Response to Submitter Evidence/Statements where there are Outstanding Matters in Contention

Contaminated Land & Hazardous Substances Topic

Issue/Plan Provision	Submitter Evidence	Response
1. Definition of 'Major Hazardous Facility'	***FENZ*** (S57.006) [Statement from Paul McGimpsey, pp1-3] FENZ original submission sought to amend the definition as follows: MAJOR HAZARDOUS FACILITY (a) any facility which involves one or more of the following activities: (i) manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints) (ii) oil and gas exploration and extraction facilities (iii) purpose-built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale supply (iv) the storage/use of more than 6 tonnes of LPG (v) galvanising plants (vi) electroplating and metal treatment facilities (vii) tanneries (viii) timber treatment (ix) freezing works and rendering plants (x) wastewater treatment plants (xi) metal smelting and refining (including battery refining or re-cycling) (xii) milk treatment plants (xiii) fibreglass manufacturing (xiv) polymer foam manufacturing (xv) asphalt/bitumen manufacture or storage (xvi) landfills **(xvii) The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment** **(xviii) Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016** (b) The following activities are not considered to be major hazardous facilities: (i) the incidental use and storage of hazardous substances in minimal domestic-scale quantities (ii) retail outlets for hazardous substances intended for domestic usage (e.g. supermarkets, hardware stores and pharmacies) (iii) the incidental storage and use of agrichemicals, fertilisers and fuel for primary production activities. (iv) the mixing of fertilisers (v) service stations, truck stops and commercial refuelling activities (vi) pipelines used for the transfer of hazardous substances such gas, oil, trade waste and sewage (vii) fuel in motor vehicles, boats, airplanes and small engines (viii) military training activities (ix) the transport of hazardous substances (e.g. in trucks or trains) **(x) Emergency service activities** FENZ also suggested applying a quantity limit to (a)(i) and (b)(i) for greater clarity. Section 42A Report recommendation is to accept the submission in part, and to amend the definition in response to all the submissions on this matter, as follows: MAJOR HAZARDOUS FACILITY (a) any facility which involves one or more of the following activities: (i) manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints) (ii) oil and gas exploration and extraction facilities (iii) purpose-built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale supply	I have considered the statement from Mr McGimpsey. In terms of applying a quantity limit to (a)(i) and (b)(i) for greater clarity, I remain of the view that as no quantity limits have been offered up by the submitter (or any submitter) in this regard, there is no evidential basis on which to apply any meaningful or appropriate quantities. FENZ has confirmed that their temporary storage of large quantities of fire retardant and foam product, and stocks of petrol and diesel would not fall within the definition of 'Major Hazard Facility' under the MHF Regulations. Therefore, I confirm that I am comfortable with excluding 'the incidental storage and use of hazardous substances for emergency service activities' from activities considered to be major hazardous facilities, as per my recommended amendments in my s42A report. In response to the suggestion to adopt a different term (such as 'Hazardous Facility' or similar), I do not consider there is scope within the submissions to do this. In any case, while similar, I note that the term adopted in the PDP is 'Major Hazardous Facility', as distinct from 'Major Hazard Facility' as contained in the MHF Regulations. I do not consider this presents a significant aspect of potential confusion. Overall, **I have not changed my position**, as set out in paras 5.3.13 – 5.3.17 of Section 42A Report: *'5.3.13 FENZ have also sought that 'The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling or treatment' be included within the definition of 'Major Hazardous Facility'. They consider that where the business cannot process or dispose of materials, this can become a high fire risk and poses a risk to the health and safety of communities. In my view, storage and/or treatment of hazardous waste would clearly pose potentially significant off-site risks to people, property, and the environment. Therefore, I recommend this be added to the definition of 'Major Hazardous Facility'.* *5.3.14 FENZ have also sought a quantity limit be applied to facilities involving the 'manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints' (definition a.(i)); and 'the incidental use and storage of hazardous substances in minimal domestic-scale quantities' (definition b.(i)).* *5.3.15 The first facility relates to manufacturing and the associated storage of hazardous substance rather than small amounts of storage for use by a small business and for this reason I do not support including a limit on this type of facility.* *5.3.16 The second activity excludes incidental use and storage of hazardous substances 'in minimal domestic scale quantities'. FENZ have not recommended any particular threshold. I suggest that a common-sense*

		(iv) the storage/use of more than 6 tonnes of LPG (v) galvanising plants (vi) electroplating and metal treatment facilities (vii) tanneries (viii) timber treatment (ix) **meat processing,freezing works** and rendering plants (x) wastewater treatment plants (xi) metal smelting and refining (including battery refining or re-cycling) (xii) milk treatment plants (xiii) fibreglass manufacturing (xiv) polymer foam manufacturing (xv) asphalt/bitumen manufacture or storage (xvi) landfills **(xvii) the storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment** **(xviii) any facility designated a Major Hazard Facility under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016** (b) The following activities are not considered to be major hazardous facilities: (i) the incidental use and storage of hazardous substances in minimal domestic-scale quantities (ii) retail outlets for hazardous substances intended for domestic usage (e.g. supermarkets, hardware stores and pharmacies) (iii) the incidental storage and use of agrichemicals, fertilisers and fuel for primary production activities (iv) the mixing of fertilisers (v) service stations, truck stops and commercial refuelling activities (vi) pipelines used for the transfer of hazardous substances such gas, oil, trade waste and sewage (vii) fuel in motor vehicles, boats, airplanes and small engines (viii) military training activities (ix) the transport of hazardous substances (e.g. in trucks or trains) **(x) the incidental storage and use of hazardous substances for emergency service activities**	
	In his Statement on behalf of FENZ, Mr McGimpsey states that, notwithstanding the Reporting Officer's recommendation, *'Fire and Emergency suggests that the Commissioners consider the implications of not applying a quantity limit to (a)(i) and (b)(i) for greater clarity*'. Mr McGimpsey also responds in his statement as follows: *'The reporting officer considers that it is unclear whether such use and temporary storage of hazardous substances poses potential for significant off-site risks to the environment. The reporting officer has requested that Fire and Emergency confirm if such use and storage of hazardous substances would fall within the definition of 'Major Hazard Facility' ('lower tier' or 'upper tier') under the MHF Regulations. If 'use and storage of hazardous substances for emergency service activities' is deemed not to be a 'Major Hazard Facility' under the MHF Regulations, then the reporting officer would support excluding this from the definition.* *In response to the reporting officer's question, Fire and Emergency's firefighting chemicals do not have the types of hazard classifications that are covered by the WorkSafe MHF regulations, so Fire and Emergency sites would never be an MHF because of them. The only substances that Fire and Emergency have that trigger this is oxygen for medical purposes, and Fire and Emergency facilities would never come close to 200 tonne limit for a lower tier MHF.* *In liaising with Fire and Emergency on this, another potential issue was raised which Commissioners may wish to consider. Dr Trudy Geoghegan, National Hazardous Substances Advisor for Fire and Emergency has advised that the term*	*approach would apply. In the absence of any evidence to support a threshold for domestic scale activities, I do not support including one.* *5.3.17 With regard to excluding 'Emergency Service Activities' from the definition of Major Hazardous Facility, as sought by FENZ, I note from their submission that on occasions they are temporarily required to store large quantities of fire retardant and foam product, and stocks of petrol and diesel. It is unclear whether such use and temporary storage of hazardous substances poses potential for significant off-site risks to the environment. It would be helpful if FENZ could advise if such use and storage of hazardous substances would fall within the definition of 'Major Hazard Facility' ('lower tier' or 'upper tier') under the MHF Regulations. If 'use and storage of hazardous substances for emergency service activities' is deemed not to be a 'Major Hazard Facility' under the MHF Regulations, then I would be comfortable excluding this from the definition in the PDP.'*

	'Major Hazardous Facility' is already defined in other legislation and has its own regulations and definitions. The Proposed District Plan definition of 'Major Hazardous Facility' is significantly different to how is the term is defined under the Health and Safety at Work (Major Hazardous Facility) Regulations 2016. *Noting the reporting officer's question that references upper and lower tier MHF (a concept that comes from the WorkSafe regulations), the Proposed District Plan definition is not structured as upper and lower tier. There is only one MHF in Central Hawke's Bay District (Leichesters Waipukurau). To avoid inconsistency and potential confusion, it is therefore suggested the Proposed District Plan adopt a different term such as 'Hazardous Facility' or similar.'*	
	Hort NZ (S81.020) [Statement from Lynette Wharfe, para 6.1-6.19, pp4-7] Hort NZ's original submission sought to retain the definition of 'Major Hazardous Facility', as notified. Section 42A Report recommendation is to accept the submission in part, and to amend the definition in response to all the submissions on this matter (including FENZ submissions), as follows: MAJOR HAZARDOUS FACILITY (a) any facility which involves one or more of the following activities: (i) manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints) (ii) oil and gas exploration and extraction facilities (iii) purpose-built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale supply (iv) the storage/use of more than 6 tonnes of LPG (v) galvanising plants (vi) electroplating and metal treatment facilities (vii) tanneries (viii) timber treatment (ix) **meat processing,~~freezing works~~** and rendering plants (x) wastewater treatment plants (xi) metal smelting and refining (including battery refining or re-cycling) (xii) milk treatment plants (xiii) fibreglass manufacturing (xiv) polymer foam manufacturing (xv) asphalt/bitumen manufacture or storage (xvi) landfills **(xvii) the storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment** **(xviii) any facility designated a Major Hazard Facility under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016** (b) The following activities are not considered to be major hazardous facilities: (i) the incidental use and storage of hazardous substances in minimal domestic-scale quantities (ii) retail outlets for hazardous substances intended for domestic usage (e.g. supermarkets, hardware stores and pharmacies) (iii) the incidental storage and use of agrichemicals, fertilisers and fuel for primary production activities (iv) the mixing of fertilisers (v) service stations, truck stops and commercial refuelling activities (vi) pipelines used for the transfer of hazardous substances such gas, oil, trade waste and sewage (vii) fuel in motor vehicles, boats, airplanes and small engines (viii) military training activities (ix) the transport of hazardous substances (e.g. in trucks or trains) **(x) the incidental storage and use of hazardous substances for emergency service activities**	This refers to the recommendation in the Section 42A Report to accept the FENZ submission to include the following in the definition of 'Major Hazardous Facility': *(xvii) the storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment* I have considered the evidence of Ms Wharfe and the statement from Ms Barr and concur that the focus of the submission from FENZ is on 'high risk' facilities but that the wording may capture waste from any hazardous substances or hazardous substances awaiting reuse, recycling or treatment, and that this could inadvertently include such 'low risk' situations as agrichemicals stored in a sprayer awaiting future use or disposal or storage of other domestic scale quantities of hazardous waste awaiting removal off site. To address any potential tension between provisions in the definition, I consider the exclusion in (b)(i), (b)(iii) and recommended additional (b)(x) of the definition, could be addressed by clarifying that 'incidental storage' includes for disposal purposes. On that basis, **I have changed my position** from that set out in para 5.3.13 of Section 42A Report, and wish to recommend the following overall set of amendments to the definition of 'Major Hazardous Facility' in response to all the submissions on this matter (highlighted in grey below): MAJOR HAZARDOUS FACILITY (a) any facility which involves one or more of the following activities: (i) manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints) (ii) oil and gas exploration and extraction facilities (iii) purpose-built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale supply (iv) the storage/use of more than 6 tonnes of LPG (v) galvanising plants (vi) electroplating and metal treatment facilities (vii) tanneries (viii) timber treatment (ix) **meat processing,~~freezing works~~** and rendering plants (x) wastewater treatment plants (xi) metal smelting and refining (including battery refining or re-cycling) (xii) milk treatment plants (xiii) fibreglass manufacturing (xiv) polymer foam manufacturing (xv) asphalt/bitumen manufacture or storage (xvi) landfills

	Ms Wharfe responds in her evidence as follows (in summary): *'The s42A Report is recommending changes to the definition of major hazardous facility as a result of a submission by Fire and Emergency NZ (FENZ).* *The recommended change seeks to add additional clauses to the definition:* *xvii) The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment.* *xviii) Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major Hazardous Facilities Regulations 2016* *I consider that inclusion of Health and Safety at Work regulations is appropriate as a threshold for major hazardous facilities, so support the inclusion of xviii).* *But I do not support the addition of clause xvii) for the following reasons:* *(a) The addition is inconsistent with the definition in the Hastings District Plan on which the provisions are modelled;* *(b) The addition is inconsistent with other listed facilities as it is generic, whereas the other facilities in the list are specific and readily identified;* *(c) The definition of hazardous waste in the PCHBDP is very broad – wastes of any hazardous substances – so does not provide guidance as to what may be included as a major hazardous facility;* *(d) The wording would capture more hazardous substances than anticipated by the description and reasons set out in the submission;* *(e) The addition presents potential confusion with the matters exempted under the definition.' (paras 6.2-6.5)* *'The s42A Report (5.3.13) considers that storage and/or treatment of hazardous waste would clearly pose potentially significant off-site risks to people, property and the environment and so recommends the addition to the definition, but does not consider the scope of what would be included as 'hazardous waste' and the level of risk associated with all hazardous waste, which includes small scale or minor storage.* *The s42A Report does not consider the implications of the addition of the second part of the clause: or hazardous substances awaiting reuse, recycling, or treatment.* *Nor does the s42A Report consider the premise in the s32 Report that the definition and provisions align with Hastings District.* *In my opinion, matters covered under the additional clause xvii) would be captured by the addition of the Health and Safety at Work thresholds, thereby making xvii) unnecessary.* *Objective HAZS-O2 seeks to avoid unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act (1996) and the Health and Safety at Work Act (2015). Given that major hazardous facilities are identified through the Major Hazardous Facility regulations it is not necessary to include a generic clause in the definition in the Plan as this would be duplication.* *I also consider that the provisions should be clear and simple with no potential ambiguity or debate as to which clause has precedence.'* (paras 6.14-6.19)	**(xvii) the storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment** **(xviii) any facility designated a Major Hazard Facility under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016** (b) The following activities are not considered to be major hazardous facilities: (i) the incidental use and storage **(including for disposal)** of hazardous substances in minimal domestic-scale quantities (ii) retail outlets for hazardous substances intended for domestic usage (e.g. supermarkets, hardware stores and pharmacies) (iii) the incidental **use and** storage **(including for disposal) and use** of agrichemicals, fertilisers and fuel for primary production activities (iv) the mixing of fertilisers (v) service stations, truck stops and commercial refuelling activities (vi) pipelines used for the transfer of hazardous substances such gas, oil, trade waste and sewage (vii) fuel in motor vehicles, boats, airplanes and small engines (viii) military training activities (ix) the transport of hazardous substances (e.g. in trucks or trains) **(x) the incidental use and storage (including for disposal) of hazardous substances for emergency service activities** The above revised amendments do not necessitate any change to the recommendations to **'Accept in part' submissions S81.020, S110.018 or S57.006** in the Section 42A Report, as it stands.

Oil Companies (S110.018) [Statement from Megan Barr, para 2.1-2.12, pp2/3]

The Oil companies original submission sought to reconsider the need for hazardous substance controls based on the broad definition of MHF, and if a broad definition can be justified, retain clauses to the effect of a(iii) and b(v) of the definition as notified.

Section 42A Report recommendation is to accept the submission in part, and to amend the definition in response to all the submissions on this matter (including FENZ submissions), as follows:

MAJOR HAZARDOUS FACILITY	(a) any facility which involves one or more of the following activities: (i) manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints) (ii) oil and gas exploration and extraction facilities (iii) purpose-built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale supply (iv) the storage/use of more than 6 tonnes of LPG (v) galvanising plants (vi) electroplating and metal treatment facilities (vii) tanneries (viii) timber treatment (ix) **meat processing,~~freezing works~~** and rendering plants (x) wastewater treatment plants (xi) metal smelting and refining (including battery refining or re-cycling) (xii) milk treatment plants (xiii) fibreglass manufacturing (xiv) polymer foam manufacturing (xv) asphalt/bitumen manufacture or storage (xvi) landfills **(xvii) the storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling, or treatment** **(xviii) any facility designated a Major Hazard Facility under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016** (b) The following activities are not considered to be major hazardous facilities: (i) the incidental use and storage of hazardous substances in minimal domestic-scale quantities (ii) retail outlets for hazardous substances intended for domestic usage (e.g. supermarkets, hardware stores and pharmacies) (iii) the incidental storage and use of agrichemicals, fertilisers and fuel for primary production activities (iv) the mixing of fertilisers (v) service stations, truck stops and commercial refuelling activities (vi) pipelines used for the transfer of hazardous substances such gas, oil, trade waste and sewage (vii) fuel in motor vehicles, boats, airplanes and small engines (viii) military training activities (ix) the transport of hazardous substances (e.g. in trucks or trains) **(x) the incidental storage and use of hazardous substances for emergency service activities**

Ms Barr responds in the statement as follows:

'Notwithstanding disagreement with the principle of potentially broad controls, given the exemptions for '(b)(v) service stations, truck stops and commercial refuelling activities' and '(b)(vi) pipelines used for the transfer of hazardous substances such as gas, oil, trade waste and sewage', the Oil Companies can accept retention of a version of the definition.

The Oil Companies support the insertion of the additional clause 'Any facility deemed a Major Hazardous Facility under the Health and Safety at Work Major

	Hazardous Facilities Regulations 2016' to ensure that MHF are not inadvertently excluded from the definition. *The Oil Companies do not support the recommendation that a new clause stating 'The storage and/or treatment of hazardous waste (including reuse and recycling facilities) or hazardous substances awaiting reuse, recycling or treatment' be added to the definition of MHF, as proposed by FENZ.* *The Reporting Planner states that in their view "…storage and/or treatment of hazardous waste would clearly pose potentially significant off-site risks to people, property, and the environment". However, no evidence, other than the FENZ submission, is provided to support this position.* *A range of facilities store hazardous waste or hazardous substances, at least temporarily, pending removal off site at more than minimal domestic scale quantities as provided for by clause (b)(i). Adding the clause sought by FENZ to the definition has the potential to create unintended consequences in that the definition could capture a range of facilities that aren't what Council is intending to control through the definition of MHF.* *Relief Sought:* *The Oil Companies seek that:* *• The Hearing Panel accept the recommendation of the Reporting Planner to add clause (a)(xviii) to the definition of MHF; and* *• The Hearing Panel reject the recommendation of the Reporting Planner to add clause (a)(xvii) to the definition of MHF because there is not a strong evidence base to support its inclusion and it has the potential to lead to unintended consequences.'* (paras 2.7-2.12)	
2. Rule HAZS-R1 (Storage, Handling or use of Hazardous Substances)	***Federated Farmers*** (S121.121) [Evidence of Rhea Dasent, paras 12-17, p3] Fed Farmers original submission sought to delete Rule HAZS-R1. Section 42A Report recommendation is to accept the submission in part, and to amend the rule in response to all submissions on this provision, as follows: HAZS-R1 The storage, handling or use of hazardous substances (except Major Hazardous Facilities) All Zones 1. Activity Status: PER Where the following conditions are met: ~~a. All relevant Standards in the underlying zone are complied with.~~ b. The activity does not involve the use of explosives within 60m of any part of the Gas Transmission Network. 2. Activity status where compliance not achieved: RDIS Matters over which discretion is restricted: a. The risk of hazards affecting public or individual safety, and the risk of property damage. b. Measures proposed to avoid or mitigate potential adverse effects on the Gas Transmission Network. c. Technical advice, including an assessment of the level of risk. d. The outcome of any consultation with the owner and operator of the Gas Transmission Network. e. Whether the use of explosives could be located a greater distance from the Gas Transmission Network. Ms Dasent responds in her evidence: *'Federated Farmers supports the recommendation to remove the condition, but we still do not think the rule is needed at all.*	I have considered the evidence of Ms Dasent, and the statement from Mr Roberts, and **I have not changed my position** as set out in paras 6.3.2 – 6.3.5 of Section 42A Report: *'6.3.2 The is support for retention of Rule HAZS-R1 on the basis that it provides for the storage, handling or use of hazardous substances (except for Major Hazardous Facilities) in all zones, subject to conditions.* *6.3.3 However, the Oil Companies, the NZ Defence Force, and Federated Farmers raise concerns with the Permitted Activity condition (Rule HAZS-R1(1)(a)) requiring that all relevant standards in the underlying zone must be complied with, and non-compliance with those underlying zone standards could inadvertently trigger requirement for a separate resource consent for a completely unrelated breach of zone standards (e.g. noise, lighting) on the same site.* *6.3.4 I concur that the way the rule is framed is problematic and does not follow the drafting norms applying to other district-wide rules in the PDP (e.g. Rule TRAN-R1, Rule LIGHT-R1, Rule NOISE-R1 etc). Triggering a resource consent for storage, handling or use of hazardous substances based on a breach of the zone standards is not the intent of the rule, which was merely to provide a Permitted Activity pathway where not a 'Major Hazardous Facility' (which are subsequently addressed in Rule HAZS-R3) and subject to avoiding use of explosives within 60m of the Gas Transmission Network*

	Policy HAZS-P4 (the Section 42a version) seeks to not regulate the use, storage, or transportation of hazardous substances in the District Plan, where adequate levels of protection are already provided by the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015, or the Regional Plan. However HAZS-R1 does precisely that, it regulates hazardous substances that are already well managed by other means. *Although the Hastings District Plan has a similar permitted rule, this was written before Section 31(1)(b)(ii) was repealed in 2017, and territorial authorities still had a function to manage hazardous substances.'* (paras 15-17)	*(condition (1)(b)). In my view, the intent of the rule should be clarified, and the rule should follow the drafting norms across the PDP.* *6.3.5 Therefore, I recommend Rule HAZS-R1 be retained, but that condition (1)(a) be deleted...'* I do not consider that this unduly 'regulates' the storage, handling or use of hazardous substances – it merely provides a consenting pathway where the activity involves the use of explosives within 60m of any part of the Gas Transmission Network (condition 1(b)), and differentiates from the storage, handling or use of hazardous substances within a 'Major Hazardous Facility'.
	Firstgas Ltd (FS3.014) [Evidence of Graeme Roberts, paras 31-34, pp8/9] Mr Roberts responds in his evidence as follows: *'Following a review of the Section 42A report, I concur with the recommendation made in that report to accept, in part, Firstgas' further submissions in support of submission S81.063 Horticulture New Zealand, which seeks to retain rule HAS-R1, and in opposition of submission S121.121 Federated Farmers of New Zealand, which seeks to delete rule HAZS-R1.* *Rule HAZS-R1 relates to the storage, handling or use of hazardous substances (except for Major Hazardous Facilities) in all zones, subject to the following conditions:* *a) All relevant Standards in the underlying zone are complied with* *b) The activity does not involve the use of explosives within 60m of any part of the Gas Transmission Network.* *In response to submissions by the Oil Companies, the New Zealand Defence Force and Federated Farmers New Zealand, the Reporting Officer recommends deleting condition (a) from rule HAZS-R1 because the way the rule is framed is problematic3 – triggering a resource consent for the storage, handling or use of hazardous substances based on a breach of the underlying zone standards. The Reporting Officer concludes that the intent of rule HAZS-R1 is to provide a Permitted Activity pathway where not a 'Major Hazardous Facility' and subject to avoiding use of explosive within 60m of the Gas Transmission Network3.* *I agree with the position of the Reporting Officer in relation to the intent of rule HAZS-R1. In particular, to retain clause (b) to ensure that the storage, handling or use of hazardous substances does not result in the use of explosive within 60m of the Gas Transmission Network. I support the deletion of clause (a) from rule HAZS-R1 for the reasons provided by the Reporting Officer.'*	

Earthworks, Mining & Quarrying Topic

Issue/Plan Provision	Submitter Evidence	Response
3. Protection of Cultural Sites from the Effects of Earthworks	***Kairakau Lands Trust*** (S84.014) [Verbal statement and Notes of Stella August presented at the Hearing, paras 3.1-3.2, pg iv] Kairakau Lands Trust original submission seeks specific objectives or policies that relate to ensuring that cultural sites are protected in the Earthworks chapter of the PDP, and that Council employ earthworks contractors who have had sufficient training or a certain level of competency in regard to recognising sites of significance to Māori. Section 42A Report recommendation is to accept the submission in part. Ms August's verbal evidence and notes state the following: *'3.1.1 The Section 42 report advises this issue is addressed by other parts of the PDP such as the SASM chapter. We submit that cultural and historic sites should be mentioned, and those other relevant sections of the PDP should be referred to here so that this Earthworks section is not read in isolation of those other parts of the PDP'* *3.2.1 The Section 42 report stated this was a matter of operational policy for Council, and not something that can be achieved through the provisions of the Plan. We accept this position but would like to stress this is one way Council (albeit operationally) can start to change the colonial mindset…'*	I have considered the presentation from Ms August and **I have changed my position** as set out in paras 4.3.9-4.3.15 of Section 42A Report, and wish to recommend the following amendments to Policy EW-P7 to provide greater alignment of terminology with the objectives and policies in the SASM chapter (which refers to 'wāhi tapu, wāhi taonga, and sites of significance'), and to add a cross-reference, as follows: EW-P7 To control earthworks, exploration and mining activities to ensure that any adverse effects on the natural and physical environment, and the amenity of the community, adjoining land uses**, heritage items, and wāhi tapu, wāhi taonga and sites of significance to Māori, ~~and culturally sensitive sites~~** are avoided, remedied or mitigated. ***Refer also the policies in the SASM chapter in relation to wāhi tapu, wāhi taonga and sites of significance to Māori*** I consider these amendments will provide greater linkage and alignment in terms of addressing earthworks in the vicinity of wahi tapu, wahi taonga and sites of significance. In response to a question from the Panel, I confirm that this wording does not restrict the application of the policy to only those SASM sites that are scheduled/mapped in the PDP. The PDP differentiates between *'wāhi tapu, wāhi taonga and sites of significance to Māori'* generally, and *'wāhi tapu, wāhi taonga or sites or areas of significance identified in SASM-SCHED3'* when referring to scheduled areas that are the subject of rules in the SASM section of the PDP. The above amendment does not necessitate any change to the recommendation to **'Accept in part' submissions S84.014** in the Section 42A Report, as it stands. I note this amendment also affects the recommended amendment in response to **Heritage NZ's submission (S55.065)** seeking amendment of Policy EW-P7, which was to '**Accept in part'**. In my view (and having heard the questions and verbal presentation of Mr Raymond from Heritage NZ), the revised amendment achieves a similar outcome and does not necessitate a revised recommendation in respect of that submission point.
4. Policy EW-P2	***Federated Farmers*** (S121.074) [Evidence of Rhea Dasent, paras 21-24, p4] Fed Farmers original submission sought to amend Policy EW-P2 as follows: EW-P2 To ensure earthworks are appropriately located and designed to avoid, remedy or mitigate adverse effects by: 1. controlling volume and vertical extent of earthworks, to maintain the role, function and predominant character **and existing land use** of each zone and reduce effects on neighbouring properties and the environment; and 2. controlling the movement of dust and sediment beyond the area of development, particularly to avoid nuisance effects and/or adverse amenity effects **inconsistent with the zoning and existing land uses** on neighbouring sites or any Council reticulated stormwater system. Section 42A Report recommendation is to reject the submission.	I have considered the evidence of Ms Dasent and **I have not changed my position** as set out in para 4.3.24 of Section 42A Report: *'4.3.24 …I do not concur with the amendments sought by Federated Farmers. Policy EW-P2 seeks to give effect to Objective EW-O1, which focuses on avoiding, remedying or mitigating the effects of earthworks, and provides the policy framework for differentiating permitted earthworks based on the role, function and predominant character of the zone in which they are to be carried out in. In my view, the amendments sought by Federated Farmers would have the effect of elevating existing land uses and affording a level of consideration in terms of earthworks that is not in keeping with the objective or the purpose of the RMA.'*

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<td>Ms Dasent responds in her evidence:

‘21. Federated Farmers submitted S121.074 for seeking that existing land use is recognised in Policy EW-P2(1) alongside the role, function and predominant character of each zone, when it comes to ensuring earthworks are appropriately located. This was so existing farming land uses are considered when looking at what the role, function and character of the rural zone is. Likewise zoning and land uses are recognised in Policy EW-P2(2) when avoiding nuisance and adverse amenity effects of the dust and sediment from earthworks.

22. Farming earthworks like tracking for safe vehicle passage across paddocks, or earthworks during fence construction for stock management and stock exclusion from waterways, should be considered in keeping with the role, function, character and the primary production land uses of the rural zone.

23. In paragraph 4.3.24, the Sec□on 42a Report author does not agree and says our amendments would have the undesirable effect of elevating existing land uses and affording a level of consideration in terms of earthworks that is not in keeping with the objective or the purpose of the RMA.

24. Federated Farmers does not view our amendments as not being in keeping, rather we deem that they are a continuation of the policy as it was proposed – by adding in the land use in conjunction with the role, function and character of the zone.’</td>
<td></td>
</tr>
<tr>
<td>5. Rule EW-R5 / Standard EW-S6

(Earthworks in the National Grid Yard)</td>
<td>Federated Farmers (S121.087 & S121.097) [Evidence of Rhea Dasent, paras 29-38, pp5-7]

Fed Farmers original submission sought amendments to Rule EW-R5 and Standard EW-S6, as follows:

<table>
<tr><th colspan="3">EW-R5 Earthworks and vertical holes within the National Grid Yard</th></tr>
<tr>
<td>All Zones</td>
<td>1. Activity Status: PER
Where the following conditions are met:
a. <u>From National Grid poles, T</u>the earthworks must be no deeper (measured vertically) than <u>300mm within 2.2m of the pole; and 750mm between 2.2m and 5m of the pole, or</u>
b. <u>From National Grid towers, the earthworks must be no deeper (measured vertically) than 300mm within 6m of a tower; and 3m between 6m and 12m of a tower</u><s>300mm within 12m of the outer visible edge of any National Grid support-structure foundation</s>, except under the following circumstances:
i. earthworks that are undertaken by a network utility operator (other than for the reticulation and storage of water for irrigation purposes) as defined by the Resource Management Act 1991, or
ii. earthworks undertaken as part of agricultural or domestic cultivation, or repair, sealing or resealing of a road, footpath, driveway or farm track.
iii. vertical holes <s>not exceeding 500mm in diameter</s>, provided they:
a. <u>are not exceeding 500mm diameter and</u> are more than 1.5m</td>
<td>2. Activity status where compliance with conditions EW-R5(1)(a) and/or EW-R5(1)(b) is not achieved: RDIS
Matters over which discretion is restricted:
a. EW-AM1.
b. EW-AM2.
c. EW-AM3.
d. EW-AM4.
e. EW-AM5.
f. EW-AM6.
g. EW-AM7.
h. Impacts on the operation, maintenance, upgrading and development of the National Grid.
i. The risk to the structural integrity of the affected National Grid support structure.
j. Any impact on the ability of the National Grid owner (Transpower) to access the National Grid.
k. The risk of electrical hazards affecting public or individual safety, and the risk of property damage.
l. Technical advice provided by the National Grid owner (Transpower).
m. Any effects on National Grid support structures including the creation of an unstable batter.</td>
</tr>
</table>
</td>
<td>I have considered the evidence of Ms Dasent (Federated Farmers), Ms Whitney & Mr Cartwright (Transpower) on this matter. I note that, on further consideration of the submissions of others, Ms Whitney & Mr Cartwright have altered their stance and now offer partial support for making amendments to Rule EW-R5 and Standard EW-S6.

I am comfortable with the amendments now proposed in Ms Whitney’s evidence in relation to Rule EW-R5 and Standard EW-S6, which go somewhat towards achieving the relief sought by Federated Farmers and Kāinga Ora.

Given the above, I have changed my position from that set out in paras 5.3.7-5.3.9 and paras 5.3.40-5.3.42 of Section 42A Report and make the following revised recommendations to ‘Accept in part’ submissions S79.093 & S79.094, S121.087 & S121.097, and S129.126, and to recommend the following amendments to Rule EW-R5 and Standard EW-S6 (which are slightly different to that suggested by Ms Whitney, in order to align with the rule format in the PDP – highlighted in grey below):

<table>
<tr><th colspan="3">EW-R5 Earthworks and vertical holes within the National Grid Yard</th></tr>
<tr>
<td>All Zones</td>
<td>1. Activity Status: PER
Where the following conditions are met:
a. The earthworks must be no deeper (measured vertically) than 300mm within <u>6m</u><s>12m</s> of the outer visible edge of any National Grid support-structure foundation, <u>and no deeper than 3 metres between 6 metres and 12 metres from the outer visible edge of a foundation of a National Grid support-structure foundation,</u> except under the following circumstances:</td>
<td>2. Activity status where compliance with conditions EW-R5(1)(a) and/or EW-R5(1)(b) is not achieved: RDIS
Matters over which discretion is restricted:
a. EW-AM1.
b. EW-AM2.
c. EW-AM3.
d. EW-AM4.
e. EW-AM5.</td>
</tr>
</table>
</td>
</tr>
</table>

	b. from the outer edge of the pole support structure or stay wire, or are a post hole for a farm fence or artificial crop protection or crop support structures and are more than **6m**~~**5m**~~ from the visible outer edge of a tower support structure foundation. c. Compliance with: i. EW-S1; ii. EW-S2; iii. EW-S3; iv. EW-S4; v. EW-S5; vi. EW-S7; vii. EW-S8; and viii. EW-S9. d. Compliance with EW-S6.	3. Activity status where compliance with condition EW-R5(1)(c) is not achieved: NC

EW-S6 Earthworks and Vertical Holes within the National Grid Yard		
All Zones	1. The earthworks must not compromise the stability of a National Grid support structure, and 2. The earthworks must not result in a reduction in ground-to-conductor clearance distances **specified in Table 4 of NZECP34** ~~**of less than: 6.5m (measured vertically) from a 110kV National Grid transmission line, and**~~ 3. ~~**The earthworks must not result in the permanent loss of vehicular access to any National Grid support structure.**~~	

Section 42A Report recommendation is to reject both submissions.

Ms Dasent responds in her evidence:

'The Section 42a Report in paragraph 5.3.8 accepts Transpower's position and rejects Federated Farmers, yet we disagree and consider the proposed restriction for fence post holes in EW-R5(a)(iii)(b) to be 6m away from tower foundations to be onerous compared to what NZECP34 permits…

NZECP34 has different depths for poles compared to towers, to recognise the different safety distances for stability. Below are diagrams from pages 6 and 7 of the NZECP34. The first diagram shows safe distances from poles, the second from towers.

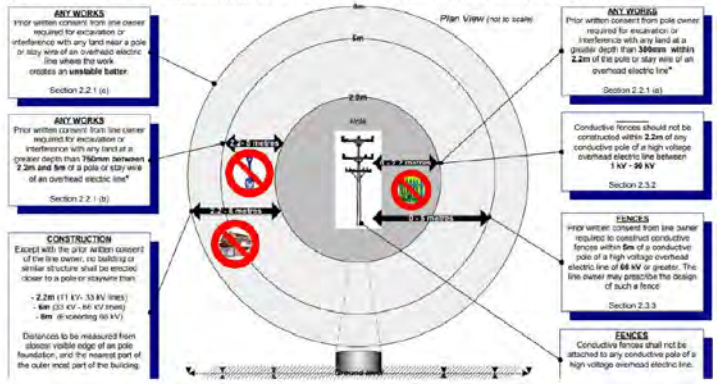
On the right side, the first box details that excavation can be up to 300mm within 2.2m of a pole without needing consent. On the left side, the second box details excavation can be up to 750mm from the 2.2m mark to the 5m mark before it needs consent. Beyond 5m from the pole, there are no restrictions on excavation depth, other than that an unstable batter must not occur.

	i. earthworks that are undertaken by a network utility operator (other than for the reticulation and storage of water for irrigation purposes) as defined by the Resource Management Act 1991, or ii. earthworks undertaken as part of agricultural or domestic cultivation, or repair, sealing or resealing of a road, footpath, driveway or farm track. iii. vertical holes not exceeding 500mm in diameter, provided they: a. are more than 1.5m from the outer edge of the pole support structure or stay wire, or b. are a post hole for a farm fence or artificial crop protection or crop support structures and are more than 6m from the visible outer edge of a tower support structure foundation. c. Compliance with: i. EW-S1; ii. EW-S2; iii. EW-S3; iv. EW-S4; v. EW-S5; vi. EW-S7; vii. EW-S8; and viii. EW-S9. d. Compliance with EW-S6.	f. EW-AM6. g. EW-AM7. h. Impacts on the operation, maintenance, upgrading and development of the National Grid. i. The risk to the structural integrity of the affected National Grid support structure. j. Any impact on the ability of the National Grid owner (Transpower) to access the National Grid. k. The risk of electrical hazards affecting public or individual safety, and the risk of property damage. l. Technical advice provided by the National Grid owner (Transpower). m. Any effects on National Grid support structures including the creation of an unstable batter.
		3. Activity status where compliance with condition EW-R5(1)(c) is not achieved: NC

EW-S6 Earthworks and Vertical Holes within the National Grid Yard	
All Zones	1. The earthworks must not compromise the stability of a National Grid support structure, and 2. The earthworks must not result in a reduction in ground-to-conductor clearance distances **as required in Table 4 of the New Zealand Electrical Code of Practice for Electrical Safety Distances (NZECP 34:2001)** ~~**of less than: 6.5m (measured vertically) from a 110kV National Grid transmission line**~~, and 3. The earthworks must not result in the permanent loss of vehicular access to any National Grid support structure.

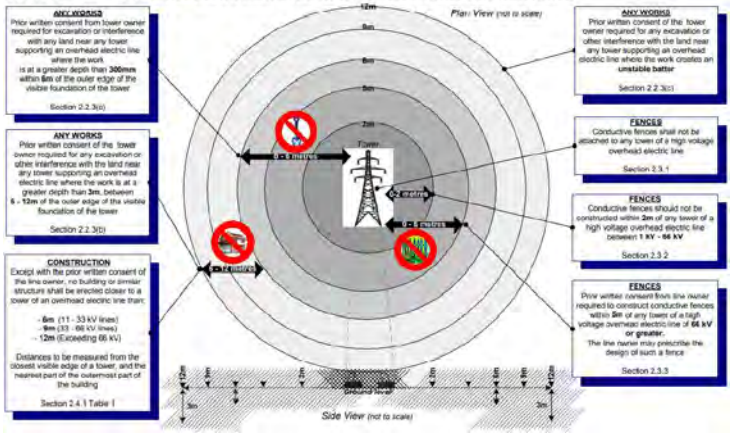
This would also result in revised recommendations in respect of the associated further submissions of **Transpower (FS18.23, FS18.24 & FS18.27), Federated Farmers (FS25.83 & FS25.86), Hort NZ (FS17.66 & FS17.68), Forest & Bird (FS9.87 & FS9.97)**, to reflect the revised recommendations on the primary submissions.

FIGURE 1 MINIMUM SAFE DISTANCES FOR EXCAVATION AND CONSTRUCTION NEAR POLES OR STAY WIRES



For towers, the safe distance for hole excavation is shown on the first box on the left, with no deeper than 300mm within 6m of the tower. After the 6m mark, excavation can be up to 3m deep.

FIGURE 2 MINIMUM SAFE DISTANCES FOR EXCAVATION AND CONSTRUCTION NEAR TOWERS



The District Plan restriction for post holes to be at least 6m away from a tower foundation as proposed in EW-R5 is in excess of NZECP34, and it would be disingenuous for the National Grid operator to decline permission under the District Plan if it is permitted under NZECP34.

Many National Grid structures have been located along road corridors much closer than 6m from farm boundary fencing. It appears that National Grid structures have been located so close to farm boundaries so they are further away from the formed road, which means the poles and towers have been preferentially located so close to existing fences. The boundaries pre-date the National Grid, so the fences were likely already present when Transpower erected poles and towers as close as 1m. 36. Farmers must be able to maintain their fences as a permitted activity, especially on roadsides, to avoid livestock escaping. Farmers must also

	be able to construct new fences to meet freshwater and stock exclusion obligations, as a permitted activity, where they meet NZECP34 standards. Sometimes, Transpower itself will re-build a fence closer than 6m from its structures, after finishing National Grid construction or maintenance. *This is a case of reverse sensitivity, where Transpower is complaining about the activities of the existing and legitimately established farming land uses, and seeking to stifle normal post hole excavation beyond the safe engineering distances in NZECP34. The issues that are detailed in paragraph 5.38 like dust on the wires, reduction of clearance between overhanging wires and the ground, excavation restricting Transpower's access to its structures, and network integrity, are not problems that arise from fence post holes but rather large scale development earthworks.* *Rule EW-R5 and Standard EW-S6 for earthworks in the National Grid Yard must be consistent with Section 2.2 of the New Zealand Code of Practice for Electrical Safe Distances NZECP34:2001, and have the same depths and setback distances for vertical holes.'* (paras 30-38)	
	Transpower (S79.093, S79.094, FS18.23, FS18.24, FS18.27) [Evidence of Pauline Whitney, paras 6.20-6.30] Transpower's original submissions supported retention of Rule EW-R5 and Standard EW-S6, as notified. Transpower also further submitted, opposing the submissions of Federated Farmers (S121.087 & S121.097) to amend these provisions so that they are not more stringent than that specified in Table 4 of NZECP, and the submission of Kāinga Ora (S129.126) to amend Rule EW-R5 to reduce the application of the standard from 12m to 6m of the outer visible edge of any National Grid support structure foundation. Section 42A Report recommendations are to accept (in part) the submissions and further submissions of Transpower, and reject the submissions of Federated Farmers and Kāinga Ora. Ms Whitney addressed this matter in her evidence as follows: *'…Notwithstanding the recommendation to retain the provisions as notified, in response to submission points I recommend minor amendment to the rule EW-R5 and standard EW-S6 as outlined below.' (para 6.20)* *'Specific to Rule EW-R5, in addition to Transpower, two original submitters lodged submission points on the National Grid specific earthworks rule EW-R5, and one submitter lodged an original submission point on the standard EW-S6. I support the officer recommendation on the submission point S129.126 (Kainga Ora) on the basis there is no justification, evidence or basis for the relief sought by the submitter. In response to the submission point S121.87 by Federated Famers on EW-S5, the submitter seeks amendment to rule EW-R5 to reflect Section 2.2.1 of NZECP:34. Based on the evidence of Mr Cartwright, I support the officer recommendation to reject the relief sought in the submission point. However, based on the evidence provided, I do consider there merit in amending clause EW-R5.1.a to reflect section 2.2.3 of NZECP:34. This would make the condition more enabling than that notified in that it allows for earthworks within 6 metres and 12 metres of a support structure go to a depth of 3 metres. While I note standard EW-S6 addresses matters such as access and stability of the support structure, in*	

	my opinion the provision of clear and appropriate depth and setback standards within EW-R5 provide certainty and based on the evidence of Mr Cartwright, are appropriate. *The amendments I would support are as follows (noting there appears to be some numbering errors in Appendix A to the Section 42 Report and therefore I adopt the numbering within the PDP):* *EW-R5 Rule Earthworks and vertical holes within the National Grid Yard* *1. Activity Status: PER* *Where the following conditions are met:* *a* ***i.*** *The earthworks must be no deeper (measured vertically) than 300mm within* ~~***12***~~***6****m of the outer visible edge of any National Grid support-structure foundation,* ***ii.. The earthworks are no deeper than 3 metres between 6 metres and 12 metres from the outer visible edge of a foundation of a National Grid support-structure foundation,*** *except under the following circumstances:* *i. earthworks that are undertaken by a network utility operator (other than for the reticulation and storage of water for irrigation purposes) as defined by the Resource Management Act 1991, or* *ii. earthworks undertaken as part of agricultural or domestic cultivation, or repair, sealing or resealing of a road, footpath, driveway or farm track.* *iii. vertical holes not exceeding 500mm in diameter, provided they:* *a. are more than 1.5m from the outer edge of the pole support structure or stay wire, or* *b. are a post hole for a farm fence or artificial crop protection or crop support structures and are more than 6m from the visible outer edge of a tower support structure foundation.* *b. Compliance with: ……* *c. Compliance with EW-S6* *d. …'* (paras 6.25 & 6.26) *'Specific to Standard EW-S6 and the relief sought by Federated Farmers on EW-S6 sought to:* *1. Amend the reference to NZEPC34 in relation to conductor clearance distances within clause 2. from a reference to a 6.5m vertical clearance, to clearance as required by Table 4 of NZECP, and* *2. Remove the access standard within clause 3.* *I support in part the relief sought by the submitter to amend the reference in clause 2. to refer to table 4 of NZECP. While I agree with the reporting the officer that a metric is more easily understood, I am not opposed to direct reference to Table 4 of NZECP:34. As such, below I have outlined an amendment to EW-S6(2) I would accept should the panel prefer such an approach.* *In response to the submitter request to remove the clause 3. access standard, as outlined in my Primary Evidence to Hearing 3 I support the retention of the access standard (clause 3.) within EW-S6. Transpower has had instances in the past where access to a support structure is severed and there is no ability as is proposed by the submitter for "The Network Utility Operator will just have to travel to the structure using a different route". The evidence of Mr Cartwright outlines instances where Transpowers ability to access support structures has been compromised. In summary, physical access to transmission lines is required for all maintenance and project work, and when a system fault occurs, the Grid would need to be restored quickly to reduce impacts on businesses and communities throughout the district, and beyond. Restoring supply becomes challenging if*	

	transmission lines are difficult to access due to intensive developments that may be constructed under and around them. Earthworks can restrict access and therefore the standard is supported. *Based on the above, I support amendment to the standard EW-S6 as follows:* *EW-S6 Standard* *Earthworks and Vertical Holes within the National Grid Yard* *All Zones* *1. The earthworks must not compromise the stability of a National Grid support structure, and* *2. The earthworks must not result in a reduction in ground-to-conductor clearance distances* ***~~of less than: 6.5m (measured vertically) from a 110kV National Grid transmission line~~ as required in Table 4 of the New Zealand Electrical Code of Practice for Safe Electrical Distances (NZECP 34:2001).,*** *and* *3. The earthworks must not result in the permanent loss of vehicular access to any National Grid support structure.'* (paras 6.27-6.30)	
6. Rule EW-R6 (Earthworks within 20m of the Gas Transmission Network)	***Federated Farmers*** (S121.088) [Evidence of Rhea Dasent, paras 39-46, pp7/8] Fed Farmers original submission sought deletion of Rule EW-R6. Section 42A Report recommendation is to reject this submission. Ms Dasent responds in her evidence as follows: *'High pressure gas pipelines have 100% easement agreement coverage where they cross over private land, which already stipulate setbacks, no build zones, and manage earthworks for the purpose of protecting the line and safety. District Plan provisions must not undermine legal easement agreements. In addition, there are no National Policy Statements for gas transmission to give effect to.* *The Section 42a Report in paragraph 5.3.10 recommends to reject our submission, and refers us to their discussion on gas transmission lines in Hearing Stream 3 for GRUZ-S12 / RPROZ-S14. Paragraph 2.3.31 of the Hearing Stream 3 Section 42a Report says I do not support Federated Farmer's request to delete Standards GRUZ-S12 and RPROZ-S14, as the setbacks for new residential buildings (being sensitive activities) from the Gas Transmission Network are important to ensure there are no reverse sensitivity effects on the transmission network that could interfere with its ongoing operation as infrastructure of national, regional and local importance. The setback for residential activities is also important to ensure the health and safety of owners and occupiers of the residential buildings.* *The health and safety mater that the Section 42a Report mentions will be the relevant mater for this earthworks chapter.* *The safety of earthworks or digging near gas transmission lines is already managed by the First Gas permit system. Any earthworks, excavation, landscaping, fencing, drain construction, road and track construction, planting or removal of trees in the easement needs prior permission from First Gas. There is no need for a District Plan to have an additional permit system by requiring a resource consent. Council staff will not have any greater knowledge than First Gas on the mater, that justifies a duplicate permit regime. First Gas even provide the permit for free in order to avoid a disincentive for applications.* *The District Plan 20m setback is in excess of the easement widths of 12 metres wide for a single pipeline, with an additional 4 metres for each additional pipeline.*	I have considered the evidence of Ms Dasent and Mr Roberts (and the verbal presentation from Ms Hines at the Hearing) and **I have not changed my position** as set out in para 5.3.10 of Section 42A Report: *'5.3.10 I note the submission of Federated Farmers seeking the deletion of Rule EW-R6 (and all provisions for the Gas Transmission Network). However, I am of the view that earthworks in the vicinity of the gas transmission network is potentially dangerous – being a potential effect of low probability which has a high potential impact. Similar to the 20m setback standard from the gas transmission network for residential activities applying in the rural zones (I refer to discussion with respect to GRUZ-S12 / RPROZ-S14 Setback from Gas Transmission Network as part of Hearing 3 on the Rural Environment topic), I consider it appropriate to enable scrutiny of earthworks where they are proposed to take place within 20m of the gas transmission pipeline, from a safety perspective and from the perspective of the protection of regionally significant infrastructure.'*

	There is no justification why the district plan requires a setback that is 66% greater than the legal easement to manage safety. *Health and safety of owners and occupiers of property that has a gas transmission line is a commendable concern, but this is already managed through the easements, and the safety campaigns run by First Gas, and WorkSafe monitoring and enforcement under the Gas Act 1992. First Gas has a wealth of educational and guidance material for a range of audiences, a Dial-before-you-Dig helpline, and free access to their staff for advice. First Gas clearly describe the health and safety at work obligations in their pamphlets, including this one specifically for farmers. This level of health and safety service provided by First Gas and WorkSafe cannot be bettered by the District Plan.* *Therefore, all provisions (other than the mapping of the gas transmission lines) should be deleted from the District Plan.'*	
	Firstgas Ltd (FS 3.019) [Evidence of Graeme Roberts, paras 25 & 26, p7] Mr Roberts responds in his evidence as follows: *'Following a review of the Section 42A report, I concur with the recommendation made in that report to accept Firstgas' further submission in opposition of submission S121.088 Federated Farmers of New Zealand, which seeks to delete rule EW-R6 in its entirety.* *Rule EW-R6 relates to setbacks for earthworks from the Gas Transmission Network. In the interest of health and safety, the protection of regionally significant infrastructure, and the actual or potential reverses sensitivity effects resulting from earthworks in proximity to the Gas Transmission Network, I consider that rule EW-R6 is retained, as notified. I consider that District Plan rules are an appropriate mechanism to address actual or potential reverse sensitivity effects resulting from earthworks on the Gas Transmission Network and, on that basis, seek that rule EW-R6 is retained.'*	
7. New Rule for Land Disturbance Activities	***Oil Companies*** (S110.017) [Statement of Megan Barr, paras 2.1-2.10] The Oil companies original submission sought the addition of a Permitted Activity pathway in the Earthworks chapter for 'land disturbance activities' as defined in the PDP – *'In terms of the balance of intrusive works undertaken by the Oil Companies, which typically involve reinstatement of existing levels, the Oil Companies seek clarity that these would be considered land disturbance (as defined) and would not default to Rule EW-R7 and the corresponding permitted conditions (relating to (inter alia) cut depths, volumes etc). This would be consistent with the permitted pathway for land disturbance activities provided for network utilities. A consistent approach is appropriate having regard to the potential effects of land disturbance activities, irrespective of their purpose.'* Section 42A Report recommendation is to accept in part this aspect of their submissions, noting that it is unclear what other land disturbance situations the Oil companies are concerned about, other than earthworks associated with replacement and/or removal of fuel storage systems already provided for in Rule EW-R1 Specified Earthworks. Ms Barr responds in the statement as follows:	I have considered the statement from Ms Barr and appreciate the provision of additional examples of the range of works that might be undertaken on a retail fuel site that do not involve fuel storage systems. In terms of the oil-water separator example, likely occurring on a site with flat to slope of less than 22 degrees, with excavation up to 2.5m deep and affecting a maximum of $20m^2$ in area (i.e. $50m^3$), this would comply with the Permitted Activity conditions for earthworks in <u>all</u> the zones required by Rule EW-R7 (as it would comply with the most stringent of requirements in Standards EW-S1 Slope, EW-S2 Extent of Earthworks & EW-S3 Vertical Extent)… provided the works also met other relevant standards such as Standards EW-S4 Site Reinstatement, EW-S5 Silt & Sediment Control, was not within the National Grid Yard (EW-S6), or did not exceed the electrical safe distances under NZECP34:2001 (EW-S8). I also consider it very likely that the same would be the case for the other examples given ('installation of EV charging facilities, diesel exhaust fluid tanks, and site exits'). I would also be cautious about incorporating provision for 'temporary' land disturbance activities – in terms of being able to determine what constitutes 'temporary' in this sense – 1 week? 1 month? 6 months? If left open-ended, compliance with Standard EW-S4 Site

	'In terms of land disturbance, there are a range of works that might be undertaken on a retail fuel site that do not involve fuel storage systems and would, therefore, not be considered Specified Earthworks under Rule EW-R1. These include the removal or replacement of an oil-water separator, which could require a 2.5m deep excavation but would be temporary. Other works that may require temporary land disturbance include installation of electric vehicle (EV) charging facilities, diesel exhaust fluid tanks, and site exits. *The Oil Companies consider that, from an effects perspective, there is no reason why temporary land disturbance activities that reinstate existing ground levels should be managed differently to the same activities associated with network utilities and other specified activities, like tank installs and replacement.* *Relief Sought:* *The Oil Companies seek that the Hearing Panel reject the recommendation of the Reporting Planner in relation to submission point S110.017 and add a Permitted Activity pathway (via a new Rule EW-RXX) for temporary 'land disturbance activities' (as defined in the Proposed Plan) that reinstate existing ground levels.* *Alternatively, temporary 'land disturbance activities' could be provided for as specified activities under Rule EW-R1, in the same manner as earthworks associated with network utilities (EW-R1-1.b.) and earthworks associated with the replacement and/or removal of a fuel storage system (EW-R1-1.c.).'* (paras 2.7-2.10) Ms Barr offers the following proposed amendment to Rule EW-R1: *Rule EW-R1 Specified Earthworks* *All Zones* *1. Activity Status: PER* *Where the following conditions are met:* *a. The earthworks are associated with site preparation works for a building, the area (m2) of earthworks is no more than 150% of the area of the associated building footprint, and complies with EW-S1 Slope, and EW-S5 Control of Silt and Sediment; or* *b. The earthworks are associated with any network utilities, including the upgrade or maintenance of existing public roads, and complies with EW-S4 Site Reinstatement and EW-S5 Control of Silt and Sediment; or* *c. The earthworks are associated with replacement and/or removal of a fuel storage system defined as permitted by the Resource Management Regulations (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health), and complies with EW-S5 Control of Silt and Sediment or* *d. The earthworks are associated with gravel extraction within the bed of a river.* ***e. The earthworks are temporary land disturbance activities and comply with EW-S4 Site Reinstatement and EW-S5 Control of Silt and Sediment.*** *Note:* *Gravel extraction within the bed of a river is subject to rules administered by the Hawke's Bay Regional Council.* or, alternatively, a new rule, as follows: ***Rule EW-RXX (new rule)*** ***All Zones*** ***Activity Status: PER*** ***Temporary land disturbance activities where existing ground levels are reinstated upon completion of works.***	Reinstatement may prove the default, which is a 6-month timeframe for reinstatement, and I question whether 6 months should constitute 'temporary'. As a consequence, **I have not changed my position** as set out in paras 5.3.19-5.3.23 of Section 42A Report: *'5.3.19 The Oil Companies seek a Permitted Activity pathway for 'land disturbance activities' (defined in the PDP as 'the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) that does not permanently alter the profile, contour or height of the land') rather than defaulting to Rule EW-R7 with corresponding conditions. They propose such earthworks be treated similar to the Permitted Activity pathway for land disturbance activities provided for network utilities.* *5.3.20 They are concerned that the PDP not duplicate matters which are appropriately addressed under the NESCS or which have limited potential for adverse effects, namely temporary land disturbance activities which reinstate existing ground levels.* *5.3.21 I note that earthworks associated with replacement and/or removal of fuel storage systems are already provided for as a Permitted Activity in Rule EW-R1 Specified Earthworks. It is unclear what other land disturbance situations the Oil Companies are concerned about (i.e. what other 'intrusive works on sites to operate, maintain and upgrade refuelling facilities' involve)?* *5.3.22 In the case of any other earthworks, Rule EW-R7 already provides a Permitted Activity pathway, subject to compliance with the various EW-Standards and, where these are not met, the activity defaults to a Restricted Discretionary Activity. I do not consider this to be an onerous consenting process.* *5.3.23 Therefore, based on the information provided with the submission, I am of the opinion that a separate rule providing for land disturbance activities is not warranted and may lead to adverse effects that deserve consideration and that should be avoided, remedied, or mitigated. Having said that, perhaps the submitter can supply further details at the Hearing for the Hearings Commissioners to consider.'*

8. New Rule for Earthworks in Natural Hazard Areas	***Kāinga Ora*** (S129.127) [Evidence of Michael Campbell, paras 4.2-4.7] Kāinga Ora's original submission sought the addition of a new rule in the EW – Earthworks chapter, *'which provides for earthworks within areas of natural hazards, and considers that where carried out in accordance with relevant conditions a permitted activity status would be appropriate. Where earthworks in areas of natural hazards are likely to exacerbate the risks associated with those natural hazards, a discretionary or non-complying activity status may be appropriate'*. Section 42A Report recommendation is to reject this aspect of their submissions. Mr Campbell responds in his evidence as follows: *'I acknowledge that a range of earthworks are provided as a permitted activity (as set out in proposed rules EW-R1 – EWR7), however the point of the submission by Kāinga Ora, as I understand it, was to highlight the fact that while a range of earthworks are enabled in all zones, it does not appear that there are standards in place to manage the actual or potential effects of earthworks within areas of Natural Hazards. For example, proposed rule "EW-R1 Specified Earthworks" enables earthworks associated with site preparation works for a building, provided the area (m2) of earthworks is no more than 150% of the area of the associated building footprint, and complies with EW-S1 Slope, and EW-S5 Control of Silt and Sediment.* *I note that many of the permitted Earthworks rules require Compliance with conditions EW-S1 to EW-S8.* *There do not appear to be any standards that specifically control or manage the effects of earthworks on areas identified has containing Natural Hazards. It does not appear that earthworks activities are managed in section NH – Natural Hazards. I note that Policy EW-P1 seeks to:* *To avoid, remedy or mitigate the adverse effects of earthworks which:* *1. create new or exacerbate existing natural hazards, particularly flood events, or cause adverse effects on natural coastal processes; and* *2. result in adverse effects on the stability of land, structures or buildings.* *It is unclear to me how the effects of permitted earthworks would be managed within areas of identified natural hazards The proposed permitted activities enable potentially significant earthworks. Such works could, for example, alter the ground level of the site to the extent that it could create upstream or downstream flooding issues. It is unclear to me at this stage how the actual or potential effects of such activities would be managed.* *In my view, it would be prudent, as a minimum, to include a standard that earthworks would not exacerbate the risks of any natural hazards.'*	I have considered the evidence of Mr Campbell, and I acknowledge that permitted earthworks could potentially enable significant earthworks that could alter the ground level of a site to the extent that it could create upstream or downstream flooding issues, however, I am unsure how a rule or standard could be drafted that enables determination of whether earthworks would exacerbate the risks of any natural hazards or not. My concern is how this would be judged? What would trigger the earthworks to be treated as a discretionary or non-complying activity in this regard? Short of requiring a resource consent for any and all earthworks within a natural hazard area, which would then require an assessment as to whether the earthworks would exacerbate the risks of any natural hazards in each and every case, I am not clear as to how the relief sought by the submitter could be achieved. This would be a considerable imposition, and I question how big an issue this really is – I note that this issue has not been raised during the District Plan Review process to-date, or by any other submitters (including HBRC). In the absence of details as to what a new rule or new standard would look like, and how it would operate, **I have not changed my position** as set out in paras 5.3.24-5.3.27 of Section 42A Report: *'5.3.24 Kāinga Ora seeks the addition of a new rule in the EW – Earthworks chapter providing for earthworks within natural hazard areas, subject to conditions, and a Discretionary or Non-Complying activity status if there is non-compliance with those conditions.* *5.3.25 In my view, earthworks are already provided for as a Permitted Activity subject to various conditions as set out in Rule EW-R7 (irrespective of whether the earthworks are in a natural hazard area or not), and non-compliance with the standards defaults to a Restricted Discretionary Activity. Further, Assessment Matter EW-AM1 already provides for consideration of the effects of land disturbance and earthworks in respect of erosion and stability (EW-AM1(1)(c)), consideration of the potential or increased risk of hazards from the activity, including potential risk to people or the community (EW-AM1(2)(d)), sediment control measures ((2)(e)) and rehabilitation ((2)(f)), and effects on flow paths and floodways ((2)(j)), which provides adequate opportunity to consider implications of earthworks within natural hazard areas where a requirement for resource consent is triggered as a Restricted Discretionary Activity.* *5.3.26 A Discretionary or Non-Complying activity status is not considered necessary in respect of earthworks. Buildings and alterations to existing buildings within natural hazard areas are themselves subject to rules in the NH chapter based on building importance, as well as vulnerable activities in the Tsunami Hazard Area.* *5.3.27 For these reasons, I consider the addition of a new rule as sought by this submitter is unnecessary.'*

9. Definition of 'Ancillary Rural Earthworks'	***Federated Farmers*** (S121.231) [Evidence of Rhea Dasent, paras 47-52, pp8/9] Fed Farmers original submission supported the definition of 'Ancillary Rural Earthworks' but sought amendments as follows: **ANCILLARY RURAL EARTHWORKS (PRIMARY PRODUCTION)** means: a. Normal agricultural and horticultural practices, such as cultivating and harvesting crops, ploughing, planting trees, root ripping, digging post holes, maintenance of drains, troughs and installation of their associated pipe networks, and realignment of fencelines, drilling bores and offal pits, burying of dead stock and plant waste; b. Land preparation and vegetation clearance undertaken as part of horticultural plantings; and c. Maintenance **and construction** of **existing** walking tracks, farm and forestry tracks, driveways, roads and accessways ~~within the same formation width~~. Section 42A Report recommendation is to reject this submission, but recommends amendments to the definition in response to other submissions on this matter, as follows: **ANCILLARY RURAL EARTHWORKS (PRIMARY PRODUCTION)** means **earthworks associated with normal agricultural and horticultural practices, such as**: a. ~~Normal agricultural and horticultural practices, such as cultivating and harvesting crops, ploughing, planting trees, root ripping, digging post holes,~~ maintenance of drains, troughs and installation of their associated pipe networks, ~~and realignment of fencelines,~~ drilling bores and offal pits, **and** burying of dead stock and plant waste **(including material infected by unwanted organisms as declared by the Ministry of Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993)**; b. ~~Land preparation and vegetation clearance undertaken as part of horticultural plantings;~~ and c. Maintenance of existing walking tracks, farm and forestry tracks, driveways, roads and accessways ~~within the same formation width~~. ***Note: for clarification purposes, the alteration or disturbance of land associated with 'gardening, cultivation, and disturbance of land for the installation of fence posts' is excluded from the definition of 'earthworks'.*** Ms Dasent responds in her evidence as follows: *'Federated Farmers supports the shift of normal agricultural and horticultural practices out of article (a) and into the top of the definition.* *However, I am not sure that relying on the exemptions from the earthworks definition and a note is sufficient for the list of other ancillary activities, alteration/disturbance of land for gardening, cultivation, fence posts.* *Given the discussion in paragraph 3.6.21, the Section 42a Report considers cultivation to be outside even ancillary rural earthworks and not subject to the 500m3 ancillary rural earthworks volume limit in ONLs/HNCs and SNAs of Standard EW-S1(1) by reasoning I note that 'cultivation' and fence post holes are excluded from the definition of 'earthworks' and therefore are not subject to this permitted volume limit.* *This leaves me somewhat confused, is cultivation an ancillary rural earthworks activity and permitted by the rules, or is it unregulated? I seek clarification from the Reporting Officer. Federated Farmers will prefer that cultivation is unregulated by the District Plan, because it is such a necessary and ubiquitous farming activity it does not need District Council oversight.'* (paras 49-52)	Ms Dasent has requested clarification as to whether cultivation is an ancillary rural earthworks activity and permitted by the rules, or whether it is unregulated. I presume Ms Dasent is referencing para 6.3.21, not para 3.6.21 of the Section 42A Report, in relation to Standard EW-S2 and the extent of ancillary rural earthworks permitted? As stated in para 6.3.5 of the Section 42A Report (below), ancillary rural earthworks are a subset of earthworks, and 'cultivation' is specifically excluded from the definition of 'Earthworks' (as per the definition adopted from the National Planning Standards). Therefore, 'cultivation' is not captured by the earthworks rules in the PDP, including the rules and standards relating specifically to ancillary rural earthworks (such as Standard EW-S2). I consider this is suitably evident in the amendments I have recommended. *'6.3.5 I concur with Hort NZ that gardening, cultivation (where 'cultivation' is defined in the PDP as 'the alteration or disturbance of land…for the purpose of sowing, growing or harvesting of pasture or crops'), and disturbance of land for the installation of fence posts, are excluded from the definition of 'Earthworks' and therefore should similarly be removed from the definition of 'Ancillary Rural Earthworks' to avoid confusion. However, I do not accept that this is reasonably achieved by deleting clauses (a) and (b) in their entirety. I recommend deletion of clause (b) as it falls within the definition of 'cultivation', but retaining those aspects of clause (a) that do not constitute 'gardening, cultivation or disturbance of land for the installation of fence posts', and by inserting a 'Note' to clarify the application of the definition in line with those aspects excluded from the definition of 'Earthworks'.*

10. New Policy for 'Ancillary Rural Earthworks'	***Federated Farmers*** (S121.079) [Evidence of Rhea Dasent, paras 53-56, pp9/10] Federated Farmers' original submission sought inclusion of a new policy as follows: **EW-PX Provide for ancillary rural earthworks as unlimited, to recognise that they normal and anticipated within the rural zones, with de minimus effects.** Section 42A Report recommendation is to reject this submission. Ms Dasent responds in her evidence as follows: *'The Section 42a Report rejects the new policy for ancillary rural earthworks starting in paragraph 6.3.11, as well as Federated Farmers, Horticulture New Zealand and New Zealand Pork also sought similar new policies. The Section 42a Report reasons that 'ancillary rural earthworks' are a subset of 'earthworks' generally, therefore such earthworks are already appropriately covered by the existing policies in the EW – Earthworks chapter.* *Given the repeated presence of ancillary rural earthworks throughout the rules and standards, and a regime that mostly permits it with no volume or area limits compared to other earthworks, it deserves its own policy to explain why.* *A new policy recognising and providing for ancillary rural earthworks will also align with objectives RPROZ-O1 and GRUZ-O1: The General Rural Zone/Rural Production Zone is predominantly used for primary production activities and ancillary activities'* (paras 54-56)	I have considered the evidence of Ms Dasent and **I have not changed my position** as set out in para 6.3.13 of Section 42A Report: *'In terms of the additional policy sought by Federated Farmers…, for the reasons already stated above in paragraph 6.3.9, I do not support extending unlimited ancillary rural earthworks into identified HNC, ONF/ONL & SNA areas, nor any policy wording that promotes ancillary rural earthworks as having 'de minimus effects'. In my opinion, there are certain situations where ancillary rural earthworks can have adverse effects on the environment, particularly in areas of significant natural character, landscape, and ecosystem and indigenous biodiversity values. Therefore, the policy sought is not supported. Also, as stated above, 'ancillary rural earthworks' are a subset of 'earthworks' generally, therefore such earthworks are already appropriately provided for in the existing policies in the EW – Earthworks chapter. Therefore, I consider inclusion of the additional policy sought by Federated Farmers is neither accurate, appropriate, nor necessary.'*
11. New Policy for 'Earthworks'	***Hort NZ*** (S81.086) [Evidence of Jordyn Landers, paras 23-26, pp5/6] Hort NZ's original submission sought inclusion of a new policy as follows: **EW-PX Enable earthworks to provide for people and communities social, economic and cultural well-being, and their health and safety, including ancillary rural earthworks, where adverse effects are appropriately managed.** Section 42A Report recommendation is to reject this submission. Ms Landers responds in her evidence as follows: *'I agree with the S42A that ancillary rural earthworks is a subset of earthworks (and therefore addressed by the policies applicable to earthworks). However, I consider that as the rule framework does enable earthworks to a certain extent (for example providing for specified earthworks and ancillary rural earthworks as permitted activities subject to conditions), that an 'enable' policy would be an appropriate addition to 'round-out' the earthworks policy. This would acknowledge the benefits of providing for earthworks (however I accept that this would not have to specifically refer to ancillary rural earthworks), such as:* *EW-PX Enable earthworks to provide for people and communities social, economic and cultural well-being, and their health and safety, where adverse effects are appropriately managed.* *The Earthworks policies (EW-P1 to EW-P7) refer to direction to 'avoid, remedy, mitigate', 'ensure', 'require', 'protect', 'avoid duplication' and 'control'. Whereas the policies specific to Mining, Quarrying and Hydrocarbon Extraction, include in addition to 'avoid, remedy, mitigate' and 'require' directions, 'enabling' policies (EW-P8 and EW-P9). Accordingly, an additional policy such as that above, would be in keeping with the approach in the plan for earthworks.'* (paras 24-26)	I have considered the evidence of Ms Landers and I accept that an 'enabling' policy would be an appropriate addition to 'round out' the earthworks policy, in acknowledging the benefits of providing for earthworks and reflecting that certain specified earthworks are provided for as permitted activities subject to conditions. In coming to this position, I note the Introduction to the EW – Earthworks chapter refers to earthworks as being *'an integral part of development, as they prepare land (including the formation of building platforms) to be used for living, business and recreation, and are often essential to the construction of foundations, buildings, and structures'*. I am comfortable with the revised wording of the new policy as proposed in Ms Landers evidence, but with a change to refer to adverse effects being avoided, remedied or mitigated. Given the above, **I have changed my position** from that set out in para 6.3.12 of Section 42A Report and make the following revised recommendation to **'Accept in part' submission S81.086**, and to recommend the inclusion of an additional policy in the Earthworks chapter of the PDP as follows: **EW-PX To enable earthworks to provide for people and communities' social, economic and cultural well-being, and their health and safety, where adverse effects are avoided, remedied or mitigated.** This would also result in revised recommendations to **'Accept in part'** the similar primary submission, and associated further submission, of **NZ Pork (S42.029 & FS6.7)** reflecting the revised recommendation on the Hort NZ primary submission.

		In terms of section 32AA, I consider the addition of this policy would more appropriately contribute to the overall achievement of Objective EW-O1 of the PDP, through rounding out the policies in acknowledging earthworks are an integral part of development.
12. New Standard for Earthworks on the site of Heritage Items and Sites of Significance	***Heritage New Zealand Pouhere Taonga*** (S55.067, S55.068, S55.069, S55.070, S55.071) [Evidence of Dean Raymond, paras 10-17, pp3-5] HNZPT's original submission sought to include an additional permitted activity standard in the Earthworks chapter of the PDP (and reference the new Standard in Rules EW-R1, EW-R3, EW-R4 & EW-R7), as follows: **EW-SX Earthworks with sites identified as Historic Heritage in SCHED2 or Sites and Areas of Significance to Māori in SCHED3** **All Zones** — 1. **The earthworks are not within a site identified as Historic Heritage in SCHED2 or identified as a Site or Area of Significance to Māori in SCHED3, unless the earthworks are limited to trenching necessary for the installation of service connections or effluent disposal systems, or interments in existing cemeteries or urupā.** Section 42A Report recommendations were to reject these submissions. Mr Raymond responds in his evidence as follows: *'The very general rules in the SASM and HH chapters, for example SASM-R1 and SASM-R5, are beneficial as far as they are written to capture any activity which might damage or destroy a site. However in practice the rule framework would allow for a land owner or developer to undertake extensive earthworks in the vicinity of a significant site without the need for any consent. Uncontrolled earthworks is one of the most common ways significant archaeological and cultural sites are damaged or destroyed. There is a high risk that such activity, whether unintentional or deliberate, would damage significant heritage or cultural resources. This is exacerbated by the fact that the sites included in the PDP Schedule are identified only by a point/marker on the map, and the extent of scheduled sites has not been identified in the Plan. The location of the HH or SASM marker on the maps may also not be accurate.* *In Paragraph 7.3.6 the author refers to the Assessment Matters which come into play when a resource consent is applied for, including reference to Wāhi Tapu, sites of significance and archaeological sites. It is appreciated that these assessment matters are included in the plan. However, there is a high bar in the PDP for an activity to trigger a consent for earthworks. For example, EW-R2 (Ancillary Rural Earthworks) provides for 500m3 of earthworks per annum. Even earthworks at a much smaller scale has the potential to damage or destroy significant sites.* *Other District Plans often include specific provisions controlling earthworks on historic heritage and SASM sites. I refer the panel to the Proposed District Plans for New Plymouth and Porirua. Both of these PDPs include policies and rules in the HH and SASM chapters for matter (whether included in the Earthworks or the SASM chapters), but it does matter that such provisions are included.* *I acknowledge that there is the potential for duplication between the processes of the District Plan and the Heritage New Zealand Pouhere Taonga Act 2014, with regard to the destruction of archaeological sites. The PDP has taken the approach that all archaeological sites are included in the planning maps for information*	I have considered the evidence of Mr Raymond and I accept that there is an issue by the fact that the sites included in the PDP Schedule are identified only by a point/marker on the map, and the extent of scheduled sites has not been identified in the Plan. I also accept that the location of the HH or SASM marker on the maps may also not be accurate. This could mean that my reliance in the Section 42A Report on the provisions of the HH – Historic Heritage and SASM – Sites of Significance to Māori chapters in the PDP as the primary means to address risks associated with earthworks in the vicinity of these areas, may not always be sufficient to protect such areas from the risk of damage (whether unintentional or deliberate). I remain of the view that the standard as originally sought would create duplication with the HNZPT Act in relation to archaeological sites and concur with Mr Raymond that this be addressed through limiting its application to Wāhi tapu places identified in HH-SCHED2, as these may not be 'archaeological sites' and therefore may not be afforded the protection provided under the HNZPT Act. Protection of those cultural sites that are not archaeological sites, therefore, could otherwise suffer permanent damage or destruction from earthwork activities. However, I remain of the view that activities within, and within 100m of, a site or area of significance to Māori in SASM-SCHED3 are appropriately managed through the specific rules in the SASM – Sites & Areas of Significance to Māori chapter of the PDP. In addition to the general requirement not to destroy, damage or modify these sites/areas (Rules SASM-R1, SASM-R3, SASM-R4 & SASM-R5), these rules also regulate particular activities considered to pose risk to the cultural values of these sites/areas – being offal pits, burial of dead stock or plant waste, or effluent storage or disposal fields (Rules SASM-R5 & SASM-R6). Rule SASM-R2 specifically permits earthworks associated with burials within an existing urupā identified in SASM-SCHED3. In my view, the revised wording of the proposed Standard offered in Mr Raymond's evidence goes some way to addressing this matter without causing duplication with the HNZPT Act. However, to apply such a standard across an entire site on the basis that it contains a Wāhi Tapu place or a Site or Area of Significance to Māori, is too broadly applied in my opinion. The earthworks could be located some considerable distance away from the place/site and have no impact at all on it, and yet the application of the standard as proposed would trigger a resource consent. Recognising the potential inaccuracy of the mapping of these places/sites on the PDP Planning Maps, I recommend applying the standard to land within 100m of the location point of these places/sites as shown on the Planning Maps, rather than applying this standard potentially to the whole property.

	purposes only, however the scheduled SASM and Historic Heritage sites are included in the Plan with an associated regulatory framework. My understanding of the inclusion of these places in the PDP schedules is because of their significance. In relation to earthworks an additional level of protection, with clear and unambiguous provisions, is warranted for these places. *Regarding the effect of earthworks on sites containing scheduled heritage items or buildings, the greatest potential for adverse effects is on Wāhi Tapu sites. While it is possible that earthworks can cause adverse effects on the setting or surrounds of a scheduled heritage building, the larger risk is for Wāhi Tapu and other Sites of Significance to Māori. With this in mind I suggest that the additional standard requested by HNZPT be amended to refer to SASM sites and scheduled Wāhi Tapu only, and not other scheduled heritage places.* *I recommend that the following standard be added to the District Plan, and included in rules EW-R1, EW R3, EW-R4 and EW-R7 as a permitted activity standard:* *EW-S10 Earthworks within sites containing scheduled Wāhi Tapu places in SCHED2 or Sites and Areas of Significance to Māori in SCHED3* *All Zones:* *1. The earthworks are not within a site containing a scheduled Wāhi Tapu place in SCHED2 or a Site or Area of Significance to Māori in SCHED3, unless the earthworks are limited to interments in existing cemeteries or urupā.* *I have considered the proposed addition of this standard in relation to the requirements of Section 32AA. The following is my brief analysis:* ➢ *This proposed provision will improve the effectiveness of the district plan by specifically controlling earthworks on sites containing Wāhi Tapu and Sites of Significance to Māori.* ➢ *The proposed amendment is efficient, as although the PDP contains general provisions addressing 'all activities', a specific provision addressing earthworks is warranted to achieve the purpose of the Act to protect Historic Heritage* ➢ *The proposed provision effectively implements EW-O1, EW-P7, SASM-O1, SASM-P2, and TW-P9* ➢ *The risk of not acting is that the District Plan provision are inadequate to prevent the damage or destruction of significant Wāhi Tapu and other Māori sites* ➢ *In my view the proposed amendment will be more appropriate in achieving the purpose of the RMA.'*	The adoption of 100m aligns with the generally accepted locational accuracy of archaeological sites recorded in NZAA ArchSite being only to 100m grid squares, and therefore only deemed accurate within, at best, 100m of the actual site location. It also aligns with the 100m distance already applying to sites identified in SASM-SCHED3 in Rule SASM-R6 of the PDP. Given the above, **I have changed my position** from that set out in paras 7.3.1-7.3.6 of Section 42A Report, but only in relation to Wāhi Tapu places identified in HH-SCHED2. To this end, I make the following revised recommendations to **'Accept in part' submission S55.071, and 'Accept' submissions S55.067, S55.068, S55.069, S55.070**, to include the following permitted activity Standard in the EW – Earthworks chapter of the PDP, as follows: **EW-SX Earthworks within a scheduled Wāhi Tapu place in HH-SCHED2** **All Zones** — **1. Earthworks are not within 100m of the location on the Planning Maps of a scheduled Wāhi Tapu place in HH-SCHED2, unless the earthworks are limited to interments in existing cemeteries or urupā.** ***Note: for activities (including earthworks) within, or within 100m of, a site or area of significance to Māori identified in SASM-SCHED3 refer SASM chapter of the PDP.*** With subsequent amendments also recommended for Rules EW-R1, EW-R3, EW-R4 & EW-R7, to include reference to the above Standard in condition 1 of these rules, accordingly. This would also result in revised recommendations in respect of the associated further submissions of **Federated Farmers (FS25.82 & FS25.85), Waka Kotahi (FS16.35), Kāinga Ora (FS23.73), and Ngā hapū me ngā marae o Tamatea (FS5.091)**, to reflect the revised recommendations on the primary submissions. As an aside, I note the definition of 'Earthworks' excludes 'gardening, cultivation, and disturbance of land for the installation of fence posts' – therefore, I note that the above recommended standard would not ultimately apply to such land disturbance activities.
13. Objective EW-O2 (Offsetting / Compensation)	***Question from the Panel re: Aggregate & Quarry Association*** (S82.001) Aggregate & Quarry Assoc original submission was to amend Objective EW-O2 as follows: EW-O2 Ensure that the life-supporting capacity of air, water, soil and ecosystems is safeguarded and that adverse effects of mining, quarrying and hydrocarbon extraction activities on the environment are avoided, remedied**,** ~~**or**~~ mitigated, **offset or compensated,** while meeting the needs of the District (and wider Region) for minerals. Section 42A Report recommendation is to reject this submission.	I have considered the question from the Panel and, in my view, offsetting and compensation are methods consent authorities should only be considered where avoidance, remediation or mitigation are not achievable. While s104(1)(ab) RMA provides for consideration of off-setting, this can be considered independent of any policy support. In my view there should be a preference towards avoiding, remedying or mitigating adverse effects on the environment, and this is consistent with the direction set by the higher order objectives and policies and the Regional Policy Statement. For that reason, I do not consider that they should be considered options inherently available in every case. Therefore, I remain of the view, that they should not be listed in

	Quarrying is not always able to avoid, remedy or mitigate adverse effects – are off-setting and compensation therefore reasonable to include in the objective as options, given s104(1)(ab) provides as follows *'any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity"*?	the policy alongside, and equal to, 'avoidance, remediation or mitigation' in the way sought by the submitter. To this end, **I have not changed my position** as set out in para 9.3.9 of Section 42A Report: *'9.3.9 With respect to the Aggregate & Quarry Assoc submission, when considering an application for a resource consent, section 104(1) of the RMA provides for consent authorities to have regard to '(ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity'. It is my understanding that offsetting is a last resort… where adverse effects cannot be reasonably avoided, remedied, or mitigated… and that there are limits to offsets (e.g. situations where residual impacts cannot be fully compensated for by a biodiversity offset because of the irreplaceability or vulnerability of the biodiversity affected) and this can only be considered on a case-by-case basis. Given this, I do not consider offsetting and compensation are appropriate as standard options to apply in all instances, and therefore I do not support the amendment to incorporate these options within Objective EW-O2.'*
14. Policy EW-P9 (Farm Quarries)	***Federated Farmers*** (S121.081) [Evidence of Rhea Dasent, paras 63-67, pp11/12] Fed Farmers original submission sought amendments to Policy EW-P9, as follows: EW-P9 To enable **farm** quarries **and** ancillary to ~~**farming and**~~ forestry activities to be established in rural areas. Section 42A Report recommendation is to reject this submission. EW-P9 To **provide for**~~**enable**~~ **farm** quarries **and**~~**ancillary to farming and**~~ forestry **quarrying**~~**activities**~~ to be established in rural areas **where the adverse effects on the environment are avoided, remedied or mitigated**. Ms Dasent responds in her evidence as follows: *'However it does not appear that any submitters asked for enable to be deleted, and replaced with provide for. Federated Farmers prefers enable to remain, and it will be consistent with Objective EW-O1 which the Section 42a Report recommends to use the word enable. We do not object to the addition of adverse effects are to be avoided, remedied or mitigated, as this is consistent with RMA Section 5(2)(c).'*	I have considered the evidence of Ms Dasent and consider the change to the terminology to replace the words 'To enable' with 'To provide for' is within scope of the Forest & Bird submission (S75.088) in relation to this policy. Forest & Bird submitted as follows *'An enable policy is not appropriate, particularly without reference to environmental limits or avoiding/remedying/mitigating effects'* and sought that the policy be deleted entirely. On this basis, **I have not changed my position** as set out in paras 9.3.14 & 9.3.15 of Section 42A Report: *'9.3.14 I concur with Federated Farmers to use the term 'farm quarries' in Policy EW-P9, as 'farm quarry' is the term is defined in the PDP and is used in Rule EW-R4, and it is therefore appropriate to have consistent terminology. I recommend the policy be amended to refer to 'farm quarry', accordingly.* *9.3.15 In terms of Forest & Bird's submission, I concur that the policy as written is not appropriate without reference to environmental limits or avoiding/remedying/mitigating effects. However, I do not consider that Policy EW-P9 should be deleted entirely, as such minor quarry activities are anticipated in the rural environment. I recommend utilising defined terms ('farm quarries' and 'forestry quarrying') and constructing the policy around avoiding, remedying or mitigating effects, which will bring the policy more in line with giving effect to Objective EW-O2…'*

Natural Hazards & Climate Change Topic

<table>
<tr><th>Issue/Plan Provision</th><th>Submitter Evidence</th><th>Response</th></tr>
<tr>
<td>15. Rule NH-R1
(Vegetation Planting)</td>
<td>
Question from the Panel re: Federated Farmers (S121.136)
My understanding of the question was around whether this rule could be considered too restrictive… for instance, situations where landowners carry out natural hazard mitigation e.g. riparian planting to stabilise soil, and they are not a network utility, or territorial authority, or doing work on behalf of either?
This is may be related to Federated Farmers' original submission to amend Rule NH-R1, as follows, including raising concern that 'the broad definition of 'natural hazard mitigation activities' includes activities like riparian planting and drainage which should be reasonable activities for farmers to undertake on their land for the purposes of mitigating potential flood damage…'.
<table>
<tr><th colspan="3">NH-R1 Natural hazard mitigation activities within a Natural Hazard area</th></tr>
<tr>
<td>Fault Avoidance Area
Flood Hazard Area
Tsunami Hazard Area</td>
<td>1. Activity Status: PER
Where the following conditions are met:
a. The activity is carried out by or on behalf of a local authority, network utility operator or a requiring authority exercising its powers, functions and duties under the RMA, Soil Conservation and Rivers Control Act 1941, Land Drainage Act 1908, or Local Government Act 2002.; or
b. the natural hazard risk cannot be reasonably avoided, and the mitigation works do not transfer or create unacceptable hazard risk to other people, property, infrastructure or the natural environment.</td>
<td>2. Activity status where compliance not achieved: DIS</td>
</tr>
</table>
Section 42A Report recommendation is to reject this submission.
</td>
<td>
I have considered the matter, and Rule NH-R1 only applies to such activities occurring within the identified and mapped 'Hazard Areas'. Elsewhere in the District, such activities would generally be permitted by the PDP (subject to complying with the 'Earthworks' rules, the 'Ecosystems and Indigenous Biodiversity' rules, and with the 'Shading of Land and Roads' standards applying in the Rural Zones etc).
In my view, in hazard risk areas, it is appropriate to scrutinise such activities through a resource consent process, with the ability to decline such an application if the activity is deemed to exacerbate risk to people, property, infrastructure and/or the environment.
I also note, in terms of planting, the Hawke's Bay Regional Resource Management Plan has a rule applying to activities in the vicinity of river control and drainage schemes (including planting, buildings or structures, and deposition of material, within 6 metres of the bed of a river, lake or artificial water course), where undertaken by persons other than the local authority or persons acting on their behalf. In that situation, such planting would similarly fall to a Discretionary Activity (Rule 71 of the HBRRMP). Therefore, I do not consider that Rule NH-R1 is out of step with this.
<table>
<tr><th>Rule</th><th>Activity</th><th>Classification</th></tr>
<tr>
<td>71
Activities affecting river control & drainage schemes[156, 157]
Refer POL 79</td>
<td>Any of the following activities, where they are undertaken by persons other than the local authority or persons acting on their behalf, within a land drainage or flood control scheme area that is managed by a local authority exercising its powers, functions and duties under the Soil Conservation and Rivers Control Act 1941, the Land Drainage Act 1908, or the Local Government Act 1974:
• The introduction or planting of any plant including any tree in, on, or under the bed of any river, lake or artificial water course, or within 6 metres of the bed.
• The erection of any building, fence or other structure in, on, or under the bed of any river, lake or artificial water course, or within 6 metres of the bed.
• The deposition of any rock, shingle, earth, debris or other substance in, on, or under the bed of any river, lake or artificial water course, or within 6 metres of the bed.
• The reclamation or drainage of the bed of any river, lake or artificial water course.
• The undertaking of any other land disturbance activity which impedes access to the bed of any river, lake or artificial water course, or within 6 metres of the bed.
• The erection of any structure and the undertaking of any land disturbance activity which interferes with the integrity of any defence against water.[158]</td>
<td>Discretionary[159]</td>
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		Therefore, **I have not changed my position** as set out in para 6.3.2-6.3.8 of Section 42A Report: *'6.3.2 Federated Farmers considers activities like riparian planting and drainage should be reasonable activities for farmers to undertake on their land for the purposes of mitigating potential flood damage, and are also concerned that maintenance work on existing stop banks is not enabled.* *6.3.3 'Natural hazard mitigation activities' are defined in the PDP as 'activities that are carried out to reduce the risks posed by natural hazards (includes stopbanks, sea walls, vegetation planting, and river control and drainage works)'.* *6.3.4 In terms of 'vegetation planting', I am unsure as to the use of riparian planting as a means of mitigating flood hazard other than, perhaps, as a way to stabilise riverbanks. Riparian planting is generally used as a filtering mechanism for water quality purposes, shading for aquatic ecosystems, and for amenity and cultural reasons.* *6.3.5 In terms of maintenance work on existing stop banks, where carried out 'by or on behalf of a local authority… exercising its powers, functions and duties under the …, Soil Conservation and Rivers Control Act 1941, Land Drainage Act 1908, …', such maintenance would meet the Permitted Activity condition in Rule NH-R1 and is therefore already enabled.* *6.3.6 In my view, it is appropriate that privately-initiated 'natural hazard mitigation activities' should be subject to appropriate consideration through a resource consent process, given such works can transfer or create risk off-site. The rule is also consistent with a similar rule in the Hastings District Plan (Rule NH1).* *6.3.7 I also consider that the wording of the condition sought introduces a degree of judgement which is inappropriate within a rule in a District Plan – in terms of determining whether a natural hazard risk can be 'reasonably avoided' or not, and in terms of determining whether the works transfer or create 'unacceptable' hazard risk to other people, property, infrastructure or the natural environment.* *6.3.8 For these reasons, I do not support amending Rule NH-R1 as sought by Federated Farmers.'*
16. Flood Hazard Mapping / Rule NH-R2	***HBRC*** (S11.017 & S11.039) [Evidence of Gavin Ide, paras 4.1-4.6, pp4/5] HBRC's original submission sought that the mapping of flood hazard areas be amended to provide a more accurate overlay that identifies both 'at risk' of flooding, and those at 'low risk' of flooding. Section 42A Report recommendation is to accept these submissions, and to update the Planning Maps with differentiation between 'at risk' and 'low risk' of flooding on the maps and within Rule NH-R2, accordingly. Mr Ide responds in his evidence as follows: *'I note Kainga Ora (Submission S129.054) sought an amendment to Rule NH-R2 to delete all clauses relating to the Flood Hazard Area. Kainga Ora's submission is that "the spatial identification of flood hazard areas should be made publicly available through a set of non-statutory flood hazard maps which sit outside of the PDP."*	I have considered the legal submission of Mr Whittington and the evidence of Mr Campbell on behalf of Kainga Ora, and the evidence of both Mr Ide and Mr Goodier on behalf of HBRC on this matter, including their verbal presentations to the Panel. Mr Whittington and Mr Campbell refer to the Auckland Unitary Plan and Tauranga Plan Change 27 adopting an 'outside the plan' or 'non-statutory mapping' approach. I provide some commentary on these two examples below. <u>Auckland Unitary Plan</u> In the Auckland Unitary Plan (operative in part) situation, the Plan contains rules pertaining to *'activities in the 1 per cent annual exceedance probability (AEP) floodplain'* – Rules A23 to A38 – and *'infrastructure in the 1 per cent*

	I disagree. Even though some areas at risk of flooding have been identified and that information is made available in the Hawke's Bay Hazards Portal, it is my opinion that it is appropriate for some land use activities to be restricted by district rules more than others in flood hazard areas. Rule NH-R2 in the proposed district plan goes some way to doing just that. *As consequence of the reporting officer recommending adoption of updated flood hazard maps developed by the Regional Council, the reporting officer goes on to state (at para 6.3.12) "that it is appropriate to differentiate between 'Zone 1' and 'Zone 2' flood areas within Rule NH-R2 accordingly." I agree that differentiation is appropriate.* *In my opinion, managing the risks arising from flooding of some land use activities involving the gathering of larger numbers of people ought to be subject to different restrictions than say, a typical residential dwelling. I do not consider it appropriate for a district plan to apply a 'one-size-fits-all' approach to restricting all land use activities, building and structures within an area identified as being at risk of flooding.* *At paragraph 8.3.1 of the s42A Report, the reporting officer comments that there is "considerable support for Appendix NH-APP1 and the use of building importance categories (BIC) as a way of managing risk from natural hazards in the PDP." Indeed if the proposed district plan is to retain BICs, then I concur with the amendments to Rule NH-R2 as recommended and described by the reporting officer at paragraphs 6.3.15 and 6.5.1 of the s42A report.'* (paras 4.2-4.6) Refer also the evidence of Craig Goodier, HBRC's Principal Engineer, as follows (para 12 & paras 20-28, pp3-5): *'The flood hazard maps were submitted to the CHBDC proposed district plan such that the maps could be included in the district plan and be used by the district council in fulfilling its functions in planning and controlling building activity in potentially hazardous zones.'* and *'One of the principal guides to effective natural hazard management is taken from the Quality Planning website (the website is backed by Ministry for the Environment, New Zealand Planning Institute, Resource Management Law Association, New Zealand Institute of Surveyors, Local Government New Zealand and New Zealand Institute of Architects). The risk-based approach to planning for hazards has four principles – the first of which relates to hazard information:* *"1. Gathering accurate natural hazard information: Identifying and accurately locating hazards on planning maps is essential for communicating and mitigating hazard risk. Collecting information often requires specialised technical knowledge and surveys. Maps showing the location of hazards in the vicinity of a property must be developed at an appropriate scale. As the existence of a particular hazard may have a major effect on a decision to purchase or build on a property, all information on hazards should be as accurate as technology and resources permit."* *The key point is one that '… hazards should be as accurate as technology and resources permit.', i.e. concerning the present case of the CHB flood hazard maps, in my opinion, the method used was commensurate with the available data and resources.*	*annual exceedance probability (AEP) floodplain'* – Rules A52 to A56 – and also permitted and controlled activity standards pertaining to the 1 per cent annual exceedance probability (AEP) floodplain – Standards E36.6.1.5 to E36.6.1.9, E36.6.1.13, and E36.6.2.1. There are no flooding overlays on the Auckland Unitary Plan maps. The only indication of the approach to determining whether a site is within the floodplain or not is in the Background section at the beginning of the E36. Natural Hazards and flooding section of the Plan, which appears to indicate the use of non-statutory maps held by the Council outside of the Plan, as follows: PC 78 (see Modifications) The Plan has defined criteria to identify land which may be subject to natural hazards. The Plan requires the use of the best information available to identify greenfield land or land which is proposed for redevelopment which may be subject to natural hazards. This includes hazard maps, databases and reports held by the Council. The level of detail and the quality of this information is variable. This affects the Council's ability to identify and map land that may be subject to natural hazards. At this time, the provisions in the Plan are focussed on the following hazards: • coastal erosion; • coastal storm inundation; • flooding; • land instability; and • wildfires. <u>Plan Change 27 Tauranga City Plan</u> PC 27 was notified in November 2020. The Tauranga City Council website states: *"The plan change introduces a new rule framework to the Tauranga City Plan to manage the effects of flooding from intense rainfall on people, properties and infrastructure."* Decisions on submissions on PC 27 were released in March 2022. The decisions version of the text adopts the following definitions for 'floodplain' and 'flood prone area', which then flow through into a rules framework adopted in Chapter 8 Natural Hazards of the Plan (and other chapters): - **<u>Adopt definition for floodplain as notified and include new note following:</u>** ***floodplain*** Means the land near a stream or river channel, susceptible to flooding in the 1% *annual exceedence probability* (*AEP*) rainfall event concurrent with a 5% *annual exceedence probability* (*AEP*) *storm-tide event*, taking into account the effects of climate change on rainfall and sea level based on the RCP 8.5 median scenario as of the year 2130. <u>Note: The *Council* holds publicly available information showing the modelled extent of *floodplain(s)* affecting specific properties in its GIS viewer. The maps are non-statutory and indicative only. *Council* will update the maps, including where further relevant *site*-specific information becomes available and to account for catchment changes as a result of infrastructure and land development. *Council* will consider publicly held *site*-specific</u>

	It should be noted that newer region-wide ground elevation data has been collected and is likely to become available the latter part of 2022. The resources allocated to the interim flood hazard maps recognised this, as it was prudent to delay producing more accurate maps using computer modelling techniques until the new ground level data was made available. *Limitations* *There are limitations to the accuracy of any flood hazard mapping due to the method used. These limitations are stated in the description of the method and are repeated here for clarity.* *The specific line drawn to delineate the zones should be assumed to have a buffer ranging from approximately 5 m in steep areas, up to approximately 50 m in flat areas. There may be exceptions to this estimate.* *Not all floodable areas have been mapped. There may be overland flow paths that are not able to be delineated due to limited resolution of the base contours (250 mm intervals), and there may be areas at risk from flooding that have not been examined due to lack of contour information.* *The scale to use the mapping should be limited to approximately 1:20,000. There are instances where using the data at a smaller scale is possible, however, caution should be used in the interpretation of the specific location of the flood zone edge.* *Summary* *Flood hazard mapping for CHB was completed by using a sound method commensurate with available data and resources of delineating likely flood extents using ground level contours and aerial photos.* *The method is intended to be an interim solution to provide an update from previous mapping, which had limited accuracy and was no longer providing acceptable level of functionality for planning or building control purposes.'*	information as well as any relevant information and technical assessments provided by any person(s) when assessing the current applicability of the *floodplain* definition to a particular *site*. - **Adopt definition for flood prone area as notified and include new note following:** ***flood prone area*** Means the land susceptible to flooding in the 1% *annual exceedence probability* (*AEP*) rainfall event concurrent with a 5% *annual exceedence probability* (*AEP*) *storm-tide event*, taking into account the effects of climate change on rainfall and sea level based on the RCP 8.5 median scenario as of the year 2130, but is not within the definition of *overland flowpath* or *floodplain*. Note: The *Council* holds publicly available information showing the modelled extent of *flood prone area(s)* affecting specific properties in its GIS viewer. The maps are non-statutory and indicative only. *Council* will update the maps, including where further relevant *site*-specific information becomes available and to account for catchment changes as a result of infrastructure and land development. *Council* will consider publicly held *site*-specific information as well as any relevant information and technical assessments provided by any person(s) when assessing the current applicability of the *flood prone area* definition to a particular *site*. In terms of mapping of floodplains and flood prone areas, the decisions version adopts the following text in 8D. Purpose of Flooding from Intense Rainfall Provisions in Chapter 8: - **Adopt Section 8D Flooding from Intense Rainfall with the following amendments:** **8D Purpose of Flooding from Intense Rainfall Provisions** The purpose of this section is to manage *activities* related to flood hazards from intense rainfall, so that risk is not increased and is reduced over time. The nature of risk and appropriate mitigation for intense rainfall related flooding can vary depending on the nature of the flood area. *Council* has therefore defined three types of flooding areas from intense rainfall events: *floodplains, overland flowpaths* and *flood prone areas*. The purpose of these categories is to enable targeted control of *activities* which may introduce risk or ~~negative~~ adverse effects, while allowing *activities* which may be appropriate in or adjacent to the flood area. This section adopts the 1% *AEP* rainfall event taking into account climate change and sea level rise to give effect to the Bay of Plenty Regional Council Regional Policy Statement. *Floodplains* are situated next to a river or stream. They carry out the important function of water storage and flood flow conveyance during a flood event. Development within a *floodplain* can cause an increase in flood risk, by either placing more people and assets within an area likely to be affected by flooding, and/or by increasing flood flows through loss of storage and conveyance function and diversions of flows such that additional adverse effects occur. *Overland flowpaths* are part of the stormwater system to safely convey flood flows, which cannot get into or cannot be conveyed by the primary stormwater system and need to be ~~protected~~ managed in order to reduce nuisance or damage caused by flooding. *Overland flowpaths* have been delineated into following categories: a) *Minor overland flowpath:* has a contributing catchment of less than 2ha. b) *Major overland flowpath:* has a contributing catchment of 2ha or more, meaning that the flowpath function serves a larger area. There is potentially greater onsite risk in a *major overland flowpath* and the possibility that the *major overland flowpath* will affect larger upstream and downstream land area than a *minor overland flowpath*. *Flood prone areas* are areas which are flooded in a 1% *AEP* event, however, unlike *floodplains* and *overland flowpaths*, the flow of the water is much slower. Therefore, it is possible to develop in *flood prone areas* in certain circumstances provided flood risk to life and property is mitigated.
	Kāinga Ora (S129.054 & S129.235) [Evidence of Michael Campbell, paras 3.2-3.10] Kāinga Ora's original submission sought that the 'Flood Hazard Overlay' on the PDP Planning Maps, and clauses pertaining to it in the Natural Hazards rules (e.g. NH-R2), be deleted. Section 42A Report recommendation is to reject this aspect of their submissions. Mr Campbell responds in his evidence as follows: *'I concur with the reporting planner that it is appropriate to incorporate natural hazard controls into the District Plan in line with Council's functions under section 31 of the RMA.* *However, I consider that providing a non-statutory natural hazards layer is the most appropriate means to address these functions. This is to ensure that the most up to date changes to natural hazard information can be readily identified to address such issues. I consider that this is particularly relevant with the risk of climate change and, in my view, it is appropriate that the PDP can respond to and address the most up to date information about natural hazards.* *In my view, hazards maps are a useful tool to set out information the Council holds on different matters relevant to provisions in the PDP where there is insufficient certainty and consistency over time to provide this information in a mapped District*	

	Plan overlay. The use of information outside the PDP serves purely as information or guidance in the context of particular rules in a plan. *Having maps sitting outside of the Plan for information purposes is appropriate in the context of flood hazard information as this information is dynamic and subject to change over time. Changes may be due to improved understanding of the natural hazard, to interventions that change the location of natural hazard, or to changing real world conditions including climate change. Therefore, it is difficult to map flood hazards within the planning maps in a way where the information will stay accurate and relevant over time.* *In my opinion, requiring changes to flood hazard information to reflect changes in the environment, such as improvement, through a Schedule 1 process is not an efficient planning process. The mismatch between the maps and true position will likely add cost to any consenting process until a Schedule 1 process is undertaken to update the maps. This would result in additional time a cost.* *I note that the Auckland Unitary Plan (AUP) provides an example of a plan which adopts a set of 9 flood hazard overlay maps which sit outside the plan and operate as interactive maps on the Council's 'Geo Maps' website – a separate mapping viewer to the statutory maps. This approach is different to that of the traditional means of displaying hazard overlays on district plan maps and reflects that these maps do not have regulatory effect. I understand that the Tauranga City Council has also adopted this approach in recent decisions on Plan Change 27.* *A GIS viewer outside the Plan can assist plan users in determining whether a site may be subject to a particular flooding hazard. The fact that this GIS viewer can be updated as new information becomes available outside of a formal plan change process will make it a more reliable starting point for further assessments over time, than a spatial layer within the Plan that is unable to be easily updated.* *In my opinion, this alternative approach provides greater flexibility, while appropriately ensuring that natural hazard risks are adequately understood and considered.'*	*Council* holds publicly available information showing the modelled extent of *floodplains, overland flowpaths* and *flood prone areas*, which ~~identifies~~ identify the locations and extent of these flood types. The maps are non-statutory and indicative only. *Council* will update the maps, including where further relevant *site*-specific information becomes available and to account for catchment changes as a result of infrastructure and land development. *Council* will consider publicly held *site*-specific information as well as information and technical assessments provided by any person(s) when assessing the current applicability of the *floodplains, overland flowpath* and *flood prone area* definitions to a particular *site*. The Tauranga City Council Flooding from intense rainfall guideline is publicly available to aid in the understanding of the modelling and implementation of provisions in relation to flooding from intense rainfall. The guideline is non-statutory and will be periodically reviewed and updated by the *Council* as needed. In both cases, the rules in the Auckland Unitary and Tauranga City Plans apply land use controls to a floodplain determined by applying a specified Annual Exceedance Probability rainfall event (1%), and the non-statutory maps outside of the Plan are merely available to indicate the modelled extent of the 1% AEP event. I have read the 'Memorandum of Counsel in relation to Legal Issues Arising from Proposed Plan Change 27' in relation to the Tauranga City Plan, provided by Kainga Ora following the hearing. I have no reason to doubt counsel's analysis of the legality of the rules included in the Tauranga District and Auckland Unitary Plans, which refer to non-statutory plans. In particular, I refer to para 16 of those submissions which states *"Because they sit outside the City Plan, the GIS hazard maps do not directly trigger requirements for resource consent. Rather, requirements for resource consent are triggered by activities being proposed in areas which satisfy the parameters specified in the definitions"*. However, in the case of the PDP for Central Hawke's Bay, the NH – Natural Hazard rules in the PDP apply directly to the mapped extent of the 'Hazard Areas' shown on the Planning Maps, as the direct means to apply a risk-based set of rules to buildings and activities at risk from natural hazards. This is the same approach adopted in all the District Plans in the Hawke's Bay Region (Hastings, Napier, Wairoa & CHB) to-date, in relation to river flood hazard. This differs from the Auckland and Tauranga approach, in that the requirement to obtain resource consent is triggered by being located within the 'Hazard Areas' mapped on the PDP Planning Maps, and not by reference to some other parameters as is the case in the Auckland and Tauranga approach, where the non-statutory maps are illustrative only. Applying the rules to mapping outside the District Plan in the CHB PDP context, would mean that the application of those rules could change without recourse to a Schedule 1 RMA plan change process. This raises similar issues to the application of rules in the PDP to Codes of Practice or Standards outside of the District Plan, that can similarly change over time (unless pegged to a specific publication date). Mr Goodier and Mr Ide confirmed that the flood risk maps provided by HBRC are the latest mapping available for CHB, based on the best data available. Whilst acknowledging its limitations, Mr Goodier confirmed that *'Flood hazard mapping for CHB was completed by using a sound method commensurate with available data and resources of delineating likely flood extents using ground level contours and aerial photos. The method is intended to be an*

		interim solution to provide an update from previous mapping, which had limited accuracy and was no longer providing acceptable level of functionality for planning or building control purposes' (paras 27 & 28 of Mr Goodier's evidence). Mr Ide confirmed that *'In my opinion, that flood hazard mapping work by Mr Goodier is superior to the much earlier work that was the basis of flood hazard areas identified in the operative district plan and in the notified version of the PDP'* (para 3.5 of Mr Ide's evidence). I also note Mr Goodier advised the Panel that updated flood modelling for CHB was years away unless significant additional resources were made available to progress that quicker. On that basis, I consider the risk of the flood hazard overlay on the maps in the District Plan becoming quickly out-dated is 'low' for a substantial portion of the life of this Plan, and if there is updated flood modelling made available during the life of this Plan, a plan change would be the appropriate step at that time (if required). Therefore, **I have not changed my position** as set out in paras 9.3.4-9.3.13 of Section 42A Report: *'9.3.4 The river flood hazard overlay in the Operative District Plan was identified as being significantly out-of-date and inaccurate. The approach for the PDP has been to reflect the latest hazard information from the regional 'Hawke's Bay Hazard Portal' which is the central repository of all the latest hazard information for the Region. Unlike Hastings District, significant parts of Central Hawke's Bay had not yet been modelled for flooding, so disclaimers from the 'Hazard Portal' were carried over onto the Planning Maps in the PDP.* *9.3.5 In the technical report supporting their submission ('Interim Flood Hazard Mapping For Central Hawke's Bay', prepared by Craig Goodier Principal Engineer, HBRC, dated 6 August 2021), there is acknowledgement that there is no comprehensive computer model available to produce detailed flood hazard maps for the area, but that HBRC has carried out work to be able to provide an interim solution based on mapping of areas that are potentially floodable through use of computer models from limited areas, as well as contours and air photos where no model was available.* *9.3.6 There is also an acknowledgement that there are limitations to the mapping produced, and no flood depths are provided, and the report notes that the scale to use the mapping should be limited to approximately 1:20,000 but that there are instances where using the data at a smaller scale is possible where used with caution.* *9.3.7 Regardless of the limitations, the interim mapping for Central Hawke's Bay is a considerable improvement on existing flood hazard mapping relied on to-date. I do not agree with Kāinga Ora that the whole 'Flood Hazard Area' should be deleted from the Planning Maps – I do not concur that such mapping is subject to constant change, or that it is more appropriate as a non-statutory map which sits outside of the PDP.* *9.3.8 Flood hazard mapping has historically been provided in the District Plan and, in my view, where reliable flood hazard data is available, it is appropriate to incorporate it into the District Plan in line with Council's functions under section 31 of the RMA – particularly section 31(1)(b)(i) 'the*

		control of any actual or potential effects of the use, development, or protection of land, including for the purpose of… the avoidance or mitigation of natural hazards'. *9.3.9 HBRC's submission states that these two tiers of flood hazard layers will be updated on the Hawke's Bay Hazard Portal but can also be applied to the District Plan maps, and that this will provide clear direction to landowners that consideration of flood hazards is necessary in these areas when considering land use change. I have been advised by Mr Craig Goodier, HBRC Principal Engineer, that these maps will change with new information but that the mapping is unlikely to be subject to any significant change in the short to medium term (i.e. the life of this District Plan). Mr Goodier has advised that the hazard maps indicate areas where flooding is reasonably anticipated to occur but further investigation is required, so they are limited in their accuracy. He has also advised that scaling is an issue and zooming in would need to come with a good disclaimer.* *9.3.10 In terms of applying this to the District Plan maps, any change would need to go through a Schedule 1 RMA process. While the Regional Council mapping is somewhat lacking in certainty, I am satisfied that they are sufficiently reliable as a basis for mapping within the District Plan and to act as a trigger for further investigation as to whether there are flooding effects that need to be mitigated, and conditions included on any consent granted (or consent declined in some circumstances).* *9.3.11 Therefore, I recommend applying the latest flood hazard risk mapping supplied by HBRC. I note that the Hazard Portal has already been updated to reflect this latest flood mapping since submissions on the PDP closed…* *9.3.12 This would involve updating the 'Flood Hazard Areas' shown on the Planning Maps and differentiating to show two zones – 'Zone 1 (Flood Risk Areas)' and 'Zone 2 (Low Flood Risk Areas)' as identified in the technical report accompanying the HBRC submission and as per the Hawke's Bay Hazard Portal.* *9.3.13 I also note that Method NH-M1 provides a 'disclaimer' of sorts in that the hazard information is regional in scope and that site-specific investigation is required.'*
17. Minor Correction to Appendix B of Section 42A Report	***HBRC*** (S11.036) [Evidence of Gavin Ide, paras 3.2 & 3.3, pp3/4] Mr Ide notes in his evidence as follows: *'At paragraph 9.3.3 of the s42A report, the reporting officer recommends corrections to the tsunami maps as requested in the Regional Council's submission. I agree with the reporting officer's recommendation.* *Having said that, I note that what is recorded in Appendix B of the s42A Report is ambiguous. Appendix B records that the officer recommends accepting the Regional Council's submission point, but "No" is recorded in the column titled 'Amendments to Proposed Plan?' If the Regional Council's submission point is accepted to correct the tsunami extent areas, then there should indeed be amendments to the proposed plan.'* I concur. This is a minor error in the table that should be corrected to ensure the need for amendments to the PDP as a result of accepting this submission is not missed. I note the same issue arises in respect of S11.017, which was also a recommendation to 'Accept' and which also results in amendments to the PDP Planning Maps. Therefore, I wish to record the following corrections to the table in 'Appendix B Summary of Recommended Responses to Submissions and Further Submissions' of the Section 42A Natural Hazards & Climate Change Report (shown as tracked changes):	

Table: Summary of Recommended Responses to Submissions and Further Submissions

Submission Point	Submitter/Further Submitter Name	Plan Provision	Summary of Decision Requested	Officer Recommendation	Amendments to Proposed Plan?
S11.016	**Hawke's Bay Regional Council**	NH - Introduction	Amend paragraph 3 of NH-Introduction as follows: 'Risk from natural hazards can arise from: - intense rainfall events causing flooding from rivers, streams, overland flow **paths** and lakes; - earthquakes and **liquefaction** ~~tsunami~~; **- tsunami**; ...'	Accept	Yes
.					
S11.017	**Hawke's Bay Regional Council**	MAPS	Update the Flood Risk Area to Zone 1 and Zone 2 areas as provided by flood hazard maps developed by the HBRC Asset Management team.	Accept	Yes~~No~~
.					
S11.036	**Hawke's Bay Regional Council**	MAPS	Amend maps to address the following near source tsunami extent areas identified on the Hazard Portal but excluded in the planning maps: Parerahi Rd and Makaramu St in Porangahau, McHardy Place, Southern end of Pourerere Beach Rd, a section of Pourerere Road, Okura Rd, Mangakuri and an area around John Ross Place and Kapiti Place in Kairakau.	Accept	Yes~~No~~
.					
S11.039	**Hawke's Bay Regional Council**	NH-R2	We support the proposal to restrict permitted activities to only BIC-1 category buildings in the high risk flood area (Zone 1). It may be appropriate for building importance category restrictions to apply in Zone 2 that would restrict sensitive activities, or buildings that have the ability to house large numbers of people. Or alternatively, Zone 2 could work as an alert layer without any additional rules other than the existing natural hazards matter of control in the Subdivision chapter, supported by a policy framework in the Natural Hazards chapter for other land use activities.	Accept	Yes
.					