

Before the Hearings Commissioners

Under the Resource Management Act 1991 (the **RMA**)

In the matter of a submission by NZ Transport Agency Waka Kotahi
(Submitter S275 and Further Submission FS28) on Plan
Change 1

and in the matter of Wellington Natural Resources Plan

**Hearing statement of evidence of Catherine Lynda Heppelthwaite for NZ Transport
Agency Waka Kotahi regarding Plan Change 1**

**Hearing Stream 3 – Rural land use activities, Forestry and vegetation clearance and
Earthworks.**

on the Wellington Natural Resources Plan

Dated 27 May 2025

1. INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

1.1 My Primary Statement sets out my qualifications, commitment to comply with the Environment Court's Code of Conduct for Expert Witnesses (2023) and also describes NZ Transport Agency's relief which includes seeking provisions for a setback standard in relation to the rail corridor.

1.2 This statement provides an updated version of my recommended provisions in response to the Rebuttal Evidence of:

- a. Mr Shannon Watson on Forestry and vegetation clearance¹; and
- b. Ms Alisha Vivian on Earthworks².

1.3 I have also considered the Primary Evidence of:

- a. Ms Christine Foster³;
- b. Ms Caroline Horrox⁴; and
- c. Ms Pauline Whitney (for HoroKiwi Quarries Limited and Transpower)⁵.

2. ASSESSMENT

2.1 I consider the following further amendments should be made to the S42A Report Author's recommended provisions.

Earthworks WH.P29 and Policy P.P27

2.2 I proposed deletion of clause (e) *minimising works required during the closedown period (from 1st June to 30th September each year)*; Ms Vivian addresses (e) in a range of locations within her Rebuttal⁶ and does not consider that is appropriate as the *"policy directs works during this period to be minimised and the associated rule framework provides a clear pathway for large infrastructure projects to undertake works associated with infrastructure as a permitted activity, subject to specific*

¹ Statement of Rebuttal Evidence Of Mr Shannon Watson on Behalf of Greater Wellington Regional Council Hearing Stream 3 – Forestry And Vegetation Clearance 16 May 2025.

² Statement of Rebuttal Evidence of Ms Alisha Vivian on behalf of Greater Wellington Regional Council Hearing Stream 3 – Earthworks 16 May 2025.

³ Dated 4 May 2025.

⁴ Dated 5 May 2025.

⁵ Both dated 5 May 2025.

⁶ For example, Rebuttal Evidence of Ms Vivian, Table 1, Row 11, Table 2, Row 1 and Table 4, Row 1.

requirements”. Whilst I still consider deletion of (e) preferable, if it is to be retained, I prefer the approach of Ms Whitney⁷, who recommends replacing (e) with the following text:

(e) ~~minimising works required during the close down period (from 1st June to 30th September each year) managing earthworks during 1st June to 30th September in accordance with the GWRC Erosion and Sediment Control Guideline for the Wellington Region (2021).~~

- 2.3 If (e) is to be retained, I consider Ms Whitney’s recommendation better reflects that there is a pathway for winter earthworks to progress as long as effects are managed.

Earthworks WH.P29 and P.27

- 2.4 I acknowledged that Ms Vivian has adopted⁸ my requested inclusion of *where practicable* in clause (b) of both policies.

Earthworks WH.R23A and P.R22A (d) to include:

- 2.5 Ms Vivian considers that adding (d) *a bore or geotechnical investigation bore* is not necessary as bores should be undertaken in manner in which the permitted activity requirement of WH.R23 and P.R22⁹. I accept her view on this.
- 2.6 Ms Vivian notes that her inclusion of (d) was an error and process alternative wording. While Ms Vivian’s provisions are an improvement, I prefer Ms Foster’s recommendation on (d)¹⁰ and consider this is a more streamline and practical response to managing discharges. In particular, Ms Foster’s recommended (d) includes reference to debris (which often accompanies sediment) and streamlines the standard. I note Ms Horrox¹¹ and Ms Whitney¹² make similarly worded recommendations; both of which I would also be comfortable with.

⁷ Primary Evidence of Ms Whitney, for Transpower Ltd, 5 May 2025, page 25, Table 1. Summary of Transpower submission on Earthworks provisions.

⁸ Rebuttal Evidence of Ms Vivian, Table 9, page 21.

⁹ Rebuttal Evidence of Ms Vivian, Table 9, page 21.

¹⁰ Primary Evidence of Ms Christine Foster, 4 May 2025, page 18, clause (d) of Proposed Rules WH.R23A and P.R22A.

¹¹ Primary Evidence of Ms Horrox, 5 May 2025, page 9 clause (d) of Proposed Rules WH.R23A and P.R22A.

¹² Primary Evidence of Ms Whitney, for Transpower, 5 May 2025, page 48.

Ms Foster recommends:

is a permitted activity provided the following conditions are met:

~~*(a) the earthworks shall not occur within 5m of a surface water body or the coastal marine area, and*~~

~~*(b) soil or debris from earthworks is not placed where it can enter a surface water body or the coastal marine area, including via a stormwater network; and*~~

~~*(c) the area of earthworks must be stabilised within six months after completion of the earthworks, and*~~

(d) erosion and sediment control measures shall be used to prevent, to the extent practicable, and otherwise minimise the a discharge of sediment and debris from earthworks and/or flocculant into a surface water body, the coastal marine area, or onto land that may enter a surface water body or the coastal marine area, including via a stormwater network. where a preferential flow path connects with a surface water body or the coastal marine area, including via a stormwater network.

Earthworks WH.R23 and P.R22

- 2.7 I proposed amendments to both rules to provide for the lineal nature of network utilities when considering what constitutes an earthworks activity (relative to the 3,000m² limit). I appreciate Ms Vivian has made an amendment to accept the lineal nature of network utilities by including:

(d) for network utility operators, the area of earthworks does not exceed 3000m² for work being undertaken at any particular location or work site in any consecutive 12-month period

- 2.8 I consider Ms Vivian's amendments would go some way to addressing my concern but continue to prefer my more specific wording which recognises progressive stabilisation (as a method to manage earthworks areas) and is not limited by a 12 month duration.
- 2.9 In addition, I also sought to have the word *prevent* removed from (c)(v) as I do not consider a "no discharge" outcome is reasonable or realistic. Ms Vivian considers that (in response to Mr Gibson¹³) *the existing wording is clear that the discharge of sediment shall be prevented in the first instance*. Whilst I agree the wording is clear, prevention of all discharges is not, as Ms Vivian acknowledges in her primary

¹³ Rebuttal Evidence of Ms Vivian, Table 5, Row 2.

evidence¹⁴, feasible due to weather and topography. The inclusion of a “no discharge” standard may result in situations where an earthworks activity is permitted but, in the event of a storm or other unintentional discharge (eg. as a result of a slip), the activity then needing consent, but only in regard to a specific discharge event. This would be an inefficient and uncertain both for the Council to monitor and plan users to operate under

- 2.10 In this regard I continue to prefer my wording per my primary evidence, with a minor amendment (removal of “where practicable” to improve clarity) to address both linear networks and ensuring permitted activity conditions certain.

Earthworks and the associated discharge of sediment and/or flocculant into a surface water body or coastal water or onto or into land where it may enter a surface water body or coastal water, including via a stormwater network, is a permitted activity, provided the following conditions are met:

(a) [...], or

(b) [...] or

(bb) for network utility, a 3000m² threshold applies to the individual area of work being undertaken at any one time at a particular location such that, ~~where practicable~~, progressive closure and stabilisation of works could be adopted to maintain the activity within the threshold; or

(c) *where (bb) does not apply*, the area of earthworks does not exceed 3,000m² per property in any consecutive 12-month period, and [...]

i. [...]

ii. [...]

iii. [...]

iv. [...]

v. *erosion and sediment control measures shall be used to **minimise the risk of prevent** a discharge of sediment where a preferential flow path connects with a surface water body or the coastal marine area, including via a stormwater network.*

Earthworks WH.R24 and P.R23

- 2.11 Ms Vivian proposes no change to either of these rules to address my alternative proposal for Part FMUs where TAS are not met. My proposed amendment would see discharges to Part FMUs where TAS being a restricted discretionary activity with new Matters of Discretion introduced to address fine sediment discharge. In my primary evidence I sought a better understanding of what additional matters Council considered would be addressed under a discretionary activity as compared to a discretionary activity; Ms Vivian¹⁵ has responded with:

¹⁴ S42A Report Earthworks, paragraph 109.

¹⁵ Rebuttal Evidence of Ms Vivian, Table 9, page 22.

In my opinion the default catch-all rule is appropriate to capture activities unable to meet the requirements of the restricted discretionary rule and therefore a different activity status is appropriate

- 2.12 I remain of the view the addressing applications for with Part FMUs where TAS for fine sediments are not met can be easily dealt with as a restricted discretionary activity with suitable matters of discretion.

Earthworks and the associated discharge of sediment and/or flocculant into a surface water body [...] that does not comply with Rule P.R22 [or WH.R24] is a restricted discretionary activity, provided the following conditions are met: the water quality [...]

(a) [...]

(b) earthworks shall not occur between 1st June and 30th September in any year where works are located within a Part Freshwater Management Unit where the target attribute state for suspended fine sediment in Table 8.4 [Table 9.2 for WH.R24] is not met;

Matters for discretion

1 [...]

2 [...]

3 [...]

4. [...]

5. The adequacy and efficiency of stabilisation devices for sediment control

5A. Where earthworks are proposed to occur between 1st June and 30th September in any year within a Part Freshwater Management Unit where the target attribute state for suspended fine sediment in Table 8.4 [or Table 9.2 for WH.R24] is not met:

i. the potential effects of discharges of sediment on suspended sediment concentrations in any surface water receiving environment; and

ii. the need for restrictions on any earthworks activities during the period 1st June to 30th September to avoid or minimise adverse effects on surface water receiving environments; and

iii. requirements for site preparation and mitigation measures in the period preceding 1st June to 30th September

6. Any adverse effects on: [...]

Vegetation WH.R17 and P.R16

- 2.13 Mr Watson¹⁶ has recommended not accepting my relief to include (in WH.17 and P.R16) a permitted activity for *vegetation clearance associated with the repair and maintenance of existing roads and tracks* on the basis that the definition of *vegetation clearance* excludes this activity already and that means that WH.R17 and P.R16 do not apply.

¹⁶ Rebuttal Evidence of Mr Watson, Table 8, point 1.

- 2.14 The reason I requested the permitted activity is that the Operative Plan definition of *vegetation clearance* contains a conjunctive list of items (including repair and maintenance of existing roads and tracks) all connected by “and”. The term “and” requires that all things are read cumulatively, not individually.
- 2.15 This is a different approach than that set out in the RPS (Decisions Version) where the definition of *vegetation clearance* has a similar list of items but each item is separated by “or” and is to be assessed individually. I accept that Mr Watson has advised¹⁷ that he does not consider the Operative Plan list to be conjunctive and this agreed by GWRC consent planners.
- 2.16 However, Council practice / Mr Watson’s opinion does not change the existence of “and” in the definition. This may appear a technical point but it is the difference between WH.R17 and P.R16 applying / resource consent being required or not.
- 2.17 I propose, for the benefit of all plan users, to modify the definition of vegetation clearance by deleting the “ands” and adding an “or” at the end of (c).

Vegetation Clearance

The clearance or destruction of woody vegetation (exotic or native) by mechanical or chemical means, including felling vegetation, spraying of vegetation by hand or aerial means, hand clearance, and the burning of vegetation. Vegetation clearance does not include:

- (a) any vegetation clearance, tree removal, or trimming of vegetation associated with the Electricity (Hazards from Trees) Regulations 2003, **and***
- (b) any vegetation clearance or vegetation disturbance covered by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017, **and***
- (c) any vegetation clearance associated with the repair and maintenance of existing roads and tracks, **and-or***
- (d) the removal of an individual shrub or tree or a standalone clump of trees or shrubs no larger than 20m².*

3. CONCLUSION

- 3.1 A number of matters are now agreed with the S42A Authors, however I continue to support the following amendments:
- a. Earthworks WH.P29 (e) and Policy P.P27 (e) either deletion (e) in its entirety of adopt Ms Whitney’s wording as follows:

¹⁷ Rebuttal Evidence of Mr Watson, Table 8, point 1.

~~(e) minimising works required during the close down period (from 1st June to 30th September each year) managing earthworks during 1st June to 30th September in accordance with the GWRC Erosion and Sediment Control Guideline for the Wellington Region (2021).~~

b. Earthworks WH.R23A and P.R22A (d) (Ms Foster's wording)

is a permitted activity provided the following conditions are met:

~~(a) the earthworks shall not occur within 5m of a surface water body or the coastal marine area, and~~

~~(b) soil or debris from earthworks is not placed where it can enter a surface water body or the coastal marine area, including via a stormwater network; and~~

~~(c) the area of earthworks must be stabilised within six months after completion of the earthworks, and~~

(d) erosion and sediment control measures shall be used to prevent, to the extent practicable, and otherwise minimise the a discharge of sediment and debris from earthworks and/or flocculant into a surface water body, the coastal marine area, or onto land that may enter a surface water body or the coastal marine area, including via a stormwater network. ~~where a preferential flow path connects with a surface water body or the coastal marine area, including via a stormwater network.~~

c. Earthworks WH.R23 and P.R22:

Earthworks and the associated discharge of sediment and/or flocculant into a surface water body or coastal water or onto or into land where it may enter a surface water body or coastal water, including via a stormwater network, is a permitted activity, provided the following conditions are met:

(a) [...], or

(b) [...], or

~~(bb) for network utility, a 3000m² threshold applies to the individual area of work being undertaken at any one time at a particular location such that, where practicable, progressive closure and stabilisation of works could be adopted to maintain the activity within the threshold; or~~

(c) where (bb) does not apply, the area of earthworks does not exceed 3,000m² per property in any consecutive 12-month period, and [...]

vi. [...]

vii. [...]

viii. [...]

ix. [...]

x. erosion and sediment control measures shall be used to minimise the risk of prevent a discharge of sediment where a preferential flow path connects with a surface water body or the coastal marine area, including via a stormwater network.

d. Earthworks WH.R24 and P.R23:

a. *Earthworks and the associated discharge of sediment and/or flocculant into a surface water body [...]* that does not comply with Rule P.R22 [or WH.R24]

is a restricted discretionary activity, provided the following conditions are met:

- b. the water quality [...]
- c. (a) [...]
- d. ~~(b) earthworks shall not occur between 1st June and 30th September in any year where works are located within a Part Freshwater Management Unit where the target attribute state for suspended fine sediment in Table 8.4 [Table 9.2 for WH.R24] is not met,~~

Matters for discretion

1 [...]

2 [...]

3 [...]

4. [...]

5. The adequacy and efficiency of stabilisation devices for sediment control

5A. Where earthworks are proposed to occur between 1st June and 30th September in any year within a Part Freshwater Management Unit where the target attribute state for suspended fine sediment in Table 8.4 [or Table 9.2 for WH.R24] is not met:

- i. the potential effects of discharges of sediment on suspended sediment concentrations in any surface water receiving environment; and
- ii. the need for restrictions on any earthworks activities during the period 1st June to 30th September to avoid or minimise adverse effects on surface water receiving environments; and
- iii. requirements for site preparation and mitigation measures in the period preceding 1st June to 30th September

6. Any adverse effects on: [...]

- e. Definition of vegetation clearance:

Vegetation Clearance

The clearance or destruction of woody vegetation (exotic or native) by mechanical or chemical means, including felling vegetation, spraying of vegetation by hand or aerial means, hand clearance, and the burning of vegetation. Vegetation clearance does not include:

- (a) any vegetation clearance, tree removal, or trimming of vegetation associated with the Electricity (Hazards from Trees) Regulations 2003, **and***
- (b) any vegetation clearance or vegetation disturbance covered by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017, **and***
- (c) any vegetation clearance associated with the repair and maintenance of existing roads and tracks, **and or***
- (d) the removal of an individual shrub or tree or a standalone clump of trees or shrubs no larger than 20m² .*

- 3.2 I confirm that I would be available to attend expert conferencing on the above if this is directed.

Cath Heppelthwaite
27 May 2025