

Plan Change 147: Earthworks

Section 32 Evaluation Report

Prior to Notification

March 2019

Contents

Contents	1
List of Abbreviations.....	2
1. Introduction.....	3
1.1 Overview.....	3
1.2 The Proposed Plan Change	3
2. Background	3
2.1 Resource Management Issues	4
2.2 District Plan Implementation and Ease of Use.....	4
2.3 No Specific Earthworks Land Use Rule	5
2.4 Consultation	5
3. Statutory Considerations	5
3.1 Resource Management Act 1991 (RMA)	6
3.2 National Policy	6
3.3 Iwi and Hapu Management Plans	8
3.4 Local Government Act 2002	9
3.5 Building Act 2004.....	9
3.6 Regional Policy	9
3.7 District Policy.....	10
4. Section 32 Analysis	11
4.1 Appropriateness in Terms of Purpose of RMA	11
4.2 Appropriateness in Relation to Higher Order Documents.....	11
4.3 Appropriateness in Relation to the Strategic Direction Chapter	12
4.4 Appropriateness of Proposed Policies and Methods	12
5. Conclusion.....	18
Appendix 1: Proposed Definitions	19

List of Abbreviations

Environmental Engineering Standards 2010	EES 2010
Environmental Engineering Standards 2018	ES 2018
Long Term Plan	LTP
Gross Floor Area	GFA
Local Government Act 2002	LGA
New Zealand Coastal Policy Statement	NZCPS
Regional Water and Soil Plan	RWSP
Draft Regional Plan	DRP
Northland Regional Council	NRC
Northland Regional Policy Statement	NRPS
Resource Management Act 1991	RMA
Section 32 of the RMA	s32
Section 42A of the RMA	s42A
Structure Plan	SP
Urban Growth Strategy	UGS
Whangarei District Growth Model	WDGM
Whangarei District Council Operative District Plan	WDP
Whangarei District Growth Strategy, Sustainable Futures 30/50	30/50
Whangarei 20/20 Plus	20/20 Plus
Crime Prevention through Environmental Design	CPTED
Parking Management Strategy 2011	PMS
City Centre Development Plan	CCDP
National Environmental Standards	NES
National Policy Statements	NPS
NPS on Urban Development	NPS:UDC
Outstanding Natural Landscapes	ONL
Outstanding Natural Feature	ONF
Mean High Water Springs	MHWS
City Centre Zone	CC
Mixed Use Zone	MU
Commercial Zone	COM
Residential Zone	RES
Low Density Residential Zone	LDR
Medium Density Residential Zone	MDR
High Density Residential Zone	HDR
Light Industrial Zone	LI
Heavy Industrial Zone	HI
Waterfront Zone	WZ
Shopping Centre Zone	SCZ
Neighbourhood Commercial Zone	NC
Local Commercial Zone	LC
Urban Area	UA
Living 1 Environment	L1
Living 2 Environment	L2
Living 3 Environment	L3
Business 1 Environment	B1
Business 2 Environment	B2
Business 3 Environment	B3
Business 4 Environment	B4

1. Introduction

1.1 Overview

1. This report is in relation to proposed plan change 147 (PC147) to the Operative Whangarei District Plan (**WDP**) as part of the WDP rolling review. The report has been prepared in accordance with the requirements of Schedule 1 of the Resource Management Act 1991 (**RMA**) and incorporates an evaluation under section 32 of the RMA (**s32**). S32 evaluations are iterative, and therefore the evaluation in this report constitutes the initial evaluation, with this being further revised throughout the plan change process.
2. The report provides background material to the Plan Change. It outlines the statutory considerations relating to the preparation and consideration of plan changes generally, and sets out the strategy and policy frameworks within which the Plan Change fits. It also addresses key issues pertaining to the Plan Change. The report then goes on to address the RMA's s32 evaluation requirements

1.2 The Proposed Plan Change

3. PC147 seeks to introduce a district wide chapter relating to earthworks. The overall focus of the proposed "Earthworks" Chapter is to manage the impact of subdivision within the wider environment.

PC147 includes:

- A new 'Earthworks' Chapter – with objectives, policies and district wide rules.
- Consequential changes to the WDP.
- New definitions for Chapter 4 of the WDP.

2. Background

4. Managing the effects of earthworks undertaken for land development involves managing and minimising the impact of erosion, land instability, compaction and sedimentation. Earthworks includes:
 - A cut and fill process which may modify the shape of the land surface.
 - A process which may include the removal of aggregate, excavation, infilling, re-contouring, and construction of any road, track, landing or drainage channel.
5. Provisions relating to earthworks are currently located across multiple plan chapters and are undertaken within each Environment (zone). The WDP requires earthworks to be designed in accordance with the Whangarei District Council Environmental Engineering Standards 2010 (**EES 2010**) by incorporating the EES 2010 through reference. The EES 2010 primarily relates to managing the effects of earthworks on land instability hazards. Chapter 56 of the WDP manages other natural hazards including coastal hazards, flooding and mining subsidence. Chapter 63 of the WDP manages contaminated sites. Various aspects of earthworks are also managed through the Northland Regional Plans.

2.1 Resource Management Issues

6. During the development of PC 147 the following were identified as issues:

- District Plan implantation and ease of use
- No specific earthworks land use rules

2.2 District Plan Implementation and Ease of Use

7. The current approach of incorporating the EES 2010 by reference and requiring compliance with the standards in the EES 2010 creates several issues including:

- Assessing, monitoring and enforcing compliance with the EES 2010 is difficult for applicants as well as Council. The EES 2010 is a large and complex technical document, and ensuring that the correct consents have been applied for and that the standards are being met is challenging. As a result, the EES 2010 has not been properly implemented or enforced in some cases.
- Engineering designs are often difficult to standardise as certain allotments or situations require specific design with a degree of flexibility. The EES 2010 has been written to allow for flexibility and enable engineers to have discretion in decision making. From an engineering perspective, this is appropriate. However, by referencing the EES 2010 in the WDP, third party decision making has been incorporated in an RMA process. It can be up to the discretion of an engineer or manager as to whether or not an activity complies with the rules.
- Many of the standards in the EES 2010 overlap with functions carried out under the Regional Council, vesting approval processes, and building consent process. The management of these issues in the WDP is therefore redundant and is often better addressed through the alternative processes.
- By referencing the EES 2010 in the WDP, any updates or changes to the EES 2010 require a full plan change to be reflected in the WDP. Consequently, the EES 2010 has not been updated since 2010 due to the costs and uncertainty associated with a plan change, which in turn results in the EES 2010 not being up-to-date to reflect best practice.

8. Council has undertaken a review of the EES 2010 following industry feedback that the standards needed to be easier to follow and aligned with best practice. The updated version of the EES 2010, the Whangarei District Council Engineering Standards 2018 (**ES 2018**), has undergone consultation and several rounds of review. The review of the EES 2010 and the finalising of the ES 2018 has been undertaken to coincide with PC147 and the new district plan approach to earthworks management. PC147 will aim to address these existing issues by removing the EES 2010 as a referenced document.

9. The current earthworks provisions are scattered across several WDP chapters. As a means of simplifying and streamlining the WDP, PC147 will provide the policy direction for earthworks management in a specific section of the WDP. This approach enables the policy framework and rules relating to the management of earthworks to be located at a 'district wide' level in one chapter in the WDP, consistent with the WDP rolling review.

2.3 No Specific Earthworks Land Use Rule

10. The WDP contains rules managing earthworks as a land use activity in the following instances:
 - Within natural hazard areas (e.g. coastal hazards, mining subsidence areas, flood susceptibility areas, and contaminated sites)
 - Within Landscapes and Feature overlays
 - Within the Coastal Area
 - Where the activity is considered a Farm Quarry or a Mineral Extraction activity
11. Outside these areas/activities the WDP rules only manage earthworks that are associated with a subdivision. This creates a gap where unlimited earthworks may be carried out as a permitted activity. One means of addressing this is the Building Act which can manage earthworks when they are associated with a building. However, the WDP subdivision rules and the Building Act can often be circumvented by developers undertaking earthworks before they are “associated” with a subdivision or a building.
12. The Northland Regional Council manages earthworks under the Regional Plan. The Regional Plan is more focused on environmental aspects (such as sedimentation and discharges) than amenity, and only requires resource consent for earthworks at a large scale.
13. It has been identified that there is a need to consider implementing rules in the WDP to manage earthworks from a land use perspective. This would help to manage effects on amenity caused by earthworks, and would address the current gap in the WDP earthworks land use rules.
14. As discussed in more detail in section 4 below, PC147 does not seek to address the land use component of earthworks. Rather PC147 seeks to slightly modify the operative subdivision rules with the intention being that the land use component will be reviewed more comprehensively as part of a future plan change during the WDP rolling review. It is intended to undertake plan changes covering natural hazards and biodiversity following this round of Urban and Services plan changes. Therefore, PC147 will act as a “placeholder” and will retain the operative approach to earthworks management pending further review of land use earthworks provisions in future.

2.4 Consultation

15. No specific pre-consultation has been undertaken for PC147, as the plan change is intended to be a placeholder with a more comprehensive review of earthworks being undertaken in a future plan change.

3. Statutory Considerations

16. The WDP sits within a layered policy framework, which incorporates the National Policy Statements, National Environmental Standards, Iwi Management Plans, RPS, Regional Plans, Structure Plans and Long Term Plans. Each of these policy documents and plans has been considered in accordance with the RMA. The relevant policy documents that were taken into consideration when preparing PC147 are discussed below.

3.1 Resource Management Act 1991 (RMA)

17. The RMA provides the statutory framework for the sustainable management of natural and physical resources. The RMA defines sustainable management as:

‘managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety’

18. Under the RMA it is mandatory for a territorial authority to prepare a district plan, which manages land use and development within its territorial boundaries. The RMA requires district plans, and thereby changes to district plans whether private or Council initiated to meet the purpose and principles of the RMA. Consideration has been given to the extent to which PC147 achieves the purpose and principles of Part 2 of the RMA.

19. The statutory context for the preparation and evaluation of plan changes under the RMA is summarised as follows:

Section 31 - *One of the functions of the Council is to review the WDP to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district.*

Section 74 - *Matters that the plan change must “accord with” and “have regard to” are set out in this section.*

Section 75 - *Higher order plans that the plan changes must “give effect to” are set out in this section.*

Section 32 - *The manner in which an evaluation of a plan change must be carried out is set out in this section.*

20. S79 of the RMA sets Councils the requirement to review district plans. Councils must complete a review of all district plan provisions within any 10-year time period. The WDP became operative on 3 May 2007, after eight years of formulation. The data that the WDP was based upon are therefore over ten years old. Monitoring of the WDP has identified areas of inconsistency and ineffectiveness.
21. S79 of the RMA provides the opportunity for Councils to undertake rolling reviews of district plan provisions. Using this opportunity to improve the integrity of the WDP, a rolling review process has been implemented.
22. The rolling review provides an opportunity to include further objectives and policies on an Environment (zone) by Environment basis. A policy heavy approach to the WDP has been introduced. The new structure provides opportunity for policy at a district wide, geographical, locality or neighbourhood context. The scope and degree of specification in the objectives and policies will be proportional to the level of context and relevance to ensure objectives and policies at each level do not overlap or contradict each other.

3.2 National Policy

National Environmental Standards

23. Section 44 of the RMA requires local authorities to recognise National Environmental Standards (**NES**).

There are currently five NES's:

- National Environmental Standards for Air Quality
- National Environmental Standard for Sources of Drinking Water
- National Environmental Standards for Telecommunication Facilities
- National Environmental Standard for Electricity Transmission Activities
- National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (**NES Soils**)
- National Environmental Standards for Plantation Forestry (**NES Plantation Forestry**)

24. There are no provisions in the NES for Air Quality, Telecommunication Facilities, Electricity Transmission Activities, Sources of Drinking Water or Plantation Forestry which specifically relate to Earthworks management.

25. The NES Plantation Forestry applies to earthworks for plantation forestry purposes. The regulations under the NES however do not apply to:

- Vegetation clearance that is carried out before afforestation
- Any activities or general provisions and conditions not specified

26. If these regulations do not apply to a particular activity, there may be rules in the regional or district plans that apply to that activity. Earthworks is permitted from a territorial authority perspective; however, resource consent could be needed from a regional authority. A forestry earthworks management plan is required for all earthworks that involve more than 500m² of soil disturbance in any 3-month period under the NES.

27. The NES Soils applies to the removal or replacement of fuel storage, small scale soil disturbance activities, soil sampling, and the change of use or subdivision of land which is identified as or may be subject to contamination. Regional authorities have the functions of identifying and monitoring land which may be contaminated and to maintain a register of sites which is shared with the territorial authority. The undertaking of earthworks on land which is identified as a contaminated site requires consideration under the relevant provisions of the NES.

National Policy Statements

28. Section 55 of the RMA requires local authorities to recognise National Policy Statements (**NPS**) and Section 75 requires local authorities to give effect to them in their plans. There are currently five National Policy Statements:

- National Policy Statement on Urban Development Capacity
- National Policy Statement for Freshwater Management

- National Policy Statement for Renewable Electricity Generation
 - National Policy Statement on Electricity Transmission
 - New Zealand Coastal Policy Statement
29. The NPS on Urban Development Capacity, the NPS for Freshwater Management, the NPS for Renewable Electricity Generation, and the NPS on Electricity transmission do not specifically relate to Earthworks.
30. The New Zealand Coastal Policy Statement (**NZCPS**) identifies sedimentation, erosion, coastal hazards, and subdivision use, and development in areas of coastal hazard risk, which are associated to earthworks. As part of the framework the NZCPS addresses these hazards which demonstrates how adverse effects will be prevented. Specific policies include Policy 22 which addresses sedimentation particularly in coastal areas. Policy 25 is relevant as it addresses subdivision, use and development in areas of coastal hazard risk. Both policies are relevant to PC147 due to sedimentation controls needed during earthworks and the potential effects of earthworks during or arising from earthworks needed for subdivision, use and development.

National Planning Standards

31. The National Planning Standards (**Standards**) are scheduled to be gazetted in April 2019, and will have an impact on the integration of PC147 with the WDP. The draft Standards direct that an Earthworks section is to be included within the General District Wide matters chapter (**S-GDW**). PC147 has been drafted to be consistent with the draft Standards and for the proposed Earthworks chapter to be later incorporated as a section within a future S-GDW Chapter.

3.3 Iwi and Hapu Management Plans

32. According to s74(2A) of the RMA, Council must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district. At present, there are five such documents accepted by Council, being Te Iwi O Ngatiwai Environmental Policy Document (2007), Patuharakeke Te Iwi Trust Board Environmental Plan (2014), Ngati Hine Iwi Environmental Management Plan (2008), Ngati Hau Hapu Environmental Management Plan 2016 and Te Uriroroi Hapu Environmental Management Plan and Whatatiri Environmental Plan. Each management plan is comprehensive and covers a range of issues of importance to the respective iwi. The management plans contain statements of identity and whakapapa and identify the rohe over which mana whenua (and mana moana) are held. The cultural and spiritual values associated with the role of kaitiaki over resources within their rohe are articulated. PC147 has considered those matters of relevance as follows:
- The Ngati Hau Hapu Environmental Management Plan addresses minerals and mining associated to earthworks.
 - The Iwi o Ngatiwai Iwi Environmental Policy Document addresses earthworks in the water, wahi tapu and ngatiwai landscapes policies.

- The Patuharakeke Te Iwi Trust Board Environmental Plan addresses soils and minerals and has several policies which include earthworks management.
- The Ngati Hine Iwi Environmental Management Plan addresses soils and minerals (geothermal), but does not specifically mention provisions relating to earthworks management.
- The Te Uriroi Hapu Environmental Management Plan/Whatatiri Environmental Plan address the importance of providing earthworks management plans for earthworks consent application detailing the management of erosion, sediment control, possible archaeological or cultural sites and rehabilitation.

3.4 Local Government Act 2002

33. The Local Government Act 2002 (**LGA**) enables local authorities to make and implement bylaws. Section 145 of the LGA provides for local authorities to make general bylaws for the purpose of protecting the public from nuisance, protecting, promoting, and maintaining public health and safety, minimising the potential for offensive behaviour in public places. Sections 146 and 147 provide for the creation of more specific bylaws. Whangarei District has several bylaws; however, none relate specifically to earthworks.

3.5 Building Act 2004

34. The Building Act 2004 sets standards for Earthworks. PC147 aims to avoid an overlap with the Building Act. Care has been taken in preparing PC147 that proper consideration is given to earthworks at a subdivision stage to ensure that future built development will be practicable.

3.6 Regional Policy

Northland Regional Policy Statement (NRPS)

35. The NRPS became operative on 9 May 2016. The policies of most relevance to PC147 are discussed below

- Policy 3.13 addresses the natural hazard risk and the activities that may occur that could compromise the effectiveness of existing defences including infilling of flood plains resulting from earthworks.
- Policy 4.6.1 addresses the management of effects on the characteristics and qualities of natural character, natural features and landscapes. Particularly in the coastal environment where it is required that the scale and intensity of earthworks is appropriate considering the scale, form and the vulnerability of instable ground.
- Policy 4.6.3 states that methods in the district plan shall include the control of the location and scale of earthworks removal and the disturbance, demolition or alteration of physical elements.
- Policy 6.1 relates to ensuring that district plans are efficient, effective, simple and consistent.

- Policy 7.1.2 relates to new subdivision, stating that land use may be appropriate within 10-year and 100- year flood hazard areas provided that earthworks do not divert flood flow onto neighbouring properties.

36. The NRPS is relevant to PC147 regarding managing adverse effects from the processes carried out during earthworks which include controlling sedimentation, run off and erosion. Earthworks carried out will be managed correctly and will prevent any environmental, economic, social or cultural issues.

Regional Plans

37. There are several operative Regional Plans for Northland that have been developed under the RMA. These include the Regional Water and Soil Plan (**RWSP**), the Air Quality Plan and the Coastal Plan. The most relevant to the consideration of PC147 is the RWSP which covers the effects of land use activities on water and soil in the region. The RWSP identifies the significant water and soil issues for the region and seeks to address these through specific policies and rules.

38. The RWSP addresses general environmental standards in relation to practicable measures that shall be taken to avoid creating erosion features such as sheet wash, slips, slumps, rills and gullies, wind erosion, blow outs and stream bank erosion and to mitigate the effects of existing erosion features. As part of managing instability, it is important that specific areas which are erosion prone do not have vegetation clearance or that exposed soil is revegetated within a practical timeframe to help prevent sediment discharges.

39. The Proposed Regional Plan (**PRP**) proposes to combine the operative Regional Plans into one plan. Similar to the operative RSP, in the PRP specific policies and rules are proposed to manage the effects of earthworks. As part of the PRP, erosion and sediment control measures are proposed to be implemented in accordance with the *Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region (2016)* for the duration of the activity. The PRP addresses instability, minimising erosion and avoiding slope failure, however the earthworks thresholds that the PRP associates to is significantly larger than what will be addressed in PC147.

40. The RWSP and PRP manage earthworks from a regional council perspective and the operative and proposed provisions in these documents have been taken into consideration in the drafting of PC147 to avoid redundancies including any overlaps between the two plans.

3.7 District Policy

Whangarei District Growth Strategy, Sustainable Futures 30/50 2010 (30/50)

41. To manage projected growth sustainably, Council formulated 30/50 as a long term Sub-Regional Growth Strategy. 30/50 identified economic drivers of development, assessed future growth potential, determined existing and potential land use patterns, and assessed and planned for future development for the District over a 30-50-year time frame.

42. PC147 seeks to ensure that any earthworks are effectively and efficiently managed to prevent land instability and coastal hazards such as coastal erosion and is intended to manage or prevent any

adverse effects and human health and safety caused by earthworks. PC147 seeks to manage the effects of earthworks on land instability hazards.

4. Section 32 Analysis

4.1 Appropriateness in Terms of Purpose of RMA

43. Council must evaluate in accordance with s32 of the RMA the extent to which each objective proposed in PC147 is the most appropriate way to achieve the purpose of the RMA. To confirm the appropriateness of the proposed objectives, sections 4.1, 4.2 and 4.3 of this report assess whether the proposed objectives are the most appropriate way to achieve the purpose of the RMA as well as other higher order documents and objectives in the proposed Strategic Direction Chapter (PC 148). The level of analysis undertaken in this report is considered appropriate to the scale of the proposal.
44. Part 2 of the RMA outlines the purpose and principles of the RMA. Table 1 details the proposed EARTH objective, its main reasoning and demonstrates that the proposed objective achieves the purpose of the RMA. Many sections within Part 2 of the RMA are not relevant to PC147. With regard to s8, pre-notification consultation with Tangata Whenua has not been undertaken for PC147 due to the plan change largely relocating existing WDP content into a single chapter. It is not considered appropriate to keep the current earthworks objectives as they relied on the EES which will no longer be relevant.

TABLE 1: S32 ASSESSMENT OF PROPOSED PC147 PROVISIONS		
Proposed EARTH Objectives	Reason/Issue	Sections of Part 2 of the RMA that are addressed
<u>EARTH-O1 – Land Instability</u> Minimise the risk of land instability and manage compaction.	To address the risk of land instability and manage compaction.	Section 5, Section 6(h), Section 7(f)(g), Section 8

45. Having assessed the proposed objective against Part 2 of the RMA it is considered that it achieves the purpose of the RMA and promotes sustainable management.

4.2 Appropriateness in Relation to Higher Order Documents

46. The provisions of higher order documents were considered in the formulation of the objective and policies in PC147 as discussed in Section 3. An overview of the proposed EARTH objective's consistency with the relevant higher order documents follows.
47. The provisions of higher order documents were considered in the formulation of the objective and policies in PC 147 as discussed in section 3 of this report. The main higher order documents of relevance to the proposed EARTH objective are listed below, and their relevance has been detailed above.
- Northland Regional Policy Statement
 - Draft Northland Regional Plan
 - Whangarei District Growth Strategy 30/50

- Northland Regional Plan

4.3 Appropriateness in Relation to the Strategic Direction Chapter

48. The proposed EARTH objective links to the higher order district wide objectives set out in the Strategic Direction Chapter proposed under Plan Change 147. The relevant overarching Strategic Direction Chapter objective and policy and their links to the proposed EARTH objectives are shown in Table 2 below. This table illustrates that the objectives of the EARTH are effectively linked to the relevant objective and policy of the Strategic Direction Chapter which have been assessed as being appropriate in terms of s32 (refer to Plan Change 148 s32 Report).

TABLE 2: LINKING BETWEEN STRATEGIC DIRECTION CHAPTER AND EARTH OBJECTIVES		
Proposed Strategic Direction Objective	Proposed Strategic Direction Policies	Proposed EARTH Objectives
SD-010 – Hazards Minimise the risks and impacts of natural hazard events on people, property and infrastructure.	SD-P3	EARTH-01

4.4 Appropriateness of Proposed Policies and Methods

49. S32 assessments must determine whether the proposed provisions are the most appropriate way to achieve the proposed objectives. In this instance, PC147 proposes one objective and this s32 assessment must assess whether the proposed provisions are the most appropriate to achieve the proposed objective. The risk of acting or not acting where uncertain information exists must also be considered.

4.4.1 One Chapter

50. It is proposed that all the provisions relating to earthworks be located in one chapter. Reasonably practicable options for the chapter structure are as follows:

- **Option 1:** Status Quo – retain Chapters 5, 6, 8 and 23 for policy content, and Chapters 71, 73 and 74 for rules.
- **Option 2:** One chapter (plan change option) – combine objectives, policies and rules into one Earthworks Chapter.
- **Option 3:** Include all earthworks management provisions in the new Subdivision Chapter.

51. It is considered that Option 2 represents the most appropriate option for the following reasons:

- Option 2 is consistent with the structure of the WDP under the rolling review. Other district wide plan changes that have been recently made operative, such as Noise and Vibration (NAV) and Historic Heritage (HH), have incorporated all provisions for their relevant topic area into one comprehensive chapter. This is desirable as all provisions relating to a particular topic are located in one chapter without the need to cross reference to different chapters as is the case with Option 1. This enables better understating of what is to be achieved by locating the explanation and

objectives and policies alongside the rules. This makes it easier for plan users to navigate the plan and to determine requirements for a specific area or topic.

- The draft Standards provide specifically for an Earthworks section to be included within the General District Wide matters chapter (**S-GDW**). Option 2 is consistent with the draft Standards, as it is intended that the Earthworks chapter will become a section in a future S-GDW chapter.
- There are no economic growth and employment opportunities arising from the options for this component of PC147.
- There is no risk due to insufficient information.

4.4.2 Overview

52. An Overview section is proposed that discusses the issues and approach provided in the EARTH chapter. Reasonably practicable options for the overview section are as follows:

- **Option 1:** Status Quo – duplicate Overview information from Chapters 5, 6, 8 and 23 of the WDP.
- **Option 2:** No overview provided.
- **Option 3:** (Plan change option) Include a revised Overview section at the beginning of the proposed EARTH chapter.

53. It is considered that Option 3 represents the most appropriate option for the following reasons:

- Option 3 will ensure that the expectations and reasons for the EARTH chapter are clear, thus making the subsequent provisions easier to understand for plan users. This is also consistent with the structure of the WDP under the rolling review where each chapter has its own overview section.
- Option 1 is not an efficient or effective option as the overview for the EARTH chapter would not be updated to match the new approach to earthworks management and the new structure under the WDP rolling review and the draft Standards.
- Option 2 is not an efficient or effective option as it would represent a lack of consistency with the new WDP structure and the draft Standards, and would make the expectations and reasons unclear for plan users.
- There are no economic growth and employment opportunities arising from the options for this component of PC147.
- There is no risk due to insufficient information.

4.4.3 Policies

54. The proposed EARTH objective seeks to ensure that any earthworks carried out has a minimal effect to land instability on the surrounding environment. It also includes people, property and infrastructure

which could also be affected if earthworks are not managed to a certain standard. This objective is achieved through the application of policies and methods, in this case the use of subdivision rules. There is the option to retain the operative policies, however due to the changes needed, including land stability and removing the EES reference, it is considered necessary to amend the policies associated to earthworks.

55. The policies proposed for inclusion (see **Appendix A**) are considered to achieve the objective:

- To avoid where practicable, or otherwise remedy or mitigate, adverse effects associated with land instability and compaction by managing subdivision design and layout.
- To design subdivision to minimise potential risks to people, property and the environment

56. The proposed policies are considered the most appropriate for achieving the objective and provide a coherent link to the methods and rules in the proceeding sections of the EARTH chapter. The use of clear and direct policies also aligns with the policy driven approach applied to the WDP rolling review. Table 5 below demonstrates that the policies proposed for the EARTH implement the proposed EARTH objective, and that the methods implement the proposed EARTH policies:

TABLE 3: LINKING OF PROPOSED EARTH PROVISIONS		
Proposed EARTH Objective	Proposed EARTH Policies	Proposed EARTH Methods
EARTH-O1 Minimise the risk of land instability and manage compaction.	EARTH-P1 and P2	EARTH-R1

4.4.4 Subdivision Rules

57. The WDP currently provides a controlled activity earthworks rule in relation to subdivision, cascading to a Restricted Discretionary activity if the works:

- Do not comply with the relevant standards in Whangarei District Council's Environmental Engineering Standards 2010.
- Cause changes to the natural range of water levels or the natural eco-system of flora and fauna in any indigenous wetland.
- Occur within a Site of Significance to Māori or within 10m of any archaeological site.
- Occur within an Outstanding Landscape Area in excess of the extent permitted by Rule LAN.3.1.3.

58. Proposed Rule EARTH-R1 seeks to replace the operative subdivision rules, accompanied by a new information requirement rule EARTH-REQ1. The rule requirements are summarised as follows:

1. *The subdivision does not result in earthworks which*

a) *Change the natural range of water levels or the natural eco-system of flora and fauna in any indigenous wetland.*

b) *Occur within a Site of Significance to Maori or within 10.0m of any archaeological site.*

2. *A 100m² building area can be provided and identified within each allotment where a residential unit can be constructed.*

3. *Access to the identified building area is identified building area is identified within each allotment.*

59. The rule requirements are grouped and discussed under the following themes:

- EES 2010 reference
- Water levels and natural eco-systems
- Proximity to sites of significance to Maori and archaeological sites.
- Cross references to Landscapes Chapters

EES 2010 Reference

60. The EES 2010 section 2 (Site Suitability) requires a preliminary site evaluation which manages instability. As part of the preliminary site evaluation the developer's geotechnical engineer/geo-professional is required to carry out a preliminary site evaluation and prepare a geotechnical report, unless the developer can otherwise demonstrate that the site is stable and suitable for the proposed use and the proposed earthworks on site are minor in scale. An Independently Qualified Person (IQP) is required to carry out an evaluation on other hazards. PC147 has considered the following options to address the EES.

- Option 1: Retain the reference to the EES

Currently the EES is a referenced document and is a compliance requirement within the subdivision chapter. Due to the issues stated above in section 2.2, retaining the reference to the EES as part of the subdivision rule is not the preferred option.

- Option 2: incorporate the EES requirement as an information requirement rule (The plan change option)

The preferred option is to reformat and select parts of the EES that would be relevant to the earthworks rule. The EES requirement to prepare a preliminary site evaluation and geotechnical report is vital when assessing earthworks as it is a standard assessment to address any effects relating to the management of site instability. The option of providing no information requirements was considered as the information could be requested through the consent process; however, this is inefficient as it would likely result in additional information being requested under section 92 for most applications. Transferring the site suitability requirement from the EES into a new proposed information requirement rule EARTH-REQ1 is considered more efficient and effective than retaining the EES as a referenced document.

- Option 3: Mapping of the hazard areas

The option to map hazard areas, which would include low, medium and high instability hazards, was considered but not preferred because further data collection, research and technical advice would be needed to determine where these hazard areas would be and then map them. The mapping option would be effective, but not efficient due to significant up front cost across the entire district.

Water levels and natural eco-systems

The operative rule requirement referring to water levels and natural eco-systems is proposed to stay the same. There is no change considered necessary because the effects of earthworks on the natural range of water levels or the natural ecosystem of flora and fauna in any indigenous wetland should be assessed.

Proximity to sites of significance to Maori and archaeological sites.

61. The operative rule requirement referring to sites of significance to Maori and archaeological sites is proposed to stay the same. There is no change considered necessary because the effects of earthworks within proximity to sites of significance to Maori and archaeological sites should be assessed.

Cross references to Landscapes Chapters

62. The operative rule which refers to earthworks within an outstanding landscape is not proposed to be included within the PC147 because it is already covered in the recently operative LAN chapter and does not need to be repeated.

Activity Status

63. It is proposed that where the rule requirements of rule EARTH-R1 are achieved, that the subdivision is a restricted discretionary activity, and where compliance is not achieved that the subdivision is a discretionary activity. This is a change from the status quo of a controlled activity where the rule requirements are met and restricted discretionary activity where compliance is not achieved.
64. Retaining the controlled activity status was considered. However, there are limited technical engineering requirements stated in the District Plan, and the ES 2018 is not proposed to be incorporated as a referenced document. It is considered that a controlled activity status would not be appropriate as an application could not be declined and there would be limited ability to require significant changes to an application by conditions if the proposal by the applicant was assessed to be unsuitable.
65. It is proposed to list targeted matters of restricted discretion for the subdivision rules to guide applicants and the assessment. The ES 2018 is also proposed to be mentioned in a note as a means of compliance with the restricted discretionary activity rules. This enables applicants to use the ES 2018 as a guide to meeting the rules, but also provides the option of proposing different methodologies provided that adverse effects are appropriately managed.

66. One potential cost of changing the minimum activity status from controlled to restricted discretionary is the additional consenting costs and uncertainty in the consenting process. However, analysing Council's resource consent statistics database has revealed that there is considered to be minimal cost or uncertainty associated with changing the activity status. Since 2014 there have been 46 controlled activity subdivisions and 88 restricted discretionary activity subdivisions¹. Only one restricted discretionary activity was limited notified, and none of the restricted discretionary applications were declined. In terms of total fees charged to the applicants, the controlled subdivisions had an average total cost of \$2,892 and the restricted discretionary subdivisions had an average total cost of \$3,052 (a difference of \$160). It is therefore considered that any additional potential consenting costs are minimal.

67. It is considered that the proposed restricted discretionary activity status is the most appropriate option.

4.4.5 Timing of plan change

68. As discussed in section 2.4 above there is currently a gap in the WDP with relation to earthworks land use rules. PC147 has considered the following options to address this issue:

- Option 1: Undertake full review of earthworks provisions to implement land use rules

The option to undertake a full review of the earthworks provisions has been considered. However, the time and research needed to fully review and implement all earthworks provisions would be unrealistic to keep pace with the Urban and Services plan changes. Therefore, this was not the preferred option at this time. A full review of all earthworks provisions (subdivision and land use) could be deferred to further along the rolling review, but it is not clear when this would be able to be reviewed. This would not satisfy the RMA requirement to review operative provisions within 10 years.

- Option 2: Proposed PC147 provisions and include a placeholder earthworks chapter (plan change option)

The option chosen involves addressing instability and hazards in relation to earthworks for subdivision which will retain the status quo. This option will address the ten-year review requirements under the Resource Management Act and the draft Standards, and is therefore more efficient and effective than Option 1. As such reviewing, only the earthworks rules relating to subdivision is considered to be the most appropriate option at this stage.

- Option 3: Bylaw

The option to include an earthworks bylaw has been considered. An earthworks bylaw would be useful as it would manage effects cause by small scale earthworks. However due to the lack of environmental enforcement available under the Local Government Act 2002, an earthworks bylaw

¹ These numbers do not include applications such as boundary adjustments, change to conditions, extensions of timeframes, etc., and only include applications for which the full set of data had been recorded in the resource consent statistics database.

is not considered effective in this instance. An earthworks bylaw could be considered in the future that addresses health and safety or damage to property.

5. Conclusion

69. Pursuant to s32 of the RMA, the proposed EARTH objective has been analysed against Part 2 of the RMA and the relevant provisions of higher order plans and policy documents. It is considered that the proposed objective is the most appropriate way to achieve the purpose of the RMA.
70. The proposed provisions have been detailed and compared against viable alternatives in terms of their costs, benefits, efficiency and effectiveness and risk in accordance with the relevant clauses of s32 of the RMA. The proposed provisions are considered to represent the most appropriate means of achieving the proposed objectives and of addressing the underlying resource management issues relating to earthworks in the Whangarei District.

Appendix 1: Proposed Definitions

1. The following definitions are proposed through PC147. The definitions are listed in the draft National Planning Standards and may be subject to change depending on the gazetted version of the National Planning Standards.

Cleanfill

means an area used for the disposal of exclusively inert, non-decomposing material.

Land disturbance

means the alteration to land, including by moving, cutting, placing, filling, or excavation of soil, cleanfill, earth or substrate land.

2. It is also proposed that the following existing definitions in the Operative Whangarei District Plan are amended as shown below with underline and ~~strike through~~. The definitions are listed in the draft National Planning Standards and may be subject to change depending on the gazetted version of the National Planning Standards.

Earthworks

means any land disturbance that changes the existing contour or ground level, ~~modification to the shape of the land surface, including removal of soil, excavation, infilling, re-contouring and construction of any road, track, landing or drainage channel.~~

Ground Level

~~ground level shall be taken as the level of the ground existing when works associated with any prior subdivision of the land are completed, but before excavation for new buildings on the land has commenced.~~

means:

- a) the actual finished surface level of the ground after the most recent subdivision that created at least one additional allotment was completed (at the issue of the section 224c Certificate or the previous legislative requirement), but excludes any excavation or filling associated with the construction or alteration of a building;
- b) if the ground level cannot be identified under paragraph (a), the existing surface level of the ground, excluding areas of cut or fill associated with the construction or alteration of a building;
- c) if in any case under paragraph (a) or (b), a retaining wall or retaining structure is located on the boundary, the level on the front of the retaining wall or retaining structure where it intersects the boundary.