

TAI POUTINI PLAN COMMITTEE

Hearing of Submissions on the Proposed Te Tai O Poutini Plan

Recommendation Report of Hearing Panel

Recommendation Report: General District Wide Matters - Ngā Kaupapa ā-Rohe Whānui

Earthworks - Ngā Rama, Light - Te Huke Whenua and Temporary Activities - Ngā Mahi Taupua

Hearing Date: 14 November 2023

HEARING PANEL

Sharon McGarry (Chair)

Paul Rogers

Maria Bartlett

Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel

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PART A – INTRODUCTORY MATTERS

1. PRELIMINARY MATTERS

1.1. Introduction

1. Matters to do with our appointment and other preliminary matters applicable to all Hearing Panel’s recommendations on the Proposed Te Tai o Poutini Plan (**pTTPP** or ‘the Plan’) are recorded and addressed in Recommendation Report 1.
2. This Recommendation Report relates to three chapters – Earthworks - Ngā Rama (**EW**), Light - Te Huke Whenua (**LIGHT**) and Temporary Activities - Ngā Mahi Taupua (**TEMP**) in the General District Wide Matters - Ngā Kaupapa ā-Rohe Whānui section of the pTTPP; and contains the Hearing Panel’s evaluations and recommendations to the TTPP Committee on the submissions and further submissions received on these sections of Part 2 of the Plan.
3. The Section 32 Report¹ provided an evaluation of the options for the management of General District Wide Matters through the Plan, including key resource management issues, the regulatory and policy direction, the evidence base (research, consultation, information and analysis undertaken) and evaluation of the options.
4. The Section 42A Officer’s Report² (‘s42A Report’), authored by Ms Briar Belgrave, a planner with Barker & Associates acting as the Reporting Officer, was circulated prior to the hearing. The s42A Report provided an analysis of submissions and further submissions received; and made recommendations on changes to the notified plan provisions. The s42A Report included a statement of evidence by Mr Paul Wilson, a Lighting Designer with Xyst Limited, relating to submissions received on the LIGHT provisions.
5. The s42A Report assessed 106 submissions and nine further submissions received relating to each relevant chapter (EW, LIGHT and TEMP) of the General District Wide Matters section. It provided summaries of all the submissions and further submissions received and the relief sought; an analysis of the proposed changes to provisions; and recommendations on changes to the plan provisions (see Appendix 1 of s42A Report) and the accept/accept in part/reject recommendations for individual submission and further submission points (see Appendix 2 of the s42A Report).
6. An Addendum to the s42A Report (and an updated Appendix 1 and Appendix 2) were tabled at the hearing responding to submitter evidence circulated prior to the hearing. These documents indicated any changes to the Reporting Officer’s recommendations in the s42A Report.
7. The s42A Report assessed 380 submission points and 43 further submission points relating to the EW chapter; 184 submission points and 31 further submission points relating to the LIGHT chapter; and 84 submission points and 11 further submission points relating to the TEMP chapter.

¹ Te Tai o Poutini Plan – Section 32 Evaluation Report Seven General District Wide Matters - Ngā Kaupapa ā-Rohe Whānui: Noise – Ngā Oro, Light - Te Huke Whenua, Signs – Ngā Tohu, Earthworks - Ngā Rama, and Temporary Activities - Ngā Mahi Taupua

² General District Wide Matters: Light - Te Huke Whenua, Earthworks - Ngā Rama and Temporary Activities - Ngā Mahi Taupua’

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8. The matters raised by submitters were grouped in the s42A Report in relation to each of the following key issues for each of the three chapters:
 - General/Whole Chapter;
 - Overview;
 - Objectives;
 - Policies; and
 - Rules.
9. This Recommendation Report follows the same structure of the s42A Report for each chapter and provides a summary of the issues raised in submissions and further submissions, the s42A Report analysis and recommendations, submitter evidence and the Reporting Officer's reply evidence, before providing our evaluation and recommendation.
10. This Recommendation Report should be read in conjunction with the s42A Report and Addendum Report, and the tracked change version of the notified Plan provisions (attached as Appendix 1 to this Report). The tracked change version of the TTPP provisions forms an integral part of the decision and records all recommended amendments (additions and deletions) to the notified TTPP provisions made by the Panel. The tracked change version of the TTPP shows the Panel's recommended changes to the notified provisions in **bold and underlining** indicating additions and ~~striketrough~~ indicating deletions. If there is any discrepancy between this Recommendation Report and the tracked change version of the Plan, the tracked change version of the Plan shown in Appendix 1 of this Report must prevail.
11. This Recommendation Report contains the reasons for the Panel's recommendations. These comprise either adoption of the reasoning and recommendations of the original section 42A Reports, Addendum or the Reporting Officer's reply evidence (Councils' Right of Reply post hearing adjournment), or a specific reasoning by the Panel.
12. Where the Panel recommends the TTPP provisions should remain as notified, it is because:
 - (a) The Panel has adopted the reasoning and recommendation of the s42A Report or Addendum to retain the provision as notified; or
 - (b) The Panel has adopted the reasoning and recommendation to retain the provision as notified as recommended in the Reporting Officer's reply evidence; or
 - (c) The Panel has recommended to retain the provision as notified for reasons set out in this Recommendation Report.
13. Where there is a recommended change to a notified provision of the TTPP, it is because:
 - (a) The Panel has recommended amendment to a provision for reasons set out in this Recommendation Report in response to a submission point, which the s42A Report or Addendum did not recommend; or
 - (b) The Panel adopted the reasoning and recommendation of the s42A Report or Addendum to change the provision to that recommended in the original s42A Report; or

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- (c) The Panel has adopted the reasoning and recommendation to that recommended in the Reporting Officer’s reply evidence; or
 - (d) A consequential change has been necessary following on from a decision in either (a), (b) or (c).
14. Where there may be a different recommendation between the s42A Report and the Reporting Officer’s Addendum or reply evidence (i.e., the recommendation by the Reporting Officer has changed as a result of hearing the evidence of submitters), unless the Panel decision specifically adopts the original s42A Report’s reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.
15. If there are circumstances where the Panel consider that alternative relief is more appropriate than that requested in submissions and further submission to give effect to the RMA, NZCPS, national policy statements and/or RPS, but are still within the scope of the relief sought, the relevant recommendation clearly sets out the nature of the change and the reason for the change. This is recorded in this Recommendation Report.
16. If any changes are recommended to the provisions (since the Section 32A Report was completed) a further evaluation, if required, has been undertaken pursuant to section 32AA of the RMA. Any such circumstances are referred to in this Recommendation Report in sufficient detail to demonstrate a further evaluation was undertaken.
17. Clause 16(2) of the First Schedule of the RMA enables the Panel to recommend amendments to alter information, where such an alteration is of minor effect, or may correct any minor errors. The Panel’s recommendations below each section considered in Part C of this Report and in the tracked change version of the notified Plan provisions (Appendix 1 of this Report) record any such minor amendments.

1.2. Terminology in this Report

18. Throughout this Report, the following abbreviations will be used:

BCZ	Buller Coalfield Zone
Councils	Buller District Council, Grey District Council, and Westland District Council
DOC	Department of Conservation
ECO	Ecosystems and Biodiversity
EIT	Energy, Infrastructure and Transport
EW	Earthworks – Te Huke Whenua
FENZ	Fire and Emergency New Zealand
Forest & Bird	Royal Forest & Bird Protection Society of NZ

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Hort NZ	Horticulture New Zealand
KiwiRail	KiwiRail Holdings Limited
LIGHT	Light – Ngā Rama
MINZ	Mineral Extraction Zone
NOSZ	Natural Open Space Zone
NPSET	National Policy Statement on Electricity Transmission 2008
NPSFM	National Policy Statement for Freshwater Management 2020
NZCPS	New Zealand Coastal Policy Statement
NZDF	New Zealand Defence Force
NZTA Waka Kotahi	NZ Transport Agency Waka Kotahi
pTTPP	Proposed Te Tai Poutini Plan
Poutini Ngāi Tahu	Te Rūnanga o Ngāi Tahu, Te Runanga o Ngāti Waewae, Te Rūnanga o Makaawhio
RLWP	West Coast Regional Land and Water Plan
RMA or the Act	Resource Management Act 1991
RPS	West Coast Regional Policy Statement
RLZ	Rural Lifestyle Zone
SASM	Sites and Areas of Significance to Māori
Transpower	Transpower New Zealand Limited
TEMP	Temporary Activities

1.3. Hearing Arrangements

19. The hearing was held at the RSA Hokitika, 22 Sewell Street, Hokitika on 14 November 2023, commencing at 9.00am and adjourning at 6.00pm. Two submitters appeared by internet connection.

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20. The Panel received a further addendum of evidence (dated 20 November 2023) following the hearing adjournment from Mr Kennedy on behalf of Westpower Limited responding to matters raised in questions at the hearing.
21. We also received further information via email from Ms Nyhan after the hearing adjournment in response to questions during the hearing.

1.4. Appearances

22. The following submitters appeared at the hearing:

Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu ('Poutini Ngāi Tahu') - Ms Philippa Lynch, General Manager for Poutini Environmental

Westland District Council – Okārito Dark Skies - Ms Paula Sheridan and Ms Tash Goodman

Ms Frida Inta for herself and on behalf of the **Buller Conservation Group** (by internet connection)

Nikau Deer Farm Limited - Mr George and Mrs Carol Coates

Ms Inger Perkins for herself and on behalf of the **West Coast Penguin Trust**

Ms Lauren Nyhan for herself and Mr Anthony Phillips, Mr Russel and Mrs Joanne Smith, Mr John and Mrs Claire West, Mr Joel and Mrs Jennifer Watkins, and Mr Tim and Mrs Phaedra Robins

Birchfield Coal Mines Limited, Papahaua Resource Limited, Rocky Mining Limited, TiGa Minerals and Metals Limited, and WMS Group (HQ) Limited and WMS Land Company Limited - Ms Katherine McKenzie, Planner with Tai Poutini Resources

Bathurst Resource Limited and BT Mining Limited - Mr Joshua Leckie, Legal Counsel

Westpower Limited

- Mr Roger Griffiths, General Manager – Generation and Technology for Westpower
- Ms Sylvie Saskova, Technical Administrator, for Westpower
- Mr Martin Kennedy, Planner

Mr Martin Kennedy on behalf of himself and Mrs Lisa Kennedy

Horticulture New Zealand - Ms Emily Leveson, Environmental Policy Advisor, for Horticulture New Zealand (by internet connection)

1.5. Overview of submitter evidence and statements received

23. Legal submissions were received from Mr Joshua Leckie for Bathurst Resource Limited and BT Mining Limited ('Bathurst') (dated 31 October 2023).
24. The following evidence and/or statements were received:
 - (a) Ms Philippa Lynch, General Manager for Poutini Ngāi Tahu (dated 17 October 2023);
 - (b) Ms Emily Leveson, Planner for Horticulture New Zealand (dated 19 October 2023);

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- (c) Mr Jordon Shortland-Witehira, Engineer for Transpower New Zealand Limited (date 16 October 2023);
 - (d) Ms Pauline Whitney, Planner for Transpower New Zealand Limited (date 16 October 2023);
 - (e) Ms Stephanie Styles, Planner for Manawa Energy Limited (date 10 October 2023);
 - (f) Mr Martin Kennedy, planner for Westpower Limited (dated 16 October 2023) and an addendum to his evidence (dated 20 November 2023);
 - (g) Ms Katherine McKenzie, Planner on behalf of Birchfield Coal Mines Limited, Papahaua Resource Limited, Rocky Mining Limited, TiGa Minerals and Metals Limited, and WMS Group (HQ) Limited and WMS Land Company Limited (dated 16 October 2023); and
 - (h) Ms Amy Young, Planner on behalf of the Director General of Conservation (dated 16 October 2023).
25. Following the receipt of the s42A Report and the Addendum to the s42A Report:
- (a) Transpower advised³ the substance of relief sought in evidence had been accepted by the Reporting Officer. Transpower also provided an Addendum to the evidence from Ms Whitney, which was tabled at the hearing.
 - (b) The New Zealand Defence Force (**NZDF**) advised⁴ it would not be attending the hearing and outlined areas of support and recommendations not supported in the s42A Report.
 - (c) BP Oil New Zealand, Mobil Oil New Zealand and Z Energy Limited ('the Fuel Companies') advised in a hearing statement⁵ that there was general agreement with majority of the recommendations. It noted the relief sought to Advice Note 2 of EW-R1 and EW-R2 had not been addressed in the s42A Report.
 - (d) Fire and Emergency New Zealand (**FENZ**) advised⁶ it would not be attending the hearing. FENZ confirmed the concerns raised would be addressed if temporary emergency service training activities were included in the definition of 'Temporary Activities'.

1.6. Right of Reply

26. Ms Belgrave provided Part 1 of the written Right of Reply (dated 29 November 2023) that included an updated Appendix 1 showing tracked changes to the notified provisions (Attachment 1), a response to matters raised in the hearing from Mr Wilson (Attachment 2), a legal memorandum from Wynn Williams (dated 23 November 2023, Attachment 3) and rules for mineral extraction activities in each zone (Attachment 4).
27. Ms Belgrave provided Part 2 of the written Right of Reply (dated 29 August 2024) which responded to questions raised in the hearing relating to ecological matters. It included an updated Appendix 1 showing further tracked changes to the notified provisions (Attachment

³ Letter from Rebecca Eng, Technical Lead – Policy, Transpower New Zealand Limited dated 14 November 2023.

⁴ Letter from Rebecca Davies, Principal Statutory Planner, Defence Estate and Infrastructure dated 13 November 2023.

⁵ Letter from Phil Brown, Senior Planner, 4Sight Consulting Ltd dated 7 November 2023.

⁶ Letter from Lydia Shirley, Planner, BECA dated 6 November 2023.

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1), a Report by Wildlands⁷ on the effects of lighting and temporary activities on indigenous species (Attachment 2A), an Addendum Report by Wildlands⁸ (Attachment 2B) and a response to the Wildlands Report by Mr Wilson (Attachment 3).

1.7. Procedural Steps and Issues

28. No procedural matters were raised at the hearing.

1.8. Site Visits

29. The Panel undertook site visits throughout the pTTPP process to inform the hearing.

PART B - STATUTORY REQUIREMENTS AND DOCUMENTS

30. General District Wide Matters is one section of seven sections located in Part 2 – District-Wide Matters – Te Wāhanga 2 – Ngā Kaupapa ā-Rohe Whānui. The section has objectives, policies and rules for general matters which apply across the districts. Earthworks, Light and Temporary Activities are three chapters of seven chapters within the General District Wide section of the Plan.
31. The Section 32 Report outlined the relevant statutory considerations applicable to Earthworks, Light and Temporary Activities; and the relationships between the sections of the RMA and higher order documents.
32. The section 42A Report highlighted the relevant matters from section 6, 7 and 8 of the RMA, the NZCPS, NPS-IB, NPS-HPL, NESETA, NESCS, NESTF, iwi management plans and the RPS.
33. RMA Schedule 1, clause 10 states that it is not necessary to provide decisions on individual submissions. Recommendations of the Panel are made within the scope of requested relief, either individual submissions or groups of submissions making similar requests, as specified in reasons for recommendation. References to relevant submissions are made in the footers.
34. The National Planning Standards mandatory directions 7.30, 7.32 and 7.37 require provisions relating to Earthworks, Light and Temporary Activities be located in the chapters within the General District Wide Matters section of the Plan. Mandatory direction 7.31 requires cross-referencing within the Earthworks Chapter to any provisions associated with mining, quarries and extraction in zone chapters. We are satisfied the Plan structure is consistent with this national direction.

⁷ 'Assessment of Lighting Effects on Threatened and Endangered West Coast Species' Contract Report No. 7158 by Wildlands dated April 2024

⁸ 'Assessment of Lighting Effects on Threatened and Endangered West Coast Species - Addendum' by Wildlands dated August 2024

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PART C – SUBMISSIONS, EVIDENCE, EVALUATION AND RECCOMENDATIONS

2. EARTHWORKS

2.1. EW General/Whole Chapter

Submissions and Further Submissions

35. Twenty submissions points and three further submission points relating to general matters or the whole EW chapter were summarised in a Table on pages 17-18 of the s42A Report. The Panel has considered the relevant submissions and further submissions received and adopts the summaries in the s42A Report.
36. In addition to these specific submission and further submission points, the Panel considers the implications of making Plan wide changes for consistency to replace the use of '*critical infrastructure*' with '*regionally significant infrastructure*' within the context of the EW Chapter.

Section 42A Report

37. Ms Belgrave did not support removing references to Overlay Chapters. She considered cross referencing could provide clarity to plan users and noted there was no guidance on this in the National Planning Standards. She did not support amendments to the definition of 'earthworks' to exclude mineral extraction activities given the definition used is from the National Planning Standards.
38. Ms Belgrave supported amending '*critical infrastructure*' to '*regionally significant infrastructure*' (**RSI**) on the basis the new term is consistent with the West Coast Regional Policy statement (**RPS**). She acknowledged this matter related to other topic hearings and that any decision in terms of the General District Wide Matters provisions would need to align with the decisions made on other topics.
39. Ms Belgrave did not support Transpower's request to provide all relevant earthwork rules in the EW Chapter given the Plan had been structured so all the overlay provisions are located in their respective District-Wide chapters and the generic district wide matters are contained within the General District-Wide Matters section. She supported using cross referencing for clarity.
40. Ms Belgrave supported minor amendments to the Overview to address submissions and improve clarity. These are set out below in the EW Overview section.

Hearing and Submitter Evidence/Statements

41. Mr Leckie's legal submissions for Bathurst highlighted the need to ensure the EW chapter provisions do not unintentionally undermine the objectives and policies in the Mineral Extraction Zone (**MINZ**) and the Buller Coalfield Zone (**BCZ**). He requested further amendments to explicitly make it clear which rules take precedence to avoid conflict and interpretation issues.

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42. Ms McKenzie for Birchfield Coal Mines Limited *et al.*⁹ highlighted the intent of RPS Objective 4.1 and Policy 4.1 were to enable resource use and development, while managing adverse effects. She noted the Earthwork provisions had been drafted to not capture mineral extraction and associated activities. She sought additional amendments to the Overview to make it clear the Earthwork provisions do not apply to mineral extraction.
43. Ms Whitney's evidence for Transpower confirmed it no longer sought the relocation of all earthwork provisions to the EW chapter based on the National Grid specific Rule EW-R7.
44. Mr Kennedy, for Westpower, noted the s42A Report had recommended accepting further submission (FS222.0312) regarding submission S560.314, however, it appeared the recommendation would reject the further submission in part. He clarified the intent of the further submission was to ensure the outcome did not extend regulatory controls beyond the intent of the Plan.
45. Mr and Mrs Coates for themselves and Nikau Deer Farm Limited considered the s32 Report evaluation was poor in terms of section 6 RMA matters. They requested removal of all section 6 matters and overlays from the Plan because this made it more restrictive to do earthworks and prune vegetation. They considered this was an erosion of their private property rights and the rules were impractical.

Reporting Officer Reply Evidence

46. Ms Belgrave agreed the additional amendments sought in planning evidence provided by Ms McKenzie improved clarity.
47. Ms Belgrave considered the use the term '*minimise*' as compared to using the RMA language '*avoid, remedy and mitigate*'. Overall, she considered use of '*avoid, remedy and mitigate*' in the policies and rules would provide increased flexibility and scope to ensure that appropriate action is considered and carried out when managing effects. However, in the context of the Overview, she considered replacing '*minimise*' with '*avoid remedy and mitigate*' would cause unnecessary complexity.
48. Ms Belgrave did not support use of '*effects management hierarchy*' (as requested by Ms Inta) given this would enable adverse effects to be offset and compensated and this is not appropriate with this context.
49. Ms Belgrave supported amending '*critical infrastructure*' to '*regionally significant infrastructure*' on the basis the new term is consistent with the West Coast Regional Policy statement (RPS). She acknowledged this matter related to other topic hearings and that any decision in terms of the General District Wide Matters provisions would need to align with the recommendations made on other topics.

Hearing Panel's Evaluation

⁹ Birchfield Coal Mines Limited, Papahaua Resource Limited, Rocky Mining Limited, TiGa Minerals and Metals Limited, and WMS Group (HQ) Limited and WMS Land Company Limited

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50. The Panel agree with Ms Belgrave that it is not appropriate to remove references to overlays or to remove all references to Sites and Areas of Significance to Māori (**SASM**) in the Earthworks chapter.
51. The Panel has considered the concerns raised by Mr and Mrs Coates regarding their loss of property rights and additional restrictions imposed by use of the Overlays to protect RMA section 6 matters of national importance. The Panel finds the identification and protection of areas of significant environmental value through use of the Overlays is appropriate to give effect to Part 2 of the RMA. The Panel are satisfied the EW provisions sufficiently enable the continuation of current land use activities, without unnecessary restrictions.
52. The Panel considers the section 32 evaluation provides sufficient analysis of existing regulation under the three operative district plans as compared to the proposed TTPP provisions to enable assessment of the scope of change. We have also considered the regulatory effect of the Regional Land and Water Plan with a view to being consistent and compatible with, while not to duplicating, regional rules.
53. The Panel considers use of the National Planning Standard definition for ‘earthworks’ is appropriate and recognise this includes mineral extraction. The Panel agrees with Ms Belgrave that it is not appropriate to amend the definition to exclude mineral extraction.
54. The Panel accepts Ms Belgrave’s recommendation to make further minor amendments to the Overview to make it clear the earthwork provisions do not apply to mineral extraction activities that are specifically provided for in the BCZ and MINZ zones.
55. The Panel notes while Bathurst was not included in the summary of submission points allocated to the EW Chapter in General Matters or the Overview section, we accept it did make general submission points to ensure consistency across the wider plan provisions to not restrict anticipated activities in the MINZ and BCZ.
56. The Panel notes Forest and Bird’s concern that the mapped overlay chapters relied on in the permitted activity rules do not include all areas of significant indigenous biodiversity, high natural character and margins of waterbodies; and therefore, these environmental values which require protection would not be considered relevant if not identified in the overlay chapters.
57. Ms Belgrave considered Forest & Bird’s concerns would be addressed by improving the clarity of the Overview wording. However, the Panel considers this is a valid concern given the rule wording relies on the identification of significant environmental values in overlays. This is considered further by the Panel in relation to the EW rules in the section below, and in other relevant Recommendation Reports.
58. The Panel is satisfied the recommended changes do not extend the regulatory controls beyond what was intended in the proposed Plan, which addresses the further submission point highlighted by Mr Kennedy for Westpower.
59. The Panel accepts the Plan wide recommendation to replace ‘*critical infrastructure*’ with ‘*regionally significant infrastructure*’ and this is considered on a case by case basis where it is used in the provisions below.

Hearing Panel’s Recommendation

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60. No changes to the provisions are required in relation to issues raised in submissions and further submission made on general matters or the whole EW Chapter.
61. The Panel's recommended changes to the EW Overview wording are set out in the below section.

2.2. EW Overview

Submissions and Further Submissions

62. Twelve submissions points and one further submission point relating to the Overview were summarised in a Table on pages 21-22 of the s42A Report. The Panel adopts these summaries and has considered the relevant submissions and further submissions.
63. All submission points sought amendments to include additional wording in the Overview, except one submission which supported the wording be retained as notified.

Section 42A Report

64. Ms Belgrave made recommendations on the individual submission and further submission points in Appendix 1 of the s42A Report. She supported minor amendments to the Overview wording to improve clarity and make it clear that the rules that apply to mineral extraction activities are located in the zone chapters of the Plan. She recommended the following amendments in paragraph 76 of the s42A Report:

Overview

Earthworks are usually an essential prerequisite for development. Earthworks are the physical works that modify land so that it can be used for living, business, and recreation purposes, farming and forestry and the construction and maintenance of infrastructure. The scope and scale of earthworks range from large bulk earthworks, which can alter the landform and its topography, to small and discrete areas of works most often associated with minor development.

*Earthworks can adversely affect amenity values (visual, dust nuisance, noise and traffic, **natural environment values (such as indigenous biodiversity, habitat, environmental quality and landscape)**) and result in changes to natural landforms. Earthworks can cause changes to the appearance and character of the neighbourhoods they are located in and can impact on people's experience of their environment.*

Other relevant Te Tai o Poutini Plan provisions

In addition to the provisions in this chapter, earthworks ~~and land disturbance~~ are also subject to additional provisions in some zone chapters and a number of Part 2: District-Wide Matters chapters, including:

- **District Wide Chapters – Energy, Infrastructure, and Natural Hazards Chapters have provisions relating to earthworks**
- **Overlay Chapters** - the Overlay Chapters have **earthworks** provisions in relation to Historic Heritage; Notable Trees; Sites and Areas of Significance to Māori; Ecosystems and Indigenous Biodiversity; Natural Features and Landscapes; Natural Character and Margins of Waterbodies; Natural Hazards; and the Coastal Environment. ~~Where earthworks are located within an overlay area (as identified in the planning maps) then the relevant overlay chapter provisions apply.~~

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- ***Earthworks Associated with Mineral Extraction - the rules that apply to mineral extraction activities are located in the Zone Chapters ~~have provisions in relation to mineral extraction and its ancillary activities including earthworks.~~***

65. Ms Belgrave also recommended similar changes to Rules EW-R1 and EW-R2 and an Advice Note to EW-R6, which are addressed below in the EW Rules section.
66. In response to our questions regarding Heritage New Zealand Pouhere Taonga (S140.042), Ms Belgrave agreed the additional sentence requested provided further clarity to plan users.

Hearing and Submitter Evidence/Statements

67. Ms McKenzie supported the recommended amendments in the s42A Report but sought the following additional amendments to the Overview:

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

68. Mr Leckie was supportive of the recommended amendments in the s42A Report but considered these amendments did not go far enough to clarify which plan provisions take precedence. He supported the wording proposed by Ms McKenzie.
69. Mr Kennedy, for Westpower, noted that submission point S547.456 was accepted in the s42A Report but that the recommendation changed the outcome sought in the submission. He clarified the intent was to ensure it was clear that there were earthworks provisions for activities in the vicinity of energy activities and infrastructure in the energy activities chapter. He remained of the view the wording sought by Westpower should be included in the amendment accepted by the s42A Reporting Officer.
70. Mr Kennedy also noted that the s42A Report did not include a recommendation on submission point S547.458, which sought to include a reference in the Overview section to the Strategic Objectives and Policies section.

Reporting Officer Reply Evidence

71. In the Addendum s42A Report, Ms Belgrave agreed with the additional amendments suggested by Ms McKenzie.
72. In response to questions, Ms Belgrave considered the recommended wording addressed the concerns of Mr Kennedy and made it clear that earthworks associated with energy activities are addressed in the Energy, Infrastructure and Transport (EIT) Chapter.

Hearing Panel's Evaluation

73. The Panel accepts that Ms Belgrave's recommended amendments to the Overview provide important clarifications for plan users.
74. The Panel is satisfied the recommended wording clarifies that the EIT Chapter addressed earthworks associated with energy activities and rejects submission point S547.456. The Panel also considers the Plan is clear that the Strategic Objectives and Policies are to be

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considered alongside the other relevant zone or overlay objectives and policies when assessing resource consents. The Panel rejects submission point S547.458.

75. The Panel accepts the additional sentence requested by Heritage New Zealand Pouhere Taonga (S140.042) which provides clarity that the Plan does not include identification of all archaeological sites.
76. The Panel also agrees with Ms McKenzie that some further wording is required to direct plan users to the zone provisions that apply to earthworks associated with mining, quarrying and gravel extraction. While terminology in the Planning Standards mandatory direction 7.31 describes these activities as '*mining, quarrying and gravel extraction*', the Panel adopt the description '*mineral extraction, mineral prospecting or mineral exploration*' as proposed by Ms McKenzie, which is terminology derived from the Crown Minerals Act 1991 and considered acceptable for the purposes of the Plan.

Hearing Panel's Recommendation

77. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submissions identified in the footnotes below are accepted or accepted in part, and recommends the following changes to the **Earthworks – Te Huke Whenua Overview**:

Earthworks can adversely affect amenity values (visual, dust nuisance, noise and traffic), **natural environment values (such as indigenous biodiversity, habitat, environmental quality and landscape)**¹⁰ and result in changes to natural landforms. Earthworks can cause changes to the appearance and character of the neighbourhoods they are located in and can impact on people's experience of their environment.

Other relevant Te Tai o Poutini Plan provisions

In addition to the provisions in this chapter, earthworks and land disturbance¹¹ are also subject to additional provisions in some zone chapters and a number of Part 2: District-Wide Matters chapters, including:

- **District Wide Chapters – Energy, Infrastructure, and Natural Hazards Chapters have provisions relating to earthworks.**¹²
- **Overlay Chapters** - the Overlay Chapters have **earthworks**¹³ provisions in relation to Historic Heritage; Notable Trees; Sites and Areas of Significance to Māori; Ecosystems and Indigenous Biodiversity; Natural Features and Landscapes; Natural Character and Margins of Waterbodies; Natural Hazards; and the Coastal Environment. ~~Where earthworks are located within an overlay area (as identified in the planning maps) then the relevant overlay chapter provisions apply.~~¹⁴
- **Earthworks Associated with Mineral Extraction** - the Zone **and Overlay** Chapters have provisions **which manage** mineral extraction and its ancillary activities. ~~including earthworks.~~ **The earthwork rules within this chapter do not apply to mineral extraction, mineral prospecting or mineral exploration.**¹⁵

¹⁰ Director General of Conservation S602.162

¹¹ Clause 16(2) of First Schedule of RMA.

¹² Westpower Limited S547.456

¹³ Clause 16(2) of First Schedule of RMA

¹⁴ Papahaua Resource Limited S500.032 and Rocky Mining Limited S474.048

¹⁵ Papahaua Resource Limited S500.032, Rocky Mining Limited S474.048 Birchfield Coal Mines Limited S601.005, William McLaughlin S567.005, BRM Developments Limited S603.005, Birchfield Ross Mining Limited S604.005, TiGa Minerals and Metals Limited S493.006, Phoenix Minerals Limited S606.005, New Zealand Carbon & Coal Limited S472.004 and Whyte Gold Limited S607.005

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Other relevant regulations

A number of other regulatory and non-regulatory methods also manage the effects of earthworks. For instance, certain earthworks carried out as part of building work are subject to the New Zealand Building Code and may require a building consent under the Building Act 2004 **and earthworks in the vicinity of electrical infrastructures are regulated under the New Zealand Code of Practice for Electrical Safe Distances (NZCEP 34:2001).**¹⁶

Earthworks and land disturbance¹⁷ affecting archaeological sites may also require authorisation under the Heritage New Zealand Pouhere Taonga Act 2014. The Heritage New Zealand Pouhere Taonga Act 2014 makes it unlawful for any person to modify or destroy, or cause to be modified or destroyed, the whole or any part of an archaeological site without the prior authority of Heritage New Zealand. **This is regardless of whether the site is scheduled in Tai o Poutini Plan or not, and is in addition to any resource consent obtained.**¹⁸ If you wish to do any work that may affect an archaeological site you must obtain an authority from Heritage New Zealand before you begin.

Earthworks may need additional resource consents from the West Coast Regional Council under the Regional Land and Water or Coastal Plans for the West Coast/Te Tai o Poutini, or under the National Environmental Standard for Freshwater 2020 including earthworks that may result in silt or sediment contamination of water or those which will affect wetlands.

Where earthworks associated with the removal of contaminated land and soil are undertaken, the provisions of the National Environmental Standard (NES) for Assessing and Managing Contaminants in Soil for Human Health will also apply.

The National Environmental Standard for ~~Commercial Plantation Forestry 2017~~ **Commercial Plantation Forestry 2017 Amendment Regulations 2023**¹⁹ regulates earthworks for plantation forestry and these rules do not apply to those works.

2.3. Earthworks Objective

Submissions and Further Submissions

78. Thirty-three submissions points and four further submission point relating to EW-O1 were summarised in a Table on pages 24-26 of the s42A Report. The Panel adopts these summaries and has considered the relevant submissions and further submissions.
79. Most submissions supported the retention of the objective as notified. Two opposed the objective and requested it be split into two objectives for protective and exploitative purposes. Four submissions sought amendments to wording.

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¹⁶ Westpower Limited S547.457

¹⁷ Clause 16(2) of First Schedule of RMA.

¹⁸ Heritage New Zealand Pouhere Taonga S140.042

¹⁹ First Schedule Clause 16(2) amendment to reflect the enactment of the Resource Management (National Environmental Standard for Commercial Forestry) Regulations 2023, which replaces the NES-PF.

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80. Ms Belgrave supported the addition of '*remedied*' but considered deletion of the word '*surrounding*' altered the intent of the objective.
81. Ms Belgrave highlighted the RMA definition of '*environment*' and noted this included '*natural and physical resources*'.
82. Ms Belgrave did not support splitting the enabling and protecting parts of the objective into two objectives.

Hearing and Submitter Evidence/Statements

83. Ms Young for the Director General of Conservation reiterated the need to delete the word '*surrounding*' from EW-O1 to ensure the management of adverse effects on the environment includes effects on the environment at the works site itself. She considered this was necessary given the policies that follow on from the objective.
84. Mr Kennedy, for Westpower supported the addition of '*remedied*'.
85. Ms Inta for herself and Buller Conservation Group sought to replace '*avoided and mitigated*' with reference to '*follow the adverse effects hierarchy*'. However, in response to questions, she agreed that offsetting and compensation was not appropriate in all cases.

Reporting Officer Reply Evidence

86. Having considered the evidence of Ms Young and the policies under EW-O1, Ms Belgrave agreed that deleting '*surrounding*' from EW-O1 was appropriate as it would achieve improved consistency with the EW policies. She noted the policies intended to manage adverse effects at a site as well as the surrounding area.
87. In considering Ms McKenzie's requested changes to EW-P1 (addressed below), Ms Belgrave considered a consequential amendment to EW-O1 was required to align the provisions to enable earthworks generally and manage all adverse effects, not just significant effects.
88. In response to our questions, Ms Belgrave also supported deleting '*that their*' as a minor correction to improve the language used. This was shown in the updated Appendix 1 of Part 2 of the Right of Reply.

Hearing Panel's Evaluation

89. The Panel accepts the reasoning set out in the s42A Report and agree that the definition of RMA '*environment*' is broad and includes natural and physical resources. The Panel agrees the changes recommended are appropriate and are consistent with the wording of the RMA.
90. The Panel agree the word '*surrounding*' is unclear and should be deleted, as requested by the Director General of Conservation and recommended in Appendix 1 of Part 2 of the Right of Reply.

Hearing Panel's Recommendation

91. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submissions identified in the footnotes below are

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accepted or accepted in part, and recommend the following changes to the **Earthworks Objectives**:

EW – O1	To provide for earthworks to facilitate subdivision, use and development of the West Coast/Te Tai o Poutini’s land resource, while ensuring that their ²⁰ adverse effects on the surrounding ²¹ environment are avoided, remedied ²² or mitigated.
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2.4. Earthworks Policies

Submissions and Further Submissions

92. Twenty-nine submissions points and one further submission point relating to **EW-P1** were summarised in a Table on pages 27-28 of the s42A Report. Nineteen submissions supported retention of the policy as notified. Eleven submissions requested wording amendments.
93. Twenty-three submissions points and one further submission point relating to **EW-P2** were summarised in a Table on pages 29-30 of the s42A Report. Fifteen submissions supported the policy be retained as notified. Seven submissions sought wording amendments.
94. Twenty-one submissions points relating to **EW-P3** were summarised in a Table on page 31 of the s42A Report. All the submissions supported the policy as notified, except for two submissions that sought the same correction to wording.
95. Twenty-three submissions points and one further submission point relating to **EW-P4** were summarised in a Table on pages 32-33 of the s42A Report. Twenty submissions supported retention of the policy as notified. Three submissions sought wording amendments.
96. The Panel has considered the relevant submissions and further submissions and adopts the summaries in the s42A Report.

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97. In relation to EW-P1, Ms Belgrave did not support the requested deletion of ‘*temporary and small scale*’ because she considered it sought to enable earthworks that would have only limited adverse effects on the environment.
98. Ms Belgrave supported replacing the term ‘*utilities*’ with ‘*infrastructure*’ in response to Westpower Limited’s request to add ‘*including energy activities and critical infrastructure*’. She noted ‘*utilities*’ was not defined in the pTTPP or RMA, but that ‘*infrastructure*’ was defined and includes electricity infrastructure.
99. Ms Belgrave did not support the request to change the order of EW-P1 and EW-P2 given there was no hierarchy, and all policies must be considered.
100. Ms Belgrave considered replacing ‘*significant*’ with ‘*no more than minor*’ was not necessary and was more appropriate within the policy framework.

²⁰ Clause 16(2) of First Schedule of RMA

²¹ Director General of Conservation S602.168

²² Silver Fern Farm S441.026, Westpower Limited S547.459 and Director General of Conservation S602.168

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101. In her Addendum, Ms Belgrave considered the use the term '*minimise*' instead of '*avoid, remedy or mitigate*' in the context of EW policies. She recommended EW-P2 be amended to replace '*minimise*' with '*avoid remedy and mitigate*'. However, we note this was not reflected in updated Appendix 1 of the Addendum to the s42A Report.
102. In relation to EW-P2, Ms Belgrave agreed with the request to delete '*water quality*' to avoid duplication with Regional Council functions.

Hearing and Submitter Evidence/Statements

103. Ms McKenzie sought amendments to EW-P1 to ensure that all forms of earthworks are enabled, not just temporary and small scale earthworks, to be consistent with the EW-O1 to enable earthworks generally and with the RPS. She considered the policy only provided 'narrow scope' and did not enable a range of earthworks, as envisioned by EW-O1.
104. Mr Kennedy, for Westpower, highlighted the importance of ensuring energy activities are included in the reference to '*infrastructure*' in EW-P1; and supported replacing '*minimise*' with '*avoid, remedy and mitigate*' in EW-P2 to be consistent with EW-O1.
105. At the hearing, Mr Kennedy questioned whether there was scope for deleting '*significant*' from EW-P1 and considered this changed the scope of the policy. However, he noted he supported deletion of '*temporary and small scale*' from EW-P1.
106. Ms Inta, on behalf of herself and the Buller Conservation Group, highlighted the requirement to avoid adverse effects on significant biodiversity. She supported replacing '*avoid, remedy and mitigate*' with '*the effects hierarchy*'. However, in response to questions, she preferred '*avoid, remedy and mitigate*' to use of '*minimise*', which she considered was meaningless.

Reporting Officer Reply Evidence

107. Having heard the evidence and undertaking further analysis, Ms Belgrave agreed that deleting '*temporary and small scale*' from policy EW-P1 was appropriate to enable earthworks more generally and to be consistent with EW-O1. She considered the deletion of '*significant*' was appropriate to require the management of all adverse effects.
108. Revised Appendix 1 of Part 2 of the Right of Reply recommended the following amendments to the EW policies:

EW – P1 Enable ~~temporary and small scale~~ earthworks for the subdivision, use and development of land, the provision of **infrastructure** utilities, and hazard mitigation, while managing those with the potential to create ~~significant~~ adverse effects.

EW – P2 Manage the effects of earthworks to ~~minimise~~ **avoid, remedy and mitigate** impacts on landscape character, amenity, natural features, ~~water quality~~, biodiversity, cultural and heritage sites and the quality of the environment.

EW – P3 Require the use of accidental discovery protocols to mitigate the potential risk ~~to~~ **of** earthworks to archaeological sites and sites of significance to Māori and archaeological sites that are not scheduled in the Plan.

109. No changes to EW-P4 were shown in the updated Appendix 1 of Part 2 of the Right of Reply.

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Hearing Panel's Evaluation

110. The Panel agrees with Ms Belgrave to delete '*temporary and small scale*' from EW-P1 to enable earthworks more generally and to be consistent with EW-O1.
111. The Panel also agree with Ms Belgrave that '*significant*' should be deleted from EW-P1 because the intent of the policy wording is to enable earthworks with minor adverse effects, as permitted activities. The Panel also agree with Forest and Bird that this should be replaced with '*more than minor*' to enable activities that have only minor or less than minor adverse effects on the environment. Without adding '*more than minor*', it would be all '*adverse effects*' without qualification.
112. In response to Mr Kennedy's view at the hearing regarding the scope to delete '*significant*', the Panel considers Forest & Bird's submission (S560.316) specifically requests this and its replacement with '*no more than minor*'.
113. The Panel considers replacement of '*utilities*' with '*infrastructure*' is appropriate and that this addresses the concerns raised by Westpower Limited regarding the inclusion of energy activities and critical infrastructure.
114. The Panel accepts there is no hierarchy in the policies and that all relevant policies must be considered. For this reason, there is no need to re-order the policies.
115. The Panel agrees with Ms Belgrave that EW-P2 should be amended to replace '*minimise*' with '*avoid remedy or mitigate*' given there are circumstances where adverse effects must be avoided to protect significant environmental values and to give effect to Part 2 of the Act. Similarly, it does not recognise the national direction to '*avoid, remedy or mitigate*' significant effects on other environmental values.
116. The Panel notes the submission from Forest & Bird seeks to ensure adverse effects on biodiversity are managed in accordance with the ECO Chapter and the NFL Chapter, and not to a 'lesser standard'. We agree this consistency across the chapters is critical to give effect to section 6, 7 and 8 matters. The Forest & Bird submission gives the Panel scope to insert words '*natural*', '*values*' and '*indigenous*' to make the wording consistent with the ECO and NFL Chapters.
117. The Panel also consider the wording would be clearer and consistent with the statutory requirements if '*impacts*' is replaced with '*adverse effects*'. The Panel is satisfied this more precise language does not change the intent of the policy and clarifies that only adverse impacts must be managed and not all impacts.
118. The Panel notes the language used in EW-P2 is not consistent with the language used in the RMA and the higher order documents by using '*landscape character*'. The Panel considers this should be corrected to '*landscape, natural character*' to align with Part 2 of the RMA. The Panel is satisfied this does not change the intent of EW-P2.
119. The Panel notes that EW-P4 uses '*critical infrastructure*' but that this was not addressed by Ms Belgrave. In the context of its use in EW-P4, we consider this should be amended to '*regionally significant infrastructure*' as a consequential amendment to ensure consistency across the wider plan provisions.

Hearing Panel's Recommendation

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120. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submissions identified in the footnotes below are accepted or accepted in part, and recommends the following changes to the **Earthworks Policies**:

EW - P1	Enable temporary and small scale ²³ earthworks for the subdivision, use and development of land, the provision of infrastructure utilities ²⁴ , and hazard mitigation, while managing those with the potential to create significant more than minor ²⁵ adverse effects.
EW – P2	Manage the adverse ²⁶ effects of earthworks to minimise impacts ²⁷ on natural ²⁸ landscape values, natural ²⁹ character, amenity values , ³⁰ natural features, water quality , ³¹ indigenous ³² biodiversity, cultural and heritage sites items and areas ³³ , and the quality of the environment to avoid, remedy or mitigate adverse effects, as appropriate . ³⁴
EW – P3	Require the use of accidental discovery protocols to mitigate the potential risk to of ³⁵ earthworks to archaeological sites and sites of significance to Māori and archaeological sites that are not scheduled in the Plan.
EW – P4	Protect critical infrastructure regionally significant infrastructure ³⁶ and natural hazard defences from the adverse effects of earthworks.

2.5. Earthworks Rules

Submissions and Further Submissions

121. Thirty-nine submissions points and four further submission points relating to **EW-R1** were summarised in a Table on pages 37-40 of the s42A Report. Ten submissions supported the rule as notified. Twenty submissions sought changes to the rule, standards and advice note wording.
122. Forty-one submissions points and nine further submission points relating to **EW-R2** were summarised in a Table on pages 42-45 of the s42A Report. Five submissions supported the rule as notified. Most submissions sought amendments to provide more clarity and to be more enabling of development. Two submission sought deletion of the rule.

²³ Birchfield Coal Mines Limited S601.062, BRM Developments Limited S603.040, Birchfield Ross Mining Limited S604.055 Papahaua Resource Limited, Rocky Mining Limited, TiGa Minerals and Metals Limited S493.076, WMS Group (HQ) Limited and WMS Land Company Limited S599.081, Phoenix Minerals Limited S606.041 and Whyte Gold Limited S607.039

²⁴ Westpower Limited S547.460

²⁵ Royal Forest and Bird Protection Society of New Zealand Incorporated S560.316

²⁶ Royal Forest and Bird Protection Society of New Zealand Incorporated S560.588

²⁷ Royal Forest and Bird Protection Society of New Zealand Incorporated S560.317

²⁸ Royal Forest and Bird Protection Society of New Zealand Incorporated S560.588

²⁹ Royal Forest and Bird Protection Society of New Zealand Incorporated S560.588

³⁰ Royal Forest and Bird Protection Society of New Zealand Incorporated S560.588

³¹ Westpower Limited S547.461

³² Royal Forest and Bird Protection Society of New Zealand Incorporated S560.588

³³ Consequential amendment arising from recommendations on the Historic Heritage Chapter

³⁴ Royal Forest and Bird Protection Society of New Zealand Incorporated S560.317

³⁵ Silver Fern Farms S441.027 and Director General of Conservation S602.169

³⁶ Consequential amendment under Clause 16(2) of First Schedule of RMA

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123. Thirty-nine submissions points and four further submission points relating to **EW-R3** were summarised in a Table on pages 49-51 of the s42A Report. Seven submissions supported the rule as notified. Most submissions sought amendments to provide more clarity and to be more enabling of development.
124. Eighteen submissions points and three further submission points relating to **EW-R4** were summarised in a Table on pages 53-54 of the s42A Report. Four submissions supported the rule as notified. Majority of submissions sought wording amendments.
125. Six submissions points and one further submission point relating to **EW-R5** were summarised in a Table on pages 54-55 of the s42A Report. Three submissions supported the rule as notified. Three sought wording changes.
126. Twenty-four submissions points relating to **EW-R6** were summarised in a Table on pages 55-56 of the s42A Report. Fifteen submissions supported the rule as notified. Eight submissions sought deletion of the rule.
127. Twenty-five submissions points and seven further submission points relating to **EW-R7** were summarised in a Table on pages 57-59 of the s42A Report. Sixteen submissions supported the rule as notified. The remaining submissions sought wording amendments.
128. Twenty-eight submissions points and five further submission points relating to **EW-R8** were summarised in a Table on pages 62-64 of the s42A Report. Fourteen submissions supported the rule as notified. Nine submissions sought wording amendments.
129. Twenty-eight submissions points and five further submission points relating to **EW-R8** were summarised in a Table on pages 62-64 of the s42A Report. Fourteen submissions supported the rule as notified. Nine submissions sought wording amendments.
130. The Panel adopts these summaries and has considered the relevant submissions and further submissions.

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131. In relation to **EW-R1**, Ms Belgrave did not support providing an exemption for piles, or the removal or reduction of the 1.5 m cut height without further justification. She did not support an additional advice note stating that the rule did not apply to mineral activities given other amendments addressed this. She noted the pTTPP definition for 'clean fill' did not include vegetative matter and therefore she did not support any exemption for vegetative matter, as requested.
132. Ms Belgrave supported additional clauses (d) and (e) sought by Westpower in EW-R1 but not the deletion of clauses (3) and (4) given these did not duplicate the West Coast Regional Land and Water Plan (RLWP) and gave effect to the NPS-FM.
133. Ms Belgrave did not support the request to add a standard to EW-R1 to ensure that any vegetation clearance complied with the rules in the Ecosystems and Indigenous Biodiversity Chapter given the cross referencing in the EW Overview.
134. Ms Belgrave supported a number of amendments requested by the Fuel Companies to improve clarity but did not support inclusion of an exemption for maintenance, removal or replacement of underground petroleum storage tanks. She noted the Resource

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Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NESCS**) applies to such activities and provides for excavation of up to 30m³ of each as a permitted activity.

135. In relation to **EW-R2**, Ms Belgrave did not support deleting the rule or its replacement with the operative rule from the Grey District Plan. She also did not support removal of the requirement in EW-R2(2)(g) for hazard mitigation structures to be constructed by a statutory agency or authorised contractors.
136. Transpower’s original submission sought to amend EW-R2 and EW-R7 to exclude earthworks within the National Grid Yard and to provide a standalone rule for earthworks and vertical holes. Ms Belgrave recommended deleting notified EW-R7 and inserting new permitted activity rule EW-RX based on the new rule wording proposed by Transpower but with a restricted discretionary activity status where compliance is not achieved rather than the non-complying default status proposed by Transpower.
137. However, in her Addendum to the s42A Report in response to Ms Whitney’s planning evidence for Transpower, Ms Belgrave agreed that a change from a restricted discretionary to non-complying activity status, where compliance is not achieved, was appropriate for new rule EW-RX. She considered this would be consistent with the direction of EW-P4 to ‘protect’ critical infrastructure. She also agreed with Ms Whitney’s requested amendments to EW-RX to improve consistency and to widen the scope of exemptions include ‘*vertical holes*’ and the repair and resealing of ‘*footpaths and driveways*’.
138. In her Addendum, Ms Belgrave agreed with Ms Styles’ request to reinstate ‘*earthworks*’ to the rules and remove her recommended change to ‘*land disturbance*’ given new EW-RX now addressed cultivation. She noted this also result in a consequential change to the Overview by removing reference to ‘*land disturbance*’.
139. Further minor amendments were recommended in her Addendum Report to reflect her revised recommendation and were recorded in updated Appendix 1 as follows:

EW-RX Earthworks and vertical holes within the National Grid Yard

Activity Status: Permitted

Where:

1. Earthworks and vertical holes do not:

- a. Exceed 300mm in depth within 6m of the outer visible edge of a National Grid support structure;*
- b. Exceed 3m in depth between 6m and 12m of the outer visible edge of a National Grid support structure;*
- c. Result in a reduction of the ground to conductor clearance distances as required in Table 4 of the New Zealand Electrical Code of Practice for Electrical Safe Distances 34:2001;*
- d. Compromise the stability of any National Grid support structures; and e. Result in the loss of vehicular access to a National Grid support structure.*
- e. Result in the loss of vehicular access to a National Grid support structure.*

*2. Earthworks and vertical holes for the following activities are exempt from compliance with EW-RX.1(a) **to (d) and (b):***

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- a. Earthworks or vertical holes, excluding mining and quarrying, that are undertaken by a network utility operator as defined by the Resource Management Act 1991;
- b. Agricultural or domestic cultivation;
- c. The repair, sealing or resealing of a vehicle access, ~~or~~ farm track **footpath or driveway**;
- d. Vertical holes not exceeding 500mm in diameter that are more than 1.5m from the outer edge of a National Grid pole or stay wire, or are a post hole for a farm fence or horticulture structure more than 6m from the visible outer edge of a National Grid tower foundation; and
- e. ~~Any other earthwork or land disturbance activities~~ **Earthworks and vertical holes** subject to a dispensation from Transpower under New Zealand NZECP 34:2001.

Activity status: ~~Restricted-Discretionary~~ **Non-complying**

Notification

1. An application under this rule is precluded from being publicly notified in accordance with section 95A of the RMA. When deciding whether any person is affected in relation to this rule for the purposes of section 95E of the RMA, the Council will give specific consideration to any adverse effects on Transpower New Zealand Limited.

140. In relation to **EW-R3**, Ms Belgrave did not support the changes sought by Manawa given the pTTPP definition of 'Energy Activity' includes renewable energy generation and 'regionally significant infrastructure' was included in EW-R2(2)(d). She considered a limit of 500m² was appropriate given it did not include cultivation and in recognition of the stated role of the RLZ. She did not support inclusion of the earthworks associated with a lawfully established activity given these may have adverse effects that need to be managed.
141. Ms Belgrave recommended an additional clause RW-R3(2)(ii), as sought by Forest and Bird (S560.320), to include limits in the NOSZ and considered this was consistent with EW-R4. She noted this was opposed in further submissions by Westpower on the basis it would impose additional regulation on energy activities. However, she considered the potential for adverse effects from earthworks in the NOSZ should be managed through an appropriate limit and noted the limit proposed by the submitter was consistent with EW-R4.
142. In relation to **EW-R4**, Ms Belgrave did not support any increases to the maximum volumes and considered the limit of 250m² per site was appropriate for Residential, Neighbourhood Centre and Settlement Zones and their minimum lot size. She recommended EW-R4 be retained as notified.
143. Similarly, in relation to **EW-R5**, Ms Belgrave did not support any increases to the maximum volumes or reference to 'Infrastructure Activity'. She recommended EW-R5 be retained as notified.
144. In relation to **EW-R6**, Ms Belgrave noted the BCZ and MINZ rules do not include provisions for earthworks and therefore rejected submissions to delete the rule. She recommended the rule be retained as notified.
145. As noted above, Ms Belgrave recommended **EW-R7** be deleted and replaced with EW-RX for earthworks within the National Grid Yard.
146. In relation to **EW-R8**, Ms Belgrave recommended changes to clause (a) and (b) in response to Manawa and the Buller Conservation Group. She did not support the relief sought by Westpower regarding including 'energy activities and infrastructure' in clause (g), or Forest

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and Bird's request to include a new clause for vegetation clearance. She did not support inclusion of 'Poutini Ngāi Tahu values' in clause (e) without further evidence providing clarity on what this would require.

147. In her Addendum, Ms Belgrave acknowledged Ms Styles' evidence regarding removing any duplication in clauses (a) and (h) of Rule EW-R8 and the error regarding this relief sought in the Summary of Submissions Requested. She recommended 'visual' be deleted from clause (a) to refer to 'amenity' broadly.

Hearing and Submitter Evidence/Statements

148. Poutini Ngāi Tahu sought inclusion of a matter of discretion for consideration of 'Poutini Ngāi Tahu values' for the restricted discretionary and controlled activity rules in the EW chapter. Ms Lynch's evidence highlighted the distinctive cultural context, the way Poutini Ngāi Tahu think about and respond to resource management issues in their takiwā. She noted this cultural context reflected the holistic nature of how Poutini Ngāi Tahu considered resource management and why individual values cannot be considered in isolation of each other in their world view given their interconnectedness.
149. Ms Lynch considered inclusion of 'Poutini Ngāi Tahu values' as a matter of discretion gives effect to sections 6(e), 7(a) and 8 of the RMA and the relevant objectives and policies of the RPS. She noted that not including this would mean that Poutini Ngāi Tahu values could not be taken into account when making decisions on restricted discretionary activities.
150. Mr Leckie for Bathurst requested the following advice note be added to EW-R1(2) to clarify that if a Mineral Extraction Plan has been prepared, EW-R1(2) would not apply to mining activities:
- Clause 2 does not apply to mining activities in the BCZ, MINZ, General Rural Zones or Open Space Zone where a Mineral Extraction Plan is prepared in accordance with Appendix Seven.
151. Mr Leckie considered the recommended amendments in the s42A Report partially addressed Bathurst's concerns (i.e. by inserting 'importing' fill) but that cross referencing without explicitly excluding earthworks for mineral extraction activities would not avoid ambiguity,
152. Ms McKenzie for Birchfield Coal Mines Limited *et al.* sought amendments to rules EW-R1, EW-R2, EW-R4 and EW-R8 to include wording specifically excluding mineral extraction, exploration and prospecting.
153. In her Addendum, Ms Whitney confirmed Transpower's support for the recommended amendments to the rules EW-R2, EW-R7 and provision of new Rule EW-RX. However, she requested EW-RX(2) be amended from '(a) to (d)' to '(a) to (e)'
154. Ms Styles, for Manawa, requested amendments to EW-R3 to remove overlaps with EW-R2. She noted the summary of Manawa's submission on EW-R8 did not cover the entire submission point and the changes sought.
155. Ms Leveson, for Horticulture New Zealand ('Hort NZ'), sought amendments to EW-RX(2)(b) to replace 'agricultural or domestic cultivation' with 'ancillary earthworks' to include horticulture activities. She also sought to change the reference to 'Transpower New Zealand' to the consideration of adverse effects on the National Grid.

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156. Mr Kennedy, for Westpower, requested an increase in the permitted depth or height of earthworks to 2m in RW-R1 to enable earth bunds for landscaping and screening in relation to energy activities, which is consistent with the permitted height for a fence or wall. He noted that 2m was consistent with other permitted activities. He supported replacing 'minimise' with 'avoid, remedy and mitigate' in EW-R8.
157. Mr Kennedy sought to replace 'Network Utility Operation' with 'Infrastructure Activity' in rules EW-R3, EW-R4 and EW-R5 to be consistent with sections in the EIT Chapters of the Plan. He emphasised the importance of consistency and connections of the provisions with other chapters of the Plan.
158. The Fuel Companies tabled hearing statement sought clarification from the Reporting Officer whether the general earthworks provisions would apply in addition to the NESCS. It stated the earthworks rules would duplicate and add stricter controls. It noted the following amendment sought to Advice Note 2 of EW-R1 and EW-R2 had not been addressed in the s42A Report:
 2. *Earthworks undertaken in areas of contaminated land are subject to the Rules in the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health **and not to this rule.***
159. In its original submission, the Fuel Companies sought the replacement of 'avoid' in EW-R1(3) with 'minimise', which was rejected in the s42A Report. The Fuel Companies responded to this seeking 'avoid where practicable, otherwise minimise'.
160. The Fuel Companies also sought a definition for 'land disturbance' that was consistent with the National Planning Standards definition to assist in providing a permitted pathway for temporary land disturbance activities that do not change the contour of the land.
161. Ms Nyhan sought simplification of EW-R1 to remove duplication with the requirements of the Greymouth Earthworks Control Area under the RLWP to establish or extend a residential dwelling and maintain access roads on land subdivided for that intention, such as at Port Elizabeth Heights. She also sought clarification whether EW-R1 would be required to be complied with where the contiguous land parcels were owned by the same people. She considered the 500m² limit for land clearance in EW-R2 was unduly prohibitive and considered it should be increase to 1,000m² or 10% of the total useable land. She noted another option would be to exempt subdivision in the Rural Lifestyle Zone (RLZ), which existed before notification of the TTPP.
162. Mr Kennedy, on behalf of himself, requested the addition of 'land drainage' to EW-RX(2)(b).
163. Ms Inta, for herself and the Buller Conservation Group, highlighted use of the term 'site' in the rules and the need to define this and to be more specific as to what was intended and questioned whether 'site' meant a land title parcel. She highlighted the use of the term 'site' in EW-R3 and EW-R4 and requested the words 'or 10% whichever is the greater' be added to both rules. She noted that in terms of EW-R3(2)(i) that 500m² could be a large proportion of a small site.

Reporting Officer Reply Evidence

164. Ms Belgrave agreed with Mr Leckie and Ms McKenzie that further amendments could be made to clarify the provisions did not apply to mineral extraction, exploration and

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- prospecting. She recommended the addition of an additional clause to EW-R1, EW-R2, EW-R3 and EW-R4.
165. Ms Belgrave recommended including a maximum threshold for earthworks within the Natural Open Space Zone (**NOSZ**) and an amended new rule EW-RX to manage earthworks in the National Grid Yard. She highlighted the outstanding issues related to the appropriate permitted quantity and depth of earthworks and replacement of *'critical infrastructure'* with *'regionally significant infrastructure'*.
166. The legal opinion from Wynn Williams³⁷ considered whether including the proposed amended wording was lawful in the context of the legal requirements for permitted activity rules. It concluded such a requirement would provide discretion to the Rūnanga to determine whether the activity is permitted, thereby reserving discretion to a third party.
167. Wynn Williams considered it could be possible to devise a rule that meets the requirements of a permitted activity rule by including a *'certification element'* but that this would be novel and relatively untested, with some risk of challenge.
168. Having heard the evidence of Ms Lynch and considered the legal submissions for Poutini Ngāi Tahu³⁸, Ms Belgrave retained concerns that the wording sought would increase the complexity and cost of resource consents for restricted discretionary and controlled activities. She considered the additional costs would not be commensurate to the potential effects of activities relating to earthworks, light or temporary activities where no other resource consents are required due to the inherent scale and nature of these activities and potential environmental effects.
169. Ms Belgrave noted the inclusion of *'Poutini Ngāi Tahu values'* was relatively broad and as a matter of control or discretion would reduce certainty to plan users otherwise afforded by a controlled or restricted discretionary activity status. She did not consider the inclusion of *'significant adverse effects'* as suggested in Poutini Ngāi Tahu's legal submissions would limit its application given input from Poutini Ngāi Tahu would be needed to determine the scale of adverse effect for all consent applications.
170. In response to our questions regarding the potential to reference particular Māori values, Ms Belgrave was supportive of the inclusion of *'mahinga kai species'* under matters of control which refer to indigenous flora and fauna in EW-R8(h). She had reservations about including *'taonga'* and *'mauri'* given a lack of accurate assessment on these values from Poutini Ngāi Tahu.
171. In response to Hort NZ, Ms Belgrave noted the wording used in new EW-RX(2)(b) was relocated from notified wording in rule EW-R2(2)(i)(B). She noted Hort NZ had supported the provision for cultivation in the National Grid Yard under EW-R2(2)(i) and had sought this be retained. On this basis, she considered Ms Leveson's request to amend the wording was out of scope of the original submission. However, she did not support the wording replacement sought as it would enable larger scale and frequency earthworks at could potentially affect the functioning and safety of the National Grid. She also did not support removing reference

³⁷ Memorandum from Ms Lucy de Latour, Wynn Williams dated 23 November 2023 (Attachment 4, s42A Author Right of Reply Part 1 dated 29 November 2023).

³⁸ Legal Submissions on behalf of Te Rūnanga O Ngāti Waewae, Te Rūnanga O Makaawhio and Te Rūnanga O Ngāi Tahu (Submitter 620 and Further Submission FS41) 13 November 2023 by Sarah Scott and Katherine Viskovic

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to *'Transpower New Zealand Limited'* in the Notification part of EW-RX given the relevant s95E consideration was the ability of Transpower to operate and maintain the National Grid.

172. In response to Manawa, Ms Belgrave considered both EW-R2 and EW-R3 were necessary given EW-R3 contains additional standards for earthworks within more sensitive environments. She reconsidered the addition of *'on surrounding land use'* to EW-R8(b) and recommended this was not included given it needed to include the site itself.
173. Ms Belgrave clarified the National Planning Standards definition for *'earthworks'* and *'land disturbance'* and concluded based on this that land disturbance was a subset of earthworks. She recommended using earthworks in the instances where *'earthworks and land disturbance'* was used in the Plan.
174. Ms Belgrave clarified EW-R1 would be applicable at contiguous boundaries under the same ownership and was necessary to manage land stability effects at site boundaries given the steep topography. She considered the 1.5m depth or height limit was an appropriate threshold to require an assessment of land stability effects as a restricted discretionary activity under EW-R8. She noted the RLWP was to manage the discharge of contaminants in sediment laden water associated with earth work activities, whereas the pTTPP manages land stability effects more generally and visual amenity.
175. Similarly, Ms Belgrave did not support increasing the 1.5m depth or height limit to 2m to allow for earth bunds given the potential for additional adverse effects from their bulk and width compared to a fence or wall.
176. Ms Belgrave agreed with the amendments to EW-R1(3) sought by the Fuel Companies to delete *'put in place'* and to add *'designed, installed and maintained for the duration of earthworks'* but did not support inserting *'avoid where practicable, otherwise minimise'*. She considered use of *'designed, installed and maintained until earthworks are completed'* was clearer.
177. In response to Westpower, Ms Belgrave reviewed the relevant rule for earthworks under the operative Grey District Plan. She considered the exclusions under Rule 16.7 4A, 17.7 4A and 18.7 4A were similar to those proposed under EW-RX.
178. Ms Belgrave considered the wording change sought by Westpower to EW-R3 should be considered within the wider context of the Plan and should be consistent. She recommended using *'regionally significant infrastructure'* if this was adopted throughout the Plan and considered this would include *'infrastructure activity'* as requested.
179. Ms Belgrave did not support replacing *'minimise'* with *'avoid, remedy and mitigate'* in EW-R8(d) given it refers to *'management or mitigation measures'*.

Hearing Panel's Evaluation

180. The Panel generally agree with Ms Belgrave's analysis of submissions and recommended changes to the rules.
181. The Panel agree with Ms Belgrave that *'land disturbance'* is a subset of *'earthworks'* given the National Planning Standards definitions and there is no need to reference both given the rule framework provides a permitted activity pathway for earthworks, including where the land contour is not changed.

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182. The Panel accept the recommended addition of clause EW-R1(1)(f) but have replaced '*critical infrastructure*' with '*regionally significant infrastructure*' for consistency with the wider Plan provisions. A similar change was requested by Manawa to EW-R2(2)(d) and was accepted by Ms Belgrave but was not included in the Appendix 1 of Part 2 of the Right of Reply. The Panel considers the replacements are appropriate for Plan-wide consistency.
183. The Panel agrees that Ms Belgrave's recommendation to replace '*Network Utility Operation*' with '*Regionally Significant Infrastructure*' in EW-R3, EW-R4 and EW-R6 is also appropriate and consistent with the wider Plan provisions; and meets the concerns raised by Westpower to use '*infrastructure activity*'.
184. The Panel considers minor amendments to the wording of EW-R2 are appropriate to remove '*These are*' from sub clauses (a) to (e) as notified to remove repetition with clause (2) '*These earthworks are*'. This is a minor reword from Ms Belgrave's Appendix 1 of Part 1 of the Right of Reply.
185. The Panel accepts Ms Belgrave's recommendation to not remove the requirement in EW-R2(2)(g) for hazard mitigation structures to be constructed by a statutory agency or authorised contractors. The Panel agrees that this provides for appropriate design and engineering, and oversight to ensure hazard risks are not exacerbated elsewhere. The Panel considers the meaning of '*statutory agency or their authorised contractors*' is sufficiently clear in this context but recommend '*statutory agency or authorised contractor acting on its behalf*' clarifies the statutory agency is in control and is used elsewhere in the Plan.
186. The Panel agrees with Ms Belgrave that there is insufficient information on the potential nature and scale of environmental effects from maintenance, removal or replacement of underground petroleum storage tanks to provide for an exemption. The Panel notes the NESCS standards have limited overlap with the permitted activity standards in EW-R1 and EW-R2.
187. The Panel considers the amendment sought by the Fuel Companies to EW-R1(3) would introduce uncertainty and is inappropriate given sediment runoff discharges to stormwater systems and waterbodies should be avoided during earthworks.
188. The Panel agrees with Ms Belgrave that the EW rules do not duplicate the RLWP requirements and are appropriately focussed on land stability issues. The Panel considers a threshold of 500m² per site in any 12-month period within the RLZ (under EW-R3) is sufficiently enabling to establish and maintain building platforms and access roads. The Panel also agree that the construction of 2m high earth bunds may have greater adverse effects than a fence and are not the option to achieve screening without an assessment of environmental effects.
189. The Panel accepts Ms Belgrave's recommended new clause EW-R3(2)(ii) but consider this should be included as new clause with a consequential amendment to include reference to the new standard where compliance is not achieved.
190. The Panel generally accepts Ms Belgrave's recommended wording of new EW-RX in her reply evidence. However, we note Ms Whitney requested EW-RX(2) be amended from '*(a) to (d)*' to '*(a) to (e)*' and that this was not reflected in Appendix 1 of the reply evidence. We recommend this change below. The Panel does not agree with Mr Kennedy's request to add '*land drainage*' to EW-RX(2)(b) given the intent is to enable cultivation.

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191. The Panel agree with Ms Belgrave that the request by Ms Leveson for the Hort NZ to replace *'agriculture'* with *'ancillary rural earthworks'* is out of scope given it supported retention of the wording of EW-R2 in its original submission. However, given that part of EW-R2 has been relocated into new rule EW-RX, we have considered the submitter's view on the appropriate wording of the new rule. The Panel finds replacing *'agriculture'* with *'ancillary rural earthworks'* would increase uncertainty and the scope beyond cultivation, which is defined in the National Planning Standards. However, the Panel agree with Ms Leveson that it would be appropriate to replace *'Transpower New Zealand'* with *'the operator of the National Grid'* to avoid the need for a plan change process if there was a name change to Transpower or change in operator. The Panel notes this language is consistent with Policy 11 of the NPSET.
192. The Panel is satisfied EW-RX gives effect to the NPSET by managing activities within the National Grid Yard to avoid reverse sensitivity effects on the electricity transmission network and ensure it is not compromised (NPSET Policy 10). The notification clause gives effect to Policy 11 by requiring consultation with the network operator; and the default non-complying activity status is appropriate to avoid more than minor adverse effects on the electricity transmission network.
193. The Panel has considered the addition of *'Poutini Ngāi Tahu values'* as a matter of discretion for the remaining discretionary activity rule EW-R8. The Panel notes that clause (h) includes *'cultural and heritage sites'* and agrees with Ms Belgrave that adding *'including mahinga kai species'* is appropriate. The Panel notes this matter is considered further in other recommendations including the EIT Chapter and the s32AA provided there by Ms Pull on behalf Poutini Ngāi Tahu is accepted.
194. Buller Conservation Group and Frida Inta sought *'per site or 10% whichever is the greater'* be added to EW- R3. The submitters also sought the addition of *'or lower'* to EW-R8(e), which was not specifically considered in the s42A Report. The Panel accepts the addition of *'or lower'* is appropriate as any change in the water table should be assessed. Given the 500m² limit only applies to the Rural Lifestyle Zone, the Panel considers restricting earthworks to 10% of a site is probably unnecessary given the minimum lot size is 1 ha. The Panel is satisfied that the term *'site'* is clearly defined in the Plan.
195. The Panel notes Forest and Bird sought replacement of the reference to *'overlay'* in Rules EW-R3 and EW-R4 based on concerns that significant environmental values have not been identified in overlays. Westpower opposed this in further submissions and noted this issue had not been analysed in the s42A Report. The Panel note this issue was considered in the ECO Chapter hearing and is satisfied this issue has been adequately addressed.
196. The Panel notes that EW-R4(4)(a) allows up to 250m² of land disturbance in any 12-month period and clause (c) up to a maximum change in the existing ground level of 1m (c)). However, the maximum amount of material to be transported offsite is 200m³ in any 12-month period (clause (b)). The Panel considers this is an error and that EW-R4 should allow a maximum of 250m³ in clause (b) taking into account the limits in clauses (a) and (c). The Panel notes this also applies to EW-R3(2)(ii) and the same correction is recommended.
197. The Panel agrees with Mr Kennedy, for Westpower, that replacing *'minimise'* with *'avoid, remedy and mitigate'* in EW-R8(d) is appropriate given it refers to *'the effectiveness of proposed management or mitigation measures'* and the RMA section 17 duty to avoid, remedy or mitigate adverse effects.

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198. The Panel notes the evidence of Ms Styles that Manawa also requested deletion of 'landscape, amenity' in EW-R8(h) to remove duplication with clause (a), which was not addressed in the s42A Report. However, Ms Belgrave addressed this in the Addendum and again in Part 1 of her Right of Reply.
199. The Panel accepts with Ms Belgrave recommendations in Appendix 1 of Part 1 of the Right of Reply, with the minor amendments outlined above, with the exception that the Panel does not agree that EW-R6 is required in the BCZ or MINZ given the suite of rules recommended for those zones. In particular, the Panel does not agree with Ms Belgrave that the rules in those zones do not manage earthworks, as they have a central purpose of managing large scale earthworks associated with mineral extraction activities. We also recommend adding new non-complying activity Rule EW-R9 for earthworks and vertical holes within the National Grid Yard not complying with the new permitted activity Rule EW-7, as a consequential amendment.

Hearing Panel's Recommendation

200. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submissions identified in the footnotes below are accepted or accepted in part, and recommend the following changes to the **Earthworks Rules**:

Earthworks Rules	
Note: There may be a number of Plan provisions that apply to an activity, building, structure and site. In some cases, consent may be required under rules in this Chapter as well as rules in other Chapters in the Plan. In those cases, unless otherwise specifically stated in a rule, consent is required under each of those identified rules. Details of the steps Plan users should take to determine the status of an activity are provided in General Approach.	
Permitted Activities	
EW - R1	Earthworks General Standards
All Permitted activities must comply with the following relevant standards:	
1. Earthworks must not exceed a maximum depth or height above ground level of 1.5m measured vertically within 1.5m of a boundary except where these are undertaken by a network utility operator for the purpose of:	
a. Pole foundations;	
b. Backfilled trenches; or	
c. Installation of services by trenchless methods such as directional drilling;	
d. <u>Installation of underground equipment as part of the electricity supply or distribution network;</u> ³⁹	
e. <u>Achieving safe separation between conductors and the ground;</u> or ⁴⁰	

³⁹ Westpower Limited S547.466

⁴⁰ Westpower Limited S547.467

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- f. **Stockpiles required for network utility or regionally significant infrastructure maintenance, operation, repair, upgrade, or installation of new network utilities.**⁴¹
2. All **imported**⁴² fill must consist of cleanfill material;
3. Erosion and sediment control measures must be ~~put in place~~ **designed, installed and maintained until earthworks are completed**⁴³ to avoid sediment run-off from earthworks activities entering a Council reticulated network or into waterbodies.
4. No diversion of stormwater and overland flow shall occur beyond the site boundary and water must not be diverted to adjacent properties or the road;
5. Any earthworks within the vicinity of overhead electric lines must comply with the New Zealand Electrical Code of Practice for Electrical Safety Distances (NZECP 34:2001);
6. No earthworks are to be undertaken on or within 10m of any public natural hazard mitigation structure unless ~~under~~⁴⁴ the written approval has been obtained from the relevant local government agency; ~~and~~⁴⁵
7. In the event of discovery of any sensitive or archaeological material that the Accidental Discovery Protocol outlined in Appendix Four must be followed; **and**⁴⁶
8. **Rule EW-R1 does not apply to earthworks associated with mineral extraction, mineral exploration, or mineral prospecting.**⁴⁷

Advice Notes:

1. Earthworks are also regulated by the West Coast Regional Land and Water Plan and the NES - Freshwater 2020 administered by the West Coast Regional Council.
2. Earthworks undertaken in areas of contaminated land are subject to the Rules in the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

Activity Status where compliance not achieved: Restricted Discretionary

EW - R2 Earthworks – All Zones

Activity Status Permitted

Where:

1. All standards in Rule EW - R1 are complied with; and
2. These earthworks are:
 - a. Associated with the construction of an approved building platform and access; or

⁴¹ Grey District Council S608.667

⁴² Fuel Companies S613.010

⁴³ Fuel Companies S613.010

⁴⁴ Clause 16(2) of First Schedule of RMA

⁴⁵ Clause 16(2) of First Schedule of RMA

⁴⁶ Clause 16(2) of First Schedule of RMA

⁴⁷ Birchfield Ross Mining Limited S604.005, William McLaughlin S5567.005, TiGa Minerals and Metals Limited S493.006, Birchfield Coal Mines Limited S601.005, BRM Developments Limited S603.005, Whyte Gold Limited S607.005, New Zealand Coal & Carbon Limited S472.004, Straterra S536.039 and Phoenix Minerals Limited S606.005

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- b. ~~These are earthworks~~ Associated⁴⁸ with an approved subdivision consent; or
 - c. ~~These are earthworks~~ Associated⁴⁹ with an approved well or bore; or
 - d. ~~These are Earthworks, including stockpiles~~ Are Required for **repair, maintenance, operation, upgrading and establishment of a** network utility or **critical regionally significant** infrastructure, maintenance, operation, repair, upgrade, or installation of new network utilities including public roads⁵⁰ and may include stockpiles;⁵¹ or
 - e. ~~These are Earthworks~~⁵² associated with installation of swimming pools; or
 - f. ~~The earthworks are for~~⁵³ interments in a cemetery or urupā;
 - g. ~~The earthworks are for~~⁵⁴ natural hazard mitigation structures constructed by a statutory agency or their authorised contractor acting on its behalf;⁵⁵ or
 - h. ~~The earthworks are test~~⁵⁶ pits for geotechnical or contaminated land assessment where the land is reinstated within 48 hours; ~~or~~
 - i. ~~They are earthworks within the National Grid Yard where:~~
 - i. ~~Any earthworks must not exceed a depth or fill from original ground level of 300mm, except for:~~
 - A. ~~Earthworks for a network utility or as part of a renewable electricity generation activity; and~~
 - B. ~~Earthworks undertaken as part of agricultural or domestic cultivation, or repair, sealing or resealing of a road, footpath, driveway or farm track.~~⁵⁷
3. **Rule EW-R2 does not apply to earthworks associated with mineral extraction, mineral exploration, or mineral prospecting.**⁵⁸

Advice Notes:

1. Rules in relation to earthworks in overlay areas can be found in the Overlay Chapters of this Plan.
2. Earthworks undertaken in areas of contaminated land are subject to the Rules in the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

Activity Status where compliance not achieved: Restricted Discretionary

Refer Overlay Chapters for Earthworks Rules in relation to these overlay areas.

⁴⁸ Director General of Conservation S602.170

⁴⁹ Director General of Conservation S602.170

⁵⁰ Manawa Energy Limited S438.121

⁵¹ Westpower Limited FS222.0106

⁵² Director General of Conservation S602.170

⁵³ Director General of Conservation S602.170

⁵⁴ Director General of Conservation S602.170

⁵⁵ Clause 16(2) of First Schedule of RMA

⁵⁶ Director General of Conservation S602.170

⁵⁷ Transpower New Zealand Limited S299.059

⁵⁸ Birchfield Ross Mining Limited S604.005, William McLaughlin SS567.005, TiGa Minerals and Metals Limited S493.006, Birchfield Coal Mines Limited S601.005, BRM Developments Limited S603.005, Whyte Gold Limited S607.005, New Zealand Coal & Carbon Limited S472.004, Straterra S536.039 and Phoenix Minerals Limited S606.005

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EW – R3 Earthworks in the GRUZ - General Rural Zone, RLZ - Rural Lifestyle Zone, any INZ - Industrial Zone, FUZ - Future Urban Zone, AIRPZ - Airport Zone, any OSRZ - Open Space and Recreation Zone and the MPZ - Māori Purpose Zone

Activity Status Permitted

Where:

1. All standards in Rule EW - R1 are complied with; and
2. These are ancillary earthworks for:
 - i. A Permitted Activity, except that in the Rural Lifestyle Zone a maximum of 500m² per site of land is disturbed in any 12 month period; or
 - ii. An Energy Activity, **Regionally Significant Infrastructure Network – Utility Operation**⁵⁹ or Transport Activity;
3. Where the earthworks are undertaken within an Overlay Chapter area these earthworks meet the Permitted Activity standards for the relevant Overlay Chapter;
4. **In the Natural Open Space Zone, a maximum of 250m² per site of land is disturbed in any 12 month period and a maximum of 250m³ of material is transported off site in any 12 month period, and there is a maximum 1m change of existing ground level; and**⁶⁰
5. **Rule EW-R3 does not apply to earthworks associated with mineral extraction, mineral exploration, or mineral prospecting.**⁶¹

Activity Status where compliance not achieved: Restricted Discretionary where standard 1, ~~and 2~~ and 4⁶² are not complied with.

Refer to relevant Overlay Chapter where standard 3 is not complied with.

EW – R4 Earthworks in any RESZ - Residential Zone, the NCZ - Neighbourhood Centre Zone or SETZ - Settlement Zone

Activity Status Permitted

Where:

1. All standards in Rule EW - R1 are complied with; and
2. Where the⁶³ earthworks are undertaken within an Overlay Chapter area these earthworks meet the Permitted Activity standards for the relevant Overlay area; **and**⁶⁴

⁵⁹ Westpower Limited S547.470

⁶⁰ Royal Forest and Bird Protection Society of New Zealand Incorporated S560.320

⁶¹ Birchfield Ross Mining Limited S604.005, William McLaughlin SS567.005, TiGa Minerals and Metals Limited S493.006, Birchfield Coal Mines Limited S601.005, BRM Developments Limited S603.005, Whyte Gold Limited S607.005, New Zealand Coal & Carbon Limited S472.004, Straterra S536.039 and Phoenix Minerals Limited S606.005

⁶² Consequential amendment Royal Forest and Bird Protection Society of New Zealand Incorporated S560.320

⁶³ Clause 16(2) of First Schedule of RMA

⁶⁴ Clause 16(2) of First Schedule of RMA

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3. These are ancillary earthworks for an Energy Activity, **Regionally Significant Infrastructure Network-Utility-Operation**⁶⁵ or Transport Activity; and
4. Where earthworks are undertaken for any other activity:
 - a. A maximum of 250m² per site of land is disturbed in any 12 month period;
 - b. A maximum of **250**⁶⁶200m³ of material is transported off site in any 12 month period; and
 - c. There is a maximum 1m change of existing ground level.
5. **Rule EW-R4 does not apply to earthworks associated with mineral extraction, mineral exploration, or mineral prospecting.**⁶⁷

Advice Note:

Rules in relation to earthworks in overlay areas can be found in the Overlay Chapters.

Activity Status where compliance not achieved: Restricted Discretionary

Refer to relevant Overlay Chapter where standard 2 is not complied with.

EW - R5 Earthworks in any COMZ - Commercial and Mixed Use Zone, SVZ - Scenic Visitor Zone, HOSPZ - Hospital Zone or STADZ - Stadium Zone

Activity Status Permitted

Where:

1. All standards in Rule EW - R1 are complied with; and
2. Where ~~the~~⁶⁸ earthworks are undertaken within an⁶⁹ Overlay Chapter area these meet the Permitted Activity standards for the relevant overlay area; and
3. These are ancillary earthworks for an Energy Activity, **Regionally Significant Infrastructure Network-Utility-Operation**⁷⁰ or Transport Activity; and
4. Where earthworks are undertaken for any other activity a maximum of 1000m² per site or land is disturbed in any 12 month period.

Advice Note:

Rules in relation to earthworks in overlay areas can be found in the Overlay Chapters.

Activity Status where compliance not achieved: Restricted Discretionary

Refer to relevant Overlay Chapter where standard 2 is not complied with.

~~**EW - R6 Earthworks in the BCZ - Buller Coalfield Zone and MINZ - Mineral Extraction Zone**~~

⁶⁵ Westpower Limited S547.471

⁶⁶ Clause 16(2) of First Schedule of RMA correction given 1m depth change and 250m² limits.

⁶⁷ Birchfield Ross Mining Limited S604.005, William McLaughlin SS567.005, TiGa Minerals and Metals Limited S493.006, Birchfield Coal Mines Limited S601.005, BRM Developments Limited S603.005, Whyte Gold Limited S607.005, New Zealand Coal & Carbon Limited S472.004, Straterra S536.039 and Phoenix Minerals Limited S606.005

⁶⁸ Clause 16(2) of First Schedule of RMA

⁶⁹ Clause 16(2) of First Schedule of RMA

⁷⁰ Westpower Limited S547.472

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Activity Status Permitted

Where:

1. All standards in Rule EW—R1 are complied with; and
2. Where the earthworks are undertaken within a Overlay Chapter area these need to meet the Permitted Activity standards for the relevant overlay area.

Advice Note:

1. Rules in relation to mineral extraction and ancillary activities can be found in the relevant zone rules.
2. Rules in relation to earthworks in overlay areas can be found in the Overlay Chapters.

Activity Status where compliance not achieved: Controlled Activity under the relevant zone rule— Rule BCZ—R5 or MINZ—R6

Refer to relevant Overlay Chapter where standard 2 is not complied with.⁷¹

EW – R7 Earthworks and vertical holes within the National Grid Yard⁷²

Activity Status Permitted

Where:

1. All standards in Rule EW - R1 are complied with; and
2. Earthworks and vertical holes do not:
 - a. Exceed 300mm in depth within 6m of the outer visible edge of a National Grid support structure;
 - b. Exceed 3m in depth between 6m and 12m of the outer visible edge of a National Grid support structure;
 - c. Result in a reduction of the ground to conductor clearance distances as required in Table 4 of the New Zealand Electrical Code of Practice for Electrical Safe Distances 34:2001;
 - d. Compromise the stability of any National Grid support structures; and
 - e. Result in the loss of vehicular access to a National Grid support structure.
3. Earthworks and vertical holes for the following activities are exempt from compliance with EW-R7(1)(a) to (e):
 - a. Earthworks or vertical holes, excluding mining and quarrying, that are undertaken by a network utility operator as defined by the Resource Management Act 1991;
 - b. Agricultural or domestic cultivation;

⁷¹ WMS Group (HQ) Limited and WMS Land Co. Limited S599.085, TiGa Minerals and Metals Limited S493.080, Birchfield Coal Mines Limited S601.066, BRM Developments Limited S603.044, Birchfield Ross Mining Limited S604.059, Phoenix Minerals Limited S606.045, Whyte Gold Limited S607.043, Royal Forest & Bird Protection Society of New Zealand Inc S560.324

⁷² Transpower New Zealand Limited S299.059

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- c. The repair, sealing or resealing of a vehicle access, farm track, footpath, or driveway;**
- d. Vertical holes not exceeding 500mm in diameter that are more than 1.5m from the outer edge of a National Grid pole or stay wire, or are a post hole for a farm fence or horticulture structure more than 6m from the visible outer edge of a National Grid tower foundation; and**
- e. Earthworks and vertical holes subject to a dispensation from Transpower under New Zealand NZECP 34:2001.**

Activity status where compliance not achieved: Non-complying

Restricted Discretionary Activities

~~**EW – R7 – Earthworks within the National Grid Yard Not Meeting Rule EW – R2**~~

~~**Activity Status Restricted Discretionary**~~

~~**Discretion is restricted to:**~~

- ~~a. Effects on the operation, maintenance, upgrading and development of the National Grid;~~
- ~~b. The risk to the structural integrity of the National Grid support structure (s);~~
- ~~c. Any impact on the ability to access the National Grid; d. Management of stormwater and overland flow;~~
- ~~e. Any adverse effects on landscape, amenity, natural features, water quality, cultural and heritage sites, biodiversity and habitat of indigenous flora and fauna, and the quality of the environment;~~
- ~~f. The risk of electrical hazards affecting public or individual safety and the risk of property damage; and~~
- ~~g. The outcome of any consultation with the owner and operator of the National Grid.~~

~~**Activity status where compliance not achieved: N/A⁷³**~~

EW – R8 – Earthworks in any Zone not meeting Permitted Activity standards

Activity Status Restricted Discretionary

Discretion is restricted to:

- a. The impact **of earthworks**⁷⁴ on **visual**⁷⁵ amenity, **landscape character**⁷⁶, outlook and privacy;
- b. Potential dust nuisance, sedimentation, land instability, contamination and erosion effects.
- c. Effects that result from the stockpiling in terms of **visual**⁷⁷ amenity, landscape context and character, views, outlook, overlooking and privacy;

⁷³ Transpower New Zealand Limited S299.059

⁷⁴ Manawa Energy Limited S438.123

⁷⁵ Manawa Energy Limited S438.123

⁷⁶ Manawa Energy Limited S438.123

⁷⁷ Consequential amendment to Manawa Energy Limited S438.123

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- d. The effectiveness of proposed management or mitigation measures to ~~minimise~~ **avoid, remedy or mitigate**⁷⁸ any ~~potential~~⁷⁹ adverse effects beyond the property boundary of the activity;
- e. Any changes to the patterns of surface drainage or subsoil drains that could result in a higher risk of drainage problems, inundation run-off, flooding, or raise **or lower**⁸⁰ the water table;
- f. The impact of earthworks on ~~critical~~ **regionally significant**⁸¹ infrastructure;
- g. The impact on the road network, of heavy vehicle and other vehicular traffic generated as a result of earthworks;
- h. Any adverse effects on landscape **and natural character**,⁸² ~~amenity~~,⁸³ natural features, ~~water quality~~,⁸⁴ cultural and heritage sites **items and areas and archaeological sites**⁸⁵, biodiversity and habitat of indigenous flora and fauna, **including mahinga kai species**,⁸⁶ and the quality of the environment;
- i. The impact on stormwater infrastructure and any overland flow paths; and
- j. The impact on any natural hazards infrastructure and the effectiveness of its operation.

Activity status where compliance not achieved: N/A

Advice Note:

Rules in relation to earthworks in overlay areas can be found in the Overlay Chapters.

Non-complying Activities

EW – R9	Earthworks and vertical holes within the National Grid Yard not meeting Permitted Activity standards ⁸⁷
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Activity Status Non-complying

3. LIGHT

3.1. General/Whole Chapter

Submissions and Further Submissions

201. Ten submissions points and five further submission point relating to general matters were summarised in a Table on pages 67-68 of the s42A Report. One submission point sought to retain the provisions as notified, one supported in part and eight submission points sought amendments to the wording of the provisions.

⁷⁸ Westpower Limited S547.477

⁷⁹ Buller Conservation Group S552.142 and Frida Inta S553.142

⁸⁰ Buller Conservation Group S552.142 Frida Inta S553.142

⁸¹ Manawa Energy Limited S438.123

⁸² Buller Conservation Group S552.142 Frida Inta S553.142

⁸³ Manawa Energy Limited S438.123

⁸⁴ Consequential amendment to Westpower Limited S547.461

⁸⁵ Consequential amendment arising from recommendations on the Historic Heritage Chapter

⁸⁶ Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.210

⁸⁷ Consequential amendment Transpower New Zealand Limited S299.059

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202. The Panel adopts these summaries and has considered the relevant submissions and further submissions.

Section 42A Report

203. Ms Belgrave noted three submitters sought greater protection for indigenous biodiversity and the West Coast dark skies; and to align the rules with the requirements of the International Dark Skies for Punakaiki/Barrytown Flats and Okārito.
204. Ms Belgrave did not support inclusion of a definition for ‘artificial outdoor lighting’ given the plain and common-sense meaning.
205. Mr Wilson’s expert evidence outlined the background to Dark Sky International and designation of Dark Sky Sanctuaries and Dark Sky Parks under the programme, including preparation of a Light Management Plan. He noted the policies and rules of the pTTPP would set the benchmark for a community wishing to apply for international recognition of a Dark Sky place. He outlined the requirements for ‘Dark Sky friendly’ light fixtures and considered the Plan provisions supported the development of a Dark Sky place.
206. In her Addendum, Ms Belgrave relied on the technical evidence of Mr Wilson to conclude the proposed light provisions generally aligned with best practice guidelines for the management of lighting and maximum Lux levels. However, she recommended simplification of the light provisions, while recognising the anticipated character and amenity values of each zone, and the functional and operational requirements of activities. She noted this included removing duplication and alignment with standard AS/NZS 4282 Control of the Obtrusive Effects of Outdoor Lighting to improve assessment and enforceability of the permitted activity standards. She did not support inclusion of ‘*locational*’ or ‘*technical*’ considerations given these matters were inherently included in the definition of ‘*functional and operational needs*’.
207. Ms Belgrave highlighted the outstanding issues related to inclusion of provisions that are consistent with the requirements of the Dark Skies Park Designation for locations at Punakaiki, Barrytown Flats and Okārito; and the appropriateness of proposed Lux levels for various zones.

Hearing and Submitter Evidence/Statements

208. Ms Perkins for the West Coast Penguin Trust highlighted adverse effects on the Westland Petrel/tāiko from artificial light source during their breeding and fledging season (November to March). She requested that information be sought from the Department of Conservation regarding records of ‘downed’ birds so ‘*sensitive areas*’ can be identified. She was aware that these primarily occurred along the coast between Punakaiki and Hokitika but also included Westport.
209. Ms Inta, for herself and the Buller Conservation Group, highlighted the RMA section 6 requirement to avoid adverse effects on significant habitats of indigenous biodiversity and ‘*threatened and at risk species*’⁸⁸ such as the Westland Petrel/tāiko.
210. Ms Paula Sheridan and Ms Tash Goodman presented a written statement on behalf of Westland District Council – Okārito Dark Skies highlighting Okārito’s unique character and

⁸⁸ New Zealand Classification System

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unspoilt night sky qualities. They sought alignment of the Plan requirements with the Dark Sky International Community Program Guidelines. The highlighted the uniqueness of the small coastal settlement with very little existing light pollution and the communities desire for it to remain a dark sky community.

Reporting Officer Reply Evidence

211. Ms Belgrave’s Part 1 Right of Reply confirmed that further technical advice relating to ecological matters was being sought in relation to the protection of significant biodiversity values.
212. Ms Belgrave’s Part 2 Right of Reply responded to questions raised in the hearing in relation to the potential effects of lighting on threatened and at risk indigenous species and consideration of further amendments to provisions based on the advice of ecology experts. Her assessment considered the following key themes:
- 1) Approach to light management across the district;
 - 2) Appropriate lighting controls and restrictions within light sensitive areas; and
 - 3) Appropriate lighting controls and restrictions within other areas.
213. Ms Belgrave’s recommendations are addressed below in relation to the specific provisions.

Hearing Panel’s Evaluation

214. The Panel agrees with Ms Belgrave that it is not necessary to provide a definition for ‘*artificial lighting*’.
215. The Panel considers the concerns raised regarding the protection of ecological values and the dark sky in relation to the provisions below.

Hearing Panel’s Recommendation

216. No changes to the provisions are required in relation to issues raised in submissions and further submissions made on general matters or the whole LIGHT Chapter.

3.2. Light Overview

Submissions and Further Submissions

217. Two submissions points relating to the Overview were summarised in a Table on page 69 of the s42A Report. One submission sought to retain the Overview as notified and one submission sought wording changes.

Section 42A Report

218. The s42A Report recommended minor amendments sought by the submitter, including changing the wording to ‘*reduction or loss*’ and deleting ‘*potentially*’ as sought. Ms Belgrave did not support adding ‘*neighbourhoods*’ but instead recommended adding ‘*immediate environment*’.

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Hearing and Submitter Evidence/Statements

219. Ms Inta, for herself the Buller Conservation Group, highlighted she had sought to include *'neighbourhoods'* in the Overview, but that the Reporting Officer had recommended including *'immediate area'*. She considered this was worse than nothing. However, in response to questions, she agreed *'receiving environment'* would meet her concerns.
220. Mr Kennedy, for Westpower did not support adding *'immediate environment'* because he considered this increased ambiguity. However, in response to questions, he supported adding *'receiving environment'* instead.

Reporting Officer Reply Evidence

221. Ms Belgrave supported replacing *'immediate area'* with *'receiving environment'* in the Overview to provide greater clarity and reduce uncertainty.

Hearing Panel's Evaluation

222. The Panel considers adding *'receiving environment'* increases clarity and meets the concerns raised by Ms Inta. The Panel accepts the changes to the wording of the Overview recommended in Appendix 1 of Part 2 of the Right of Reply.

Hearing Panel's Recommendation

223. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submissions identified in the footnotes below are accepted or accepted in part, and recommend the following changes to the **LIGHT Overview**:

Overview

Artificial outdoor lighting enables work, recreation, and entertainment activities to occur beyond normal daylight hours. It also enables night-time activities to be conducted safely and provides for site security. However, if outdoor lighting is poorly designed, controlled, located or orientated, it may adversely affect the amenity of **the receiving environment**,⁸⁹ neighbouring properties and light sensitive areas; result in a **reduction or loss** ~~loss or reduction~~⁹⁰ of views of the night sky; and ~~potentially~~⁹¹ disturb wildlife. It may also affect human health and/or safety.

The provisions for artificial outdoor lighting provide for adequate lighting to support activities and site security, while minimising potential adverse effects.

3.3. Light Objectives

Submissions and Further Submissions

224. Twenty submission points and two further submission points relating to the **LIGHT -O1** were summarised in a Table on pages 70-71 of the s42A Report. Sixteen submission points sought to retain the objective as notified, four submission points sought amendments, and two further submissions opposed the amendments sought.

⁸⁹ Buller Conservation Group S552.144

⁹⁰ Buller Conservation Group S552.144

⁹¹ Buller Conservation Group S552.144

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225. Seventeen submission points and two further submission points relating to the **LIGHT -O2** were summarised in a Table on pages 72-73 of the s42A Report. Four submission points sought to retain the objective as notified and thirteen submission points sought amendments.
226. The Panel adopts these summaries and has considered the relevant submissions and further submissions.

Section 42A Report

227. In relation to LIGHT-O1, the s42A Report supported changing '*rural productive activities*' to '*rural production activities*' as sought by Federated Farmers. However, in response to questions, Ms Belgrave agreed '*primary production activities*' could be better given this was used elsewhere in the Plan and it is defined in the National Planning Standards.
228. The S42A Report also supported including '*energy activities*' as requested by Westpower, but did not support including reference to maintaining amenity values given this was addressed in LIGHT-O2.
229. In relation to LIGHT-O2, the s42A Report recommended LIGHT-O2 be amended to improve clarity and poor drafting by separating the various matters addressed into clauses. She agreed with some submitters that '*protection*' of the night sky without qualification or limits was unachievable and unenforceable. However, she supported recognising the values and qualities of the night sky to improve the effectiveness and efficiency of the objective and to improve alignment with LIGHT-P3.
230. The s42A Report did not support submissions to '*protect*' amenity values given RMA section 7(c) required the maintenance and enhancement of amenity values. Ms Belgrave agreed it was appropriate to protect all indigenous species from light effects and not just '*nocturnal*' species. She did not support adding '*avoid, remedy and mitigate*' because it did not afford sufficient policy direction.
231. In her Addendum, Ms Belgrave responded to the evidence of Mr Kennedy for Westpower and Ms McKenzie for Birchfield *et al.* regarding the requirement to '*protect*' all indigenous fauna. She considered '*maintain*' would be consistent with Objective 1 of the NPS-IB.
232. In response to questions, Ms Belgrave reconsidered the use of '*maintain*' in LIGHT-O2 and whether this gives effect to the required protection of RMA section 6(a), (b) and (c) matters of national importance. She agreed that including these matters in LIGHT-O2 and amending the wording to '*protect*' would better give effect to section 6 matters. However, she considered there was limited scope to include the protection of the natural character of the coastal environment to give effect to section 6(a) and Policies 1 and 13 of the NZCPS given the submissions on LIGHT-O2.
233. Ms Belgrave supported amendments to LIGHT-O2 to recognise the '*protect*' directive of section 6(c) in relation to significant habitats of indigenous fauna and to '*maintain*' all other habitats, ecosystems and species; and consequential amendments to LIGHT-P3 to align the provisions.

Hearing and Submitter Evidence/Statements

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234. Ms McKenzie for Birchfield Coal Mines Limited *et al.* sought amendments to LIGHT-O2 to avoid unnecessary constraints on operational lighting. She considered the word ‘*protect*’ was problematic without qualification and only related to adverse effects on significant biodiversity to be consistent with the NPS-IB. She recommended the following wording:

LIGHT - O2 Artificial outdoor lighting is located, designed and operated to ~~maintain~~ ensure that adverse effects on the character and amenity values within zones, ~~so that it does not adversely affect~~ the health and safety of people, the safe operation of the transport network, ~~protects~~ views of the night sky, the habitats and ecosystems of nocturnal native fauna and the species themselves are avoided, remedied or mitigated.

235. Ms Perkins, for herself and the West Coast Penguin Trust, highlighted the adverse effects of outdoor lights on Westland Petrel/tāiko and how birds can become ‘downed or grounded’ when dazed by lights when fledging. She sought incorporation of information held by DOC on where this occurs to assist in identify sensitive areas and minimising the risks to Westland Petrel/tāiko. She supported clause (d) in LIGHT-O2 to ‘*protect the habitats and ecosystems of indigenous fauna and the species themselves*’ but accepted use of ‘*maintain*’, as recommended in the Addendum to the s42A Report, if it was defined as used in section 1.7 of the NPS-IB (i.e. no net loss).
236. Mr Kennedy, for Westpower, did not support the use of ‘*protect*’ in LIGHT-O2 in relation to all indigenous vegetation and fauna, and highlighted this was not required by the RMA or the RPS.
237. Ms Inta, for herself and the Buller Conservation Group, sought to deleted ‘*rural production activities*’ given this would be included in ‘*night-time work*’; and the deletion of sport given this was included in ‘*recreation activities*’ in LIGHT -O1. However, she acknowledged she had not sought these additional changes in the submissions.

Reporting Officer Reply Evidence

238. Ms Belgrave confirmed her verbal recommendation at the hearing to replace ‘*rural production activities*’ with ‘*primary production*’ for consistency throughout the Plan. She considered the wording of LIGHT-O1 and LIGHT-P1 with the wording of the rules in relation to ‘*functional and operational requirements*’ and concluded these were well integrated but considered ‘*functional and operational needs*’ would be preferable for consistency with the wider Plan.
239. Ms Belgrave highlighted that natural features and landscapes were now recommended to be managed under LIGHT-R3, in response to the Director General of Conservation (S602.177), and that a consequential alignment of LIGHT-O2 was appropriate.
240. Ms Belgrave noted the purpose of LIGHT-O2 was to manage the effects of lighting to give effect to RMA Part 2 and sections 6(a), (b) and (c) matters of national importance. She recommended amendments to achieve this.
241. In Appendix 1 of Part 2 the Right of Reply, Ms Belgrave recommended the following changes to LIGHT-O2:

Artificial outdoor lighting is located, designed and operated to:

a. ~~M~~aintain the character and amenity values within zones,

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b. the natural character of the coastal environment and outstanding natural features and landscapes,

c. ~~so that it does not~~ adversely affect the health and safety of people, and the safe operation of the transport network,

d. Protects and maintain the qualities views of the dark night sky in light sensitive areas,

e. Protect significant habitats of indigenous fauna and the species themselves and maintain the habitats ~~and ecosystems of nocturnal~~ other indigenous native fauna and the species themselves.

Hearing Panel's Evaluation

242. The Panel accepts the recommended changes to LIGHT-O1 shown in Appendix 1 of Part 2 of the Right of Reply and consider these address submitter concerns and provide clarity. The Panel consider the further changes sought by Ms Inta are outside of the scope of the submissions made.
243. The Panel considers the wording of LIGHT-O2, as notified, is poorly worded and does not give effect to section 6(a), (b) and (c) of the RMA, the objectives and policies of the NZCPS, or the provisions of the RPS that give effect to these matters of national importance.
244. The submissions points relating to general matters and the whole chapter seek greater protection of the West Coast's dark skies and indigenous biodiversity. The Panel considers this can be achieved by ensuring the wording of LIGHT-O2 is consistent with section 6 of the RMA and the relevant provisions of the NZCPS, which require the protection of the natural character of the coastal environment, outstanding natural features and landscapes, and significant habitats of indigenous fauna from inappropriate subdivision, use and development.
245. The Panel considers the submissions requesting further protection of the dark skies recorded in relation to the whole LIGHT chapter provide wide scope to make amendments to LIGHT-O2 (and other provisions) to protect the natural character of the coastal environment.
246. Policy 13 of the NZCPS requires the preservation of natural character in the coastal environment and to protect it from inappropriate subdivision, and development by:
- (a) avoiding adverse effects of activities on areas within the coastal environment with high outstanding natural character; and
 - (b) avoiding significant adverse effects and avoiding, remedying and mitigating other adverse effects of activities on natural character in all other areas of the coastal environment.
247. The Panel notes that NZCPS Policy 13 specifically refers to 'the darkness of the night sky' as a matter relevant to the preservation of natural character in the coastal environment.
248. RPS Coastal Environment Objective 1 aligns with this language using 'protect' for indigenous biodiversity and natural features and landscapes within the coastal environment; and 'preserve' for natural character. The RPS policies anticipate the identification of significant and outstanding values to give effect to NZCPS Policies 11, 13 and 15; the avoidance of

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adverse effects on significant and outstanding values; and the avoidance of significant effects and avoidance, remediation or mitigation of other effects on indigenous biodiversity, natural character, natural features and natural landscapes.

249. The Panel considers LIGHT-O2, as recommended in the Right of Reply, while much improved, not consistent with the clear direction of the NZCPS and RPS in relation to the requirements to protect biodiversity within the coastal environment.
250. The submissions by Ms Inta and the Buller Conservation Group seek to include the protection of *'landscapes'* in LIGHT-O2. The Panel agree and consider it is appropriate to include *'outstanding natural features and landscapes'* to be consistent with RMA section 6(b) and Policy 15 of the NZCPS.
251. The Panel notes the Director General of Conservation sought the protection of *'native indigenous vegetation and habitats of indigenous fauna and the species themselves'* generally. This requested amendment is broad and, if applied without qualification, would be more restrictive than the higher order instruments. The Panel finds the wording sought is not sufficiently refined to recognise the statutory framework of the NZCPS and NPS-IB and the different statutory requirements for management of indigenous biodiversity both inside and outside the coastal environment; and the requirements to protect significant indigenous biodiversity values from adverse effects and *'other'* indigenous biodiversity values from significant adverse effects. These are important distinctions that must be reflected to give effect to the national direction.
252. The NPS-IB only applies to indigenous biodiversity in the terrestrial environment of New Zealand⁹². Whereas, the NZCPS and NPS-IB both apply in the terrestrial part of the coastal environment and if there is a conflict between the provisions, the NZCPS prevails⁹³. The Panel finds that a more nuanced approach is therefore required to reflect the statutory direction applying to indigenous biodiversity within the coastal environment, as well as to terrestrial biodiversity areas outside the coastal environment.
253. The Panel acknowledges the pTTPP was not drafted to give effect to the NPS-IB but considers the relief sought must be considered in light of its direction and must be consistent with its requirements. This includes use of *'indigenous biodiversity'* where appropriate and managing significant adverse effects by applying the effects management hierarchy to achieve no net loss of indigenous biodiversity outside the coastal environment.
254. In terms of protecting indigenous biodiversity values, the NZCPS and NPS-IB require not only the protection of significant habitats of indigenous biodiversity and threatened and at risk indigenous species, but also the protection of all other habitats of indigenous biodiversity and indigenous species from significant adverse effects. This is not sufficiently addressed in the policy framework.
255. The RPS directs that within the coastal environment (Chapter 9), indigenous biodiversity must be protected (Objective 1(a)) by - avoiding adverse effects on significant values (Policy 1(b)); and avoiding significant adverse effects on indigenous biodiversity (Policy 1(c)). Outside of the coastal environment, (Chapter 7), significant indigenous biodiversity must be protected (Objective 2); and indigenous biodiversity must be maintained (Objective 3).

⁹² NPS-IB 2023 Clause 1.3

⁹³ NPS-IB 2023 Clause 1.4

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256. The Panel considers the recommended changes in the Reporting Officer’s Right of Reply go towards addressing the protection of significant indigenous biodiversity values (NZCPS Policy 11(a)) but require further amendment to require the protection of all indigenous biodiversity within the coastal environment from significant adverse effects (NZCPS 11(b)). The Panel has included clauses (f) and (g) to achieve this within the coastal environment.
257. The Panel considers amendments are required to LIGHT-O2(e) to clarify the clause applies to areas *‘outside the coastal environment’* to reflect the requirements of the NPS-IB and RPS. This requires the protection of significant indigenous biodiversity by applying the effects management hierarchy; and the maintenance of terrestrial indigenous biodiversity values generally.
258. The Panel notes that a verb at the beginning of LIGHT-O2(b) is missing and consider the appropriate word is ‘protect’ to give effect to RMA section 6(a) and (b), Policies 13 and 15 of the NZCPS and Objective 1 of chapter 7A of the RPS.
259. The Panel finds it is appropriate to replace *‘views’* with *‘qualities’* of the night sky in LIGHT-O2 given it is not just people’s views that need to be protected. The Panel considers adding *‘dark’* night sky is appropriate but consider it is clearer to add *‘natural darkness of the night sky’* given the lunar cycle. This is also consistent with wording used in relation to natural character in Policy 13 of the NZCPS.
260. The Panel notes the recommended changes to LIGHT-O2 and the separation of the various matters into separate clause results in a poorly worded (c) *‘Not adversely affect the health and safety of people, the safe operation of the transport network’*. The Panel considers this clause should be reworded (as a consequential amendment) to *‘Provide for the health and safety of people, and the safe operation of the transport network’*.
261. The Panel considers the need to identify *‘light sensitive areas’* in relation to the LIGHT rules below. The Panel is satisfied that the rule structure takes into account the sensitivity of the different zones.
262. Overall, the Panel also accepts the recommended changes to LIGHT-O2 shown in Appendix 1 of the Part 2 of the Right of Reply, with further amendments to give effect to the NZCPS, NPS-IB and RPS.
263. The Panel accepts Ms Belgrave’s s32AA evaluation for the recommended changes to LIGHT-O2.
264. The Panel has undertaken a s32AA evaluation of the further amendments and consider the amendments to LIGHT-O2 will be more efficient and effective in managing the effects of lighting on indigenous species and their habitats, while recognising the differences of the statutory framework within the coastal environment and outside of the coastal environment, and for significant indigenous values and other indigenous values that are not significant.

Hearing Panel’s Recommendation

265. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submissions identified in the footnotes below are accepted or accepted in part, and recommends the following changes to the **LIGHT Objectives**:

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LIGHT - O1 Artificial outdoor lighting enables night-time work, **primary production** ~~rural~~ ~~productive~~⁹⁴ activities, recreation activities, sport, entertainment activities, transportation, **energy activities**⁹⁵ and public health and safety.

LIGHT - O2 Artificial outdoor lighting is located, designed and operated to:

- a. ~~Maintain~~ Maintain the character and amenity values within zones;
- b. **Protect the natural character of the coastal environment⁹⁶ and outstanding natural features and landscapes;**⁹⁷
- c. ~~so that it does not adversely affect~~ **Provide for** the health and safety of people, **and** the safe operation of the transport network;⁹⁸
- d. ~~Protects and maintain the qualities~~ **views** of the **natural darkness of the** night sky;
- e. **Outside the coastal environment, protect significant habitats of indigenous biodiversity and the species themselves by applying the effects management hierarchy⁹⁹ and maintain** the habitats and ecosystems of nocturnal native fauna **biodiversity** and the species themselves;
- f. **Protect significant indigenous biodiversity within the coastal environment by avoiding adverse effects on Threatened or At Risk indigenous species and their habitats;**¹⁰⁰ **and**
- g. **Protect indigenous biodiversity within the coastal environment by avoiding significant adverse effects on indigenous species and their habitats.**¹⁰¹

3.4. Light Policies

Submissions and Further Submissions

266. Twenty-eight submission points and four further submission points relating to **LIGHT-P1** were summarised in a Table on pages 75-76 of the s42A Report. Eleven submissions sought the provision be retained as notified and 17 submissions sought amendments.
267. Fifteen submission points and one further submission point relating to **LIGHT-P2** were summarised in a Table on pages 77-78 of the s42A Report. Two submissions sought the provision be retained as notified and 13 submissions sought amendments.
268. Fifteen submission points and six further submission points relating to **LIGHT-P3** were summarised in a Table on pages 78-80 of the s42A Report. One submission sought retention of the policy as notified and 14 submissions sought amendments.

⁹⁴ Federated Farmers of New Zealand S524.096

⁹⁵ Westpower Limited S547.480

⁹⁶ West Coast Penguin Trust S275.016

⁹⁷ Buller Conservation Group S552.146 and Frida Inta S553.146

⁹⁸ Consequential amendment to new rule structure

⁹⁹ Forest and Bird S560.327, Buller Conservation Group S552.146, Frida Inta S553.146, Director General of Conservation S602.174

¹⁰⁰ Director General of Conservation S602.174

¹⁰¹ Director General of Conservation S602.174

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269. Two submission points sought a new policy to manage the effects of reflectivity and glare from paved areas.
270. The Panel adopts these summaries and has considered the relevant submissions and further submissions.

Section 42A Report

271. In relation to **LIGHT-P1**, the s42A Report did not consider there was repetition and did not support adding *'avoids, remedies or mitigates adverse effects'* instead of *'minimise', 'maintain'* and *'protect'* used clauses (b), (d) and (e). It did support replacing *'protects'* with *'minimises adverse effects'* in clause (e) and adding a new clause (f) *'protects ecosystems'*. It considered clauses (a) and (c) provided for rural production activities and therefore did not support an additional clause to address this, as requested by Hort NZ. It did not support adding *'avoids adverse effects on indigenous biodiversity'* given this was inconsistent with RMA section 6(c).
272. In relation to **LIGHT-P2**, the s42A Report did not support deleting clause (a) given the effects of temporary activities would be limited under the rules in the TEMP chapter and the amendment sought would be too restrictive. It considered the wording sufficiently provided for rural production activities or commercial and industrial activities. It recommended the policy be retained as notified.
273. In relation to **LIGHT-P3**, the s42A Report considered it was appropriate to recognise the functional or operational need of specific activities that occur within an appropriate zone. However, it did not support amendments to exempt the Industrial Zone based on the expert advice of Mr Wilson and the need to address adverse effects through the consent process. It did not support including reference to people's enjoyment, amenity values, light blindness or rural production activities. It did not support amendments that reached beyond the requirements of section 6(c) or to remove *'including'* to limit assessment to areas of outstanding coastal natural character.
274. Mr Wilson's technical report considered uncontrolled lighting within an industrial zone or in relation to rural production activities could have significant impacts on the quality of the night sky within the wider region. He highlighted the potential significant cumulative effects of light pollution over a very wide area from poorly designed or controlled installations.
275. Mr Wilson did not support exemptions for industrial and primary production activities and noted LIGHT-P3 seeks to minimise the impact of light on the environment. However, he supported amendments to LIGHT-P3 to recognise the nature of these activities. He noted other districts use the preparation of Light Management Plans for specific industrial sites.
276. Mr Wilson considered LIGHT-P3 had sufficient direction to minimise adverse effects, including reflectivity. He noted laser light control in relation to airports was best controlled by a bylaw or a code of conduct for operators.
277. In her Addendum, Ms Belgrave responded to the evidence of Mr Kennedy for Westpower and Ms McKenzie for Birchfield *et al.* regarding LIGHT P1 and LIGHT-P2. She agreed further amendments could be made to improve clarity and to separate out the enabling approach under LIGHT-P1 and the management approach under LIGHT-P3. She supported including recognising *'functional and operational requirements'* in LIGHT-P1 but did not consider the

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inclusion of *‘technical or location requirements’* was necessary. She noted that functional and operational requirements should also be included in LIGHT-R5 for consistency.

278. In her Addendum, Ms Belgrave questioned whether Poutini Ngāi Tahu had requested the inclusion of *‘Poutini Ngāi Tahu values’* in submissions in relation to LIGHT-P3.
279. In response to questions at the hearing regarding giving effect to RMA section 6(c), Ms Belgrave agreed that some amendment to LIGHT-P1 was required but that this could be achieved by shifting clauses (d), (e) and new (f) to LIGHT-P3. She noted LIGHT-P1 was to provide for the use of outdoor lighting, whereas LIGHT-P3 was to control the effects of outdoor lighting.

Hearing and Submitter Evidence/Statements

280. Ms Lynch sought inclusion of a matter of discretion for consideration of *‘Poutini Ngāi Tahu values’* for LIGHT-P3. She noted none of the policies included reference to *‘Poutini Ngāi Tahu values’* as a matter of discretion. She acknowledged Poutini Ngāi Tahu had not made a specific submission to LIGHT-P3 but that this amendment was consistent with the NTCSA and the Mana Whakahono ā Rohe. She sought inclusion of an additional matter to LIGHT-P3 to *‘minimise adverse effects on Poutini Ngāi Tahu values’*.
281. Ms McKenzie for Birchfield Coal Mines Limited *et al.* did not agree with the recommended amendments in the s42A Report to LIGHT-P1, for the same reasons outlined in relation to LIGHT-O2. She recommended the following wording:

LIGHT-P1 Provide for the use of artificial outdoor lighting that:

- a. Allows people and communities to enjoy and use sites and facilities during night time hours and contributes to the security and safety of private and public spaces;
- b. Maintains the character and amenity values of the zone and surrounding area;
- c. Supports the social, cultural, and economic wellbeing or health and safety of people and communities, including road safety;
- d. Minimises sky glow and light spill; and
- e. ~~Protects~~ Minimises adverse effects on the health and well-being of people and ecosystems; and
- f. Recognises the technical, locational, functional or operational requirements of activities.

282. Ms McKenzie also requested the addition of *‘while recognising the functional and operational needs of the area of activity’* to LIGHT-P3(c).
283. Ms Young, for the Director General of Conservation, noted support for the recommended amendments to LIGHT-P3 in the s42A Report. She noted that section 6(c) of the RMZ requires the protection of significant habitats for indigenous fauna.
284. Ms Inta, for herself and the Buller Conservation Group, sought a new clause to LIGHT-P3 to *‘avoid light blindness’* from poorly directed lights and noted it did not address pavement reflectivity. She supported removing reference to *‘ecosystems’* in LIGHT-P1 and LIGHT-P2 if

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this was replaced with indigenous biodiversity. Ms Inta also sought a new policy to avoid light blindness effect on the Westland Petrel/tāiko.

285. Ms Perkins highlighted there were many ways to avoid light spill that need not be onerous, including design techniques and light fittings or through the timing of lighting. She considered the Plan needed to clearly enable management of outdoor lighting on a case-by-case basis in areas where tāiko are known to have been present. She noted DOC could provide relevant spatial data to identify a sensitive zone with higher lighting standards closer to colonies and a high standard for the area between Westport and Hokitika.
286. Ms Leveson for Hort NZ sought amendments to LIGHT-P1 to enable nighttime harvesting, loading of produce and other normal horticulture activities. She noted the importance of considering the health and safety of staff, impacts on neighbours and security. She sought inclusion of ‘*rural production activities*’ as a new clause (g) or as part of clause (c) because she considered it was unclear whether ‘*people and communities*’ included rural businesses.
287. Mr Kennedy, for Westpower, did not support use of ‘*protect*’ in LIGHT-P1 in relation to all indigenous vegetation and fauna, and highlighted this was not required by the RMA or the RPS. He highlighted the need to ensure consistency in the wording to avoid interpretation issues

Reporting Officer Reply Evidence

288. Ms Belgrave confirmed her recommended changes in the Addendum to the s42A Report to shift clauses (d), (e) and (f) to LIGHT-P3. She also recommended adding a new clause ‘functional and operational *need*’ rather than ‘requirements’ to achieve consistency with the National Planning Standards and national policy statements.
289. Ms Belgrave made the following recommendations for **LIGHT-P1** in Appendix 1 of Part 2 of the Right of Reply:

Provide for the use of artificial outdoor lighting that:

a. Allows people and communities to enjoy and use sites and facilities during night time hours and contributes to the security and safety of private and public spaces;

b. Maintains the character and amenity values of the zone ~~and surrounding area~~;

c. Supports the social, cultural, and economic wellbeing or health and safety of people and communities, including road safety; and

d. ~~Minimises sky glow and light spill; and~~

e. ~~Minimises the adverse effects on the health and well-being of people; and~~

f. ~~Protects ecosystems; and~~

e. Recognises the functional or operational need of activities.

290. Ms Belgrave also considered whether the use the term ‘*minimise*’ should continue to be used instead of ‘*avoid, remedy and mitigate*’ in the LIGHT policy context. She recommended LIGHT-P3(c), (d) and (e) be amended to replace ‘*minimise*’ with ‘*avoid remedy and mitigate*’.

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291. Ms Belgrave expressed reservations with the proposed wording sought by Ms Lynch given the uncertainty as to what Poutini Ngāi Tahu values are when considering activities under the rules. She also questioned scope in terms of proposed amendments to LIGHT-P3.
292. Ms Belgrave made the following recommendations for **LIGHT-P3** in Appendix 1 of Part 2 of the Right of Reply:

Control the intensity, location and direction of any artificial outdoor lighting to:

- a. Ensure that any artificial outdoor lighting avoids conflict with existing light sensitive areas and uses;*
- b. Internalise light spill within the site where the outdoor lighting is located;*
- c. ~~Minimises~~ **Avoid, remedy or mitigate** adverse effects on views of the night sky and intrinsically dark landscapes including in areas of outstanding coastal natural character, ~~while recognising the functional or operational needs of the area or activity;~~*
- d. ~~Minimises~~ **Avoid** adverse effects on the significant habitats of ~~light sensitive native indigenous~~ fauna and the species themselves **and avoid, remedy or mitigate adverse effects on the habitats of other indigenous vegetation and fauna and the species themselves;** ~~and~~*
- e. ~~Minimises~~ **Avoid, remedy or mitigate** adverse effects on the health and safety of people and communities in the surrounding area; **and***
- f. ~~Maintains ecosystems.~~*

Hearing Panel's Evaluation

293. The Panel considers the purpose of LIGHT-P1 is to provide for the use of artificial outdoor lighting where appropriate. While it is agreed that LIGHT-P3 manages the use of outdoor light, it does not provide guidance as to where it may be inappropriate to provide for outdoor lighting, such as where adverse effects on natural character and significant habitats of indigenous species and threatened and at risk species within the coastal environment cannot be avoided, as required to give effect to RMA section 6 matters and the NZCPS.
294. The Panel disagrees with Ms Belgrave that LIGHT-P1 clauses (d), (e) and (f) relate solely to the control or management of effects, as these clauses provide important guidance to decision makers on determining circumstances where use and development would be inappropriate.
295. LIGHT-P1(d) is intended to minimise adverse effects from glow and light spill on the natural darkness of the night sky. However, as currently worded, it relates to all land and does not recognise the statutory requirement to protect the natural character of the coastal environment from inappropriate subdivision, use and development. It does, however, go some way to recognising the need to minimise adverse light effects in areas outside the coastal environment.
296. The Panel recommends amendments to the wording of LIGHT-P1(d) to give effect to Part 2 of the RMA and NZCPS Policy 13 and to achieve consistency with LIGHT-O2(d). The Panel considers this is within the scope of the submission by the West Coast Penguin Trust seeking greater protection of the West Coast dark skies throughout the provisions generally.

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297. The Panel agrees with Ms Belgrave’s recommendation to delete LIGHT-P1(e) given health and safety is addressed in clause (c) and ecosystems are now addressed in the recommended amendments.
298. The Panel considers the *‘recognition of the functional and operations needs of activities’* relates to the management and control of light under LIGHT-P3. We note this was originally included under LIGHT-P3(c), in the notified provision, in relation to adverse effects on the dark sky. The Panel recommends this is included as a separate new clause both LIGHT-P1 and LIGHT-P3 and is deleted from the end of LIGHT-P3(c).
299. The Panel notes the submission points by Westpower to include a new clause in LIGHT-P1 and LIGHT-P3 to *‘recognise technical, location, functional and operation constraints or requirements of activities’*. The Panel considers this is unnecessary given functional and operational needs includes matters relating to technical and location requirements.
300. As discussed above in relation to LIGHT-O2, the Panel recommends amendments to LIGHT-P1(f) to give effect to Part 2 of the RMA and the NPS-IB direction regarding the protection of significant habitats of indigenous biodiversity and threatened and at risk species, outside the coastal environment; and the maintenance of indigenous biodiversity by managing significant adverse effects with application of the effects management hierarchy, outside of the coastal environment. The Panel considers these amendments are consistent LIGHT-O2(e) and give effect to the statutory direction.
301. As discussed above in relation to LIGHT-O2, the Panel agrees that further amendments are required to protect indigenous biodiversity within the coastal environment and give effect to the NZCPS and RPS. The Panel recommends the addition of two new clauses to LIGHT-P1 to give effect to the NZCPS Policy 11, within the coastal environment. The Panel finds this meets the concerns raised regarding the need for further protection of indigenous biodiversity without requiring the avoidance of adverse effects on all indigenous biodiversity.
302. The Panel agree with Ms Belgrave that a separate new clause to *‘enable rural production activities’*, as sought by Hort NZ and Federated Farmers, is unnecessary given LIGHT-P1(a) covers *‘people and communities’*. Similarly, the Panel considers specific reference is unnecessary for LIGHT-P2 and LIGHT-P3.
303. The Panel notes the s42A Report at paragraph 203 states it did not support Silver Fern Farms Limited’s request to delete *‘surrounding areas’* from LIGHT-P1(b) but that this deletion was recommended and was included in Appendix 1. The Panel agrees it is appropriate to delete *‘surrounding areas’* as requested by Silver Fern Farms Ltd.
304. In relation to LIGHT-P3, the Panel agrees with Ms Belgrave that *‘minimise’* should be replaced with *‘avoid, remedy and mitigate’* in clauses (c), (d) and (e) to give effect to Part 2 of the RMA and the RPS. However, the Panel considers further amendments are also warranted to clause (c) to provide clarity that natural character within the coastal environment must be maintained to give effect to RMA section 6(a) and NZCPS Policy 13. The Panel considers this is within the scope of submissions seeking further protection in the provisions of the West Coast’s dark skies.
305. The Panel consider the amendment sought by Ms Lynch for Poutini Ngāi Tahu to include an additional clause in LIGHT-P3 to *‘minimise adverse effects on Poutini Ngāi Tahu values’* is

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outside of the scope of their submission given this submission point related to rules and not policies and objectives.

306. The Panel notes the submission points requesting deletion of *'including'* from LIGHT-P3(c) to limit this to areas of *'outstanding natural coastal character'*. However, as outlined above this is not consistent with the statutory framework which requires the protection of natural character within the coastal environment.
307. The Panel accepts Ms Belgrave's recommendations to amend LIGHT-P3(d) to give effect to the statutory framework but consider the second part of the clause should include reference to *'significant'* adverse effects rather than adverse effects generally, to be consistent with direction of the NZCPS, NPS-IB and RPS.
308. The Panel partly agrees with the submission points of Ms Inta and the Buller Conservation Group that LIGHT-P3(e) should include *'amenity values'*, which is consistent with the wording of the LIGHT objectives. However, we consider adding *'enjoyment'* is unnecessary with the addition of *'amenity values'*; and the requested new clause *'minimises light blindness caused by badly directed lights'* is sufficiently addressed under LIGHT-P3(f) and new clauses (g) and (h).
309. In relation to Silver Fern Farms Limited's request to exempt industrial zones from LIGHT-P3(c), the Panel agree with Ms Belgrave that this is not appropriate based on the evidence of Mr Wilson. This is addressed further in relation to providing for increased Lux limits in the Industrial Zone in the rules below.
310. The Panel notes Silver Fern Farms Limited also requested that *'intrinsically dark landscapes'* be mapped in the Plan. The Panel considers this is unnecessary given most areas outside of the main settlement areas are naturally dark.
311. The Panel agrees with Ms Belgrave that a new policy is not required to manage the adverse effects from new paved areas given the evidence of Mr Wilson and his view LIGHT-P3 is sufficient.
312. The Panel accepts Ms Belgrave's s32AA evaluation for the recommended changes to LIGHT-P1 and LIGHT-P3.
313. The Panel has also undertaken a s32AA evaluation of the further amendments and consider the amendments to LIGHT-P2 and LIGHT-P3 will be more efficient and effective in managing the effects of lighting on indigenous species and their habitats, while recognising the differences of the statutory framework within the coastal environment and outside of the coastal environment, and for significant indigenous values and other indigenous values that are not significant.

Hearing Panel's Recommendation

314. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submissions identified in the footnotes below are accepted or accepted in part, and recommends **LIGHT-P2** is retained as notified and the following changes made to **LIGHT-P1** and **LIGHT-P3**:

LIGHT – P1

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Provide for the use of artificial outdoor lighting that:

- a. Allows people and communities to enjoy and use sites and facilities during night time hours and contributes to the security and safety of private and public spaces;
- b. Maintains the character and amenity values of the zone ~~and surrounding area~~¹⁰²;
- c. Supports the social, cultural, and economic wellbeing or health and safety of people and communities, including road safety;
- d. ~~Minimises sky glow and light spill~~ **Maintains the natural darkness of the night sky within the coastal environment and minimises adverse effects on the darkness of the night sky in other areas; and**¹⁰³
- e. ~~Protects the health and well-being of people and ecosystems;~~¹⁰⁴
- e. **Outside the coastal environment, avoids adverse effects on significant habitats of indigenous biodiversity and Threatened or At Risk species by applying the effects management hierarchy and maintains the habitats of other indigenous biodiversity and the species themselves;**¹⁰⁵
- f. **Recognises the functional need or operational need of activities.**¹⁰⁶
- g. **Within the coastal environment, avoids adverse effects on significant indigenous biodiversity and Threatened or At Risk indigenous species and their habitats; and**¹⁰⁷
- h. **Within the coastal environment, avoids significant adverse effects on indigenous biodiversity and their habitats.**¹⁰⁸

LIGHT – P3

Control the intensity, location and direction of any artificial outdoor lighting to:

- a. Ensure that any artificial outdoor lighting avoids conflict with existing light sensitive areas and uses;
- b. Internalise light spill within the site where the outdoor lighting is located;
- c. ~~Minimises~~**Avoid, remedy or mitigate**¹⁰⁹ adverse effects on **the natural darkness of the views of the night sky, and intrinsically dark landscapes including in areas of outstanding coastal and maintain** natural character **within the coastal environment;**¹¹⁰

¹⁰² Silver Fern Farms Limited S441.030

¹⁰³ West Coast Penguin Trust S275.016

¹⁰⁴ Consequential amendment

¹⁰⁵ Forest and Bird S560.327 and Director General of Conservation S602.174

¹⁰⁶ Westpower Limited S547.482

¹⁰⁷ Director General of Conservation S602.174

¹⁰⁸ Director General of Conservation S602.174

¹⁰⁹ Westpower Limited S547.510

¹¹⁰ West Coast Penguin Trust S275.016 and Suzanne Hills S443.034

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- d. ~~Minimises~~ **Avoid, remedy or mitigate**¹¹¹ adverse effects on the significant habitats of ~~light sensitive native~~ **indigenous biodiversity**¹¹² and the species themselves **and significant adverse effects on the habitats of other indigenous biodiversity and the species themselves**,¹¹²
- e. ~~Minimises~~ **Avoid, remedy or mitigate**¹¹³ adverse effects on **amenity values, and**¹¹⁴ the health and safety of people and communities in the ~~surrounding area~~ **receiving environment; and**¹¹⁵
- f. **Recognise the functional need or operational needs of activities.**¹¹⁶

3.5. Light Rules

Submissions and Further Submissions

315. Thirty-four submissions points and eight further submission points relating to the **general matters** were summarised in a Table on pages 83-86 of the s42A Report. One submission point sought the rules be retained as notified and thirty-three submission points sought amendments.
316. Nine submissions points and two further submission points relating to the **LIGHT-R1** were summarised in a Table on pages 87-88 of the s42A Report. Two submission points sought amendments to the wording and seven sought deletion of the rule.
317. Ten submissions points relating to the **LIGHT-R2** were summarised in a Table on page 89 of the s42A Report. Two submission points sought the rule be retained as notified and eight submission points sought amendments to the wording of the rule.
318. Six submissions points relating to the **LIGHT-R3** were summarised in a Table on pages 90-91 of the s42A Report. Two submission points sought the rule be retained as notified and four submission points sought amendments.
319. Fifteen submissions points and one further submission point relating to the **LIGHT-R4** were summarised in a Table on pages 91-92 of the s42A Report. Two submission points sought amendments to the wording and limits.
320. Ten submissions points relating to the **LIGHT-R5** were summarised in a Table on page 93 of the s42A Report. Seven submission points sought the rule be retained as notified and three submission points sought amendments to the wording of the rule.
321. Eight submissions points relating to the **LIGHT-R6** were summarised in a Table on page 94 of the s42A Report. Two submission points sought the rule be retained as notified and six submission points sought amendments to be more enabling of existing users.
322. The Panel adopts these summaries and has considered the relevant submissions and further submissions.

¹¹¹ Westpower Limited S547.510

¹¹² Forest and Bird S560.327

¹¹³ Westpower Limited S547.510

¹¹⁴ Buller Conservation Group S552.148 and Frida Inta S553.148

¹¹⁵ Silver Fern Farms Limited S441.030

¹¹⁶ Westpower Limited S547.510

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Section 42A Report

323. The s42A Report recommended minor amendments in response to submission points on **general matters** relating to the rules to remove duplication and to achieve consistency with AS/NZS 4282. Based on the evidence of Mr Wilson, it did not support managing laser light use within the Hokitika aircraft flight path or street lighting.
324. In relation to **LIGHT-R1**, the s42A Report relied on the expert advice of Mr Wilson regarding the need to direct lights away from adjoining and adjacent overlay areas, methods to measure light and appropriate Lux limits. It recommended amendments to improve clarity by including advice notes as general standards, as was common in other district plans. In response to questions, Ms Belgrave agreed that adding '*to minimise light spill*' to LIGHT-R1(3)¹¹⁷ was appropriate to address the Director General's concerns about light spill.
325. Mr Wilson considered the Director General's submission relating to directing lights away from any adjoining or adjacent overlay areas in LIGHT-R1. He considered there was potential for significant adverse effects if light less than 25 Lux were directed towards adjacent or adjoining sites, particularly in terms of the Natural Character overlays. He noted LED lighting is a very intense light source with the potential for significant light pollution and disability glare when aimed horizontally.
326. In response to the submission from Silver Fern Farms (S441.033), Mr Wilson noted that lights should be directed towards the site and that the relevant zone standards would provide sufficient control within the zone. To address this, he suggested amendments to LIGHT-R1(2) and (3). He highlighted the light rules provided for an increase in the limit in the Port Zone to 10 Lux between 10pm and 7am and that consideration of applying this to the Industrial Zone would give greater flexibility to 24-hour operations in these zones.
327. In response to submissions regarding where and what aspect of light is measured, Mr Wilson noted the rules were not consistent with AS/NZS 4282 Control of the Obtrusive Effects of Outdoor Lighting, which provides a comprehensive method for assessment. He recommended amendments to the rules to achieve consistency with best practice.
328. Mr Wilson undertook an analysis of the limits in the pTTPP compared to the existing district plan limits (see his Table 1 on pages 11-12) and concluded the permitted level of light spill onto adjacent properties between 7am and 10pm would increase '*significantly*' in all zones other than NOSZ, SETZ – PREC 2 - Settlement Zone – Coastal Settlement Precinct and in all zones where the site falls within the Outstanding Coastal Natural Character Overlay. The permitted level of light spill onto adjacent properties between 10pm and 7am would increase in the Grey District Township zone and decrease in all other zones. On this basis, he concluded the 7am to 10pm limits proposed were high compared to other areas in New Zealand; and the 10pm to 7am limits '*average and appropriate*' given the intrinsically dark environment on the West Coast.
329. In relation to mining operations in the mineral extraction zones and the rural zones, Mr Wilson recommended amendments to increase the distance at which light spill is measured to make it easier to comply with the rules. He considered the proposed Lux limits were appropriate and could be achieved through good design.

¹¹⁷ As shown in the Appendix 1 of the Right of Reply.

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330. In response to Hort NZ, Mr Wilson did not support any increase to the Lux limit in LIGHT – R4(b) to 5 Lux but noted the rules would not apply to vehicle mounted lights and fixed lights can be located, aimed and controlled to prevent light spill.
331. Mr Wilson considered the amendments sought to LIGHT-R3 by the Buller Conservation Group and Ms Inta to protect biota from the effects of artificial light and he agreed the light spectrum can make a difference depending on the sensitivity of the biota. He noted Dark Sky International recommended limiting short wavelength light (blue-violet) in sensitive areas and a limit for warm light of 3,000K, but that the rule did not prevent use of warmer temperatures such as 2,200K if desired. He highlighted NZS/AS 4282 recommends using techniques such as dimming or switching of light during breeding hatching season. He noted LED technology had matured, and the availability of warmer light had improved but that lighting <2,200K may be difficult to source. On this basis, he did not support changing the limit from 3,000K to 2,200K.
332. In the Addendum to the s42A Report, Ms Belgrave noted that the basis for the assessment of light spill is set out in AS/NZS 4282. On this basis, she agreed with Ms McKenzie for Birchfield Coal Mines Limited *et al.* that amendments to LIGHT-R1 were appropriate to reflect this guidance.
333. In her Addendum, Ms Belgrave retained reservations in relation to Poutini Ngāi Tahu's request to include 'Poutini Ngāi Tahu values' as a matter of discretion for restricted discretionary and controlled activity rules.

Hearing and Submitter Evidence/Statements

334. Ms Young, for the Director General, noted support for the recommended amendments to rules LIGHT-R1, LIGHT-R2, LIGHT-R3 and LIGHT-R4 in the s42A Report.
335. Ms Inta for herself and the Buller Conservation Group sought a new clause to LIGHT-R1 to minimise the light reflectivity of pavement. She considered the existing operations up at Stockton Mine should be required to minimise pollution of the night sky. She noted other district plans have the same light standards for all zones and that problems sourcing appropriate lights is not a barrier in other districts where use of warmer lights is required in sensitive areas. She considered sensitive areas were around Punakaiki, the Conservation Estate and the coastal environment.
336. Ms Perkins supported Mr Wilson's recommendation that all exterior lighting be directed towards the area to be illuminated. She requested the Panel seek further advice from an expert regarding light colours and levels to protect adverse effects on breeding and fledging Westland petrel/tāiko.
337. Ms Perkins sought the input of further expert advice on the proposed light spill curfew times in the rules to protect Westland petrel/tāiko fledglings and to meet Policy 11 of the NZCPS. In particular, she considered it was necessary to extend the curfew hours to 8am from May to August to protect adult Westland petrel/tāiko; and to begin the curfew at 8pm for November and 8.30pm for December and January to protect fledglings.
338. Ms McKenzie for Birchfield Coal Mines Limited *et al.* sought amendments to LIGHT-R1 to delete the requirement for conformance calculations to be undertaken by a suitably qualified professional.

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339. Ms Leveson sought to amend LIGHT-R4(b) to increase the 10.00pm-7.00pm limit from 2 Lux to 5 Lux to take into account the need for light for health and safety. She highlighted Policy 4 of the NPS-HPL to prioritise and support the use of highly productive land; and Policy 9 to manage reverse sensitivity to not constrain land-based primary production on highly productive land.
340. Mr Kennedy, for Westpower, sought inclusion of a new clause 'The technical, locational, functional or operational constraints and/or requirement of the activity' in LIGHT-R5.
341. Poutini Ngāi Tahu sought inclusion of a matter of discretion for consideration of Poutini Ngāi Tahu values for the restricted discretionary and controlled activity rules in the Plan in general and not specifically in relation to the LIGHT Chapter. In relation to this submission point, Ms Lynch's evidence sought inclusion of a matter of discretion for consideration of '*Poutini Ngāi Tahu values*' for rule LIGHT-R5.

Reporting Officer Reply Evidence

342. Included with the Reporting Officer's Part 1 of the Right of Reply was a further statement of evidence from Mr Wilson addressing the control of lighting from mining activities, dark sky protection in Okārito, the management of reflectivity and glare, use of light management plans in light sensitive areas and consistency with standard AS/NZS 4282.
343. Mr Wilson highlighted difficulties with LIGHT-R4 (as proposed) given it sets illuminance levels for the General Rural Zone (GRUZ), Special Purpose Mineral Extraction zones (MINZ and BCZ) and General Residential Zone (GRZ), which are likely to occur in very different receiving environments with different ambient light conditions. He noted that mining activities were most likely to occur in relatively dark and low brightness areas (Environmental Zones A1 and A2 in Table 3.2 of AS/NZS 4282:2023) but that the proposed limits of 10 Lux during non-curfew and 2 Lux during curfew would normally be associated with medium to high brightness areas in residential areas (Environmental Zones A3 and A4 in Table 3.2 of AS/NZS 4282:2023). He considered mining activities in the GRUZ and Special Purpose mineral extraction zones would be sufficiently controlled if the illuminance limits were reduced to be consistent with Table 3.2 of AS/NZS 4282:2023 with a maximum of 5 Lux during non-curfew and 1 Lux during curfew in low brightness areas (Environmental Zone A2 in Table 3.2 of AS/NZS 4282:2023); and a maximum of 2 Lux during non-curfew and 0.1 Lux during curfew in relatively dark areas (Environmental Zone A1 in Table 3.2 of AS/NZS 4282:2023).
344. Mr Wilson noted LIGHT-R4 did not include any control on upward light but that AS/NZS 4282 recommended a maximum light ratio of zero (i.e. no upward light spill) in intrinsically dark areas (Environmental Zone A1 in Table 3.2 of AS/NZS 4282:2023) and 0.01 (1%) in low brightness areas (Environmental Zone A2 in Table 3.2 of AS/NZS 4282:2023).
345. Mr Wilson considered it would be best practice to consider upward light spill controls for mining activities noting that under AS/NZS 4282 these limits should not apply to vehicle lights, including working lights mounted on moving vehicles and plant, which are exempt.
346. Mr Wilson considered the management of light in light sensitive areas needed to be better aligned with the recommendations of AS/NZS 4282.
347. Mr Wilson concluded the Lux levels in LIGHT-R4 were appropriate for general residential but that the limits in LIGHT-R2 of 25 Lux during non-curfew and 10 Lux during curfew hours were

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too high if applied to residential areas. He noted the GRUZ would typically occur in relatively dark or low brightness areas (Environmental Zones A1 and A2 in Table 3.2 of AS/NZS 4282:2023) and that the limits in LIGHT-R3 would be more appropriate (i.e. a maximum of 2 Lux during non-curfew and 0.1 Lux during curfew).

348. In relation to protection of the Okārito dark sky, Mr Wilson considered LIGHT-R3 would provide sufficient protection, if it also included controls on upward light spill and colour temperature. He recommended consideration of including a standard for lights emitting greater than 500 lumens to be controlled by motion-activated switches limiting their duration to less than five minutes between 10am and 7am to align with AS/NZS 4282 and the dark sky guidelines.
349. Mr Wilson did not recommend the inclusion of rules to limit light intensity (glare) or reflectivity and noted these factors would be considered in good light design. He recommended LIGHT-R2, LIGHT-R3 and LIGHT-R4 should be amended to only measure illuminance in the vertical plane to be consistent with AS/NZ S4282.
350. Mr Wilson recommended use of a Light Management Plans method to introduce a greater level of professional input to mitigate the effects of light within specific light sensitive areas to control and optimise the use of artificial lighting, while meeting operational requirements. He noted this could support any application made under LIGHT-R5 and LIGHT-R6.
351. Based on the recommendation of Mr Wilson, Ms Belgrave agreed that it would best practice to align the Lux limits in the rules with AS/NZS 4282 to achieve the outcomes sought in the LIGHT objectives, subject to scope. She accepted all of Mr Wilson’s recommendations, except for the management of upward light spill from mining activities given no other activities were required to manage upward light spills and it was common for district plans to manage Lux levels.
352. In her Part 1 Right of Reply, Ms Belgrave recommended the following changes to her recommendations to the LIGHT rules from Appendix 1 of the Addendum to the s42A Report:

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">• Non-curfew: 10 Lux• Curfew: 2 Lux
LIGHT-RX2	Insert new rule to manage lighting within the General Rural and Special Purpose Mineral Extraction Zones: <ul style="list-style-type: none">• Non-curfew: 5 Lux

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	• Curfew: 1 Lux
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

353. Ms Belgrave highlighted further amendments maybe necessary following technical advice on ecological matters.
354. Ms Belgrave supported the inclusion of Significant Natural Areas to LIGHT-R3 to manage lighting effects on the habitats of indigenous fauna.
355. Ms Belgrave supported a correction to LIGHT-R3 to refer to Precinct 3 of the Settlement Zone to ensure the protection of existing dark sky qualities in Okārito, including the recommendations of Mr Wilson for additional standards applying to the Okārito settlement to achieve accreditation through Dark Sky International.
356. Again, to achieve consistency with the National Planning Standards and national policy statements, Ms Belgrave recommended amending LIGHT-R5 to include functional and operational 'need'. She also supported amendments to LIGHT-R5 to broaden the matters of discretion to include consideration of any light management plan prepared.
357. Having heard the evidence of Ms Lynch and considering the legal submissions for Poutini Ngāi Tahu¹¹⁸, Ms Belgrave retained concerns that the wording sought would increase the complexity and cost of resource consents for restricted discretionary and controlled activities. She considered the additional costs would not be commensurate to the potential effects of activities relating to earthworks, light or temporary activities where no other resource consents are required due to the inherent scale and nature of these activities and potential environmental effects.
358. Ms Belgrave noted the same concerns with the inclusion of 'Poutini Ngāi Tahu values' as a matter of discretion in relation to the LIGHT rules and that input from Poutini Ngāi Tahu would be needed to determine the scale of adverse effect for all consent applications.

¹¹⁸ Legal Submissions on behalf of Te Rūnanga O Ngāti Waewae, Te Rūnanga O Makaawhio and Te Rūnanga O Ngāi Tahu (Submitter 620 and Further Submission FS41) 13 November 2023 by Sarah Scott and Katherine Viskovic

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359. In response to the Panel’s questions, Ms Belgrave was supportive of the inclusion of ‘*mahinga kai species and taonga*’ under matters of control which refer to indigenous flora and fauna.
360. The legal opinion by Wynn Williams considered incorporation of standard AS/NZS 4282 Control of the Obtrusive Effects of Outdoor Lighting into the LIGHT-R1. It noted the National Planning Standards anticipate the cross referencing of material within a plan but that where it has legal effect as part of a rule it should be included by reference. Wynn Williams noted that where it is included in a rule by reference to the standard, future versions of the standard are not automatically referred to and a plan change under clause 31 of the RMA would be required to update the version referenced in the Plan.
361. Based on the legal advice, Ms Belgrave recommended including AS/NZ 4282 by reference in LIGHT-R1 as a standard for the management and measurement of light.
362. The Wildlands Report (Appendix 2A of Part 2 of the Right of Reply) concluded the proposed non-curfew (7.00 am to 10.00 pm) and curfew (10.00 pm to 7.00 am) hours were appropriate for the various artificial outdoor locations. However, it noted that the vertical light levels during curfew were too high (e.g. LIGHT – R2 states 5 or 10 Lux, and LIGHT – RX1 2 Lux) as listed in Appendix 1 (Recommended Provisions). It considered the curfew Lux level should not exceed 5 or 2 Lux (LIGHT – R2; Port and Industrial Zone; and Town Centre, Mixed Use, Commercial, Hospital, Stadium and Airport, respectively) and 1 Lux (LIGHT – RX1). This is because vertical light levels affect birds flying at night and can attract birds to an area.
363. The Wildlands Report considered all lights should be shielded above, and the edge of the shield should be below the whole of the light source, preventing any upward illumination and reducing horizontal light spread, regardless of location. It noted this would greatly reduce any attraction of birds flying at night. Similarly, it noted that LIGHT – R4 did not include any control on upwards light but that LIGHT – RX3 did - where all lights must ‘be fully shielded and mounted in a horizontal position and have a colour corrected temperature of no greater than 3000 kelvin (K) (warm light) and a maximum of 1 Lux. It highlighted this is very important as *Procellariforme* fledglings (e.g. petrels, terns, albatross, prions, and shearwater) can be drawn back to land as they fly out to sea, leading to crash landings (e.g. in cities, on boats and gas and oil fields).
364. The Wildlands Report noted that light sources can affect *Procellariforme* fledglings up to 15 kilometres away (Light Pollution Guidelines 2020); and it is important to keep lighting at a minimum during fledging of Westland petrel/tāiko around early November to mid-January when they are susceptible to crash landing. It notes that once on the ground, these birds cannot take flight and will die from starvation, injury or mammalian predation.
365. In relation to Mr Wilson’s review, the Wildlands Report agrees that the mining activities would most likely occur in areas A1 (Dark – Relatively uninhibited rural and coastal areas) and A2 (Low District Brightness – sparsely inhabited rural and semi-rural areas). However, it noted an error where the maximum of 5 Lux curfew and 1 Lux non-curfew (A2) and 2 Lux curfew and 0.1 Lux non-curfew (A1) have been written in the incorrect order (para 7, Appendix 2 of Part 1 of the Right of Reply). It agreed with Mr Wilson’s recommended lighting levels if corrected to 1 Lux curfew (A2) and 0.1 Lux curfew (A1).
366. The Wildlands Report highlighted that Appendix 1 (Part 1 of the Right of Reply) for rules LIGHT – R2, LIGHT – RX1, and LIGHT – RX2 did not discuss the proposed colour corrected

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temperature of the outdoor lighting. It noted that seabirds have eyes which are well adapted to see colour and can see different regions of the colour spectrum, and this can lead to attraction and crash landings. It noted this is especially prevalent when outdoor lighting uses cool lighting (3500-5000K) which is highly attractive to seabirds as it contains blue light and UV light. For this reason, it recommended that all lights should be of a low colour temperature (no greater than 3000K warm white) and as low intensity as practical (Light Pollution Guidelines 2020).

367. The Wildlands Report also agrees with Mr Wilson and Ms Belgrave stating that *‘a Light Management Plan would provide specific operations requirements which can address using very warm light sources in areas where light is required for safety; and no light during the breeding season in areas which coincide with breeding areas and flight paths or migration routes’*. It also agreed with the recommendations of Mr Wilson and Ms Belgrave regarding the lighting requirements for Ōkarito (LIGHT – R3(2)(a) and LIGHT – R3(2)(b)) which have been revised in rule LIGHT – RX3.
368. Ms Wilson’s further report (Appendix 3 of Part 2 of the Right of Reply) responded to the Wildlands Report and any further changes to the recommended provisions. His report addressed the following:
- 1) Measurement of light under AS/NZ S4282 (LIGHT-R1);
 - 2) Agreement with Wildlands that all lights should be shielded to prevent vertical light;
 - 3) Disagreement with Wildlands that the maximum Lux level measured as received at a neighbouring boundary needs to be reduced given a lower Lux level will not necessarily prevent high levels of vertical illumination within the site.
 - 4) Curfew and non-curfew light levels in other district plans.
 - 5) Difficulties for Ports and Industrial areas meeting the vertical illuminance levels recommended in the Wildlands Report.
 - 6) Use of Light Management Plans as a tool to minimise adverse effects of light spill on areas adjoining Port and Industrial areas, while recognising the operational requirements.
 - 7) The practical effect of either 1 Lux or 0.1 Lux is that if lighting is designed and installed considering the effects of lighting, and aimed inward towards the site then the vertical limits at the boundary can be readily achieved
369. The Wildlands Addendum Report (Appendix 2B of Part 2 of the Right of Reply) reviewed the further report by Mr Wilson (Appendix 3 of Part 2 of the Right of Reply). It acknowledged that reducing the illuminance levels, as recommended by Wildlands, would be difficult in certain areas, and therefore considered alternative recommendations.
370. In relation to LIGHT-R2, the Wildlands Addendum Report, acknowledged that in the Port and Industrial areas, for human health and safety requirements, lighting limits could be increased to 4,500–5,000K, with low light intensity, long wavelength (e.g. over 560 nanometres), and downward-facing lights as close to the ground as possible. It noted the importance of illuminating only the intended object or area as practicable and including motion sensor

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lighting where appropriate. On this basis, it stated Lux levels could be increased to 10 Lux (curfew) to provide for human and safety requirements.

371. For other areas around the Town Centre, Mixed Use, Commercial, Airport, Hospital, and Stadium, Wildlands still recommended that 3000K is used and no greater than 3,500K within 15km of all coastal areas. In areas further inland than 15km, it recommended an increase of no greater than 4,500K. It agreed that Lux levels could be increased in accordance with human and safety requirements to 5 Lux (curfew). It highlighted that light intensity may be more important than colour for seabirds; and that very bright light will attract seabirds regardless of colour. It considered it is important to keep light intensity to a minimum and to ensure light intensity is appropriate for the activity and the minimum number of lights are used.
372. In relation to LIGHT-RX1 and RX2, the Wildlands Addendum Report also recommended that 3000K is used and no greater than 3,500K within 15km of all coastal areas; and for areas further inland than 15km, no greater than 4,500K. However, because Westland petrel/tāiko only breed on the West Coast and are highly susceptible to being attracted to lighting, it recommended a 15km wide buffer should be applied to either side of their flight path from the breeding colony to the ocean; where lighting should be no greater than 3,000K to prevent crash landing, especially as fledglings leave their colony around early November to mid-January.
373. In areas of Special Purpose Mineral Extraction or Mining Zone, Wildlands recommended that lighting could be increased to no greater than 4,000K for human and safety requirements, if within 15km of the coast and not within the Westland petrel/tāiko flight path. However, it noted that if it was within 15km of the coast and within the petrel flight path, no works should be carried out during curfew unless lighting can be reduced to no greater than 3,000K. For areas over 15km inland from the coast and not within the petrel flight path, it considered lighting could be increased to 4,500–5,000K for operational safety requirements.
374. In her Part 2 Right of Reply, Ms Belgrave relied on the Wildlands Report and Addendum Report, and the further review of Mr Wilson in relation to ecology matters and made the following further recommended amendments:
 - 1) Retain the rule structure, which applies different lighting controls to different zones and overlays;
 - 2) Amend LIGHT-RX3 to:
 - i. Require lighting in all areas and overlays managed under LIGHT-RX3 to be fully shielded and mounted in a horizontal position;
 - ii. Require lighting in all areas and overlays managed under LIGHT-RX3 to be no greater than 3000K; and
 - iii. Include areas within 15km of the coastal environment to the rule header;
 - 3) Amend LIGHT-R5 to include an additional matter of discretion in relation to the consideration of a Light Management Plan (LMP).
375. Mr Belgrave confirmed that no further amendments to the objectives and policies of the Light chapter were required to protect significant habitats of indigenous fauna and the

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species themselves; and to maintain the habitats of other indigenous fauna and the species themselves.

376. Ms Belgrave supported the rule structure of a targeted approach to lighting control in sensitive environments and standardised light control across all areas, as well as consideration of operational requirements for Port and Industrial areas.
377. Ms Belgrave highlighted the recommendations in the Wildlands Addendum Report and considered the following were relevant to the consideration of light controls within sensitive areas:
- 1) All lights should be fully shielded and mounted horizontally, preventing upward illumination and reducing horizontal light spread.
 - 2) Use LEDs with as low a colour-correlated temperature as practicable, preferably as low as 3,000K (warm light), but no greater than 5,000K.
 - 3) Coastal areas within 15km of the ocean should use preferably as low as 3,000K (warm light), but no greater than 3,500K.
 - 4) A buffer of 15km should be established on either side of the tāiko/Westland petrel flight path from breeding colony to the ocean. The lighting should be no greater than 3,000K, especially between November to late January.
 - 5) All lights must have as little or no short wavelength (380-500 nanometres) violet or blue light as possible.
378. Ms Belgrave noted Wildlands had not recommended amendments to the maximum allowable Lux levels under any of the LIGHT rules. She also noted that streetlights are managed outside the pTTPP.
379. In relation to light sensitive areas, Ms Belgrave noted the need to determine whether LIGHT-RX3 appropriately identifies all light sensitive areas and applies appropriate controls for light sensitive areas.
380. Ms Belgrave provided a s32AA evaluation for three options of controls for light sensitive areas in Table 1 of Part 2 of the Right of Reply. She supported Option 3 because it was more efficient than Option 1 (LIGHT-RX3 as recommended in Part 1 of the Right of Reply) and the controls are easily measurable and achievable for plan users, and Option 3 is more effective than Option 1 in managing potential light effects on indigenous, threatened and endangered species. She acknowledged Option 3 was less effective than Option 2 but considered Option 2 was less efficient because the spatial extent of the Westland petrel/tāiko is not currently defined in the Plan and there would be additional costs and complexities to plan users in determining compliance with wavelength requirements.
381. Similarly, in relation to appropriate light control and restrictions in other areas (not sensitive areas), Ms Belgrave noted it was necessary to determine whether LIGHT-R2, LIGHT-RX1, and LIGHT-RX2 apply to appropriate areas and include appropriate lighting controls within these areas. She highlighted the LIGHT-RX3 would apply to relevant overlays, irrespective of the underlying zoning.

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382. Ms Belgrave highlighted the recommendations in the Wildlands Addendum Report and noted the following were relevant to the consideration of light controls in other areas managed under LIGHT-R2, LIGHT-RX1 and LIGHT-RX2:

- 1) All lights should be fully shielded and mounted horizontally, preventing upward illumination and reducing horizontal light spread.
- 2) Use LEDs with as low a colour-correlated temperature as practicable, preferably as low as 3,000K (warm light), but no greater than 5,000K.
- 3) Use LEDs with as low a colour-correlated temperature as practicable, preferably as low as 3,000K (warm light), but no greater than 5,000K in Light-R2 areas needing to meet specific health and safety requirements (e.g. port and industrial). If up to 5,000K is used, control of light spread and intensity is imperative.
- 4) Areas further inland than 15km should be around 3,000K. However, if source at larger commercial scale is challenging, the lighting should be as low as practical, but not greater than 4,500K.
- 5) In areas of mineral and mining activity, for coastal areas (<15km) and not within the tāiko/Westland petrel flight path, lighting can be up to 4,000K.
- 6) If mineral and mining activity is within the petrel flight path, works should only occur during curfew hours if the lighting can be reduced to 3,000K.
- 7) All lights must have as little or no short wavelength (380-500 nanometres) violet or blue light as possible.

383. Ms Belgrave acknowledged the assessment of Mr Wilson regarding control of vertical illumination and light spill. She noted his examples of acceptable lighting solutions (Mr Wilson's Attachment 3) and highlighted requirements to shielding and mounting in a horizontal position would extent to small scale lighting, such as garden lights and bollards.

384. Ms Belgrave noted LIGHT-R1(5) requires all lighting to be directed towards the area within the site that is intended to be illuminated. She considered this will contribute to minimising the potential effects of light spill. On balance, she concluded LIGHT-R1(5) was appropriate to manage potential effects of vertical light spill on indigenous, threatened, and endangered species in areas that are not identified as being sensitive to lighting.

385. Overall, Ms Belgrave did not support the inclusion of additional rules to address any of the above considerations due to additional costs to landowners and potential restrictions on operational requirements. However, she highlighted the recommended inclusion of an additional matter of discretion to LIGHT-R5 to consideration of any Light Management Plan. She considered the scale of these amendments did not necessitate a section 32AA evaluation.

Hearing Panel's Evaluation

386. The Panel agrees with Ms Belgrave that there is no need to define '*artificial outdoor lighting*' given its plain and common meaning.

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387. The Panel notes the numerous submission points seeking adequate protection of the West Coast's dark skies, the natural character of the coast environment, outstanding natural landscapes, indigenous biodiversity, including significant habitats of indigenous fauna and indigenous species, such as the Westland petrel/tāiko. As discussed above in relation to the LIGHT objectives and policies, the Panel finds amendments to the rules are required to give effect to section 6(c), the NPS-IB and the RPS.
388. The Panel also notes the submission points seeking amendments to reduce the complexity of the rules and to be more enabling of development.
389. The Panel consider the submission points provide wide scope to amend the light rules to protect significant environmental values while providing for and enabling appropriate use and development. The Panel also note wide scope to make the rules less complex and to ensure limits are measurable and achievable.
390. The Panel accepts the evidence of Mr Wilson in relation to appropriate light levels during curfew and non-curfew hours and that some of those proposed were too high in some zones/areas to protect the environment and in comparison to other districts.
391. The Panel consider Ms Belgrave's recommended changes to the rules in relation to light levels are consistent with the expert advice of Mr Wilson and the requirements of AS/NZ 4282. The Panel find the recommended rules appropriately distinguish between zones/areas that are considered to be '*light sensitive*' and those where higher light levels are acceptable and provide for health and safety, and operational needs.
392. The Panel agrees with the Director General of Conservation that it is appropriate to direct light to avoid adverse effects on significant values and to minimise light spill outside of the area required to be illuminated. The Panel is satisfied the recommended changes are consistent with the expert evidence of Mr Wilson in this regard.
393. The Panel has been greatly assisted by the further information provided on the potential effects of lighting on significant ecological values and the further expert advice of Mr Wilson. The Panel acknowledges the evidence provided by Wildlands supports the need for the consideration of further light controls and restrictions to protect significant habitats of threatened and at risk species, particularly in the coastal environment. The Panel accepts there is a need to identify these areas in relation the species identified by Wildlands.
394. The Panel considers the Plan provisions will not give effect to RMA section 6(c), NZCPS Policy 11, RPS Chapter 9 Objective 1(a) and Policy 1, and RPS Chapter 7 Objectives 1 and 2, and Policies 1-6 until SNA are identified for the Buller and Westland districts. The Councils also need to undertake a region wide assessment to identify significant habitats of threatened and at risk fauna species, including those identified in the Wildlands Report. This would include identifying the breeding area and flight path of the Westland petrel/tāiko.
395. Overall, the Panel accepts Ms Belgrave's analysis of the options available to address known adverse effects of lighting on indigenous species and the need to balance these with existing activities and operational needs. The Panel views the recommended amendments to be an interim step until SNA and significant habitats of threatened and at risk species can be identified. The Panel accepts Ms Belgrave's section 32AA evaluation that recommended provisions (Option 3) represent the most efficient and effective method to protect significant ecological values until SNA and significant habitats of fauna can be identified region wide.

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396. The Panel considers adding areas within 15km of the coast to LIGHT-RX3 (recommended to be renumbered as LIGHT-R4A in the recommendation box below) is an appropriately precautionary approach for areas not provided for in LIGHT-RX1 (recommended to be renumbered as LIGHT-R3 in the recommendation box below) and LIGHT-RX2 (recommended to be renumbered as LIGHT-R4 in the recommendation box below). This includes specific protection for Okārito and areas within the Outstanding Coastal Natural Character Overlay. The Panel accepts Ms Belgrave’s recommended wording for LIGHT-RX3 (new LIGHT-4A) with the addition of the specific Plan overlay schedules and replacing ‘*coastal environment*’ with ‘*coastal marine area*’ to provide greater certainty. The Panel notes that 15km inland from the ‘*coastal environment*’ (as defined in the Plan) could be a significant distance inland and that 15km from the coast (i.e. coastal marine area) reflects the expert evidence.
397. The Panel note that Ms Belgrave’s recommended amendments to TEMP-R1 also address concerns raised by submitters in relation to protecting Westland petrel/tāiko from temporary lighting.
398. The Panel considers the recommended wording for new Rule LIGHT-R3 can be simplified by referring to ‘*all RESZ – Residential Zones, all SETZ – Settlement Zones except SETZ – PREC3 – Coastal Settlement Precinct, NCZ – Neighbourhood Centre Zone, OSZ – Open Space Zone, and SARZ – Sport and Recreation Zone*’.
399. The Panel consider the recommended changes to the rules appropriately recognise and provide for lighting in special purpose zone MINZ – Mineral Extraction Zone, but note that the BCZ – Buller Coal Zone has not been included in new Rule LIGHT-R4. Accordingly, we have added the BCZ to new Rule LIGHT-R4. This accords with recommendations in the Mineral Extraction Recommendation Report that the District-wide provisions apply in the BCZ, with the exception of Earthworks, and accords with recommended BCZ-P4.
400. We also note that the GRUZ – General Rural Zone, the RLZ – Rural Lifestyle Zone, and the MPZ – Māori Purpose Zone have not been included in a rule. We consider these zones should also be added to new Rule LIGHT-R4.
401. The Panel agrees with Mr Wilson that the proposed light limits in the Port and Industrial Zone are sufficiently responsive to operational needs up until 10pm but also required the reduction of light from 10pm and 7am to reduce impacts on adjacent residents and the receiving environment.
402. The Panel accepts that use of a Light Management Plan in Port and Industrial areas is consistent with the approach taken in other districts to manage adverse effects of light while providing for health and safety and operational requirements.
403. In relation to Poutini Ngāi Tahu’s request to include the consideration of Poutini Ngāi Tahu values for the restricted discretionary and controlled activity rules in the LIGHT chapter, the Panel notes that Ms Belgrave was supportive of the inclusion of ‘*mahinga kai species*’ under matters of control which refer to indigenous flora and fauna. The Panel agrees with Ms Belgrave’s view that reference to ‘*Poutini Ngāi Tahu values*’ ‘*taonga species*’ and ‘*mauri*’ is unclear and too broad; and would increase the complexity and costs of resource consent. The Panel accepts Ms Belgrave’s recommendation to include ‘*including mahinga kai species*’ at the end of LIGHT – R5(g) ‘*Effects on indigenous biodiversity*’ as a matter of discretion.

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404. Overall, the Panel finds the recommended changes in Appendix 1 of Part 2 of the Right of Reply are appropriate, subject to the minor changes outlined above.
405. The Panel accepts Ms Belgrave’s s32AA evaluation for the recommended changes to LIGHT rules.

Hearing Panel’s Recommendation

406. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submissions identified in the footnotes below are accepted or accepted in part, and recommends the following changes to the **LIGHT Rules**:

Light Rules

Note: There may be a number of Plan provisions that apply to an activity, building, structure and site. In some cases, consent may be required under rules in this Chapter as well as rules in other Chapters in the Plan. In those cases, unless otherwise specifically stated in a rule, consent is required under each of those identified rules. Details of the steps Plan users should take to determine the status of an activity are provided in General Approach.

Permitted Activities

LIGHT - R1 **All Zones: General Permitted Activity Standards**

All activities must comply with the following relevant standards: ~~Where Activity Status is Permitted~~ ~~All artificial outdoor lighting must:~~

- ~~1. Be directed so that light is emitted away from any adjoining and adjacent properties;~~
- ~~2. Be directed so that light is emitted away from any state highway or arterial or principal roads, or any oncoming traffic; and~~
- ~~3. Where an activity is located on a site which adjoins or is separated by a road from a different zone, the activity on the site must meet the relevant zone standards for light for the adjoining zone at the zone boundary.~~

Advice Notes:

1. Lighting limits must be measured and assessed in accordance with AS/NZS 4282 Control of the Obtrusive Effects of Outdoor Lighting.
- ~~2. Where conformance with the limits set out in the Rules in this chapter is to be determined by calculation, the calculation must be undertaken by a person who is professionally qualified and competent in the discipline of illuminating engineering.~~
- 2. For measurement of light levels in NOSZ - Natural Open Space Zone, SETZ - PREC 3 - Settlement Zone - Coastal Settlement Precinct, and in All Zones where the site falls within the Outstanding Coastal Natural Character Overlay, the calculation plane shall be taken at the property boundary.**¹¹⁹

¹¹⁹ Director General of Conservation S602.176

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~~3. Any calculation for the purposes of these Rules must be based on a maintenance factor of 1.0 (i.e. no depreciation shall be taken into account for reduction in light levels over time).¹²⁰~~

3. All exterior lighting shall be directed towards the area within the site that is intended to be illuminated.¹²¹

Activity status where compliance not achieved: Restricted Discretionary

LIGHT - R2 Artificial Outdoor Lighting in the TCZ - Town Centre, MUZ - Mixed Use, COMZ - Commercial, PORTZ - Port, HOSZ - Hospital, STADZ - Stadium, AIRPZ- Airport and all INZ - Industrial Zones

Activity Status Permitted

Where:

1. Outdoor artificial lighting must not exceed the following vertical ~~or horizontal~~¹²² light levels:

a. 7.00am – 10.00pm: 25 Lux;

b. 10.00pm – 7.00am: 10 Lux in the PORTZ - Port Zone **and all INZ - Industrial Zones**;¹²³

c. 10.00pm - 7am: 5 Lux in the TCZ - Town Centre, MUZ - Mixed Use, COMZ - Commercial, HOSZ - Hospital, STADZ - Stadium, AIRPZ - Airport and all INZ – Industrial Zones¹²⁴.

~~d. The above standards a - c shall be measured 2m inside the boundary of any adjoining site or the closest window in the adjoining property, whichever is the closest to the light source.~~¹²⁵

Activity status where compliance not achieved: Restricted Discretionary

~~**LIGHT – R3 Artificial Outdoor Lighting in the NOSZ – Natural Open Space Zone, SETZ – PREC 3 2 – Settlement Zone – Coastal Settlement Precinct, and in All Zones where the site falls within the Outstanding Coastal Natural Character Overlay**~~

Activity Status Permitted

Where:

1. Artificial outdoor lighting must not exceed the following vertical or horizontal light levels:

a. 7.00am – 10.00pm: 2 Lux; and

b. 10.00pm – 7.00am: 1 Lux; where

¹²⁰ BRM Developments Limited S603.049, Birchfield Ross Mining Limited S604.064, TiGa Minerals and Metals Limited S493.085, WMS Group (HQ) Limited and WMS Land Company Limited S599.090, Phoenix Minerals Limited S606.050 and Whyte Gold Limited S607.048

¹²¹ Director General of Conservation S602.176

¹²² Silver Fern Farms Limited S441.032

¹²³ Silver Fern Farms Limited S441.032

¹²⁴ Silver Fern Farms Limited S441.032

¹²⁵ Silver Fern Farms Limited S441.032

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~~c. This is measured at the boundary of the site.~~

~~2. Where the artificial outdoor lighting is located within the Outstanding Coastal Natural Character Overlay it must:~~

~~a. Be fully shielded and mounted in a horizontal position or use a controlled optic;~~

~~b. Have a colour corrected temperature of no greater than 3000K (warm white); and~~

~~c. Be installed in a manner that precludes operation between 10pm and 7am the following day.~~

~~**Activity status where compliance not achieved:** Restricted Discretionary except Discretionary where this is within the Outstanding Coastal Natural Character Overlay¹²⁶~~

~~LIGHT – R4~~ ~~Artificial Outdoor Lighting in locations not provided for in Rule LIGHT – R2 or LIGHT – R3~~

Activity Status Permitted

~~Where:~~

~~1. Outdoor artificial lighting must not exceed the following vertical or horizontal light levels:~~

~~a. 7.00am – 10.00pm: 10 Lux; and~~

~~b. 10.00pm – 7.00am: 2 Lux;~~

~~c. The above standards a – b shall be measured 2m inside the boundary of any adjoining site or the closest window in the adjoining property, whichever is the closest to the light source.~~

~~**Activity status where compliance not achieved:** Restricted Discretionary¹²⁷~~

LIGHT – R3 **Artificial Outdoor Lighting in all RESZ - Residential Zones, all SETZ – Settlement Zone except the SETZ – PREC 3 – Coastal Settlement Precinct, NCZ – Neighbourhood Centre Zone, OSZ – Open Space Zone, and SARZ - Sport and Recreation Zone**

Activity Status Permitted

Where:

1. Outdoor artificial lighting must not exceed the following vertical light levels:

a. 7.00am – 10.00pm: 10 Lux; and

b. 10.00pm – 7.00am: 2 Lux.

¹²⁶ Consequential amendment to Director General of Conservation S602.177, West Coast Penguin Trust S275.016 and S275.009, Westland District Council F579.4, Suzanne Hills S442.034, Forest & Bird S560.327

¹²⁷ Consequential amendment to Director General of Conservation S602.177, West Coast Penguin Trust S275.016 and S275.009, Westland District Council F579.4, Suzanne Hills S442.034, Forest & Bird S560.327

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Activity status where compliance not achieved: Restricted Discretionary¹²⁸

LIGHT – R4 Artificial Outdoor Lighting in the GRUZ – General Rural Zone, RLZ – Rural Lifestyle Zone, FUZ – Future Urban Zone, MPZ - Māori Purpose Zone, BCZ – Buller Coalfield Zone and MINZ – Mineral Extraction Zone

Activity Status Permitted

Where:

1. Outdoor artificial lighting must not exceed the following vertical light levels:

a. 7.00am – 10.00pm: 5 Lux; and

b. 10.00pm – 7.00am: 1 Lux.

Activity status where compliance not achieved: Restricted Discretionary¹²⁹

LIGHT – R4A Artificial Outdoor Lighting in the NOSZ – Natural Open Space Zone, SETZ – PREC 3 - Coastal Settlement Precinct and in locations within:

- Outstanding Coastal Natural Character Overlay (Schedule Eight);
- Outstanding Natural Landscapes Overlay (Schedule Five);
- Outstanding Natural Features Overlay (Schedule Six); or
- A distance of 15 kilometres landward of the coastal marine area.

Activity Status Permitted

Where:

1. Artificial outdoor lighting must not exceed the following vertical light levels:

a. 7.00am – 10.00pm: 2 Lux; and

b. 10.00pm – 7.00am: 1 Lux; where

c. This is measured at the boundary of the site.

2. Artificial outdoor light must:

a. Be fully shielded and mounted in a horizontal position; and

b. Have a colour corrected temperature of no greater than 3000K (warm white).

3. Where the artificial outdoor lighting is located within the SETZ - PREC 3 - Settlement Zone - Coastal Settlement Precinct of Ōkarito it must be installed in a manner that precludes

¹²⁸ Consequential amendment to Director General of Conservation S602.177, West Coast Penguin Trust S275.016 and S275.009, Westland District Council FS79.4, Suzanne Hills S442.034, Forest & Bird S560.327

¹²⁹ Rocky Mining Limited S474.049 and Papahaua Resource Limited S500.033

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operation of lights greater than 500 lumens for durations greater than five minutes between 10pm and 7am the following day.

4. Where the artificial outdoor lighting is located within the Outstanding Coastal Natural Character Overlay it must be installed in a manner that precludes operation between 10pm and 7am the following day.

Activity status where compliance not achieved: Restricted Discretionary¹³⁰

LIGHT – R5 Artificial Outdoor Lighting in any zone not meeting Permitted Activity Standards outside of the Outstanding Coastal Natural Character Overlay

Activity Status Restricted Discretionary

Discretion is restricted to:

- a. The number, placement, design, height, colour, orientation and screening of light fittings and light support structures;
- b. The amount of light spill and sky glow and associated effects on views to the night sky;
- c. Effects on visual amenity;¹³¹
- d. Effects on the safety of the transport network;
- e. Effects on established uses and their operation;
- f. Effects on coastal natural character;
- g. Effects on native wildlife; and **indigenous biodiversity¹³², including mahinga kai species;¹³³ and**
- h. Any positive effects generated from the use of artificial lighting;-
- i. **The functional or operational need of the activity; and¹³⁴**
- j. **Other measures as identified in any Light Management Plan.¹³⁵**

Activity status where compliance not achieved: N/A

Discretionary Activities

LIGHT – R6 Artificial Outdoor Lighting within the Outstanding Coastal Natural Character Overlay and not meeting the Permitted Activity Standards.

Activity Status Discretionary

¹³⁰ Director General of Conservation S602.177, West Coast Penguin Trust S275.016 and S275.009, Westland District Council FS79.4, Suzanne Hills S442.034, Forest & Bird S560.327

¹³¹ Manawa Energy Limited S438.123 consequential amendment for consistency

¹³² Forest & Bird S560.327, Director General of Conservation S602.174 consequential amendment.

¹³³ Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.210

¹³⁴ Westpower S547.484

¹³⁵ Consequential amendment

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Activity status where compliance not achieved: N/A

4. TEMPORARY ACTIVITIES

4.1. General/Whole Chapter

Submissions and Further Submissions

407. Twelve submission points and one further submission point relating to general matters were summarised in a Table on pages 95-96 of the s42A Report. Twelve submissions requested wording amendments and four further submissions opposed these changes.
408. The Panel adopts these summaries and has considered the relevant submissions and further submissions.

Section 42A Report

409. Ms Belgrave did not support the removal of all references to SASM in the chapter, or changes to the definitions of *'freedom camping'* or *'temporary activities'*. She clarified the provisions for freedom camping only related to the land adjacent to the State Highway network because this land is not subject to the Freedom Camping Bylaws of the three District Councils. She considered camping was sufficiently managed as a temporary event under TEMP-P3.
410. In her Addendum, Ms Belgrave agreed with Ms Lynch that the occupation and use of Crown land by Ngāi Tahu at Nohoanga sites (identified in Appendix Six of the pTTPP) would not meet the definition of a *'camping ground'*. She considered excluding Nohoanga sites from the definition of *'freedom camping'* would address this concern. Appendix 1 of the Addendum included this new clause (d) to address this.

Hearing and Submitter Evidence/Statements

411. The tabled statement from Fire and Emergency New Zealand (FENZ) sought an amendment to the definition of *'Temporary Activities'* to exclude temporary emergency services training activities.
412. Ms Lynch sought explicit exclusion of Nohoanga sites from the definition of *'Freedom Camping'* to give effect to Part 2 of the RMA and the objectives and policies of the RPS. She supported the use of advice notes to ensure it is clear to all plan users that they are required to refer to all District Wide rules as well as the relevant zone provisions.
413. Mr Kennedy, for Westpower, reiterated the request to amend clause (e) of the definition of *'Temporary Activities'* to ensure interpretation of *'structures'* includes buildings, as follows:

e. ***buildings and structures for construction and demolition projects; and***

Reporting Officer Reply Evidence

414. Ms Belgrave referred to her reasoning in the s42A Report that it was not necessary to add *'buildings and structures'* to clause (e) of the definition for *'Temporary Activities'* given the reference to *'ancillary buildings and structures'* in the first part of the definition. She also noted clause (e) is specific to construction and demolition structures such as scaffolding.

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415. Ms Belgrave’s Part 2 Right of Reply stated that no further amendments to the Temporary Activities chapter were necessary in relation to the further information on ecological matters, except for recommended changes to the rules, which is addressed below.

Hearing Panel’s Evaluation

416. The Panel accepts the Freedom Camping Bylaws manage freedom camping except in areas adjacent to the State Highway.
417. The Panel agrees with Ms Belgrave it is not appropriate to remove references to SASM in this chapter given the need to manage activities that are temporary in nature in these areas.
418. The Panel agrees with Ms Belgrave that the RMA definition of ‘*Temporary Activities*’ does not need to be amended given the definition refers to ‘*activities and ancillary buildings and structures*’.
419. The Panel agrees with Ms Belgrave’s recommendation to amend the pTTPP definition of ‘*Freedom Camping*’ to exclude seasonal occupation by Poutini Ngāi Tahu whānui on Nohoanga sites identified in Appendix Six of the Plan.
420. The Panel considers the submission points from Ms Inta and the Buller Conservation Group that were included in general matters summary table in relation to the TEMP rules below.

Hearing Panel’s Recommendation

421. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submissions identified in the footnotes below are accepted or accepted in part, and recommends the following changes to the definition of ‘*Freedom Camping*’:

FREEDOM CAMPING

has the same meaning as in Section 5 of the Freedom Camping Act (as set out below) means to camp (other than at a camping ground) within 200 m of a motor vehicle accessible area or the mean low-water springs line of any sea or harbour, or on or within 200 m of a formed road or a Great Walks Track, using 1 or more of the following:

- a. a tent or other temporary structure;
- b. a caravan; or
- c. a car, campervan, house truck, or other motor vehicle.

It does not include the following activities:

- a. temporary and short-term parking of a motor vehicle;
- b. recreational activities commonly known as day-trip excursions; ~~or~~
- c. resting or sleeping at the roadside in a caravan or motor vehicle to avoid driver fatigue; **or**
- d. use of Nohoanga entitlement sites identified in Appendix Six by Ngāi Tahu whānui.¹³⁶

¹³⁶ Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.030

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4.2. Temporary Activities Overview

Submissions and Further Submissions

422. One submission relating to the Overview supported retention of the wording as notified.

Section 42A Report

423. The s42A Report recommended the Overview be retained as notified. However, in response to Westpower’s general request for further clarification that the chapter rules do not apply to energy and infrastructure activities, Appendix 1 of the Addendum to the s42A Report included an additional sentence to the fourth bullet point as a consequential amendment.

Hearing Panel’s Evaluation

424. The Panel accepts recommendation amendment to include an additional sentence on the fourth bullet point, as shown in Appendix 1 of the Addendum to the s42A Report, as a consequential amendment.

Hearing Panel’s Recommendation

425. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submissions identified in the footnotes below are accepted or accepted in part, and recommends the following changes to the **TEMP Overview**:

Overview

Temporary events and uses such as, concerts, parades, festivals, fairs, meetings, sporting and special events and exhibitions occur on a regular basis throughout the West Coast and contribute to the community. Alongside these events temporary buildings and structures are often associated with larger construction works. The temporary nature of such activities generally minimises the adverse effects the event may have on the surrounding environment. Consequently, many events and activities of short duration are tolerated by parts of the community, while other members enjoy what the event has to offer.

To ensure that the number, scale and intensity of temporary activities does not increase to a level beyond which the effects are more than of a temporary duration and have minimal effects, the following objectives, policies and rules intend to manage the effects of temporary activities and their operations.

In addition to community focused events, temporary military training and emergency management services training exercises are also provided for within the Plan with a set of clear parameters to ensure any adverse effects are minimised and temporary in duration.

Temporary camping adjacent to the State Highway is also a matter which is regulated in these provisions. This is because land in that location is not subject to the Freedom Camping Bylaws of the three District Councils.

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Other relevant Te Tai o Poutini Plan provisions

In addition to the provisions in this chapter, temporary activities are also subject to additional provisions in some zone chapters and a number of Part 2: District-Wide Matters chapters, including:

- **Sites and Areas of Significance to Māori** - There are specific rules in relation to temporary events in the Sites and Areas of Significance to Māori Chapter.
- **Earthworks** - the Earthworks Chapter sets out the requirements in relation to earthworks, including for temporary activities.
- **Noise** - the Noise Chapter sets out the requirements into relation to noise.
- **Energy, Infrastructure and Transport** - provisions in relation to temporary network utilities and temporary energy activities are included within the Energy and Infrastructure Chapters of the Plan. **The rules within this chapter do not apply to energy and infrastructure activities.**¹³⁷
- **Overlay Chapters** - the Overlay Chapters have provisions in relation to Historic Heritage; Notable Trees; Sites and Areas of Significance to Māori; Ecosystems and Indigenous Biodiversity; Natural Features and Landscapes; Natural Character and Margins of Waterbodies; Natural Hazards; and the Coastal Environment. Where temporary activities are located within an overlay area (as identified in the planning maps) then the relevant overlay chapter provisions apply.

4.3. Temporary Activities Objectives

Submissions and Further Submissions

426. Six submission points relating to TEMP-O1 were summarised in a Table on page 97 of the s42A Report. Five submissions sought to retain the provision as notified and one sought additional wording be included.

Section 42A Report

427. The s42A Report accepted the additional wording '*while minimising adverse effects*' sought by Waka Kotahi NZTA. Ms Belgrave considered the amendments to TEMP-O1 recognised it is appropriate to manage the potential adverse effects of temporary activities and give effect to Part 2 of the RMA.

Hearing and Submitter Evidence/Statements

428. No further evidence was provided at the hearing in relation to TEMP-O1.

Reporting Officer Reply Evidence

429. In response to questions, Ms Belgrave also considered the use of '*minimise*' instead of '*avoid, remedy and mitigate*' used in the RMA in the context of the TEMP policies, but this was not specifically considered in the context of the TEMP-O1 in Part 1 of her Right of Reply. She recommended TEMP-P2 be amended to replace '*minimise*' with '*avoid remedy and mitigate*'.

¹³⁷ Clause 16(2) of First Schedule of RMA

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430. In Part 2 of her Right of Reply, Ms Belgrave confirmed that no further amendments to objectives were necessary and remain as recommended in Appendix 1 of Part 1 of the Right of Reply.

Hearing Panel's Evaluation

431. The Panel consider the amendment sought by Waka Kotahi NZTA to require adverse effects to be minimised is appropriate to give effect to Part 2 of the RMA. The Panel agrees and accepts Ms Belgrave's recommendation.

Hearing Panel's Recommendation

432. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submissions identified in the footnotes below are accepted or accepted in part, and recommends the following changes to the **TEMP Objectives**:

TEMP – O1 To provide for temporary activities where they contribute to social, economic and cultural wellbeing of the West Coast **while minimising adverse effects**.¹³⁸

4.4. Temporary Activities Policies

Submissions and Further Submissions

433. Four submission points sought policy **TEMP-P1** be retained as notified.
434. Four submission points sought policy **TEMP-P2** be retained as notified.
435. Four submission points sought policy **TEMP-P3** be retained as notified. One submission from Waka Kotahi NZTA sought additional words regarding transport safety.
436. Two submissions supported the retention of **TEMP-P4** as notified, one submission was recorded as opposed in part and one sought amendment to the wording.

Section 42A Report

437. The s42A Report recommended **TEMP-P1** and **TEMP-P2** be retained as notified.
438. In relation to **TEMP-P3**, Ms Belgrave recommended adding the words '*or transport safety*' at the end of the policy, as requested by Waka Kotahi NZTA
439. In relation to **TEMP-P4**, Ms Belgrave agreed with Waka Kotahi NZTA that the wording was unclear and recommended amending the wording from '*in*' to '*adjacent to*' to provide clarity that it only applies to the land adjacent to the state highway network not otherwise managed under the relevant Freedom Camping Bylaw.

Hearing and Submitter Evidence/Statements

440. No further evidence from submitters was provided.

¹³⁸ Waka Kotahi NZ Transport Agency S450.185

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Reporting Officer Reply Evidence

441. In response to questions regarding the wording of TEMP-P4, Ms Belgrave recommended the following wording in Appendix 1 of Part 1 of her Right of Reply:

TEMP-P4 *Ensure that freedom camping activities undertaken ~~in~~ **immediately adjoining** the State Highway road corridor are managed in a manner consistent with freedom camping in other parts of the relevant district.*

442. In Part 2 of her Right of Reply, Ms Belgrave confirmed that no further amendments to TEMP policies were necessary and remain as recommended in Appendix 1 of Part 1 of the Right of Reply.

Hearing Panel's Evaluation

443. The Panel accepts the recommendation to retain TEMP-P1 as notified.

444. The Panel accepts the recommendation to include 'or transport safety' in TEMP-P3.

445. The Panel notes that the BDC submission points in relation to TEMP-P1, TEMP-P2 and TEMP-P3 recorded as 'oppose in part', however the under TEMP-P4 BDC notes it supports the objectives and policies for Temporary Activities with the exception of Policy 4 because it considers it is the role of Waka Kotahi NZTA to manage freedom camping within the State Highway corridor in relation to TEMP-P4.

446. The Panel considers the recommended replacement of 'in' with 'immediately adjoining' clarifies the policy is only addressing freedom camping on land immediately adjacent to the state highway road corridor, outside of the state highway corridor and outside of areas under the Freedom Camping Bylaw relevant to the district. The Panel finds this addresses the concerns raised by Waka Kotahi NZTA and BDC; and accepts the amendments recommended in reply evidence.

Hearing Panel's Recommendation

447. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submissions identified in the footnotes below are accepted or accepted in part, and recommends TEMP-P1 is retained as notified and the following changes to the remaining **TEMP Policies**:

TEMP-P2	Enable military training and emergency management training activities while ensuring that adverse effects on amenity values, safety and the environment are minimised.
TEMP-P3	Enable a wide range of temporary events on the West Coast recognising their positive contribution to community wellbeing in locations where these do not adversely affect natural or cultural values, or transport safety . ¹³⁹

¹³⁹ Waka Kotahi NZ Transport Agency S450.187

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TEMP-P4 Ensure that freedom camping activities undertaken in immediately adjoining the State Highway road corridor are managed in a manner consistent with freedom camping in other parts of the relevant district.¹⁴⁰

4.5. Temporary Activities Rules

Submissions and Further Submissions

448. Seven submission points and three further submission points relating to **TEMP-R1** were summarised in a Table on page 102 of the s42A Report. Three submission points sought the rule be retained as notified. The NZDF submission was recorded as four submission points seeking amendments to the wording. The further submission points related to the amendments sought by the NZDF.
449. Eight submission points relating to **TEMP-R2** were summarised in a Table on page 103 of the s42A Report. Three submission points sought to retain the rule as notified, four submission points sought amendments to the wording and one submission point sought a review for duplication.
450. Five submission points relating to **TEMP-R3** were summarised in a Table on page 104 of the s42A Report. Four submission points sought to retain the rule as notified and one sought amendment to the wording of clause (1).
451. Three submission points relating to **TEMP-R4** were summarised in a Table on page 105 of the s42A Report. Two submission points sought to retain the rule as notified and one sought amendment to the wording.
452. Seven submission points and two further submission points relating to **TEMP-R5** were summarised in a Table on page 106 of the s42A Report. Two submission points sought to retain the rule as notified, one sought the rule be deleted and one submission sought amendments to the wording.
453. Seven submission points and three further submission points relating to **TEMP-R6** were summarised in a Table on pages 106-107 of the s42A Report. Five submission points sought to retain the rule as notified and two submission sought amendments to the wording.
454. Five submission points and one further submission points relating to **TEMP-R7** were summarised in a Table on page 107 of the s42A Report. Four submission points sought to retain the rule as notified and one submission point also sought to delete the matters of control from the rules.
455. Six submission points relating to **TEMP-R8** were summarised in a Table on page 108 of the s42A Report. Three submission points sought to retain the rule as notified, two submission points sought two additional clauses and one submission point sought an additional matter of discretion.
456. Six submission points relating to **TEMP-R9** were summarised in a Table on page 109 of the s42A Report. Four submission points sought to retain the rule as notified and two submission points sought two additional clauses.

¹⁴⁰ Waka Kotahi NZ Transport Agency S450.188

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457. The Panel adopts these summaries and has considered the relevant submissions and further submissions.

Section 42A Report

458. In response to the NZDF submission, Ms Belgrave supported amendments to TEMP-R1 to enable temporary and military training activities and emergency management training to occur over a period of 31 consecutive days, as follows:

*These are for a maximum of 31 **consecutive** days per year (**excluding set up and pack down activities**).*

459. However, Ms Belgrave did not support the amendment sought by the NZDF to amend clause (4) to add ‘*unless written approval from the relevant Poutini Ngāi Tahu rūnanga is provided to the relevant District Council at least 10 working days prior to the activities commencing*’, as she considered this would create a third party approval.
460. In response to BDC, Ms Belgrave supported the deletion of TEMP-R2(4) to remove duplication.
461. Ms Belgrave did not support Kiwi Rail’s submission to amend TEMP-R2 to provide for activity on ‘*adjacent sites*’ in the vicinity of demolition activity.
462. Ms Belgrave recommended TEMP-R5 to provide further clarity that freedom camping is not provided for with the state highway road corridor and to delete the words ‘*Waka Kotahi New Zealand Transport Authority or*’ from clause (1).
463. Ms Belgrave recommended TEMP-R3, TEMP-R4, TEMP-R6, TEMP-R7, TEMP-R8 and TEMP-R9 be retained as notified.
464. In her Addendum, Ms Belgrave clarified that she did not support the changes to the rules sought by Westpower given the addition of clarification that the TEMP rules do not apply to energy and infrastructure activities.
465. Ms Belgrave also revised Appendix 2 (attached to the s42A Addendum Report) to add the submission points by Ms Inta and the Buller Conservation Group, which sought to add a clause to each of the rules requiring that environmental values are not degraded, and that wildlife is not disturbed by temporary activities; and the further submission points in opposition by Westpower and the NZDF. She recommended rejecting the submissions seeking the additional clause and accepting the further submissions. She noted the matters raised related to the effects of noise and light.
466. In response to the evidence of Ms Lynch, Ms Belgrave supported an exemption for Māori Purpose Activities occurring within a Māori Purpose Zone given these activities are provide for under rule MPZ-R1.

Hearing and Submitter Evidence/Statements

467. Poutini Ngāi Tahu sought inclusion of a new matter of discretion and control for consideration of Poutini Ngāi Tahu values for the restricted discretionary and controlled activity rules in the Temporary Activities chapter. Ms Lynch highlighted this additional

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matter of discretion was consistent with other rules, including INF-R21 and SUB-R10 as notified. She sought its inclusion in rules TEMP-R7, TEMP-R8 and TEMP-R9.

468. As a further submitter to the submission point from the NZDF regarding amending TEMP-R1 (4), Ms Lynch's supported the wording as follows:

These do not occur on a Site or Area of Significance to Māori identified in Schedule Three unless written approval from the relevant Poutini Ngāi Tahu rūnanga is provided to the relevant District Council at least 10 working days prior to the activities commencing. (pg. 17)

469. Ms Lynch sought to amend rule TEMP-R6 by adding a new standard as follows:

These are temporary activities associated with a Māori Purpose Activity on Māori Purpose Zoned land. (pg.18)

470. Ms Lynch did not support deleting the matters of control from rule TEMP-R7.

471. The NZDF highlighted the definition of 'regionally significant infrastructure' does not include defence facilities but that the definition of 'critical infrastructure' did include defence facilities. It noted that earthworks associated with defence facilities would therefore require resource consent regardless of the effects associated with the activity.

472. NZDF sought amendment to clause (4) of Rule TEMP-R1 to allow earthworks within a SASM as a permitted activity with the written approval of Poutini Ngāi Tahu Rūnanga. It highlighted a similar standard to that proposed is used for temporary activities permitted under SASM-R5. This amendment was supported in the evidence of Ms Lynch for Poutini Ngāi Tahu.

473. NZDF noted that submission point S519.022 sought deletion of the matters of control listed under TEMP-R7 given the nature of Temporary Military Training Activities (TMTA) and the control and management of these events by the NZDF. It submitted it was not appropriate to require a resource consent to consider the environmental effects given these events were not held in public spaces and had similar effect to other day-to-day and training activities carried out by other emergency and civilian organisations.

474. Ms Inta and the Buller Conservation Group sought to add a clause to each of the rules requiring that environmental values are not degraded, and that wildlife is not disturbed by temporary activities. This was opposed by Westpower and the NZDF in further submissions.

475. Mr Kennedy, for Westpower, reiterated the amendments sought to TEMP-R2, TEMP-R8 and TEMP-R9.

Reporting Officer Reply Evidence

476. On the basis of the legal opinion from Wynn Williams, Ms Belgrave considered the proposed wording of TEMP-R1 proposed by Ms Lynch did not satisfy all the legal tests required for permitted activities, including not reserving discretion to decide whether an activity is a permitted activity to a third party. She therefore recommended the proposed amendment to Standard (4) requested by the NZDF and supported by Poutini Ngāi Tahu was rejected.

477. The Reporting Officer and the legal advice received both acknowledge the benefits of including such an amended standard, including the benefits to applicants and the Rūnanga

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of not imposing an additional resource burden. They noted it may be possible to devise a rule that meets the requirements of a permitted activity rule with a certification element but that this would be novel and relatively untested.

478. Ms Belgrave considered the addition of a new matter of control or discretion to TEMP-R7, TEMP-R8 and TEMP-R9, as requested by Poutini Ngāi Tahu, would increase the complexity and costs from applications. She considered this increase in costs would not be commensurate with the potential effects of temporary activities where no other consent was required due to the inherent scale and nature of these activities and their potential environmental effects. She concluded this would reduce certainty to plan users.
479. In Part 2 of her Right of Reply, Ms Belgrave considered the potential effects of temporary activities on indigenous, threatened, and endangered species and expert advice in the Wildlands Report. In summary, Ms Belgrave recommended the following amendments to the Temporary Activities chapter:
1. Amendment to TEMP-R1 to restrict the use of outdoor artificial lighting during the tāiko/Westland petrel breeding season (1 November to 15 January);
 2. Amendment to TEMP-R1 to restrict temporary and military training activities and emergency management training within Significant Natural Area (SNA) identified in Schedule Four of the pTTPP; and
 3. Consequential amendment to the matters of control under TEMP-R7.
480. Ms Belgrave highlighted the conclusions reached by Wildlands are that temporary activities subject to TEMP-R2 (Temporary Motorsport Activities) and TEMP-R6 (Other Temporary Activities and Buildings) will generally occur near residential areas, during daylight hours, or for a short duration, and it is not anticipated that the tāiko/Westland petrel will be adversely affected. She considered one or more of these characteristics also applied to activities provided for under TEMP-R3 (Temporary Buildings and Structures Ancillary to a Construction and Demolition Activity), TEMP-R4 (Temporary Residential Buildings Following an Emergency Declaration), and TEMP-R5 (Freedom Camping on land adjacent to the State Highway Network).
481. In focussing her assessment on TEMP-R1, Ms Belgrave did not support the inclusion of additional requirements to avoid activities within known flight paths of Westland petrel/tāiko or associated lighting controls because these are not currently clearly identified or mapped within the pTTPP. On this basis, she considered that requirements to avoid significant habitat of indigenous fauna would be inappropriate in a permitted activity rule.
482. As an alternative, Ms Belgrave recommended amendments to TEMP-R1(4) to require that activities do not occur within a SNA identified in Schedule Four given SNA include significant habitat of indigenous fauna. However, she highlighted that Schedule Four in its current form has only identified SNA within the Grey District, and that the provisions of the Ecosystems and Indigenous Biodiversity require further assessment to be undertaken at the time of resource consent to identify significant indigenous biodiversity within the Buller and Westland Districts. In these instances, she noted that an ecological assessment process would be required to be undertaken by an ecologist to confirm the presence of significant indigenous biodiversity. She considered that the requirement for ecological assessment outside of the Grey District would create additional costs to demonstrate compliance under

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- TEMP-R1; and that given the limited scope of activities provided for under TEMP-R1 (and their temporary nature), she considered that referring to SNA identified in Schedule Four would provide an appropriate level of protection. She also considered the recommended wording would future proof the Plan provisions until such time SNA in the Buller and Westland District can be identified and included within the Schedule.
483. Ms Belgrave considered the scale of the further recommended amendments did not necessitate a section 332AA evaluation.
484. The Wildlands Report (Appendix 2A of Part 2 of the Right of Reply) noted that Temporary and Military Training Activities and Emergency Management Training under TEMP – R1 could occur in the Westland petrel/tāiko breeding season when any unshielded lights (vertical light spill) and lights containing blue light and UV light (3500-5000K) could attract and cause grounding of adult and fledging young, especially if the activity is within their flight path to and from the sea. It therefore recommended that any deployed lighting should adhere to the recommendations for LIGHT – RX2 or LIGHT – RX3.
485. The Wildlands Report highlighted that TEMP-R1 did not include any restrictions on activities occurring within significant habitat for indigenous fauna. It noted that this is a concern as indigenous species, including tāiko/Westland petrel, whio/blue duck (*Hymenolaimus malachorhynchos*, Threatened – Nationally Vulnerable), roroa/great spotted kiwi (*Apteryx maxima*, Threatened – Nationally Vulnerable), rowi/Ōkarito brown kiwi (*Apteryx rowi*, Threatened – Nationally Endangered), or kororā/southern blue penguin (*Eudyptula minor minor*, At Risk – Declining), can be adversely affected by light, noise and human activity, particularly during the breeding season of these species (May to February). It highly recommended such activities do not occur within areas of significant habitat for indigenous fauna.
486. In relation to the permitted activities for the Temporary Motorsport Activities (TEMP – R3), Other Temporary Activities and Buildings (TEMP – R6), Wildlands also considered the effects on tāiko/Westland petrel. It concluded that because these activities would generally occur near residential areas, during daylight hours or within the early hours of the curfew period (e.g. before midnight), and for short durations (up to a maximum of three days in a given period), adverse effects on Westland petrel/tāiko were not expected.

Hearing Panel's Evaluation

487. The Panel notes the Recommendation Report for the Energy, Infrastructure and Transport Chapters recommend adding defence facilities to the definition of '*regionally significant infrastructure*', which addresses the concerns of the NZDF.
488. The Panel acknowledges temporary activities within identified SASM will be subject to the rules in the SASM chapter and TEMP-R9(b) includes 'cultural values'. We note rule INF-R21 appropriately includes consideration of Poutini Ngāi Tahu values because it relates to community wastewater facilities. Similarly, SUB-R10 relates to the subdivision of land within an identified SASM.
489. The Panel considers it would be appropriate to incorporate reference to '*Poutini Ngāi Tahu values*' as a matter of control in TEMP-R7. This is in response to the submissions and evidence of NZDF and Poutini Ngāi Tahu, which indicates a working relationship between the two submitters. Such inclusion would also recognise reference in TEMP-R9(b) to '*cultural values*'.

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Specifying ‘*Poutini Ngāi Tahu values*’ in TEMP-R7 would limit the matter of control in comparison with the broader term ‘*cultural values*’.

490. The Panel considers that outside of an identified SASM it is conceivable that the timing, location and design of temporary military and emergency management activities could impact on cultural practices and matters of cultural significance to Poutini Ngāi Tahu (e.g. seasonal mahinga kai harvest) because such activities could occur in a wide range of settings, at different times of year and at a variety of scales of activity, such that it is appropriate there is opportunity for the matter to be assessed at the time of resource consent application.
491. The Panel is not persuaded that TEMP-R8 requires amendment in response to Poutini Ngāi Tahu submissions and evidence given that activities will be limited in terms of their location and the nature of the activity. As has been noted, TEMP-R9(b) already allows for consideration of ‘*Poutini Ngāi Tahu values*’ within the broader reference to ‘*cultural values*’.
492. The Panel agrees with Ms Belgrave that adding the consideration of Poutini Ngāi Tahu values to rules TEMP-R8 and TEMP-R9 is not appropriate given the intended nature and scale of the potential effects of the temporary activities covered by these three rules. The Panel agrees that this would add complexity and cost for applicants where no other resource consents are required. The Panel therefore recommends no changes to TEMP-R8 and TEMP-R9.
493. The Panel agrees with Ms Belgrave that the amendments sought by Ms Inta and the Buller Conservation Group, to add a new clause regarding the potential adverse effects on wildlife from temporary light and noise, are generally addressed in other rules in the Plan. However, the Panel accepts Ms Belgrave’s recommendation to include the consideration of significant habitats of indigenous fauna within SNA identified in Schedule Four as a matter of control in TEMP-R7. However, the Panel consider this control should be of ‘*adverse effects*’ and not linked to clause (a) which relates to visual amenity. The Panel recommends the addition of a new matter of control as a separate clause to enable the control of ‘*Adverse effects on significant habitats of indigenous fauna within Significant Natural Areas identified in Schedule Four, taking into account the duration, hours of operation and frequency of the activity.*’
494. The Panel agrees with Ms Belgrave that the amendments sought by Westpower to TEMP-R2, TEMP-R8 and TEMP-R9 are not necessary given the recommended amendments to the overview and the removal of duplication.
495. The Panel is satisfied that Ms Belgrave’s recommended changes to the rules add clarity and remove duplication.

Hearing Panel’s Recommendation

496. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends retaining TEMP-R3, TEMP-R4, TEMP-R7, TEMP-R8 and TEMP-R9 as notified; and recommends that the relevant submissions identified in the footnotes below are accepted or accepted in part, and recommends the following changes to the following TEMP Rules:

Temporary Activity Rules

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Note: There may be a number of Plan provisions that apply to an activity, building, structure and site. In some cases, consent may be required under rules in this Chapter as well as rules in other Chapters in the Plan. In those cases, unless otherwise specifically stated in a rule, consent is required under each of those identified rules. Details of the steps Plan users should take to determine the status of an activity are provided in General Approach.

Permitted Activities

TEMP-R1 Temporary Military Training Activities and Emergency Management Training

Activity Status Permitted:

Where:

1. These are for a maximum of 31 **consecutive** days per year (**excluding set up and pack down activities**);¹⁴¹
2. No permanent structures are erected unless they are lawfully established in accordance with relevant zone and overlay chapter rules in this Plan;
3. **There is no outdoor artificial light during the tāiko/Westland petrel breeding season, from 1 November to 15 January.**¹⁴²
4. No earthworks are undertaken except where they are in accordance with relevant Earthworks and overlay chapter rules (or resource consent is obtained for the earthworks); and
5. These do not occur on a Site or Area of Significance to Māori identified in **Schedule Three or Significant Natural Area identified in Schedule Four.**¹⁴³

Activity status where compliance not achieved: Controlled

TEMP-R2 Temporary Buildings and Structures Ancillary to Construction and Demolition Activity

Activity Status Permitted:

Where:

1. These are removed within 1 month of the activity ceasing and the site reinstated to the original or better condition;
2. The building or structure is located on the same site as the construction or demolition activity;
3. Relevant zone Setback standards are met where the activity adjoins any Residential or Settlement Zone; **and**
4. ~~The building or structure is on the same site as the construction or demolition activity.~~¹⁴⁴

¹⁴¹ New Zealand Defence Force S519.017

¹⁴² Buller Conservation Group S552.158 and Frida Inta S553.158

¹⁴³ Buller Conservation Group S552.148 and Frida Inta S553.148

¹⁴⁴ Buller District Council S538.374

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54. Any temporary building is no more than 50m² in gross floor area where this adjoins a residential zone.

Activity status where compliance not achieved: Restricted Discretionary

TEMP-R5 Freedom Camping on land adjacent to the State Highway Network

Activity Status Permitted:

Where:

1. This activity is in locations identified and signposted by ~~Waka Kotahi New Zealand Transport Authority or~~¹⁴⁵ the relevant District Council as a designated Responsible Camping Site or Freedom Camping Site;
2. Freedom camping at any one location or within 500m of the same location is limited to no more than two consecutive nights, and no more than 10 nights per 30-day period; and
3. Freedom camping is limited to Certified Self-Contained Vehicles in accordance with NZS 5465:2001.

Activity status where compliance not achieved: Restricted Discretionary

TEMP-R6 Other Temporary Activities and Buildings

Activity Status Permitted:

Where:

1. These are aircraft or helicopter movements; or
2. These are temporary activities associated with a Māori Purpose Activity on Māori Purpose zoned land; or¹⁴⁶
3. Community markets occur a maximum of 1 day/week at any one site; or
4. For other activities and events:
 - a. These are for a maximum of 3 times in any one year at one site;
 - b. These only occur for a maximum of 3 consecutive days at any site;
 - c. In all zones except the Open Space and Recreation Zones the relevant Permitted Activity NOISE and LIGHT standards are met; and
 - d. In the Open Space and Recreation Zones a temporary activity may exceed the zone Permitted Activity NOISE and LIGHT standards on a site on one occasion in a 3 month period and for a maximum of 3 days.

Advice Note:

1. It is the organiser's obligation to contact the relevant road controlling authority (Waka Kotahi - NZ Transport Agency) if the activity is accessed from a State Highway, and the relevant District

¹⁴⁵ Waka Kotahi NZ Transport Agency S450.191

¹⁴⁶ Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.212

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Council (if accessed from any other roads) to arrange an appropriate traffic management plan to avoid traffic safety hazards being generated from the activity.

2. Temporary Events in a number of important cultural sites and locations are subject to rules in the Sites and Areas of Significance to Māori Chapter.

Activity status where compliance not achieved: Restricted Discretionary

TEMP-R7 Temporary Military Training Activities and Emergency Services Training not meeting Permitted Activity Standards

Activity Status: Controlled

Matters of Control are:

- a. Visual amenity ~~from~~of neighbouring properties and public places;
- b. **Adverse effects on significant habitats of indigenous fauna within Significant Natural Areas identified in Schedule Four, taking into account the duration, hours of operation and frequency of the activity;**¹⁴⁷
- c. **Effects on Poutini Ngāi Tahu values;**¹⁴⁸
- d. Location and design; and
- e. Traffic safety.

Activity status where compliance not achieved: N/A



Sharon McGarry

Hearings Panel - Chair



Maria Bartlett

Hearings Panel Member



Paul Rogers

Hearings Panel Member

Date: 17 September 2025

¹⁴⁷ Buller Conservation Group S552.158 and Frida Inta S553.158

¹⁴⁸ Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.015

APPENDIX 1 – RECOMMENDATIONS ON PLAN PROVISIONS

Earthworks Chapter

Overview

Earthworks can adversely affect amenity values (visual, dust nuisance, noise and traffic), **natural environment values (such as indigenous biodiversity, habitat, environmental quality and landscape)** and result in changes to natural landforms. Earthworks can cause changes to the appearance and character of the neighbourhoods they are located in and can impact on people's experience of their environment.

Other relevant Te Tai o Poutini Plan provisions

In addition to the provisions in this chapter, earthworks and land disturbance are also subject to additional provisions in some zone chapters and a number of Part 2: District-Wide Matters chapters, including:

- **District Wide Chapters – Energy, Infrastructure, and Natural Hazards Chapters have provisions relating to earthworks.**
- **Overlay Chapters** - the Overlay Chapters have **earthworks** provisions in relation to Historic Heritage; Notable Trees; Sites and Areas of Significance to Māori; Ecosystems and Indigenous Biodiversity; Natural Features and Landscapes; Natural Character and Margins of Waterbodies; Natural Hazards; and the Coastal Environment. ~~Where earthworks are located within an overlay area (as identified in the planning maps) then the relevant overlay chapter provisions apply.~~
- **Earthworks Associated with Mineral Extraction** - the Zone **and Overlay** Chapters have provisions **which manage** mineral extraction and its ancillary activities. ~~including earthworks.~~ **The earthwork rules within this chapter do not apply to mineral extraction, mineral prospecting or mineral exploration.**

Other relevant regulations

A number of other regulatory and non-regulatory methods also manage the effects of earthworks. For instance, certain earthworks carried out as part of building work are subject to the New Zealand Building Code and may require a building consent under the Building Act 2004 **and earthworks in the vicinity of electrical infrastructures are regulated under the New Zealand Code of Practice for Electrical Safe Distances (NZCEP 34:2001).**

~~Earthworks and land disturbance~~ affecting archaeological sites may also require authorisation under the Heritage New Zealand Pouhere Taonga Act 2014. The Heritage New Zealand Pouhere Taonga Act 2014 makes it unlawful for any person to modify or destroy, or cause to be modified or destroyed, the whole or any part of an archaeological site without the prior authority of Heritage New Zealand. **This is regardless of whether the site is scheduled in Tai o Poutini Plan or not, and is in addition to any resource consent obtained.** If you wish to do any work that may affect an archaeological site you must obtain an authority from Heritage New Zealand before you begin.

Earthworks may need additional resource consents from the West Coast Regional Council under the Regional Land and Water or Coastal Plans for the West Coast/Te Tai o Poutini or under the National Environmental Standard for Freshwater 2020 including earthworks that may result in silt or sediment contamination of water or those which will affect wetlands.

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Where earthworks associated with the removal of contaminated land and soil are undertaken, the provisions of the National Environmental Standard (NES) for Assessing and Managing Contaminants in Soil for Human Health will also apply.

The National Environmental Standard for **Commercial Plantation Forestry 2017 Amendment Regulations 2023** regulates earthworks for plantation forestry and these rules do not apply to those works.

EW – O1 To provide for earthworks to facilitate subdivision, use and development of the West Coast/Te Tai o Poutini’s land resource, while ensuring that their adverse effects on the surrounding environment are avoided, **remedied** or mitigated.

EW - P1 Enable ~~temporary and small scale~~ earthworks for the subdivision, use and development of land, the provision of **infrastructure** utilities, and hazard mitigation, while managing those with the potential to create significant **more than minor** adverse effects.

EW – P2 Manage the **adverse** effects of earthworks to minimise impacts on **natural** landscape values, **natural** character, amenity values, natural features, water quality, **indigenous** biodiversity, cultural and heritage sites **items and areas**, and the quality of the environment **to avoid, remedy or mitigate adverse effects, as appropriate.**

EW – P3 Require the use of accidental discovery protocols to mitigate the potential risk ~~to~~ **of** earthworks to archaeological sites and sites of significance to Māori and archaeological sites that are not scheduled in the Plan.

EW – P4 Protect ~~critical infrastructure~~ **regionally significant infrastructure** and natural hazard defences from the adverse effects of earthworks.

Earthworks Rules

Note: There may be a number of Plan provisions that apply to an activity, building, structure and site. In some cases, consent may be required under rules in this Chapter as well as rules in other Chapters in the Plan. In those cases, unless otherwise specifically stated in a rule, consent is required under each of those identified rules. Details of the steps Plan users should take to determine the status of an activity are provided in General Approach.

Permitted Activities

EW - R1 Earthworks General Standards

All Permitted activities must comply with the following relevant standards:

1. Earthworks must not exceed a maximum depth or height above ground level of 1.5m measured vertically within 1.5m of a boundary except where these are undertaken by a network utility operator for the purpose of:
 - a. Pole foundations;
 - b. Backfilled trenches; ~~or~~
 - c. Installation of services by trenchless methods such as directional drilling;
 - d. **Installation of underground equipment as part of the electricity supply or distribution network;**
 - e. **Achieving safe separation between conductors and the ground; or**

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- f. **Stockpiles required for network utility or regionally significant infrastructure maintenance, operation, repair, upgrade, or installation of new network utilities.**
2. All **imported** fill must consist of cleanfill material;
3. Erosion and sediment control measures must be ~~put in place~~ **designed, installed and maintained until earthworks are completed** to avoid sediment run-off from earthworks activities entering a Council reticulated network or into waterbodies.
4. No diversion of stormwater and overland flow shall occur beyond the site boundary and water must not be diverted to adjacent properties or the road;
5. Any earthworks within the vicinity of overhead electric lines must comply with the New Zealand Electrical Code of Practice for Electrical Safety Distances (NZECP 34:2001);
6. No earthworks are to be undertaken on or within 10m of any public natural hazard mitigation structure unless ~~under~~ the written approval has been obtained from the relevant local government agency; ~~and~~
7. In the event of discovery of any sensitive or archaeological material that the Accidental Discovery Protocol outlined in Appendix Four must be followed; **and**
8. **Rule EW-R1 does not apply to earthworks associated with mineral extraction, mineral exploration, or mineral prospecting.**

Advice Notes:

1. Earthworks are also regulated by the West Coast Regional Land and Water Plan and the NES - Freshwater 2020 administered by the West Coast Regional Council.
2. Earthworks undertaken in areas of contaminated land are subject to the Rules in the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

Activity Status where compliance not achieved: Restricted Discretionary

EW - R2 Earthworks – All Zones

Activity Status Permitted

Where:

1. All standards in Rule EW - R1 are complied with; and
2. These earthworks are:
 - a. Associated with the construction of an approved building platform and access; or
 - b. ~~These are earthworks a~~Associated with an approved subdivision consent; or
 - c. ~~These are earthworks a~~**Associated** with an approved well or bore; or
 - d. ~~These are eEarthworks, including stockpiles Are r~~Required for **repair, maintenance, operation, upgrading and establishment of a** network utility or critical **regionally significant** infrastructure, ~~maintenance, operation, repair, upgrade, or installation of new network utilities including public roads~~ **and may include stockpiles;** or
 - e. ~~These are e~~Earthworks associated with installation of swimming pools; or
 - f. ~~The earthworks are f~~For interments in a cemetery or urupā;
 - g. ~~The earthworks are f~~For natural hazard mitigation structures constructed by a statutory agency or their authorised contractor **acting on its behalf;** or

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- ~~h. The earthworks are – Test pits for geotechnical or contaminated land assessment where the land is reinstated within 48 hours; or~~
- ~~i. They are earthworks within the National Grid Yard where:~~
- ~~i. Any earthworks must not exceed a depth or fill from original ground level of 300mm, except for:~~
- ~~A. Earthworks for a network utility or as part of a renewable electricity generation activity; and~~
- ~~B. Earthworks undertaken as part of agricultural or domestic cultivation, or repair, sealing or resealing of a road, footpath, driveway or farm track.~~
3. **Rule EW-R2 does not apply to earthworks associated with mineral extraction, mineral exploration, or mineral prospecting.**

Advice Notes:

1. Rules in relation to earthworks in overlay areas can be found in the Overlay Chapters of this Plan.
2. Earthworks undertaken in areas of contaminated land are subject to the Rules in the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

Activity Status where compliance not achieved: Restricted Discretionary

Refer Overlay Chapters for Earthworks Rules in relation to these overlay areas.

EW – R3 Earthworks in the GRUZ - General Rural Zone, RLZ - Rural Lifestyle Zone, any INZ - Industrial Zone, FUZ - Future Urban Zone, AIRPZ - Airport Zone, any OSRZ - Open Space and Recreation Zone and the MPZ - Māori Purpose Zone

Activity Status Permitted

Where:

1. All standards in Rule EW - R1 are complied with; and
2. These are ancillary earthworks for:
 - i. A Permitted Activity, except that in the Rural Lifestyle Zone a maximum of 500m² per site of land is disturbed in any 12 month period; or
 - ii. An Energy Activity, **Regionally Significant Infrastructure** Network Utility Operation or Transport Activity;
3. Where the earthworks are undertaken within an Overlay Chapter area these earthworks meet the Permitted Activity standards for the relevant Overlay Chapter;
4. **In the Natural Open Space Zone, a maximum of 250m² per site of land is disturbed in any 12 month period and a maximum of 250m³ of material is transported off site in any 12 month period, and there is a maximum 1m change of existing ground level; and**
5. **Rule EW-R3 does not apply to earthworks associated with mineral extraction, mineral exploration, or mineral prospecting.**

Activity Status where compliance not achieved: Restricted Discretionary where standard 1, ~~and 2~~ **and 4** are not complied with.

Refer to relevant Overlay Chapter where standard 3 is not complied with.

EW – R4 Earthworks in any RESZ - Residential Zone, the NCZ - Neighbourhood Centre Zone or SETZ - Settlement Zone

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Activity Status Permitted

Where:

1. All standards in Rule EW - R1 are complied with; and
2. Where the earthworks are undertaken within an Overlay Chapter area these earthworks meet the Permitted Activity standards for the relevant Overlay area; **and**
3. These are ancillary earthworks for an Energy Activity, **Regionally Significant Infrastructure Network-Utility Operation** or Transport Activity; and
4. Where earthworks are undertaken for any other activity:
 - a. A maximum of 250m² per site of land is disturbed in any 12 month period;
 - b. A maximum of **250**200m³ of material is transported off site in any 12 month period; and
 - c. There is a maximum 1m change of existing ground level.
5. **Rule EW-R4 does not apply to earthworks associated with mineral extraction, mineral exploration, or mineral prospecting.**

Advice Note:

Rules in relation to earthworks in overlay areas can be found in the Overlay Chapters.

Activity Status where compliance not achieved: Restricted Discretionary

Refer to relevant Overlay Chapter where standard 2 is not complied with.

EW - R5 Earthworks in any COMZ - Commercial and Mixed Use Zone, SVZ - Scenic Visitor Zone, HOSPZ - Hospital Zone or STADZ - Stadium Zone

Activity Status Permitted

Where:

1. All standards in Rule EW - R1 are complied with; and
2. Where the earthworks are undertaken within an Overlay Chapter area these meet the Permitted Activity standards for the relevant overlay area; and
3. These are ancillary earthworks for an Energy Activity, **Regionally Significant Infrastructure Network-Utility Operation** or Transport Activity; and
4. Where earthworks are undertaken for any other activity a maximum of 1000m² per site or land is disturbed in any 12 month period.

Advice Note:

Rules in relation to earthworks in overlay areas can be found in the Overlay Chapters.

Activity Status where compliance not achieved: Restricted Discretionary

Refer to relevant Overlay Chapter where standard 2 is not complied with.

~~EW - R6 Earthworks in the BCZ - Buller Coalfield Zone and MINZ - Mineral Extraction Zone~~

~~Activity Status Permitted~~

~~Where:~~

- ~~1. All standards in Rule EW - R1 are complied with; and~~
- ~~2. Where the earthworks are undertaken within a Overlay Chapter area these need to meet the Permitted Activity standards for the relevant overlay area.~~

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~~Advice Note:~~

- ~~1. Rules in relation to mineral extraction and ancillary activities can be found in the relevant zone rules.~~
- ~~2. Rules in relation to earthworks in overlay areas can be found in the Overlay Chapters.~~

~~Activity Status where compliance not achieved: Controlled Activity under the relevant zone rule – Rule BCZ – R5 or MINZ – R6~~

~~Refer to relevant Overlay Chapter where standard 2 is not complied with.~~

EW – R7 Earthworks and vertical holes within the National Grid Yard

Activity Status Permitted

Where:

1. All standards in Rule EW - R1 are complied with; and

2. Earthworks and vertical holes do not:

- a. Exceed 300mm in depth within 6m of the outer visible edge of a National Grid support structure;**
- b. Exceed 3m in depth between 6m and 12m of the outer visible edge of a National Grid support structure;**
- c. Result in a reduction of the ground to conductor clearance distances as required in Table 4 of the New Zealand Electrical Code of Practice for Electrical Safe Distances 34:2001;**
- d. Compromise the stability of any National Grid support structures; and**
- e. Result in the loss of vehicular access to a National Grid support structure.**

3. Earthworks and vertical holes for the following activities are exempt from compliance with EW-R7(1)(a) to (e):

- a. Earthworks or vertical holes, excluding mining and quarrying, that are undertaken by a network utility operator as defined by the Resource Management Act 1991;**
- b. Agricultural or domestic cultivation;**
- c. The repair, sealing or resealing of a vehicle access, farm track, footpath, or driveway;**
- d. Vertical holes not exceeding 500mm in diameter that are more than 1.5m from the outer edge of a National Grid pole or stay wire, or are a post hole for a farm fence or horticulture structure more than 6m from the visible outer edge of a National Grid tower foundation; and**
- e. Earthworks and vertical holes subject to a dispensation from Transpower under New Zealand NZECP 34:2001.**

Activity status where compliance not achieved: Non-complying

Restricted Discretionary Activities

~~EW – R7 Earthworks within the National Grid Yard Not Meeting Rule EW – R2~~

~~Activity Status Restricted Discretionary~~

~~Discretion is restricted to:~~

- ~~a. Effects on the operation, maintenance, upgrading and development of the National Grid;~~
- ~~b. The risk to the structural integrity of the National Grid support structure (s);~~

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- c. ~~Any impact on the ability to access the National Grid;~~ d. Management of stormwater and overland flow;
- e. ~~Any adverse effects on landscape, amenity, natural features, water quality, cultural and heritage sites, biodiversity and habitat of indigenous flora and fauna, and the quality of the environment;~~
- f. ~~The risk of electrical hazards affecting public or individual safety and the risk of property damage;~~ and
- g. ~~The outcome of any consultation with the owner and operator of the National Grid.~~

~~Activity status where compliance not achieved: N/A~~

EW – R8 Earthworks in any Zone not meeting Permitted Activity standards

Activity Status Restricted Discretionary

Discretion is restricted to:

- a. The impact **of earthworks** on ~~visual~~ amenity, landscape character, outlook and privacy;
- b. Potential dust nuisance, sedimentation, land instability, contamination and erosion effects.
- c. Effects that result from the stockpiling in terms of ~~visual~~ amenity, landscape context and character, views, outlook, overlooking and privacy;
- d. The effectiveness of proposed management or mitigation measures to ~~minimise~~ **avoid, remedy or mitigate** any ~~potential~~ adverse effects beyond the property boundary of the activity;
- e. Any changes to the patterns of surface drainage or subsoil drains that could result in a higher risk of drainage problems, inundation run-off, flooding, or raise **or lower** the water table;
- f. The impact of earthworks on ~~critical~~ **regionally significant** infrastructure;
- g. The impact on the road network, of heavy vehicle and other vehicular traffic generated as a result of earthworks;
- h. Any adverse effects on landscape **and natural character**, amenity, natural features, ~~water quality~~, cultural and heritage sites **items and areas and archaeological sites**, biodiversity and habitat of indigenous flora and fauna, **including mahinga kai species**, and the quality of the environment;
- i. The impact on stormwater infrastructure and any overland flow paths; and
- j. The impact on any natural hazards infrastructure and the effectiveness of its operation.

~~Activity status where compliance not achieved: N/A~~

Advice Note:

Rules in relation to earthworks in overlay areas can be found in the Overlay Chapters.

Non-complying Activities

EW – R9 Earthworks and vertical holes within the National Grid Yard not meeting Permitted Activity standards

Activity Status Non-complying

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Light Chapter

Overview

Artificial outdoor lighting enables work, recreation, and entertainment activities to occur beyond normal daylight hours. It also enables night-time activities to be conducted safely and provides for site security. However, if outdoor lighting is poorly designed, controlled, located or orientated, it may adversely affect the amenity of **the receiving environment**, neighbouring properties and light sensitive areas; result in a **reduction or loss** ~~loss or reduction~~ of views of the night sky; and ~~potentially~~ disturb wildlife. It may also affect human health and/or safety.

The provisions for artificial outdoor lighting provide for adequate lighting to support activities and site security, while minimising potential adverse effects.

LIGHT - O1 Artificial outdoor lighting enables night-time work, **primary production** ~~rural productive~~ activities, recreation activities, sport, entertainment activities, transportation, **energy activities** and public health and safety.

LIGHT - O2 Artificial outdoor lighting is located, designed and operated to:

- a. ~~maintain~~ Maintain the character and amenity values within zones;
- b. **Protect the natural character of the coastal environment and outstanding natural features and landscapes;**
- c. ~~so that it does not adversely affect~~ **Provide for** the health and safety of people, **and** the safe operation of the transport network;
- d. ~~Protects~~ **and maintain the qualities** views of the **natural darkness of the** night sky;
- e. **Outside the coastal environment, protect significant habitats of indigenous biodiversity and the species themselves by applying the effects management hierarchy and maintain** the habitats and ecosystems of nocturnal native fauna **biodiversity** and the species themselves;
- f. **Protect significant indigenous biodiversity within the coastal environment by avoiding adverse effects on Threatened or At Risk indigenous species and their habitats; and**
- g. **Protect indigenous biodiversity within the coastal environment by avoiding significant adverse effects on indigenous species and their habitats.**

LIGHT – P1

Provide for the use of artificial outdoor lighting that:

- a. Allows people and communities to enjoy and use sites and facilities during night time hours and contributes to the security and safety of private and public spaces;
- b. Maintains the character and amenity values of the zone ~~and surrounding area~~;
- c. Supports the social, cultural, and economic wellbeing or health and safety of people and communities, including road safety;
- d. ~~Minimises sky glow and light spill~~ **Maintains the natural darkness of the night sky within the coastal environment and minimises adverse effects on the darkness of the night sky in other areas; and**
- e. ~~Protects the health and well-being of people and ecosystems;~~

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e. Outside the coastal environment, avoids adverse effects on significant habitats of indigenous biodiversity and Threatened or At Risk species by applying the effects management hierarchy and maintains the habitats of other indigenous biodiversity and the species themselves;

f. Recognises the functional need or operational need of activities.

g. Within the coastal environment, avoids adverse effects on significant indigenous biodiversity and Threatened or At Risk indigenous species and their habitats; and

h. Within the coastal environment, avoids significant adverse effects on indigenous biodiversity and their habitats.

LIGHT – P3

Control the intensity, location and direction of any artificial outdoor lighting to:

- a. Ensure that any artificial outdoor lighting avoids conflict with existing light sensitive areas and uses;
- b. Internalise light spill within the site where the outdoor lighting is located;
- c. ~~Minimises~~**Avoid, remedy or mitigate** adverse effects on **the natural darkness of the views of the night sky, and intrinsically dark landscapes including in areas of outstanding coastal** **and maintain** natural character **within the coastal environment;**
- d. ~~Minimises~~ **Avoid, remedy or mitigate** adverse effects on the significant habitats of light sensitive native **indigenous biodiversity** ~~fauna~~ and the species themselves **and significant adverse effects on the habitats of other indigenous biodiversity and the species themselves;**
- e. ~~Minimises~~**Avoid, remedy or mitigate** adverse effects on **amenity values, and** the health and safety of people and communities in the ~~surrounding area~~ **receiving environment; and**

f. Recognise the functional need or operational needs of activities.

Light Rules

Note: There may be a number of Plan provisions that apply to an activity, building, structure and site. In some cases, consent may be required under rules in this Chapter as well as rules in other Chapters in the Plan. In those cases, unless otherwise specifically stated in a rule, consent is required under each of those identified rules. Details of the steps Plan users should take to determine the status of an activity are provided in General Approach.

Permitted Activities

LIGHT - R1

All Zones: General Permitted Activity Standards

All activities must comply with the following relevant standards: ~~Where Activity Status is Permitted~~
All artificial outdoor lighting must:

- ~~1. Be directed so that light is emitted away from any adjoining and adjacent properties;~~
- ~~2. Be directed so that light is emitted away from any state highway or arterial or principal roads, or any oncoming traffic; and~~
- ~~3. Where an activity is located on a site which adjoins or is separated by a road from a different zone, the activity on the site must meet the relevant zone standards for light for the adjoining zone at the zone boundary.~~

Advice Notes:

1. Lighting limits must be measured and assessed in accordance with AS/NZS 4282 Control of the Obtrusive Effects of Outdoor Lighting.

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~~2. Where conformance with the limits set out in the Rules in this chapter is to be determined by calculation, the calculation must be undertaken by a person who is professionally qualified and competent in the discipline of illuminating engineering.~~

2. For measurement of light levels in NOSZ - Natural Open Space Zone, SETZ - PREC 3 - Settlement Zone - Coastal Settlement Precinct, and in All Zones where the site falls within the Outstanding Coastal Natural Character Overlay, the calculation plane shall be taken at the property boundary.

~~3. Any calculation for the purposes of these Rules must be based on a maintenance factor of 1.0 (i.e. no depreciation shall be taken into account for reduction in light levels over time).~~

3. All exterior lighting shall be directed towards the area within the site that is intended to be illuminated.

Activity status where compliance not achieved: Restricted Discretionary

LIGHT - R2 Artificial Outdoor Lighting in the TCZ - Town Centre, MUZ - Mixed Use, COMZ - Commercial, PORTZ - Port, HOSZ - Hospital, STADZ - Stadium, AIRPZ- Airport and all INZ - Industrial Zones

Activity Status Permitted

Where:

1. Outdoor artificial lighting must not exceed the following vertical ~~or horizontal~~ light levels:
 - a. 7.00am – 10.00pm: 25 Lux;
 - b. 10.00pm – 7.00am: 10 Lux in the PORTZ - Port Zone **and all INZ - Industrial Zones;**
 - c. 10.00pm - 7am: 5 Lux in the TCZ - Town Centre, MUZ - Mixed Use, COMZ - Commercial, HOSZ - Hospital, STADZ - Stadium, AIRPZ - Airport and all INZ – Industrial Zones.
 - d. The above standards a-c shall be measured 2m inside the boundary of any adjoining site or the closest window in the adjoining property, whichever is the closest to the light source.

Activity status where compliance not achieved: Restricted Discretionary

~~**LIGHT – R3** Artificial Outdoor Lighting in the NOSZ – Natural Open Space Zone, SETZ – PREC 3-2 Settlement Zone – Coastal Settlement Precinct, and in All Zones where the site falls within the Outstanding Coastal Natural Character Overlay~~

Activity Status Permitted

Where:

1. Artificial outdoor lighting must not exceed the following vertical or horizontal light levels:
 - a. 7.00am – 10.00pm: 2 Lux; and
 - b. 10.00pm – 7.00am: 1 Lux; where
 - c. This is measured at the boundary of the site.
2. Where the artificial outdoor lighting is located within the Outstanding Coastal Natural Character Overlay it must:
 - a. Be fully shielded and mounted in a horizontal position or use a controlled optic;
 - b. Have a colour corrected temperature of no greater than 3000K (warm white); and
 - c. Be installed in a manner that precludes operation between 10pm and 7am the following day.

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Activity status where compliance not achieved: Restricted Discretionary except Discretionary where this is within the Outstanding Coastal Natural Character Overlay

LIGHT – R4 Artificial Outdoor Lighting in locations not provided for in Rule LIGHT – R2 or LIGHT – R3

Activity Status Permitted

Where:

1. Outdoor artificial lighting must not exceed the following vertical or horizontal light levels:

a. 7.00am – 10.00pm: 10 Lux; and

b. 10.00pm – 7.00am: 2 Lux;

c. The above standards a-b shall be measured 2m inside the boundary of any adjoining site or the closest window in the adjoining property, whichever is the closest to the light source.

Activity status where compliance not achieved: Restricted Discretionary

LIGHT – R3 Artificial Outdoor Lighting in all RESZ - Residential Zones, all SETZ – Settlement Zone except the SETZ – PREC 3 – Coastal Settlement Precinct, NCZ – Neighbourhood Centre Zone, OSZ – Open Space Zone, and SARZ - Sport and Recreation Zone

Activity Status Permitted

Where:

1. Outdoor artificial lighting must not exceed the following vertical light levels:

a. 7.00am – 10.00pm: 10 Lux; and

b. 10.00pm – 7.00am: 2 Lux.

Activity status where compliance not achieved: Restricted Discretionary

LIGHT – R4 Artificial Outdoor Lighting in the GRUZ – General Rural Zone, RLZ – Rural Lifestyle Zone, FUZ – Future Urban Zone, MPZ - Māori Purpose Zone, BCZ – Buller Coalfield Zone and MINZ – Mineral Extraction Zone

Activity Status Permitted

Where:

1. Outdoor artificial lighting must not exceed the following vertical light levels:

a. 7.00am – 10.00pm: 5 Lux; and

b. 10.00pm – 7.00am: 1 Lux.

Activity status where compliance not achieved: Restricted Discretionary

LIGHT – R4A Artificial Outdoor Lighting in the NOSZ – Natural Open Space Zone, SETZ – PREC 3 - Coastal Settlement Precinct and in locations within:

- Outstanding Coastal Natural Character Overlay (Schedule Eight);
- Outstanding Natural Landscapes Overlay (Schedule Five);
- Outstanding Natural Features Overlay (Schedule Six); or
- A distance of 15 kilometres landward of the coastal marine area.

Activity Status Permitted

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Where:

1. Artificial outdoor lighting must not exceed the following vertical light levels:

a. 7.00am – 10.00pm: 2 Lux; and

b. 10.00pm – 7.00am: 1 Lux; where

c. This is measured at the boundary of the site.

2. Artificial outdoor light must:

a. Be fully shielded and mounted in a horizontal position; and

b. Have a colour corrected temperature of no greater than 3000K (warm white).

3. Where the artificial outdoor lighting is located within the SETZ - PREC 3 - Settlement Zone - Coastal Settlement Precinct of Ōkarito it must be installed in a manner that precludes operation of lights greater than 500 lumens for durations greater than five minutes between 10pm and 7am the following day.

4. Where the artificial outdoor lighting is located within the Outstanding Coastal Natural Character Overlay it must be installed in a manner that precludes operation between 10pm and 7am the following day.

Activity status where compliance not achieved: Restricted Discretionary

LIGHT – R5	Artificial Outdoor Lighting in any zone not meeting Permitted Activity Standards outside of the Outstanding Coastal Natural Character Overlay
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Activity Status Restricted Discretionary

Discretion is restricted to:

- a. The number, placement, design, height, colour, orientation and screening of light fittings and light support structures;
- b. The amount of light spill and sky glow and associated effects on views to the night sky;
- c. Effects on visual-amenity;
- d. Effects on the safety of the transport network;
- e. Effects on established uses and their operation;
- f. Effects on coastal natural character;
- g. Effects on ~~native wildlife;~~ and **indigenous biodiversity, including mahinga kai species;** and
- h. Any positive effects generated from the use of artificial lighting;
- i. **The functional or operational need of the activity; and**
- j. **Other measures as identified in any Light Management Plan.**

Activity status where compliance not achieved: N/A

Discretionary Activities

LIGHT – R6	Artificial Outdoor Lighting within the Outstanding Coastal Natural Character Overlay and not meeting the Permitted Activity Standards.
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Activity Status Discretionary

Activity status where compliance not achieved: N/A

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Temporary Activities Chapter

Definitions

FREEDOM CAMPING

means to camp (other than at a camping ground) within 200 m of a motor vehicle accessible area or the mean low-water springs line of any sea or harbour, or on or within 200 m of a formed road or a Great Walks Track, using 1 or more of the following:

- a. a tent or other temporary structure:
- b. a caravan; or
- c. a car, campervan, house truck, or other motor vehicle.

It does not include the following activities:

- e. temporary and short-term parking of a motor vehicle;
- f. recreational activities commonly known as day-trip excursions; ~~or~~
- g. resting or sleeping at the roadside in a caravan or motor vehicle to avoid driver fatigue; or
- h. use of Nohoanga entitlement sites identified in Appendix Six by Ngāi Tahu whānui.

Overview

Temporary events and uses such as, concerts, parades, festivals, fairs, meetings, sporting and special events and exhibitions occur on a regular basis throughout the West Coast and contribute to the community. Alongside these events temporary buildings and structures are often associated with larger construction works. The temporary nature of such activities generally minimises the adverse effects the event may have on the surrounding environment. Consequently, many events and activities of short duration are tolerated by parts of the community, while other members enjoy what the event has to offer.

To ensure that the number, scale and intensity of temporary activities does not increase to a level beyond which the effects are more than of a temporary duration and have minimal effects, the following objectives, policies and rules intend to manage the effects of temporary activities and their operations.

In addition to community focused events, temporary military training and emergency management services training exercises are also provided for within the Plan with a set of clear parameters to ensure any adverse effects are minimised and temporary in duration.

Temporary camping adjacent to the State Highway is also a matter which is regulated in these provisions. This is because land in that location is not subject to the Freedom Camping Bylaws of the three District Councils.

Other relevant Te Tai o Poutini Plan provisions

In addition to the provisions in this chapter, temporary activities are also subject to additional provisions in some zone chapters and a number of Part 2: District-Wide Matters chapters, including:

- **Sites and Areas of Significance to Māori** - There are specific rules in relation to temporary events in the Sites and Areas of Significance to Māori Chapter.
- **Earthworks** - the Earthworks Chapter sets out the requirements in relation to earthworks, including for temporary activities.
- **Noise** - the Noise Chapter sets out the requirements into relation to noise.

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- **Energy, Infrastructure and Transport** - provisions in relation to temporary network utilities and temporary energy activities are included within the Energy and Infrastructure Chapters of the Plan. **The rules within this chapter do not apply to energy and infrastructure activities.**
- **Overlay Chapters** - the Overlay Chapters have provisions in relation to Historic Heritage; Notable Trees; Sites and Areas of Significance to Māori; Ecosystems and Indigenous Biodiversity; Natural Features and Landscapes; Natural Character and Margins of Waterbodies; Natural Hazards; and the Coastal Environment. Where temporary activities are located within an overlay area (as identified in the planning maps) then the relevant overlay chapter provisions apply.

TEMP – O1 To provide for temporary activities where they contribute to social, economic and cultural wellbeing of the West Coast **while minimising adverse effects.**

TEMP-P2 Enable military training and emergency management training activities while ensuring that adverse effects on amenity values, safety and the environment are minimised.

TEMP-P3 Enable a wide range of temporary events on the West Coast recognising their positive contribution to community wellbeing in locations where these do not adversely affect natural or cultural values, **or transport safety.**

TEMP-P4 Ensure that freedom camping activities undertaken in **immediately adjoining** the State Highway road corridor are managed in a manner consistent with freedom camping in other parts of the relevant district.

Temporary Activity Rules

Note: There may be a number of Plan provisions that apply to an activity, building, structure and site. In some cases, consent may be required under rules in this Chapter as well as rules in other Chapters in the Plan. In those cases, unless otherwise specifically stated in a rule, consent is required under each of those identified rules. Details of the steps Plan users should take to determine the status of an activity are provided in General Approach.

Permitted Activities

TEMP-R1 Temporary Military Training Activities and Emergency Management Training

Activity Status Permitted:

Where:

1. These are for a maximum of 31 **consecutive** days per year **(excluding set up and pack down activities);**
2. No permanent structures are erected unless they are lawfully established in accordance with relevant zone and overlay chapter rules in this Plan;
3. **There is no outdoor artificial light during the tāiko/Westland petrel breeding season, from 1 November to 15 January;**
4. No earthworks are undertaken except where they are in accordance with relevant Earthworks and overlay chapter rules (or resource consent is obtained for the earthworks); and
5. These do not occur on a Site or Area of Significance to Māori identified in Schedule Three **or Significant Natural Area identified in Schedule Four.**

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Activity status where compliance not achieved: Controlled

TEMP-R2 Temporary Buildings and Structures Ancillary to Construction and Demolition Activity

Activity Status Permitted:

Where:

1. These are removed within 1 month of the activity ceasing and the site reinstated to the original or better condition;
2. The building or structure is located on the same site as the construction or demolition activity;
3. Relevant zone Setback standards are met where the activity adjoins any Residential or Settlement Zone; **and**
- ~~4. The building or structure is on the same site as the construction or demolition activity;~~
- ~~5~~4. Any temporary building is no more than 50m² in gross floor area where this adjoins a residential zone.

Activity status where compliance not achieved: Restricted Discretionary

TEMP-R5 Freedom Camping on land adjacent to the State Highway Network

Activity Status Permitted:

Where:

1. This activity is in locations identified and signposted by ~~Waka Kotahi New Zealand Transport Authority~~ or the relevant District Council as a designated Responsible Camping Site or Freedom Camping Site;
2. Freedom camping at any one location or within 500m of the same location is limited to no more than two consecutive nights, and no more than 10 nights per 30-day period; and
3. Freedom camping is limited to Certified Self-Contained Vehicles in accordance with NZS 5465:2001.

Activity status where compliance not achieved: Restricted Discretionary

TEMP-R6 Other Temporary Activities and Buildings

Activity Status Permitted:

Where:

1. These are aircraft or helicopter movements; or
2. **These are temporary activities associated with a Māori Purpose Activity on Māori Purpose zoned land; or**
3. Community markets occur a maximum of 1 day/week at any one site; or
4. For other activities and events:
 - a. These are for a maximum of 3 times in any one year at one site;
 - b. These only occur for a maximum of 3 consecutive days at any site;
 - c. In all zones except the Open Space and Recreation Zones the relevant Permitted Activity NOISE and LIGHT standards are met; and

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- d. In the Open Space and Recreation Zones a temporary activity may exceed the zone Permitted Activity NOISE and LIGHT standards on a site on one occasion in a 3 month period and for a maximum of 3 days.

Advice Note:

1. It is the organiser's obligation to contact the relevant road controlling authority (Waka Kotahi - NZ Transport Agency) if the activity is accessed from a State Highway, and the relevant District Council (if accessed from any other roads) to arrange an appropriate traffic management plan to avoid traffic safety hazards being generated from the activity.
2. Temporary Events in a number of important cultural sites and locations are subject to rules in the Sites and Areas of Significance to Māori Chapter.

Activity status where compliance not achieved: Restricted Discretionary

TEMP-R7 Temporary Military Training Activities and Emergency Services Training not meeting Permitted Activity Standards

Activity Status: Controlled

Matters of Control are:

- a. Visual amenity ~~from~~of neighbouring properties and public places;
- b. **Adverse effects on significant habitats of indigenous fauna within Significant Natural Areas identified in Schedule Four, taking into account the duration, hours of operation and frequency of the activity;**
- c. **Effects on Poutini Ngāi Tahu values;**
- d. Location and design; and
- e. Traffic safety.

Activity status where compliance not achieved: N/A