

Decision Report

Plan Change 23 – Earthworks

Important Note

The Proposed District Plan May 2011 Annotated Version was the current version of the District Plan when Plan Changes 1-27 were notified in November 2011 and this version was therefore used as the base document for preparing the Plan Changes and the Section 32 and Planning Reports.

Since then the District Plan has been made operative (16 June 2012). The Operative District Plan 2012 is now the current version of the District Plan and therefore Plan Changes 1-27 are proposed to change this version only.

For the purpose of understanding how decisions on this Plan Change relate to the Section 32 and Planning Report and to both versions of the District Plan discussed above, this Decision Report is divided into three parts.

Part A contains the decisions made on the topics in the Planning Report and uses the Proposed District Plan May 2011 Annotated Version as the base document.

Part B shows how the full notified Plan Change and subsequent decisions on topics would change the Proposed District Plan May 2011 Annotated Version Base Document.

Part C shows how the full notified Plan Change and subsequent decisions on topics are proposed to change the Operative District Plan 2012.

Advice to Submitters:

Submitters will be familiar with the rule and map numbers from the Proposed District Plan May 2011 Annotated Version and so should refer to Parts A and B of this report to understand the decisions on their submission points.

However any submitter wishing to make an appeal will need to refer to the rule and map numbers of the Operative District Plan 2012 in Part C and reference these in their appeal.

Part A: Decisions on Topics in the Planning Report

Any changes to rules are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in [red](#), and any changes resulting from decisions on the topics in the Planning Reports in [blue](#).

Topic 1: Whole of Plan Change

Decision

That Plan Change 23 – Earthworks proceed subject to any below changes.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
67	8	Progressive Enterprises Limited
8	1	Winstone Aggregates

Rejected

Submission	Point Number	Name
FS85	6	Transpower Limited
FS85	7	Transpower Limited

Reason for Decision

The change is to make the wording clear for District Plan users, and does not require resource consent be obtained for activities which are already provided for elsewhere in the District Plan.

Topic 2: Earthworks Definition

Decision

That the definition of Earthworks be amended as follows:

“Earthworks” means the alteration of land contours on any site including, without limitation; deposition, disturbance of land by moving, removing, placing or replacing soil by excavating, cutting, filling or backfilling and re-compacting of existing ground, but does not include domestic and reserve gardening, landscaping, quarrying and normal agricultural and horticultural practices.

~~The above definition of Earthworks shall not apply to Rules 10.3(be) – (bj) – Transmission Buffer Zones. The standard in Rule 10.4(t) shall apply.~~

The following submissions are therefore:

Accepted

Submission	Point Number	Name
45	29	Federated Farmers of New Zealand
47	14	Horticulture New Zealand and the New Zealand Kiwifruit Growers Incorporated

Accepted in Part

Submission	Point Number	Name
43	12	Bay of Plenty Regional Council
23	3	Transpower Limited
23	18	Transpower Limited
FS85	1	Transpower Limited

Rejected

Submission	Point Number	Name
FS85	2	Transpower Limited
FS85	3	Transpower Limited

Reason for Decision

The above definition is clear for District Plan users, and does not require resource consent be obtained for activities which are already provided for elsewhere in the District Plan.

Furthermore the removal of landscaping from the list of exclusions means that where any landscaping project with associated earthworks that would be considered over and above that of a domestic gardening type activity would require resource consent where Earthworks are listed as requiring one in the District Plan.

See the Decision Report for Plan Change 5 – Electricity Transmission Buffer Zones for an explanation of the deletion of the sentence beginning “the above definition of earthworks...”.

Topic 3: General Rule 4A.1.4

Decision

That there is no change to Rule 4A.1.4 as was notified.

The following submission is therefore:

Accepted:

Submission	Point Number	Name
43	13	Bay of Plenty Regional Council

Reason for Decision

The wording change is for clarification.

Topic 4: New Rule 4A.5

Decision

That proposed Rule 4A.5 be amended to read as follows:

4A.5 Earthworks

~~With the exception of those Earthworks which are provided for elsewhere in the District Plan or those which are undertaken in association with an activity for which a resource consent is required, all other Earthworks shall be assessed as a permitted activity.~~

With the exception of the following all Earthworks shall be permitted:

(a) Earthworks which are listed as requiring resource consent elsewhere in the District Plan

(b) Earthworks which are undertaken in association with an activity which a resource consent for a discretionary or non-complying activity is required

(c) Where Earthworks are listed as a matter of control or discretion

The following submissions are therefore:

Accepted

Submission	Point Number	Name
43	14	Bay of Plenty Regional Council
45	30	Federated Farmers Of New Zealand
FS75	73	Federated Farmers Of New Zealand
FS75	74	Federated Farmers Of New Zealand
FS79	17	Surveying Services Limited

FS83	19	Horticulture New Zealand & New Zealand Kiwifruit Growers Incorporated
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Accepted in Part

Submission	Point Number	Name
34	19	Trustpower Limited

Reason for Decision

The amendment will ensure that there is clarification of when earthworks will require resource consent and when they will require an assessment of the effects of any earthworks associated with other activities. Furthermore it will ensure that there is no ongoing confusion for District Plan users as to what earthworks are permitted or non-complying.

Topic 5: Permitted Activities 16.3.1 – Rural Earthworks

Decision

That Rule 16.3.1(p) be deleted.

~~(p) — Earthworks ancillary to Permitted Activities~~

The following submissions are therefore:

Accepted:

Submission	Point Number	Name
43	15	Bay of Plenty Regional Council
85	4	Transpower Limited

Accepted in Part:

Submission	Point Number	Name
47	15	Horticulture New Zealand and the New Zealand Kiwifruit Growers Incorporated

Reason for Decision

Deleting Rule 16.3.1 is supported by all submitters and the provision is no longer required as new Rule 4A.5 has been adopted.

Having a note as suggested by Horticulture New Zealand and the New Zealand Kiwifruit Growers Incorporated is not considered necessary.

Topic 6: Permitted Activities 20.3.1 – All Terrain Park Earthworks

Decision

That Rule 20.3.1(k) be deleted.

~~(k) — Earthworks ancillary to Permitted Activities~~

The following submission is therefore:

Accepted:

Submission	Point Number	Name
43	16	Bay of Plenty Regional Council

Reason for Decision

New Rule 4A.5 makes Rule 20.3.1(k) redundant.

Topic 7: Miscellaneous New Rule – Structural Engineers Supervision

Decision

That the new rule as submitted by Mervyn and Joan Price is not accepted.

The following submissions are therefore:

Accepted:

Submission	Point Number	Name
FS73	1	Trustpower Limited

Rejected:

Submission	Point Number	Name
1	3	Mervyn and Joan Price

Reason for Decision

The submission is considered to be out of scope. Notwithstanding this matter is covered in Section 12 – Subdivision and Development.

Topic 8: Miscellaneous New Rule – Production Forestry Rule 16.3.1 and Definition

Decision

That the amendment as submitted by Land Matters New Zealand is not accepted.

The following submissions are therefore:

Accepted:

Submission	Point Number	Name
FS81	7	Bay of Plenty Regional Council
FS85	5	Transpower Limited

Accepted in Part

Submission	Point Number	Name
35	9	Land Matters New Zealand

Reason for Decision

New Rule 4A.5 makes Rule 16.3.1 redundant.

Part B: Changes to the Proposed District Plan May 2011 Annotated Version Base Document

Any changes to rules are shown as follows; existing District Plan text in black and changes (being the culmination of the notified Plan Change and subsequent decisions) are shown in red.

That the definition of Earthworks be amended to read as follows:

“Earthworks” means the alteration of land contours on any site including, without limitation; deposition, disturbance of land by moving, removing, placing or replacing soil by excavating, cutting, filling or backfilling and re-compacting of existing ground, but does not include domestic and reserve gardening, quarrying and normal agricultural and horticultural practices.

That Rule 4A.1.4 be amended to read as follows:

With the exception of those activities ~~that fall under the jurisdiction of the Regional Council,~~ ~~or~~ that are provided for in the general provisions of the District Plan, any activity that is not listed in the activity lists in the District Plan shall require a resource consent for a non-complying activity.

That a new Rule 4A.5 be included to read as follows:

4A.5 Earthworks

With the exception of the following all Earthworks shall be permitted:

- (a) Earthworks which are listed as requiring resource consent elsewhere in the District Plan
- (b) Earthworks which are undertaken in association with an activity which a resource consent for a discretionary or non-complying activity is required
- (c) Where Earthworks are listed as a matter of control or discretion

That Rule 16.3.1(p) be deleted.

~~(p) Earthworks ancillary to Permitted Activities~~

That Rule 20.3.1(k) be deleted.

~~(k) Earthworks ancillary to Permitted Activities~~

Part C: Changes to the Operative District Plan 2012

Any changes to rules are shown as follows; existing District Plan text in black and changes (being the culmination of the notified Plan Change and subsequent decisions) are shown in red.

That the definition of Earthworks be amended to read as follows:

“Earthworks” means the alteration of land contours on any site including, without limitation; deposition, disturbance of land by moving, removing, placing or replacing soil by excavating, cutting, filling or backfilling and re-compacting of existing ground, but does not include domestic and reserve gardening, quarrying and normal agricultural and horticultural practices.

That Rule 4A.1.4 be amended to read as follows:

With the exception of those activities ~~that fall under the jurisdiction of the Regional Council,~~
~~or~~ that are provided for in the general provisions of the District Plan, any activity that is not listed in the activity lists in the District Plan shall require a resource consent for a Non-Complying Activity.

That a new Rule 4A.5 be included to read as follows:

4A.5 Earthworks

With the exception of the following all *Earthworks* shall be permitted:

- (a) *Earthworks* which are listed as requiring resource consent elsewhere in the District Plan.
- (b) *Earthworks* which are undertaken in association with an activity for which a resource consent for a Discretionary or Non-Complying Activity is required.
- (c) Where *Earthworks* are listed as a matter of control or discretion.

That Rule 18.3.1(p) be deleted.

~~(p) *Earthworks* ancillary to Permitted Activities~~

That Rule 23.3.1(k) be deleted.

~~(k) *Earthworks* ancillary to Permitted Activities~~