

Proposed Selwyn District Plan



Right of Reply Report

Earthworks

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1. Purpose of Report

- 1.1 The purpose of this report is to respond to the questions raised by the Hearings Panel during Hearing 15: Earthworks, and for the Officer to propose any further amendments to the notified version of the Proposed District Plan (PDP) above those recommended in the Officer's s42a evidence report.

2. Hearing Panel's Questions to the s42a Reporting Officer and/or the Submitters and their Response

- 2.1 The following questions were received from the Hearing Panel or posed to submitters for the Earthworks (EW) Chapter, which was heard on 18 January 2022.

[1] EW-REQ1 Volumes

- 2.2 Rolleston West Residential Group, Rolleston Industrial Developments Ltd, Rolleston Industrial Holdings Ltd and IPort Rolleston Holdings Ltd (together, 'the Carter Group')¹ requested that the permitted volumes in the General Industrial Zone and Large Format Retail Zone be changed from 1,000m³ per site, to 1000m³ per hectare. The result of this would be that the levels of permitted earthworks increase in proportion to the size of the related site. The site size in the Industrial zone varies widely. Within Izone, the largest currently developed site being nearly 15ha and the smallest sites being around 900m². The average site size within the Izone is roughly 7500m² (0.75ha).
- 2.3 Should the Carter Group's suggested change be adopted, the largest site could undertake nearly 15,000m³ of earthworks (excluding earthworks related to a Building consent under rule EW-R1) without requiring resource consent, while smallest sites could only undertake 90m³ of permitted earthworks, this is less than the 150m³ permitted in the residential zones. This would result in the perverse outcome of small sites requiring resource consent for earthworks less than the permitted residential volume, while large sites could undertake more than 150 times the volume of earthworks without needing resource consent. As the potential adverse effects of earthworks increase as the volumes of earthworks increase, it is considered appropriate to manage large scale earthworks through resource consent conditions and monitoring. I therefore do not support the submitters recommended submission and recommend the earthworks volumes be retained as notified.

[2] Offal Pits

- 2.4 The submissions received relating to Offal Pits, by Ellesmere Sustainable Agriculture Incorporated and Federated Farmers of New Zealand², related to Offal Pits being excluded from the Maximum Depth required by EW-REQ3 and the reinstatement of earthworks requirement under EW-REQ4. The Hearing Panel raised the question of how offal pits are to be managed through the CLWRP and CARP, and whether these regional plans suitably address the effects caused by offal pits. The CLWRP rule 5.24 addresses the permitted volume, prevention of runoff into the pit and requires measures to prevent animals from accessing the pit. The main effects these seek to address relate to discharge to ground and/or water. The

¹ DPR-0358 RWRL, DPR-0384 RIDL, DPR-0374 RIHL, DPR-0363 IRHL, evidence of Amy Clark, Para 18-22

² DPR-0212.095 & 096 ESAI, & DPR-0422.234 & 235 NCCF

CARP rule 7.75 requires offal pits to be setback from sensitive activities and requires that no objectionable odours be created beyond the boundary of the property. This provision addresses effects relating to odour. For larger farming sites, Farm Environment Plans are required, which would involve the management of any offal pits on site. These larger sites are the most likely to have larger offal pits, which are more likely to generate adverse effects. While smaller rural sites don't require Farm Management Plans, the scale of any offal pits on these sites will be small, and therefore unlikely to produce adverse effects beyond the site. It is noted that small sites will still need to meet all relevant offal pit requirements in the Regional Plans.

- 2.5 Given the above, and as stated in page 4 of my "Response to Hearing Panel Questions" report the effects of the increased depth can be appropriately managed by the regional plans.

[3] Cross reference to EI Chapter

- 2.6 Orion³ are seeking that the EW chapter includes corridor protection rules in relation to earthworks and land disturbance to ensure the SEDL's and support structures are protected. It is noted that in her 'Right of Reply' on the EI chapter, Vicki Barker⁴ has recommended the inclusion of a rule relating to earthworks in proximity to the National Grid (EI-RX). Orion seeks the inclusion of rules relating to SEDL's on similar grounds. While this rule inclusion relates more directly to the EI chapter, the matter has been considered in the context of the EW Chapter Hearing as it was not considered as part of the EI Hearing.
- 2.7 The EW s42a report recommended that such a rule is not necessary as it essentially replicates the provisions of the NZCEP which manage earthworks near overhead lines support structures. Given the information provided at hearing and in order to remain consistent with the updated recommendation of Ms. Barker relating to earthworks in proximity to the National Grid, I agree that the inclusion of a rule relating to earthworks in the vicinity of SEDL's are appropriate. While it is Orion's preferred option to insert this rule into the Earthworks chapter, I consider that the more appropriate location is within the EI chapter, as the intention of the PDP is to have the EI chapter as a self-contained chapter for all energy, transport and infrastructure works and activities..
- 2.8 Having reviewed the draft provisions submitted by Orion and the other District Plans, I consider that the draft provisions submitted by Orion could be further amended and recommend the following, noting that reference to EI-RX is in reference to the new rule proposed in the EI chapter right of reply:

EI-RY	<u>Earthworks Near Significant Electricity Distribution Lines</u>	
<u>All Zones</u>	<u>Activity Status: PER</u>	<u>Activity status when compliance</u>
	1. <u>Earthworks within 10m of the centreline and/or foundation of a support structure of-in the vicinity of any Significant Electricity Distribution Line.</u> <u>Where:</u>	<u>not achieved:</u> 2. <u>When compliance with EI-RY.1.a. is not achieved: Refer to EI-RY.4 or EI-RY.6.</u>

³ DPR-0367 Orion Evidence of Melanie Karen Foote, para 13-15

⁴ Right of Reply of Vicki Barker, dated 26 October 2021, paragraph 2.59-63

	<p>a. <u>Earthworks are for cultivation or the repair, sealing or resealing of the existing surface of any road, footpath, driveway or farm track.</u></p> <p>b. <u>The earthworks are for any network utility and meet EI-RX.</u></p>	<p>3. <u>When compliance with EI-RY1.b is not achieved: NC</u></p> <p><u>Notification: Any application arising from EI-RY.1.3 shall not be subject to public notification and shall be limited notified to the following parties: the network utility operator with responsibility for the Significant Electricity Distribution Line, unless their written approval is provided.</u></p>
All zones	<p><u>Activity Status: PER</u></p> <p>4. <u>Earthworks within 10m of the centreline and/or foundation of a support structure of the Significant Electricity Distribution Line (Islington to Springston), the purpose of which is not covered by EI-RY.1.</u></p> <p><u>Where:</u></p> <p>a. <u>Earthworks are less than 300mm deep within 6m from the outer visible edge of a foundation of a Significant Electricity Distribution Line (Islington to Springston) support structure; and</u></p> <p>b. <u>Earthworks are less than 3m deep between 6 and 10 metres from the outer visible edge of a foundation of the Significant Electricity Distribution Line (Islington to Springston) support structure; and</u></p> <p>c. <u>The work does not compromise the stability of the Significant Electricity Distribution Line support structure; and</u></p> <p>d. <u>Earthworks are for fence posts more than 5m from the outer visible edge of a foundation of a Significant Electricity Distribution Line (Islington to Springston) support structure.</u></p> <p><u>Note: That part of the earthworks definition which excludes fence posts does not apply to this clause.</u></p>	<p><u>Activity Status when Compliance not achieved:</u></p> <p>5. <u>When compliance with any of EI-RY.4. is not achieved: NC</u></p> <p><u>Notification:</u></p> <p><u>Any application arising from EI-RY.5 shall not be subject to public notification and shall be limited notified to the following parties: the network utility operator with responsibility for the Significant Electricity Distribution Line, unless their written approval is provided.</u></p>

	<p>e. <u>The earthworks do not result in a reduction in ground to conductor clearance distances below what is required by Table 4 in NZECP 34:2001.</u></p> <p>And this activity complies with the following rule requirements:</p> <p>EI-REQX New Zealand Code of Practice for Electrical Safe Distances</p>	
<u>All zones</u>	<p><u>Activity Status: PER</u></p> <p>6. <u>Earthworks within 5m of the centreline of Other Significant Electricity Distribution Lines, the purpose of which is not covered by EI-RY.1 or EI-RY.4</u></p> <p><u>Where:</u></p> <p>a. <u>Earthworks are less than 300mm deep within 2.2m metres of a foundation of the Significant Electricity Distribution Line support structure; and</u></p> <p>b. <u>Earthworks are less than 0.75m deep between 2.2m and 5m from the foundation of the Significant Electricity Distribution Line support structure; and</u></p> <p>c. <u>The work does not compromise the stability of the Significant Electricity Distribution Line support structure.</u></p> <p>d. <u>The earthworks do not result in a reduction in ground to conductor clearance distances below what is required by Table 4 in NZECP 34:2001.</u></p> <p>And this activity complies with the following rule requirements:</p> <p>EI-REQX New Zealand Code of Practice for Electrical Safe Distances</p>	<p><u>Activity Status when Compliance not achieved:</u></p> <p>7. <u>when Compliance not achieved with EI-RY.6 NC</u></p> <p><u>Notification:</u></p> <p><u>Any application arising from EI-RY.7 shall not be subject to public notification and shall be limited notified to the following parties: the network utility operator with responsibility for the Significant Electricity Distribution Line, unless their written approval is provided.</u></p>

2.9 Given the above recommendation, it would not be appropriate or beneficial to include Energy and Infrastructure provisions (i.e. objectives and policies) in the Earthworks chapter given that they are already in the Energy and Infrastructure.

2.10 Orion state, in their statement of evidence that their preference remains for such a rule to be in the

Earthworks Chapter but if the Panel prefer to locate these provisions in the EI Chapter with appropriate cross referencing via hyperlinks, they would accept this as an alternative relief. While the officer's response to the Hearing Panel questions report raised the issue that there is no reason that particular reference should be given to the EI chapter and not all the other chapters, it has subsequently been identified that the National Planning Standards states that EW chapter must include cross-references to any relevant earthworks provisions under the Energy, Infrastructure, and Transport heading⁵. It is therefore considered that a note should be added to the EW chapter to identify that there are rules relating to earthworks in the EI chapter that take precedence over the rules in the EW chapter.

- 2.11 The Panel raised the question at the hearing whether properties which contain the SEDL layer link to the EI chapter. I can confirm that they do. This means that anyone who searches their property will be directed to the EI chapter when relevant.
- 2.12 Recommended amendments to the note section of the EW Chapter are as follows:

Note

...

As mentioned above, before undertaking any work that may affect an archaeological site you must obtain an authority from Heritage New Zealand.

As well as the provisions in this chapter, the Energy and Infrastructure chapter contains provisions that may also be relevant to earthworks.

[4] Relationship between the NESCS and the EW Chapter.

- 2.13 The Oil Companies⁶ have sought to exempt certain activities, which are covered under the NESCS, from needing to comply with the EW chapter rules. Specifically the removal or replacement of fuel storage systems or the sampling of soil relating to the NESCS.
- 2.14 The Hearing Panel has asked for clarity on the overlap between the earthwork provisions in the EW chapter and the NESCS. I am of the position that there is little to no overlap in terms of effects managed. The NESCS seeks solely to manage the adverse effects relating to the management of contaminated soil on people and the environment. The EW chapter does not seek to manage these effects, but instead is primarily concerned with managing the appropriate level of amenity given the location. Exempting earthworks from the EW chapter, which are also subject to the NESCS could result in earthworks with significant effects on amenity occurring without Council having the ability to manage these effects.

[5] Given there are very few non-complying activity status' in the provisions, is an 'avoid' provision (as suggested by Carter Group) appropriate?

- 2.15 The Carter Group⁷ are seeking that EW O1 be amended to replace the word 'limit' with 'avoid significant adverse effects' and 'remedy or mitigate other adverse effects'. The Hearing Panel has asked whether the

⁵ Planning standards 7.30

⁶ DPR-0383 Oil Companies, Evidence of Jarrod Dixon

⁷ DPR-0358 RWRL, DPR-0384 RIDL, DPR-0374 RIHL, DPR-0363 IRHL, evidence of Amy Clark, Para 8 -13

use of the word 'avoid' is considered appropriate in EW-O1. It is noted that the only non-complying activity status is for earthworks in the SP Grasmere Zone (EW-R3) that are not covered by the general earthwork rule (EW-R1) and fails to meet R3(a), being outside the Tourist Accommodation Area or the Residential Accommodation Area. As this is the only use of the NC status, it is considered that the use of 'avoid' in the objective would be inconsistent with the remainder of the chapter.

- 2.16 Taking the above into account, I consider it appropriate to alter the wording of EW-O1 to remove the 'avoid' wording, as follows:

EW-Objectives

EW-O1 Earthworks are undertaken in a manner that ~~avoids significant and~~ minimises other adverse effects on the surrounding environment.

3. Reporting Officer's Proposed Provision Amendments

- 3.1 On review of the submitter's evidence and the matters raised within the Hearing the following amendments to the proposed provisions are recommended. For a full summary of all the proposed amendments to provisions see **Appendix 2**.

EW-O1

- 3.2 *Earthworks are undertaken in a manner that ~~avoids significant and~~ minimises other adverse effects on the surrounding environment.*

Submission scope:

- 3.3 Scope is provided for this proposed amendment through the RWRL, IRHL, RIHL, RIDL, NCFF and DoC submission points, DPR0358.243, DPR0363.232, DPRDPR0374.238, DPR0384.250, DPR0422.227, DPR0427.083 respectively.

Reasoning:

- 3.4 The change is explained at paragraphs 2.15-2.16. No s32AA assessment is deemed necessary.

EW Note

- 3.5 A minor amendment is recommended to the EW note section, as follows:

...

As mentioned above, before undertaking any work that may affect an archaeological site you must obtain an authority from Heritage New Zealand.

As well as the provisions in this chapter, the Energy and Infrastructure chapter contains provisions that may also be relevant to earthworks.

Submission scope:

3.6 Scope is provided for this proposed amendment through the Orion submission, DPR-0367.114.

Reasoning:

3.7 The change is explained at paragraphs 2.10-2.12. No s32AA assessment is deemed necessary.

El-RY

3.8 It is recommended to insert a new rule into the El chapter as follows:

El-RY	<u>Earthworks Near Significant Electricity Distribution Lines</u>	
<u>All Zones</u>	<p><u>Activity Status: PER</u></p> <ol style="list-style-type: none"> <u>Earthworks within 10m of the centreline and/or foundation of a support structure of in the vicinity of any Significant Electricity Distribution Line.</u> <p><u>Where:</u></p> <ol style="list-style-type: none"> <u>Earthworks are for cultivation or the repair, sealing or resealing of the existing surface of any road, footpath, driveway or farm track.</u> <u>The earthworks are for any network utility and meet El-RX.</u> 	<p><u>Activity status when compliance not achieved:</u></p> <ol style="list-style-type: none"> <u>When compliance with El-RY.1.a. is not achieved: Refer to El-RY.4 or El-RY.6.</u> <u>When compliance with El-RY1.b is not achieved: NC</u> <p><u>Notification: Any application arising from El-RY.1.3 shall not be subject to public notification and shall be limited notified to the following parties: the network utility operator with responsibility for the Significant Electricity Distribution Line, unless their written approval is provided.</u></p>
<u>All zones</u>	<p><u>Activity Status: PER</u></p> <ol style="list-style-type: none"> <u>Earthworks within 10m of the centreline and/or foundation of a support structure of the Significant Electricity Distribution Line (Islington to Springston), the purpose of which is not covered by El-RY.1.</u> <p><u>Where:</u></p> <ol style="list-style-type: none"> <u>Earthworks are less than 300mm deep within 6m from the outer visible edge of a foundation of a Significant Electricity Distribution Line (Islington to Springston) support structure; and</u> <u>Earthworks are less than 3m deep between 6 and 10 metres from the outer visible edge of a</u> 	<p><u>Activity Status when Compliance not achieved:</u></p> <ol style="list-style-type: none"> <u>When compliance with any of El-RY.4. is not achieved: NC</u> <p><u>Notification:</u></p> <p><u>Any application arising from El-RY.5 shall not be subject to public notification and shall be limited notified to the following parties: the network utility operator with responsibility for the Significant</u></p>

	<p><u>foundation of the Significant Electricity Distribution Line (Islington to Springston) support structure; and</u></p> <p>c. <u>The work does not compromise the stability of the Significant Electricity Distribution Line support structure; and</u></p> <p>d. <u>Earthworks are for fence posts more than 5m from the outer visible edge of a foundation of a Significant Electricity Distribution Line (Islington to Springston) support structure.</u></p> <p><u>Note: That part of the earthworks definition which excludes fence posts does not apply to this clause.</u></p> <p>e. <u>The earthworks do not result in a reduction in ground to conductor clearance distances below what is required by Table 4 in NZECP 34:2001.</u></p> <p>And this activity complies with the following rule requirements:</p> <p>EI-REQX New Zealand Code of Practice for Electrical Safe Distances</p>	<p><u>Electricity Distribution Line, unless their written approval is provided.</u></p>
<u>All zones</u>	<p><u>Activity Status: PER</u></p> <p>6. <u>Earthworks within 5m of the centreline of Other Significant Electricity Distribution Lines, the purpose of which is not covered by EI-RY.1 or EI-RY.4</u></p> <p><u>Where:</u></p> <p>a. <u>Earthworks are less than 300mm deep within 2.2m metres of a foundation of the Significant Electricity Distribution Line support structure; and</u></p> <p>b. <u>Earthworks are less than 0.75m deep between 2.2m and 5m from the foundation of the Significant Electricity Distribution Line support structure; and</u></p> <p>c. <u>The work does not compromise the stability of the Significant Electricity Distribution Line support structure.</u></p>	<p><u>Activity Status when Compliance not achieved:</u></p> <p>7. <u>when Compliance not achieved with EI-RY.6 NC</u></p> <p><u>Notification:</u></p> <p><u>Any application arising from EI-RY.7 shall not be subject to public notification and shall be limited notified to the following parties: the network utility operator with responsibility for the Significant Electricity Distribution Line, unless their written approval is provided.</u></p>

	<p>d. <u>The earthworks do not result in a reduction in ground to conductor clearance distances below what is required by Table 4 in NZECP 34:2001.</u></p> <p>And this activity complies with the following rule requirements:</p> <p>EI-REQX New Zealand Code of Practice for Electrical Safe Distances</p>	
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Submission scope:

3.9 Scope is provided for this proposed amendment through the Orion submission, DPR-0367.114.

Reasoning:

3.10 The change is explained at paragraphs 2.6-2.9. No s32AA assessment is deemed necessary.