

To: Hearing Commissioners – Te Tai o Poutini Plan

From: Briar Belgrave – Reporting Officer

Date: 29 November 2023

Re: **s42A Author Right of Reply Part 1 – General District Wide Matters: Earthworks, Light, Temporary Activities**

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## Introduction and Purpose

- (1) Part 1 of this report responds to the questions raised by Commissioners during the General District Wide hearing for Earthworks, Light, and Temporary Activities chapters. This report will also respond to outstanding matters in response to submissions and evidence presented at the hearing.
- (2) The West Coast Regional Council has engaged technical advice from an ecologist to inform relevant matters raised during the hearing. That advice cannot be provided in the timeframe of this Right of Reply, and will be provided to the Commissioners as soon as it is received. Ecological matters, including the management of indigenous, threatened, and endangered species under the Light and Temporary Activities chapters will therefore be addressed separately in Part 2.
- (3) Part 1 of this report is supported by the following attachments:
  - (a) **Attachment 1:** Recommended provisions;
  - (b) **Attachment 2:** Light memorandum;
  - (c) **Attachment 3:** Legal memorandum; and
  - (d) **Attachment 4:** Rules for mineral extraction activities.

## Overarching Matters

### **Objectives and Policies: Whether the inclusion of ‘avoid, remedy, mitigate’ would be more appropriate than ‘minimise’**

- (4) The Commissioners have queried the use of the term ‘minimise’ throughout the Earthworks, Light, and Temporary Activities chapters and whether ‘avoid, remedy or mitigate’ would be more appropriate and provide more flexibility. I have considered this amendment and set out my comments below.
- (5) I note the West Coast Regional Policy Statement (RPS) refers to both ‘avoid, remedy, and mitigate’ (Section 5 Policy 2(a), Section 6 Policy 5, Section 7 Policy 7) and ‘minimise’ (Section 11 Objective 1, Policy 2). In this regard, I do not consider the RPS to provide specific direction on which of these terms are appropriate to include within the policy framework of the pTTPP.
- (6) I note that ‘avoid, remedy, mitigate’ does provide increased flexibility and scope to ensure that the appropriate action is considered and carried out when managing effects. I have considered the relevant objectives and policies within the Earthworks, Light, and Temporary Activities chapters, and recommend amendments from ‘minimise’ to ‘avoid, remedy, mitigate’ within the following provisions:
  - (a) EW-P2 in relation to impacts of earthworks on landscape character, amenity, natural features, biodiversity, cultural and heritage sites and the quality of the environment.

- (b) LIGHT-P3 in relation to controlling light to avoid, remedy or mitigate adverse effects on the views of the night sky and intrinsically dark landscapes (LIGHT-P3(c)), significant habitats of light sensitive native fauna and the species themselves (LIGHT-P3(d)) and on the health and safety of people and communities in the surrounding area (LIGHT-P3(e)).
  - (c) TEMP-P2 in relation to the adverse effects of temporary military training and emergency management training activities.
- (7) I recommend retaining 'minimise' within the following provisions:
- (a) Matter of discretion EW-R8(d) as this matter refers to 'management or mitigation measures' to minimise potential effects. In my opinion, management or mitigation measures provides a sufficiently wide scope to manage potential earthworks effects, as these effects, and the appropriate management measures, for example erosion and sediment controls, are generally well understood.
  - (b) References within the overview text. In my opinion, minimise encompasses actions to avoid, remedy, and minimise adverse effects, and retaining this term within the overview is appropriate to reduce unnecessary complexity.
- (8) For completeness, I do not support inclusion of the 'effects management hierarchy' as recommended by Ms Inta and the Buller Conservation Group. The effects management hierarchy would enable adverse effects to be offset or compensated. In my opinion, this is not appropriate in the context of the potential adverse effects associated with earthworks, lighting, and temporary activities.

**The inclusion of 'Poutini Ngāi Tahu values' within the matters of discretion and control**

- (9) I address the inclusion of 'Poutini Ngāi Tahu values' within the matters of discretion and control under the relevant Earthworks, Light, and Temporary Activities chapter rules at paragraphs 24-27 of the Planning Summary Statement.
- (10) I have further considered the evidence presented by Ms Lynch on behalf of Ngāi Tahu during the hearing. I have also reviewed the relevant sections of the legal submission prepared by Ms Scott and Viskovic on behalf of Ngāi Tahu and filed for the Energy, Infrastructure, and Transport hearing. Having regard to this, I set out my comments on this matter below.
- (11) I retain concerns that the wording sought would increase the complexity of resource consents for restricted discretionary and controlled activities under the Earthworks, Light, and Temporary Activities provisions, having particular regard to the nature of these activities and their potential effects. I consider that an informed and accurate assessment of a proposal's effects on Poutini Ngāi Tahu values would require Ngāi Tahu input into all applications. I note POU-P9, also identified at paragraph 4.11 of the Ngāi Tahu legal submission, identifies that Poutini Ngāi Tahu, as specialists in tikanga, are best placed to convey their relationship with their ancestral lands, water, sites, wāhi tapu and other taonga.
- (12) I consider that the inclusion of Poutini Ngāi Tahu values would increase complexity and cost for applications made under the Earthworks, Light, and Temporary Activities rules. In my opinion, the additional costs would not be commensurate with the potential effects of activities relating to earthworks, lighting, or temporary activities where no other resource consents are required. This is due to the inherent scale and nature of these activities, and their potential environmental effects, which are typically readily identifiable and understood, as is recognised by the controlled or restricted discretionary activity status. I also note that the inclusion of 'Poutini Ngāi Tahu values', being a matter that is relatively broad, as a matter of discretion or control would in my opinion

reduce certainty to plan users that is otherwise afforded by a controlled or restricted discretionary activity status.

- (13) Furthermore, I do not consider that an amendment to ‘significant adverse effects on Poutini Ngāi Tahu values’, as set out at paragraph 4.11 of the Ngāi Tahu legal submission, would limit the circumstances that this matter of discretion or control is engaged. In my opinion, input from Ngāi Tahu would still be necessary to determine the scale of adverse effect.
- (14) During the hearing, Ms Lynch spoke to instances where engagement with Ngāi Tahu was not carried out appropriately during the resource consent decision making process. While I acknowledge that the inclusion of ‘Poutini Ngāi Tahu values’ as a matter of discretion or control would provide an indication to decision makers to give consideration to this matter, I remain of the view that this would also require an assessment by Ngāi Tahu on all resource consent applications and sites. In my opinion, there are other methods available outside of the district plan to ensure that appropriate engagement and consultation is carried out for activities which have the potential to create adverse effects on Poutini Ngāi Tahu values, for example, landfills. This includes establishing best practice guidelines for applicants and decision makers.
- (15) I have also considered the inclusion of ‘mahinga kai species’, ‘taonga’, and ‘mauri’ as matters of discretion or control, as raised by Commissioners and discussed during the hearing. For the reasons identified above, I am supportive of including ‘mahinga kai species’ under matters of discretion or control which refer to indigenous flora and fauna, noting that effects on flora and fauna, including any mahinga kai species, can be readily assessed where a proposal has the potential to affect indigenous flora or fauna. I recommend amendment to EW-R8(h), and note that further amendments to the Light and Temporary Activities provisions may be necessary following the receipt of ecological advice.
- (16) I retain reservations in relation to the inclusion of ‘taonga’ and ‘mauri’, and consider that an accurate assessment in relation to effects on ‘taonga’ and ‘mauri’ cannot be made without input or assessment from Ngāi Tahu. For example, the presence of taonga sites, areas, or resources may not always be readily identified under the pTTPP. I note that inclusion of ‘taonga’ may be appropriate in the instance that Schedule 3: Sites and Areas of Significance to Māori is confirmed as a sufficient identifier.
- (17) I also note matters of scope in relation to amendments recommended by Ms Lynch on behalf of Ngāi Tahu to LIGHT-P3 paragraph 50-52 of their statement of evidence. Limitations of scope are further set out at paragraph 28 of the Planning Summary Statement. In particular, I note submission S620.015 is specific to matters of discretion and control across the pTTPP, and excludes the objectives and policy framework. Notwithstanding matters of scope, I have not recommended further amendment to LIGHT-P3 for the reasons set out above.

## Earthworks

### **EW-O1: The relationship of this objective to other plan chapters and provisions which have a reference to ‘earthworks’**

- (18) I have considered the relationship of EW-O1, which seeks to provide for earthworks while managing their effects, with other provisions in the pTTPP. I acknowledge that the term ‘earthworks’ is included across the Plan, including for example in various overlays and chapters for Infrastructure and Energy.

(19) In my opinion EW-O1 is, appropriately, a broad objective located within the district wide chapter to provide a framework for managing earthworks across the region. In practice, when considering an application for resource consent, EW-O1 will apply in addition to a suite of relevant objectives and policies which seek to manage more specific and targeted development outcomes in the zones and overlays, such as activities like mining. I also note that the broad nature and wording of EW-O1 is such that it is unlikely to conflict with other objectives in the Plan and will support any earthwork activity while requiring that their adverse effects are appropriately managed.

(20) I consider it is appropriate that EW-O1 refer to earthworks while there are also provisions located within other chapters which also manage earthworks activities. This includes within specific spatial areas such as overlays, or for specific activities such as mining. In my opinion, the Earth chapter Overview text includes clear direction to plan users on the other relevant Plan provisions which are likely to apply.

#### **EW-O1: Simplifying the wording**

(21) The Commissioners have suggested amendments to EW-O1 to delete 'that' and 'their' from line 2. I agree with and support this amendment and consider that it will simplify the wording of this objective.

#### **EW-O1: Whether subdivision activities need to be referenced in the Earthworks chapter**

(22) The Commissioners have queried the relationship of EW-O1 to subdivision activities, and whether there is a gap because the Earthworks chapter does not refer to subdivision activities. In my opinion, it is appropriate for EW-O1 to recognise that earthworks may facilitate subdivision activities. Subdivision is a broad activity that is associated with, or necessary for, use and development enabled under the pTTPP. In my opinion, it is not necessary for the earthworks rules and standards to refer to, or manage subdivision activities.

#### **EW-P1: Whether there is scope to amend the threshold for managing adverse effects**

(23) During the hearing, Mr Kennedy on behalf of Westpower queried the scope to amend EW-P1 to delete 'significant'.

(24) Amendments are recommended to EARTH-P1 as set out at paragraph 12 of the the Section 42A Addendum Report. In summary, I agree that it would be appropriate to delete 'temporary and small scale'. Consequentially, I consider it is appropriate to delete 'significant' from line four. As the deletion of 'temporary and small scale' will result in the policy being broadly enabling of all earthworks, I consider it necessary for EW-P1 to manage all potential adverse effects of earthworks.

(25) In my opinion, there is scope for this deletion as a consequential amendment to accepting the relief sought under S493.076, S599.081, and S601.062.

(26) I have also considered the submission of Forest and Bird (S560.316), which sought to amend 'significant' to 'more than minor'. I do not support the inclusion of 'more than minor' to EW-P1 for the reasons outlined above. Given the policy is broadly enabling, it is appropriate to manage all potential adverse effects, as opposed to being limited to those that are 'significant' or 'more than minor'.

#### **EW-R1: Whether the depth, height, and quantity of permitted earthworks should be more enabling**

(27) Ms Nyhan on behalf of submitters 533, 477, 506, 565, and 579 raised the following key matters during the hearing:

- (a) The application of EW-R1(1) to contiguous land parcels owned by the same people. In this case, a private road which the properties at Point Elizabeth Heights hold a 1/8 share of.
  - (b) Duplication with the West Coast Land and Water Plan, including provisions for the Greymouth Earthworks Control area. My Nyhan considers that the pTTPP does not seem as simple as possible, or minimise compliance costs were possible.
  - (c) The maximum land clearance is unduly prohibitive and does not align with the way in which rural lifestyle properties are developed.
- (28) I address each of these matters below:
- (a) EW-R1 is applicable at contiguous boundaries under the same ownership. I consider the standard is necessary to manage stability effects at site boundaries given the steep topography that is typical in the West Coast, particularly within the rural areas of Westport and Greymouth.
  - (b) In my opinion, it is unlikely that works for repair and maintenance of existing formed access ways will exceed 1.5m in depth or height. In the event that more extensive excavation is required, for example to install piles, I consider that it is appropriate for potential stability effects to be assessed comprehensively through the resource consent process, noting that this would require restricted discretionary consent under EW-R8, which will provide plan users with certainty of the relevant effects to consider. I also note that no other submissions made to the pTTPP requested exemptions to EW-R1 in relation to contiguous boundaries under the same ownership. I therefore do not consider that this rule, as currently drafted, will create significant inefficiencies in practice.
  - (c) In relation to provisions of the Regional West Coast Land and Water Plan, I note Rules 3-7 manage earthwork activities. The rules provide for earthworks and any associated discharge of sediment subject to permitted activity conditions. Although the relevant conditions require that the works do not contribute to slope or land surface instability, including subsidence or other erosion, I consider that the overarching purpose of the Regional Plan provisions is to manage the discharge of contaminants in sediment laden water associated with earthworks activities. For this reason, I do not consider that the pTTPP provisions, which manage potential land instability effects more broadly, create unnecessary duplication with the Regional Plan.
  - (d) In relation to the quantity of permitted earthworks, I understand that building platforms within the Point Elizabeth Heights subdivision have been formed, and note that this will limit the extent of additional earthworks required to construct dwellings and any accessory buildings. Furthermore and as discussed above, an exceedance to this threshold would require a restricted discretionary consent, which will provide a level of certainty to plan users, including applicants.
- (29) Overall, I do not support amendments to EW-R1 or EW-R3 in response to the above matters, which I consider to be discrete and isolated considerations specific to the Point Elizabeth Heights subdivision, which can be undertaken as permitted activities or effectively and efficiently managed through the resource consent process for a restricted discretionary activity.
- (30) I also continue to support the permitted activity limit of 500m<sup>2</sup> for earthworks in the Rural Lifestyle Zone. No other evidence has been presented in relation to increasing this threshold, and in the absence of this, I consider 500m<sup>2</sup> is appropriate to manage potential effects associated with stability and visual amenity associated with changes to the landform resulting from earthworks.

**EW-R1: Whether the depth and height of permitted earthworks should be increased to make provision for earth bunds**

- (31) Mr Kennedy on behalf of Westpower Limited has recommended an increase to the permitted depth or height of earthworks under EW-R1 from 1.5m to 2m at paragraph 8.10 of their statement of

evidence. Mr Kennedy notes that this will provide for earth bunds as part of landscaping and screening of activities in relation to certain energy activities. The 2m sought is consistent with the height for fences and walls on the boundary. Mr Kennedy also notes that an earth bund would have the same purpose as a fence or wall, and therefore recommends a consistent approach.

- (32) I understand that the relevant rule in the Energy chapter is ENG-RXX for the 'construction, operation, maintenance and upgrade of community and large scale energy activities, excluding wind', where clause 4 requires buildings and generating structures to be screened by fencing and/or landscaping, which can include earth bunds.
- (33) In my opinion, an earth bund has the potential to create additional effects to a fence or wall, particularly when located at a common boundary adjoining a neighbouring site. These effects include stability as well as visual bulk and dominance as earth bunds will typically have a greater width or footprint and different visual amenity outcomes to a fence or wall. I therefore do not consider it appropriate to increase the permitted depth or height of earthworks to enable earth bunds up to 2m.
- (34) I also note that the relevant rule recommended under the Energy chapter applies to limited activities, being community and large scale energy activities, and that clause 4 recognises that an earth bund is one form of landscaping that may be implemented to screen buildings and structures. As such, I do not consider that it is necessary to align EW-R1 with this rule.
- (35) In the absence of further evidence, I continue to support the maximum 1.5m depth or height for permitted activity earthworks.

#### **EW-R1: Wording to manage the implementation of erosion and sediment control measures**

- (36) Following discussion with the panel during the hearing, I support an amendment to EW-R1(3) to amend 'duration of earthworks' to read 'until earthworks are completed'. I consider this amendment will assist with interpretation of the plain and common meaning of the standard.

#### **EW-R2 and EW-R3: Whether there is duplication between the rules, as submitted by Manawa Energy**

- (37) Ms Styles on behalf of Manawa Energy Limited has recommended amendments to EW-R3 on the basis that there is overlap with EW-R2 at paragraphs 3.4-3.6 of their statement of evidence. In particular, Ms Styles notes duplication for Manawa operations such as maintaining and repairing access tracks or undertaking dam upgrade works.
- (38) In my opinion, both EW-R2 and EW-R3 are necessary. EW-R3 includes additional standards for earthworks occurring within more sensitive receiving environments, and these restrictions apply in addition to the more general controls in EW-R2. I also consider that clause 2(iii) of EW-R3 will assist plan users as it easily identifies the purpose of permitted earthworks that are enabled within those zones managed under EW-R3.
- (39) I note that EW-R4, EW-R5, and EW-R6 all contain separate requirements for specific zones, and the inclusion of EW-R3 is consistent with this approach.
- (40) I also note amendments to EW-R3 are included in the Section 42A Addendum report to correct 'and' to 'or' between clauses 2(ii) and 2(iii).
- (41) For these reasons, I continue to support the inclusion of EW-R3 and recommend this rule is retained.

#### **EW-RX: Whether reference to 'ancillary rural earthworks' would be more appropriate than 'agriculture or domestic cultivation'**

- (42) Ms Levenson on behalf of Horticulture New Zealand has recommended that EW-RX(2)(b) is amended from 'agricultural or domestic cultivation' to 'ancillary rural earthworks' (paragraphs 22-24 of Ms Levenson's evidence). Ms Levenson's statement of evidence notes that that cultivation may exclude horticulture activities. Paragraph 23 identifies that ancillary rural earthworks includes land preparation, burying infected material that poses a biosecurity threat, irrigation and land draining, and maintenance and construction of facilities, devices and structures for farming activities.
- (43) In the drafting of EW-RX, clause (2)(b) was relocated from EW-R2(2)(i)(B) as notified, which referred to agricultural or domestic cultivation. I note that the submission by Horticulture New Zealand supports the provision for cultivation in the National Grid Yard under EW-R2(2)(i), and sought that this be retained. I consider that the recommended amendments detailed at paragraph 12 of Ms Levenson's evidence are outside of the scope of Horticulture New Zealand's submission and conflict with submission S486.048.
- (44) Notwithstanding matters of scope, I do not support the amendment to enable ancillary rural earthworks within the National Grid Yard. Both agriculture or domestic scaled cultivation is a limited form of land disturbance defined as being undertaken for the purpose of sowing, growing, or harvesting. In my opinion, the potential effects of cultivation on the National Grid Yard are appropriate as the inherent nature, scale, and frequency of earthworks is limited. Ancillary rural earthworks would enable a larger scale and frequency of earthworks which has the potential to adversely affect the functioning and safety of the National Grid. I therefore do not consider it is appropriate to exclude these activities from the requirements under EW-RW(1). I also note ancillary rural earthworks is not a defined term under the pTTPP or National Planning Standards.

**EW-RX: Whether it is appropriate to identify agriculture or domestic cultivation as an activity that is enabled within the National Grid Yard**

- (45) I discuss the reference of agriculture or domestic cultivation at paragraph 14 of the Section 42A Addendum Report. I acknowledge that cultivation is a form of land disturbance and not earthworks, as EW-RX seeks to manage, however, support the inclusion of this activity within the rule as it will clearly set out to plan users the activities that may occur within the National Grid Yard.
- (46) I note similar exclusions are contained in the New Plymouth District Plan Appeals Version (NU-R33) and the Timaru District Plan (EW-R5).

**EW-RX: Whether the relevant adverse effects considerations are in relation to Transpower or the National Grid**

- (47) Ms Levenson on behalf of Horticulture New Zealand has recommended that the notification clause under EW-RX is amended to consider adverse effects on the National Grid instead of Transpower New Zealand Limited when deciding whether any person is affected under section 95E of the Act (paragraphs 26-27 of Ms Levenson's evidence).
- (48) A resource consent application made under EW-RX is precluded from public notification in accordance with section 95A of the Act and only those effects under section 95E are to be considered. As the purpose of section 95E is to consider an activity's adverse effects on a person, I consider it is appropriate that the reference under EW-RX is to Transpower. In my opinion, the relevant section 95E consideration is the ability for Transpower to operate and maintain the National Grid. I consider that this will also ensure that potential effects on the National Grid are considered as part of the resource consent process.

- (49) For completeness, I support the public notification preclusion under EW-RX, and consider this is efficient and effective for the consideration of earthworks and vertical hole activities in the National Grid Yard.
- (50) The Commissioners also queried the reference to Transpower in the event of a change to the name of the entity. I have reviewed recently developed district plans for Timaru, New Plymouth, Selwyn, and Porirua, and note that reference to Transpower is referred in all but the Timaru District Plan, which refers to:

*The effects on the ability of the utility operator to operate, upgrade and develop the National Grid and Transmission lines, including on-going safe and direct access.*

In my opinion, the reference to Transpower provides a clear direction to plan users in relation to the affected party under section s95E, and I support its inclusion. I also consider that there are benefits to providing national consistency in the identification of the relevant affected party when considering earthworks activities in the National Grid Yard. I note that in the event Transpower changes their name or the National Grid is managed by another entity, then the Plan would need to be changed in accordance with the Scheule 1 process, however, this would be no different to other recently adopted district plans.

#### **EW-RX: Comparison to the operative rule under the Grey District Plan and including provision for activities that improve access to the National Grid**

- (51) I have reviewed the relevant rules for earthworks in National Grid Yard under the operative Grey District Plan in response to evidence presented by Mr Kennedy on behalf of Westpower during the hearing. I note the provisions for exclusions under Rule 16.7 4A, 17.7 4A, 18.7 4A are similar to those proposed under EW-RX, which are recommended to be amended in the Section 42A Addendum Report in response to the Statement of Evidence of Ms Whitney on behalf of Transpower New Zealand Limited.
- (52) In the absence of the identification of additional provisions under the Grey District Plan, including exclusions for specific such as those which improve access to the National Grid Yard, I do not recommend further amendments to EW-RX.

#### **EW-R8: Consideration of effects on surrounding land uses**

- (53) The Commissioners have queried the appropriateness of the inclusion of 'on surrounding land uses' to EW-R8, in response to submission 438.123 by Manawa Energy.
- (54) On further consideration of amendments to EW-R8(b) to include 'on surrounding land uses', I agree that this addition may unduly limit the scope of the consideration of effects, particularly those which are not limited to surrounding land uses such as sedimentation and erosion effects. I also note that dust nuisance and land instability effects may affect persons in addition to land uses.
- (55) I support the deletion of this addition from EW-R8(b).

#### **The relationship under the pTTPP between mining activities and the General District Wide Earthworks Chapter**

- (56) The management of mining activities is addressed in the statement of evidence of Ms McKenzie and at paragraphs 10 of the Section 42A Addendum Report, where I support Ms McKenzie's recommended amendments to the Earthworks Overview:



*Other relevant Te Tai o Poutini Plan provisions*

- ...
- *Earthworks Associated with Mineral Extraction – the Zone and Overlay Chapters have provisions which manage mineral extraction and its ancillary activities. The Earthworks rules within this chapter do not apply to mineral extraction, mineral prospecting or mineral exploration.*

(57) I have further considered the management of mining activities under the pTTPP, the relationship between mining activities and the Earthworks chapter, and the implications of the National Planning Standards. I provide my comments on these matters below.

(58) In terms of which rules in the pTTPP apply to mining and how plan users are alerted to this, mineral extraction and ancillary activities are defined and managed under the zone rules, including within the following zones:

- Open Space (OSZ-R11, OSZ-R22)
- General Rural (GRUZ-R12, GRUZ-R18, GRUZ-R25)
- Rural Lifestyle (RLZ-R11, RLZ-R15)
- Settlement (SETZ-R15, SETZ-R23)
- Special Purpose Buller Coalfield (BCZ-R1, BCZ-RR5)
- Future Urban Zone (FUZ-R9, FUZ-R15)
- Special Purpose Mineral Extraction (MINZ-R1, MINZ-R2, MINZ-R6, MINZ-R7).

The relevant rules and any associated permitted activity standards are included at **Attachment 4**.

(59) In my opinion, the recommended amendments to the Earthworks Overview provides a clear cross reference to alert plan users that rules which manage mineral extraction and ancillary activities are located in the respective zone rules. This is consistent with the structure and drafting of user notes across the pTTPP.

(60) My comments in relation to the relationship between mining activities and the Earthworks chapter and the implications of the National Planning Standards are included below:

- (a) In relation to clause 29(b) of the National Planning Standards (refer to page 34 of the standards), I do not consider that mining activities are managed on a consistent district-wide basis in within the West Coast, as demonstrated by the above rules, which vary across the relevant zones. As such, I do not consider it is efficient or effective to include these provisions within the District Wide section or Earthworks chapter.
- (b) I consider the structure and management of mining activities under the pTTPP is consistent with clause 31, which require that the General District Wide Earthworks chapter must include cross references to any provision for mining, quarries and or gravel extraction in a special purpose zone or zone chapter or section.
- (c) I also note that the management approach under the pTTPP does not create unintended consequences to the interpretation of the term and definition of earthworks, which remains as defined in accordance with the National Planning Standards. In my opinion, the structure of the pTTPP sets out the management of mineral extraction and ancillary activities. The approach of managing mining outside of the Earthworks chapter does not change the definition of earthworks, nor does it suggest that mineral extraction activities are not included within the definition of 'earthworks'.

- (61) For completeness, I consider that EW-O1, which seeks to provide for earthworks that facilitate subdivision, use and development, is appropriately worded to refer to earthworks, which may include mining activities based on the 'earthworks' definition. This is because EW-O1 is a broad district wide objective. I discuss the wording of EW-O1 in greater detail at paragraphs 18-20 above.
- (62) Overall, I support the structure of the pTTPP in relation to the management of earthworks and mining as well as ancillary activities. I consider there are appropriate cross references to the Zone and Overlay chapters to alert plan users and achieve consistency with the National Planning Standards.
- (63) Notwithstanding this, I note that this matter also relates to the wider structure of the Plan, and consider that consistency in the location of rules with respect to zones and overlays should be achieved across the pTTPP for an effective and efficient approach. I am supportive of amendments to earthworks and mining activities should these be necessary to achieve consistency in the event that the current structure and approach is amended through other hearing topics.

#### **Whether it would be appropriate to delete the the 'land disturbance' term and definition**

- (64) I have considered the inclusion of the term 'land disturbance' throughout the pTTPP. The definitions for each term under the National Planning standards are included below:
- Earthworks: means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavating of earth (or any matter constituting the land including soil, clay, sand and rock); but excludes gardening, cultivation, and disturbance of land for the installation of fenceposts.*
- Land disturbance: means 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.*
- (65) In the majority of instances across the pTTPP, the term 'land disturbance' is used in conjunction with 'earthworks', for example 'earthworks and land disturbance'. In other chapters, the term 'land disturbance' appears to have been used interchangeably with the term earthworks, for example SASM-R3 and AIRPZ-P11.
- (66) In my opinion, land disturbance activities are a subset of earthworks activities, and it is unnecessary to refer to both terms within the Plan. In the instances where only the term 'land disturbance' has been included, I believe that the provision is intended to include earthworks activities, given the narrow scope of land disturbance activities. For example, under SASM-R3 the demolition, removal, or alterations to a structure on Sites and Areas in Schedule Three – Sites and Areas of Significance to Māori is permitted where no land disturbance is involved. In this case, earthworks within these sites would not be managed under SASM-R3 due to different definitions. I believe this is an unintended consequence of using the term land disturbance over earthworks.
- (67) Overall, I consider that inclusion of both terms has created additional complexity, and would be supportive of deleting the term and definition for 'land disturbance from the Plan'. In my opinion, the term and definition for earthworks is sufficient to incorporate activities intended to be defined under the earthworks and land disturbance.

## Light

### **Light Overview: Whether referring to the 'receiving environment' would be more appropriate than 'immediate area'**

- (68) Following discussion during the hearing, I agree with and support amendments to the Light Overview to amend 'immediate area' to 'receiving environment'. In my opinion, this will provide greater clarity and reduce uncertainty.

### **Whether mining activities are appropriately managed under the Light chapter**

- (69) The management of light associated with mining has been considered by Mr Wilson at paragraphs 3-10 of the lighting memorandum, included at **Attachment 2**. In summary, based on AS/NZS 4282, Mr Wilson considers that a maximum lux level of 5 lux during non-curfew and 1 lux during curfew would be sufficient to control lighting within the General Rural and Special Purpose Mineral Extraction Zones, and that 2 lux and 0.1 lux during non-curfew and curfew respectively would be in keeping with A1 environment zone under AS/NZS 4282, which apply in relatively uninhabited rural and coastal areas.
- (70) Mr Wilson also notes that the lux levels currently permitted under LIGHT-R4, which would apply to the General Rural and Special Purpose Mineral Extraction Zones, are typically associated with lighting controls in residential zones in suburban areas in towns and cities.
- (71) Notwithstanding matters of scope, I agree with Mr Wilson and consider that a lower lux level is necessary to manage activities associated with mining, and typically located within the General Rural and Special Purpose Mineral Extraction zones. I support the inclusion of 5 lux during non-curfew and 1 lux during curfew hours to manage lighting with these zones, as these levels would be in keeping with best practice lighting enabled within non-urban areas, as well as the intrinsic darkness of the West Coast. In my opinion, these lux levels will be appropriate in terms of managing light illuminance, including to neighbouring sites, and will not unduly restrict mining, or other activities within the General Rural zone from taking place within a site. This is because under AS/NZS 4282, lighting is measured relative to neighbouring sites as opposed to the activity or source of light. Overall, I consider the amended lux levels effective and efficient in achieving LIGHT-O1 and LIGHT-O2.
- (72) Mr Wilson also recommends the management of upward light spill for mining activities in accordance with best practice. I note that no other activities within the Light chapter are required to manage upward light spill, and that it is more common practice for district plan standards to manage lux levels. I therefore do not support the inclusion of standards to manage upward light spill for mining activities and consider that this would add unnecessary cost to demonstrate compliance.

### **Whether it would be appropriate to manage lighting in light sensitive and non-light sensitive areas**

- (73) The Light rules (LIGHT-R2, LIGHT-R3, and LIGHT-R4) and the lux levels within the pTTPP as notified have been considered by Mr Wilson at paragraphs 10-11 of the lighting memorandum.
- (74) The current light rules identify and provide for light in urban and/or working environments under LIGHT-R2 and identify and manage more sensitive receiving environments under LIGHT-R3. Zones that are not listed and specifically managed under Light-R2 or LIGHT-R3 are managed under LIGHT-R4. These rules are summarised in the table below.

Rule	Zone(s) and Overlay(s) Managed	Lux Level
LIGHT-R2	<ul style="list-style-type: none"> <li>• Town Centre</li> <li>• Mixed Use</li> <li>• Commercial</li> <li>• Port</li> <li>• Hospital</li> <li>• Stadium</li> <li>• Airport</li> <li>• Industrial</li> </ul>	<ul style="list-style-type: none"> <li>• Non-curfew: 25 Lux</li> <li>• Curfew: 10 Lux in the Port Zone and all Industrial Zones, 5 Lux in all other zones</li> </ul>
LIGHT-R3	<ul style="list-style-type: none"> <li>• Natural Open Space</li> <li>• Settlement – Precinct 3</li> <li>• Outstanding Coastal Natural Character</li> <li>• Outstanding Natural Landscapes</li> <li>• Outstanding Natural Features</li> </ul>	<ul style="list-style-type: none"> <li>• Non-curfew: 2 Lux</li> <li>• Curfew: 1 Lux</li> </ul>
LIGHT-R4	<ul style="list-style-type: none"> <li>• All other zones, including General Rural, General Residential, and Special Purpose Mineral Extraction</li> </ul>	<ul style="list-style-type: none"> <li>• Non-curfew: 10 Lux</li> <li>• Curfew: 2 Lux</li> </ul>

- (75) Mr Wilson has identified the appropriate lux levels within comparable environments to the General Rural and General Residential zones under AS/NZS 4282. These zones are currently managed under LIGHT-R4.
- (76) I have further considered the lux levels under AS/NZS 4282 as advised by Mr Wilson, and the management of light sensitive areas within the West Coast, having particular regard to values associated with biodiversity and the dark night sky.
- (77) Notwithstanding matters of scope, I support amendments to the Light rules to align with AS/NZS 4282, and to the structure of the rules to manage all light sensitive areas under the more restrictive lux levels currently prescribed under LIGHT-R3.
- (78) I agree with Commissioners that identifying areas where a greater level of lux may be appropriate and requiring all other areas to comply with more restrictive lux levels would improve effectiveness and efficiency, however, support the use of zoning and overlays to differentiate between light sensitive and non-light sensitive areas. In my opinion, the use of zones and overlays, based on their purpose and anticipated activities, provides greater certainty and accuracy to plan users than introducing a new definition or scope for light sensitive areas, or vice versa. I also note that this will ensure the provisions are sufficiently future proofed.
- (79) My recommendations to the Light rules are summarised in the table below.

Rule	Recommended Amendment
LIGHT-R1	No change
LIGHT-R2	No change
LIGHT-RX1	Insert new rule to manage lighting within the Residential Zones Settlement Zone Precincts 2 and 4, Open Space Zone, and Sport and Active Recreation Zone with the following lux levels: <ul style="list-style-type: none"> <li>• Non-curfew: 10 Lux</li> </ul>

Rule	Recommended Amendment
	<ul style="list-style-type: none"> <li>• Curfew: 2 Lux</li> </ul>
LIGHT-RX2	Insert new rule to manage lighting within the General Rural and Special Purpose Mineral Extraction Zones: <ul style="list-style-type: none"> <li>• Non-curfew: 5 Lux</li> <li>• Curfew: 1 Lux</li> </ul>
LIGHT-RX3	Insert new rule to manage lighting within all other zones and the Outstanding Coastal Natural Character Overlay, Outstanding Natural Landscapes Overlay, and Outstanding Natural Features Overlay in accordance with the requirements of LIGHT-R3 as notified.
LIGHT-R3	Delete rule
LIGHT-R4	Delete rule
LIGHT-R5	No change
LIGHT-R6	No change

(80) I note further amendments to lux levels may be necessary following the receipt of advice relating to ecological matters.

**LIGHT-O1: Whether referring to ‘primary production’ would be more appropriate than ‘rural production’ activities**

(81) I agree with and support amendments to LIGHT-O1 to refer to ‘primary production’ activities as ‘primary production’ is a defined term under the National Planning Standards. I note that rural production is not defined, and consider the definition of ‘primary production’ is appropriate in this instance.

**LIGHT-O2: Giving effect to section 6 matters**

(82) The Commissioners have queried the use of ‘maintain’ under LIGHT-O2 and whether this appropriately gives effect to section 6 matters.

(83) I have considered the provision of section 6 matters under LIGHT-O2.

(84) The broad purpose of LIGHT-O2 is to manage the effects of lighting. I consider that the section 6 matters that are relevant to the management of lighting effects are:

- (a) Section 6(a), the protection of the natural character of the coastal environment from inappropriate subdivision, use, and development;
- (b) Section 6(b), the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development; and
- (c) Section 6(c), the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

(85) I agree that amendments to LIGHT-O2 to include those relevant matters under section 6 of the Act will achieve consistency with, and give effect to Part 2 the Act. This will include the addition of outstanding natural features and landscapes, and the natural character of the coastal environment.

(86) Natural features and landscapes are recommended to be managed under LIGHT-R3 in response to submission 602.177 of the Department of Conservation. I consider the inclusion of outstanding

natural features and landscapes to LIGHT-O2 are consequential to this amendment to align the policy and rule frameworks.

- (87) While I support the merit of including protection of the natural character of the coastal environment to give effect to section 6 and Policies 1 and 13 of the New Zealand Coastal Policy Statement, and to align with LIGHT-R3 which manages lighting in the Outstanding Coastal Natural Character Overlay, I note that submitters did not seek this addition to LIGHT-O2. As such, the scope to make this change may be limited.
- (88) I also support amendments to LIGHT-O2 to recognise the 'protect' directive of section 6(c) in relation to significant habitats of indigenous fauna and consider this will give effect to section 6. I recommend LIGHT-O2 is amended to 'protect' significant indigenous vegetation and habitats and to 'maintain' all other habitats, ecosystems, and species.
- (89) I also recommend consequential amendments to LIGHT-P3.

#### **LIGHT-O2: Dark night sky**

- (90) I acknowledge that amendment of LIGHT-O2 to 'protect and maintain the qualities of the dark night sky' is in keeping with the values and qualities of the night sky in the West Coast, and note the inclusion of the term 'maintain' recognises that protection may not be achievable within all receiving environments.

#### **LIGHT-P1: Policy wiring of 'functional and operational requirements' and whether there is sufficient cross reference within the Light chapter**

- (91) I have considered the integration of rules with LIGHT-P1 which seeks to recognise the functional or operational requirements of activities, and note the following:
- (a) LIGHT-P1 seeks to provide for artificial outdoor lighting. In my opinion, recognising the functional or operational requirements of activities under LIGHT-P1 is a relevant consideration when providing for outdoor lighting requirements.
  - (b) LIGHT-R2 gives effect to LIGHT-O1 and LIGHT-P1 by providing a separate rule framework for zones that are anticipated to accommodate activities with functional or operational requirements and/or are located within urban areas where it is appropriate to generate greater lux levels, having regard to the quality of the night sky.
  - (c) LIGHT-R5 includes the functional or operational requirements of activities within the matters of discretion here artificial lighting does not comply with the relevant permitted activity standards.

Overall, I consider that the LIGHT provisions are well integrated and give effect to LIGHT-O1 and LIGHT-P1 in relation to recognising the functional or operational requirements of activities.

#### **LIGHT-R1: Whether the AS/NZS 4282 are to be incorporated into the pTTPP by cross reference or as a material incorporated by reference in accordance with Schedule 1**

- (92) The relationship between LIGHT-R1 and AS/NZS 4282 is considered in the legal memorandum prepared by Wynn Williams at **Attachment 3** (paragraphs 23-37). In summary, it is necessary for AS/NZS 4282 to be included into the pTTPP by reference in accordance with Schedule 1 of the Act as it is a part of the standards required under LIGHT-R1. It is also understood that it was the intent for AS/NZS 4282 to be included as a material incorporated by reference under the pTTPP at the time the Plan was notified.

(93) Fore completeness, I continue to support the inclusion of AS/NZS 4282 as a standard under LIGHT-R1, as it provides relevant parameters for the management and measurement of lighting. This inclusion also enables the simplification of the lighting rules. I do not consider that it is appropriate to include this reference as an advice note as notified.

(94) On this basis, I support the inclusion of AS/NZS 4282 as a material incorporated by reference.

**Light-R1: Whether it would be appropriate to include the words ‘to minimise light spill’ in relation to the direction of lighting**

(95) I have considered the inclusion of ‘to minimise light spill’ to the final clause of LIGHT-R1 as suggested by Commissioners. I acknowledge that this inclusion will provide clarity on the purpose of the standard, however have concerns that this amendment will introduce unnecessary wording to the standard as well as a subjective assessment.

(96) In the context of assessing compliance with a permitted standard, the inclusion of ‘to minimise light spill’ has the potential to raise the question of the degree of minimisation of light spill that is required to meet the permitted activity standard. The rationale for the inclusion of this standard was to provide a simple, clear, and cost effective method to ensure lighting effects at boundaries and to adjoining properties are minimised, which can be readily achieved through direction lighting towards the area and subject site intended to be illuminated.

(97) In my opinion, the addition has the potential to alter the intent of this standard, and would not be an efficient method to achieve LIGHT-O1 and LIGHT-O2. On this basis, I do not support this amendment to LIGHT-R1.

**LIGHT-R3: Inclusion of Significant Natural Areas with relevant overlays managed under LIGHT-R3**

(98) I support the inclusion of Significant Natural Areas to LIGHT-R3, and consider it is appropriate to manage lighting within these areas due to the potential effects of lighting on habitats of indigenous fauna.

**LIGHT-R5: Achieving consistency in wording in relation to providing functional and operational requirements**

(99) Following amendments to LIGHT-P1 in relation to recognising the functional and operational requirements of activities, I support amendments to LIGHT-R5 matters of discretion to achieve consistency in wording. I also recommend an amendment to functional and operational ‘need’ in LIGHT-P1 and LIGHT-R5 to achieve consistency with the National Planning Standard term as well as other national policy statements.

**Whether there is appropriate dark sky protection in Okarito**

(100) I support protection of dark sky qualities and values in Okarito, and note a correction to LIGHT-R3 to refer to Precinct 3 of the Settlement Zone to ensure that lighting is managed in accordance with the standards in LIGHT-R3.

(101) Mr Wilson has considered that appropriateness of the existing standards under LIGHT-R3 in relation to dark sky qualities and values in Okarito at paragraphs 12-14 of the lighting memorandum, and recommends the inclusion of additional standards to manage upwards light spill, the temperature of light, and duration of brighter lights during curfew hours. Mr Wilson considers that these amendment to LIGHT-R3 will provide sufficient dark sky protection and ensure consistency with achieving accreditation through Dark Sky International.

- (102) On this basis, I support amendments to apply these provisions to the Okarito settlement, and am satisfied that the lighting provisions will provide appropriate protection to dark sky qualities and values.

#### **Consider the relevance and usefulness of Light Management Plans**

- (103) Mr Wilson has considered the used of light management plans at paragraphs 20-23 of the lighting memorandum. I agree with his assessment and consider that the preparation of a light management plan is an effective and efficient method to manage lighting effects where the permitted activity standards cannot be complied with. I support amendments to LIGHT-R5 to broaden the matters of discretion to include consideration of any light management plan that is prepared.

#### **Whether it is necessary to manage reflectivity and glare**

- (104) Mr Wilson has considered the management of glare at paragraphs 15-19 of the lighting memorandum. I agree with his assessment and do not support the inclusion of additional provisions to manage glare. In my opinion, the management and measurement of glare would create unnecessary costs for plan users and enforcement.

#### **Measurement of illuminance**

- (105) Mr Wilson identifies at paragraph 24 of the lighting memorandum that LIGHT-R2, LIGHT-R3, and LIGHT-R4 include the measurement of illuminance in the horizontal plane, while AS/NZS 4282 measures illuminance in the vertical plane. I support amendments to LIGHT-R2, LIGHT-R3, and LIGHT-R4 to achieve consistency with AS/NZS 4282 and consider this will assist with simplifying the Light provisions for all plan users.

#### **Temporary Activities**

##### **TEMP-P4: Whether the inclusion of ‘immediately adjoining’ would be more appropriate than ‘adjacent’**

- (106) The Commissioner’s queried whether it would be more appropriate to refer to ‘immediately adjoining’ when identifying freedom activities occurring adjoining the State Highway road corridor under TEMP-P4. I agree with and support amendments to TEMP-P4 to refer to ‘immediately adjoining the State Highway road corridor’. In my opinion, this will provide greater clarity and reduce uncertainty.

##### **The relationship between the Temporary Activities Chapter to energy and infrastructure activities**

- (107) Mr Kennedy on behalf of Westpower Limited has recommended the inclusion of additional matters of discretion to TEMP-R8 and TEMP-R9 to include considerations for the benefits from the work being undertaken. Mr Kennedy has also recommended alternative amendments to include clarification that the Temporary Activities chapter does not apply to energy and infrastructure activities, noting that if it is intended that the Temporary Activities chapter does not apply to energy, infrastructure, and transport, then the Plan should clearly state that.
- (108) I have considered this recommendation at paragraph 23 of the Section 42A Addendum Report, and support additional clarification to the Temporary Activities Overview to specify that the Temporary Activities provisions do not apply to energy or infrastructure activities as sought by Westpower.
- (109) I have also considered Mr Kennedy’s further concern of whether this amendment creates a gap in the Plan for temporary energy or infrastructure activities, as ENG-R9 is only applicable following state of emergency declaration. In my opinion, a range of energy and infrastructure activities and



their potential ancillary activities are provided for in the Energy and Infrastructure chapters, such that it is not necessary or efficient to differentiate between temporary and permanent energy and infrastructure activities.

#### **TEMP-R1: Whether the provision of written approval can be included as a permitted activity standard**

- (110) Ms Lynch on behalf of Ngāi Tahu has recommended an additional provision under TEMP-R1 to enable as a permitted activity, temporary and military training activities and emergency management training activities on a site or area of significant to Māori identified in Schedule three where written approval from the relevant Poutini Ngāi Tahu rūnanga is provided at least 10 working days prior to the activities commencing (paragraphs 65-69 of their statement of evidence).
- (111) The inclusion of this standard has been considered in the legal memorandum prepared by Wynn Williams at **Attachment 3 at** paragraphs 11-22. In summary, it is considered that wording of the standard does not satisfy all legal tests required for permitted activities, including that a rule must not reserve discretion to decide whether an activity is a permitted activity.
- (112) In relation to permitted boundary activities I note that provision is made under the Act as opposed to a permitted activity standard in a district plan.
- (113) I therefore do not support amendments to TEMP-R1 to include this provision.

#### **Other Matters**

##### **Relief sought by Westpower**

- (114) During the hearing, Commissioners queried the recommendations to submissions made by Westpower, noting a number of corrections were made in the Section 42A Addendum Report.
- (115) Given that a number of further amendments are recommended to provisions under the Section 42A Addendum Report and this Right of Reply Report, to assist Commissioners, I set out the recommendations to the relief sought by Westpower and identified in Mr Kennedy's statement of evidence and my assessment of these matters in the table below.
- (116) Amendments to the recommendation are identified in ~~strike through~~ and underline.

##### **Light Objectives and Policies**

- (117) A number of submissions were received in relation to the specific wording of Light policies (refer pages 75-82 of the Section 42A Report). I have considered this relief sought as well as queries raised by Commissioners in relation to giving effect to relevant section 6 matters, and recommend the amendments shown at **Attachment 1** and discussed above.
- (118) On review of the Light objectives and policies, I note that there are elements of the policies which appear to duplicate the objectives, particularly LIGHT-P1 and LIGHT-P3 with LIGHT-O1. Based on the relief sought within submissions, I do not consider that there is clear scope to the wording of the Light policies to remove this duplication, however bring this to matter to the Commissioners' attention.

Submission and Further Submission Number	Paragraph at the Statement of Evidence of Mr Kennedy	Relief Sought	Recommendation	Assessment
S547.455 Earthworks Overview	4.5	<u>Earthworks can adversely affect amenity values ... noise and traffic), <b>energy activities, including critical infrastructure</b>, and result in changes to the ...</u>	Reject	This submission appears to have been omitted from the Section 42A Report due to an error in the Summary of Decisions Requested, and has been included in the Appendix to the Section 42A Addendum Report.  I do not support the relief sought as the Earthworks Overview is referring to values as opposed to specific activities.
FS222.033, FS222.144 Light Policies	4.5	Disallow [the primary submissions].	Accept	As noted at paragraph 5 of the Section 42A Report, only key further submissions are identified in relation to the decisions requested by submitters. In accordance with Minute 4 issued by Panel Members, the recommendation in the Appendix is accurate and the primary submission is recommended to be rejected.
S547.483 LIGHT-R4	4.5	This submission appears to be in relation to LIGHT-P3, and this has also been addressed under S547.0510. I note Westpower has not submitted against LIGHT-R4.	N/A	N/A
FS222.062 LIGHT-R5	4.5	Note stated, oppose primary submission in part.	Accept in part	In accordance with Minute 4 issued by Panel Members, the recommendation in the Appendix is accurate
FS222.037 Temporary Activities Overview	4.5	Disallow [the primary submission].	Accept	This submission was incorrectly allocated and has been included in the Appendix to the Section 42A Addendum Report. I do not support the primary submission, and agree that the matters

Submission and Further Submission Number	Paragraph at the Statement of Evidence of Mr Kennedy	Relief Sought	Recommendation	Assessment
				of discretion and control as notified are appropriate for the management of temporary activities and their effects. I also note that military training activities are subject to bespoke noise standards, and that natural values are a matter of discretion under TEMP-R9, which apply to activities that do not comply with the permitted activity standards.
FS222.0148 Temporary Activities Overview	4.5	Disallow [the primary submission].	Accept.	As above.
FS222.0312 Earthworks Overview	8.3	Disallow [the primary submission].	Accept	The primary submission S560.314 by Forest and Bird has been rejected, as no changes are recommended in response to this primary submission.
S547.456 Earthworks Overview	8.4	Insert new point under Other Relevant Te Tai o Poutini Plan provisions: <b>Energy Activities - this Chapter contains provisions for activities in the vicinity of energy activities and infrastructure.</b>	Accept in part	This submission has been accepted in part. While amendments have been made to the Earthworks Overview, the recommended wording differs to that sought by Transpower.
S547.458 Earthworks Overview	8.5	Insert section on Strategic Objectives and Policies as per previous chapters.	Reject	In accordance with Minute 4 issued by Panel Members, the recommendation in the Appendix is accurate. I do not support this relief sought as the cross reference is unnecessary. I note other cross references are clarification where the relationship with other plan provisions may be unclear to users. I also

Submission and Further Submission Number	Paragraph at the Statement of Evidence of Mr Kennedy	Relief Sought	Recommendation	Assessment
				note that this is a wider integration matter as to whether the Strategic Direction provisions are referenced.
S547.459 EW-O1	8.6	Amend: To provide for earthworks ... on the surrounding <b>natural and physical</b> environment are avoided, <b>remedied</b> or mitigated."	Accept in part	This submission has been corrected in the Appendix to the Section 42A Addendum Report. I support the inclusion of 'remedied' to EW-O1. In my opinion, reference to the 'natural and physical' environment is unnecessary.
S547.460 EW-P1	8.7	Amend: Enable temporary and small scale ... land, the provision of utilities, <b>including energy activities and critical infrastructure</b> , and hazard ...".	Accept in part	This submission is addressed at paragraph 83 of the Section 42A Report.
S547.462 EW-P2	8.8	(1) Avoid duplication of compliance by removing reference to "water quality" from the policy where already provided for in regulations administered by regional plans. (2) Amend the Policy: Manage the effects of earthworks to <b>avoid, remedy or mitigate adverse effects</b> on landscape character, amenity, natural features, biodiversity ... .	<del>Accept in part</del> <u>Accept</u>	This submission is addressed at paragraphs 4-8 of this Right of Reply Report
S547.464 EW-P4	8.9	Amend: Protect critical infrastructure, <b>including energy activities and infrastructure</b> , and natural hazard ...	Reject	I note that the relief sought relates to whether the term 'critical infrastructure' is adopted in place of 'regionally significant infrastructure', and no amendments to the provisions are recommended at this time as a decision is to be made through the Energy, Infrastructure, and Transport hearing.

Submission and Further Submission Number	Paragraph at the Statement of Evidence of Mr Kennedy	Relief Sought	Recommendation	Assessment
				In my opinion, if 'critical infrastructure' is retained, then this addition is not necessary. However, if the term is amended to 'regionally significant infrastructure', then I consider that the term should be amended to 'protect infrastructure as not to exclude other electricity activities.
S547.465 EW-R1	8.10	Amend 1. Earthworks must not exceed a maximum depth of <b>1.5m or height above ground of 2m</b> measured vertically within 1.5m of a boundary except ... .	Reject	This submission is addressed at paragraphs 31-35 of this Right of Reply Report.
S547.468 EW-R1	8.11	Avoid duplication of compliance by removing items 3. and 4. Where these matters are already provided for in regulations administered by regional plans in regard to earthworks.	Reject	This submission is addressed at paragraphs 101-102 of the Section 42A Report. I note Mr Kennedy accepted the Section 42A Report recommendation at paragraph 8.11 of their Statement of Evidence.
S547.469 EW-R2	8.12	Amend d. These are earthworks including stockpiles required for network utility, <b>including energy activities and infrastructure</b> , or critical infrastructure ... of new network utilities, <b>including energy activities and infrastructure</b> , and public roads.	Reject	This submission is addressed at paragraph 122 of the Section 42A Report.
FS222.0106 EW-R2	8.13	Disallow [the primary submission].	Accept in part	EW-R2(2)(d) has been corrected in the provisions appended to the Section 42A Report.

Submission and Further Submission Number	Paragraph at the Statement of Evidence of Mr Kennedy	Relief Sought	Recommendation	Assessment
S547.470 EW-R3	8.14	Amend item 2.ii,ii. An Energy Activity, <b>Infrastructure Activity</b> or Transport Activity.	Accept in part	I agree that consistent wording across the pTTPP would be beneficial. In my opinion, the term 'regionally significant infrastructure', should this be adopted, would be more appropriate to achieve consistency and recognise the significance of infrastructure activities occurring within the more sensitive receiving environments managed under EW-R3. I note this terminology is subject to the Energy, Infrastructure, and Transport hearing.
FS222.315 EW-R3	8.15	I note FS222.315 does not correlate to a further submission point in the summary of decisions requested.  Paragraph 8.15 of Mr Kennedy's evidence notes this further submission opposed the inclusion of the Natural Open Space zone to EW-R3.	Reject	EW-R3(2)(ii) has been corrected in the provisions appended to the Section 42A Report.  In my opinion, the Natural Open Space zone is appropriate to be included under EW-R3 due to the description of the zone under the National Planning Standards, being areas where the natural environment is retained, and activities are compatible with the characteristics of the zone.
FS222.0316 EW-R3	8.16	Disallow [the primary submission].	Accept	The primary submission S560.321 by Forest and Bird has been rejected, as no changes are recommended in response to this primary submission.
S547.471 Ew-R4	8.17	Amend 3. An Energy Activity, <b>Infrastructure Activity</b> or Transport Activity.	Accept in part	I agree that consistent wording across the pTTPP would be beneficial. In my

Submission and Further Submission Number	Paragraph at the Statement of Evidence of Mr Kennedy	Relief Sought	Recommendation	Assessment
				opinion, the term 'regionally significant infrastructure', should this be adopted, would be more appropriate to achieve consistency and recognise the significance of infrastructure activities occurring within the more sensitive receiving environments managed under EW-R3. I note this terminology is subject to the Energy, Infrastructure, and Transport hearing.
FS222.0317 EW-R4	8.18	Disallow [the primary submission].	Accept	The primary submission S560.322 by Forest and Bird has been rejected, as no changes are recommended in response to this primary submission.
S547.472 EW-R5	8.19	Amend 3. An Energy Activity, <b>Infrastructure Activity</b> or Transport Activity.	Accept in part	I agree that consistent wording across the pTTPP would be beneficial. In my opinion, the term 'regionally significant infrastructure', should this be adopted, would be more appropriate to achieve consistency and recognise the significance of infrastructure activities occurring within the more sensitive receiving environments managed under EW-R3. I note this terminology is subject to the Energy, Infrastructure, and Transport hearing.
FS222.0318 EW-R5	8.20	Disallow [the primary submission].	Accept	The primary submission S560.323 by Forest and Bird has been rejected, as no

Submission and Further Submission Number	Paragraph at the Statement of Evidence of Mr Kennedy	Relief Sought	Recommendation	Assessment
				changes are recommended in response to this primary submission.
S547.474, S547.475, S547.476	8.21 and 8.22	Amendments to EW-R7.	Reject	These submission points are recommended to be rejected as EW-R7 is recommended to be deleted. I also note that matters of discretion do not apply following the recommendation to the activity status to non-complying, as addressed at paragraph 16 of the Section 42A Addendum Report.
S547.477 EW-R8	8.23	Amend d. The effectiveness of proposed management or mitigation measures for adverse effects beyond the property boundary of the activity.	Reject	This submission is addressed at paragraph 7 of this Right of Reply Report.
S547.478 EW-R8	8.24	Amend g. The impact of <b>earthworks on energy activities and infrastructure</b> , including critical infrastructure.	Reject	This submission is addressed at paragraph 167 of the Section 42A Report. Notwithstanding, I note that should the term 'regionally significant infrastructure' be adopted in place of 'critical infrastructure', then this provision should relate to 'infrastructure' as not to exclude energy activities.
FS222.031, FS222.0142 EW-8	8.25	Disallow [the primary submissions].	Accept in part	This submission has been corrected in the Appendix to the Section 42A Addendum Report.



Submission and Further Submission Number	Paragraph at the Statement of Evidence of Mr Kennedy	Relief Sought	Recommendation	Assessment
FS222.0364 Light Overview	8.26	Disallow [the primary submission].	Accept	This submission has been corrected in the Appendix to the Section 42A Addendum Report.
S547.479 Light Overview	8.27	Retain [the provision as notified].	<del>Accept</del> <u>Accept in part</u>	Amendment to the Light Overview as notified is discussed at paragraph 68 of this Right of Reply Report.
FS222.032 Light-O1	8.28	Disallow [the primary submission].	Accept	This submission has been corrected in the Appendix to the Section 42A Addendum Report.
S547.481 Light-O2	8.29	Amend Artificial lighting is located, operated and designed to <del>maintain</del> <b>ensure that potential adverse effects on the character and amenity values within zones</b> , the health and safety of people, the safe operation of the transport network, <del>protects</del> views of the night sky, the habitats and ecosystems of nocturnal native fauna and the-species themselves are avoided, remedied or mitigated.	Reject	Light-O2 is addressed in detail at paragraphs 82-89 of this Right of Reply Report.
S547.482 LIGHT-P1	8.30	Amend LIGHT-P1, "Provide for the use of ... a. ... b. <b>avoids, remedies or mitigates</b> adverse effects on the character and amenity values of ... c. ... d. ... e. <b>avoids, remedies or mitigates</b> adverse effects on the health and wellbeing ... f. <b>recognises the technical, location, functional or</b>	Accept in part	This submission has been corrected in the Appendix to the Section 42A Addendum Report and is further discussed at paragraph 19 of the Section 42A Addendum Report.

Submission and Further Submission Number	Paragraph at the Statement of Evidence of Mr Kennedy	Relief Sought	Recommendation	Assessment
		operation constraints or requirements of activities."		
S547.0510 LIGHT-P3	8.31	1) Amend LIGHT-P3, "Control the intensity, location ... a. ensure that adverse effects of any artificial outdoor lighting on light sensitive areas and uses are avoided, remedied or mitigated. b. ... c. <b>avoid, remedy or mitigate</b> adverse effects on views ... d. <b>avoid, remedy or mitigate</b> adverse effects on the significant habitats ... e. <b>avoid, remedy or mitigate</b> adverse effects on the health and safety ...f. <b>recognises the technical, location, functional or operation constraints or requirements of activities."</b>	Reject	This relief sought is not considered necessary following the amendments recommended to LIGHT-P1 at paragraph 19 of the Section 42A Addendum Report.
FS222.058, FS222.059, FS222.060, FS222.061	8.32	Various further submission in relation to simplifying the Light standards and introducing more enabling levels of lux permitted within the pTTPP.	Reject	This matter is discussed at paragraphs 230-233 of the Section 42A Report. I continue to support the lux levels included at <b>Attachment 1</b> , and note they are in accordance with AS/NZS 4282, and seek to align the District Plan requirements with best practice guidelines. I also note that prescribed lux limits do not restrict activities occurring within a site, and seek to manage light spill effects at site boundaries.

Submission and Further Submission Number	Paragraph at the Statement of Evidence of Mr Kennedy	Relief Sought	Recommendation	Assessment
S547.484 LIGHT-R5	8.33	Add i. <b>The technical, locational, functional or operational constraints and/or requirements of the activity.</b>	Accept in part	This submission has been corrected in the Appendix to the Section 42A Addendum Report to accept in part.
S547.042 Temporary Activities definition	8.34	Amend (e)... <b>buildings and structures for ...</b>	Reject	This submission is addressed at paragraph 265 of the Section 42A Report. I also consider that the reference to structures in (e) is specific to construction and demolition, e.g. scaffolding.
S547.495 TEMP-R2	8.35	Amend: 2. The building or structure is located on the same site as the construction or demolition activity, <b>or on a site in the vicinity where there will be no greater effect arising to any other landowner</b>	Reject	This submission is addressed at paragraph 282 of the Section 42A Report. In addition, I do not consider the requested amendment to be appropriate for a permitted activity standard, as the assessment of effect is subjective.
S547.497, 547.498 TEMP-R8	8.36	Add c. <b>The technical, locational, functional or operational constraints and/or requirements of the activity.</b> Add d. <b>Benefits from the work being undertaken and energy activities and infrastructure developed.</b>	Reject	These submissions are addressed at paragraph 23 of the Section 42A Addendum Report and paragraphs 107-109 of this Right of Reply Report.
S547.499, S547.500 TEMP-R9	8.37	As above.	Reject	As above.

