OFFICER'S RESPONSE TO QUESTIONS FROM THE HEARINGS PANEL

DATE: **13 January, 2022**

HEARING: **Earthworks**

HEARING DATE: **18th January 2022**

PREPARED BY: **Ryan Mayes**

Introduction

The purpose of this report is to provide a written response to the questions posed by the Hearings Panel on the respective section 42A report for the Earthworks Chapter.

Questions and Answers

Paragraph or Plan reference	Question from the Hearings Panel
4.1	The report states: *Regard is also to be given to the CRPS,* Should this not be 'give effect to' rather than have regard as per RMA s75(3)? And 'not be inconsistent with' a regional plan? I note this is a consistent paragraph across all the S42A reports.
Officer response:	The purpose of this summary statement is to identify the relevant planning documents that need to be taken into consideration in accordance with the requirements of ss 74 & 75 RMA, rather than specifying the weight that needs to be applied to each. Para 4.1 confirms that the PDP needs to be prepared in accordance with ss 74 & 75 RMA, which encapsulates the need to give effect to the CRPS, among other requirements.
New EW Policy 9.25	The report states: *It is recommended that the submission point be rejected as policies relating to distribution lines are most appropriately addressed in the EI chapter, which already includes rules relating to protecting the operation and security of important infrastructure.* Is there merit in including at least a cross reference? As, for example, a farmer reading the EW Chapter who intends to do earthworks near a transmission line might not know that there are also relevant rules in the EI Chapter?

Paragraph or Plan reference	Question from the Hearings Panel
Officer response:	*The issue with this is that there are several other chapters that have rules around earthworks, such as natural hazards (NH-R3), Ecosystems and Indigenous Biodiversity (EIB-R2) and Notable Trees (TREE-R3). There is no reason that particular reference should be given to the EI chapter and not all the other chapters and having reference to all relevant chapters would create unnecessary clutter in the chapter.*
10 Earthworks subject to a building consent	Please explain why this rule has been introduced, i.e. it appears to be targeted at earthworks near a boundary only, is this because the scale of earthworks will be small and presumably the stability/drainage aspects are covered off in the building consent process?
Officer response:	*Correct, earthworks related to building consents are by their nature finite in duration and controlled by the building consent process. Earthworks near to boundaries need to be given particular consideration as there is an increased potential risk to create adverse effects on neighbouring properties, such as subsidence.*
15.2 New Rules	The Report states: *Activities relating to Significant Electricity Distribution Lines and utilities are addressed in the EI chapter,* For clarity, are there any EI Chapter rule(s) that expressly cover earthworks in the vicinity of Significant Electricity Distribution Lines? If yes, can you please identify them. If not, is there merit in this rule being included in the EI Chapter?
Officer response:	*There is not a separate rule for earthworks relating to Significant Electricity Distribution Lines. Rule requirement EI-REQ5 does manage earthworks in special areas, such as SASM's and SNA's. As the EI chapter is self-contained, there would be no requirement to comply with the Earthworks chapter unless there is specific direction within the EI chapter to do so.*
16.5	The report states: *It is recommended that Winstone submission point be accepted* Are you agreeing with Winstone's argument that those effects (sedimentation and water erosion) are the responsibility of the regional council and SDC has no role in managing this?
Officer response:	*Correct. These are effects that are under the jurisdiction of the regional authority to manage, rather the District Authority.*
16.6	The report states: It is noted that the definition of site does include '*land which comprises two or more adjoining legally defined allotments in such a way that the allotments cannot be dealt with separately without the prior consent of the council*'. Yes, but does this wording really cover off the situation described by Trustpower, they may be owned by the same body but still have separate C/T's and can be developed separately?

Paragraph or Plan reference	Question from the Hearings Panel
Officer response:	*It is acknowledged that the definition of 'site' may not cover all instances of land owned by Trustpower. However where this is the case, any earthworks associated with works covered under the EI chapter would not be required to meet the EW chapter and therefore the rules would not be restrict the efficient operation of their activities. They would also have the permitted volumes that they can undertake above and beyond the earthworks undertaken under the EI chapter.* *For earthworks on sites which are owned by a single party, other than entities such as Trustpower, but are not legally held together, it is considered appropriate to manage earthworks for each title separately as Council is unable to control if and when they are bought and sold to separate parties. This could complicate monitoring and enforcement issues.*
16.7	The report states: *The scale of earthworks outside the beds of rivers, lakes or in the CMA, that fall under flood protection and irrigation schemes could potentially be very large, and in that circumstance it is considered appropriate for the PDP to control the amenity effects of such earthworks*. Could it be that emergency works provisions might be triggered in the event of flooding prevention/repair?
Officer response:	*Correct, sections 330 and 330A of the RMA provide for emergency works to be undertaken where:* • *an adverse effect on the environment which requires immediate preventive measures; or* • *an adverse effect on the environment which requires immediate remedial measures; or* • *any sudden event causing or likely to cause loss of life, injury, or serious damage to property—* *Should works meet these requirements it would be possible to act under these sections to undertake the required works in the required timeframe.* *It still remains appropriate to manage the effects of non-urgent works relating to flood protection and irrigation schemes in other situations.*
16.8	The report states: ***Recommendations and amendments*** *I recommend, for the reasons given above, that the Hearings Panel:* *a) Amend EW-REQ1 as shown in **Appendix 2** to better reflect jurisdictional concerns in relation to the matters of discretion to be considered.* But there do not appear to be any changes to this rule shown in Appendix 2?
Officer response:	*This was an error in Appendix 2 and is corrected in the addendum.*

Paragraph or Plan reference	Question from the Hearings Panel
18 EW-REQ3 Excavation and Filling 18.3	The Report states: *ESAI I agree that it would not be achievable to have all filling being cleanfill material.* How do we control other than offal being deposited in these pits so they do not become contaminated with hazardous waste? *ESAI and NCFF seek to exempt offal pits from requiring to comply with EW-REQ3.* NCFF also sought to exclude ancillary rural earthworks. I see in Appendix 2 that you are not accepting this part. What is your reason for this, or is this covered in 22.1 with the Hort NZ submissions on this? These submissions actually sought a complete exclusion for offal pits, not just for the filling clause that you have considered here and changed in Appendix 2. What is your opinion on the complete exclusion for offal pits?
Officer response:	*The CLWRP does allow for offal pits to be used for onsite refuse disposal, as long as the relevant conditions of Rule 5.24 and 5.27 are met. The Health Act 1956 requires that the discharge of carcasses and offal to land must not create a nuisance, as outlined in the CLWRP. The Health Act also gives local authority powers to "to cause all proper steps to be taken to secure the abatement of the nuisance or the removal of the condition".* *In regard to the Ancillary Rural Earthworks, section 22 addresses all matters related to this matter. It was an error in the report that submission DPR-0422.234 was not repeated in that section. However I consider that the argument and positon of section 22 cover off this matter. This has also been corrected in the* *In regard to removing requirements for offal pits to meet the maximum depth requirement (EW-REQ3.1), as all offal pits are likely to breach this requirement, it is considered unreasonable to require resource consent for all offal pits. I therefore recommend the inclusion of the following text to clause 1 of EW-REQ3.1:* *"1. Earthworks, excluding those earthworks associated with offal pits, shall not exceed a maximum…".* *Given the required nature and location of offal pits, the effects of the increased depth can be appropriately managed by the regional plans.*
18.4	The Report states: *It is recommended that this submission point be rejected as the appropriateness of noncleanfill materials needs to be considered, especially in the higher amenity zones and to ensure the likely intended activities are not compromised.* Please provide an example of acceptable non-cleanfill materials?
Officer response:	*It is considered appropriate to put the onus on the applicant to show that it is acceptable in a given situation. A situation where no- clean fill may be acceptable may be for bunding, where hardfill materials may be suitable.*

Paragraph or Plan reference	Question from the Hearings Panel
19.3	The report states: *As offal pits may be required to be open for more than 12 months and the CLWRP offers control around their location and nature, it is considered appropriate to exempt them from meeting this requirement.* Does the size of the offal pit itself have being on its reinstatement? While you say that offal pits maybe open for more than 12 months and their nature and location is governed by Regional Plans, how is fill to managed to minimise odour?
Officer response:	*The CLWRP has a maximum volume of 50m^3- and requires that the pit is covered once it is full or no longer in use.* *In regard to odour, the Canterbury Air Regional Plan regulates separation distance of offal pits from sensitive activities, being greater than 150m when uncovered, and requires that they do not cause an offensive or objectionable effect beyond the boundary. Management of potential odour effects would be addressed through the Farm Environment Plan.*
22 Rural Ancillary Earthworks 22.6	The Report states: *The Operative District Plan contains volume requirements, measured on a per project basis.* How does this compare to the PSDP? Does it have the same area m^2 basis?
Officer response:	*It is difficult to make a direct comparison as the Operative District Plan permits up to 5000m^3 per project (Rule 1.7.1.2) and does not reference sites or timeframe, while the Proposed District Plan is based on the site size over a 12 month period.*
24 Quarries 24.2	The report states: *It is recommended that these submission points are accepted as GRUZ-R21 includes earthwork activities and the related effects.* Please explain how new or extensions to existing quarries generally are addressed in the PSDP. What is GRUZ-R21?
Officer response:	*Quarries are addressed in the PDP as a whole activity, which incorporates all ancillary activities such a buildings, and earthworks.* *GRUZ-R21 is the rule relating to establishment of a new, or expansion of an existing mine, quarry, or farm quarry that exceeds an area of extraction of 1,500m^2. This rule is Restricted Discretionary when complied with and Discretionary where it is not.*

Paragraph or Plan reference	Question from the Hearings Panel
25 Subdivision 25.4	The report states: *earthworks associated with subdivision are a related but separate activity from the action of subdivision,* How does this work, at what stage do earthworks get linked to subdivision? What if a developer does the earthworks first, and then applies for subdivision later down the track?
Officer response:	*Earthworks are only able to be related to a subdivision if one exists. That is, where one has been applied for and granted. Should earthworks be undertaken before subdivision is granted, any earthworks would be required to meet standard EW rule (EW-R2). Should they not achieve the permitted levels before subdivision consent was granted, it is appropriate to manage the effects of the earthworks through a resource consent.* *This approach would ensure earthworks are not drawn out over an extended timeframe, or if they are, appropriate mitigation measures are put in place.*

Questions relating to the s32 report

Section 3.2 Page 13	If something was accidentally discovered and the accidental discovery protocol would be triggered, this may mean that works are halted until (1) the discovery is confirmed as cultural and for instance (2) if it is cultural material, local Iwi and HNZ give their permission for the works to proceed. How likely would it be that such a discovery would be reported given that work hold ups cost time and money for the developer?
Officer response:	*I am unable to comment on the likelihood of this occurring. This matter is addressed through the Heritage New Zealand Pouhere Taonga Act 2014 and any failure to comply would risk penalties under that Act. It is beyond the scope of the DPR to address any issues with this matter.*
Section 3.3 Page 17	The accidental discovery protocol presumes that cultural material is able to be recognised by the discoverer when experience suggests for the most part, it is not. Given what this paragraph is saying (ie) that regardless of whether a site (that contains cultural material) is registered or not or if its recognised in planning provisions or not, under the Pouhere Taonga Act - cultural material is still protected. If cultural material is accidentally discovered, how can it be protected under the Te Pouhere Taongo Act if its not recognised as cultural material?
Officer response:	*This matter is addressed through the Heritage New Zealand Pouhere Taonga Act 2014 and is outside the scope of the PDP.*
Section 3.3 Page 17	Do you agree that this sentence is essentially saying that all sites are protected regardless of whether they are registered or not and whether they have been identified in planning provisions, or not?
Officer response:	*Correct, this is what the referenced webpage states.*

Section 3.3 Page 17	I'm not sure whether this sentence has been accurately quoted or fully explained? please clarify
Officer response:	*The HNZPTA is the Act that defines what an archaeological site is, identifies Heritage NZ as the authority from which permission must be sought, where identified as required in the Act and authorises Heritage NZ to issue punishments under the Act.*