

UNITARY PLAN UPDATE REQUEST MEMORANDUM

TO Jenny Fuller, Manager Planning – Auckland-wide
FROM Eryn Shields, Team Leader, Auckland-wide
DATE 11 February 2020
SUBJECT **Plan Change 4 - Corrections to technical errors and anomalies to the Auckland Unitary Plan (AUP) Operative in part (15 November 2016)**



This memorandum requests an update to Auckland Unitary Plan Operative in part

Reason for update – Plan Change 4 can be made fully operative as an appeal has been settled by Environment Court decision dated 11 November 2019.	
Chapter	Chapter E – Auckland-wide
Section	E 12 – Land disturbance – District
Changes to text (shown in underline and strikethrough)	E12 as set in Environment Court Decision - See Attachment 1 .
Changes to diagrams	Not applicable
Changes to spatial data	Not applicable
Attachments	<ul style="list-style-type: none">• Attachment 1: Environment Court decision dated 11 November 2019• Attachment 2: Updated E12 Land disturbance – District

Prepared by: Eryn Shields Team Leader, Auckland-wide	Text Entered by: Sophia Coulter Planning Technician
Signature: 	Signature:
Reviewed by: Eryn Shields Team Leader, Auckland-wide	Signed off by: Jenny Fuller Manager, Auckland-wide
Signature: 	Signature:

Attachment 1:
Environment Court decision dated 11
November 2019

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER of the Resource Management Act 1991
(the Act)

AND of an appeal under Clause 14 of the First
Schedule to the Act

BETWEEN HOUSING NEW ZEALAND
CORPORATION

ENV-2018-AKL-000147

Appellant

AND AUCKLAND COUNCIL

Respondent

Principal Environment Judge L J Newhook sitting alone under s 279 of the Act
In Chambers at Auckland

CONSENT ORDER

[A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed subject to the amendments set out in the order.
- (2) the appeal is otherwise dismissed.

[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.



REASONS

Introduction

- [1] This appeal is against a decision of the Auckland Council in respect of a submission lodged by Housing New Zealand Corporation (**HNZ**) on Proposed Plan Change 4: Corrections to technical errors and anomalies in the Auckland Unitary Plan Operative in part (**PC4**).
- [2] Part of PC4 sought to introduce into the Auckland Unitary Plan Operative in Part (**AUP**) new rules for land disturbance in the Special Character Areas Overlay - Residential: Isthmus C (**Isthmus C overlay**) in Chapter E12 Land Disturbance - District of the AUP. HNZ's appeal relates to the introduction of these new rules for land disturbance.

The appeal

- [3] The provisions and parts of the Council's decision that are being appealed are:
- (a) The introduction of new rules for land disturbance in the Isthmus C Special Character Area in Chapter E12 Land Disturbance, specifically:
- (i) The addition of D18 Special Character Areas – Residential and Business Overlay to Note 1 of E12.4.2.1 "Activity Table – all zones and roads"; and
- (ii) The addition of the Special Character Areas Overlay – Residential Isthmus C to E12.4.2 "Activity Table – Overlays (except Outstanding Natural Features Overlay)", discretionary activity status for (A32) and (A33).

The agreement reached

- [4] HNZ and the Council have had discussions and have reached an agreement that will resolve this appeal.
- [5] The parties have agreed that the identified special character values associated with the Isthmus C – Three Kings area are less sensitive to effects associated



with land disturbance activities which are proposed to be managed by the inclusion of land disturbance rules through PC4 than the other areas within the Isthmus C overlay.

- [6] Specifically, the parties have agreed to:
- (a) Amend the activity status of land disturbance rules for earthworks of up to 50m³ and earthworks greater than 50m³ and up to 250m³ within Isthmus C - Three Kings;
 - (b) Amend the matters of discretion and assessment criteria in Chapter E12 Land Disturbance - District to include new matters of discretion and assessment criteria for restricted discretionary land disturbance activities in Isthmus C - Three Kings; and
 - (c) Otherwise include the land disturbance rules for the Isthmus C overlay proposed by PC4.

Consideration

- [7] The Court has read and considered the appeal and the joint memorandum of the parties dated 29 August 2019.
- [8] No person has given notice of an intention to become a party under s 274 of the Act.
- [9] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:
- (a) The parties agree that the amendments they propose to Chapter E12 are within scope of PC4 as notified by the Council.
 - (b) All parties to the proceedings have executed the memorandum requesting this order.



- (c) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Resource Management Act 1991, including in particular Part 2.

Order

- [10] Therefore, the Court orders, by consent, that Table E12.4.2 Activity Table, E12.8.1 Matters of discretion and E12.8.2 Assessment Criteria in Chapter E12 Land disturbance - District of the Auckland Unitary Plan Operative in part are to be amended as set out in Appendix 1 to this Consent Order.
- [11] The appeal is otherwise dismissed.
- [12] There is no order for costs.

DATED at Auckland this 11th day of November 2019



L J Newhook
Principal Environment Judge



APPENDIX 1: PROPOSED AMENDMENTS TO THE AUCKLAND UNITARY PLAN OPERATIVE IN PART

New text is shown as underlined and deleted text as ~~strikethrough~~

Amend Table E12.4.1 Activity table – all zones and roads in Chapter E12 Land disturbance - District as follows:

Table E12.4.1 Activity table – all zones and roads in Chapter E12 Land disturbance - District

...

Note 1

...

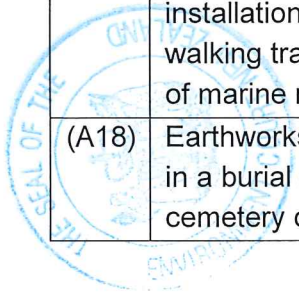
In addition to the objectives and policies above, the rules in Table E12.4.2, notification, standards, matters and assessment criteria implement the objectives and policies in the following chapters:

- D10 Outstanding Natural Features Overlay and Outstanding Natural Landscapes Overlay;
- D11 Outstanding Natural Character and High Natural Character Overlay;
- D17 Historic Heritage Overlay; and
- D18 Special Character Areas – Residential and Business Overlay; and
- D21 Sites and Places of Significance to Mana Whenua Overlay.

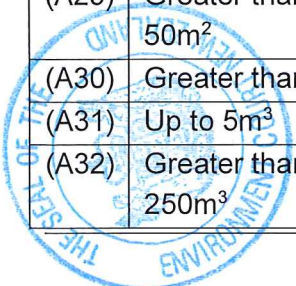
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Table E12.4.2 Activity table – overlays (except Outstanding Natural Features Overlay)

Activity	Activity status						
	Outstanding Natural Character Overlay	High Natural Character Overlay and Outstanding Natural Landscapes Overlay	Historic Heritage Overlay	Sites and Places of Significant to Mana Whenua Overlay	Special Character Areas Overlay – Residential: Isthmus C (except – Residential: Isthmus C - Three Kings)	Special Character Areas Overlay – Residential: Isthmus C - Three Kings	Special Character Areas Overlay – Residential: Isthmus C - Three Kings
Fences, service connections, effluent disposal systems, swimming pools, garden amenities, gardening, planting of any vegetation, burial of marine mammals, bridle paths, cycle and walking tracks but excluding ancillary farming earthworks and ancillary forestry earthworks							
(A16)	Earthworks for maintenance and repair	P	P	P	P		
(A17)	Earthworks for the installation of fences, walking tracks and burial of marine mammals	P	P	P ²	RD		
(A18)	Earthworks for interments in a burial ground, cemetery or urupā (within	P	P	P	P		



Activity		Activity status					
		Outstanding Natural Character Overlay	High Natural Character Overlay and Outstanding Natural Landscapes Overlay	Historic Heritage Overlay	Sites and Places of Significant to Mana Whenua Overlay	Special Character Areas Overlay – Residential: Isthmus C (except – Residential: Isthmus C - Three Kings)	Special Character Areas Overlay – Residential: Isthmus C - Three Kings
	the burial plot for that interment)						
(A19)	Earthworks for gardening or planting	P	P	P	P		
Driveways, parking areas and, sports fields and major recreational facilities							
(A20)	Earthworks for operation, maintenance, resurfacing and repair	P	P	P	P		
Cultivation							
(A21)	Up to 500m ²	RD	P	RD	D		
(A22)	Greater than 500m ² up to 2500m ²	RD	P	RD	D		
(A23)	Greater than 2500m ²	RD	P	D	D		
Irrigation or land drainage							
(A24)	Works below the natural ground level	RD	P	D	D		
Farming							
(A25)	Ancillary farming earthworks for maintenance of tracks	P	P	P ²	P		
Forestry							
(A26)	Ancillary forestry earthworks for maintenance	P	P	P ²	P		
Temporary activities							
(A27)	Earthworks associated with the installation of the temporary activity	P	P	P ²	RD		
Land disturbance not otherwise listed in this table ³							
(A28)	Up to 5m ²	P	P	P ²	D		
(A29)	Greater than 5m ² up to 50m ²	RD	P	RD ²	D		
(A30)	Greater than 50m ²	RD	RD	RD	D		
(A31)	Up to 5m ³	P	P	P ²	D		
(A32)	Greater than 5m ³ up to 250m ³	RD	P	RD ²	D	<u>D</u>	



Activity		Activity status					
		Outstanding Natural Character Overlay	High Natural Character Overlay and Outstanding Natural Landscapes Overlay	Historic Heritage Overlay	Sites and Places of Significant to Mana Whenua Overlay	Special Character Areas Overlay – Residential: Isthmus C (except – Residential: Isthmus C - Three Kings)	Special Character Areas Overlay – Residential: Isthmus C - Three Kings
(A33)	Greater than 250m ³	RD	RD	RD	D	<u>D</u>	<u>D</u>
(A34)	Up to 50m ³						<u>P</u>
(A35)	Greater than 50m ³ up to 250m ³						<u>RD</u>

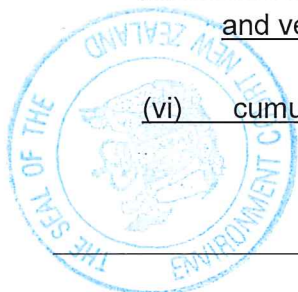
Amend Standard E12.8.1 Assessment –restricted discretionary activities: Matters of discretion as follows:

E12.8. Assessment –restricted discretionary activities

E12.8.1 Matters of discretion

The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary resource consent application:

- (1)...
- (2) additional matters of discretion for land disturbance within overlay areas:
 - (a)...to (d)...
 - (e) within the Special Character Area- Residential: Isthmus C - Three Kings:
 - (i) the objectives and policies in Chapter D18 as they relate to Special Character Areas – Residential areas;
 - (ii) nature and extent of any disturbance to the biophysical components in Isthmus C - Three Kings (i.e. landform, tuff ring or vegetation) that contribute to the identified special character values;
 - (iii) degree of existing modification to the landform and vegetation;
 - (iv) landscape, visual and amenity effects;
 - (v) mana whenua values, in particular mātauranga, tikanga, spiritual values for those landforms and vegetation that contribute to the identified special character values; and
 - (vi) cumulative effects on the identified special character values.



Amend Standard E12.8.2 Assessment criteria as follows:

E12.8.2 Assessment criteria

The Council will consider the relevant assessment criteria below for restricted discretionary activities:

(1)...

(2) (a)... to (d)...

(e) within the Special Character Area - Residential: Isthmus C - Three Kings:

- (i) Policies D18.3(1) to (7) in Chapter D18 Special Character Areas Overlay Residential areas;
- (ii) the impact of the proposal on the special character values as identified in the special character statement;
- (iii) the extent to which land disturbance, its design, location and execution will:
 - adversely impact on the physical integrity of those volcanic landforms identified as contributing to the identified special character values;
 - maintain or enhance the visual integrity of the landscape values identified in the special character statement, including the effects of the proposal on the volcanic landform and vegetation;
 - maintain or enhance the relationship of built form to the natural landscape context identified as contributing to the stated special character values; and
 - avoid, remedy, or mitigate any adverse effects on mana whenua values, in particular mātauranga, tikanga and spiritual values, where they are relevant to the identified special character values.
- (iv) the degree to which the biophysical components of Isthmus C - Three Kings, including volcanic landscapes and vegetation have already been modified, and the extent to which further modification would adversely impact on the special character values of the area.



Attachment 2:
Updated E12 Land disturbance –
District

E12. Land disturbance – District

E12.1. Background

Land disturbance is an essential prerequisite for the development of urban land, for the use of rural land for both farming and forestry, for mineral extraction and the construction and maintenance of infrastructure. In this plan, land disturbance encompasses the defined activities of earthworks, ancillary farming earthworks and ancillary forestry earthworks.

The management of the adverse effects of land disturbance focuses on both large and small disturbance areas, as the cumulative adverse effects from a number of small earthwork sites can be significant as can single large areas of exposed earth.

Land disturbance can have direct physical impacts on sites of archaeological and heritage value. Given the lengthy history of Māori settlement in Auckland, sites of significance including burial sites are found across Auckland. Procedures are in place for dealing with any human remains found during land disturbance. There are also places and areas that have landscape or landform values that are identified in the plan, where land disturbance is discouraged.

E12.2. Objectives

- (1) Land disturbance is undertaken in a manner that protects the safety of people and avoids, remedies or mitigates adverse effects on the environment.

E12.3. Policies

- (1) Avoid where practicable, and otherwise, mitigate, or where appropriate, remedy adverse effects of land disturbance on areas where there are natural and physical resources that have been scheduled in the Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage and special character.
- (2) Manage the amount of land being disturbed at any one time, to:
 - (a) avoid, remedy or mitigate adverse construction noise, vibration, odour, dust, lighting and traffic effects;
 - (b) avoid, remedy or mitigate adverse effects on accidentally discovered sensitive material; and
 - (c) maintain the cultural and spiritual values of Mana Whenua in terms of land and water quality, preservation of wāhi tapu, and kaimoana gathering.
- (3) Enable land disturbance necessary for a range of activities undertaken to provide for people and communities social, economic and cultural well-being, and their health and safety.
- (4) Manage the impact on Mana Whenua cultural heritage that is discovered undertaking land disturbance by:
 - (a) requiring a protocol for the accidental discovery of kōiwi, archaeology and artefacts of Māori origin;

- (b) undertaking appropriate actions in accordance with mātauranga and tikanga Māori;
and
 - (c) undertaking appropriate measures to avoid adverse effects, or where adverse effects cannot be avoided, effects are remedied or mitigated.
- (5) Design and implement earthworks with recognition of existing environmental site constraints and opportunities, specific engineering requirements, and implementation of integrated water principles.
- (6) Require that earthworks are designed and undertaken in a manner that ensures the stability and safety of surrounding land, buildings and structures.

E12.4. Activity tables

The following tables specify the activity status for land disturbance, which encompasses earthworks, ancillary farming earthworks and ancillary forestry earthworks. Refer to other provisions in the Plan for the activity status of the related land use activity.

The land disturbance area and volume thresholds listed in the rules below are to be interpreted as follows:

- for network utility the thresholds apply to the area and volume of work being undertaken at any one time at a particular location such that, where practicable, progressive closure and stabilisation of works could be adopted to maintain the activity within the thresholds; and
- for other land disturbance, the cumulative total area and volume of land disturbance associated with a given project will be used when determining the activity status of the project.

For drilling holes and bores refer to Section [E7 Taking, using, damming and diversion of water and drilling](#).

Activities regulated by the ‘Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009’ are not affected by the provisions below.

If any activity listed in rules (including standards) E12.4.1 to E12.6.4 is regulated by the Resource Management (National Environmental Standard for Plantation Forestry) Regulations 2017 (“NESPf”) then the NESPf applies and prevails.

However, the NESPf allows the plan to include more restrictive rules in relation to one or more of the following:

- Significant Ecological Areas Overlay;
- Water Supply Management Areas Overlay;
- Outstanding Natural Character Overlay;
- High Natural Character Overlay;
- Outstanding Natural Landscapes Overlay;
- Outstanding Natural Features Overlay; or

- activities generating sediment that impact the coastal environment.

Where there is a rule in the plan that relates to any of the matters listed above then the plan rule will apply. In the event that there is any conflict between the rules in the plan and the NESPF in relation to any of the above, the most restrictive rule will prevail.

If the NESPF does not regulate an activity then the plan rules apply.

Tables E12.4.1, E12.4.2 and E12.4.3 specify the activity status of land use and development activities pursuant to section 9(3) of the Resource Management Act 1991.

- The land disturbance rules that apply to network utilities are located in [E26 Infrastructure](#).

Table E12.4.1 Activity table – all zones and roads

Activity		Activity status						
		Residential zones	Business zones and City Centre Zone	Rural – Rural Conservation Zone)	Future Urban Zone and rural zones (excluding Rural – Rural Conservation Zone)	Open space zones (excluding Open Space – Conservation Zone)	Rural – Rural Conservation and Open Space – Conservation Zone	Special Purpose – Quarry Zone
Fences, service connections, effluent disposal systems, swimming pools, garden amenities, gardening, planting of any vegetation, arenas for equestrian activities, burial of marine mammals, interments in a burial ground, cemetery or ūrupā, bridle paths, cycle and walking tracks but excluding ancillary farming earthworks and ancillary forestry earthworks								
(A1)	Earthworks for installation, operation, maintenance and repair	P	P	P	P	P	P	P
Driveways, parking areas and sports fields and major recreational facilities								
(A2)	Earthworks for operation, maintenance, resurfacing and repair	P	P	P	P	P	P	P
General earthworks not otherwise listed in this table ¹								
(A3)	Up to 500m ²	P	P	P	P	P	P	P
(A4)	Greater than 500m ² up to 1000m ²	RD	P	P	P	RD	P	P
(A5)	Greater than	RD	P	RD	RD	RD	P	P

E12 Land disturbance – District

	1000m ² up to 2500m ²							
(A6)	Greater than 2500m ²	RD	RD	RD	RD	RD	Refer to H28 Special Purpose – Quarry Zone	RD
(A7)	Up to 250m ³	P	P	P	P	P	P	P
(A8)	Greater than 250m ³ up to 1000m ³	RD	P	P	P	RD	P	P
(A9)	Greater than 1000m ³ up to 2500m ³	RD	P	RD	RD	RD	P	P
(A10)	Greater than 2500m ³	RD	RD	RD	RD	RD	Refer to H28 Special Purpose – Quarry Zone	RD
(A11)	Earthworks that exceed 1m in depth below ground level within the limited earthworks corridor measured 5m either side of the centre line which is shown on Figure E12.10.1 Limited earthworks corridor	NA	C	NA	NA	NA	NA	NA
Lava caves, fossils and sub-fossils								
(A12)	Land disturbance that disturbs	RD	RD	RD	RD	RD	RD	RD

E12 Land disturbance – District

	known lava caves more than 1m diameter along any axis or fossils or subfossils							
Farming								
(A13)	Ancillary farming earthworks	P	P	P	P	P	P	P
Forestry								
(A14)	Ancillary forestry earthworks	P	P	P	P	P	P	P
Hauraki Gulf islands								
(A15)	Hauraki Gulf islands	Refer to the Auckland Council District Plan (Hauraki Gulf Islands Section) for district activity status and E11 Land Disturbance – Regional for the relevant regional activity status						

Note 1

For the purposes of determining activity status for the general earthworks not otherwise listed in Table E12.4.1, both the area and volume thresholds must be taken into account and the more restrictive activity status applies.

In addition to the objectives and policies above, the rules in Table E12.4.2, notification, standards, matters and assessment criteria implement the objectives and policies in the following chapters:

- [D10 Outstanding Natural Features Overlay and Outstanding Natural Landscapes Overlay](#);
- [D11 Outstanding Natural Character and High Natural Character Overlay](#);
- [D17 Historic Heritage Overlay](#);
- [D18 Special Character Areas – Residential and Business Overlay](#); and
- [D21 Sites and Places of Significance to Mana Whenua Overlay](#).

Table E12.4.2 Activity table – overlays (except Outstanding Natural Features Overlay)

Activity		Activity status						
		Outstanding Natural Character Overlay	Outstanding Natural Landscapes Overlay	High Natural Character Overlay and Outstanding Natural Landscapes Overlay	Historic Heritage Overlay	Whenua Overlay	Sites and Places of Significance to Mana Whenua Overlay	Special Character Areas Overlay – Residential: Isthmus C (except – Residential: Isthmus C – Three Kings)
Fences, service connections, effluent disposal systems, swimming pools, garden amenities, gardening, planting of any vegetation, burial of marine mammals, bridle paths, cycle and walking tracks but excluding ancillary farming earthworks and ancillary forestry earthworks								
(A16)	Earthworks for maintenance and repair	P	P	P	P			
(A17)	Earthworks for the installation of fences, walking tracks and burial of marine mammals RD* where archaeological rules apply as listed in Schedule 14.1	P	P	P RD*	RD			
(A18)	Earthworks for interments in a burial ground, cemetery or urupā (within the burial plot for that interment)	P	P	P	P			
(A19)	Earthworks for gardening or planting	P	P	P	P			
Driveways, parking areas and, sports fields and major recreational facilities								
(A20)	Earthworks for	P	P	P	P			

E12 Land disturbance – District

	operation, maintenance, resurfacing and repair						
Cultivation							
(A21)	Up to 500m ²	RD	P	RD	D		
(A22)	Greater than 500m ² up to 2500m ²	RD	P	RD	D		
(A23)	Greater than 2500m ²	RD	P	D	D		
Irrigation or land drainage							
(A24)	Works below the natural ground level	RD	P	D			
Farming							
(A25)	Ancillary farming earthworks for maintenance of tracks RD* where archaeological rules apply as listed in Schedule 14.1	P	P	P RD*	P		
Forestry							
(A26)	Ancillary forestry earthworks for maintenance RD* where archaeological rules apply as listed in Schedule 14.1	P	P	P RD*	P		
Temporary activities							
(A27)	Earthworks associated with the installation of the temporary activity RD* where	P	P	P RD*	RD		

E12 Land disturbance – District

	archaeological rules apply as listed in Schedule 14.1						
Land disturbance not otherwise listed in this table ³							
(A28)	Up to 5m ² RD* where archaeological rules apply as listed in Schedule 14.1	P	P	P RD*	D		
(A29)	Greater than 5m ² up to 50m ²	RD	P	RD	D		
(A30)	Greater than 50m ²	RD	RD	RD	D		
(A31)	Up to 5m ³ RD* where archaeological rules apply as listed in Schedule 14.1	P	P	P RD*	D		
(A32)	Greater than 5m ³ up to 250m ³	RD	P	RD	D	D	
(A33)	Greater than 250m ³	RD	RD	RD	D	D	D
(A33A)	Up to 50m ³						P
(A33B)	Greater than 50m ³ up to 250m ³						RD

Note 2

[deleted]

Note 3

For the purposes of determining activity status for the general earthworks not otherwise listed in Table E12.4.1, both the area and volume thresholds must be taken into account and the more restrictive activity status applies.

In addition to the objectives and policies above, the rules in Table E12.4.3, notification, standards, matters and assessment criteria implement the objectives and policies in [D10 Outstanding Natural Features Overlay](#).

Table E12.4.3 Activity table – Outstanding Natural Features Overlay

Activity		Activity status									
		A1	A	V1	V2	B	C	D	E	F1	F2
(A34)	Earthworks for maintenance and repair limited to the area and depth of earth previously disturbed or modified for the same activity	P	P	P	P	P	P	P	P	P	P
(A35)	Ancillary farming earthworks limited to the area and depth of earth previously disturbed or modified for the same activity	P	P	RD	RD	RD	RD	RD	RD	RD	RD
Irrigation or land drainage											
(A36)	Land disturbance for irrigation or land drainage	P	P	RD	RD	RD	RD	RD	RD	RD	RD
Forestry											
(A37)	Ancillary forestry earthworks limited to the area and depth of earth previously disturbed or modified for the same activity	P	P	RD	RD	RD	RD	RD	RD	RD	RD

General land disturbance not otherwise listed in this table											
(A38)	Up to 2m ³	P	P	P	P	RD	RD	RD	RD	NC	RD
(A39)	Greater than 2m ³ up to 10m ³	P	P	RD	RD	RD	RD	RD	NC	NC	NC
(A40)	Greater than 10m ³ up to 50m ³	P	RD	RD	RD	RD	RD	RD	NC	NC	NC
(A41)	Greater than 50m ³	RD	RD	RD	RD	RD	RD	RD	NC	NC	NC

E12.5. Notification

- (1) An application for resource consent for a controlled activity listed in Table E12.4.1 Activity table all zones and roads above will be considered without public or limited notification or the need to obtain written approval from affected parties unless the Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991.
- (2) Any application for resource consent for an activity listed in Table E12.4.1 Activity table all zones and roads Table E12.4.2 Activity table overlays (except Outstanding Natural Features Overlay) and Table E12.4.3 Activity table Outstanding Natural Features Overlay and which is not listed in E12.5(1) will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (3) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule [C1.13\(4\)](#).

E12.6. Standards

E12.6.1. Accidental discovery rule

- (1) Despite any other rule in this Plan permitting earthworks or land disturbance or any activity associated with earthworks or land disturbance, in the event of discovery of sensitive material which is not expressly provided for by any resource consent or other statutory authority, the standards and procedures set out in this rule must apply.
- (2) For the purpose of this rule, 'sensitive material' means:
 - (a) human remains and kōiwi;
 - (b) an archaeological site;
 - (c) a Māori cultural artefact/taonga tuturu;
 - (d) a protected New Zealand object as defined in the Protected Objects Act 1975 (including any fossil or sub-fossil);

- (e) evidence of contaminated land (such as discolouration, vapours, asbestos, separate phase hydrocarbons, landfill material or significant odour); or
- (f) a lava cave greater than 1m in diameter on any axis.

(3) On discovery of any sensitive material, the owner of the site or the consent holder must take the following steps:

Cease works and secure the area

- (a) immediately cease all works within 20m of any part of the discovery, including shutting down all earth disturbing machinery and stopping all earth moving activities, and in the case of evidence of contaminated land apply controls to minimise discharge of contaminants into the environment;
- (b) secure the area of the discovery, including a sufficient buffer area to ensure that all sensitive material remains undisturbed;

Inform relevant authorities and parties

- (c) inform the following parties immediately of the discovery:
 - (i) the New Zealand Police if the discovery is of human remains or kōiwi;
 - (ii) the Council in all cases;
 - (iii) Heritage New Zealand Pouhere Taonga if the discovery is an archaeological site, Māori cultural artefact, human remains or kōiwi;
 - (iv) Mana Whenua if the discovery is an archaeological site, Māori cultural artefact, or kōiwi.

Wait for and enable inspection of the site

- (d) wait for and enable the site to be inspected by the relevant authority or agency:
 - (i) if the discovery is human remains or kōiwi the New Zealand Police are required to investigate the human remains to determine whether they are those of a missing person or are a crime scene. The remainder of this process will not apply until the New Zealand Police confirm that they have no further interest in the discovery; or
 - (ii) if the discovery is of sensitive material, other than evidence of contaminants, a site inspection for the purpose of initial assessment and response will be arranged by the Council in consultation with Heritage New Zealand Pouhere Taonga and appropriate Mana Whenua representatives; or
 - (iii) if the discovery is evidence of contaminants, a suitably qualified and experienced person is required to complete an initial assessment and provide information to the Council on the assessment and response.
- (e) following site inspection and consultation with all relevant parties (including the owner and consent holder), the Council will determine the area within which work

must cease, and any changes to controls on discharges of contaminants, until the requirements of E12.6.1(3)(f) are met.

Recommencement of work

- (f) work within the area determined by the Council at E12.6.1(3)(e) must not recommence until all of the following requirements, so far as relevant to the discovery, have been met:
- (i) Heritage New Zealand has confirmed that an archaeological authority has been approved for the work or that none is required;
 - (ii) any required notification under the Protected Objects Act 1975 has been made to the Ministry for Culture and Heritage;
 - (iii) the requirements of [E30 Contaminated land](#) and/or the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 have been met;
 - (iv) any material of scientific or educational importance has been recorded and if appropriate recovered and preserved;
 - (v) if the discovery is a lava cave as outlined in E12.6.1(2)(f) above and if the site is assessed to be regionally significant, reasonable measures have been taken to minimise adverse effects of the works on the scientific values of the site; and
 - (vi) where the site is of Māori origin and an authority from Heritage New Zealand Pouhere Taonga is not required the Council will confirm, in consultation with Mana Whenua, that:
 - any kōiwi have either been retained where discovered or removed in accordance with the appropriate tikanga; and
 - any agreed revisions to the planned works to be/have been made in order to address adverse effects on Māori cultural values.
 - (vii) resource consent has been granted for any alteration or amendment to the earthworks or land disturbance that may be necessary to avoid the sensitive materials and that is not otherwise permitted under the Plan or allowed by any existing resource consent; and
 - (viii) there are no requirements in the case of archaeological sites that are not of Māori origin and are not covered by the Heritage New Zealand Pouhere Taonga Act 2014

E12.6.2. General standards

All activities (except ancillary farming earthworks, ancillary forestry earthworks and network utilities) listed as a permitted activity, controlled activity or restricted discretionary activity in Table E12.4.1, Table E12.4.2 or Table E12.4.3 must comply with the following standards.

- (1) Land disturbance within riparian yards and coastal protection yards are limited to:

- (a) operation, maintenance and repair (including network utilities);
 - (b) less than 5m² or 5m³; for general earthworks;
 - (c) less than 10m² or 5m³ for the installation of new network utilities;
 - (d) installation of fences and walking tracks; or
 - (e) burial of marine mammals.
- (2) Land disturbance must not result in any instability of land or structures at or beyond the boundary of the property where the land disturbance occurs.
- (3) The land disturbance must not cause malfunction or result in damage to network utilities, or change the cover over network utilities so as to create the potential for damage or malfunction.
- (4) Access to public footpaths, berms, private properties, network utilities, or public reserves must not be obstructed unless that is necessary to undertake the works or prevent harm to the public.
- (5) Measures must be implemented to ensure that any discharge of dust beyond the boundary of the site is avoided or limited such that it does not cause nuisance.
- (6) Burial of marine mammals must be undertaken by the Department of Conservation or the agents of the Department of Conservation.
- (7) Land disturbance around Transpower NZ Ltd electricity transmission line poles must:
- (a) be no deeper than 300mm within 2.2m of a transmission pole support structure or stay wire; and
 - (b) be no deeper than 750mm within 2.2 to 5m of a transmission pole support structure or stay wire; except that
 - (c) vertical holes not exceeding 500mm diameter beyond 1.5m from the outer edge of a pole support structure or stay wire are exempt from Standards E12.6.2(7)(a) and E12.6.2(7)(b) above.
- (8) Land disturbance around Transpower NZ Ltd electricity transmission lines towers must:
- (a) be no deeper than 300mm within 6m of the outer visible edge of a transmission tower support structure; and
 - (b) be no deeper than 3m between 6-12m from the outer visible edge of a transmission tower support structure.
- (9) Land disturbance within 12m of a Transpower NZ Ltd electricity transmission line pole or tower must not:
- (a) create an unstable batter that will affect a transmission support structure; or

- (b) result in a reduction in the ground to conductor clearance distances as required by New Zealand Electrical Code of Practice for Electrical Safe Distances NZECP34:2001.
- (10) Only cleanfill material may be imported and utilised as part of the land disturbance.
- (11) Earthworks (including filling) within a 100 year annual exceedance probability (AEP) flood plain:
 - (a) must not raise ground levels more than 300mm, to a total fill volume up to 10m³ which must not be exceeded through multiple filling operations; and
 - (b) must not result in any adverse changes in flood hazard beyond the site.

Note1

This standard does not limit excavation and replacement of fill to form building platforms, where those works do not raise ground levels.

- (12) Earthworks (including filling) within overland flow paths must maintain the same entry and exit point at the boundaries of a site and not result in any adverse changes in flood hazards beyond the site, unless such a change is authorised by an existing resource consent.
- (13) Temporary land disturbance and stockpiling of soil and other materials within the one per cent annual exceedance probability (AEP) flood plain and/or overland flow path for up to a maximum of 28 days in any calendar year may occur as part of construction or maintenance activities.
- (14) Earthworks for maintenance and repair of driveways, parking areas, sports fields and major recreational facilities on a site or places of Significance to Mana Whenua must be limited to the area and depth of earth previously disturbed or modified.
- (15) Earthworks for maintenance and repair of driveways, parking areas, sports fields and major recreational facilities within the Historic Heritage Overlay must not extend more than 300 mm below the surface where additional rules for archaeological sites or features apply as listed in [Schedule 14 Historic Heritage Schedule, Statements and Maps](#).
- (16) Earthworks associated with a temporary activity on a site or place of significance to Mana Whenua shall be limited to the area of earthwork previously disturbed or modified.
- (17) Earthworks/land disturbance for the planting of any tree within the Historic Heritage Overlay must not be undertaken where additional rules for archaeological sites or features apply as listed in [Schedule 14 Historic Heritage Schedule, Statements and Maps](#), other than as a replacement for a pre-existing tree; and, within the area previously occupied by the root plate of the pre-existing tree.

E12.6.3. Standards for ancillary farming earthworks

Ancillary farming earthworks listed as a permitted activity in Table E12.4.1, Table E12.4.2 or Table E12.4.3 must comply with the following permitted activity standards.

- (1) Ancillary farming earthworks for maintenance of tracks on sites identified in the Sites and Places of Significance to Mana Whenua Overlay must be limited to the area and depth of earth previously disturbed.
- (2) Land disturbance around Transpower NZ Ltd electricity transmission line poles must:
 - (a) be no deeper than 300mm within 2.2m of a transmission pole support structure or stay wire; and
 - (b) be no deeper than 750mm within 2.2 to 5m of a transmission pole support structure or stay wire; except that
 - (c) vertical holes not exceeding 500mm diameter beyond 1.5m from the outer edge of a pole support structure or stay wire are exempt from E12.6.2(2)(a) and E12.6.2(2)(b) above.
- (3) Land disturbance around Transpower NZ Ltd electricity transmission lines towers must:
 - (a) be no deeper than 300mm within 6m of the outer visible edge of a transmission tower support structure; and
 - (b) be no deeper than 3m between 6-12m from the outer visible edge of a transmission tower support structure.
- (4) Land disturbance within 12m of a Transpower NZ Ltd electricity transmission line pole or tower must not:
 - (a) create an unstable batter that will affect a transmission support structure; or
 - (b) result in a reduction in the ground to conductor clearance distances as required by NZECP34:2001.

E12.6.4. Standards for ancillary forestry earthworks

Ancillary forestry earthworks listed as a permitted activity in Table E12.4.1, Table E12.4.2 or Table E12.4.3 must comply with the following permitted activity standards.

- (1) Other than for ancillary forestry earthworks on sand soils, the Council must be notified at least 48 hours prior to the earthworks starting.
- (2) The ancillary forestry earthworks must not take place on land within a coastal fore-dune.
- (3) Slash associated with landing sites and processing sites must be placed on stable ground and contained to prevent accumulated slash from causing erosion or land instability.

- (4) Ancillary forestry earthworks for maintenance shall be limited to the area and depth of earth previously disturbed or modified on a site or place identified in the Site or Place of Significance to Mana Whenua Overlay.
- (5) Only cleanfill material may be imported and utilised as part of the land disturbance.
- (6) Works must not result in any instability of land or structures at or beyond the boundary of the property where the land disturbance occurs.
- (7) The land disturbance must not cause malfunction or result in damage to network utilities, or change the cover over network utilities so as to create the potential for damage or malfunction.
- (8) Access to public footpaths, berms, private properties, network utilities or public reserves must not be obstructed unless that is necessary to undertake the works or prevent harm to the public.
- (9) Measures must be implemented to ensure that any discharge of dust beyond the boundary of the site is avoided or limited such that it does not cause nuisance.
- (10) Burial of marine mammals must be undertaken by the Department of Conservation or the agents of the Department of Conservation.
- (11) Land disturbance around Transpower NZ Ltd electricity transmission line poles must:
 - (a) be no deeper than 300mm within 2.2m of a transmission pole support structure or stay wire; and
 - (b) be no deeper than 750mm within 2.2 to 5m of a transmission pole support structure or stay wire; except that
 - (c) vertical holes not exceeding 500mm diameter beyond 1.5m from the outer edge of a pole support structure or stay wire are exempt from E12.6.4(11)(a) and E12.6.4(11)(b) above.
- (12) Land disturbance around Transpower NZ Ltd electricity transmission lines towers must:
 - (a) be no deeper than 300mm within 6m of the outer visible edge of a transmission tower support structure; and
 - (b) be no deeper than 3m between 6-12m from the outer visible edge of a transmission tower support structure.
- (13) Land disturbance within 12m of a Transpower NZ Ltd electricity transmission line pole or tower must not:
 - (a) create an unstable batter that will affect a transmission support structure; or
 - (b) result in a reduction in the ground to conductor clearance distances as required by New Zealand Code of Practice for Electrical Safe Distances NZECP34:2001.

E12.7. Assessment – controlled activities

E12.7.1. Matters of control

The Council will reserve its control to all of the following matters when assessing a controlled activity resource consent application:

- (1) all controlled activities:
 - (a) compliance with the standards;
 - (b) effects of noise, vibration, odour, dust, lighting and traffic on the surrounding environment;
 - (c) effects on the stability and safety of surrounding land, buildings and structures;
 - (d) effects on overland flow paths and flooding;
 - (e) protocol for the accidental discovery of kōiwi, archaeology and artefacts of Māori origin;
 - (f) staging of works and progressive stabilisation;
 - (g) timing and duration of works;
 - (h) term of consent; and
 - (i) potential effects on significant ecological and indigenous biodiversity values.
- (2) additional matter of control for earthworks that exceed 1m in depth below ground level within the limited earthworks corridor measured 5m either side of the centre line which is shown on Figure E12.10.1 Limited earthworks corridor:
 - (a) effect on the relationship of Mana Whenua and their culture and traditions with wāhi tapu in the precinct, especially wāhi whenua and wāhi pito.

E12.7.2. Assessment criteria

The Council will consider the relevant assessment criteria below for controlled activities:

- (1) all controlled activities:
 - (a) whether applicable standards are complied with;
 - (b) the extent to which the earthworks will generate adverse noise, vibration, odour, dust, lighting and traffic effects on the surrounding environment and the effectiveness of proposed mitigation measures;
 - (c) whether the earthworks and any associated retaining structures are designed and located to avoid adverse effects on the stability and safety of surrounding land, buildings, and structures;

- (d) whether the earthworks and final ground levels will adversely affect overland flow paths or increase potential volume or frequency of flooding within the site or surrounding sites;
 - (e) whether a protocol for the accidental discovery of kōiwi, archaeology and artefacts of Māori origin has been provided and the effectiveness of the protocol in managing the impact on Mana Whenua cultural heritage if a discovery is made; and
 - (f) whether the extent or impacts of adverse effects from the land disturbance can be mitigated by managing the duration, season or staging of such works.
- (2) additional assessment criteria for earthworks that exceeds 1m in depth below ground level within the limited earthworks corridor measured 5m either side of the centre line which is shown on Figure E12.10.1 Limited earthworks corridor:
- (a) conditions may be imposed on consents to avoid, remedy or mitigate any adverse effects of works to support Mana Whenua, including:
 - (i) a requirement to notify the Council and Mana Whenua before any earthworks start;
 - (ii) supervision of works by a Council-appointed archaeologist and Mana Whenua representatives; and
 - (iii) control how earthworks are managed, such as hand digging rather than mechanical digging.

E12.8. Assessment – restricted discretionary activities

E12.8.1. Matters of discretion

The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary resource consent application:

- (1) all restricted discretionary activities:
 - (a) compliance with the standards;
 - (b) effects of noise, vibration, odour, dust, lighting and traffic on the surrounding environment;
 - (c) effects on the stability and safety of surrounding land, buildings and structures;
 - (d) effects on overland flow paths and flooding;
 - (e) protocol for the accidental discovery of kōiwi, archaeology and artefacts of Māori origin;
 - (f) the treatment of stockpiled materials on the site including requirements to remove material if it is not to be reused on the site;
 - (g) staging of works and progressive stabilisation;

- (h) information and monitoring requirements;
 - (i) timing and duration of works;
 - (j) term of consent;
 - (k) potential effects on significant ecological and indigenous biodiversity values;
 - (l) risk that may occur as a result of natural hazards;
 - (m) protection of or provision of network utilities and road networks.
 - (n) potential effects on the natural character and values of the coastal environment, lakes, rivers and their margins, where works encroach into riparian or coastal yards; and
 - (o) positive effects enabled through the land disturbance.
- (2) additional matters of discretion for land disturbance within overlay areas:
- (a) within the Outstanding Natural Character, High Natural Character Overlay or Outstanding Natural Landscapes Overlay:
 - (i) the objectives and policies in [D10](#) as they relate to Outstanding Natural Landscapes and [D11](#) as they relate to Outstanding Natural Character and High Natural Character;
 - (ii) setback from mean high water springs;
 - (iii) cumulative effects;
 - (iv) landscape, visual and amenity effects;
 - (v) mitigation of effects;
 - (vi) modification to landform;
 - (vii) vegetation clearance; and
 - (viii) Mana Whenua values.
 - (b) within the Historic Heritage Overlay:
 - (i) effects on historic heritage.
 - (c) within the Sites and Places of Significance to Mana Whenua Overlay:
 - (i) potential effects on the water quality of taiāpure or mahinga maataitai, wāhi tapu, taonga and other scheduled sites in the Sites and Places of Significance to Mana Whenua; and
 - (ii) potential effects on the values and associations of Mana Whenua with the site or place including effects on the context of the Maori cultural landscape.

(d) within the Outstanding Natural Features Overlay:

- (i) the objectives and policies in [D10](#);
- (ii) nature, form and extent of proposed works;
- (iii) effects on landscape values;
- (iv) the degree of existing geological modification;
- (v) protection or enhancement of the feature; and
- (vi) Mana Whenua values.

(e) within the Special Character Area – Residential: Isthmus C – Three Kings:

- (i) the objectives and policies in Chapter D18 as they relate to Special Character Areas – Residential areas;
- (ii) nature and extent of any disturbance to the biophysical components in Isthmus C – Three Kings (i.e. landform, tuff ring or vegetation) that contribute to the identified special character values;
- (iii) degree of existing modification to the landform and vegetation;
- (iv) landscape, visual and amenity effects;
- (v) mana whenua values, in particular mātauranga, tikanga, spiritual values for those landforms and vegetation that contribute to the identified special character values; and
- (vi) cumulative effects in the identified special character values.

(3) Additional matters of discretion for land disturbance that disturbs lava cavities more than 1m diameter along any axis or fossils or sub-fossils:

- (a) effects on known lava caves, fossils and sub-fossils.

E12.8.2. Assessment criteria

The Council will consider the relevant assessment criteria below for restricted discretionary activities:

(1) all restricted discretionary activities:

- (a) whether applicable standards are complied with;
- (b) the extent to which the earthworks will generate adverse noise, vibration, odour, dust, lighting and traffic effects on the surrounding environment and the effectiveness of proposed mitigation measures;
- (c) whether the earthworks and any associated retaining structures are designed and located to avoid adverse effects on the stability and safety of surrounding land, buildings, and structures;

- (d) whether the earthworks and final ground levels will adversely affect overland flow paths or increase potential volume or frequency of flooding within the site or surrounding sites;
 - (e) whether a protocol for the accidental discovery of kōiwi, archaeology and artefacts of Māori origin has been provided and the effectiveness of the protocol in managing the impact on Mana Whenua cultural heritage if a discovery is made;
 - (f) whether the extent or impacts of adverse effects from the land disturbance can be mitigated by managing the duration, season or staging of such works;
 - (g) the extent to which the area of the land disturbance is minimised, consistent with the scale of development being undertaken;
 - (h) the extent to which the land disturbance is necessary to provide for the functional or operational requirements of the network utility installation, repair or maintenance;
 - (i) the extent of risks associated with natural hazards and whether the risks can be reduced or not increased;
 - (j) whether the land disturbance and final ground levels will adversely affect existing utility services;
 - (k) the extent to which the land disturbance is necessary to accommodate development otherwise provided for by the Plan, or to facilitate the appropriate use of land in the open space environment, including development proposed in a relevant operative reserve management plan or parks management plan;
 - (l) for land disturbance near Transpower New Zealand Limited transmission towers:
 - (i) the outcome of any consultation with Transpower New Zealand Limited; and
 - (ii) the risk to the structural integrity of transmission lines.
 - (m) the extent to which earthworks avoid, minimise, or mitigate adverse effects on any archaeological sites that have been identified in the assessment of effects.
- (2) additional assessment criteria for land disturbance within overlay areas:
- (a) within the Outstanding Natural Character and High Natural Character Overlay or the Outstanding Natural Landscapes Overlay:
 - (i) the extent to which the land disturbance, its design, location and execution provide for the maintenance and protection of:
 - protected trees;
 - cliff faces/cliff tops; and
 - identified landscape features

- (ii) the extent to which the proposal will adversely affect amenity and identified natural character values, and whether the proposed mitigation measures can ensure there will be no more than minor effects on:
 - amenity values or views, both from land and sea;
 - landscape and natural character values; and
 - people's experience and values associated with an area, including the predominance of nature and wilderness values.
 - (iii) the extent to which there are adverse visual and or ecological effects from any land disturbance, associated with creating farm tracks, driveways or other servicing requirements;
 - (iv) the extent to which the activity impacts on Mana Whenua values;
 - (v) the extent to which the functional need for farm tracks, driveways or other servicing requirements to be in the location proposed; and
 - (vi) the objectives and policies in [D10 Outstanding Natural Landscapes Overlay](#) and [D11 Outstanding Natural Character and High Natural Character Overlay](#).
- (b) within the Historic Heritage Overlay;
- (i) the extent to which the land disturbance, its design, location and execution provide for the maintenance and protection of heritage sites.
- (c) within the Sites and Places of Significance to Mana Whenua Overlay:
- (i) whether the proposal will protect the relationship of Mana Whenua with their cultural heritage by:
 - avoiding the physical destruction in whole or in part of the site or place of significance to Mana Whenua;
 - avoiding significant adverse effects on the values and associations of Mana Whenua with the site or place;
 - where relevant, recognising and providing for the outcomes articulated by Mana Whenua through the cultural impact assessment process and within iwi planning documents;
 - incorporating mātauranga, tikanga and Mana Whenua values, including spiritual values;
 - demonstrating consideration of practicable alternative methods, locations or designs which would avoid or reduce the impact on the values of scheduled sites and places of significance to Mana Whenua; or
 - demonstrating consideration of practical mechanisms to maintain or enhance the ability to access and use the scheduled site or feature for

karakia, monitoring, customary purposes and ahikā roa by Mana Whenua.

(d) within the Outstanding Natural Features Overlay:

- (ii) whether the nature, form and extent of the proposed works or activity adversely affects the feature or features for which the item was scheduled;
- (iii) whether the activity will interfere with natural processes e.g. hydrology or adverse effects on nature and form of sand dunes;
- (iv) whether the proposed works or activity cause adverse visual effects or adversely affect landscape values;
- (v) the degree to which the feature or features have already been modified so that further modification will not cause significant additional loss of geological value;
- (vi) the extent to which the proposed works will protect the feature from further damage, such as erosion protection, or remediate it from previous damage. This excludes potential damage from the activity for which consent is sought;
- (vii) whether the proposed land disturbance is for an activity which has a functional or operational need to be in the location proposed; and
- (viii) the objectives and policies in [D10 Outstanding Natural Features Overlay](#)

(e) within the Special Character Area – Residential: Isthmus C – Three Kings:

- (i) Policies D18.3(1) to (7) in Chapter D18 Special Character Areas Overlay Residential areas;
- (ii) the impact of the proposal on the special character values as identified in the special character statement;
- (iii) the extent to which land disturbance, its design, location and execution will:
 - adversely impact on the physical integrity of those volcanic landforms identified as contributing to the identified special character values;
 - maintain or enhance the visual integrity of the landscape values identified in the special character statement, including the effects of the proposal on the volcanic landform and vegetation;
 - maintain or enhance the relationship of built form to the natural landscape context identified as contributing to the stated special character values; and
 - avoid, remedy, or mitigate any adverse effects on mana whenua values, in particular mātauranga, tikanga and spiritual values, where they are relevant to the identified special character values.
- (iv) the degree to which the biophysical components of Isthmus C – Three Kings, including volcanic landscapes and vegetation have already been modified,

and the extent to which further modification would adversely impact on the special character values of the area.

(3) additional assessment criteria for land disturbance that disturbs lava cavities more than 1m diameter along any axis or fossils or sub-fossils:

(a) the extent to which adverse effects on the features can be avoided or mitigated having regard to:

(i) the provision of a satisfactory record of the location, extent and any notable aspects of the feature;

(ii) the documentation, recovery and preservation of materials of scientific or educational importance; and

(iii) whether access can be maintained to significant lava caves once the works are completed.

E12.9. Special information requirements

There are no special information requirements in this section.

E12.10. Figures

Figure E12.10.1 Limited earthworks corridor

