

# Practice and Guidance note

## Land Disturbance

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# 1 Introduction

Auckland Council, as a Unitary Authority, manages the effects of land disturbance activities (earthworks) under both sections 30 (Regional) and 31 (District) of the Resource Management Act 1991 (RMA).

This Practice and Guidance note (PGN):

- sets out the relationship between the various chapters of the [Auckland Unitary Plan \(Operative in Part\)](#) (AUP(OP)) and how they manage land disturbance activities.
- provides interpretation and application guidance for some rules; and
- provides guidance for specified activities.

The practice note uses the term ‘land disturbance’ in most cases rather than “earthworks” as this best fits with the terminology used in the AUP(OP). However, these terms have the same meaning and are interchangeable<sup>1</sup>.

## 2 Key Auckland Unitary Plan (Operative in Part) References

The AUP(OP) manages land disturbance activities in the following chapters:

### **Chapter E Auckland-wide**

- [E11 – Land disturbance - regional](#), excluding land disturbance for infrastructure
- [E12 – Land disturbance – district](#), excluding land disturbance for infrastructure
- [E26 – Infrastructure, land disturbance associated with infrastructure activities](#)
  - E26.5 – Infrastructure – land disturbance all zones and roads
  - E26.6 – Infrastructure – land disturbance in overlays except Outstanding Natural Features Overlay
  - E26.7 – Infrastructure – land disturbance in Outstanding Natural Features Overlay
- [E36 – Natural hazard and flooding](#)

### **Chapter I Precincts**

- Various provisions within Auckland-wide, City Centre, Central, South, North, West, Special Housing Areas precincts.
- If a land disturbance activity is subject to a precinct rule and the activity status of that activity in the precinct is different to the activity status in the Auckland-wide

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<sup>1</sup> Land Disturbance is defined in Chapter J – Definitions as “ The disturbance of the surface of land by earthworks, ancillary farming earthworks, or ancillary forestry earthworks”

rules in Chapter E, then the activity status in the precinct takes precedence over the activity status in the Auckland-wide rules, whether that activity status is more or less restrictive <sup>2</sup>.

### **Chapter J Definitions**

- [J1 Definitions](#) - Land disturbance, Sediment control, Sediment Control Protection Area, Ancillary farming earthworks, Ancillary forestry earthworks.
- [J1 Definitions](#) - Coastal marine area (CMA) - Earthworks is not a term used in the CMA. CMA disturbance activities are addressed in [Chapter F Coastal](#).

## **3 Auckland Unitary Plan (Operative in Part) practice and interpretation**

Depending on its nature and location, a proposal involving land disturbance activities may require resource consent under more than one AUP(OP) chapter. Council's bundling rules apply where more than one resource consent is required. The most restrictive activity class will set the overall activity classification for the activity, see [C1.6 of the AUP](#).

### **3.1 Chapter E11 Land disturbance - regional**

[Chapter E11](#) AUP(OP) addresses regional land disturbance under s30 Resource Management Act 1991 (RMA). This chapter seeks to manage the effects of land disturbance primarily on water quality. The primary controls under this chapter are regional land use controls under section 9(2) RMA, s14 and s15 for diversion and discharges under E11.4.2.

Table E11.4.1 and Table E11.4.2 are activity and zone based. Generally, the same activity class applies across all zones, except Special Quarry zones and Ancillary forestry land disturbances.

Activity table E11.4.1 generally requires resource consents for large scale land disturbance activities and includes area thresholds to determine the activity status. Resource consents are required for land disturbance areas greater than 2,500m<sup>2</sup> in Sediment Control Protection Areas (SCPA) or for land disturbance areas greater than 2,500m<sup>2</sup> where any part of the land disturbance area has a slope greater than 10°. In all other areas, resource consent is triggered for land disturbance area greater than 10,000m<sup>2</sup>.

Activity Table E11.4.2 addresses discharges associated with land disturbance. E11.4.2(A13) addresses discharges associated with permitted activities, whereas E11.4.2(A14) addresses discharges associated with resource consents under E11.4.1.

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<sup>2</sup> In accordance with Chapter C - C1.6. Overall activity status

Activity table E11.4.3 establishes rules for land disturbance in Significant Ecological Area overlays and Water Supply Management Area overlays. This activity table sets triggers for resource consents at a significantly lower threshold than E11.4.1. In some cases, down to an area of 5m<sup>2</sup> or a volume of 5m<sup>3</sup>. The location and extent of overlays are shown in the AUP(OP) maps.

### **How do I determine the land disturbance area and volume?**

Chapter E11 uses the cumulative area of the proposed land disturbance to determine which rule applies. For general land disturbance not specifically listed in Table E11.4.1, the cumulative volume of the proposed land disturbance must also be considered. Both the area and volume thresholds must be taken into account for general land disturbance and the more restrictive activity status applies. The total land disturbance area or volume includes both the cut and fill <sup>3</sup>.

For network utility, the area or volume 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 can be adopted to maintain the activity within the thresholds <sup>4</sup>.

### **What if my land disturbance is a permitted activity under E11?**

If an activity is permitted under Chapter E11, when undertaking that activity the permitted activity standards must be complied with. Where land disturbance is a permitted activity under E11 but other resource consents are required to undertake a proposal, the application should demonstrate how the proposal meets the permitted activity rules and standards as required by Schedule 4, clause 3(a) RMA. This should include the use of best practice sediment control measures as required by E11.6.2(2).

Auckland Council guidance document [GD05, "Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region"](#) sets out best practice erosion and sediment control practices for the Auckland region.

### **Rules E11.4.1 (A3-A6 and A8) include slope criteria. How do I determine slope?**

Slope is determined by the steepest slope within the proposed land disturbance area.

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<sup>3</sup> Earthworks is defined in Chapter J – Definitions as "Disturbance of soil, earth or substrate land surfaces, Includes ... excavation, filling ..."

<sup>4</sup> In accordance with Chapter E11 – E11.4. Activity table

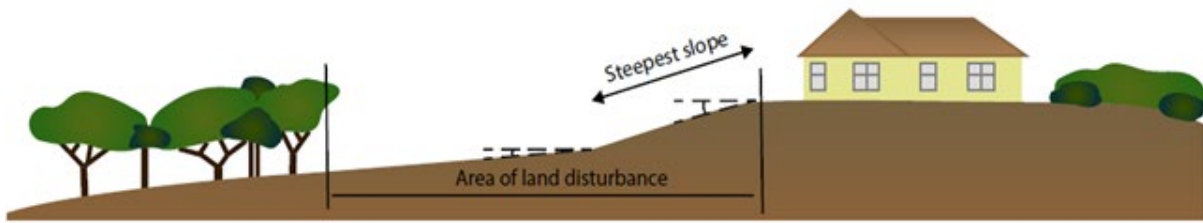


Figure 1: Determining site slope for applying E11.4.1 (A3), (A4), (A5), (A6), (A8).

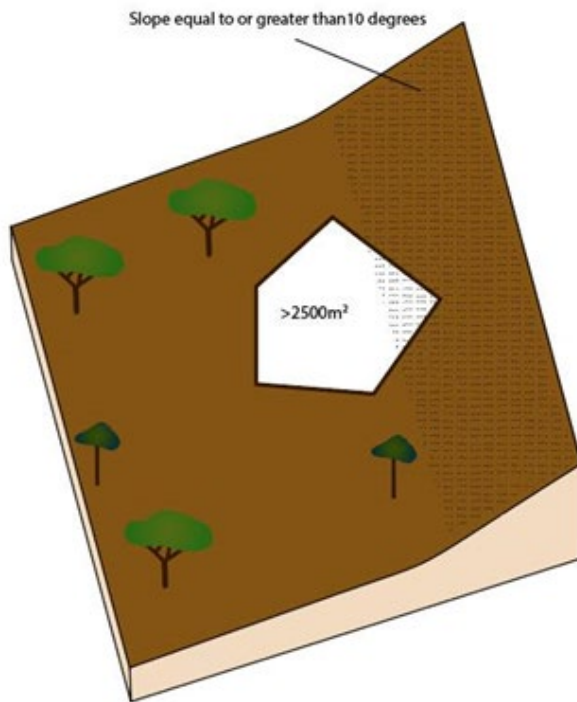


Figure 2: Resource consent is required under E11.4.1 (A8) if the cumulative land disturbance area is greater than 2,500m<sup>2</sup> and any part of the land disturbance area is located on land with a slope equal to or greater than 10 degrees.

### Do I need resource consent for diversion and discharges of contaminated water from my land disturbance?

Diversions (s14 RMA) and discharges (s15 RMA) associated with regional land disturbance are a permitted activity under E11.4.2 (A13) and (A14) where the permitted activity standards are met. If the permitted activity standards cannot be met, the diversion and discharge is a restricted discretionary activity under C1.9.

Applications for resource consents for land disturbance under Chapter E11 that rely on one of the permitted activity rules, E11.4.2 (A13) or (A14), need to demonstrate that they comply with the permitted activity standards as required by Schedule 4, clause 3(a) RMA.

## What if the land disturbance activity is on Waiheke, Rakino or Great Barrier Island?

Chapter E11 rules are regional rules and apply to the entire Auckland region, including those islands covered by the Auckland Council District Plan - Hauraki Gulf Islands Section.

## How do I know if a site is within a Sediment Control Protection Area?

Chapter E11 establishes two sediment management areas – Sediment Control Protection Area (SCPA) and areas outside SCPA. The purpose of the SCPA is to establish a lower resource consent trigger for land disturbance activities where activities are closer to waterways and therefore there is a higher risk of sediment reaching waterways. The SCPA is defined in Chapter J of the Unitary Plan as follows:

- a. 100m either side of a foredune or 100m landward of the coastal marine area (whichever is the more landward of mean high water springs); or
- b. 50m landward of the edge of a lake, river or stream, or the edge of a wetland of 1,000m<sup>2</sup> or greater.

Chapter E11 includes rules that apply specifically to SCPAs - E11.4.1 (A7) and (A9), rules that apply outside SCPAs - E11.4.1 (A3), (A4), (A5), and rules apply to both areas - E11.4.1 (A6) and (A8).

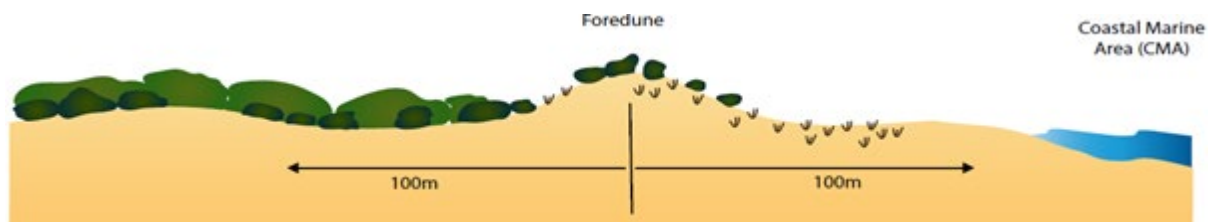


Figure 3: Indicative Sediment Control Protection Area 100m either side of a foredune which is more landward than MHWS.

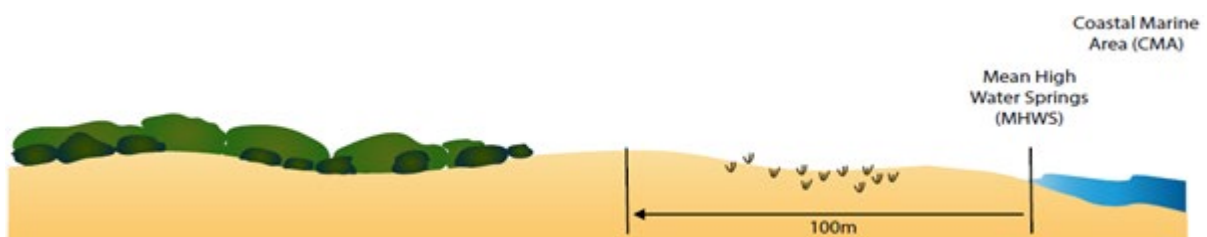
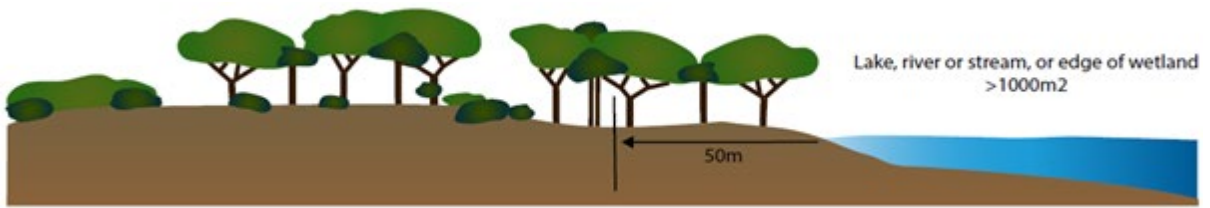


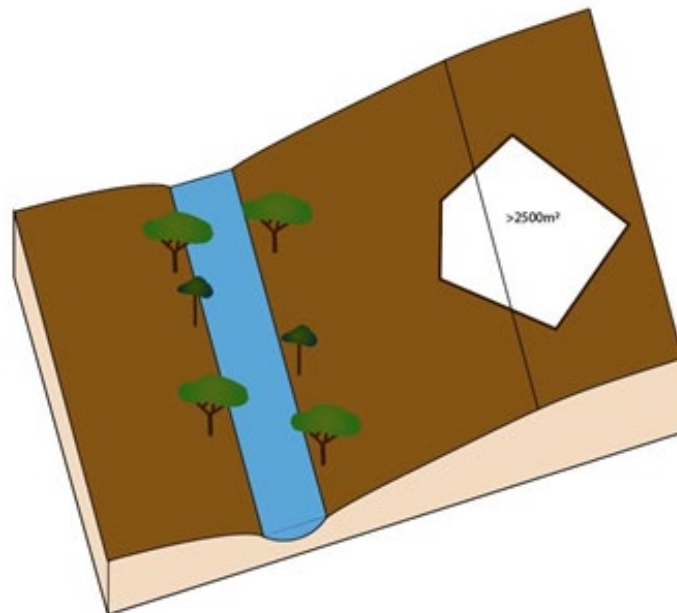
Figure 4: Indicative Sediment Control Protection Area 100m landward of the CMA.



**Figure 5: Indicative Sediment Control Protection Area 50m landward from the edge of a lake, river or stream, or the edge of a wetland of 1,000m<sup>2</sup> or greater.**

**What rule applies if only part of the land disturbance area is within a SCPA?**

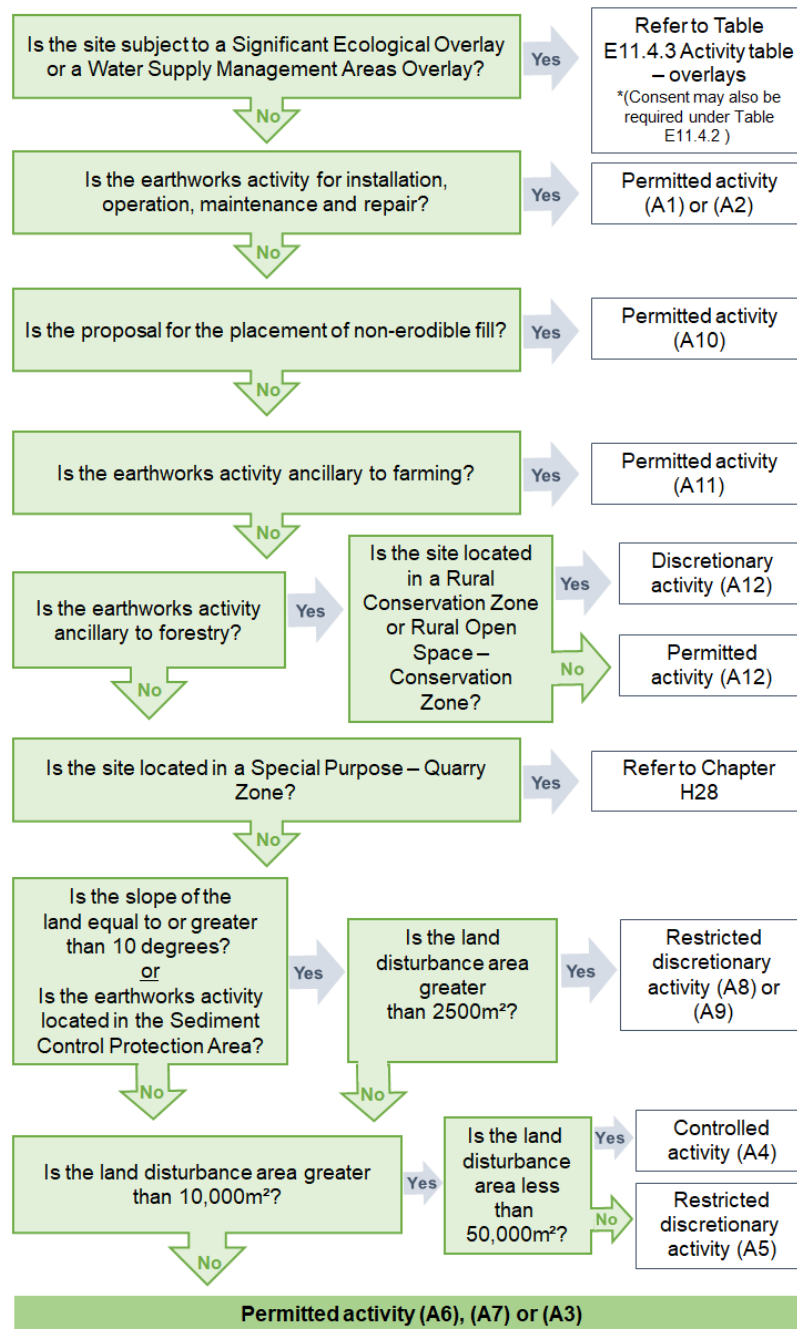
Rules E11.4.1 (A7) and (A9) are triggered when any part of the land disturbance area is within the SCPA as shown in figure 5 below <sup>5</sup>.



**Figure 6: Resource consent is required under E11.4.1 (A9) if the cumulative land disturbance area is greater than 2,500m<sup>2</sup> and any part of the land disturbance area is located within the SCPA.**

<sup>5</sup> In accordance with Chapter E11 – E11.4. Activity table

## Do I trigger the need for a resource consent under Chapter E11?



**Figure 7. Activity pathway diagram for assessing activities under E11 with the assumption that the activities meet all relevant standards. This diagram is intended to be used for informational purposes only. It is recommended that applicants undertake a comprehensive assessment of all relevant sections of AUP in order to accurately determine activity status.**

### 3.2 Chapter E12 Land disturbance - district

[Chapter E12](#) of the AUP addresses district land disturbance under s31 RMA. Chapter E12 seeks to manage the effects of land disturbance primarily on people through land use controls under section 9(3) RMA.



Chapter E12 has two activity tables; table E12.4.1 which is zone based and table E12.4.2 which is overlays based. Depending on which rules apply, land disturbance areas or volumes from 5m<sup>2</sup> or 5m<sup>3</sup> may trigger resource consent.

### **How do the land disturbance area and volume triggers work?**

Chapter E12 uses the cumulative area or total volume of the proposed land disturbance to determine which rule applies. For general land disturbance not specifically listed in Table E12.4.1, both the area and volume thresholds must be taken into account and the more restrictive activity status applies.

As with Chapter E11, For network utility, the area or volume 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 can be adopted to maintain the activity within the thresholds <sup>6</sup>.

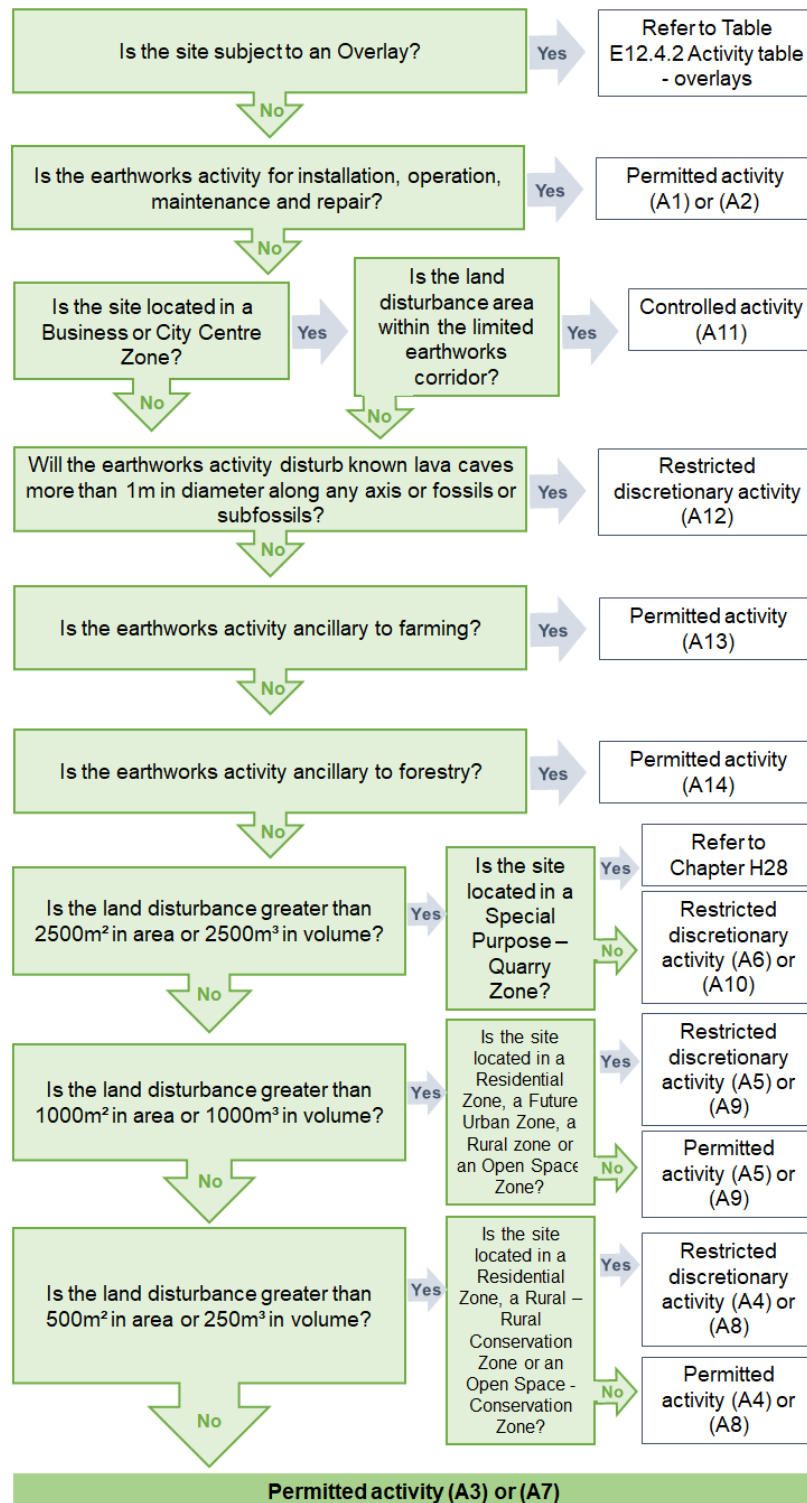
### **What if the land disturbance is on Waiheke, Rakino or Great Barrier Island?**

The provisions of Chapter E12 do not apply to those Hauraki Gulf islands covered by the Auckland Council District Plan - Hauraki Gulf Islands Section, see E12.4.1(A15).

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<sup>6</sup> In accordance with Chapter E12 – E12.4. Activity table

## Do I trigger the need for a resource consent under Chapter E12?



**Figure 8. Activity pathway diagram for assessing activities under E12 with the assumption that the activities meet all relevant standards. This diagram is intended to be used for informational purposes only. It is recommended that applicants undertake a comprehensive assessment of all relevant sections of AUP(OP) in order to accurately determine activity status.**

### 3.3 Chapter E26 Infrastructure

[Chapter E26](#) – Infrastructure, provides for land disturbance associated with infrastructure development for [network utilities](#) and electricity generation. This chapter includes higher consent thresholds in terms of land disturbance area and volume than E11 or E12. The provisions of this chapter also allow for staging of works.

#### How do I calculate the area or volume of land disturbance?

Chapter E26 allows for staging and progressive opening and closing of areas <sup>7</sup>. The applicable rule is determined by the area and volume of land disturbance proposed to be undertaken at any one time. This is a different approach to Chapters E11 and E12.

#### How does E26 address regional and district land disturbance?

Chapter E26 includes both regional and district land disturbance provisions. The AUP uses [rp] and [dp] to denote regional provisions and district provisions, respectively. The land disturbance provisions are in E26.5 through to E26.7.

#### E26 has no Objectives and Policies on land disturbance. Where do I find these?

The objectives and policies for Infrastructure land disturbance are contained in Chapters E11 and E12.

### 3.4 Chapter E36 – Natural hazards

[Chapter E36](#) – Natural hazards and flooding: activities listed under “Defences against coastal hazards” include beach nourishment and dune modification. These activities may also require resource consent under Chapters E11 and E12 if they generate sediment that impacts the coastal environment. There are a number of objectives, policies, standards and matters of discretion that reference ‘earthworks’.

## 4 Advice and guidance for specified activities

### What should I do if I am undertaking a single house or small site development?

Small scale developments, such as a single house or a single residential lot development, would likely only trigger the rules under E12. Such activities would likely be a permitted activity under Chapter E11 and the developer would need to comply with the E11 permitted activity standards and employ best practice sediment

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<sup>7</sup> In accordance with Chapter E26 – E26.5.3. Activity Table

control measures. Sediment control measures would need to be suitably detailed in a plan within the application to ensure that the proposed activity complies with E11 permitted activity standards<sup>8</sup>. For small sites this would usually comprise silt fences, diversion of clean stormwater from land disturbance areas and dirty water to the silt fences, entranceway stabilisation, and stormwater catch-pit protection. See section G2.0 Small Sites of [GD05](#) for more details.

### Earthworks for plantation forestry

The [National Environmental Standard for Plantation Forestry](#) includes provisions in relation to land disturbance activities associated with plantation forestry. For more information on the NES (Plantation Forestry) please visit the [Ministry for Primary Industries website](#).

### Special purpose: Quarry zones

The Special Purposes Quarry zone includes rules for land disturbance activities in that zone. Table H28.4.1 includes district rules (s9(3) RMA) and Table H28.4.2 regional rules (s9(2) RMA).

### Contaminated land

Where land disturbance activities are proposed for land known to be or potentially contaminated, consent may also be required under [Chapter E30 Contaminated land](#), and the [National Environmental Standard for Contaminated Land](#).

### Clean fills, managed fills and landfills

Cleanfills, managed fills and landfills may trigger resource consent under E11 and E12 for land disturbance activities associated with these works as well as E13 Cleanfills, managed fills and landfills.

### Reclamations in the CMA

Proposals for reclamation within the Coastal Marina Area will need to be considered under the provisions of E11 and E12 for the reclamation fill activities once the reclamation is above mean high-water springs.

## 5 Adaptive Management Plans

### What is an Adaptive Management Plan (AMP)?

[Chapter J](#) of the AUP(OP) defines adaptive management as “a systematic, iterative process of decision making in the face of uncertainty, with an aim of reducing

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<sup>8</sup> As required by Schedule 4, clause 3(a) RMA.

*uncertainty over time through system monitoring and changes to management in response to the results of monitoring”.*

More simply put, adaptive management is a structured process of ‘learning by doing’. In a regulatory context, management plans can be a useful tool to provide flexibility for both the consent holder and the council in monitoring and addressing adverse effects on an ongoing basis, particularly for larger and more complex proposals, including regional earthworks.

### **Why are AMPs used?**

Large-scale earthwork projects often require significant refinement of erosion and sediment control management practices once the consent for the development is granted. A challenge with such applications is to provide for flexibility in design and implementation of the preferred erosion and sediment control methodology whilst appropriately managing and mitigating effects without using consent conditions that are ultra vires because of the potential discretion needed.

An AMP can also be used to create a process to modify erosion and sediment control management practices to achieve environmental outcomes set by resource consent conditions.

### **When is an AMP used?**

The requirement for an AMP for large scale earthwork projects acknowledges the need to allow flexibility in design and implementation of the preferred erosion and sediment control methodology.

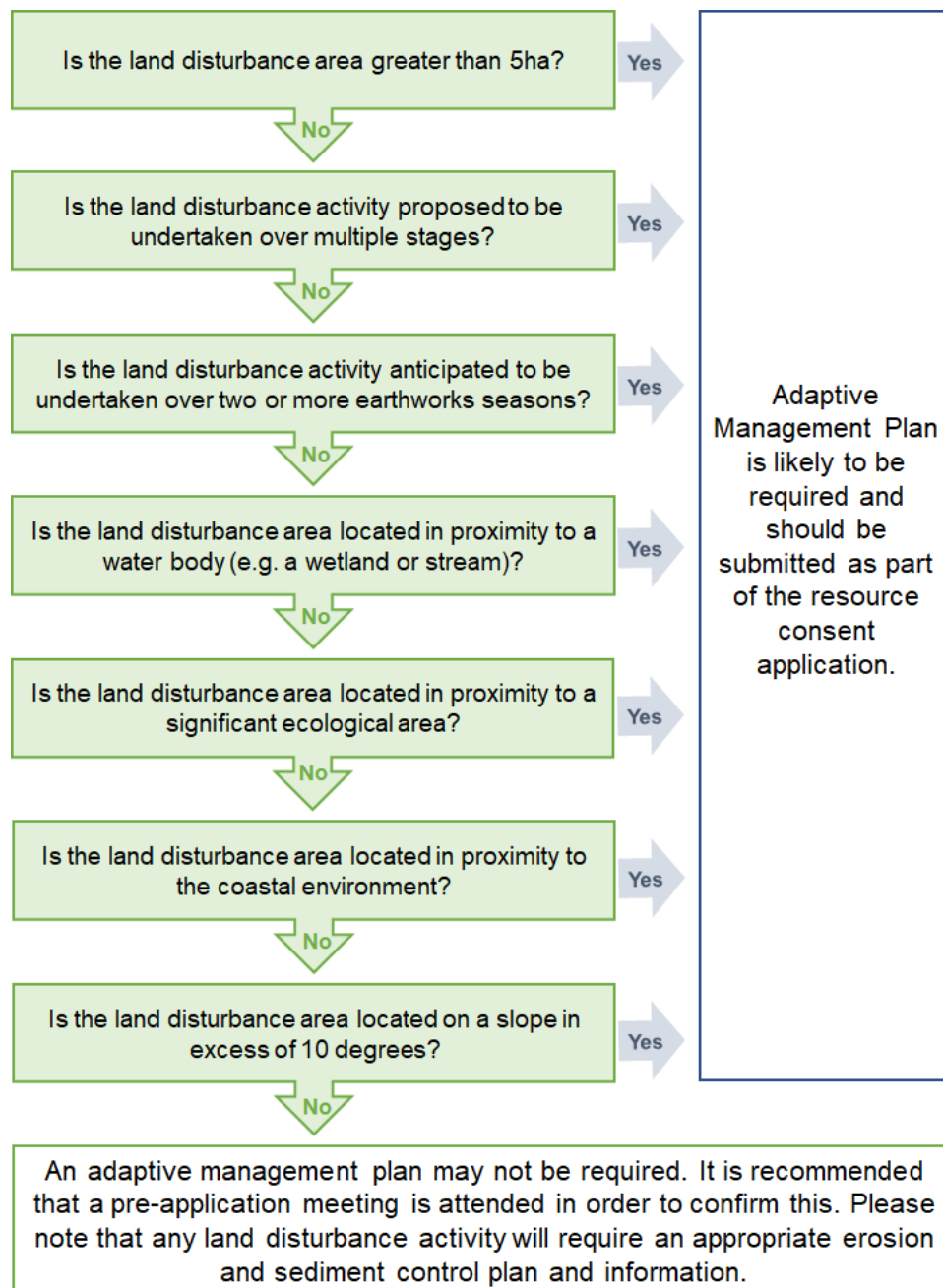
Specific feedback control and/or review provisions can be imposed to ensure that if the environmental effects of the activity exceed a specified threshold, then changes to the way the activity is managed must occur. This could include – but is not limited to - alterations to erosion and sediment control measures and methodologies, additional erosion and sediment controls, refinement of chemical treatment systems, progressive stabilisation in sub-catchments, or reducing the extent of open area on site. It could also include ceasing works on site until appropriate measures have been taken.

Appropriate monitoring and reporting conditions will continue to be essential to ensure the consent holder achieves and reports on compliance with critical performance or operational standards.

Guidance on the use of management plans is provided in the [Resource Consent Conditions Manual](#).

Not all large-scale earthwork proposals will require the submission of an AMP. However, as a guide, if a site comprises one or more of the characteristics included in Figure 9 below, an AMP should be provided as part of the Assessment of

Environmental Effects or be required to be provided prior to any earthworks commencing.



**Figure 9. Guidance diagram for when an AMP is likely to be required. This diagram is intended to be used for informational purposes only.**

An AMP may also be required if the land disturbance activity is being undertaken in proximity to other sensitive and/or complex ecological systems or receiving environments not limited to those included in Figure 9.

## How to produce an AMP

To assist applicants in the preparation of an AMP, Council has provided guidance in the form of an AMP Discussion Document. This includes an exemplar AMP, which can be used as a template. The AMP Discussion Document and Exemplar can be found on the [Auckland Design Manual](#).