

NRP Hearing Stream 3 Speaking Notes of Suzanne Rushmere (UHCC)

Definition of earthworks and rules WH.R23 and WH.R23A

UHCC was concerned about the implications of rule WH.23 when read alongside the proposed definition of earthworks.

In my statement of evidence I agreed with Ms Vivian's position in the section 42A report that there have been unintended consequences of the definition of earthworks in the operative Natural Resources Plan (NRP) being amended through Plan Change 1 as notified.

I supported Ms Vivian's recommendations in the section 42A report to address this unintended consequence through proposed new rule WH.R23A and my statement of evidence proposed a minor change to rule WH.R23.

My opinion remains that rule WH.R23A, or exclusion in a definition is necessary, and I consider that there should be an exclusionary clause in rule WH.R23 that directly links to rule WH.R23A as per the amendment proposed in my statement of evidence.

I note that the rebuttal evidence now proposes a new clause (d) to rule WH.R23. This amendment would mean that earthworks of more than 3,000m² for the construction, maintenance and repair of a network utility would not be a permitted activity.

My concern is that if WH.R23 and WH.R23A (as proposed in the rebuttal evidence) were to become operative, this would lead to the unintended consequence where these two rules appear to be in conflict with both each other and what is my understanding of the original intent of rule WH.R23A.

If it is the intention that only earthworks under 3,000m² for any activities associated with network utilities are permitted, then proposed clause (d) in rule WH.R23 and rule WH.R23A would be unnecessary.

However, should there be no infrastructure exclusions from either the definition of earthworks or rule WH.R23, this would significantly affect the ability to undertake business as usual for maintenance and renewals undertaken by territorial authorities and their agents. As per my statement of evidence, under rule WH.R23, 3,000m² of earthworks would only enable maintenance or repair of network utilities of as little as 150 linear metres per year.

This issue is also linked to a matter I raised in my statement of evidence regarding the use of the term minor in WH.23A. I was concerned about how this may be interpreted. In the rebuttal evidence Ms Vivian's view is that the term minor is appropriate as the scale of works envisaged in rule WH.R23A are minor.

I am of the opinion that the term 'minor' becomes even more unclear with proposed clause (d) to WH.R23, and remain concerned about how this would be interpreted. 'Minor' in rule WH.23A can be subjective and may be influenced by a proxy limit of 3,000m² in proposed clause (d) to rule WH.R23.

I also raised in my statement of evidence that rule WH.R23 applied per property the definition of which is "Any contiguous area of land including adjacent land separated by a road or river, held in one ownership".

I questioned whether a utility network is considered one property for the purpose of the rule or whether 'property' would relate to the area where works are being undertaken. If it is the former, then Council would only be able to undertake one or two minor maintenance activities per year without a consent. My evidence was not referenced in the rebuttal evidence, but I see that a response has been provided for other submitter's evidence raising the same issue.

Proposed clause (d) for network utility operators for rule WH.R23 in the rebuttal evidence reads "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". I support further clarity, but the 3,000m2 reference is unnecessary and duplicative, this is already identified in rule WH.R23 and I consider the wording I have proposed below is more appropriate.

I also seek a definition of work site and location and that this should address issues where projects cross administrative boundaries. As an example, Hutt City Council and Upper Hutt City Council share some water assets, and one local road is located between Upper and Lower Hutt, and currently it is unclear what would be considered to be the location of work or work site in this context.

I support the amendments proposed in the rebuttal evidence in response to other submitters evidence seeking an exclusion for smaller projects such as maintenance of driveways and footpaths, as I also raised this in my evidence. I am of the opinion that the amendments proposed by Ms Vivian in WH.R23A clause (d) provide a more practical and appropriate option for very small scale earthworks, and this is also consistent with the definition of earthworks in the operative NRP.

Accordingly, I seek that new clause (d) is not included in rule WH.R23, and recommend the following amendments: (red is from section 42A report, blue from rebuttal evidence and green from myself):

Rules WH.R23 and P.R22 Earthworks – Permitted Activity

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, (except earthworks associated with infrastructure in rule WH.R23A), is a permitted activity, provided the following conditions are met:

(a) the earthworks are to implement an action in the erosion risk treatment plan for the farm, or
(b) the earthworks are to implement an action in the farm environment plan for the farm, or
(c) the area of earthworks does not exceed 3,000m2 per property, or works being undertaken at any particular location or worksite in relation to a network utility, in any consecutive 12-month Period

(i) the earthworks shall not occur within 5m of a surface water body or the coastal marine area, except for earthworks undertaken in association with Rules R122, R124, R130, R131, R134, R135, and R137, and

(ii) 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

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

~~(iv) there is no the discharge of sediment 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, and~~

(v) erosion and sediment control measures shall be used to 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; or

~~(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~~

Rules WH.R23A Rule P.R22A Minor earthworks associated with infrastructure

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, associated with:

(a) thrusting, boring, trenching or mole ploughing associated with cable or pipe laying and maintenance, ~~and or~~

(b) the construction, repair, upgrade or maintenance of:

(i) pipelines, and

(ii) electricity lines and their support structures, including the National Grid, and

(iii) telecommunication structures or lines, and

(iv) radio communication structures, and

(v) firebreaks or fence lines, ~~and or~~

(c) repair or maintenance of existing roads and tracks, and airfield runways, taxiways, and parking aprons for aircraft, ~~or~~

~~(d) repair, sealing or resealing of a road, footpath, driveway~~

is a permitted activity provided the following conditions are met:

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

~~(fb)~~ 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

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

and

~~(d)(h) there is no discharge of sediment 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, and erosion and sediment control measures shall be used to 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. (i) erosion and sediment control measures shall be used to minimise 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.~~

Policy WH.P29

I am still of the opinion that policy WH.P29(a) reads more like a standard. I also noted in my statement of evidence that there appears to be no comparable requirement in rule WH.R23 to undertake earthworks in accordance with the GWRC erosion and sediment control guidelines. Instead, there is only a note that guidance is available in rule WH.R23. Therefore, I am unclear how this will be implemented, and this was not addressed in the rebuttal evidence.

Policy WH.P30

I am still of the opinion that this policy reads like a rule even with the amendments proposed in the rebuttal evidence and it is not usual drafting to contain standards in a policy.

Policy WH.P31

Notwithstanding my opinion on policy WH.P29 reading more like a rule, I support the proposal by Ms Vivian to amend policy WH.P29, and delete policy WH.P31 and address this matter through the rules framework.

Rule WH.R24

I did not submit any evidence on this rule, except that permitted activity standards as proposed in the section 42A report in respect of rule WH.R23A are a far more appropriate way to manage sediment runoff concerns. As identified above, however, I am concerned about the proposed amendments to rule WH.R23 in the rebuttal evidence, which defaults into rule WH.R24 when permitted activity standards are not met.

Rule WH.R25

As per my evidence, I support the amendment of activity status of WH.R25, from non-complying to discretionary.