or deposition of materials including clean fill, soil, or rock.

This definition excludes:

- earthworks associated with the maintenance of: sports fields, landscaping or gardens, farm tracks, private roads, private ways, dams, farmyards, drains, farm service areas, silage pits, and fences {EW 919.4 and others}; which are not managed by the Plan; and {RU cl.16}

82. We note that these earthworks, where not covered by existing use rights, will still be subject to the other earthworks standards.
83. We consider these activities to be commonplace in a working landscape and necessary to ensure farming practices are efficiently carried out. We agree with the Rural Reporting Officer and have added these to the list of activities excluded from the earthworks definition as shown below and in Appendix 1 (attributed to submission reference EW 919.4 and others).
84. We do not agree with the recommendation to add a definition of 'maintenance'. We note that this term is used in many other contexts in the 2GP (e.g. in terms of the

maintenance of biodiversity values), and therefore we believe adding a definition will cause confusion.

85. We do, however, agree with adding a definition for drains because we want to ensure that the exemption from the earthworks provisions is limited, and we have a concern that, without a definition for earthworks associated with the maintenance of drains, there could be uncontrolled earthworks in a wide variety of locations based upon this exemption.

#### 3.3.3.4.2 *Request to provide for earthworks associated with construction of fences and farm tracks as a permitted activity*

86. We accept in part the submission of *Robert Andrew Van Turnhout* (OS388.4) and accept in part the submissions of *Rural Contractors New Zealand Incorporated* (OS911.1), *AgResearch Limited* (OS924.1 and OS924.18) and *Clifton Trust* (OS720.7), to include a new standard for earthworks to install a fence line. We accept that fences can have positive effects in areas where the exclusion of stock from certain areas is desirable (e.g. wetlands, riparian margins and areas of indigenous vegetation and fauna habitat).
87. We also accept the submissions of *Geoff Scurr Contracting Ltd* (EW794.5) and *Clifton Trust* (EW720.7) and others, specifically in relation to allowing for the construction of new farm tracks, as we agree these are necessary for access to fencing and the general operation of farms. We note that the defined terms used in the 2GP in relation to farm tracks are "walking tracks" and "vehicle tracks"; in the interests of clear interpretation of provisions, we consider that these terms should be used in the earthworks rule.
88. However, we consider that earthworks for fences and tracks should only be permitted where the fence or track is associated with a permitted land-use or city-wide activity, and where the earthworks themselves meet maximum scale parameters. We consider that these limits are necessary in order to achieve an appropriate balance between enabling farming and other permitted activities and managing potential effects.
89. We consider it appropriate to limit the change in finished ground level to 1m, on the basis that beyond this limit, adverse visual effects, as discussed in Mr Knox's evidence to the Earthworks Hearing, are more likely. For the same reason, we have limited the width of earthworks for fencing and track construction that are to be treated as small scale.
90. In addition, we consider that a 2m limit to track width is appropriate in NCC, HNCC, ONCC and ONF overlay zones and scheduled ASBVs, with a 3m track width limit elsewhere. We have applied a stricter limit in the areas that we consider to be most sensitive to the effects of earthworks, based on their identified biodiversity, natural character or landscape values. We note that a 2m-wide track will generally allow for pedestrians, cyclists and smaller vehicles such as quad bikes, whereas, as indicated by *Mr Van Turnhout* and *Federated Farmers of New Zealand* at the Natural Environment Hearing, a 3m wide track is necessary for larger farm vehicles like side-by-sides (with an allowance for drainage systems).
91. We note that our decisions on the parameters within which track construction earthworks are to be treated as "small scale" generally align with our decisions on the parameters of the vegetation clearance associated with track construction that is to be permitted under vegetation clearance provisions in Section 10 (see Section 3.4.6 of the Natural Environment Decision).
92. For plan clarity, pursuant to Clause 16 of the First Schedule to the RMA, we have also amended the definition of 'earthworks – small scale' by moving the list of inclusions of: post holes for the erection of fences; post holes for permitted or approved buildings or signs; and driving of piles for building foundations into the Earthworks – Small Scale Thresholds performance standard (Rule 8A.5.1.1.a)

#### 3.3.3.4.3 *Request to provide for earthworks for silage pits, drains and dams as a permitted activity*

93. In relation to the requests by *Rural Contractors New Zealand Incorporated* (OS911.1) and *AgResearch Limited* (OS924.1) we agree with the Reporting Officer that it would not be appropriate that exclusions be made for the construction or upgrading of drains. Similarly, we do not accept the submission by *Geoff Scurr Contractors Ltd* to exempt earthworks relating to new dams from 2GP control.
94. We also reject the submissions that requested that earthworks for silage pits be permitted, but in paragraph 58 of this decision we have amended the definition of 'earthworks' to exclude earthworks associated with the maintenance of silage pits. We recognise that silage pits are a normal part of many farming operations, and that the 2GP provides for them in rural zones, but not within an overlay zone or mapped area, by exempting them from the Maximum change in finished ground level performance standard (Rule 8A.5.1.3) and the Maximum volume of combined cut and fill performance standard (Rule 8A.5.1.5). Silage pits in other locations may have effects on amenity and we therefore do not agree that they should be a permitted activity in all farm locations.

#### 3.3.3.4.4 *Request to provide for harvesting activity*

95. We accept the submissions of *Horticulture New Zealand* (OS1090.2) to exempt harvesting, alongside cultivation and tilling, from the definition of earthworks. We accept the evidence Ms Wharfe and the Reporting Officer and agree these are a normal part of farming and should be included in that definition instead.
96. We also accept *Horticulture New Zealand's* (OS1090.4) submission and amend the definition of farming, to clarify that this definition includes earthworks associated with harvesting, alongside cultivation and tilling.

#### 3.3.3.4.5 *Request to provide for all earthworks ancillary to farming as permitted activities*

97. We reject the submissions of *Geoff Scurr Contractors Limited* (OS794.2 and OS794.4) and *Horticulture NZ* (OS1090.2) that all earthworks associated with farming be exempt from earthworks rules, and that these instead could be subject to a Code of Practice. The reason for our decision is that, unlike forestry which is regulated by a Code of Practice (and now by a National Environmental Standard), farming activities involving earthworks are only regulated through District Plan provisions. We consider the combination of exempting some farming activities from the earthworks standard, while managing other earthworks, particularly those in sensitive locations i.e. some overlay zones, is the appropriate balance between enabling the productive use of rural land while controlling adverse effects.

#### 3.3.3.4.6 *Overall reasons and amendments*

98. Our reason for these decisions is we felt that these amendments presented the best balance between the competing objectives in the 2GP which include the need to enable farming while also appropriately managing the potential for earthworks to have adverse effects including on amenity, biodiversity, landscape, and natural character values. Where appropriate we have enabled earthworks associated with farming activities, while controlling the amount and location of earthworks to maintain important values.
99. The amendments required for this decision, including consequential amendments are:
- Amend definition of 'earthworks' to exclude track and other maintenance activities as follows (attributed to submission reference EW 919.4 and others):

##### Earthworks

The disturbance and alteration of the land surfaces by the re-contouring of land and/or the excavation or deposition of materials including clean fill, soil, or rock.

This definition excludes:

- earthworks associated with cultivation, harvesting {EW 1090.2} and tilling, which ~~is~~ are {PO cl.16} included as part of the definition of farming
- earthworks associated with quarrying or mining, which ~~is~~ are {PO cl.16} included as part of the definition of mining
- vegetation clearance that is associated with earthworks, which is included as part of the definition of vegetation clearance; and
- earthworks associated with the maintenance of sports fields, landscaping or gardens, existing farm tracks, private roads, private ways, dams, farmyards, drains, farm service areas, silage pits, and fences {EW 919.4 and others}, which are not managed by the Plan. {RU cl.16}
- earthworks that meet the definition of natural hazard mitigation earthworks. {PO cl.16}

The following are managed as sub-activities of earthworks: {PO cl.16}

- earthworks – large scale {PO cl.16}
- earthworks – small scale {PO cl.16}

Earthworks are an activity in the earthworks activities category. {PO cl.16}

- Amend the definition of 'earthworks – small scale' to move inclusions to the Earthworks – small scale thresholds performance standard (attributed to cl. 16):

#### **Earthworks - small scale**

Include:

- ~~Post holes for the erection of fences~~ {EW cl. 16}<sup>1</sup>
- ~~Post holes for permitted or approved buildings or signs~~ {EW cl. 16}<sup>1</sup>
- ~~Driving of piles for building foundations; and~~ {EW cl. 16}<sup>1</sup>

~~Earthworks that meet the scale thresholds for earthworks – small scale thresholds performance standard, as set out in the earthworks performance standards in the management and major facilities zones~~ {EW cl. 16}

Earthworks – small scale are a sub-activity of earthworks. {PO cl.16}

<sup>1</sup> Moved to Rule 8A.5.1.1 Earthworks – small scale thresholds. Any amendments to provisions as a result of submissions are shown there. {EW cl.16}

- Amend the earthworks – small scale thresholds performance standard (now Rule 8A.5.1) to include earthworks for the erection of new fences, or the construction of walking tracks or vehicle tracks (attributed to submission reference EW 388.4 and 911.1):

#### **8A.5.1 earthworks – small scale thresholds**

##### **8A.5.1.1 General**

The following earthworks are always considered earthworks – small scale:

- a. post holes for the erection of fences;
- b. post holes for permitted or approved buildings or signs;
- c. driving of piles for building foundations;
- d. earthworks in the Port Zone;
- e. earthworks in the Rural or Rural Residential zones, outside flood hazard overlay zones, associated with burying material infected by unwanted organisms as declared by the Ministry for Primary Industries' Chief Technical Officer or an emergency declared by the Minister for Primary Industries under the Biosecurity Act 1993; {EW 1090.2}

- f. subject to an approved building consent, except in a Rural or Rural Residential Zone or where they occur greater than 1.8m from the footprint of the building; {EW 308.374}
  - g. earthworks for the erection of new fences {EW 388.4} or the construction of walking tracks or vehicle tracks, where the fence or track is associated with a permitted land use of city-wide activity, provided that the earthworks: {EW 388.4 and 911.1}
    - i. do not result in a change in finished ground level that exceeds 1m; and
    - ii. do not exceed 2m in width if located in an ASBV or ONF, ONCC, HNCC or NCC overlay zone, or 3m in width outside these areas. {EW 388.4 and 911.1}
  - h. earthworks ancillary to the operation, repair, and maintenance of the roading network; and
  - i. earthworks ancillary to forestry.
- Consequentially add new definition of drain (attributed to submission reference EW 919.4 and others):

Drain {EW 919.4 and others}

Artificial channel or subsurface conduit (e.g. mole drain, tile drain or drainage tunnel) constructed to either lower the water table or divert water, excluding a water race. {EW 919.4 and others}

### **3.3.4 Requests to exempt foundation earthworks approved by building consent from earthworks standards**

- 100. The *University of Otago* (OS308.374) requested that foundation earthworks approved by building consent are exempt from the earthworks performance standards as they considered that in these circumstances any amenity effects are negated by the fact that the building will cover the foundations, and safety and stability issues are covered by the building consent. Therefore, no resource consent should be required.
- 101. Similarly, *Rural Contractors New Zealand Incorporated* (OS911.1) and *AgResearch Limited* (OS924.1 and OS924.18) sought earthworks "within the building footprint identified on a building consent, or required outside the building footprint to maintain stable slopes for the authorised construction work", be permitted.
- 102. *Federated Farmers* (FS2449.35, FS2449.360) supported the submissions of both *Rural Contractors New Zealand Incorporated* (OS911.1) and *AgResearch Limited* (OS924.1), while *Horticulture New Zealand* (FS2452.70) supported the submission of *AgResearch Limited* (OS924.18).
- 103. The Reporting Officer recommended that the *University of Otago* (OS308.374), *Rural Contractors NZ* (OS911.1) and *AgResearch Limited's* (OS924.1, OS924.18) submissions be rejected. He noted that the driving of piles for building foundations was already included under the definition of earthworks – small scale and, therefore, was a permitted activity.
- 104. However, he felt that the other requests were inappropriate as the 2GP provisions sought to manage the broader range of effects of earthworks than the Building Act, including effects beyond the site, and, therefore, were complementary, rather than overlapping (s42A Report, Section 5.8.2, p. 87 and Section 5.11.4, p. 108).
- 105. Mr Murray Brass appeared for the *University of Otago* (OS308.374). He considered that any effects on amenity are negated by the fact that the building will cover the foundations. In terms of safety and stability issues, these are covered by the building



consent process, whereas, any sediment run-off and changes to drainage patterns are controlled through the relevant regional plans and rules (Statement of Evidence, pp. 1-2).

106. Mr Brass also noted that although the original submission requested that this issue be addressed by changes to the performance standards, he considered that it would more effectively be addressed in the Activity Status provisions of Rule 34.3.4 by adding a permitted activity for 'all earthworks which are ancillary to building works and are covered by the building consent for those works' (Statement of Evidence, p. 3).
107. *AgResearch Limited* (OS924.1, OS924.18) called Mr Graeme Mathieson (planning consultant). He disagreed with the Reporting Officer and described that the adverse effects of foundation earthworks on visual amenity or character was not a legitimate concern for the Invermay and Hercus Zone (where AgResearch is located) because these sites were not located in sensitive areas (e.g. landscape, coastal, natural feature overlays), and he considered it was unnecessarily restrictive (Statement of Evidence, pp. 2-3).
108. The Reporting Officer revised his recommendations in response to the *University of Otago* and recommended that a rule be drafted to enable earthworks associated with an approved building consent to be exempt from the scale threshold limits for earthworks – small scale, and for earthworks supporting a cut: the setback from property boundary, buildings, structures and cliffs earthworks performance standard. He suggested that the wording be drafted with input from DCC's Resource Consent team, Building Services, a geotechnical consultant, and the submitter (Revised Recommendations, p. 6).
109. We sought clarification on what earthworks exemptions were appropriate when the site and/or activity were already subject to a building consent. We requested a collaborative approach to this investigation, with the DCC and University of Otago working together to develop an appropriate approach to the exemption.
110. The Reporting Officer, after liaison with the University of Otago, DCC Resource Consents Planners and Building Services officers, prepared a memorandum entitled "Earthworks Exemption for Approved Building Consents" dated 24 July 2017, that contained a revised recommendation to amend Rule 8A.5.1.a earthworks – small scale thresholds as follows:

*"vii Earthworks subject to an approved building consent or where they occur greater than 1.8m from the footprint of the building; and..."*
111. The memorandum recommended an exemption for earthworks subject to an approved building consent from the earthworks – small scale thresholds, but recommended that these earthworks still be subject to the performance standards for:
  - archaeological sites
  - setback from property boundary, buildings, structures and cliffs
  - setback from national grid
  - setback from network utilities
  - sediment control
  - removal of high class soils; and
  - NZ Environmental Code of Practice for Plantation Forestry.
112. The reasons set out were that these performance standards manage effects, which are not considered through the Building Consent process (Earthworks Exemption for Approved Building Consents Memorandum, pp. 2-3).

### 3.3.4.1 Decision and reasons

113. We accept in part the submission from the *University of Otago* (OS308.374), and the submissions of the *Rural Contractors New Zealand Incorporated* (OS911.1), and *AgResearch Limited* (OS924.1, OS924.18). We agree with the recommendation of the Reporting Officer outlined in the Earthworks Exemption for Approved Building Memorandum dated 24 July 2017, around how to give partial relief to this submission (to include an exemption to the small-scale thresholds standards for earthworks subject to an approved building consent where they occur within 1.8m of the footprint of the building). However, we do not agree that this exemption should apply in the Rural and Rural Residential Zones, where there is more propensity for earthworks even within these parameters to have adverse visual, landscape, and natural landform effects.
114. We accept the evidence of Mr Graeme Mathieson and advice from Mr Freeland that to avoid duplication of process, in this case between the Building Act and the 2GP provisions, that an exemption is warranted. We do not feel however that we received sufficient evidence relating to these types of earthworks outside of urban areas, particularly in rural or non-urban areas which have a more sensitive landscape character including highly visible areas such as on hilltops, to convince us that we should relax the rule in those areas. We consider that earthworks associated with buildings and site development may have adverse effects on rural amenity that will not be properly considered via the building consent process or addressed through plan rules managing buildings. We, therefore, consider it is appropriate for earthworks for foundations in these zones to have to meet all of the standards.
115. We decided not to exempt earthworks subject to an approved building consent where they occur more than 1.8m from the footprint of the building from the other earthworks standards as we consider that various effects will not be considered through the Building Consent process, for instance related to sediment control, setbacks from property boundary, and setbacks from network utilities.
116. The amendments required for this decision:
  - Amend the Earthworks – small scale thresholds performance standard (Rule 8A.5.1.1) to add a new Rule as follows:

“f. earthworks subject to an approved building consent, except in a Rural or Rural Residential zone or where they occur greater than 1.8m from the footprint of the building;” {EW 308.374}
117. See Appendix 1 (amendments attributed to EW 308.374).
118. While considering exemptions for earthworks subject to an approved building consent from the Earthworks – small scale thresholds performance standard (Rule 8A.5.1.1) we realised that retaining walls were managed twice in the Plan in terms of bulk and location. Firstly, through the setback from property boundary, buildings, structures and cliffs performance standard (Rule 8A.5.4), and secondly through the management and major facility zone provisions controlling the bulk and location of structures. We think this is unnecessary, and potentially confusing for Plan users. As retaining walls are always associated with earthworks, and the earthworks performance standard is more specific and linked to the potential effects of failure of retaining walls, our preference is to manage retaining walls for this purpose as part of the earthworks rules.
119. However, in heritage precincts they are also managed in terms of their effects on heritage streetscape character. We have therefore decided to remove retaining walls from the definition of ‘structures’, except to the extent that they are managed for their effects on heritage streetscape character.

120. As a consequential change we have amended the definition of 'retaining walls' and the nested table to clarify this relationship.

### **3.3.5 Request to exempt earthworks associated with the Biosecurity Act 1993**

121. *Horticulture New Zealand* (OS1090.2) sought that earthworks associated with burying any infected material under the Biosecurity Act 1993 be exempt from all earthworks standards through adding it as an exemption through an amendment to the definition of earthworks.
122. The Reporting Officer recommended that this request be rejected because the Biosecurity Act allowed the responsible Minister to exclude actions from Part 3 of the RMA, so it was not necessary to provide exclusion in the 2GP. He also outlined that these rules are appropriate in determining suitable sites for disposal of these materials and avoiding inappropriate earthworks in potentially sensitive areas such as flood hazard overlay zones (s42A Report, Section 5.1.1, p. 27).
123. Ms Wharfe, the planning consultant called by *Horticulture New Zealand*, clarified that the provisions in the Biosecurity Act that override the RMA are only when an emergency is declared by the Minister, which has not happened since the Biosecurity Act was enacted in 1993. She also described that the earthworks involved would be digging a hole, placement of infected material in the hole and then filling in and covering, with limited change to ground level and with no cut and fill. She also outlined that it became apparent in the Bay of Plenty PSA infection on kiwifruit that the thresholds for earthworks in the District Plan presented barriers to the rapid response required (Statement of Evidence, pp. 2-4).
124. Ms Wharfe also described that although this exclusion was sought by *Horticulture New Zealand* via the earthworks definition, an alternative means of providing a similar outcome would be to include a permitted activity rule for disposal of material infected by unwanted organisms outside flood hazard overlay areas (Statement of Evidence, p. 4).
125. In response to the evidence of Ms Wharfe, the Reporting Officer revised his recommendation, and recommended amending the definition of earthworks to exempt:

*"Earthworks associated with burying material infected by unwanted organisms as declared by the Ministry for Primary Industries' Chief Technical Officer or an emergency declared by the Minister for Primary Industries under the Biosecurity Act 1993"* (Revised Recommendations, p. 3).

#### **3.3.5.1 Decision and reasons**

126. We accept in part the submission by *Horticulture New Zealand* (OS1090.2) to exempt earthworks associated with burying any infected material under the Biosecurity Act 1993, based on the evidence by Ms Wharfe. We accept that it is important to not create barriers to a rapid response in burying material infected by unwanted organisms.
127. However, we think this will only be necessary for Rural and Rural Residential Zones, and we accept the original evidence of the Reporting Officer that this should not occur inside flood hazard overlay zones because of the sensitivity of these areas.
128. Therefore, instead we have amended the Earthworks - small scale thresholds performance standard (Rule 8A.5.1) so that the following earthworks will always be considered as Earthworks - small scale:

"e. earthworks in the Rural or Rural Residential zones, outside flood hazard overlay zones, associated with burying material infected by unwanted organisms as declared by the Ministry for Primary Industries' Chief Technical Officer or an emergency declared by the Minister for Primary Industries under the Biosecurity Act 1993." {EW 1090.2}

129. This amendment to Rule 8A 5.1.1.e is shown in Appendix 1 attributed to submission reference EW 1090.2.

### **3.4 Request for amendment to earthworks small scale thresholds standards**

#### **3.4.1 Background**

130. The 2GP manages which earthworks are permitted versus which require consent as a Restricted Discretionary activity via the splitting of earthworks into earthworks – small scale and earthworks – large scale, with earthworks – small scale permitted in all locations, and earthworks – large scale requiring a consent in all locations with additional assessment matter applying in Natural Environment overlays.

131. The determination of which earthworks are considered small scale is done via:
1. the definition of earthworks – small scale, which defines some types of earth disturbance as always being small scale; and
  2. meeting the standard for 'Earthworks – small scale thresholds'. This standard includes thresholds for:
    - Maximum change in ground level
    - Maximum area
    - Maximum volume of combined cut and fill.

132. Each of the standards in the 'Earthworks – small scale thresholds' also has some exemptions.

##### **3.4.1.1 Request to provide for underground storage tanks**

133. *The Oil Companies* (OS634.20) sought that earthworks for the maintenance and replacement of underground petroleum storage tanks (on a like for like basis), and for the installation, replacement or upgrade of underground infrastructure in general, be provided for as a permitted activity. The submitter suggested that this could be achieved by amending provisions so that earthworks of this kind are treated in the same way as earthworks ancillary to network utilities – i.e. exempt from maximum volume thresholds, and only required to comply with the control on change to finished ground level.

134. The submitter made this request on the basis that, if not exempt from volume thresholds, earthworks for the replacement or removal of the storage tanks may trigger a consent requirement in areas where the threshold is low, such as hazard overlays. Of the 21 service stations operated by *the Oil Companies*, the submitter indicated that 18 are within one or more hazard overlay zones. The submitter did not consider it necessary to require consent for earthworks associated with underground storage tanks in overlay zones, noting that they are unlikely to give rise to the potential effects of concern to the DCC (as set out in Policy 11.2.1.16); in the submitter's view, earthworks of this kind will not obstruct or impede flood water or create, exacerbate or transfer risk from natural hazards (Submission, para. 8.8-8.9).

135. In the submitter's view, the effects of earthworks for the replacement or removal of underground storage tanks are already appropriately managed via regional plan provisions and the NES for Assessing and Managing Contaminants in Soil to Protect Human Health; therefore, there is "no need for a further layer of regulation" (Submission, para 8.7).
136. The Reporting Officer noted that in the Network Utilities and Energy Generation Section 42A Report, the Reporting Officers had recommended that the definition of network utilities be amended to include any structure, systems, services and networks associated with the transmission and distribution of petroleum, biofuel, or geothermal energy. Further, he noted that if this recommendation was accepted, underground storage tanks would be treated as a type of underground or internal network utilities activity. Therefore, the earthworks required for these tanks would be treated as earthworks ancillary to network utilities, which would achieve the outcome sought by *the Oil Companies*. He also noted his recommendation to clarify that 'change in ground level' was intended to mean the level of the ground after all works are completed. The Reporting Officer considered that, if these other recommended changes were made, the amendment requested by the *Oil Companies* was unnecessary; therefore, he recommended it be rejected (s42A Report, p. 94).
137. At the hearing, *the Oil Companies* (OS634.20) called Mr Mark Laurenson (planning consultant) who generally supported the s42A Report recommendations but sought clarification that earthworks associated with underground fuel storage tanks would be included in the exemptions proposed for underground infrastructure (Statement of Evidence, pp. 4-5, and p. 10).
138. The Reporting Officer provided a revised recommendation that the rules be amended to clarify that underground fuel storage systems are managed in the same way as underground infrastructure (Revised Recommendations, p. 2).

#### 3.4.1.2 Decision and reasons

139. We accept the submission of *the Oil Companies* (OS634.20), for the reasons given in their submission; we agree that earthworks for the maintenance and replacement of underground petroleum storage tanks (on a like for like basis) should be provided for as a permitted activity, subject to the same performance standards as other earthworks ancillary to network utilities. These performance standards (as amended by our other decisions in this report) include: maximum change in finished ground level; performance standards relating to archaeological sites, batter gradients, setback from National grid, sediment control, and removal of high class soils. We note that earthworks ancillary to network utilities are exempt from: volume and area controls; the setback from property boundary, building, structures and cliffs; and the setback from network utilities.
140. We agree with the Reporting Officer that the most appropriate way to achieve this outcome is by treating underground fuel storage tanks, and other structures associated with "the transmission and distribution of petroleum, biofuel, or geothermal energy" as a type of network utility, as recommended in the Network Utilities and Energy Generation Section 42A Report. We consider that our amendments to the definitions of "network utilities" and "network utility structure", set out in Section 4.2.7 of the Network Utilities Decision, achieve this.

## 3.5 Other earthworks standards

### 3.5.1 Batter Gradient Performance Standard

#### 3.5.1.1 Background

141. Rule 8A.5.3 (based on the notified standard included in all management and major facility zones) is:
1. Earthworks must:
    - i. have a maximum cut batter gradient of 1:1 (i.e. rising 1m over a 1m distance); and
    - ii. have a maximum fill batter gradient of 2:1 (i.e. rising 1m over a 2m distance).
  2. Earthworks ancillary to forestry are exempt from the batter gradient performance standard.

#### 3.5.1.2 Submissions

142. *Nigel Harwood* (OS96.5) opposed the maximum batter gradient of 1:1 and sought that the standard be amended to allow engineering judgement to be included within the rule. The submitter stated that cuts in rock do not need to be on a 1:1 batter to be stable; this can be seen on the submitter's property. *Mr Harwood* considered that geotechnical knowledge should be allowed to be used in assessing what the cut and fill batters should be.
143. *Michael Doherty* (OS695.7) sought that the batter gradient requirements in the residential zones (Rule 15.6.2.3) be reduced to ensure useful access to a permitted residential property for allowed purposes is not adversely impacted by the proposed provisions.
144. *Timothy George Morris* (OS951.58) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.58) sought that the batter gradient standard in the rural zones (Rule 16.6.1.3) either be removed, or amended, to make it appropriate for all earth materials and to provide for specific engineering design. *Mr Morris* considered that the current provisions are too general, are not suitable for all earth materials and do not allow provision for specific engineering design as a permitted activity. *Geoff Scurr Contracting Limited* (FS2391.31) supported *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.58) stating they concurred with the submitters' reasons.
145. The Reporting Officer recommended, based on expert advice from *Mr Lee Paterson* (Natural Hazards Advisor to the DCC) that the submissions be rejected and the batter gradient standards remain as notified (s42A Report, Section 5.6.3, p. 66).
146. *Mr Paterson* stated in his written evidence that, "It is possible that uncontrolled development beyond these levels could foreseeably result in detrimental or hazardous outcomes for the developer and adjacent landowners". *Mr Paterson*, in his evidence, agreed that there may be instances where this greater earthwork may be undertaken without creating hazard, but considered that these situations should be addressed on a case-by case basis as a specifically consented activity.
147. *Nigel Harwood* appeared at the hearing and stated that the batter gradient performance standard should enable expert advice through a geotechnical report to be implemented, but if not provided, then the batter gradient performance standard can apply. *Tracy Scurr* on behalf of *Geoff Scurr Contracting Limited* and *Rob Morris* on behalf of *RG and SM Morris Family Trust* also appeared but did not talk explicitly on amendments to the batter gradient standard.

148. Following the hearing, the Reporting Officer noted that it is ultra vires to reserve discretion to DCC in the manner suggested by *Mr Harwood*, and to control the quality of the report and technical expertise of the report writer. The Reporting Officer then reiterated the s42A Report recommendation to retain the batter gradient standard.

### 3.5.1.3 Decision and reasons

149. We reject the submissions of *Michael Doherty* (OS695.7), *Nigel Harwood* (OS96.5), *Timothy George Morris* (OS951.58) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.58) which sought amendment to the batter gradient performance standard. In making this decision we have relied on the evidence of Mr Paterson that gradients beyond the notified levels could have adverse effects for the developer and adjacent landowners, so the scrutiny of a consent process is warranted. We therefore retain Rule 8A.5.3 as notified.

## 3.5.2 Maximum change in ground level

### 3.5.2.1 Background

150. In line with the decision in Section 3.2 to move the earthworks provisions into a new Section 8A, the earthworks – small scale thresholds performance standards have been carried over from the sections.
151. The earthworks – small scale thresholds performance standard (Rule 8A.5.1) includes a standard for 'Maximum change in ground level' (Rule 8A.5.1.3). Earthworks that exceed the change in ground level threshold are considered earthworks - large scale, and are treated as restricted discretionary activities.

### 3.5.2.2 Clarification of how ground level is measured

152. *The Oil Companies* (OS634.26) sought that the change in ground level threshold be amended in all management zones to clarify that the requirement applies to the 'finished' ground level.
153. The Reporting Officer recommended that the submission of *the Oil Companies* (OS634.26) be accepted and that "change in ground level" should be amended to "change in finished ground level" to aid in Plan clarity (s42A Report, Section 5.6.4, p. 76).
154. The Reporting Officer recommended that a new definition of 'finished ground level' be included in the 2GP, as follows:
- "The level of the ground after all works are completed, including the level of the ground adjoining any structure or building that is set into the ground e.g. a utility pole"* (Revised Recommendations, p. 2).
155. The Reporting Officer also stated that the "intent is to provide for poles without breaching the earthworks performance standard" (Revised Recommendations, p. 2).
156. Mr Mark Laurenson, the planning consultant called by *the Oil Companies*, generally supported the s42A recommendations but reiterated points raised in submissions: in particular, concern about the meaning of 'finished ground level'. *Aurora Energy Limited* also tabled evidence supporting the recommendation of the s42A Report to amend the plan to refer to 'finished ground level'.

### 3.5.2.3 Decision and reasons

157. We accept the submission of *the Oil Companies* (OS634.26). We accept the evidence of Mr Laurensen and Mr Freeland that support the replacement of 'change in ground level' with 'change in finished ground level', and the addition of a definition of 'finished ground level' in the 2GP.
158. Our reason is that the change will improve Plan clarity, as the original intent of the provisions was to be applied to finished ground level.
159. The amendments required for this decision, including consequential amendments are:
- Amend Rule 8A.5.1.3 as follows:  
"Maximum change in finished ground level" {EW 634.26}
  - Add a new definition as follows:  
"Finished Ground Level  
  
The level of the ground after all works are completed, including the level of the ground adjoining any structure or building that is set into the ground e.g. a utility pole." {EW 634.26}
160. See Appendix 1 (amendments attributed to EW 634.26).

### **3.5.3 Maximum permitted ground level in Mercy Hospital Zone**

161. *Mercy Dunedin Hospital Limited (MDHL)* (OS241.47) sought that the maximum permitted change in ground level was increased to match that in the operative District Plan (1.5m to 2.0m) in the Mercy Hospital Zone. As the Mercy Hospital Zone encompasses land with reasonably undulating topography, the submitter stated that any future development was likely to require earthworks and retaining measures. *MDHL* considered that the large size and the treed nature of the site meant that earthworks could be managed without creating physical and visual effects on properties outside the zone. This submission was opposed by *Ludgate Sharp Family Trust* (FS2436.9) which considered the existing maximum change in ground level threshold was appropriate. The *Ludgate Sharp Family Trust* highlighted a recent experience with the resource consent for a car park close to Newington Avenue, which required the removal of extensive vegetation; this example, in their view, reinforced the need to retain the maximum change in ground level threshold as notified.

#### **3.5.3.1 s42A Report**

162. The Reporting Officer recommended, based largely on the advice of Mr Paterson relating to the residential zoning of nearby land, that *MDHL's* submission (OS241.47) should be rejected, and the maximum change in ground level threshold should remain as notified (s42A Report, Section 5.11.2, p. 96).

#### **3.5.3.2 Evidence from hearing**

163. Mr Stephen Tuck the resource management consultant called by *MDHL* tabled evidence relating to the notified change in ground level. Mr Nigel Bryce the planning consultant called by the *Ludgate Sharp Family Trust* spoke of his client's major concern, which related to vegetation clearance. In response to concerns about vegetation clearance, the Reporting Officer noted at the hearing that "no current or proposed rules prevent this" and noted that this was also true of the "neighbouring residential zoning, and the default zoning for Mercy Hospital should they decide to dispose of part of their property."



### 3.5.3.3 Decision and reasons

164. We reject the submission by *MDHL* (OS241.47) to increase the maximum change in ground level for earthworks in the Mercy Hospital Zone from 1.5m to 2.0m, and therefore accept the further submission by the *Ludgate Sharp Family Trust* (FS2436.9) that opposed the change. We rely on the advice of Mr Paterson and note that a 1.5m change in ground level is consistent with the surrounding residential zoning and the default residential zoning of the Mercy Hospital Zone.

### 3.5.4 Request to exempt network utilities from 'maximum change in ground level'

165. *Aurora Energy Limited* (OS457.217) sought an exemption from 'maximum change in ground level'. They stated that if earthworks ancillary to network utilities were required to comply with the change in ground level thresholds for the various zones, this would result in resource consent requirement for almost every activity undertaken by *Aurora Energy Limited* to operate and maintain its network.
166. The Reporting Officer disagreed with *Aurora's* submission (OS457.217), and noted that the 'change in ground level' requirement was intended to apply to the change in ground level at the completion of the earthworks, not the maximum depth of cut or fill undertaken during an earthworks project. He also noted that it was unlikely that utility providers will need to significantly alter ground level for the operation of utilities, such as pole, pipe or cable installations and therefore recommended that *Aurora's* submission be rejected (s42A Report, Section 5.11.1, p. 93).

#### 3.5.4.1 Decision and reasons

167. We reject the submission by *Aurora Energy Limited* (OS457.217) to exempt network utilities from the performance standard earthworks small scale threshold, however, we note amendments to Rule 8A.5.1.3 to refer to 'finished ground level' and add a definition of 'finished ground level' in response to OS634.26 in Section 3.5.3 above goes some way to address the concerns raised by *Aurora*. We consider these amendments will ensure that routine operation and maintenance of *Aurora's* assets would not be unduly constrained.

### 3.5.5 Maximum volume of cut and fill

#### 3.5.5.1 Requests to amend the maximum volume of earthworks in the Port Zone and exempt this zone from threshold in proximity to MHWS

168. The small-scale thresholds performance standard applying in the Port Zone is set out in Rule 30.6.1.1 (new Maximum Volume of Combined Cut and Fill performance standard, Rule 8A.5.1.5) as follows:

Zone/Area		1. Port Zone	2. Within 5m of a water body <sup>1</sup> or MHWS
i	Maximum change in ground level	1.5m	0.5m
i	Maximum volume of combined cut and fill	30m <sup>3</sup> per 100m <sup>2</sup> of site	1m <sup>3</sup>
i	Maximum area	—	25m <sup>2</sup>

<sup>1</sup>See Rule 10.3.3 for how setbacks from waterbodies will be measured.

169. Unlike the earthworks standards for most other zones, the Port Zone provisions did not include different slope categories to reduce the volume of earthworks permitted on steeper slopes.
170. *Port Otago Limited (POL)* (OS737.30) sought to amend the maximum volume of cut and fill allowed in the Port Zone (Earthworks - Small Scale Thresholds performance standard – formerly Rule 30.6.1.1 - new Rule 8A.5.1.5) to be 100m<sup>3</sup>, which is the standard included in the operative Plan (Rule 17.7.3(ii)). The permitted threshold for earthworks in the Port Zone had changed from the Operative Plan scale threshold limit of 100m<sup>3</sup> volume of excavation and fill on a site with an area of 2ha on a 2-yearly basis, to 30m<sup>3</sup> volume per 100m<sup>2</sup> of site area on a 2-yearly basis in the 2GP, or just 1m<sup>3</sup> where carried out within 5m of MHWS. We note that the landholding of *Port Otago Limited* in the Port Zone is approximately 26ha, so, with the exception of earthworks in proximity to MHWS, the 2GP approach enables significantly more earthworks.
171. In addition, *POL* sought that the smaller threshold for earthworks within 5m of MHWS, not apply in the Port Zone.
172. *POL* noted that the Earthworks controls are less enabling than the current operative Plan provisions for the Port Zone, and considered that no specific reason had been identified for this.
173. *POL's* view was that to enable Port activities, earthworks are invariably necessary in close proximity to the coast and the 2GP rules will result in unnecessary consent requirements and compliance costs for earthworks associated with normal port activities. In *POL's* view, a permitted activity standard requiring erosion and sediment control measures to be installed, could address any issues relating to earthworks within proximity to the coast.
174. This submission point was supported by *the Oil Companies* (FS2487.116) who also considered that the proposed threshold was too restrictive within an operational Port Zone.
175. The Reporting Officer recommended that the submission of *POL* and further submissions of *the Oil Companies* were accepted, and that as long as all other performance standards were met, notably sediment control rules, that earthworks in the Port Zone should be exempt from the restrictive thresholds applying within 5m of a water body or the MHWS. The Reporting Officer acknowledged that due to the nature of Port activities, earthworks exceeding 1m<sup>3</sup> in volume will often be necessary within 5m of the MHWS, and given there was less risk of contamination to surrounding water bodies in the Port Zone (due to the predominantly flat nature of the site, and the fact that it is entirely asphalted) it seemed unduly restrictive to require resource consent for these earthworks (s42A Report, Section 5.6.4, p. 77).
176. At the hearing, Mr Len Andersen, legal counsel called by *POL*, tabled legal submissions that supported the Reporting Officer's recommendation in the s42A Report. Following the hearing, the Reporting Officer reiterated the s42A Report recommendations to retain earthworks thresholds but to remove restrictions relating to proximity to a water body in the Port Zone.

### 3.5.5.2 Decision and reasons

177. When considering the submissions relating to Port Zone 2GP provisions, we remained cognisant that earthworks can have adverse effects on surrounding properties. These include safety issues relating to the exacerbation of hazards, as discussed above. Other issues arise when poorly contained sediment run-off enters surrounding sites and water bodies, bringing contaminants and debris. These issues, along with dust, soil deposits, and noise from vehicle movement can create both amenity and health concerns and can impact on the cultural values of Manawhenua.

178. Sometimes industries or groups need to undertake earthworks in sensitive areas. As a result, 2GP earthworks rules can limit the ability of essential services and industries, such as ports, to undertake earthworks. More flexible exemptions, therefore, have been proposed for some port-related activities.
179. We accept the submission of *Port Otago Limited* (OS737.30) and the further submissions of *The Oil Companies* to be exempt from restrictions on depth, volume and area for earthworks carried out in the Port Zone within 5m of a water body or MHWS. In making this decision, we agree with the Reporting Officer's reasons and subsequent recommendation in the s42A Report.
180. The amendments required for this decision, including consequential amendments are:
- Amend the Earthworks – small scale thresholds (Rule 8A.5.1) to include earthworks in the Port Zone within the list of earthworks that are always considered earthworks – small scale and therefore exempt from the small-scale thresholds (rules 8A.5.1.3, 8A.5.1.4 and 8A.5.1.5).

The following earthworks are always considered earthworks - small scale:

d. earthworks in the Port Zone; {EW 737.30<sup>2</sup>}

<sup>2</sup> EW 737.30: Under notified Rule 30.6.1.1.a.iii.1, earthworks in the Port Zone were only exempt from the 'maximum area' element of the small-scale threshold. The exemption has been expanded, in response to EW 737.30, so that earthworks in the Port Zone are also exempt from the other elements of the scale threshold – i.e. 'maximum change in finished ground level' and 'maximum volume of combined cut and fill'.

181. See Appendix 1 (amendments attributed to EW 737.30 and others).

### 3.5.6 Request relating to the Residential Zones

182. *Michael Doherty* (OS695.1) sought amendments to earthworks thresholds in Residential Zones to allow for higher volumes of combined cut/fill in cases where property access for approved residential purposes would otherwise be adversely impacted by the proposed thresholds.
183. The Reporting Officer acknowledged that the earthworks provisions do restrict the ability of residents to develop their properties, including by establishing family flats and property access, but relied on the evidence of Mr Paterson that these activities should be undertaken only where it can be shown that no adverse effects will arise from earthworks exceeding the permitted thresholds. He recommended that the submission be rejected and that the volume of cut and fill thresholds for earthworks in residential zones be retained without amendment (S42A, Section 5.6.4, pp. 76-77)

#### 3.5.6.1 Decision and reasons

184. We reject the submission of *Michael Doherty* (OS695.1) and have retained the earthworks – small scale maximum volume of combined cut and fill thresholds for residential zones. Our decision is based on the expert advice of Mr Paterson that the volume thresholds are a reasonable level to require a consent to assess the potential for adverse effects and apply conditions on consent or other restrictions on what is consented as required.

### 3.5.7 Time Period and Distance Restrictions

#### 3.5.7.1 Background

185. Earthworks – small scale thresholds in rural zones (outside of overlays) are given as maximum volumes per 100m<sup>2</sup> of site area (for slopes over 26 degrees the permitted amounts are very restricted). However, within overlays the total volumes to be small scale are given as a total volume per site. In addition, in several overlays there are additional restrictions on the maximum area of earthworks.
186. The maximum volumes are calculated based on the cumulative total of earthworks on any site in a two calendar-year period, or for the Rural Zones, on any part of a site or property that is no closer than 1km from any other earthworks in the same two calendar-year period (Rule 16.6.1.1.d, reformatted as Rule 8A.5.1.5).
187. This effectively enables earthworks at a certain distance from each other on a site to be 'zeroed' or treated as a separate site. This was based on the premise that over a certain distance effects would not accumulate.
188. In terms of the site size required to take advantage of this rule; to be allowed more than one area up to the maximum amount required on a minimum site size over 100ha (calculated based on assuming a square site of 1000m by 1000m).
189. Our understanding is that the two calendar-year limit attempts to strike a balance between enabling earthworks, preventing large-scale earthworks by iterative developments, and reducing the need for monitoring. If a shorter time-period was considered, then the amount of permitted earthworks would need to be reduced proportionally.

#### 3.5.7.2 Submissions

190. *Chris Walker* (OS289.13) sought that thresholds be calculated as the cumulative total of earthworks in one year, rather than a two-year period. In *Mr Walker's* view, a two calendar-year period was too long and would result in circumstances in which earthworks required towards the end of a project (which, by themselves, would satisfy the small-scale thresholds) are treated as large-scale. *Mr Walker* considered that this would be a particular issue during new building projects.
191. *Clifton Trust* (OS720.6) sought that the rule setting out the time period within which the small-scale earthworks threshold applies be amended for overlays or mapped areas. In the *Clifton Trust's* view, the proposed 'small-scale thresholds' rule is unnecessarily complex and confusing. The submitter considered that scale thresholds should be calculated for each overlay zone or mapped area.
192. *Timothy George Morris* (OS951.55) and *Timothy George Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.55) sought that the rule directing how thresholds will be calculated should be removed altogether; they considered it added unnecessary complexity. The latter submission was supported by *Geoff Scurr Contracting Limited* (FS2391.29) who also considered the rule to be confusing.
193. The Reporting Officer recommended that the submissions from *Chris Walker* and *Christopher Valentine* be rejected, and reference to the two-calendar year period be retained in Rule 16.6.1.1.d (or new Maximum area performance standard - Rule 8A.5.1.4) (s42A Report, Section 5.6.4, pp. 70-71). This recommendation was made to ensure larger scale earthworks are not undertaken incrementally over a series of years, while still enabling an appropriate amount of earthworks in the Rural Zone.
194. The Reporting Officer also recommended that the submissions of *Clifton Trust*, *Timothy George Morris*, *Timothy George Morris* (on behalf of *RG and SM Morris Family Trust*) and

*Geoff Scurr Contracting Limited* be accepted, in part, and that Rule 8A.5.1.4 be simplified and clarified; no revised drafting recommendation was provided within the s42A Report (s42A Report, Section 5.6.4, p. 74).

195. *Mr Valentine* appeared at the hearing and tabled evidence, but neither his discussion nor evidence referred to Rule 8A.5.1.4 and likewise, *Mr Rob Morris* also appeared but did not speak to this topic.
196. Ms Tracy Scurr, called by *Geoff Scurr Contracting Limited*, appeared at the hearing to discuss her concerns with the time period metric of Rule 8A.5.1.4. The Reporting Officer followed up by emailing both Ms Tracy Scurr (and Mr Tony Devereux, see below) with revised drafting of Rule 8A.5.1.4 and endorsement was gained for the revised recommendation by both submitters.
197. Following the hearing, the Reporting Officer provided the revised recommendation to us, recommending an amendment to Rule 8A.5.1.1.f so that within any overlay zone, mapped area or scheduled site, scale thresholds will be calculated as the cumulative total of earthworks on any site in a two calendar-year period; and outside any overlay zone, mapped area or scheduled site, scale thresholds will be calculated as the cumulative total of earthworks that are no closer than 1km to earthworks on any other part of the same site, in a two calendar-year period.
198. *Helen Skinner and Joseph O'Neil* (OS312.13) sought that earthworks – small scale thresholds relate per land area rather than per site, allowing more earthworks to occur over large sites. They suggested that the 'maximum area' threshold be amended to "m<sup>2</sup> per 2 hectares" (OS312.13).
199. Ms Skinner and Mr Tony Devereux for *Helen Skinner and Joseph O'Neil* appeared at the hearing and tabled evidence; their evidence and discussion at the hearing related to hazard and other overlays, and the question of whether small scale thresholds over these areas be calculated per site, rather than per area (e.g. per 100m<sup>2</sup>).
200. We sought further information from the Reporting Officer on the relative merit (or not) of adopting an 'area' versus 'site' approach over hazard overlays, but plan wide if appropriate. The Reporting Officer provided a memorandum ("Earthworks in hazard zones (distance calculation)", see Appendix 2) that contained a revised recommendation, supported by advice from Mr Paterson (DCC's consultant senior geotechnical engineer), to amend Rule 8A.5.1.4 (rather than the notified thresholds as requested by the submitter) to lessen the distance between earthworks from 1km to 400m in the Hazard Overlays of the Rural Zone, and 150m in the Rural Residential Zones. This may also be subject to a limit on the amount of earthwork volumes per minimum site size for the relevant Rural Zone, or per 2ha for a Rural Residential Zone e.g. a 31ha rural zoned site in a rural zone with a 15ha minimum site size could have two areas of earthworks volumes, or a 7ha rural residential site could have three areas of earthworks volumes.
201. We considered the Earthworks in hazard zones (distance calculation) memorandum at the Wrap-up Hearing on 8<sup>th</sup> December 2017. No submitters attended the hearing. We sought clarification from the Reporting Officer about the scope for recommending changes to the earthworks limits outside of the rural zones. The Reporting Officer checked submission OS312 and confirmed that the submission only requested a change to the rural provisions of the Plan, and accordingly revised his recommendation to be limited to the rural zones.

### 3.5.7.3 Decision and reasons

202. We reject the submissions of *Chris Walker* (OS289.13) and accept in part the submissions of *Clifton Trust*, *Timothy George Morris*, *Timothy George Morris (on behalf of RG and SM Morris Family Trust)* and *Geoff Scurr Contracting Limited*. Our decision,

which is based on a desire to improve Plan clarity, will result in an amendment to the City-wide Rule 8A.5.1.4 to clarify the way the threshold is calculated in Hazard Overlays of the Rural Zones.

203. In addition, we accept, in part, the submission of *Helen Skinner and Joseph O'Neil* (OS312.13) and have amended the distance metric of Rule 8A.5.1.5 from 1km to 400m in rural zones for those areas not within landscape or coastal character overlay zones, scheduled heritage sites, groundwater protection mapped areas, urban conservation mapped areas, ASBV, or within 20m of a water body or MHWS. We have limited the changes in the Overlay Zones to Hazard Overlay Zones, as this was supported by geotechnical expert evidence from Lee Paterson. No evidence was provided supporting changes to other Overlay Zones or 2GP provisions that reduce earthworks limits. This amendment increases the permitted level of earthworks at large rural zoned sites and goes some way towards addressing submitters' concerns (see also Section 3.5.7.2 above).
204. The amendments required for this decision, including consequential amendments are:
- Amend Rule 8A.5.1.5 (formerly Rule 16.6.1.1.d) as follows:

**8A.5.1.5 Maximum volume of combined cut and fill**

- b. The maximum volume of combined cut and fill set out in Rule 8A.5.1.5.a is the maximum cumulative volume on any site within any two calendar year period, except that in rural zones:
    - i. more than one earthworks activity up to the maximum volume stated in Rule 8A.5.1.5.a.i, vii, viii or ix may be undertaken provided that each earthworks activity is located at least ~~1km~~ 400m **{EW 312.13}** from any other earthworks taking place on the same site within the same two calendar year period; and
    - ii. more than one earthworks activity up to the maximum volume stated in Rule 8A.5.1.5.a.ii, iii, iv or v may be undertaken provided that each earthworks activity is located at least 1km from any other earthworks taking place on the same site within the same two calendar year period.
  - c. Where the part of the site in which the earthworks are located is in more than one slope category, the most restrictive volume threshold applies.
  - d. The following activities are exempt from this standard:
    - i. Earthworks ancillary to network utility activities.
    - ii. Earthworks in the rural zones as part of a farming activity for the construction of offal pits, silage pits and farm landfills (exempt from Rule 8A.5.1.5.a.i only).
205. See Appendix 1 (amendments attributed to EW 312.13).

### **3.5.8 Submissions to Amend Thresholds over Hazard Overlays of the DIA Zone**

206. *Dunedin International Airport Limited (DIAL)* (OS724.21) sought that earthworks in a Hazard 2 (Flood) Overlay Zone be permitted by right within the Dunedin International Airport Zone (Rule 24.6.3.1). *DIAL* did not consider that a restriction on earthworks within the Hazard 2 Overlay Zone was required for the Dunedin International Airport Limited Zone; the site is flat and earthworks of a scale that change or modify flood behaviour were, in *DIAL's* view, highly unlikely to occur. *DIAL* considered that the proposed performance standard was unduly restrictive, as cumulative earthworks over 20m<sup>3</sup> in a two-year period in the Hazard 2 (Flood) Overlay Zone would require resource consent. *DIAL* also sought a consequential amendment to Rule 24.9.3.2 (OS724.30), which provides for assessment of the effects of earthworks that contravene Rule 24.6.3.1 within hazard (flood) overlay zones. *Otago Regional Council* (FS2381.8) opposed these submission points, stating that it is important to have a control on how

much fill can be created in a flood hazard overlay zone to ensure any fill volume does not have an adverse impact on flood water movement. They submitted that the DCC should retain control over the maximum fill level.

207. The Reporting Officer recommended the submission of *DIAL* (OS724.21) be rejected based on expert advice from Mr Lee Paterson (s42A Report, Section 5.6.4, p. 72). Mr Paterson notes that:

*"the impact of earth works on various land zones in Dunedin depends on the nature of the prevailing ground conditions, and the steepness of topography, as well as the history of instability and known mapped hazards. This is a complex speciality in Dunedin, and he has adopted a defensible safe maximum for recommended thresholds on volume, depth and extent in relation to boundaries,"* (Statement of Evidence, paragraph 12).

208. In relation to *DIAL* (OS724.21) the Reporting Officer noted that, "the rules on deposition of fill proposed for the Hazard 2 (Flood) Overlay Zone are not site specific; they are applicable to the whole flood area to reduce the potential for increased ground level to result in displacement of water onto other sites".

#### 3.5.8.1 Decision and reasons

209. We reject the submission by *DIAL* (OS724.21) and have retained the earthworks in Hazard Overlay zones provisions. It is our view that to do otherwise would undermine the intent of hazard management as mandated to the DCC. This is supported by the evidence of Mr Paterson (also see Section 3.3).

### 3.5.9 Setback from property boundaries, buildings, structures and cliffs performance standard

#### 3.5.9.1 Background

210. Earthworks over 600mm in height or depth must be set back from: property boundaries, foundations of buildings, structures greater than 10m<sup>2</sup>, and the top or toe of any cliff, the following minimum distances:
- a. Earthworks not supported by retaining walls:
    - i. a distance at least equal to the maximum height of the fill, as measured from the toe of the fill (see Figure 16.6A);
    - ii. a distance at least equal to 1.5 times the maximum depth of the cut, plus 300mm, as measured from the toe of the cut (see Figure 16.6A); and
    - iii. 300mm, as measured from the crest of any cut (see Figure 16.6A).
  - b. Retaining walls supporting a cut or fill must be setback a distance at least equal to the height of the retaining walls (see Figure 16.6B), except:
    - i. retaining walls supporting a cut that have been granted building consent are exempt from this standard.
  - c. Earthworks ancillary to network utilities activities, earthworks ancillary to the operation, repair, and maintenance of the roading network and earthworks ancillary to forestry are exempt from the setback from property boundary, buildings, structures and cliffs performance standard.

### 3.5.9.2 Submissions

211. *Michael Doherty* (OS695.8) requested that the setback from property boundaries, buildings, structures and cliffs in the Residential Zones (Rule 15.6.2.4) be amended to allow for lesser setbacks in cases where useful access to a residential property would be adversely impacted by the proposed provisions.
212. The Reporting Officer recommended the submissions be rejected (s42A Report, Sections 5.6.2 and 5.6.4, p. 64 and p. 73, respectively). The recommendations were based on Mr Paterson's assessment which stated:

*"Our assessment is that the recommended setbacks in the Plan are appropriate for a permitted activity. It is possible that uncontrolled activity within these setbacks could foreseeably result in detrimental or hazardous effects near property boundaries for the developer and adjacent landowners. We agree that there may be instances where these setbacks may impede useful access, but recommended that these situations are addressed on a case-by case basis as a specifically consented activity. In which case, approval of the activity may be subject to provision and approval of specific professional advice or engineering judgement".*

213. In response to *Michael Doherty* (OS695.8), the Reporting Officer recommended this submission be rejected and referred, in the s42A Report, to Mr Paterson's assessment where he noted that recommended setbacks in the Plan are appropriate for a permitted activity, but it is possible that uncontrolled activity within these setbacks could foreseeably result in detrimental or hazardous effects. Further, Mr Paterson agreed that there may be instances where these setbacks may impede useful access but recommended that these situations are addressed on a case-by-case basis as a specifically consented activity.

### 3.5.9.3 Decision and reasons

214. We reject the submissions of *Michael Doherty* (OS695.8) and have retained the earthworks – small scale thresholds for residential zones. Our decision is based on the expert advice of Mr Paterson that the volume thresholds are a reasonable level to require a consent to assess the potential for adverse effects and apply conditions on consent or other restrictions on what is consented as required.

## 3.6 Earthworks Objective and Policies

### 3.6.1 Background

215. As discussed in Section 3.1 above, in the notified 2GP, the objective and policies for earthworks are included in each management and major facility zone of the 2GP. There are three policies in the majority of zones, with an additional policy in zones where forestry is provided for (rural, rural residential, recreation, and Invermay and Hercus zones). The wording of each objective and policy was the same in each zone

### 3.6.2 Earthworks Objective

216. The objective for earthworks (now Objective 8A.2.1) reads:

*"Earthworks necessary for permitted or approved land use and development are enabled, while avoiding, or adequately mitigating, any adverse effects on:*

*a. visual amenity and character*

*b. the stability of land, buildings, and structures; and*



*c. surrounding properties."*

### 3.6.2.1 Submissions

217. The following submitters submitted in support of the earthworks objective:

- The *Otago Chamber of Commerce* (OS1028.5) supported Objective 18.2.4 as notified.
- The *University of Otago* (OS308.344) sought that Objective 34.2.3 and associated Policies 34.2.3.1, 34.2.3.2 and 34.2.3.3 be retained as notified.

218. *Dunedin International Airport Limited (DIAL)* (OS724.7) sought amendment to Objective 24.2.3 (now Objective 8A.2.1) to limit the scope of environmental effects that are managed in 2GP earthworks rules to effects on surrounding properties that are not owned by *DIAL*. *DIAL* is concerned that the objectives and policies proposed in the 2GP are targeted towards achieving a high standard of amenity for airport users. *DIAL* considers that internal and onsite amenity is an issue for their control. In *DIAL*'s view, there is no valid resource management purpose served by the 2GP exerting internal amenity control at the airport.

219. *DIAL* requested that Objective 24.2.3 be amended as follows:

*"Earthworks necessary for permitted or approved land use and development are enabled, while avoiding, or adequately mitigating, any adverse effects on surrounding properties not owned by Dunedin International Airport Limited relating to:*

*a. visual amenity and character; or*

*b. the stability of land, buildings, and structures;*

*~~c. surrounding properties."~~*

220. *Mercy Dunedin Hospital Limited (MDHL)* (OS241.20) sought amendment to Objective 27.2.3 (now Objective 8A.2.1) as follows:

*"Enable earthworks necessary for ~~permitted or approved~~ land use and development ~~are enabled~~, while avoiding, remedying or ~~adequately~~ mitigating, ~~any~~ adverse effects on:*

*a. visual amenity and character;*

*b. the stability of land, buildings, and structures; and*

*c. surrounding properties."*

221. The submitter believed the phrase "permitted or approved" is unclear and tautological and can be deleted without compromising the integrity of the objective. The current drafting includes the term "adequate" which the submitter considered also unnecessary given the purpose of mitigation. The drafting furthermore arguably requires the avoidance or mitigation of adverse effects that are less than minor due to the use of the term "any". The submitter also considered the objective does not enable the remediation of effects, which is an option afforded by the RMA.

### 3.6.2.2 S42A Report

222. In response to *DIAL*'s submission, the Reporting Officer noted that the earthworks rules aim to prevent any building, structure or cliff (regardless of location) being compromised by earthworks. Effects on one property, such as instability of structures, have the potential to cause serious harm to inhabitants not only of that property, but also of surrounding properties. He was of the view that while it is appropriate to limit

consideration of effects on amenity to surrounding properties, he did not consider it appropriate to limit consideration of adverse effects of the stability of land, buildings and structures in the same way, given the potential risks to public health and safety. He, therefore, recommended rejecting the submission by *DIAL*.

223. The Reporting Officer did not agree with *MDHL* that the phrase “permitted or approved” is unclear, or tautological. He noted that “Permitted” refers to land use and development activities that are permitted activities in the plan. “Approved” refers to land use and development activities that have been approved via resource consent.
224. He also disagreed that the term “adequate” is unnecessary. He noted that the phrase “adequately mitigated” is recommended in the 2GP policy drafting protocol, which is discussed in the Plan Overview Section 42A Report (pp. 22-23). In the Earthworks Objective, the term “adequately” is used to recognise that the level of mitigation that decision-makers determine to be adequate may vary on a case by case basis, considering case-specific factors such as the sensitivity of the surrounding environment, the magnitude of the effect, and other factors such as the operational requirements of the land use or development activity. He therefore recommended rejecting the submission by *MDHL*.

#### 3.6.2.3 Hearing

225. Mr Steven Tuck, the planning consultant called by *MDHL*, supported the Reporting Officer’s intent to apply a drafting protocol to promote a consistent approach to the drafting of provisions throughout the 2GP (Statement of Evidence, p. 4).
226. Legal submissions tabled at the Major Facilities Hearing by *DIAL* did not address this submission point.

#### 3.6.2.4 Decision and reasons

227. We reject the *MDHL* (OS241.20) submission to amend the objective wording. The basis of our decision largely relates to our decisions on the 2GP drafting protocol and guidelines, which we discuss in the Plan Overview decision.
228. We reject the submission by *DIAL* (OS724.7) relating to only considering effects on surrounding properties not owned by *DIAL*. We accept the reasons outlined by the Reporting Officer and also note that the requested amendment would create an unusual and inappropriate level of detail for an objective and would be particularly inappropriate given our decision to move all the earthworks provisions into a citywide activities section.
229. This decision is also consistent with our approach to issues raised at the Commercial Advertising Hearing, where we came to the view that while *Dunedin International Airport Limited* is privately owned and operated, it is used as a public place and there is an expectation that public access is assured. Any effects on the *DIAL* land cannot be internalised; the public can be ‘exposed’ to any effects. As a result, the 2GP appropriately regulates all effects on the property.

#### 3.6.3 Earthworks ‘Policy 1’

230. As notified, the 2GP contained earthworks provisions in every Management and Major Facilities section. While there was some variation in the standards that applied in the different zones, the policy framework was consistent and typically contained three policies. ‘Policy 1’ was the basis for the batter gradient, and some of the setback performance standards, and the associated restricted discretionary activity status for contravention of the standards.
231. The first policy for earthworks (now Policy 8A.2.1.1) reads:

*"Require earthworks, and associated retaining structures, to be designed and located to avoid adverse effects on the stability of land, buildings, and structures by:*

*a. being set back an adequate distance from property boundaries, buildings, structures and cliffs; and*

*b. using a batter gradient that will be stable over time."*

### 3.6.3.1 Submissions

232. *KiwiRail Holdings Limited* (OS322.113, OS322.125 and OS322.134) submitted in support of Policies 17.2.5.1, 18.2.4.1 and 19.2.3.1 (equivalent of Policy 8A.2.1.1).

233. *DIAL* (OS724.8) requested that Policy 24.2.3.1 (now Policy 8A.2.1.1) be amended to refer to effects of earthworks on 'surrounding properties', rather than the effects of earthworks generally. *DIAL* considers that internal and onsite amenity is an issue for their control and that there is no valid resource management purpose served by the 2GP exerting internal amenity control at the airport.

234. *DIAL* suggested the following amendment to Policy 24.2.3.1:

Require earthworks, and associated retaining structures, to be designed and located to avoid adverse effects on the stability of land, buildings, and structures on surrounding properties by:

a. being set back an adequate distance from property boundaries, buildings, structures and cliffs; and

b. using a batter gradient that will be stable over time.

235. *MDHL* (OS241.21) requested that Policy 27.2.3.1 (now Policy 8A.2.1.1) be amended as follows:

Require earthworks, and associated retaining structures, to be designed and located to avoid, remedy or mitigate adverse effects on the stability of land, buildings, and structures by:

a. being set back an adequate distance from property boundaries, cliffs, and existing buildings, and structures ~~and cliffs~~; and

b. using a stable batter gradient ~~that will be stable over time~~.

236. *MDHL* considers that the exclusive use of the term 'avoid' may be problematic if interpreted as a requirement that development must not allow the occurrence of any adverse effect whatsoever. *MDHL* submitted that the terms 'remedy and mitigate' should be included to address this problem as this would align with Section 5 of the RMA. The submitter also considered that the phrase 'stable over time', in relation to batter gradients, is subjective, and requested that it be removed. Other minor changes were requested to improve the clarity of the wording. In terms of the use of the word 'avoid' in the policy *MDHL* argued "The exclusive use of the term 'avoid' may be problematic if interpreted as a requirement that development must not allow the occurrence of any adverse effect whatsoever (*Environmental Defence Society Inc. v The New Zealand King Salmon Co. Ltd* [2014] NZSC 38)". They suggested adding the terms 'remedy and mitigate' to align with Section 5 of the RMA and address this problem.

237. For subclause (a), *MDHL* suggested insertion of the word "existing" and re-ordering of the drafting to enhance the clarity of the provision and avoid the possibility of misinterpretation in relation to the required setbacks from buildings.

238. For sub-clause (b), *MDHL* argued the phrase “over time” is subjective and suggested the amendment to resolve this.

#### 3.6.3.2 S42A Report

239. The Reporting Officer noted that as discussed in relation to *DIAL*’s submission on the earthworks objective, the earthworks rules aim to prevent any building, structure or cliff (regardless of location) being compromised by earthworks. Effects on one property, such as instability of structures, have the potential to cause serious harm to inhabitants not only of that property, but also of surrounding properties (s42A Report, Section 5.2.3, p. 39).
240. While he was of the view it is appropriate to limit consideration of effects on amenity to surrounding properties, he did not consider it appropriate to limit consideration of adverse effects of the stability of land buildings and structures in the same way, given the potential risks to public health and safety.
241. The Plan Overview Section 42A Report (pp. 22-23) discusses the protocol used when drafting 2GP policies. Taking this drafting protocol into account and given the potential for serious harm to both the public and property in the incidence of a cliff, building or structure collapse, the Reporting Officer considered the sole use of the word ‘avoid’ to be appropriate for this policy. He did not believe the other amendments proposed by *MDHL* would add clarity to Policy 27.2.3.1. Therefore, he recommended the submission by *MDHL* (OS241.21) be rejected.

#### 3.6.3.3 Hearing

242. Mr Steven Tuck, the planning consultant called by *MDHL*, supported the Reporting Officer’s intent to apply a drafting protocol to promote a consistent approach to the drafting of provisions throughout the 2GP (Statement of Evidence, p. 4).
243. Legal submissions tabled at the Major Facilities Hearing by *DIAL* did not address this submission point.

#### 3.6.3.4 Decision and reasons

244. We accept in part the submission by *MDHL* (OS241.21), although we do not agree with the amendments requested by the submitter.
245. As discussed in the Plan Overview Decision Report, we accept the evidence that use of the word “avoid” without a qualifier suggests a prohibited activity status. Therefore, as a result of that decision and the issues raised by *MDHL*, we have amended the policy as follows: Policy 8A.2.1.1

*“Require earthworks, and associated retaining structures, to be designed and located to avoid or minimise, as far as practicable, {PO 308.497 and EW 241.21} adverse effects on the stability of land, buildings, and structures by:*

*a. being set back an adequate distance from property boundaries, buildings, structures and cliffs; and*

*b. using a batter gradient that will be stable over time.”*

246. The reasons for the decision to use this wording are primarily explained in the Plan Overview decision but we agree with *MDHL* that the policy otherwise may be too strictly worded and therefore not appropriate or effective.
247. We also make a consequential amendment to Rule 8A.6.3.1 to reflect this change in wording.

248. We reject the submissions of *DIAL* (OS724.8) for the same reasons as given above in relation to their request to amend the earthworks objective.

### 3.6.4 Earthworks 'Policy 2'

249. As notified, the 2GP contained earthworks provisions in every Management and Major Facilities section. While there was some variation in the standards that applied in the different zones, the policy framework was consistent and typically contained three policies. 'Policy 2' was the basis for the sediment control performance standard and some of the setback performance standards, and the associated restricted discretionary activity status for contravention of the standards.

250. The second policy for earthworks (now Policy 8A.2.1.2) reads:

*"Require earthworks and any associated retaining structures to be designed and located to minimise adverse effects on surrounding sites and the wider area, including by:*

- a. limiting the scale of earthworks that are provided for as a permitted activity; and*
- b. requiring earthworks to avoid sediment run-off, including onto any property, or into any stormwater pipes, drains, channels or soakage systems."*

#### 3.6.4.1 Submissions

251. *KiwiRail Holdings Limited* (OS322.103, OS322.114, OS322.126 and OS322.135) sought that Policies 16.2.5.2, 17.2.5.2, 18.2.4.2 and 19.2.3.2 (i.e. Earthworks Policy 2 in the rural, rural residential, commercial mixed use and industrial zones) be retained as notified. *Ravensdown Limited* (OS893.36 and OS893.42) also supported Policy 19.2.3.2 (Earthworks Policy 2 in the industrial zones) as notified. *MDHL* sought that Policy 27.2.3.2 (Earthworks Policy 2 in the Mercy Hospital Zone) be retained as notified.

252. *Kāti Huirapa Rūnaka ki Puketeraki and Te Rūnanga o Ōtākou (the Rūnaka)* (OS1071.104) sought to amend Policy 30.2.3.2.b (in the Port Zone) and assessment rules (Rule 30.8.4.4.a.ii) which reference the policy (OS1071.106) to ensure that the coastal marine area is protected from sediment run-off from earthworks as they consider sediment run-off into the coastal marine area can adversely affect Manawhenua cultural values. *The Rūnaka* requested the following changes to Policy 30.2.3.2.b:

- b. requiring earthworks to avoid sediment run-off, including onto any property, ~~or~~ into any stormwater pipes, drains, channels or soakage systems, or into the coastal marine area.*

253. The submission was supported in part by *BP Oil NZ Ltd and Mobil Oil NZ Ltd and Z Energy Ltd (the Oil Companies)* (FS2487.110), but requested the policy be amended to refer to 'manage' rather than 'avoid' as follows:

Earthworks Policy 2:

*"Require earthworks and any associated retaining structures to be designed and located to minimise adverse effects on surrounding sites and the wider area, including by:*

- a. ...*

- b. requiring earthworks to ~~avoid~~ manage sediment run-off, including onto any property, or into any stormwater pipes, drains, channels or soakage systems, or into the coastal marine area."*

254. *The Oil Companies* supported the intent of *the Rūnaka's* submission insofar as it sought to mitigate the potential adverse effects of sediment entrained in stormwater discharges associated with earthworks. However, *the Oil Companies* did not support the use of the term "avoid" in clause (b) and considered that this term was inconsistent with the overarching policy requirement to "minimise" adverse effects. *The Oil Companies* were concerned that avoidance of sedimentation effectively means that no earthworks can be carried out, because there will generally be some sediment in the discharge – albeit at an acceptable level (i.e. a sample with 100mg/l of TSS still contains sediment, even though it is essentially clear water). For *the Oil Companies*, the question really is whether or not the quality of the discharge is acceptable (and, in their opinion, that is a question for the regional council rather than the district council). We note that the additional amendments sought in this request (as they applied beyond the coastal marine area) were beyond what can be considered as a further submission.

#### 3.6.4.2 S42A Report

255. The Reporting Officer recommended that the submissions by the *Rūnaka* (OS1071.104 and 1071.106) be accepted as it was appropriate in terms of Section 6(a) of the RMA 1991, Objective 14.2.1, which aims to maintain the relationship between Manawhenua and the natural environment, and Strategic Direction Policy 2.5.4.1, which aims to manage activities that have the potential to adversely affect cultural values (s42A Report, Section 5.2.4, p. 44).
256. He also acknowledged the point raised by *the Oil Companies* in relation to use of the term "avoid" in this context, however, he did not support the alternative wording suggested by *the Oil Companies*, as in his opinion it did not provide clear guidance to decision makers regarding the intended outcome. The Reporting Officer recommended that the wording of the policy be amended as shown below.

Require earthworks and any associated retaining structures to be designed and located to minimise adverse effects on surrounding sites and the wider area, including by:

- a. limiting the scale of earthworks that are provided for as a permitted activity; and
  - b. requiring earthworks to be managed to ensure that-avoid sediment run-off, including onto any property, or into any stormwater pipes, drains, channels or soakage systems, or the coastal marine area, is avoided or, if avoidance is not practicable, mitigated to the point that adverse effects would be no more than minor (OS1071.104 and FS2487.110).
257. The Reporting Officer was of the opinion, the policy should be amended not only in the Port Zone, but in all 2GP management and major facilities zones, so that effects on the coastal marine area can be considered whenever relevant, and so that effects are managed in a consistent way across the city. Consequential to the amendment of this policy, he noted that the sediment control performance standard would also need to be amended to refer to the coastal marine area.
258. In relation to *the Oil Companies'* submission point regarding the wording of Earthworks Policy 2, the Reporting Officer noted that the sediment control performance standard uses similar language to the policy as notified – it requires that earthworks be undertaken in a way that "prevents sediment entering" water bodies etc. He considered that use of the term "prevents" would have a similar effect to the use of the term "avoid" in the policy; it could be interpreted as meaning that no earthworks can be carried out as of right, because, as *the Oil Companies* pointed out, even water that appears clear can include very small amounts of sediment. The Reporting officer noted that a similar point was raised by Mary O'Callahan for *Port Otago*, in the evidence tabled at the Manawhenua hearing in June.

#### 3.6.4.3 Hearing

259. *The Rūnaka* did not appear at the Earthworks Hearing but did appear at the Manawhenua Hearing held on 1<sup>st</sup> and 2<sup>nd</sup> June 2016, although *the Rūnaka* did not provide evidence related to these submission points.
260. Ms Mary O'Callahan, the planning consultant called by *Port Otago Limited* at the Manawhenua Hearing, considered that the Sediment Control performance standard (new Rule 8A.5.7) in the Port Zone is uncertain as a permitted activity standard, as it is not possible to know what level of control is necessary to satisfy the rule. She was also concerned with the low permitted earthworks thresholds in the zone, as defining very small amounts of earthworks as large-scale earthworks would raise sedimentation concerns and the potential for debate on whether the performance standard was satisfied or not. She had no concerns with Manawhenua being identified as an affected party when clear and sensible permitted activity thresholds were breached (Statement of Evidence, p. 3).

#### 3.6.4.4. Reconvened Plan Overview and Structure Hearing

261. At the Reconvened Plan Overview and Structure Hearing, the Reporting Officer, Dr Anna Johnson, reviewed use of the word "minimise" in policies throughout the Plan. Having considered all relevant evidence and submissions received across all hearings, she recommended that the drafting protocol should be amended to include the option of 'minimised as far as practicable' with clear guidance on its usage and that all variations of this provision that do not spell out 'as far as practicable' be amended to include this phrasing (Reconvened Plan Overview and Structure Report, p23). Specifically, in relation to policies 15.2.5.2, 16.2.5.2, 17.2.5.2, 18.2.4.2, 19.2.3.2, and 20.2.3.2, she recommended that the wording be amended to read "minimised as far as practicable" (Reconvened Plan Overview and Structure Report Appendix 1, p53).

#### 3.6.4.5. Decision and reasons

262. We accept *the Rūnaka's* submissions (OS1071.104, OS1071.106) and the concerns raised by the submitter and have amended the sediment control standard as advised by the Reporting Officer so that it manages sediment entering the coastal marine area, but we do not consider that the requested amendment to Policy 8A.2.1.2 is necessary.
263. We note that the risk of sediment entering the sea is managed by Policy 10.2.2.4 in the Natural Environment section of the Plan. Under this policy (as amended in response to other submissions discussed the Natural Environment and Plan Overview Decisions), earthworks are to be "located and undertaken in a way that minimises, as far as practicable, the risk of sediment entering the sea or water bodies". All earthworks that contravene the sediment control performance standard are assessed against this policy, via assessment rules in the Earthworks and Natural Environment sections: Rule 8A.6.2.4.b and Rule 10.4.4.5.
264. In addition, we consider that our decision, in response to a separate submission from *the Rūnaka* (OS1071.107) discussed in Section 3.5.1 of the Manawhenua Decision, to add new assessment rules in the Earthworks and Manawhenua sections (Rules 8A.6.2.4.d and Rule 14.3.2.8) also gives partial relief to submission points OS1071.104 and OS1071.106. The new assessment rules provide for the DCC to assess effects on cultural values of Manawhenua for earthworks that contravene the sediment control performance standard. Such earthworks will be assessed against Policy 14.2.1.4, under which activities that are identified as a threat to *wāhi tūpuna* will only be allowed where adverse effects on the relationship between Manawhenua and the *wāhi tūpuna* are "avoided, or if avoidance is not practicable, are no more than minor".

265. We note that many of the requests included in the further submission by *the Oil Companies* (FS2487.110) were outside the scope of a further submission, however, similar points were considered more broadly at the Plan Overview hearing. As outlined in the Plan Overview Decision Report, our decision amends across the Plan policies which included a 'no effects' or 'avoid effects' test, with "avoid or minimise as far as practicable". General scope to make this change across all policies that use this wording is provided by the *University of Otago* submission (OS308.497). As discussed in the Plan Overview Decision Report, we accept the evidence that use of the word "avoid" without a qualifier suggests a prohibited activity status, and that minimised should generally be qualified with "as far as practicable". This decision results in two changes to Policy 8A.2.1.2: the addition of "as far as practicable" following "minimise"; and the deletion of 8A.2.1.2.b, which requires earthworks to "avoid sediment run-off, including onto any property, or into any stormwater pipes, drains, channels or soakage systems". During deliberations, we received technical advice on the latter amendment from Dr Anna Johnson, DCC City Development Manager, who considered that 8A.2.1.2.b was potentially confusing because, as pointed out in *the Oil Companies'* further submission, it introduces a second effects test to the policy ("avoid sediment run-off", in addition to "minimise, as far as practicable, adverse effects"). Therefore, she considered that from a drafting point of view, it would be preferable to delete clause b altogether as a clause 16 amendment.
266. Dr Johnson also considered that clause a of the policy (i.e. 8A.2.1.2.a: "by limiting the scale of earthworks that are provided for as a permitted activity") should be deleted as a clause 16 amendment. In her view, this clause is unnecessary, given that it is clearly implied in the first part of the policy, and is also contrary to the normal approach to policy drafting. We agree with this amendment.
267. This decision results in the following amendment to provisions:
- amend the Sediment Control performance standard (Rule 8A.5.7) so that it sediment entering "the coastal marine area".
268. See Appendix 1 (amendment attributed to EW 1071.104).
269. We note that Rule 8A5.7 is subject to additional amendments, set out in Section 3.6.9 of the Natural Environment Decision, to provide more certainty on when a consent application may be rejected on account of insufficient sediment control.

### 3.6.5 Earthworks 'Policy 3'

270. As notified, the 2GP contained earthworks provisions in every Management and Major Facilities section. While there was some variation in the standards that applied in the different zones, the policy framework was consistent and typically contained three policies. 'Policy 3' was the basis for the restricted discretionary activity status and associated assessment matters for earthworks - large scale.
271. The third policy for earthworks (now Policy 8A.2.1.3) reads:
- "Only allow earthworks that exceed the scale thresholds (earthworks - large scale) and any associated retaining structures, where all of the following effects will be avoided or, if avoidance is not possible, adequately mitigated:*
- a. adverse effects on visual amenity and character;*
  - b. adverse effects on the amenity of surrounding properties, including from changes to drainage patterns; and*



*c. adverse effects on the stability of land, buildings, and structures."*

### 3.6.5.1 Submissions

272. *KiwiRail Holdings Limited* (OS322.115, OS322.127 and OS322.136) supported policies 17.2.5.3, 18.2.4.3 and 19.2.3.3 (Earthworks Policy 3 in the rural residential, commercial and mixed use, and industrial zones) as proposed, stating that they support, in particular, the requirement to ensure: stability of adjoining land, buildings and structures, and that sediment does not run off to adjoining sites.

273. *Timothy Morris* (OS951.40) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.40) sought to remove Policy 16.2.5.3 as it applies in the rural zones, or at least deletion of the phrase "adverse effects on visual amenity and character" due to the policy placing an unreasonable imposition on individuals and being unreasonably subjective. *Federated Farmers of New Zealand* (FS2449.302 & FS2449.303) support both of these points stating that the RMA does not require visual amenity to be provided for and would limit the ability of people and communities to provide for their economic and social well-being. *Harboursides and Peninsula Preservation Coalition* (FS2267.60) opposed submission point OS951.40 and sought the retention of Policy 16.2.5.3 as proposed due to the significant potential for earthworks to disrupt amenity and character.

274. *Liquigas Limited* (OS906.39) requested that Policy 19.2.3.3 (Earthworks Policy 3 in the Industrial Zones) be amended as follows:

~~"Only a~~ *Allow earthworks that exceed the scale thresholds (earthworks - large scale) and any associated retaining structures, where all of the following effects will be avoided or, if avoidance is not possible, remedied or adequately mitigated:*

*a. adverse effects on visual amenity and character;*

*b. adverse effects on the amenity of surrounding properties, including from changes to drainage patterns; and*

*c. adverse effects on the stability of land, buildings, and structures."*

275. *Liquigas Limited* considered that the policy would be improved by a minor amendment to ensure it is aligned with the effects-based framework of the RMA, by including reference to remediation measures. This submission was supported by *the Oil Companies* (FS2497.90). *The Oil Companies* agreed that the policy would be improved by the requested changes to include reference to remediation.

276. *MDHL* (OS241.23) sought similar amendments to Policy 27.2.3.3 (Earthworks Policy 3 in the Mercy Hospital Zone), as shown:

~~"Only a~~ *Allow earthworks that exceed the earthworks - small scale thresholds specified at Rule 27.6.2.1 (a) (~~earthworks large scale~~) and any associated retaining structures, where all of the following effects will be avoided, remedied or, if avoidance is not possible, adequately mitigated:*

*a. adverse effects on visual amenity and character;*

*b. adverse effects on the amenity of surrounding properties, including from changes to drainage patterns; and*

*c. adverse effects on the stability of land, buildings, and structures."*

277. In *MDHL's* view, the inclusion of the phrase 'only allow' is unnecessarily restrictive. *MDHL* considered that the policy's intent will be adequately achieved by substituting this phrase for the term 'allow'. *MDHL* also considered that the wording relating to the earthworks

scale thresholds is imprecise and requested that it be revised to clarify references to thresholds. Finally, MDHL noted that the policy did not enable the remediation of effects, which is an option afforded by the RMA.

278. DIAL (OS724.9), for the same reasons as their requests in relation to the earthwork objective and Policy 1, sought Policy 24.2.3.3 (Earthworks Policy 3 in the Dunedin International Airport Zone) be amended to refer to effects of earthworks on 'surrounding properties' as follows:

*"Only allow earthworks that exceed the scale thresholds (earthworks - large scale) and any associated retaining structures, where all of the following effects on surrounding properties will be avoided or, if avoidance is not possible, adequately mitigated:*

*a. adverse effects on visual amenity and character;*

*b. adverse effects on the amenity ~~of surrounding properties~~, including from changes to drainage patterns; and*

*c. adverse effects on the stability of land, buildings, and structures."*

279. In a related submission, DIAL (OS724.29) sought that Rule 24.9.3.1 be amended as follows:

*"a. Effects on visual amenity character of surrounding properties*

*a.ii Adverse effects on visual amenity and character of surrounding properties will be avoided or, if avoidance is not possible, adequately mitigated" (Policy 24.2.3.3.a).*

### 3.6.5.2 Section 42A Report

280. The Reporting Officer was of the view that the decision requested above by *Timothy Morris* and supported by *Federated Farmers* did not align with the RMA 1991 or the 2GP strategic direction to protect Dunedin's rural environment and visual amenity, specifically Strategic Direction Objective 2.4.6. He noted that section 7(c) of RMA requires the DCC to have particular regard to the maintenance and enhancement of amenity values, with "amenity values" defined as "those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes". Therefore, he recommended that the submissions of *Timothy Morris* (OS951.40) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.40) and the further submissions of *Federated Farmers of New Zealand* (FS2449.302 & FS2449.303) be rejected, and the further submission of *Harboursides and Peninsula Preservation Coalition* (FS2267.60) be accepted, and that Policy 16.2.5.2 (Earthworks Policy 3 in the rural zones) remain as notified (s42A Report, Section 5.2.5, p. 49).
281. The Reporting Officer noted that for policies, the 2GP drafting protocol recommends use of language that is designed to set out clear actions (in relation to the management of land use activities) to achieve the objectives. Each policy starts with an 'action word'. The action words used in the policies are drafted to reflect the approach taken in the Plan with respect to rules (performance standards and activity status rules). For example, for policies that set up restricted discretionary activities, the words 'only allow' are used. This direct link between policy wording and rule type provides for improved plan clarity and transparency should be retained in any amendments made to the Plan (s42A Report, Section 5.2.5, p. 50).
282. The reasons for using 'only allow' rather than 'allow' was discussed in the Plan Overview Section 42A Report, in relation to submissions from these submitters that requested

similar changes across several policies. As discussed in that report, if the requested amendment were made, the policy would not require effects to be avoided or adequately mitigated. This means there would be no policy justification for the imposition of conditions to avoid or adequately mitigate effects. 'Only allow' is more specific and clearly expressed than 'allow', which does not clarify what should be done in other circumstances. The change of the wording of 'only allow' to 'allow' also removes the discretion of decision-makers to not allow or to impose conditions in situations where there may be other factors of concern by changing the focus from where consent should only be granted to one where consent must be granted.

283. With regard to MDHL's request to amend the policy to refer to the option that effects be 'remedied' as well as 'avoided' or 'mitigated', the Reporting Officer noted that the dictionary definition of 'mitigate' is 'to make something less harmful'. Since remedying an effect would make it less harmful, he did not consider that it is necessary to amend the policy as requested.
284. Therefore, he recommended that the submissions of *Liquigas Limited* (OS906.39) and *MDHL* (OS241.23) be rejected and policies 19.2.3.3 and 27.2.3.3 (Earthworks Policy 3 in the industrial and Mercy Hospital zones) are retained without amendment.
285. The Reporting Officer also recommended the submissions by *DIAL* be rejected for the same reasons given in relation to their similar requests to the earthworks objective and first policy.

#### 3.6.5.3 Hearing

286. Mr Mark Laurenson, the planning consultant called by *the Oil Companies*, disagreed with the Reporting Officer and indicated that there was no rationale for the exclusion of remediation, which he considered was flawed and therefore reiterated his support of the 'avoid, remedy or mitigate' option in Policy 19.2.3.3 (new Policy 8A.2.1.3) (Statement of Evidence, pp. 6-7).
287. Mr Steven Tuck, the planning consultant called by *MDHL*, supported the Reporting Officer's intent to apply a drafting protocol to promote a consistent approach to the drafting of provisions throughout the 2GP (Statement of Evidence, p. 4).
288. In his tabled evidence, *Mr Rob Morris* on behalf of *Timothy Morris* and *Timothy Morris (on behalf of RG and SM Morris Family Trust)*, reiterated his concern around Policy 16.2.5.3 (new Policy 8A.2.1.3) stating in his evidence "there is absolutely no need for the words 'adverse effects on visual amenity and character' to apply to earthworks associated with farming activities."

#### 3.6.5.4 Decision and reasons

289. We reject the submission points by *MDHL* (OS241.23) and *Liquigas Limited* (OS906.39) and the *Oil Companies* (FS2487.90) and *Timothy Morris* (OS951.40) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.40) for the reasons outlined by the Reporting Officer, as regards the preferred wording of these provisions, as summarised above with respect to each submission point.
290. However, as discussed in the Plan Overview Decision Report, we have amended policy 8A.2.1.3 to read "avoided or, if avoidance is not ~~possible~~practicable, adequately mitigated" (PO 908.3 and others). This may go some way to addressing the concerns of *Liquigas Limited* (OS906.39) and *the Oil Companies* (FS2487.90).
291. Consequential changes to give effect to this decision include:
  - Amending the assessment of restricted discretionary activities rules – 8A.7.2.1.a.ii, 8A.7.2.1.a.iii, 8A.7.2.1.c.ii.

292. We note that we have expanded the types of farming earthworks that are always permitted as small-scale earthworks to include; earthworks for the erection of new fences or the construction of walking tracks or vehicle tracks (see Section 3.3.3). We have amended the definition of farming to include earthworks associated with cultivation, tilling and harvesting and exempted these earthworks from the definition of earthworks (see Section 3.3.3). We have also changed how these are measured, which may go some way to addressing the concerns of *Timothy Morris* (OS951.40) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.40).
293. We reject the submissions of *DIAL* (OS724.9 and OS724.29) based on the same reasons outlined above in terms of the submissions on the earthworks objective.

## 3.7 Earthworks Activity Status

### 3.7.1 Request to add a tier of controlled earthworks

294. *Chris Walker* (OS289.7) sought the activity status of earthworks - large scale to be amended from restricted discretionary to 'controlled'. Alternatively, he sought a three-tier system of earthworks (permitted, controlled and restricted discretionary). In Mr Walker's view, it was too onerous for activities that just go beyond the threshold to then become restricted discretionary activities.
295. *Ravensdown Limited* (OS893.38, OS893.50) similarly sought a third category for small non-compliances of the small-scale earthworks standards (25% over the standard) as controlled activities. In *Ravensdown Limited's* view, such non-compliances were likely to have less than minor adverse effects. They otherwise supported 'permitted' activity status for small-scale earthworks, and restricted discretionary activity status for large-scale earthworks.
296. The submissions by *Chris Walker* and *Ravensdown Limited* (OS893.38) were opposed by the *Otago Regional Council* (FS2381.2, FS2381.9), which sought retention of the restricted discretionary activity status as they considered a controlled activity status would not allow for consideration of matters under Sections 9 (Health and Safety) and Section 10 (Natural Environment) of the 2GP, which are important to ensure adequate management of potential adverse effects.
297. The Reporting Officer agreed with the *Otago Regional Council* (FS2381.2, FS2381.9) and disagreed with *Ravensdown Limited's* submissions (OS893.38, OS893.50) and *Chris Walker* (OS289.7) and recommended that the activity status for earthworks – small scale and earthworks - large scale remain. His main reason was that due to Dunedin's varied topography and the presence of a range of physical values and characteristics, it is critical that discretion is retained around the location of earthworks. In his view a controlled activity status would not provide sufficient discretion to prevent earthworks from being undertaken in inappropriate locations as controlled activities cannot be declined (s42A Report, Section 5.5, pp. 61-62).
298. *Ravensdown Limited* called Mr Chris Hansen (planning consultant) who disagreed with the Reporting Officer and considered that a controlled activity status for a small non-compliance of the small-scale earthworks standards (25% over the standard), was a pragmatic approach that would provide some flexibility for industrial activities within the Industrial Zone to undertake small scale earthworks with less than minor effects (Statement of Evidence, p. 2-4).

#### 3.7.1.1. Decision and reasons

299. We reject the submissions of *Ravensdown Limited* (OS893.38, OS893.50) and *Chris Walker* (OS289.7) and agree with the Reporting Officer's recommendation to not a third

tier of controlled activities. We accept that advice of the Reporting Officer that a controlled activity status would make it difficult to restrict earthworks from being undertaken in inappropriate locations.

### 3.8. Special information requirements

#### 3.8.1. Background

300. All management and major facility zones contain under the subsection 'Special Information Requirements' and rule 'Geotechnical investigation report' (for example Rule 16.13.2)

The rule reads as follows:

- "1. A geotechnical investigation report may be requested by DCC for earthworks of a large scale and/or where the earthworks are proposed:*
  - a. on a site with a slope angle between 15° (3.7h:1v slope ratio, or 27% slope grade) and 26° (2h:1v slope ratio, or 50% slope grade);*
  - b. on a site identified as hazard-prone in DCC's Hazard Information Management System; or*
  - c. on any other site that the DCC, with good cause, suspects to be hazard-prone.*
- 2. A geotechnical investigation report must be provided for earthworks on all sites with a slope greater than a 26° angle (2h:1v slope ratio, or 50% slope grade).*
- 3. All requested geotechnical investigation reports must be prepared by a suitably qualified expert who is experienced in the practice of geotechnical engineering and registered under the Chartered Professional Engineers Act of New Zealand 2002 and who has professional indemnity insurance.*
- 4. The geotechnical investigation report must address the following factors:*
  - a. special design or construction requirements;*
  - b. special foundation requirements;*
  - c. services;*
  - d. access;*
  - e. effluent disposal;*
  - f. non-engineered fills; and*
  - g. a statement of professional opinion as to the suitability of the land for the proposed development."*

#### 3.8.2. Submissions

301. *The University of Otago (OS308.393) sought the removal of the words 'of a large scale and/or' from the Special Information Requirements rule in the Campus Zone (Rule 34.13.1.1), stating there is no justification in terms of effects for requiring a geotechnical investigation report simply because earthworks are deemed to be large scale.*
302. *DIAL (OS724.38, OS724.39) requested that amendments were made to the 'Special Information Requirements' Rule (24.12.1), requesting the deletion of Rule 24.12.1.1.a and 24.12.1.2. The submitter argued that since the Dunedin International Airport Zone is flat, a requirement for a geotechnical report will never be relevant. DIAL suggested the following amendments:*

#### 24.12.1 Geotechnical investigation report

1. A geotechnical investigation report may be requested by DCC for earthworks of a large scale and/or where the earthworks are proposed:
    - a. ~~on a site with a slope angle between 15° (3.7h:1v slope ratio, or 27% slope grade) and 26° (2h:1v slope ratio, or 50% slope grade);~~
    - ~~b.~~ a. on a site identified as hazard-prone in DCC's Hazard Information Management System; or
    - ~~c.~~ b. on any other site that the DCC, with good cause, suspects to be hazard-prone.
  2. ~~A geotechnical investigation report must be provided for earthworks on all sites with a slope greater than a 26° angle (2h:1v slope ratio, or 50% slope grade).~~
303. The Reporting Officer recommended that the *DIAL* submissions be accepted, (s42A Report, Section 5.9.1, p. 88) and that the submission of the *University of Otago* (OS308.393) be rejected (s42A Report, Section 5.8.1, p. 86) on the grounds that the wording of the notified rule ("a ... report may be requested by the Council") indicates that a geotechnical investigation report will not always be required (s42A Report, Section 5.9.1, p. 89). If earthworks were not proposed on a sloping or hazard-prone site, a report of this kind would only be requested if the earthworks were of a scale that could pose a risk to surrounding sites, require special construction requirements, or be unsuitable for the proposed development.
304. Mr Murray Brass appeared at the hearing for the *University of Otago* and tabled evidence, however, his concerns were put to rest when discussion at the hearing clarified that the rule does not require a geotechnical assessment in the case of "earthworks of a large scale", but for this aspect is included as a guide to Plan users as to what supporting information they may require when applying for resource consent for earthworks – large scale, but still allowing this requirement to be considered on a case-by-case basis. Following the hearing, the Reporting Officer reiterated the s42A Report recommendation to reject the *University of Otago* (OS308.393) submission.

### 3.8.3. Decision and reasons

305. We acknowledge that none of the land currently within the Dunedin International Airport is on a slope over 15°, however we note that the earthworks provisions have been consolidated into a separate section of the 2GP, section 8A, and that a generic Special Information Requirements rule (Rule 8A.9) applies. We therefore reject the submission of *DIAL* (OS724.38, OS724.39) to remove the reference to slope in the Special Information Requirements and note that as this is only providing guidance to Plan Users there is no substantive effect in removing it.
306. We also reject the submission by the *University of Otago* (OS308.393) noting that Mr Brass was satisfied that as the rule is only stating, for the words that concerned him, that this may be requested, it is not necessary to remove it.

## 3.9. Groundwater Protection Mapped Area (GPMA)

### 3.9.1. Background

307. The 2GP includes an overlay called the Groundwater Protection Mapped Area (GPMA). This overlay is based on the extent of the groundwater protection zones that was shown

within the Regional Plan: Water for Otago at the time of submissions to Variation 9A to the operative District Plan.

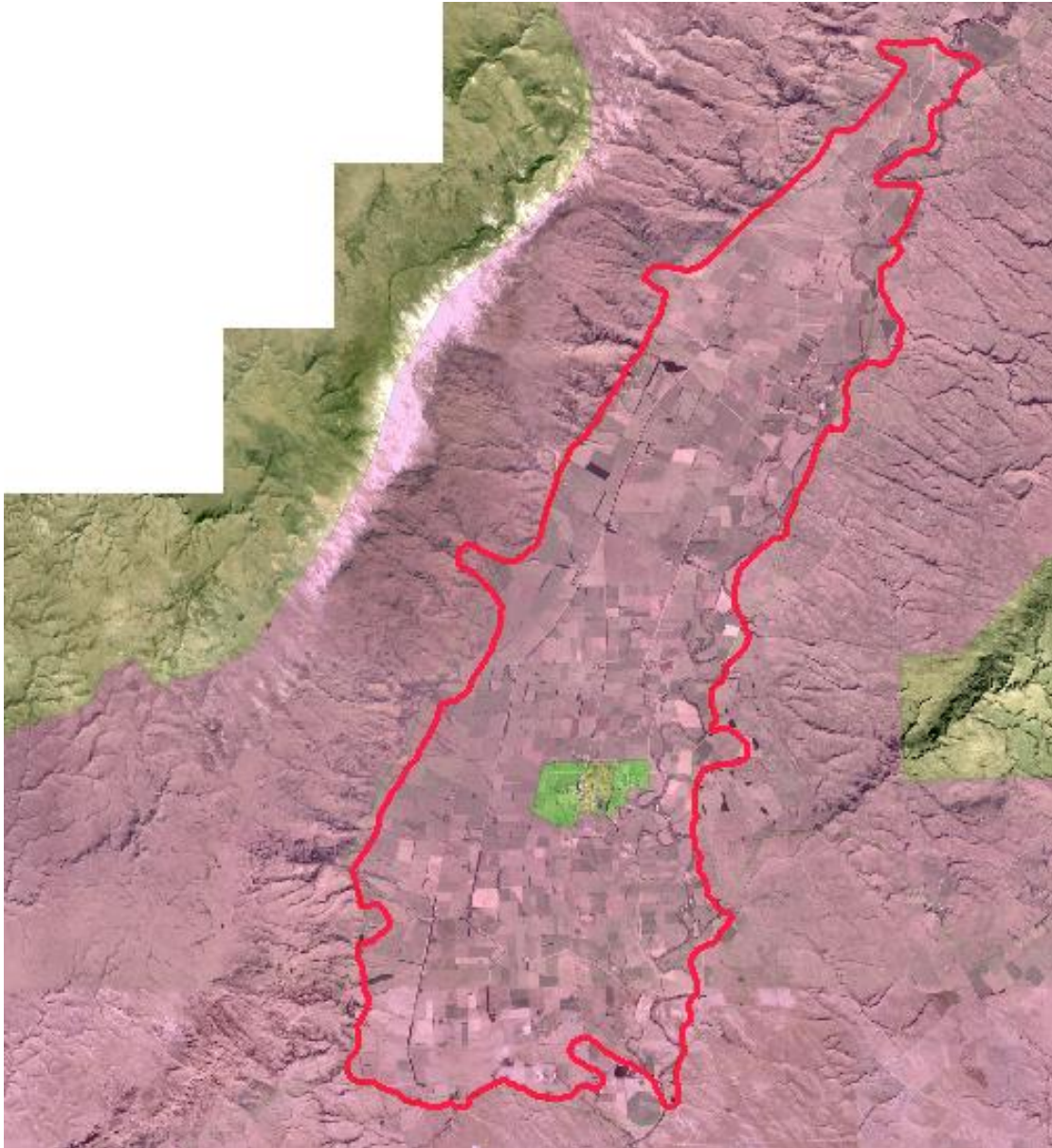
308. The earthworks rules associated with GPMA relate to the thresholds to be considered small-scale and are the same as those for land in an Outstanding Natural Feature, Urban Biodiversity Mapped Area, and Scheduled Heritage Site:
- A lower maximum change in finished ground level (1m), as well as a maximum depth of 250mm unless for the foundations of buildings
  - A maximum area of 50m<sup>2</sup>
  - A lower maximum volume of combined cut and fill (10m<sup>3</sup> up to 26°, with the limits over that slope being the managed more strictly due to slope)
309. These rules, however, are only included in the Rural and Rural Residential Zones. The reporting Officer explained that this was because it was not intended to apply the GPMA over other zones. However, a small part of the Township and Settlement Zone at Outram was included in the GPMA. The Reporting Officer explained that this was included erroneously as a carry-over from the rural zoning for this area under the operative District Plan.
310. The Reporting Officer noted that the proposed 2GP provisions relating to GPMA to a large extent represent a duplication of the Regional Plan: Water for Otago provisions, and therefore the rules proposed for the 2GP were unnecessary.
311. Earthworks that do not meet these limits are a restricted discretionary activity, and the Earthworks assessment of restricted discretionary activities rule (Rule 8A.7.2.6) links to the relevant Public Health and Safety section assessment rule (Rule 9.5.2.3).

### 3.9.2. Submissions

312. *The Otago Regional Council* (OS908.8) sought to align the groundwater protection mapped areas (GPMA) at Outram and Mosgiel in the 2GP with the Groundwater Protection Zone B mapping in the Regional Plan: Water for Otago (the Water Plan). The Water Plan identifies aquifers that are subject to higher risk from leachate contamination with inappropriate excavation. Under the policies and methods of the Water Plan, district and city councils are to manage these risks in their respective plans. Their submission stated that there was a discrepancy in the mapping of the Groundwater Protection Zone B of the Water Plan and the proposed 2GP. *The Otago Regional Council* highlighted that the 2GP does not include groundwater protection zone mapping in the urban areas of Outram and sections of Mosgiel.
313. *The Otago Regional Council* (OS908.11) also sought to add rules to the 2GP to ensure that earthworks within mapped groundwater protection zones that could breach the protective mantle of an aquifer and/or risk groundwater contamination are assessed consistently across all management zones, using the assessment criterion set out in Rule 9.5.2.3.iii (Earthworks - large scale that exceed scale thresholds for a Groundwater Protection Mapped Area).
314. The Reporting Officer recommended that the *Otago Regional Council's* submission in relation to groundwater protection mapping for earthworks (OS908.8) be rejected, and noted:
- the permitted 250mm depth would be too restrictive if applied to industrial, commercial and mixed use, rural residential, residential and major facility zoned land in the Mosgiel area

- the activity most affected by applying GPMA rules in urban zones would be landscaping, since building foundations are exempt from the 250mm depth rule
  - bores and drilling in these areas already require consent through sections 14.1 and 14.2 of the Water Plan
  - the costs associated with requiring consents for landscaping earthworks that exceed 250mm in depth would outweigh the benefits of minimising risk to groundwater from these earthworks.
315. With regard to the residential part of 94 Holyhead Street, Outram, which is subject to a GPMA, to be consistent with the approach taken throughout the rest of Mosgiel/Outram area, the Reporting Officer recommended the GPMA should be removed, considering this a minor and inconsequential amendment to be made in accordance with Schedule 1, clause 16 (2) of the RMA (s42A Report, Section 5.10, pp. 90).
316. At the hearing, *the Otago Regional Council* tabled evidence (via an email to the Reporting Officer) detailing a case for the inclusion of groundwater protection areas over urban areas, and in addition, to include the Middelmarsh Aquifer that is not yet included in the ORC Water Plan but is an important area to be managed in terms of earthworks.
317. In his revised recommendations, the Reporting Officer agreed there would be merit for Plan users if there was a better awareness of the extent of groundwater protection areas in urban areas, and the requirement to comply with Regional Plan rules. He suggested that the *Otago Regional Council* provide details of the extent of the Middelmarsh aquifer, and that it be included in the 2GP mapping. The Reporting Officer also recommended that for the urban areas, these areas should be mapped on the 2GP Data Map for information only, without a duplication of rules in the District Plan and the Regional Plan.
318. The map supplied by ORC is provided below as Figure 1; it shows the presence of an extensive aquifer on the Strath-Taieri that extends well beyond the urban area of Middelmarsh, and into the Rural Zone of the city.
319. Upon viewing the map supplied by ORC, the Reporting Officer noted that the mapped Middelmarsh aquifer does not appear with online maps associated with the Regional Plan: Water for Otago; and that the remedy sought in this instance, to add a new GPMA, is outside the scope of the *Otago Regional Council* submissions. In addition, earthworks over GPMAs, in rural areas, are managed by 2GP rules supported by a GPMA in the Plan. Given these issues, the Reporting Officer recommended the Middelmarsh Aquifer is added, along with regional council groundwater protection areas over the urban areas of Outram and Mosgiel to the 2GP Data map, for information purposes only but not as a GPMA. We note that the 2GP Data map is for information only and is not part of the 2GP. It can be changed at any time without going through a plan change process under Schedule 1 of the RMA and does not require a decision by us.





**Figure 1: Red polygon shows the position and extent of the Middlemarch Aquifer. Middlemarch township is shown in green. Map supplied by ORC post-hearing.**

### 3.9.3. Decision and reasons

320. We reject the submission of the *Otago Regional Council* (OS908.8) to include all Groundwater Protection Zone B mapping in the *Otago Regional Plan: Water* in the 2GP zoning map. We acknowledge that the 2GP already has groundwater protection rules for several rural areas that in effect duplicate rules in the *Regional Plan: Water* and are based upon the extent of protection and approach in the operative *District Plan*. We do not agree that further duplication of regional rules in the *District Plan* are necessary or desirable.
321. With regard to awareness of the extent of groundwater protection, and the relevant provisions of the *Regional Plan: Water*, we support any amendment to the 2GP data mapping that DCC may choose to make. We note that the 2GP Data Map does not form part of the 2GP, and any changes to it are not a decision for us.
322. We note that as a clause 16 amendment, the DCC have removed the GPMA from all zones other than Rural and Rural Residential Zones as these are the only zones in which the rules currently apply.

323. We accept in part the submission by the *Otago Regional Council* (OS 908.11) which sought to add rules to the 2GP to ensure that earthworks within mapped groundwater protection zones that could breach the protective mantle of an aquifer and/or risk groundwater contamination are assessed consistently across all management zones, using the assessment criterion set out in Rule 9.5.2.3.iii (Earthworks - large scale that exceed scale thresholds for a Groundwater Protection Mapped Area). We note that as the earthworks provisions have been consolidated into a single Earthworks section (Section 8A), all earthworks that exceed the small-scale thresholds are subject to the Earthworks assessment of restricted discretionary activities rule (Rule 8A.7.2.6) which links to Rule 9.5.3. We consider this provides for consistent assessment.

### 3.10. Assessment Rule 16.10.3.1.a (Rule 8A.7.1)

324. *Dunedin City Council* (OS360.134) sought to amend the assessment of restricted discretionary development activities (Rule 16.10.3.1.a) (now Rule 8A.7.1) (to clarify that the character values being assessed are of a rural nature and provide direction to Plan users to the location of the rural character values in Appendix A7. The requested amendments were:

Effects on rural character and visual amenity—~~and character~~' and by inserting: General assessment guidance: As well as the effects on the values specified in Objective 16.2.3, the DCC will consider the effects on the rural character values identified in Appendix A7.

325. The Reporting Officer recommended the Plan be amended as sought for the reasons given, that the amendment would align the assessment wording with the standard wording used elsewhere for matters of discretion in the 2GP, which would aid Plan usability (s42A Report, Section 5.7.1, p. 81).

#### 3.10.1. Decision and reasons

326. We accept (in part) the submission by the *Dunedin City Council* (OS360.134), to amend the assessment of restricted discretionary development activities (Rule 8A.7.2).
327. Following the movement of the Earthworks performance standards from each management and major facility zone to a new section of the Plan under city-wide activities (Section 8A. Earthworks), we consider it appropriate to refer to 'rural character', but only in relation to the rural zones. We are however, providing relief to the submitter by providing direction to the location of the rural character values in Appendix A7.
328. We therefore make no amendment to the matters of discretion (8A.7.2.1.a), but we do add general assessment guidance, specific to the rural zones (8A.7.2.1.a-b.xii).
329. The amendments required for this decision, including consequential amendments are as follows (Appendix 1, attributed to submission reference EW 360.134):

1. Add General assessment guidance to Rule 8A.7.2.1.a-b.xii as follows:

General assessment guidance: {EW 360.134}

xii. For Earthworks in the rural zones, Council will consider the effects on the values specified in Objective 16.2.3, and the effects on the rural character values identified in Appendix A7. {EW 360.134}

### **3.11. Request for a 2GP Dust Control Standard**

#### **3.11.1. Submission**

- 330. The *Otago Regional Council* (OS908.19) requested that dust control standards and assessment criteria are added to the 2GP to complement the Otago Regional Council Air Plan objectives, especially for areas at risk of poor air quality. This submission point was supported by *Oceana Gold (New Zealand) Limited* (FS2439.10) for the added clarity such a standard would give to Plan users.
- 331. The Reporting Officer recommended that the submissions of *the Otago Regional Council* (OS908.19) and *Oceana Gold NZ Limited* (FS2439.10) be rejected, and referred to the 'Good practice guide for assessing and managing the environmental effects of dust emissions' (Ministry for the Environment, 2001), which states that regional and district plans should be developed to prevent duplication so that dust emissions are controlled by consent from only one authority (s42A Report, Section 5.6.5, p. 79).
- 332. He did however include a draft Dust Control performance standard (s42A Report, Section 5.6.5, p. 84) should we be of a mind to include dust standards for Dunedin City in the 2GP in addition to those already imposed by the Regional Plan: Air for Otago.

#### **3.11.2. Decision and reasons**

- 333. We reject the submission of the *Otago Regional Council* (OS908.19) to include a dust control standard in the 2GP. The reasons for our decision relate to our desire to avoid duplication in process between the Regional Council Air Plan provisions and the 2GP.

## 4.0 Suggestions for future plan change

334. In considering this topic, it was our opinion that the Otakou Harbour wāhi tūpuna mapped area should be mapped to include a 20m buffer against Port activities, including earthworks. We note we had no submissions requesting this; therefore, we include this comment as a suggestion for investigation for a future plan review process.

## 5.0 Minor and inconsequential amendments

335. Clause 16(2) of Schedule 1 of the RMA allows a local authority to make an amendment where the alteration “is of minor effect”, and to correct any minor errors, without needing to go through the submission and hearing process.
336. This Decision includes minor amendments and corrections that were identified by the DCC Reporting Officers and/or by us through the deliberations process. These amendments are referenced in this report as being attributed to “cl.16”. These amendments generally include:
- correction of typographical, grammatical and punctuation errors
  - removing provisions that are duplicated
  - clarification of provisions (for example adding ‘gross floor area’ or ‘footprint’ after building sizes)
  - standardising repeated phrases and provisions, such as matters of discretion, assessment guidance, policy wording and performance standard headings
  - adding missing hyper-linked references to relevant provisions (eg. performance standard headings in the activity status tables)
  - correctly paraphrasing policy wording in assessment rules
  - changes to improve plan usability, such as adding numbering to appendices and reformatting rules
  - moving provisions from one part of the plan to another
  - rephrasing plan content for clarity, with no change to the meaning
337. Minor changes such as typographical errors have not been marked up with underline and strikethrough. More significant cl. 16 changes (such as where provisions have been moved) are explained using footnotes in the marked-up version of the Plan.

## **Appendix 1 – ePlan amendments**

Please see [www.2gp.dunedin.govt.nz/decisions](http://www.2gp.dunedin.govt.nz/decisions) for the marked-up version of the notified 2GP (2015). This shows changes to the notified 2GP with strike-through and underline formatting and includes related submission point references for the changes.

## Appendix 2 – Summary of Decisions

1. A summary of decisions on provisions discussed in this decision report (based on the submissions covered in this report) is below.
2. This summary table includes the following information:
  - Plan Section Number and Name (the section of the 2GP the provision is in)
  - Provision Type (the type of plan provision e.g. definition)
  - Provision number from notified and new number (decisions version)
  - Provision name (for definitions, activity status table rows, and performance standards)
  - Decision report section
  - Section 42A Report section
  - Decision
  - Submission point number reference for amendment

## Summary of Decisions

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
1. Plan Overview and Introduction	Definition	1.5		Earthworks	Amend to clarify harvesting is not part of definition as covered by definition of farming (not a substantive change)	EW 1090.2	3.3.3.4.4	5.1.1
1. Plan Overview and Introduction	Definition	1.5		Farming	Amend to clarify that earthworks associated with cultivation, harvesting and tilling are included in this definition	EW 1090.2	3.3.3.4.4	5.1.1
1. Plan Overview and Introduction	Definition	1.5		Finished ground level	Add definition for 'Finished Ground Level'	EW 634.26	3.5.4.1	5.6.4
1. Plan Overview and Introduction	Definition	1.5		Earthworks	Amend definition of Earthworks to exclude maintenance of farm tracks, private roads, private ways, farmyards, drains, farm service areas, sileage pits, and fences, and clarify that these are not managed by the Plan.	EW 919.4 and others	3.3.3.4.1	5.11.4
1. Plan Overview and Introduction	Definition	1.5		Drain (new)	Add definition for 'Drain'	EW 919.4 and others	3.3.3.4.1	5.11.4
1. Plan Overview and Introduction	Definition	1.5			Do not add new definition of maintenance as requested		3.3.3.4.1	5.11.4

<b>Plan Section</b>	<b>Provision Type</b>	<b>Provision number</b>	<b>New Number</b>	<b>Provision Name</b>	<b>Decision</b>	<b>Submission Point Reference</b>	<b>Decision Report Topic number</b>	<b>S42A Report Section Number</b>
1. Plan Overview and Introduction	Definition	1.5		Earthworks	Do not amend as requested (exclude the construction or upgrading of drains from the definition of earthworks)		3.3.3.4.3	5.11.4
8A. Earthworks	Policy	8A.2.1.1			Amend policy wording	PO 308.497 and EW 241.21	3.6.3.4	5.2.3
8A. Earthworks	Policy	8A.2.1.3			Do not amend as requested		3.6.5.4	5.2.5
8A. Earthworks	Objective	8A.2.1			Do not amend objective wording		3.6.2.4	5.2.2
8A. Earthworks	Activity Status	8A.3.2.3		Earthworks – large scale	Do not amend to change activity status from RD to C and add a third tier of controlled earthworks		3.7.1.1	5.5
8A. Earthworks	City Wide Performance Standard	8A.5.1.1		Earthworks - small scale thresholds - General	Amend the list of earthworks that are always considered small scale to include earthworks in the rural or rural residential zones, outside flood hazard overlay zones, associated with burying material infected by unwanted organisms as declared by the Ministry for Primary Industries' Chief Technical Officer or an emergency declared by the Minister for Primary Industries under	EW 1090.2	3.3.5.1	5.1.1



<b>Plan Section</b>	<b>Provision Type</b>	<b>Provision number</b>	<b>New Number</b>	<b>Provision Name</b>	<b>Decision</b>	<b>Submission Point Reference</b>	<b>Decision Report Topic number</b>	<b>S42A Report Section Number</b>
					the Biosecurity Act 1993			
8A. Earthworks	City Wide Performance Standard	8A.5.1.1		Earthworks - small scale thresholds - General	Amend the list of earthworks that are always considered small scale to include earthworks subject to an approved building consent, except in the rural or rural residential zones or where they are located more than 1.8m from the building	EW 308.374	3.3.4.1	5.8.2

<b>Plan Section</b>	<b>Provision Type</b>	<b>Provision number</b>	<b>New Number</b>	<b>Provision Name</b>	<b>Decision</b>	<b>Submission Point Reference</b>	<b>Decision Report Topic number</b>	<b>S42A Report Section Number</b>
8A. Earthworks	City Wide Performance Standard	8A.5.1.1		Earthworks - small scale thresholds - General	Amend the list of earthworks that are always considered small scale to include earthworks for the erection of new fences or construction of walking tracks or vehicle tracks, where the fence or track is associated with a permitted land use or city-wide activity, provided that the earthworks: Do not result in a change in finished ground level that exceeds 1m Do not exceed 2m in width if located in an ASBV or ONF, ONCC, HNCC or NCC overlay zone, or 3m in width outside these areas	EW 388.4 and 911.1	3.3.3.4.2	5.11.4
8A. Earthworks	City Wide Performance Standard	8A.5.1.1		Earthworks - small scale thresholds - General	Amend the list of earthworks that are always considered small scale to include earthworks in the Port Zone	EW 737.30	3.5.5.2	5.6.4
8A. Earthworks	City Wide Performance Standard	8A.5.1.1		Earthworks - small scale thresholds - General	Do not amend to consider all earthworks associated with farming to be exempt from rules		3.3.3.4.5	5.11.4

<b>Plan Section</b>	<b>Provision Type</b>	<b>Provision number</b>	<b>New Number</b>	<b>Provision Name</b>	<b>Decision</b>	<b>Submission Point Reference</b>	<b>Decision Report Topic number</b>	<b>S42A Report Section Number</b>
8A. Earthworks	City Wide Performance Standard	8A.5.1.3		Earthworks - small scale thresholds - Maximum change in finished ground level	Amend rule name from 'maximum change in ground level' to 'maximum change in finished ground level'	EW 634.26	3.5.2.3	5.6.4
8A. Earthworks	City Wide Performance Standard	8A.5.1.3		Earthworks - small scale thresholds - Maximum change in finished ground level	Do not amend as requested (increase the maximum change in ground level for earthworks in the Mercy Hospital Zone from 1.5m to 2.0m)		3.5.3.3	5.11.2
8A. Earthworks	City Wide Performance Standard	8A.5.1.3		Earthworks - small scale thresholds - Maximum change in finished ground level	Do not amend as requested (exempt network utilities from performance standard)		3.5.4.1	5.11.1
8A. Earthworks	City Wide Performance Standard	8A.5.1.5		Earthworks - small scale thresholds - Maximum volume of combined cut and fill	Amend the performance standard to reduce the distance where "more than one earthworks activity up to the maximum volume stated in Rule 8A.5.1.5.a.i, vii, viii or ix may be undertaken" from 1km to 400m (this includes all zones and hazard overlays but not other overlays)	EW 312.13	3.5.7.3	5.6.4

<b>Plan Section</b>	<b>Provision Type</b>	<b>Provision number</b>	<b>New Number</b>	<b>Provision Name</b>	<b>Decision</b>	<b>Submission Point Reference</b>	<b>Decision Report Topic number</b>	<b>S42A Report Section Number</b>
8A. Earthworks	City Wide Performance Standard	8A.5.1.5		Earthworks - small scale thresholds - Maximum volume of combined cut and fill	Do not amend to allow higher columns of combined cut and fill in residential zones		3.5.6.1	5.6.4
8A. Earthworks	City Wide Performance Standard	8A.5.1		Earthworks - small scale thresholds	Do not amend to permit earthworks in a Hazard 2 (flood) Overlay Zone		3.5.8.1	5.6.4
8A. Earthworks	City Wide Performance Standard	8A.5.1		Earthworks - small scale thresholds	Do not amend to allow for lesser setbacks in cases where access to a residential property would be adversely impacted by the proposed provisions		3.5.9.3	5.6.4
8A. Earthworks	City Wide Performance Standard	8A.5.3		Batter gradient	Do not amend as requested		3.5.1.3	5.6.3
8A. Earthworks	City Wide Performance Standard	8A.5.7		Sediment control	Amend performance standard to also manage sediment entering the coastal marine area	EW 1071.104	3.6.4.2	5.2.4
8A. Earthworks	Assessment of Restricted Discretionary Performance Standard Contraventions	8A.6.3.1			Amend rule to reflect policy wording	PO 308.497 and EW 241.21	3.6.3.4	5.2.3

<b>Plan Section</b>	<b>Provision Type</b>	<b>Provision number</b>	<b>New Number</b>	<b>Provision Name</b>	<b>Decision</b>	<b>Submission Point Reference</b>	<b>Decision Report Topic number</b>	<b>S42A Report Section Number</b>
8A. Earthworks	City Wide Performance Standard	8A.7.2.1			Amend guidance to add guidance for earthworks in rural zones	EW 360.134	3.10.1	5.7.1
8A. Earthworks	City Wide Performance Standard	New performance standard		Dust control standards	Do not add new performance standard		3.11.2	5.6.5