

Gore Proposed District Plan

Hearing Stream 7

Part 2: Earthworks

Section 42A of the Resource Management Act 1991

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Interpretation

Abbreviations

Resource Management Act 1991	RMA or 'the Act'
Gore District Council	GDC or 'the Council'
Operative District Plan	ODP
Proposed District Plan	PDP
National Planning Standards 2019	PS
Southland Regional Policy Statement 2017	RPS
National Policy Statements	NPS
National Policy Statement on Highly Productive Land	NPS-HPL
National Policy Statement for Freshwater Management	NPS-FM
National Policy Statement for Urban Development	NPS-UD
National Environmental Standards	NES
National Environmental Standard for Freshwater 2020	NES-F
National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011	NES-CS
Permitted Activity	PA
Controlled Activity	CA
Restricted Discretionary Activity	RDA
Discretionary Activity	DA
Non-complying Activity	NCA

Submitters and Further Submitters Names Abbreviations

Chorus New Zealand Limited	Chorus
Contact Energy Limited	Contact Energy
Department of Conservation	DOC
Environment Southland	ES
Heritage New Zealand Pouhere Taonga	Heritage NZ
Hokonui Rūnanga Incorporated	Hokonui Rūnanga
Kāinga Ora – Homes and Communities	Kāinga Ora
KiwiRail Holdings Limited	KiwiRail
Mercury New Zealand Limited	Mercury
New Zealand Defence Force	NZDF
New Zealand Transport Agency Waka Kotahi	NZTA
Royal Forest and Bird Protection Society of New Zealand inc	Forest & Bird
Southland District Council	SDC
Southland Federated Farmers of New Zealand	Federated Farmers
Spark New Zealand Trading Limited	Spark
Stoney Creek Station Limited	Stoney Creek
Transpower New Zealand Limited	Transpower

List of Submitters and Further Submitters

Submitter No.	Submitter Name
S111	Aggregate and Quarry Association
S142	Alan Taylor
S148	Alistair & Bernadette Hunt
S121	Alliance Group Limited
S118	AW+ JA Johnston Family Trust
S35	Chorus New Zealand Limited
S99	Clark Fortune McDonald & Associates
S37	Connexa Limited
S144	Contact Energy Limited
S133	David Pullar
S109	Department of Conservation
S85	Environment Southland
S105	Farm Manager - Wantwood Station
S33	FortySouth
S16	Fuel Companies
S122	Fulton Hogan
S128	Greenbriar Ltd.
S117	Greg Bokser
S74	Hamish Weir
S24	Helen McIntosh
S123	Heritage New Zealand Pouhere Taonga
S139	Hokonui Rūnanga Inc
S68	John Baynes
S19	Karen Temple
S115	Kevin Robertson
S132	KiwiRail Holdings Ltd
S104	McLeod-Wantwood Trust/Wantwood Station
S130	Mercury NZ Limited
S116	Nathan Bokser
S147	New Zealand Defence Force
S153	Oakland Farming Ltd
S32	One New Zealand Group Limited
S127	Peters Farm Ltd/Karen Peters
S138	Port Blakely Limited
S18	Reaby Downs Farm Ltd
S140	Robina Johnston
S60	Ronald Crispin
S110	Royal Forest and Bird Society of NZ Inc
S143	Rural Ratepayers Group
S20	Sarah and Peter Barclay
S40	Silver Fern Farms
S146	Southland District Council
S126	Southland Federated Farmers of New Zealand
S154	Spark New Zealand Trading Limited

S3	Stoney Creek Station Limited
S101	Transpower New Zealand Limited
S113	Trudy Bokser
S112	Waka Kotahi NZ Transport Agency
FS27	Alliance Group Limited
FS24	Contact Energy Ltd
FS17	Federated Farmers
FS5	Hamish Weir
FS11	Heritage New Zealand Pouhere Taonga
FS28	Kāinga Ora
FS25	Stoney Creek Station Ltd
FS30	Transpower New Zealand Limited
FS21	Yrless Limited

1. Executive Summary

1. The Proposed District Plan (“PDP”) for Gore District was publicly notified on 31 August 2023. The PDP includes a district wide Earthworks chapter.
2. Earthworks and other land disturbance activities are a necessary part of subdivision, land use and development. Changes in ground level and creating areas of level land is required to carry out a range of activities and the construction of buildings and infrastructure. However, if not appropriately managed, adverse effects can arise, including land instability, sediment loss and increased natural hazards, with impacts on amenity, undiscovered archaeological sites and artefacts, Ngāi Tahu cultural values, strategic infrastructure and the natural environment.
3. The proposed District Plan (PDP) Earthworks chapter provisions seek to facilitate earthworks activities, but also recognises that these need to be undertaken in manner which limits the adverse effects on the surrounding environment. A range of low risk, small scale or temporary earthworks activities are enabled, earthworks for farming activities and essential public infrastructure and utilities are provided for, and earthworks of a bulk, scale and form appropriate to the zone are also enabled. The provisions allow for limited earthworks within the *National Grid Yard* and areas of potential inundation. Earthworks are required to be appropriately designed and located. The standards manage the adverse effects associated with steep land, unretained batters, maximum cut depth or fill height and in relation to boundaries, setback from rivers and streams, site reinstatement, control of dust, silt and sediment, and accidental discovery protocol.
4. The Earthworks chapter excludes earthworks provisions relating to Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features and Amenity Landscapes and direct plans users to earthworks rules within those chapters.
5. 395 submission points and 50 further submission points were received for the Earthworks topic. Some of the key issues are identified below:
 - Specific earthworks provisions for a Hokonui Hills Special Precinct;
 - Clarification sought relating to plan relationships and exemptions;
 - Greater heritage protection in the earthworks chapter, including for undiscovered archaeological sites or artefacts;
 - Greater consideration of the effects on indigenous biodiversity;
 - Permitted earthworks or exclusions associated with commercial forestry;
 - Greater protection around earthworks on steep land;
 - Support for earthworks related definitions, and amendments sought to silage pit, landscape gardening and farm track definitions;

- General support for the earthworks objective and policies;
 - Amendments to specify the particular effects of concern to mana whenua;
 - Support for exemptions and additional exemptions sought for granular fill, trenching, fencing, fuel tanks and commercial forestry;
 - Remove exclusions for Significant Natural Areas and Outstanding Natural Landscapes or Features;
 - Concerns raised about the effects of exempt activities on electricity transmission and archaeological sites;
 - Amendment sought to convert exemptions to permitted activities;
 - Reducing restrictions around fencing;
 - Removal of cut depth requirements for underground storage tanks;
 - Support for farm related earthwork allowance, greater earthworks allowance sought for farming infrastructure, and consideration of operational need and the character of the zone;
 - Allowance sought for earthworks activities associated with Renewable Electricity Generation;
 - Support for earthworks allowances for the transport network and network utilities;
 - Greater allowances for earthworks within the National Grid Yard;
 - Greater restrictions sought by Environment Southland for earthworks within areas of inundation;
 - Support by the New Zealand Transport Authority for the rules and matters of discretion relating to the effects on traffic safety;
 - Changes to standards to reduce height/depth to boundary controls and reduce or remove slope degree restrictions;
 - Support for stream setbacks, and exemptions sought for fences, drainage and pest control, along with setbacks to wetlands and greater direction around indigenous biodiversity matters; and
 - Support for sediment erosion control, site reinstatement and accidental discovery protocol standards.
6. The report has been prepared in accordance with Section 42A of the RMA and outlines recommendations in response to the issues that have been identified through submissions. The report is intended to assist the Hearings Panel to make decisions on the submissions and further submissions on the PDP, and to provide submitters with an opportunity to

understand how their submissions have been evaluated and the recommendations made by officers, prior to the hearing.

7. As a result of submissions, a range of recommended changes have been made which are broadly summarised as follows:

- More specific references to the Ngāi Tahu cultural values of importance in the policies;
- Converting exemptions to permitted activities subject to stream setback, sediment erosion controls and accidental discovery protocol;
- Clarifications around exclusions and exemptions to the rules and standards;
- Greater allowance for earthworks and land disturbance for fences, subject to standards;
- Regrouping of spoil from drain clearance work with fencing, subject to standards, instead of land disturbance activities;
- Greater allowance for farming infrastructure and area restriction at any one time instead of annual restriction;
- Allowance for earthworks associated with renewable electricity generation activities;
- Greater allowance for earthworks and land disturbance within *National Grid Yards*, subject to standards; and
- Amendments to earthworks design standards including for;
 - Reducing boundary distance restriction for cut/fill,
 - Removing soil type restriction for retained batters,
 - Removing slope gradient,
 - Clarification for exceptions and exemptions to stream setbacks and indigenous biodiversity matters

2. Introduction

2.1 Author and qualifications

8. My name is Tina Carlson-McColl, I am the author of this report. I am employed by The Property Group as a Senior Planner. I hold a Bachelor of Arts Sociology major, Planning minor from LaTrobe University, Australia. I have practiced as a Planner for 9 years in New Zealand and Australia in both district and regional Councils and in the private sector. I am an associate member of the New Zealand Planning Institute (NZPI), which brings with it obligations with regard to continuing professional development.

9. I have been engaged as a contractor by Gore District Council to assist in the District Plan review and prepare the draft and proposed District Plan. I have been the lead planner on the preparation of the following chapters of the PDP, including the drafting of the Section 32 Evaluation reports¹ and the Designations Overview Report²:
- Transport,
 - Historical Heritage,
 - Activities on the Surface of Water,
 - Earthworks,
 - Commercial Centre Zones, and
 - Designations
10. My experience includes work on strategic and policy projects as well as consent hearings. I have been involved in Council initiated Plan Changes and variations for Towong Shire Council and Gore District Council.
11. In forming my opinions on the Earthworks chapter I have had specialist recommendations by Mr. Mark Adam (Engineering Geologist at RDA Consulting Ltd), Mr. Richard Brunton (Water Resources Engineer at Tonkin And Taylor), and legal advice by Ms. Shelley Chadwick (Anderson Lloyd).

2.2 Code of Conduct

12. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and that I have complied with it when preparing this report. Having reviewed the submissions and further submissions relevant to this topic I advise there are no conflicts of interest that would impede me from providing independent advice to the Hearings Panel. The opinions expressed in this evidence are based on my qualifications and experience and are within my area of expertise. If I rely on the evidence or opinions of another, my evidence will acknowledge that position.
13. I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearing commissioners ("Hearings Panel").

¹ [Section 32 Reports | Let's Talk Gore District \(goredc.govt.nz\)](https://goredc.govt.nz/section-32-reports/)

² [Proposed District Plan - Designations | Let's Talk Gore District \(goredc.govt.nz\)](https://goredc.govt.nz/proposed-district-plan-designations/)

3. Scope of report and topic overview

14. This report considers the submissions and further submissions that were received by the Council in relation to the Earthworks chapter and the definitions of the PDP.
15. The assessment of submissions will generally follow this format:
 - Submission information
 - Analysis of submissions
 - Recommendation and any amendments
 - Where an amendment is recommended a section 32AA assessment is provided.
16. Recommendations are made to either retain provisions without amendment, or delete, add to or amend the provisions which are shown by way of strikeout and underlining. **Appendix A** of this report contains a copy of the Earthworks chapter and the relevant parts of the Interpretation chapter with all recommended amendments being shown by way of strikeout and underlining.

4. Statutory considerations and planning framework

4.1 Resource Management Act 1991

17. The PDP has been prepared in accordance with the RMA and in particular, the requirements of:
 - Section 74 – Matters to be considered by territorial authorities; and
 - Section 75 – Content of District Plans.
18. As set out in the Section 32 Evaluation Report for Earthworks there are a number of higher order planning documents and other relevant plans which have provided direction and guidance for the preparation of the PDP. These documents and a comprehensive assessment of all relevant consultation and statutory considerations prior to public notification of the PDP are outlined in that Section 32 Report. The Section 42A Introduction, General Provisions and Strategic Direction Report for Hearing Stream 1 also provides an overview of the relevant Statutory considerations, higher order planning documents and other relevant plans and policies.
19. It is not considered necessary to repeat the detail of the relevant RMA sections and higher order documents in this report as these are covered within the relevant Section 32 Evaluation Report. However, where a higher order document is considered particularly relevant to the assessment of submissions or where there have been amendments to higher documents relevant to this topic these are discussed below.

4.2 National Planning Instruments and other Relevant Plans and Policies

National Policy Statement for Renewable Electricity Generation 2011 (NPS-REG)

20. The NPS-REG came into effect in 2011 and recognises the importance of renewable energy and will help New Zealand achieve the Government's target of 90 per cent of electricity from renewable sources by 2025. District Plans are required to give effect to the national policy statement, which directs decision makers to:
- Recognise the benefits of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities;
 - Acknowledge the practical implications and the constraints associated with the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities;
 - Manage activities to avoid reverse sensitivity effects;
 - Incorporate provisions for renewable electricity generation activities into regional policy statements and regional and district plans, including small and community-scale activities; and
 - Enable the identification of renewable electricity generation possibilities through the plan provisions.

NPS for Electricity Transmission 2008 (NPS-ET)

The NPS ET provides a high-level framework that gives guidance across New Zealand for the management and future planning of the national grid. It acknowledges the national significance of the national grid and guides the management of the adverse effects of activities, such as earthworks, from third parties on the grid. This helps reduce constraints on the operation, maintenance, upgrading and development of the grid.

District Plans are required to give effect to the national policy statement, which:

- directs decision makers to recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources;
- requires management of adverse environmental effects of the network in considering route, site and method selection, whilst considering the operational constraints;
- has policies that seek to minimise amenity effects in urban areas, avoid effects on town centres, and avoid effects on outstanding natural landscapes, areas of high natural character and areas of high recreation value and amenity and existing sensitive activities;
- provides direction for standards and provisions dealing with electric and magnetic fields associated with the electricity transmission network;
- requires management of the adverse effects of other activities and third parties on the network, including from reverse sensitivity; and

- directs Local authorities to identify an appropriate buffer corridor where sensitive activities will generally not be provided for in plans and/or given resource consent.

National Policy Statement on Indigenous Biodiversity 2023 (NPS-IB)

21. The NPS-IB came into effect on 4 August 2023, and it provides direction to councils to protect, maintain and restore indigenous biodiversity requiring at least no further reduction nationally. The NPS-IB requires the creation of a regional biodiversity strategy and the identification and protection of Significant Natural Areas. This is to be achieved by working with communities, key stakeholders, landowners, and mana whenua. Moreover, the NPS-IB requires an integrated approach in the management of indigenous biodiversity and that local authorities must consider the social, economic, and cultural wellbeing of people and communities, promote the resilience of indigenous biodiversity to climate change, and adopt a precautionary approach.

The Resource Management (Freshwater and Other Matters) Amendment Bill (no legal effect)

22. The Resource Management (Freshwater and Other Matters) Amendment Bill was introduced in May 2024 and among other things seeks to:
 - Exclude the hierarchy of obligations in the National Policy Statement for Freshwater Management (NPS-FM) from resource consenting;
 - Repeal the stock exclusion regulations in relation to sloped land;
 - Repeal National Environmental Standard for Freshwater (NES-F) restrictions around winter grazing;
 - Align the provisions for coal mining with other mineral extraction activities across the NPS-IB, NPS-FM and NES-F;
 - Suspend and extend timeframes under the NPS-IB, in particular for the identification of Significant Natural Areas (SNAs) and include them in district plans; and
 - Amend the process for preparing and amending national direction documents.

National Environmental Standards for Commercial Forestry (NES-CF)

23. The National Environmental Standards for Commercial Forestry (NES-CF) which replaces the National Environmental Standards for Plantation Forestry (NES-PF) came into force on 3 November 2023 and applies to both plantation forests and carbon forests established for commercial purposes. The NES-CF:
 - sets standards for managing the main activities carried out by commercial forests, including afforestation, pruning and thinning to waste, earthworks, river crossings, forestry quarrying, harvesting, mechanical land preparations and replanting;
 - enables councils to make rules to control afforestation in their plans, including forest locations;
 - requires carbon foresters to plan out and document how they will meet environmental requirements for different forestry activities on their sites;
 - set out clear rules for any harvest that happens in a carbon forest; and
 - have a new permitted activity standard for managing forestry slash on the cutover.

24. The NES-CF sets out when a rule in a district plan may be more stringent than the regulations and includes:
- if it gives effect to the NPS-FM, or
 - if it recognises and provides for the protection of outstanding natural features and landscapes or significant natural areas, or
 - if it manages activities in unique and sensitive environments such as separation point granite, geothermal areas or near drinking water supply.
25. Subpart 3 of the NES-CF relates to earthworks and regulation 23 specifies that for territorial authorities' earthworks are a permitted activity. Regulation 24 specifies that for regional councils permitted activity conditions apply as set out in regulation 25 to 33.

Southland Regional Policy Statement 2017

26. The Southland Regional Policy Statement 2017 (RPS) sets out the framework and priorities for resource management in the region. The RPS identifies the regionally significant issues around the management of the Region's natural and physical resources and sets out what needs to be achieved (objectives) and the way in which the objectives will be achieved (policies and methods). The PDP is required to give effect to the regional policy statement as required by Section 75(3) of the RMA.
27. Chapter 5: Rural Land/Soils - sets out the sustainable management issues affecting the rural land and soil resource. The issues highlight that to achieve sustainable use of the rural land resource it is important to avoid soil erosion, sedimentation, landscape impacts, and loss of biodiversity during land development, which includes earthworks and vegetation clearance activities.
28. Chapter 4: Water - highlights the effects of sedimentation as an issue in relation to water quality. Land use and development can result in sedimentation and stormwater to local surface waterways affecting fisheries, ecosystems and natural character. Provisions in the District Plan are required to manage the effects of subdivision, use and development on water quality.
29. Chapter 3: Tangata Whenua - specifies a holistic approach to resource management, and that Ngāi Tahu cultural values and considerations are included throughout the RPS. Territorial authorities must establish and maintain provisions in district plans that safeguard identified tangata whenua environmental and cultural values and resources from inappropriate subdivision, use or development. This includes recognising and providing for ancestral lands, wāhi tapu, wāhi taonga and recognised customary sites, activities and statutory acknowledgements.

Iwi Environmental Management Plan(s)

30. 'Te Tangi a Tauira – The Cry of the People' the Ngai Tahu Ki Murihiku Natural Resource and Environmental Management Plan. The plan highlights that earthworks and other ground disturbance activities have the potential to unearth cultural materials or disturb urupā.

Such activities also have potential to damage or destroy culturally important sites or places associated with mahinga kai resources or valued indigenous vegetation. Archaeological sites and sites of significance must be protected and impacts on cultural landscapes considered.

Subdivision and Land Development Bylaw 2019

31. The Gore District Council Subdivision and Land Development Bylaw 2019 sets out requirements for the earthworks design and construction for land use, development and subdivision in the district. The bylaw is based on NZS 4404:2010 incorporating local amendments. The bylaw includes requirements for developments that involve an assessment of slope stability or a detailed evaluation of the suitability of natural ground for building or roading development, or for bulk earthworks. Specific requirements include compaction standards for fill material, erosion, sediment, and dust control, specific design for retaining walls, cut and fill batters.
32. The issues and options relating to having development standards within the district plan or within the bylaw has previously been workshopped with the Council District Plan Review Committee. The Committee direction was to convert to managing these matters within the District Plan with a supporting Engineering Code of Practice or Development Manual. Having development standards managed through the district plan is a common approach nationally, and this has improved effectiveness, monitoring and enforcement outcomes. In the transition phase the bylaw needs to be kept active until the proposed plan becomes operative, however within the proposed earthworks provisions there is no direct reference to the bylaw to avoid process duplication.

4.3 Section 32AA evaluation

33. Any recommended amendments to provisions since the initial section 32 evaluation was undertaken are evaluated in accordance with section 32AA. Section 32AA states:

32AA Requirements for undertaking and publishing further evaluations

(1) further evaluation required under this Act-

- (a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and*
- (b) must be undertaken in accordance with section 32(1) to (4); and*
- (c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and*
- (d) must—*
 - (i) published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or*

(ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.

(2) To avoid doubt an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).

(3) In this section, proposal means a proposed statement, national planning standard, plan, or change for which a further evaluation must be undertaken under this Act.

34. The required section 32AA evaluation for changes proposed as a result of consideration of submissions with respect to the topics of this report is contained within the assessment of the relief sought in submissions in section 6, as required by s32AA(1)(d)(ii).
35. The Section 32AA further evaluation contains a level of detail that corresponds to the scale and significance of the anticipated effects of the changes that have been made. Recommendations on editorial, minor, and consequential changes that improve the effectiveness of provisions without changing the policy approach are not re-evaluated.

5. Background

36. The Section 42A Introduction, General Provisions and Strategic Direction Report, prepared for Hearing Stream 1, includes details of the PDP notification, submission statistics and a general overview of the background to the PDP. In addition, the report provides an overview of National Planning Instruments and other Policies and Plans relevant to the PDP as a whole.
37. The Section 32 Evaluation Report for Earthworks³ assesses and considers the relevant higher order planning documents and any strategic plans which provide direction and guidance for the preparation and content of the Earthworks chapter. Where relevant, these documents are considered in more detail in the assessment of submission points.
38. Earthworks and other land disturbance activities are a necessary part of subdivision, land use and development. Changes in ground level and creating areas of level land is required to carry out a range of activities and the construction of buildings and infrastructure. However, if not appropriately managed, adverse effects can arise, including land instability, sediment loss and increased natural hazards, with impacts on amenity, undiscovered archaeological sites and artefacts, Ngāi Tahu cultural values, strategic infrastructure and the natural environment.

³ [Section 32 Reports | Let's Talk Gore District \(goredc.govt.nz\)](https://www.goredc.govt.nz/section-32-reports/)

39. The proposed District Plan (PDP) Earthworks chapter provisions seek to facilitate earthworks activities, but also recognises that these need to be undertaken in manner which limits the adverse effects on the surrounding environment. A range of low risk, small scale or temporary earthworks activities are enabled, earthworks for farming activities and essential public infrastructure and utilities are provided for, and earthworks of a bulk, scale and form appropriate to the zone are also enabled. The provisions allow for limited earthworks within the *National Grid Yard* and areas of potential inundation. Earthworks are required to be appropriately designed and located. The standards manage the adverse effects associated with steep land, unretained batters, maximum cut depth or fill height and in relation to boundaries, setback from rivers and streams, site reinstatement, control of dust, silt and sediment, and accidental discovery protocols.
40. The design standards in the Earthworks chapter are in most cases directly transferred from the specific requirements of the Subdivision Development Bylaw 2019, or have been included to align with current best practice and based on key stakeholder advice from government agencies and industry interest groups, including the Department of Conservation, Waka Kothai, Transpower, Heritage New Zealand, Southland Federated Farmers, the Fuel companies, Silver Fern Farms, and Alliance Group Limited.
41. The Earthworks chapter excludes earthworks provisions relating to Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features and Amenity Landscapes and directs plan users to earthworks rules within those chapters.

5.1 Technical Reports

42. In forming my opinions on the Earthworks chapter I have had specialist recommendations by Mr. Mark Adam (Engineering Geologist at RDA Consulting Ltd) and Mr. Richard Brunton, (Water Resources Engineer at Tonkin And Taylor). Their responses to relevant submissions are attached as **Appendix C** to this report.

6. Consideration of submissions

6.1 Structure of the report

43. Submissions on earthworks matters have raised a number of issues which have been grouped by Plan provision within this report. Where there are limited submissions on Plan provisions these have been grouped by common themes. I have considered substantive commentary on primary submissions contained in further submissions as part of my consideration of the primary submission(s) to which they relate.
44. In accordance with Clause 10(3) of the First Schedule of the RMA, I have undertaken the following evaluation on both an issues and provisions-based approach, as opposed to a submission-by-submission approach. I have organised the evaluation in accordance with the layout of chapters of the PDP as notified.
45. Due to the number of submission points, this evaluation is generic only and may not contain specific recommendations on each submission point, but instead discusses the issues

generally. This approach is consistent with Clause 10(2)(a) of Schedule 1 to the RMA. Specific recommendations on each submission / further submission point are contained in **Appendix B**.

46. The following evaluation should be read in conjunction with the summaries of submissions and the submissions themselves. Where I agree with the relief sought and the rationale for that relief, I have noted my agreement, and my recommendation is provided in the summary of submission table in **Appendix B**. Where I have undertaken further evaluation of the relief sought in a submission(s), the evaluation and recommendations are set out in the body of this report. I have provided a marked-up version of the relevant provisions with recommended amendments in response to submissions at **Appendix A**.
47. This report only addresses definitions and submissions specifically relevant to this topic. In general, definitions that relate to more than one topic have been addressed in the Section 42A Introduction, General Provisions and Strategic Direction Report prepared for Hearing Stream 1.

6.2 Overview of submissions

48. A list of submitters and further submitters relating to the Earthworks topic is provided at the start of this report.
49. 395 submission points and 50 further submission points were received for the Earthworks topic. Some of the key issues are identified below:
- Specific earthworks provisions for a Hokonui Hills Special Precinct
 - Clarifications sought relating to plan relationships and exemptions
 - Greater heritage protections in the earthworks chapter, including for undiscovered archaeological sites or artefacts
 - Greater considerations of the effects on indigenous biodiversity
 - Permitted earthworks or exclusions associated with commercial forestry
 - Greater protections around earthworks on steep land
 - Support for earthworks related definitions, and amendments sought to silage pit, landscape gardening and farm track
 - General support for the earthworks objective and policies
 - Amendments to specify the particular effects of concern to mana whenua
 - Support for exemptions and additional exemptions sought for granular fill, trenching, fencing, fuel tanks commercial forestry
 - Remove exclusions for Significant Natural Areas and Outstanding Natural Landscapes or Features
 - Concerns raised about the effects of exempt activities on electricity transmission and archaeological sites
 - Amendment sought to convert exemptions to permitted activities.
 - Reducing restrictions around fencing.
 - Removal of cut depth requirements for underground storage tanks

- Support for farm related earthwork allowance, greater earthworks allowance sought for farming infrastructure, and consideration of operational need and the character of the zone.
- Allowance sought for earthworks activities associated with Renewable Electricity Generation
- Support for earthworks allowances for the transport network and network utilities
- Greater allowances for earthworks within the National Grid Yard
- Greater restrictions sought by Environment Southland for earthworks within areas of inundation
- Support by the New Zealand Transport Authority for the rules and matters of discretion relating to the effects on traffic safety.
- Changes to standards to reduce height/depth to boundary controls, reduce or remove slope degree restrictions
- Support for stream setbacks, and exemptions sought for fences, drainage and pest control. Requiring setbacks to wetlands and greater direction around indigenous biodiversity matters.
- Support for sediment erosion control, site reinstatement and accidental discovery protocol standards.

6.3 Format for consideration of submissions

50. For each identified topic, I have considered the submissions that are seeking changes to the PDP in the following format:

- Matters raised by submitters;
- Assessment;
- Summary of recommendations; and
- Where relevant a Section 32AA assessment.

51. The recommended amendments to the relevant chapters are set out in **Appendix A** of this report where all text changes are shown in a consolidated manner.

6.4 General submissions

Matters raised by submitters

52. Aggregate and Quarry Association (S111.011) support that quarrying is covered separately from the Earthworks chapter and Greenbriar Ltd. (S128.031) generally supports the earthworks provisions.

Historic Heritage sites

53. Heritage New Zealand Pouhere Taonga (S123.013) seek an amendment to refer to Heritage Items instead of Historic Heritage sites, which are not defined. Hamish Weir (FS5.116) has further submitted that the submission should be disallowed.

Hokonui Hills Special Precinct

54. Stoney Creek Station Limited (S3.034) and a number of identical submission as listed below seeks that specific earthworks provisions are developed for the Hokonui Hills Special Precinct area to reflect site specific conditions. Federated Farmers (FS5.116) have further submitted that the submission be allowed. Heritage New Zealand Pouhere Taonga (FS11.038) have further submitted that it be disallowed in part as the precinct appears to focus primarily on enabling the existing agricultural land use at Stoney Creek Station and does not sufficiently provide for the conservation of historic heritage, including archaeology and sites of significance to Māori, which are Section 6 matters of national importance, as there is a significant amount of recorded archaeological sites across the Hokonui Hills.

Stoney Creek Station Limited	S3.034,
Trudy Bokser	S113.034,
Nathan Bokser	S116.034,
AW+ JA Johnston Family Trust	S118.034,
Reaby Downs Farm Ltd	S18.036,
Karen Temple	S19.036,
Sarah and Peter Barclay	S20.036,
Helen McIntosh	S24.036,
John Baynes	S68.038,
Peters Farm Ltd/ Karen Peters	S127.070,
Greg Bokser	S117.034

Plan relationships

55. McLeod-Wantwood Trust/ Wantwood Station (S104.023) Farm Manager - Wantwood Station (S105.023) Peters Farm Ltd/ Karen Peters (S127.023) seek an amendment to clarify whether areas subject to the Outstanding Natural Landscape (ONL) overlay are excluded from the provisions in the earthworks chapter.
56. Heritage New Zealand Pouhere Taonga (S123.015) seek an amendment to state in all rules whether or not they apply to Historic Heritage sites.
57. Contact Energy Limited (S144.011) seeks that the provisions in the District Wide section of the Proposed Plan do not conflict with any of the more specific provisions which relate to renewable electricity generation activities in other chapters of the Plan.
58. Stoney Creek Station Limited (S3.037), and a number of identical submitters as listed below, seeks that:
- the relationship between rules and standards are clarified,
 - whether standards are to be treated as standalone rules,
 - inclusion of a guidance note to explain if standards are applicable to all activities or only those listed within the relevant Rule, and
 - amendments to the standards heading to specify: Standards for permitted activities.

Stoney Creek Station Limited	S3.037,
Trudy Bokser	S113.037,
Nathan Bokser	S116.037,

AW+ JA Johnston Family Trust	\$118.037,
Reaby Downs Farm Ltd	\$18.039,
Karen Temple	\$19.039,
Sarah and Peter Barclay	\$20.039,
Helen McIntosh	\$24.039,
John Baynes	\$68.041,
Peters Farm Ltd/ Karen Peters	\$127.073,
Greg Bokser	\$117.037

Assessment

59. The general support of the Aggregate and Quarry Association (\$111.011) and Greenbriar Ltd. (\$128.031) is acknowledged and accepted as the provisions are recommended to be generally retained as notified.

Historic Heritage sites

60. In relation to the Heritage New Zealand Pouhere Taonga (\$123.013) submission that the earthworks chapter should refer to *Heritage Item* instead of *Historic Heritage sites*, I note that these terms are defined as follows:

Heritage item

Means any type of historic heritage sites, buildings, structures and areas listed in HH-SCHED2 fulfilling the criteria as identified in HH-SCHED 1.

Historic Heritage

Has the same meaning as per the Resource Management Act –

(a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:

- (i) archaeological:
- (ii) architectural:
- (iii) cultural:
- (iv) historic:
- (v) scientific:
- (vi) technological;

and (b) includes—

- (i) historic sites, structures, places, and areas; and
- (ii) archaeological sites; and
- (iii) sites of significance to Māori, including wāhi tapu; and
- (iv) surroundings associated with the natural and physical resources.

61. Heritage item is limited to the sites, buildings, structures and areas listed in HH-SCHED2, which does not include the archaeological sites listed in HH-SCHED3. Historic Heritage is however an all-encompassing term, as per the RMA, and I do not support the proposal to only refer to Heritage items as it would limit the scope of consideration. I therefore reject s123.013 and accept FS5.116.

Hokonui Hills Special Precinct

62. In relation to the development of specific earthwork provisions for the Hokonui Hills Special Precinct submissions by Stoney Creek Station Limited (S3.034) and as listed in paragraph 54, the consideration of the proposed precinct will be part of Hearing Stream 9 as it primarily relates to the Natural Features and Landscape provisions and the Hokonui Hills Outstanding Natural Landscape. The earthworks chapter excludes earthworks provisions relating to Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features and Amenity Landscapes. However, the area of the station not subject to those district wide provisions would be subject to the earthworks provisions as they apply to the General Rural Zone, and I have not seen any evidence that there are other special characteristics that apply to those parts of the property that would warrant an exemption. I therefore do not support the proposal and reject the S3.034 submission and the identical submissions listed in in paragraph 54, and Federated Farmers FS17.060 submission. I accept in part the Heritage New Zealand Pouhere Taonga FS11.038 submission as the outcome of the precinct will be decided through a later hearing stream.

Plan relationships

63. The relationship between the spatial layers and the plan structure is set out in the How the Plan Works chapter of the PDP (Part 1). This chapter includes an explanation of the relationship between objectives, policies, rules and standards, and applications of multiple provisions and spatial layers. The overview of the earthworks chapter and the notes also provides guidance for plan users.
64. As detailed above, I consider that the plan already provides sufficient guidance on the relationship between the rules and standards and how they work, and that each rule lists the applicable standards and that no further amendments are necessary. The standards may also apply to rules with a different activity status and it would thus not be appropriate to call them permitted activity standards. I therefore reject Stoney Creek Station (S3.037) and the identical submission as listed in paragraph 58. I also consider that the plan provides sufficient direction to explain that the plan provisions should be read as a whole, and that spatial layers may apply to renewable electricity generation activities in other chapters of the Plan and therefore reject the Contact Energy submission (S144.011).
65. The earthworks chapter overview specifies that the chapter excludes the earthworks provisions relating to Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features and Amenity Landscapes and directs plan users to those specific chapters. The exclusion is also noted within the left-hand column of the rules, however I accept that the exclusion has been omitted for some rules (EW-R2 to EW-R6) and the exclusions, which might create ambiguity about whether the rule applies to these areas or not, and that this should be corrected. I therefore accept Heritage New Zealand (S123.015) and accept in part the Wantwood Station and identical submissions (S104.023), (S105.023), (S127.023) as I consider the overview to be sufficiently clear in terms of Outstanding Natural Landscapes or Features to not require further amendments.

Recommendation

66. I recommend for the reasons given above that the Earthworks Rules are amended to specify the exclusions for Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features in the left hand column as shown below and amendments shown in **Appendix A**.

Earthworks and Land Disturbance Exempt from District Plan Rules in this Chapter

All Zones Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

...

**EW-R1 Test pits or boreholes necessary as part of a geotechnical assessment
EW-R2 Installing septic tanks and associated drainage fields
EW-R3 Disposal of spoil from drain clearance work within the site the drain is located.
EW-R4 Replacement, removal and installation of underground storage tanks
EW-R5 Service connections**

All Zones Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

...

67. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

68. The following evaluates the recommendation to amend the above rule area exclusions under section 32AA of the RMA.

Effectiveness and efficiency

The proposed amendments provide greater guidance for plan users and will enable the Council to effectively administer the PDP in a clear and consistent manner. The amendments within the left hand column of the rules provides improved clarity around the consistent approach within the earthworks chapter to exclude the earthworks provisions relating to Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features and Amenity Landscapes which are found within those specific chapters.

Costs and benefits

The benefits of the proposal are that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. There are no apparent costs with the proposal.

Risk of acting or not acting

Although the risk generally is low with not acting as the amendments are clarifications rather than substantial changes, the amendments are considered to improve the clarity around the application of the area exclusions.

Conclusion as to the most appropriate option

The proposed amendments are considered to be a more appropriate way to achieve the Objectives of the plan than the notified version of the PDP.

6.5 Additional provisions sought

Matters raised by submitters

Steep land

69. Robina Johnston (S140.012) considers that land with more than 60% over 10 degrees should provide swales and vegetation to mitigate the runoff from the new dwelling and buildings to stabilize slopes and for beautification.

Heritage protections in the earthworks chapter

70. Heritage New Zealand Pouhere Taonga (S123.016) seek an amendment to the matters of discretion to include consideration of heritage values including archaeology for all earthworks rules to protect any non-scheduled sites.

Earthworks associated with commercial forestry

71. Port Blakely Limited (S138.005) seeks a new rule for earthworks associated with commercial forestry, permitting those activities where they comply with regulations 24 to 33 of the NES-CF.

Assessment

Steep land

72. In relation to Robina Johnston (S140.012) submission to manage earthworks activities based on a slope degree percentage, Council's geotechnical advisor Mr. Adams advises that it may be impractical to implement and that swales on slopes may have the opposite effect and decrease slope stability. I accept the expert advice and also note that there are existing earthworks standards that apply to manage the potential effects raised in the submission and reject the submission.

Heritage protections in the earthworks chapter

73. In relation to the Heritage New Zealand Pouhere Taonga (S123.016) submission to include an additional matter of discretion for each earthworks rule to allow consideration of heritage values including archaeology, the earthworks chapter excludes earthworks provisions relating to identified Historic Heritage sites, which includes archaeological sites. These are managed in the Historic Heritage chapter. However, in terms of the protection

of previously undiscovered archaeological sites, remains or artefacts, earthworks standard EW-S7 Accidental Discovery Protocol applies to all permitted earthworks activities. Moreover, notes in the chapter direct plan users to the responsibilities and accidental protocol under the Heritage New Zealand Pouhere Taonga Act 2014 and the archaeological alert layer highlight areas where finds may be more likely to be encountered.

74. In terms of permitted activities, I consider that the EW-S7 Accidental Discovery Protocol provides sufficient protection for previously undiscovered archaeological sites, however I acknowledge that the list of exempt activities would not be subject to the EW-S7 standard which is a potential risk. Although I reject the S123.016 submission as I consider that there is already sufficient provision in the earthworks chapter and historic heritage chapter to protect heritage values and previously undiscovered archaeological sites as detailed above, I consider that the potential risk by the exempt activities needs to be further assessed under Section 6.12 of this report.

Earthworks associated with commercial forestry

75. The national environmental standards for commercial forestry (NES-CF) which replaces the national environmental standards for plantation forestry (NES-PF) came into force on 3 November 2023 and applies to both plantation forests and carbon forests established for commercial purposes.
76. In relation to the Port Blakely Limited (S138.005) submission to include a new permitted activity rule for earthworks associated with commercial forestry, subpart 3 of the NES-CF relate to earthworks, and regulation 23 specify that for territorial authorities earthworks are a permitted activity. Regulation 24 specifies that for regional councils permitted activity conditions apply, and as set out in regulation 25 to 33.
77. As the NES-CF already specifies that earthworks associated with commercial forestry are permitted for territorial authorities I do not consider it necessary to include a rule in the district plan permitting earthworks managed by the regional council, and therefore reject the Port Blakely Limited (S138.005) submission. This is addressed in the Overview.

Recommendation

78. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B** and no additional provisions are proposed to the earthworks chapter as shown in **Appendix A**.

6.6 Definitions

Matters raised by submitters

79. Southland Federated Farmers, Stoney Creek Station and a number of identical submissions, as detailed in the table below, support the definitions for:
- bore
 - dead holes
 - earthworks

- farm track
- land disturbance

80. Southland Federated Farmers seek amendments to refine the definition of “silage pit”, and Stoney Creek Station to replace the definition as it is considered to be too broad, which is also supported through further submission by Federated Farmers (FS17.0100). Southland Federated Farmers seek to amend the definition of “landscape gardening” to clarify this excludes agricultural activities. Stoney Creek Station and a number of identical submissions also seek amendment to the definition for “farm track” to decouple it from “vehicle access”, and Federated Farmers (FS17.095) seek that the submission is allowed.

	Southland Federated Farmers of New Zealand Kevin Robertson Ronald Crispin Rural Ratepayers Group Alistair & Bernadette Hunt John Baynes	Stoney Creek Station Limited Trudy Bokser Nathan Bokser AW+ JA Johnston Family Trust Reaby Downs Farm Ltd Karen Temple Sarah and Peter Barclay Helen McIntosh John Baynes Peters Farm Ltd/ Karen Peters Greg Bokser
Support “bore”	S126.010, S115.011, S60.013, S143.022, S148.023, S68.131	
Support “dead holes”	S126.015, S115.016, S60.018, S143.027, S148.028, S68.136	S3.085, S113.085, S116.085, S118.085, S18.087, S19.087, S20.087, S24.087, S68.089, S127.121, S117.085
Support “earthworks”	S126.016, S115.017, S60.019, S143.028, S148.029, S68.137	S3.086, S113.086, S116.086, S118.086, S18.088, S19.088, S20.088, S24.088, S68.090, S127.122, S117.086
Support “farm track”	S126.018, S115.019, S60.021, S143.030, S148.031, S68.139	
Amend “farm track”		S3.088, S113.088, S116.088, S118.088, S18.090, S19.090, S20.090, S24.090, S68.092, S127.124, S117.088
Support “land disturbance”		S3.095, S113.095, S116.095, S118.095, S18.097, S19.097, S20.097, S24.097, S68.099, S127.131, S117.095
Amend “landscape gardening”	S126.029, S115.030, S60.032, S143.041, S148.042, S68.150	

Amend "silage pit"	S126.047, S115.048, S60.050, S143.059, S148.060, S68.168	
Replace "silage pit"		S3.113, S113.113, S116.113, S118.113, S18.115, S19.115, S20.115, S24.115, S68.117, S127.149, S117.113

81. McLeod-Wantwood Trust/Wantwood Station (S104.019), the Farm Manager - Wantwood Station (S105.109) and Peters Farm Ltd/ Karen Peters (S127.019) seeks amendments to all sections of the plan where the term land disturbance is used to reflect its true meaning or remove if applicable. The submitters query why include it in the plan if it does not permanently alter the profile, contour or height of the land.

Assessment

82. The support of Southland Federated Farmers, Stoney Creek Station and the identical submissions to the definitions as detailed in the table in paragraph 80, is acknowledged and accepted and no changes are proposed to the definitions of bore, dead holes and earthworks.

Farm track

83. In relation to the definition of farm track I acknowledge the support of Southland Federated Farmers and the submissions as detailed in the table in paragraph 80, however I agree with Stoney Creek Station that there is the potential for confusion as the definition refers to vehicle access, which is itself a defined term that relates to access to a legal road, and I accept the proposed alternative wording, as shown below:

Farm track

Means ~~vehicle access~~ tracks for the movement of vehicles and/or stock associated with agriculture, pastoral and horticultural activities.

Landscape gardening

84. In relation to the definition of landscape gardening, the term is not used in the earthworks chapter or in any other chapter of the plan. However, there is an exemption for "gardening" in the earthworks chapter, earthworks definition, and in the Historic Heritage chapter (HH-R4) which is not a defined term, and I therefore consider that the definition should be amended to relate to gardening rather than landscape gardening. In terms of the Southland Federated Farmers and the submissions as detailed in the table in paragraph 80, while I accept that gardening is a small-scale activity and that should be clarified in the definition, I do not think it is necessary to specify that agricultural activities, which are defined separately together with horticultural and pastoral activities, are excluded from gardening. I therefore accept the submissions in part.

Silage pit

85. In relation to the definition of silage pit and the submissions as detailed in the table in paragraph 80, I agree in principle with both Southland Federated Farmers and Stoney Creek Station that the definition could be further refined for clarity and that it is appropriate the definition should if possible align with the part operative Proposed Southland Land and Water plan for consistency.
86. However, the Stoney Creek Station proposed alternative, as shown below, is a combination of the “silage” and “silage storage facility” definitions of the part operative Proposed Southland Land and Water plan, and these are not necessarily entirely transferrable or relevant to the context of the of the district plan “silage pit” definition as it relates to earthworks.

Silage pit

Means land or structures on which silage (plant material harvested while green for fodder and kept succulent by partial fermentation, but does not include baleage or hay) is stored, processed or directly utilised, excluding the storage of bales of plant material completely encapsulated in plastic.

For example, I do not consider it necessary to describe in detail what silage is, and although storage is a component of a silage pit, the primary relevance in terms of earthworks is the construction of the pit, the secondary relevance is the use for ensilement and ancillary activities. Moreover, whether the silage is wrapped in plastic is perhaps relevant in relation to storage and potential discharges, but not to earthworks.

87. In terms of the Southland Federated Farmers proposed amendments, as shown below, I consider that the process of ensilement of pasture captures the fermentation aspect and it is not necessary to specify both, and I accept that it is the storage of silage that should be captured rather than other animal feed.

Silage pit

Means an area constructed and used for the purpose of ensilement and fermentation of pasture, and storage of silage for animal feed.

88. For the above reasons, I accept in part the Southland Federated Farmers and Stoney Creek Station submissions in the table in paragraph 80 in relation to “silage pit” and propose that the definition is instead amended as follows:

Silage pit

Means in relation to earthworks an area constructed and used for the purpose of fermentation ensilement of pasture, and includes the area required for storage, processing or use of silage.

Land disturbance

89. In relation to the definition of land disturbance, I acknowledge and accept the support of the definition as detailed in the table in paragraph 80, and in terms of the Wantwood station submission in paragraph 81 I note that they do not seek an amendment to the definition of land disturbance but rather question the applicability of the term.

90. Land disturbance is a defined term and is required to be included in the district plan consistent with the National Planning Standards 2019 and no change to the definition is proposed. Land disturbance is a form of earthworks but does not involve earthmoving or permanently alter the land. Land disturbance can have environmental effects such as sediment and erosion, damage to plants, or visual effects and I therefore reject the McLeod-Wantwood Trust/Wantwood Station (S104.019), the Farm Manager - Wantwood Station (S105.109) and Peters Farm Ltd/ Karen Peters (S127.019) submissions.

Recommendation

91. I recommend, for the reasons given above, that the definitions in the interpretation chapter are amended as follows and as shown in **Appendix A**.

Landscape gardening

The small-scale design, construction and maintenance of ornamental gardens and outdoor areas and growing and caring for plants. It includes the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) that does not permanently alter the profile, contour or height of the land.

Farm track

Means ~~vehicle access~~ tracks for the movement of vehicles and/or stock associated with agriculture, pastoral and horticultural activities.

Silage pit

Means in relation to earthworks an area constructed and used for the purpose of fermentation ensilement of pasture, and includes the area required for storage, processing or use of silage for animal feed.

92. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

93. The following evaluates the recommendation to amend the above definitions under section 32AA of the RMA.

Effectiveness and efficiency

The proposed amendments provide greater guidance for plan users and will enable the Council to effectively administer the PDP in a clear and consistent manner will therefore assist in achieving the earthworks objective of the plan.

Costs and benefits

The benefits of the proposal are that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. There are no apparent costs with the proposal.

Risk of acting or not acting

Although the risk is generally low with not acting as the amendments are clarifications rather than substantial changes, the amendments are considered to improve the clarity around the application of the defined terms.

Conclusion as to the most appropriate option

The proposed amendments are considered to be a more appropriate way to achieve the Objectives of the plan than the notified version of the PDP.

6.7 Overview and notes

Matters raised by submitters

94. Southland District Council (S146.062) (S146.066) notes an interest in the archaeological alert layer in Note 4 as a way of reducing risk to archaeological sites.
95. The Department of Conservation (S109.107) supports the clarification in the overview around what the chapter does not include and that the provisions relating to Significant Natural Areas and Outstanding Natural Landscapes or Features are dealt with in those specific chapters.

Assessment

96. The interest of Southland District Council (S146.062) (S146.066) in the archaeological alert layer, and the support of the Department of Conservation (S109.107) of the overview is acknowledged and accepted, and no changes to the overview or note are proposed.

Recommendation

97. It is recommended that the above submissions are accepted, as shown in **Appendix B**, and no changes to the earthwork chapter overview or notes are proposed, as shown in **Appendix A**.

6.8 Objective EW-O1

Matters raised by submitters

98. EW-O1 is copied in below:

EW-O1

Earthworks and land disturbance for subdivision, land use and development are facilitated and undertaken in a manner that minimises adverse effects on the surrounding environment and protects the natural environment, Ngāi Tahu cultural values, people and property.

99. The following submitters support EW-O1 and seek that it is retained as notified:

Chorus New Zealand Limited

S35.050

One New Zealand Group Limited	S32.050
FortySouth	S33.050
Connexa Limited	S37.050
Spark New Zealand Trading Limited	S154.050
KiwiRail Holdings Ltd	S132.068
Alliance Group Limited	S121.062
Department of Conservation	S109.108
Silver Fern Farms	S40.044

100. Stoney Creek Station and a number of identical submissions as listed below seek the following amendments to the objective to reflect the purpose of the RMA Federated Farmers FS17.061 supports the proposed change which they consider adds value to the objective:

Earthworks and land disturbance for subdivision, land use and development are facilitated and undertaken in a manner that avoids, remedies or minimises adverse effects on the ~~surrounding~~ environment and protects the natural environment, Ngāi Tahu cultural values, people and property.

Stoney Creek Station Limited	S3.035,
Trudy Bokser	S113.035,
Nathan Bokser	S116.035,
AW+ JA Johnston Family Trust	S118.035,
Reaby Downs Farm Ltd	S18.037,
Karen Temple	S19.037,
Sarah and Peter Barclay	S20.037,
Helen McIntosh	S24.037,
John Baynes	S68.039,
Peters Farm Ltd/ Karen Peters	S127.071,
Greg Bokser	S117.035

101. Southland District Council (S146.063) (S146.108) considers that the objective could be split in to more than one objective, and that there are some environmental effects that are not addressed, such as sedimentation, water quality and visual landscape effects in particular where areas adjoin Southland District Outstanding Natural Landscapes or Visual Amenity Landscapes.

102. Hokonui Rūnanga Inc (S139.063) seeks amendments to EW-O1 to specify the particular effects of concern to mana whenua as shown below:

EW-O1

Earthworks and land disturbance for subdivision, land use and development are facilitated and undertaken in ~~a manner that minimises adverse effects on the surrounding environment and protects the natural environment, Ngāi Tahu cultural values, people and property.~~ ways that:

- i. protect the natural environment including the mauri of whenua or wai;
- ii. recognise and protect silent files and other wāhi tapu;
- iii. avoid adverse effects on mahinga kai and other customary uses; and

iv. minimise adverse effects on the surrounding environment.

The submission is opposed by Hamish Weir (FS5.117) that considers it unnecessary expansion of the rule wording.

Assessment

103. The support for the objective by the submission listed in paragraph 99 is acknowledged and accepted as no changes to the objective are proposed.
104. The Section 32 report⁴ for Earthworks provides evaluation of the objective and whether it is the most appropriate way to achieve the purpose of the Act. I do not consider that the proposed changes by Stoney Creek Station and the identical submissions listed in paragraph 100 are more appropriate for this purpose as the submission merely repeats some of the wording of the Purpose of the Act rather than how it is sought to be achieved. I consider that the proposal provides less direction for plan users on the management of environmental effects by making the consideration of environment broader, and therefore reject the submissions and further submission.
105. In relation to the Southland District Council (S146.063) (S146.108) submissions that the objective does not address all environmental effects and should be split out, I consider that the role of the objective is to provide direction for the overarching outcome sought rather than the detail. More detailed direction is provided in the policies that give effect to the objective. In terms of the examples provided by Southland District Council, water quality and sedimentation is addressed in EW-P4(5) and landscape character in EW-P5(4). Specific provisions also apply to land disturbance and earthworks within Outstanding Natural Landscapes and Features within the Natural Features and Landscapes chapter (scheduled for Hearing stream 9). I also note that Southland District Council has not provided any detail of how they consider that the objective should be split out, and for the reasons stated above I reject their submissions.
106. In relation to the Hokonui Rūnanga (S139.063) submission for the objective to specify the particular effects of concern to mana whenua, I reiterate my statement from the previous paragraph in relation to the role of the objective, and consider that this level of detail is not desirable in the objective. I therefore reject the submission and accept the FS5.117 further

⁴ [Section 32 Reports | Let's Talk Gore District \(goredc.govt.nz\)](#)

submission. However, I consider this detail may more appropriately be provided in EW-P5(3) and note that Hokonui Rūnanga have also submitted on this policy.

Recommendation

107. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**, and no changes are recommended to EW-O1 as shown in **Appendix A**.

6.9 Policy EW-P1

Matters raised by submitters

108. EW-P1 seeks to recognise the benefits and necessity of earthworks and is copied in below:

EW-P1

Recognise the benefits and necessity of *earthworks* for the *subdivision*, use and development of land and the provision of utilities, by enabling *earthworks* and *land disturbance*:

1. for a range of small scale and *temporary activities* that are associated with and support anticipated *subdivision* and land development, such as fencing and service connections, geotechnical investigations, septic systems, underground storage tanks and clearing of *drains*;
2. associated with rural production, where these are located in the General Rural Zone;
3. that provide for the construction, upgrade or maintenance and repair of the *transport network*, recreational tracks and *network utilities*; or
4. that are of a bulk, scale and form appropriate to the anticipated character and amenity of the zone.

109. Chorus New Zealand Limited (S35.051) One New Zealand Group Limited (S32.051) FortySouth (S33.051) Connexa Limited (S37.051) and Spark New Zealand Trading Limited (S154.051) support EW-P1 in that it recognises the benefits of earthworks for network utilities and seek that it is retained. Yrless Limited (FS21.084) further support the submission and seeks that it is allowed.

110. Alliance Group Limited (S121.063) support EW-P1 and seek that it is retained as they agree that earthworks and land disturbance should be enabled where appropriate to reflect the character and amenity of the zone.

111. Waka Kotahi NZ Transport Agency (S112.084) and KiwiRail Holdings Ltd (S132.069) support EW-P1 and seek that it is retained, in particular Point 3. that provides for the construction, upgrade, maintenance or repair of the transport network.

112. Stoney Creek Station and a number of identical submissions, as listed below, support EW-P1(2) which recognises the need for earthworks associated with rural production activities and seek that it is retained.

Stoney Creek Station Limited	S3.036,
Trudy Bokser	S113.036,

Nathan Bokser	S116.036,
AW+ JA Johnston Family Trust	S118.036,
Reaby Downs Farm Ltd	S18.038,
Karen Temple	S19.038,
Sarah and Peter Barclay	S20.038,
Helen McIntosh	S24.038,
John Baynes	S68.040,
Peters Farm Ltd/ Karen Peters	S127.072,
Greg Bokser	S117.036

113. Hamish Weir (FS5.118) supports the Stoney Creek Station S3.036 submission and seeks that it is allowed.

114. Southland Federated Farmers and a number of identical submissions, as listed below, support EW-P1 in that it recognising the role (purpose) and character of a zone and the earthworks within it, and seek that it is retained.

Southland Federated Farmers of New Zealand	S126.121,
Kevin Robertson	S115.122,
Ronald Crispin	S60.124,
Rural Ratepayers Group	S143.133,
Alistair & Bernadette Hunt	S148.134,
John Baynes	S68.242

115. Fulton Hogan (S122.009) support EW-P1 in part, and support the concept of providing for activities that are necessary, or have effects that are anticipated by the Plan, but seeks an amendment to EW-P1(2) to refer to primary production rather than rural production, which is not a defined term

Assessment

116. The support of the submission and further submissions in the above section is acknowledged and accepted, subject to the amendment proposed by Fulton Hogan (S122.009) to replace the term rural production with primary production as I agree that the use of a defined term is more appropriate. Although rural production is a term used in the overview of the General Rural Zone chapter, the objectives and policies relate to primary production, and I accept the submission.

Recommendation

117. I recommend, for the reasons given above, that EW-P1 is amended as shown below, and as shown in **Appendix A**.

EW-P1

Recognise the benefits and necessity of *earthworks* for the *subdivision*, use and development of land and the provision of utilities, by enabling *earthworks* and *land disturbance*:

1. for a range of small scale and *temporary activities* that are associated with and support anticipated *subdivision* and land development, such as fencing and

- service connections, geotechnical investigations, septic systems, underground storage tanks and clearing of *drains*;
- 2. associated with ~~rural~~ primary production, where these are located in the General Rural Zone;
- 3. that provide for the construction, upgrade or maintenance and repair of the *transport network*, recreational tracks and *network utilities*; or
- 4. that are of a bulk, scale and form appropriate to the anticipated character and amenity of the zone.

118. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

119. The following evaluates the recommendation to amend EW-P1 under section 32AA of the RMA.

Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner and is consistent with the defined terms and as per the General Rural Zone objectives including GRUZ-O1 and GRUZ-O2 and is therefore considered more appropriate term to give effect to the earthworks objective EW-O1.

Costs and benefits

The benefits of the proposal are that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. There are no apparent costs with the proposal.

Risk of acting or not acting

Although the risk is generally low with not acting as the amendments are clarifications rather than substantial changes, the amendments are considered to improve clarity and consistency around the terms used in the plan.

Conclusion as to the most appropriate option

The proposed amendments are considered to be a more appropriate way to achieve the Objectives of the plan than the notified version of the PDP.

6.10 Policies EW-P2 and EW-P3

Matters raised by submitters

120. EW-P2 relates to earthworks within the national grid yard and EW-P3 to earthworks within areas of potential inundation and are copied in below:

EW-P2 Allow for *earthworks* within the *National Grid Yard* where these are of a scale and nature that will not compromise the safe and efficient functioning,

operation, maintenance and repair, upgrading and development of the *National Grid*.

EW-P3 Allow for *earthworks* of a limited bulk and scale within areas of potential inundation to ensure these do not exacerbate inundation or flooding effects on other sites.

121. Transpower New Zealand Limited (S101.069) support EW-P2 as it is consistent with, and assists with giving effect to, Policy 10 of the NPS-ET and seeks that it is retained.
122. Silver Fern Farms (S40.045) and Alliance Group Limited (S121.064) support EW-P3 in that the provision for a limited amount of earthworks in flood prone areas as a permitted activity is appropriate for efficiency, and seek that it is retained.
123. Waka Kotahi NZ Transport Agency (S112.085) and KiwiRail Holdings Ltd (S132.070) support EW-P3 in that it recognises the need to limit the bulk and scale of earthworks to ensure that it does not exacerbate inundation and flooding on other sites, and seek that it is retained.
124. Fulton Hogan (S122.009) support EW-P3 in part, and support the concept of providing for some earthworks in potential inundation areas where the impacts of these are likely to be low, but seeks a change to the wording so that 'to ensure' is replaced by provided. Kāinga Ora (FS28.049) further agrees with the submission and seeks it is allowed.

Assessment

125. The support of the submissions in paragraphs 121, 122 and 123 above is acknowledged and accepted as no change to EW-P2 and EW-P3 is proposed.
126. In terms of the Fulton Hogan (S122.009) submission, I do not agree with the proposed change as the bulk and scale allowed for in the rule framework is intended to ensure that flooding effects are not exacerbated. The alternative wording proposed by the submitter gives the impression that the bulk and scale is conditional on not exacerbating effects, which is not the case. I therefore reject the S122.009 submission and Kāinga Ora (FS28.049) further submission.

Recommendation

127. I recommend, for the reasons given above, that policies EW-P2 and EW-P3 are retained as shown in **Appendix A**.
128. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

6.11 Policy EW-P4 and EW-P5

Matters raised by submitters

EW-P4

129. EW-P4 sets out the requirements for how earthworks are designed, located and undertaken appropriately and is copied in below:

EW-P4

Require *earthworks* to be appropriately designed, located and undertaken so that:

1. the cut depth and fill *height* does detract from the amenity or stability of other sites;
2. unretained batters are designed and managed to ensure people and property are protected;
3. *earthworks* near *rivers* and *streams* are managed to ensure *river* and stream values are maintained or enhanced;
4. *earthworks* on steeper slopes are managed the ensure land stability is maintained;
5. *dust*, sediment and erosion are controlled to protect land stability, air, soil and *water* quality;
6. the area of disturbed ground is stabilised and replanted in a timely manner to minimise visual *effects*, *dust*, sediment or erosion; and
7. *accidental discovery* protocol inclusive of Ngāi Tahu tikanga and values is followed in the event of discovery of *sensitive material* or unknown *archaeological sites*.

130. Heritage New Zealand Pouhere Taonga (S123.014) recommends an amendment to EW-P4 to reflect the potential adverse effects on heritage values, including cultural and archaeological effects, and seeks an additional requirement as follows:

8. historic heritage values are maintained or enhanced.

131. KiwiRail Holdings Ltd (S132.071) oppose in part EW-P4 as there is an error in the wording in point 1, which should read:

1. the cut depth and fill *height* does not detract from the amenity or stability of other sites;

EW-P5

132. EW-P5 sets out the management of earthworks and the potential adverse effects, and is copied in below:

EW-P5

Manage *earthworks* that are of a nature, scale or in a location where there may be adverse *effects* to ensure that:

1. the *earthworks* do not exacerbate or create any *natural hazard*, such as impact on *land* stability or inundation or flooding *effects* on other *sites*;
2. the natural character of *rivers* and their margins are preserved and *water* quality, stream health, the intrinsic values of ecosystems, Ngāi Tahu cultural values, and public *access* are maintained or enhanced;
3. the design, location and undertaking of *earthworks* recognise Ngāi Tahu cultural values associated with the area, including a consideration of cultural landscapes, protects *archaeological sites* and cultural *sites* of significance, and limits any adverse *effects* on the underlying relationship Ngāi Tahu hold with the natural *environment*;

4. any changes to the natural landform minimise the visual *effects* on the landscape character, and *indigenous vegetation* is maintained, replaced or enhanced;
5. the safe and efficient functioning of the *transport network* or regionally significant *infrastructure* is not impacted; and
6. they are compatible with the character of the underlying zone and anticipated *amenity values* of surrounding *sites* are maintained by controlling:
 - (a) ongoing adverse *effects* such as visual *effects*, overlooking, shading or dominance from the bulk and scale;
 - (b) potential short term adverse *effects* such as the visual appearance of the works, *dust, noise* and vibration and traffic *effects*.

133. The Department of Conservation (S109.109) supports EW-P5 and seek that it is retained. Alliance Group Limited (FS27.019) further support the submission.

134. Royal Forest and Bird Society of NZ Inc (S110.042) considers that the EW-P5 policy needs to make reference to the outcomes sought for terrestrial ecosystems/biodiversity as well as in relation to stream values, and seeks an additional matter as follows:

7. Indigenous biodiversity and ecological connections are maintained or enhanced, including consideration given to nesting/roosting times of rare or threatened indigenous species or taonga species.

135. Federated Farmers (FS17.062) oppose the Forest and Bird S110.042 submission and note that 'ecological connections' is not a defined term, and raises the implication of the potential restriction in relation to farming activities as a concern.

136. Waka Kotahi NZ Transport Agency (S112.086) support EW-P5 and seek that it is retained, in particular Point 5, to ensure that earthworks do not impact on the safe and efficient functioning of the transport network or regionally significant infrastructure.

137. KiwiRail Holdings Ltd (S132.072) generally supports EW-P5 but considers that the term "preserved" in point 2 in relation to the natural character of rivers and their margins should be changed to protected, as it will potentially create a contradiction with point 5 in relation to the safe and efficient functioning of the transport network.

138. Hokonui Rūnanga Inc (S139.064) support EW-P5 in part, but seeks amendments to point 2 and 3 to specify the particular effects of concern to mana whenua as follows:

2. the natural character of rivers and their margins are preserved and water quality, stream health, the intrinsic values of ecosystems, ~~Ngāi Tahu cultural~~ mauri and mahinga kai values, and any public access are maintained or enhanced;
3. the design, location and undertaking of earthworks recognise Ngāi Tahu cultural values associated with the area, including whakapapa and ~~a consideration of~~ cultural landscapes, protects archaeological sites and cultural sites of significance and any silent files or other wāhi tapu, and limits any adverse effects on the underlying relationship Ngāi Tahu hold with the natural environment mitigates any other adverse effects on mana whenua;

EW-P4

139. The requirements in policy EW-P4 relates directly to the earthworks standards, and each of points 1 to 7 is in reference to EW-S1 to EW-S7 respectively. In terms of the Heritage New Zealand Pouhere Taonga (S123.014) submission, EW-P4.7 relates to accidental discovery protocol and archaeological values. Except for in relation to unknown archaeological sites, the earthworks chapter excludes earthworks provisions relating to identified Historic Heritage sites, as these are managed in the Historic Heritage chapter. As the proposed additional requirement does not relate to an earthworks standard, and is in relation to a matter managed elsewhere in the plan I reject the submission.
140. I accept and acknowledge the KiwiRail Holdings Ltd (S132.071) submission opposing the omission of the word not in EW-P4.1 and agree with the change.

EW-P5

141. EW-P5 relates to the earthworks activities that are managed, the potential adverse effects, and the outcomes sought. The matters listed in EW-P5 relate to permitted activity breaches and the assessment matters. In terms of the Forest and Bird (S110.042) submission to include consideration of indigenous biodiversity values, these matters are primarily managed through the Ecosystems and Indigenous Biodiversity chapter and include ECO-P6, ECO-P7 and ECO-P10 relating to maintaining and enhancing indigenous biodiversity and ecological connections and highly mobile fauna. Ensuring indigenous biodiversity is maintained, replaced or enhanced is also included in EW-P5.4 and the intrinsic values of ecosystems in relation to river margins are included under EW-P5.2. As the matters are already addressed elsewhere in the PDP and in EW-P5 I reject the submission.
142. The support for EW-P5 by Waka Kotahi NZ Transport Agency (S112.086), the Department of Conservation (S109.109) and Alliance Group Limited (FS27.019) is acknowledged and accepted as the policy is generally retained.
143. In relation to KiwiRail Holdings Ltd (S132.072) submission to change the term "preserved" to "protected" in EW-P5.2 in relation to the natural character of rivers and their margins, Section 6(a) of the Act requires the plan to recognise and provide for:

the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development

Although the natural character is sought to be protected from inappropriate subdivision, use, and development, as shown above, the outcome sought by the clause is preservation of natural character, which is reflected in the wording of the policy and I therefore reject the submission.

144. In relation to the Hokonui Rūnanga Inc (S139.064) submission I consider in principle that that mana whenua are best placed to advise on cultural values and kaitiakitanga matters, and I acknowledge the approach which seeks to be more specific to provide clarity for plan

users. I also note that a consistent approach with the decisions and any consequential changes resulting from Hearing Stream 3 in relation to the mana whenua chapter is also desirable.

145. I accept the changes to EW-P5.2 consistent with mana whenua advice, however in terms of EW-P5.3 I consider that some of the proposed changes will provide less clarity. The reference to 'silent files or other wāhi tapu' is accepted in part consistent with the statement of evidence provided by Ms Beran for Hokonui Rūnanga⁵, but may need some associated explanation in the mana whenua chapter. The phrase 'mitigates any other adverse effects on mana whenua' is very broad. The wording could be amended to 'mitigates any other adverse effects on mana whenua values', however this seems contrary with the approach to be more specific about what those values are. I would therefore invite mana whenua to consider alternative wording, and at this point I accept the proposed changes to EW-P5.3 in part, however my position may change subject to further evidence.

Recommendation

146. I recommend, for the reasons given above, that EW-P4 and EW-P5 are amended as shown below, and as shown in **Appendix A**.

EW-P4 Require *earthworks* to be appropriately designed, located and undertaken so that:

1. the cut depth and fill *height* does **not** detract from the amenity or stability of other sites;
2. unretained batters are designed and managed to ensure people and property are protected;
3. *earthworks* near *rivers* and *streams* are managed to ensure *river* and stream values are maintained or enhanced;
4. *earthworks* on steeper slopes are managed the ensure land stability is maintained;
5. *dust*, sediment and erosion are controlled to protect land stability, air, soil and *water* quality;
6. the area of disturbed ground is stabilised and replanted in a timely manner to minimise visual *effects*, *dust*, sediment or erosion; and
7. *accidental discovery* protocol inclusive of Ngāi Tahu tikanga and values is followed in the event of discovery of *sensitive material* or unknown *archaeological sites*.

⁵ Statement of Evidence of Amy Elizabeth Beran for Hokonui Rūnanga Incorporated Dated: 8 July 2024, for Hearing Stream 3

EW-P5 Manage *earthworks* that are of a nature, scale or in a location where there may be adverse *effects* to ensure that:

1. the *earthworks* do not exacerbate or create any *natural hazard*, such as impact on *land* stability or inundation or flooding *effects* on other *sites*;
2. the natural character of *rivers* and their margins are preserved and *water* quality, stream health, the intrinsic values of ecosystems, ~~Ngāi Tahu~~ cultural mauri and mahinga kai values, and public *access* are maintained or enhanced;
3. the design, location and undertaking of *earthworks* recognise Ngāi Tahu cultural values associated with the area, including whakapapa and a consideration of cultural landscapes, protects *archaeological sites* and cultural *sites* of significance and any wāhi tapu, and limits any adverse *effects* on the underlying relationship Ngāi Tahu hold with the natural *environment*;
4. any changes to the natural landform minimise the visual *effects* on the landscape character, and *indigenous vegetation* is maintained, replaced or enhanced;
5. the safe and efficient functioning of the *transport network* or regionally significant *infrastructure* is not impacted; and
6. they are compatible with the character of the underlying zone and anticipated *amenity values* of surrounding *sites* are maintained by controlling:
 - (c) ongoing adverse *effects* such as visual *effects*, overlooking, shading or dominance from the bulk and scale;
 - (d) potential short term adverse *effects* such as the visual appearance of the works, *dust*, *noise* and vibration and traffic *effects*.

147. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

148. The following evaluates the recommendation to amend EW-P4 and EW-P5 under section 32AA of the RMA.

Effectiveness and efficiency

The proposed changes do not materially change the policies but provide greater direction and clarity to plan users of how the objectives are sought to be achieved. In particular EW-O1, and the proposal will enable the Council to effectively administer the PDP in a clear and consistent manner. The changes are consistent with higher order documents and have regard to Section 7 matters including kaitiakitanga.

Costs and benefits

The benefits of the proposal are that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. There are no apparent costs with the proposal.

Risk of acting or not acting

The risk with acting or not acting is generally low, but there is the potential for confusion about mana whenua values, and the appropriate location and design of earthworks if the proposed amendments are not made.

Conclusion as to the most appropriate option

The proposed amendment is considered to be a more appropriate way to achieve the Objectives than the notified version of the PDP.

6.12 Earthworks Exemptions

Matters raised by submitters

149. The exemptions to the rules in the earthworks chapter are included at the start of the rule table and are copied in below:

Earthworks and Land Disturbance Exempt from District Plan Rules in this Chapter

Earthworks and Land Disturbance of the following activities are exempt from the rules in this chapter of the District Plan:

1. Cultivation of land
2. Planting vegetation, trees and crops
3. Restoration of indigenous vegetation
4. Gardening, planting or any vegetation and/or the construction or maintenance of garden amenities
5. Drilling bores
6. Internments in a burial ground, cemetery or urupā, within the burial plot of that internment
7. Filling of building foundation with granular fill under concrete slab foundation
8. Filling with drainage metal behind a retaining wall
9. Digging of hāngī pits, or other small-scale cultural cooking methods
10. Earthworks either permitted by a rule in a regional plan or Resource Consent issued by Environment Southland.
11. Earthworks for natural hazard mitigation undertaken by or on behalf of a statutory authority.

Additional exemptions

150. Fulton Hogan (S122.011) seeks an amendment to Exemption 7 for it to apply to similar applications for granular fill, such as subgrade for roads and other sealed areas, as shown below:

Exemption 7

Filling of ~~building foundation~~ with granular fill, such as under concrete slab building foundations, and sub-grade for roads and other sealed areas.

151. Chorus New Zealand Limited (S35.052) One New Zealand Group Limited (S32.052) FortySouth (S33.052) Connexa Limited (S37.052) and Spark New Zealand Trading Limited

(S154.052) seeks that trenching for underground infrastructure to be included in the exemptions, as follows:

Exemption xx

Trenching no deeper than 1.0m and wider than 1.0m for underground infrastructure, provided that no more than 120m of trench is open at any one time

Hamish Weir (FS5.119) and Yrless Limited (FS21.085) support the submission. Heritage New Zealand Pouhere Taonga (FS11.003) (FS11.004) oppose the submissions as the trenching could damage unrecorded archaeological sites.

152. McLeod-Wantwood Trust/ Wantwood Station (S104.024) Farm Manager-Wantwood Station (S105.024) Peters Farm Ltd/ Karen Peters (S127.024) seek that the list of exemptions apply to the Natural Features and Landscapes chapter along with exemptions for farm fencing.

153. David Pullar (S133.004) seeks that fences for primary production purposes are included in the list of exempt activities.

154. The Fuel Companies (S16.043) seek an additional exemption, as shown below, for permitted activities under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS) rather than provided for under EW-R5 as these often breach cut depth standards and are managed under the NES-CS. Heritage New Zealand Pouhere Taonga (FS11.040) oppose the submissions as the works could damage unrecorded archaeological sites.

Exemption xx

Replacement, removal and installation of underground storage tanks undertaken in accordance with the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

155. Port Blakely Limited (S138.004) seeks an exemption for earthworks related to commercial forestry, or a permitted activity rule where they comply with the NES-CF. Heritage New Zealand Pouhere Taonga (FS11.055) oppose the submission as the works could damage unrecorded archaeological sites.

Support

156. The Department of Conservation (S109.110) supports the exemption from the rules for earthworks associated with the restoration of indigenous vegetation and seeks that it is retained.

157. Waka Kotahi NZ Transport Agency (S112.087) and KiwiRail Holdings Ltd (S132.073) supports the exemption from the rules in particular points 10 and 11 which relate to regional councils and natural hazard mitigation.

Permitted activity instead of exemption

158. Transpower New Zealand Limited (S101.070) seeks that EW-R12 Earthworks within National Grid Yards should apply to the exempt activities as there are concerns the exempt activities could impact electrical safe distances as set out in New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001).

159. Stoney Creek Station Limited (S3.083) and a number of identical submissions listed below supports the listed exemptions but seeks that they are converted to a permitted activity rule as the legal status of the exemptions is questioned.

Stoney Creek Station Limited	S3.038,
Trudy Bokser	S113.038,
Nathan Bokser	S116.038,
AW+ JA Johnston Family Trust	S118.038,
Reaby Downs Farm Ltd	S18.040,
Karen Temple	S19.040,
Sarah and Peter Barclay	S20.040,
Helen McIntosh	S24.040,
John Baynes	S68.042,
Peters Farm Ltd/ Karen Peters	S127.074,
Greg Bokser	S117.038

160. Further to the Heritage New Zealand Pouhere Taonga (S123.016) submission, as detailed in section 6.10 of this report, to include additional matter of discretion for each earthworks rule to allow consideration of heritage values including archaeology, I recommend to reject the submission but consider that the potential risk to unrecorded archaeological sites by the exempt activities needs to be further considered under this section of the report. This matter is also considered below.

Assessment

Additional exemptions

161. In relation to the additional exemptions sought by submitters, in terms of the addition of other applications of granular fill as submitted by Fulton Hogan (S122.011), I consider that these activities can be included as a low risk permitted activity as the land disturbance and earthworks to prepare the site would still be subject to the relevant rules and standards, and accept the submission in part.

162. In terms of the telecom provider submissions listed in paragraph 151 to exempt trenching for underground infrastructure, service connections are included as a permitted activity under EW-R6 and earthworks and land disturbance for network utilities, which includes telecommunications, are included as a permitted activity under EW-R11. As I consider sufficient provision is already made in the PDP for service infrastructure as permitted activities, which are subject to accidental discovery protocol standard EW-S7, I reject the Chorus (S35.052) One New Zealand (S32.052) FortySouth (S33.052) Connexa (S37.052) and Spark (S154.052) submissions and Hamish Weir (FS5.119) and Yrless (FS21.085) further submission in support, and accept the Heritage New Zealand (FS11.003) (FS11.004) submissions.

163. In terms of the Wantwood Station submissions listed in paragraph 152 for the earthworks exemptions to apply to the Natural Features and Landscapes chapter, I reject the submission as the earthworks chapter excludes earthworks provisions relating to Historic Heritage sites, Significant Natural Areas, and Outstanding Natural Landscapes or Features.
164. In terms of the Wantwood Station submissions listed in paragraph 152, and David Pullar (S133.004) submission to exempt fences for primary production purposes, there is an allowance for land disturbance for construction of fences under EW-R1, and in addition there is an exemption within the definition of Earthworks for “disturbance of land for the installation of fence posts”. As I consider provisions are already made in the PDP for fences I reject the submission to exclude them from the rules.
165. In terms of the Fuel Companies (S16.043) submission to exempt permitted activities under the NES-CS, the NES-CS sets out to manage contaminants in soil and does not manage other environmental effects. It may therefore be appropriate that there are other effect standards that apply to these activities, and I therefore reject the submission and accept the Heritage NZ (FS11.040) further submission. Moreover, there is provision in the PDP for underground storage tanks within permitted activity rule EW-R5, although I acknowledge that some activities, as highlighted by the fuel companies, may breach earthworks standards and I consider that this should be further assessed under the 6.14 section of this report.
166. In terms of the Port Blakely Limited (S138.004) submission to exempt earthworks related to commercial forestry which is managed by the NES-CF, this matter has previously been addressed in this report (paragraph 75-77) and I reject the submission as the NES-CF already specifies that earthworks associated with commercial forestry are permitted for territorial authorities, and accept the Heritage NZ (FS11.055) further submission.

Exemption or permitted activity

167. Stoney Creek Station Limited (S3.083) and a number of identical submissions listed in paragraph 159 seek that the listed exemptions are converted to permitted activity rules. Exemptions to rules and standards are not uncommon within plan provisions. Although the exemptions apply to activities generally considered low risk or are managed through other methods, one potential issue with overall exemptions in the chapter is that none of the rules or standards capture these activities. This issue is highlighted by the Transpower New Zealand Limited (S101.070) submission that some of the exempt activities could impact on electrical safe distances and should be subject to EW-R12, and the Heritage New Zealand Pouhere Taonga submissions (S123.016) (FS11.003) (FS11.004) (FS11.040) (FS11.055) in relation to the protection of previously undiscovered archaeological sites.
168. A review of other recently reviewed district plans, including Selwyn, New Plymouth, Porirua and Wellington City, for a consistency approach, shows that many of the exempt activities listed in the PDP are included as permitted activities in other district plans, or are exempt from specific rules or standards, rather than included as an overall exemption. Although it should be noted that Timaru include a similar list of exemptions within the general earthworks rule heading in their proposed district plan.

169. For the above reasons I consider that there is merit in converting some of the exemptions to permitted activities, and accept the submissions listed in paragraph 159, the Transpower submission S101.070 and Heritage New Zealand submissions (S123.016) (FS11.003) (FS11.004) (FS11.040) (FS11.055). I recommend that the permitted activities are grouped as low risk earthworks and land disturbance activities which would not be subject to all earthworks standards, for example cut and fill heights, and remain without time or scale limitations. I consider that the standards that should apply are the same as those that apply to land disturbance for fences and include standards EW-S3 setback to rivers and streams - with an exemption for indigenous vegetation restorations as plantings are often undertaken in riparian margins with overall benefits to stream values, EW-S5 Erosion, sediment, and dust control, and EW-S7 Accidental Discovery Protocol. Moreover, some of the listed exemptions of a similar nature can be combined to avoid repetition, such as cultivation of land and planting vegetation, trees and crops. Although some additional restrictions would apply as the exempt activities are not currently subject to any standards and rules, the compliance aspect is not considered particularly onerous, and the benefits are considered to overall outweigh the cost.
170. The support of the exemptions from the Department of Conservation (S109.110) for earthworks associated with the restoration of indigenous vegetation, and Waka Kotahi NZ Transport Agency (S112.087) and KiwiRail Holdings Ltd (S132.073) for the exemption from the rules in particular points 10 and 11 which relate to regional councils and natural hazard mitigation are acknowledged. I consider that the exemption for restoration of indigenous vegetation can be converted to a permitted activity, as detailed above, with little cost in practice and therefore accept the Department of Conservation (S109.110) submission in part, and accept the Transport Agency (S112.087) and KiwiRail (S132.073) submissions that the exemptions for earthworks activities managed by the regional council, or for natural hazard mitigation works on behalf of a statutory authority be retained as exemptions.

Recommendation

171. I recommend for the reasons given above that exemptions 1-9 are converted to permitted activities with the amendments as shown below and in **Appendix A**.

Earthworks and Land Disturbance of the following activities are exempt from the rules in this chapter of the District Plan:

- ~~1. Cultivation of land~~
- ~~2. Planting vegetation, trees and crops~~
- ~~3. Restoration of indigenous vegetation~~
- ~~4. Gardening, planting or any vegetation and/or the construction or maintenance of garden amenities~~
- ~~5. Drilling bores~~
- ~~6. Internments in a burial ground, cemetery or urupā, within the burial plot of that internment~~
- ~~7. Filling of building foundation with granular fill under concrete slab foundation~~
- ~~8. Filling with drainage metal behind a retaining wall~~
- ~~9. Digging of hāngī pits, or other small-scale cultural cooking methods~~

10. Earthworks either permitted by a rule in a regional plan or Resource Consent issued by Environment Southland.
11. Earthworks for natural hazard mitigation undertaken by or on behalf of a statutory authority.

EW-RX Cultivation of land, planting vegetation, trees and crops

EW-RX Restoration of indigenous vegetation

EW-RX Gardening, ~~planting or any vegetation~~ and/or the construction or maintenance of garden amenities

EW-RX Drilling bores

EW-RX Internments in a burial ground, cemetery or urupā, within the burial plot of that internment

EW-RX Filling ~~of building foundation~~ with granular fill, such as under concrete slab building foundations, sub-grade for roads and other sealed areas, or filling with drainage metal behind a retaining wall

EW-RX Digging of hāngī pits, or other small-scale cultural cooking methods

All Zones Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

EW-RX to EW-RX

Activity status: Permitted

1. The works are undertaken in accordance with Earthworks Standards EW-S3, EW-S5 and EW-S7.

EW-S3 Setbacks from rivers and streams

1. Earthworks shall be set back the minimum distances from the top of the closest bank of a river or stream as follows:
 - (a) 20m for high order rivers or streams (order 5 and above);
 - (b) 10m for middle order rivers or streams (order 3 and 4); and
 - (c) 5m for low order rivers or streams (order 1 and 2).

Except that this standard does not apply to earthworks for restoration of indigenous vegetation.

Refer to Appendix 3 for river and stream orders

172. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

173. The following evaluates the recommendation to convert rule exemptions 1-9 to permitted activities and amend EW-S3 under section 32AA of the RMA.

Effectiveness and efficiency

The rules and the exemptions allow for a range of low-risk earthworks and land disturbance activities to be undertaken without the need for resource consent. The proposed change to make rule exemptions 1-9 to permitted activities will continue to facilitate those activities, but will also ensure they are undertaken in a manner that minimises adverse effects on the surrounding environment and protects the natural environment, Ngāi Tahu cultural values, people and property, and are therefore considered to more efficiently and effectively achieve EW-O1. The change will also assist in achieving the INFR-O3 objective as the exemptions will not apply in relation to earthworks within the *national grid yard*, and NH-O2 in relation to natural hazards and their impact on people, property and the environment.

The changes align with the national common practice approach and will enable the Council to effectively administer the PDP in a clear and consistent manner that is consistent with higher order national and regional direction document such as the NPS-FM and SRPS in relation to the integrated approach of freshwater management. The change is also consistent with the provision and recognition of Section 6 matters of national importance including heritage protection of undiscovered archaeological sites, Ngāi Tahu cultural values, and the natural character of river margins, and has regard to Section 7 matters including the maintenance and enhancement of the quality of the environment and amenity values.

Costs and benefits

The benefits of the proposal are that the change provides Council with greater control, proper assessment criteria and effective management of the adverse effects of earthworks while low risk earthworks activities are enabled without the need for resource consent. The change provides enhanced environmental protection, unknown archaeological sites or artefacts are protected, it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner.

Although some additional restriction would apply as the exempt activities are not currently subject to any standards and rules, the compliance aspect is not considered particularly onerous, and the benefits are considered to overall outweigh the cost.

Risk of acting or not acting

The risk with not acting means that there is a potential adverse effect on the environment from unmanaged earthworks, and that Council is not completely fulfilling its statutory obligations if the proposed amendments are not made.

Conclusion as to the most appropriate option

The proposed amendment is a more appropriate way to achieve the Objectives than the notified version of the PDP.

6.13 Rule EW-R1

Matters raised by submitters

174. EW-R1 is shown below:

EW-R1 Land disturbance for the construction of fences

All zones Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

Activity status: Permitted

Where:

1. Any *land disturbance* does not exceed:
 - (a) 1 metre in width for more than 10 metres in any 100-metre length; and/or
 - (b) 1 metre in *height* or depth; and
2. The ground is reinstated to original levels within 48 hours of work being completed.
3. The works are undertaken in accordance with Earthworks Standards EW-S3, EW-S5 and EW-S7.

Activity status where compliance is not achieved: Restricted Discretionary

175. Oakland Farming Ltd (S153.044), Alan Taylor (S142.004), Hamish Weir (S74.023), Stoney Creek Station Limited (S3.039) Southland Federated Farmers of New Zealand (S126.122) and a number of identical submissions as listed below, consider that the restriction in relation to fencing are overly restrictive and EW-R1 conditions 1 and 2 should be deleted.

Trudy Bokser	S113.039,
Nathan Bokser	S116.039,
AW+ JA Johnston Family Trust	S118.039,
Reaby Downs Farm Ltd	S18.041,
Karen Temple	S19.041,
Sarah and Peter Barclay	S20.041,
Helen McIntosh	S24.041,
John Baynes	S68.043,
Peters Farm Ltd/ Karen Peters	S127.075,
Greg Bokser	S117.039
Kevin Robertson	S115.123,
Ronald Crispin	S60.125,
Rural Ratepayers Group	S143.135,
Alistair & Bernadette Hunt	S148.135,
John Baynes	S68.243

Further submissions in support of the proposed changes include Hamish Weir (FS5.120) (FS5.121) (FS5.122) Federated Farmers (FS17.063) Stoney Creek Station Ltd (FS25.120). Heritage New Zealand Pouhere Taonga (FS11.043) (FS11.046) (FS11.052) oppose the proposal as the works could damage unrecorded archaeological sites.

176. The Department of Conservation (S109.111) supports the clarification that the rule excludes Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features.

Assessment

177. The support of the Department of Conservation (S109.111) for the clarifications of the exclusions for the rule is acknowledged and accepted as no change to these are proposed.
178. In relation to the submissions listed in paragraph 175 and conditions 1 and 2 of the rule, the reason for the restrictions on volume and area is to limit the scale and effects of disturbance. However, I accept that land disturbance for fencing is generally a low impact activity in terms of scale and the area disturbed is typically limited by the nature of the activity. I accept the advice of Councils' geotechnical advisor, Mr. Adams, who considers that there are no geotechnical issues with removal of EW-R1 condition 1 and 2, but that construction of a fence may require associated earthworks that could contribute to land instability and should instead be subject to all earthworks standards. However, EW-R1 only relates to land disturbance rather than earthworks, and I therefore propose that earthworks for fences are included under the rule and subject to standards consistent with geotechnical advice. I also consider that for clarity the rule should note that "the disturbance of land for the installation of fence posts" is an exclusion under the definition of earthworks. Although the fence rule will be subject to additional standards, the benefits of the proposed changes means that there is a greater allowance in scale and extent and time for reinstatement of earthworks for fences and the benefits are overall considered to outweigh the cost. I therefore accept the submissions listed in paragraph 175 in part, and propose that EW-R1 is amended as follows:

EW-R1 Earthworks and land disturbance for the construction of fences

Activity status: Permitted

Where:

- ~~1. Any land disturbance does not exceed:~~
 - ~~(c) 1 metre in width for more than 10 metres in any 100 metre length;~~
 - ~~and/or~~
 - ~~(d) 1 metre in height or depth; and~~
 - ~~2. The ground is reinstated to original levels within 48 hours of work being completed.~~
 - ~~3. The works are undertaken in accordance with Earthworks Standards EW-S3, EW-S5 and EW-S7.~~
1. All Earthworks Standards are complied with.

Note:

The disturbance of land for the installation of fence posts is exempt from the earthworks rule.

179. In terms of the Heritage New Zealand further submissions in relation to unrecorded archaeological sites, I note the activity is subject to EW-S7 Accidental Discovery Protocol and therefore reject the submission.

Recommendation

180. I recommend, for the reasons given above, that the EW-R1 is amended as shown below and in **Appendix A**.

EW-R1 Earthworks and land disturbance for the construction of fences

All zones Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

Activity status: Permitted

Where:

- ~~4. Any land disturbance does not exceed:
(e) 1 metre in width for more than 10 metres in any 100 metre length;
and/or
(f) 1 metre in height or depth; and~~
- ~~5. The ground is reinstated to original levels within 48 hours of work being completed.~~
- ~~6. The works are undertaken in accordance with Earthworks Standards EW-S3, EW-S5 and EW-S7.~~
2. All Earthworks Standards are complied with.

Note:

The disturbance of land for the installation of fence posts is exempt from the earthworks rule.

Activity status where compliance is not achieved: Restricted Discretionary

181. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

182. The following evaluates the recommendation to amend EW-R1 under section 32AA of the RMA.

Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner. The proposal will give effect to the earthworks objective EW-O1 in that it facilitates earthworks and land disturbance activities to be undertaken in a manner that minimises adverse effects and will enable the Council to effectively administer its District Plan and to monitor the outcomes of the proposed provisions in a clear and consistent manner. The change will improve efficiency as it will facilitate low-risk earthworks activities and all earthworks activities for fences are allowed for in the one rule which improves clarity for plan users.

Costs and benefits

The benefits of the proposal are that the change provides Council with greater control, proper assessment criteria and effective management of the adverse effects of earthworks while low risk earthworks activities are enabled without the need for resource consent. The proposal makes it clear what is required in terms of PDP administration and the PDP will be interpreted in a consistent manner.

Although subject to additional standards, the proposed changes means that there is a greater allowance in scale and extent and time for reinstatement of earthworks for fences, and the benefits are considered to overall outweigh the cost.

Risk of acting or not acting

The risk with not acting means that some low-risk earthworks activities may require resource consent, with an associated cost to the applicant. The risk with acting is considered low as although a greater scale of earthworks are allowed, these are limited by the nature of the activity and subject to standards which will result in appropriate management of adverse effects.

Conclusion as to the most appropriate option

The proposed amendment is considered to be a more appropriate way to achieve the Objectives than the notified version of the PDP.

6.14 Rule EW-R2 to EW-R6 Earthworks and land disturbance for servicing and land development

Matters raised by submitters

183. EW-R2 to EW-R6 relates to earthworks and land disturbance for common servicing and land development activities and are copied in below:

EW-R2	Test pits or boreholes necessary as part of a geotechnical assessment
EW-R3	Installing septic tanks and associated drainage fields
EW-R4	Disposal of spoil from drain clearance work within the site the drain is located
EW-R5	Replacement, removal and installation of underground storage tanks
EW-R6	Service connections

EW-R2 to EW-R6

Activity status: Permitted

Where:

1. The ground is reinstated to original levels within 48 hours of work being completed.
2. The works are undertaken in accordance with Earthworks Standards EW-S1, EW-S3, EW-S4 EW-S5 and EW-S7.

Activity status where compliance is not achieved:

Restricted Discretionary

184. KiwiRail Holdings Ltd (S132.074) (S132.075) (S132.076) (S132.077) (S132.078) support EW-R2, EW-R3 EW-R4, EW-R5 and EW-R6 and seeks they are retained as notified.

185. Fulton Hogan (S122.013) support the permitted activity status for EW-R2 to EW-R6 but seeks an exemption for EW-R4 in relation to drain clearance work to condition 1 regarding reinstating original levels.

186. The Fuel Companies (S16.044) oppose EW-R5 and seek that it is deleted as the replacement, removal, or installation of underground fuel storage tanks often breach the permitted activity standards for earthworks in relation to cut depth (EW-S1 in this case) as these can often be up to 4 or 5 metres. The Fuel Companies consider that the NES-CS sufficiently

manages instalment and removal of underground fuel storage tanks, and that the activity should be exempt from the rules, or that EW-R5 should not be subject to EW-S1. Heritage New Zealand (FS11.002) oppose the proposal as the works could damage unrecorded archaeological sites.

Assessment

187. KiwiRail Holdings Ltd (S132.074) (S132.075) (S132.076) (S132.077) (S132.078) support of EW-R2, EW-R3 EW-R4, EW-R5 and EW-R6 is acknowledged and accepted as the rules are generally retained.
188. In relation to Fulton Hogan (S122.013) submission to EW-R4 I agree that 'disposal of spoil from drain clearance work within the site the drain is located' is a small-scale earthworks activity, rather than land disturbance, and may therefore not be able to comply with the reinstatement to original levels condition by the nature of the activity. I therefore propose that EW-R4 is grouped with other small-scale earthworks activities, such as fencing, that are not subject to the reinstatement to original levels condition but are subject to all earthworks standards, including EW-S6 site reinstatement, and therefore accept the submission in part.
189. In relation to Fuel Companies (S16.044) submission that the NES-CS sufficiently manages instalment and removal of underground fuel storage tanks and that the activity should be exempt from the rules, this matter has previously been assessed under Section 6.12 of this report, and been rejected as the NES-CS sets out to manage contaminants in soil and does not manage other environmental effects. EW-R5 provides for the replacement, removal and installation of underground storage tanks, which includes fuel tanks. I acknowledge that the activity would be temporary as the ground will be reinstated within 48 hours. However, Council's geotechnical advisor Mr Adams considers that there needs to be some controls around these activities as a depth of 4 to 5 metres could affect the stability of other sites. I accept the expert advice and therefore reject the submission to delete the EW-S1 reference.
190. In terms of Heritage New Zealand (FS11.002) further submission, the rule is subject to EW-S7 Accidental Discovery Protocol for unrecorded sites, which allows consideration of heritage values, including archaeology and I therefore accept the further submission in part.

Recommendation

191. I recommend, for the reasons given above, that EW-R4 is amended so that the site reinstatement condition does not apply as shown in **Appendix A** and below:

EW-R4X Disposal of spoil from drain clearance work within the site the drain is located

Activity status: Permitted

Where:

~~1. The ground is reinstated to original levels within 48 hours of work being completed.~~

~~2. The works are undertaken in accordance with Earthworks Standards EW-S1, EW-S3, EW-S4, EW-S5 and EW-S7.~~

1. All Earthworks Standards are complied with.

Activity status where compliance is not achieved:

Restricted Discretionary

EW-R2	Test pits or boreholes necessary as part of a geotechnical assessment
EW-R3	Installing septic tanks and associated drainage fields
~~EW-R4~~	~~Disposal of spoil from drain clearance work within the site the drain is located~~
EW-R5	Replacement, removal and installation of underground storage tanks
EW-R6	Service connections

EW-R2 to EW-R6

Activity status: Permitted

Where:

1. The ground is reinstated to original levels within 48 hours of work being completed.
2. The works are undertaken in accordance with Earthworks Standards EW-S1, EW-S3, EW-S4, EW-S5 and EW-S7.

Activity status where compliance is not achieved:

Restricted Discretionary

192. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

193. The following evaluates the recommendation to amend EW-R4 under section 32AA of the RMA.

Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner and is considered more appropriate as it groups the activity with other small scale earthworks activities, rather than land disturbance activities, and is therefore considered a more efficient approach to give effect to the earthworks objective EW-O1.

Costs and benefits

The benefits of the proposal are that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. The change will benefit landowners and developers as the activity will not breach the permitted activity reinstatement condition by the nature of the activity. Although the change will mean that the activity will be subject to all standards, it is not considered that the compliance cost is overly onerous, and the overall benefits outweigh the cost.

Risk of acting or not acting

The risk of not acting means that the activity may not be able to comply with the reinstatement to original levels condition by the nature of the activity.

Conclusion as to the most appropriate option

The proposed amendments are a more appropriate way to achieve the Objectives of the plan than the notified version of the PDP.

6.15 Rule EW-R7 to EW-R9 Earthworks for farming activities

Matters raised by submitters

194. EW-R7 to EW-R9 relate to earthworks for farming activities and are copied in below:

EW-R7	Digging of dead holes and farm rubbish pits
EW-R8	Earthworks for silage pits
EW-R9	Earthworks for the construction, maintenance and repair or upgrade of a farm track

General Rural Zone Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

EW-R7 to EW-R9

Activity status: Permitted

Where:

1. The total earthworks area in any 12 month period does not exceed 2,500 m² per site.
2. The area is progressively stabilised, filled or recontoured.
3. The works are undertaken in accordance with Earthworks Standards EW-S1, EW-S2, EW-S3, EW-S4, EW-S5 and EW-S7.

Activity status where compliance is not achieved: Restricted Discretionary

Matters of discretion:

1. The timing and duration of the works.
2. Effects on ground stability.
3. Effects on any adjoining site, including visual effects, dust, noise, vibration or loss of privacy.
4. Visual amenity and landscape effects, and whether there is a functional need for the location of the activity, and the extent to which alternative practicable options have been considered and their feasibility.
5. Sediment and erosion effects and management.
6. The potential to create new or exacerbate existing natural hazards, impact natural drainage patterns, redirect overland flow paths or flood flows.
7. Vehicle movements to and from the site related to the earthworks and the controls to manage effects on traffic safety and amenity.
8. Impacts on Ngāi Tahu cultural values, including those listed in MW-2.3.
9. The matters of discretion of any infringed Standard(s).

195. Alistair & Bernadette Hunt (S148.007) generally oppose the restriction to an amount per year for essential earthworks for farm services, such as drainage and water supply.

196. Stoney Creek Station Limited (S3.040) (S3.041) (S3.042) and a number of identical submissions listed below support a permitted activity status for EW-R7 EW-R8 and EW-R9 but seeks the following amendments:

- to remove the exclusion for Significant Natural Areas and Outstanding Natural Landscapes or Features
- to exclude maintenance, repair and upgrade of existing facilities from the volume limitations in condition 1:
 1. The total earthworks area for any new dead hole, farm rubbish pit, silage pit or farm track in any 12 month period does not exceed 2,500 m² per site.
- to amend the matter of discretion 4 to include consideration of operational need, delete condition 9 in relation to infringed standards, and add a new matter relating to the character of the zone:
 4. Visual amenity and landscape effects, and whether there is a functional or operational need for the location of the activity, and the extent to which alternative practicable options have been considered and their feasibility.
 - ~~9. The matters of discretion of any infringed Standard(s).~~
 10. Whether the earthworks are of a type, scale and form that is appropriate for the location and character of the zone.

	<u>EW-R7</u>	<u>EW-R8</u>	<u>EW-R9</u>
Stoney Creek Station Limited	S3.040,	S3.041,	S3.042,
Trudy Bokser	S113.040,	S113.041,	S113.042,
Nathan Bokser	S116.040,	S116.041,	S116.042,
AW+ JA Johnston Family Trust	S118.040,	S118.041,	S118.042,
Reaby Downs Farm Ltd	S18.042,	S18.043,	S18.044,
Karen Temple	S19.042,	S19.043,	S19.044,
Sarah and Peter Barclay	S20.042,	S20.043,	S20.044,
Helen McIntosh	S24.042,	S24.043,	S24.044,
John Baynes	S68.044,	S68.044,	S68.046,
Peters Farm Ltd/ Karen Peters	S127.076,	S127.077,	S127.078,
Greg Bokser	S117.040	S117.041	S117.042

Further submissions in support of the proposed changes include Hamish Weir (FS5.123) (FS5.124) and Federated Farmers (FS17.064) (FS17.065) (FS17.066).

197. Mercury NZ Limited (S130.030) seek the inclusion of activities associated with Renewable Electricity Generation in EW-R9 to align with the National Policy Statement for Renewable Electricity Generation (NPS-REG). Contact Energy (FS24.051) further submit in support of the proposal and Heritage New Zealand (FS11.054) oppose the proposal as the works could damage unrecorded archaeological sites.

198. Waka Kotahi NZ Transport Agency (S112.088) (S112.089) (S112.090) support the permitted activity status for EW-R7 EW-R8 EW-R9 and the matters of discretion, in particular matter 3 5 and 7, and seek that they are retained.

199. Southland Federated Farmers of New Zealand (S126.123) (S126.124) and a number of identical submissions listed below support the permitted activity status of EW-R7 and EW-R8 and seek that they are retained.

	<u>EW-R7</u>	<u>EW-R8</u>
Southland Federated Farmers of New Zealand	S126.123,	S126.124,
Kevin Robertson	S115.124,	S115.125,
Ronald Crispin	S60.126,	S60.127,
Rural Ratepayers Group	S143.135,	S143.136,
Alistair & Bernadette Hunt	S148.136,	S148.137,
John Baynes	S68.244	S68.245

Assessment

200. In terms of the Alistair & Bernadette Hunt (S148.007) submission opposing earthworks restrictions per year for farm services, such as drainage and water supply, it is unclear from the submission which rule restriction the submission refers to or what is considered to be a reasonable earthworks amount. I note that service connections are permitted (EW-R6) without a yearly restriction and farm services would also be provided for in the general earthworks rule (EW-R14) which allows for up to 1000 cubic metres/year in the General Rural Zone. However, I consider that there is little difference in terms of effects between earthworks for farming infrastructure and farm tracks which are specifically allowed for in EW-R9. I therefore consider that a reference to farm infrastructure, which is proposed to be defined consistent with Hearing Stream 3 supplementary evidence, and includes water supply and drainage, can be included within this rule. Moreover, although I do not agree that the area limitation should be removed which restricts the scale of the works, I consider that it can be amended to limit the area open at any one time rather than per year, and therefore accept the submission in part.
201. In relation to the amendments sought by Stoney Creek Station Limited (S3.040) (S3.041) (S3.042) and a number of identical submissions and supporting further submission listed in paragraph 196, I reject the removal of the exclusion for Significant Natural Areas and Outstanding Natural Landscapes or Features as the earthworks chapter excludes provisions relating to Historic Heritage sites, Significant Natural Areas, and Outstanding Natural Landscapes or Features. In terms of the proposed changes to condition 1, I reject the changes to specify the limitation only applies for new activities as this could mean an increase in overall scale. However, amendments are proposed in response to S148.007, as discussed in paragraph 200, which would remove the annual restriction. In terms of the changes to the matters of discretion, I accept that operational need and the character of the zone are relevant considerations as these rules are specific to the General Rural Zone and farming activities, however I reject the deletion of the matter with reference to infringed standards as there are Earthworks Standards that apply to the activity, and therefore accept the submissions in part.
202. In relation to the Mercury NZ Limited (S130.030) submission to include activities associated with Renewable Electricity Generation in EW-R9 to align with the NPS-REG, although I don't disagree that the district plan needs to give effect to the national policy statement this is

primarily done through the Energy chapter of the PDP, which allows for large scale facilities in the General Rural Zone and small and community scale facilities in all zones. I acknowledge that there are no specific earthworks rules in relation to Renewable Electricity Generation activities, although the transmission and distribution aspect would be covered by EW-R11, including associated vehicle access tracks, and EW-R14 allows for earthworks up to 1000 cubic metres/year in the General Rural Zone. However, I do not consider that EW-R9 which relates to farm tracks and infrastructure is the most appropriate provision to provide for earthworks for Renewable Electricity Generation activities, which would also be a non-complying activity in areas outside of the General Rural Zone, and I therefore reject the S130.030 submission. However, I note that Mercury has a similar submission in relation to EW-R11 and the further submission by Contact Energy (FS24.051) in support will be assessed under the section 6.16 of this report. In terms of the Heritage New Zealand (FS11.054) further submission, I note that the rule is subject to EW-S7 Accidental Discovery Protocol which allow consideration of heritage values, including archaeology and accept the submission in part.

203. The submissions in support by Waka Kotahi NZ Transport Agency (S112.088) (S112.089) (S112.090), Southland Federated Farmers of New Zealand (S126.123) (S126.124) and a number of identical submissions listed in paragraph 199 are acknowledged and accepted.

Recommendation

204. I recommend, for the reasons given above, that EW-R7 to EW-R9 are amended as shown in **Appendix A** and below:

EW-R7	Digging of dead holes and farm rubbish pits
EW-R8	Earthworks for silage pits
EW-R9	Earthworks for the construction, maintenance and repair or upgrade of a farm track or <u>farm infrastructure</u>

General Rural Zone Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

EW-R7 to EW-R9

Activity status: Permitted

Where:

1. The total earthworks area ~~in any 12 month period~~ at any one time does not exceed 2,500 m² per site.
2. The area is progressively stabilised, filled or recontoured.
3. The works are undertaken in accordance with Earthworks Standards EW-S1, EW-S2, EW-S3, EW-S4, EW-S5 and EW-S7.

Activity status where compliance is not achieved: Restricted Discretionary

Matters of discretion:

1. The timing and duration of the works.
2. Effects on ground stability.
3. Effects on any adjoining site, including visual effects, dust, noise, vibration or loss of privacy.

4. Visual amenity and landscape effects, and whether there is a *functional* or operational need for the location of the activity, and the extent to which alternative practicable options have been considered and their feasibility.
5. Sediment and erosion effects and management.
6. The potential to create new or exacerbate existing natural hazards, impact natural drainage patterns, redirect overland flow paths or flood flows.
7. Vehicle movements to and from the site related to the earthworks and the controls to manage effects on traffic safety and amenity.
8. Impacts on Ngāi Tahu cultural values, including those listed in MW-2.3.
9. Whether the earthworks are of a type, scale and form that is appropriate for the location and character of the zone.
910. The matters of discretion of any infringed Standard(s).

205. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

206. The following evaluates the recommendation to amend EW-R7 to EW-R9 under section 32AA of the RMA.

Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner and will give effect to the earthworks objective EW-O1 in that it facilitates earthworks and land disturbance activities to be undertaken in a manner that minimises adverse effects. The proposal is also consistent with the SRPS direction for the sustainable use of rural land resource (RURAL.1) and General Rural Zone objective GRUZ-O1 in that it recognises the importance of primary production to the District by enabling earthworks for farming infrastructure, and including matters of discretion relating to operational need and the nature and character of the General Rural Zone which improves clarity for plan users. The proposal also means improved efficiency in that the condition retains a scale limitation but relate to the area open at any one time rather than per year, with improved monitoring and compliance efficiencies.

Costs and benefits

The benefits of the proposal are that the change provides Council with assessment criteria which reflect the rural environment and essential farming activities undertaken. Moreover, the effective management of adverse effects of earthworks will be maintained while allowing for a broader range of farming infrastructure and greater flexibility around the area of works by maintaining the scale restriction but removing the yearly limitation. There are no apparent costs with the proposal.

Risk of acting or not acting

The risk with not acting means that some farm related earthworks activities may require resource consent, with an associated cost to the applicant. The risk with acting is considered low as although a greater range of earthworks activities are allowed for, these

are similar in nature and scale to a farm track which are permitted and subject to standards which allows appropriate management of adverse effects.

Conclusion as to the most appropriate option

The proposed amendment is considered to be a more appropriate way to achieve the Objectives than the notified version of the PDP.

6.16 Rule EW-R10 to EW-R11 Transport network and network utilities

Matters raised by submitters

207. EW-R10 to EW-R11 relate to earthworks for the transport networks and network utilities and are copied in below:

EW-R10 *Earthworks for the construction, upgrade or maintenance and repair of the transport network and recreational walking and cycling tracks*
EW-R11 *Earthworks and land disturbance for network utilities, including associated vehicle access tracks*

All Zones Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

EW-R10 to EW-R11

Activity status: Permitted

Where:

1. The total earthworks area open at any one time does not exceed 2,500 m².
2. The earthworks area is progressively stabilised, filled or recontoured.
3. The works are undertaken in accordance with Earthworks Standards EW-S1, EW-S2, EW-S3, EW-S4, EW-S5, and EW-S7.

Activity status where compliance is not achieved: Restricted Discretionary

208. KiwiRail Holdings Ltd (S132.079) (S132.080) support EW-R10 and EW-R11 and seek that they are retained.

209. Waka Kotahi NZ Transport Agency (S112.091) (S112.092) support the permitted activity status for EW-R10 and the matters of discretion, in particular matter 4, 6 and 7, and seek that they are retained.

210. Transpower New Zealand Limited (S101.071) support EW-R11, and in particular the approach to having a maximum area open at any time and seeks that it is retained as notified

211. Chorus New Zealand Limited (S35.053) One New Zealand Group Limited (S32.053) FortySouth (S33.053) Connexa Limited (S37.053) and Spark New Zealand Trading Limited (S154.053) support EW-R11 and seek that it is retained.

212. Royal Forest and Bird Society of NZ Inc (S110.043) (S110.044) seeks the inclusion of an additional matter of discretion for EW-R10 and EW-R11 in relation to the effects on

indigenous biodiversity and ecological connections. Hamish Weir (FS5.125) (FS5.126) and Stoney Creek Station (FS25.121) have further submitted in opposition to the proposal.

213. Mercury NZ Limited (S130.031) seek the inclusion of activities associated with Renewable Electricity Generation in EW-R11 to align with the National Policy Statement for Renewable NPS-REG and notes that provision for earthworks in the General Rural Zone related to Renewable Electricity Generation activities, which are not considered a network utility, are essential.

Assessment

214. The support for EW-R10 and EW-R11 by KiwiRail Holdings Ltd (S132.079) (S132.080) Waka Kotahi NZ Transport Agency (S112.091) (S112.092) Transpower New Zealand Limited (S101.071) Chorus New Zealand Limited (S35.053) One New Zealand Group Limited (S32.053) FortySouth (S33.053) Connexa Limited (S37.053) and Spark New Zealand Trading Limited (S154.053) is acknowledged and accepted.
215. In relation to the Royal Forest and Bird Society of NZ Inc (S110.043) (S110.044) submission to include an additional matter of discretion for consideration of the effects on indigenous biodiversity and ecological connections, these matters are primarily managed through the Ecosystems and Indigenous Biodiversity chapter and include ECO-R1 relating to indigenous vegetation clearance and land disturbance for roads and network utilities. As the matters are already addressed elsewhere in the PDP I reject the submission.
216. In relation to the Mercury NZ Limited (S130.031) submission to include activities associated with Renewable Electricity Generation to align with the NPS-REG, I acknowledge that there are no specific earthworks rules in relation to Renewable Electricity Generation activities, as discussed in paragraph 202 of this report. Renewable Electricity Generation activities are primarily provided for through the Energy chapter of the PDP, which allows for large scale facilities in the General Rural Zone and small and community scale facilities in all zones. I consider that to fully give effect to the national policy statement earthworks associated with the establishment of Renewable Electricity Generation activities should be provided for, subject to standards, and therefore accept the submission, and accept in part the Contact Energy (FS24.051) submission in relation to S130.030. In terms of the Heritage New Zealand (FS11.054) further submission on S130.030, I note that the EW-R11 rule is subject to EW-S7 Accidental Discovery Protocol which allow consideration of heritage values, including archaeology and accept the submission in part.

Recommendation

217. I recommend, for the reasons given above, that EW-R11 is amended to include Renewable Electricity Generation activities as shown in **Appendix A** and below:

EW-R11 Earthworks and land disturbance for network utilities or renewable electricity generation activities, including associated vehicle access tracks

All Zones Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

EW-R10 to EW-R11

Activity status: Permitted

Where:

1. The total earthworks area open at any one time does not exceed 2,500 m².
2. The earthworks area is progressively stabilised, filled or recontoured.
3. The works are undertaken in accordance with Earthworks Standards EW-S1, EW-S2, EW-S3, EW-S4, EW-S5, and EW-S7.

Activity status where compliance is not achieved: Restricted Discretionary

218. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

219. The following evaluates the recommendation to amend EW-R11 under section 32AA of the RMA.

Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner and will give effect to the earthworks objective EW-O1 in that it facilitates earthworks and land disturbance activities to be undertaken in a manner that minimises adverse effects. The proposal will also assist in giving effect to the NPS-REG and the Energy chapter objective ENRG-O2 in that it enables earthworks for renewable electricity generation activities.

Costs and benefits

The benefits of the proposal are that the effective management of adverse effects of earthworks will be maintained while enabling works for a broader range of energy and infrastructure activities that will benefit the community and the environment by allowing works associated with the transition towards renewable electricity generation. There are no apparent costs with the proposal.

Risk of acting or not acting

The risk with not acting means that some renewable electricity generation related earthworks activities may require resource consent, with an associated cost to the applicant. The risk with acting is considered low as although a greater range of earthworks activities are allowed for, these are similar in nature and scale to a network utilities which are permitted and subject to standards which allows appropriate management of adverse effects.

Conclusion as to the most appropriate option

The proposed amendment is considered to be a more appropriate way to achieve the Objectives than the notified version of the PDP.

6.17 Rule EW-R12 National Grid Yard

Matters raised by submitters

220. Transpower New Zealand Limited (S101.072) supports in part Rule EW-R12 on the basis that the Rule reflects Transpower's nationally consistent approach to the management of earthworks in the vicinity of the National Grid in order to give effect to Policy 10 of the NPS-ET, however seeks that the exclusions are removed, reference to land disturbance are included, and additional restrictions on depth are included, as shown below:

EW-R12 Earthworks and land disturbance within National Grid Yards

All Zones ~~Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features~~

Activity status: Permitted

Where, within the *National Grid Yard*:

1. The depth of the *earthworks or land disturbance* is no greater than 300mm within 6m of the outer edge of the visible foundation of a *National Grid support structure*; and
2. The depth of the earthworks or land disturbance is no deeper than 3 metres when located between 6 metres and 12 metres from the National Grid Support Structure; and
3. The stability of the *National Grid support structure* is not compromised; and
4. Physical and practical *access* to the *National Grid support structures* is maintained; and
5. The *earthworks or land disturbance* do not result in a reduction in the ground to *conductor* clearance distances, below what is required by Table 4 of NZECP34:2001; and
6. The ~~e~~Earthworks that otherwise comply with clause 2.4.1 of NZECP34:2001.

Note:

Rule EW-R12 ~~Clauses (1) above~~ does not apply to *earthworks or land disturbance*:

...

Heritage New Zealand Pouhere Taonga (FS11.020) opposes the proposal as the proposed works should be assessed to determine the effects on historic heritage, including archaeology.

Assessment

221. In relation to EW-R12 Transpower New Zealand Limited (S101.072) submission, I accept the advice of Transpower as the relevant government authority for nationally consistent approach to the management of earthworks in the vicinity the National Grid consistent with the NPS-ET. However, in terms of the exclusions, these address potential environmental effects that relate to Section 6 matters of national importance, and the exemptions are considered consistent with policy 8 of the NPS-ET that seeks to avoid adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreation value and amenity. I therefore accept the submission in part with the amendments to the rule, but not the removal of the exemptions.

222. In terms of the Heritage New Zealand further submission, although the EW-R12 rule function is primarily to protect the national grid, the works are not subject to any

earthworks standards which therefore could impact on unknown archaeological sites. Moreover, with the additional condition allowing more extensive earthworks I consider it appropriate that the works should be subject to the earthworks standards, including accidental discovery protocol, but would maintain the permitted activity status and I therefore accept the further submission in part.

Recommendation

223. I recommend, for the reasons given above, that EW-R12 is amended as shown in **Appendix A** and below:

EW-R12 Earthworks and land disturbance within National Grid Yards

All Zones Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

Activity status: Permitted

Where, within the *National Grid Yard*:

1. The depth of the *earthworks or land disturbance* is no greater than 300mm within 6m of the outer edge of the visible foundation of a *National Grid support structure*; and
2. The depth of the earthworks or land disturbance is no deeper than 3 metres when located between 6 metres and 12 metres from the National Grid Support Structure; and
3. The stability of the *National Grid support structure* is not compromised; and
4. Physical and practical *access* to the *National Grid support structures* is maintained; and
5. The *earthworks or land disturbance* do not result in a reduction in the ground to *conductor* clearance distances, below what is required by Table 4 of NZECP34:2001; and
6. The ~~e~~Earthworks ~~that~~ otherwise comply with clause 2.4.1 of NZECP34:2001: and
7. All Earthworks Standards are complied with.

Note:

Rule EW-R12-Clauses (1) above does not apply to *earthworks or land disturbance*:

...

224. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

225. The following evaluates the recommendation to amend EW-R12 under section 32AA of the RMA.

Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner and will give effect to the earthworks objective EW-O1 in that it facilitates earthworks and land disturbance activities to be undertaken in a manner that minimises adverse effects. The proposed changes to the EW-R12 rule are consistent with government authority advice for nationally consistent approach to the management of earthworks in the vicinity the National Grid and will assist in giving effect to Policy 10 of the

NPS-ET, and INFR-O3 in that it protects the transmission network from the potential adverse effects of earthworks that could compromise the network. Moreover the change is also consistent with the provision and recognition of Section 6 matter of national importance including heritage protection of undiscovered archaeological sites, Ngāi Tahu cultural values, and the natural character of river margins, and has regard to Section 7 matters including the maintenance and enhancement of the quality of the environment and amenity values.

Costs and benefits

The benefits of the changes to the EW-R12 rule to the community are in the safe and efficient provision of electricity transmission, that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. The effective management of adverse effects of earthworks will be maintained through the application of earthworks standards, including accidental discovery protocol, while enabling a broader range of earthworks within the National Grid Yard that will benefit the community. There are no apparent cost with the proposal.

Risk of acting or not acting

The risk with not acting means that there is a potential adverse effect on the environment from unmanaged earthworks, and that Council is not fully fulfilling its statutory obligations if the proposed amendments are not made. The risk with acting is considered low as although a greater range of earthworks activities are allowed for, these are similar in nature and scale to other earthworks activities which are permitted and subject to standards which allows appropriate management of adverse effects.

Conclusion as to the most appropriate option

The proposed amendments are considered to be a more appropriate way to achieve the Objectives than the notified version of the PDP.

6.18 Rule EW-R13 Flood Hazard

Matters raised by submitters

226. EW-R13 relates to earthworks and land disturbance within areas subject to Natural Hazards (Flooding) and is copied in below:

EW-R13 Earthworks and land disturbance within areas subject to Natural Hazards (Flooding)

Activity status: Permitted

Where:

1. The work is not undertaken within the Maitava River Floodway; and
2. The work is not undertaken on the river side of a stopbank.
3. The work is within the Actual or Potential Inundation area and:
 - (a) The activity is undertaken within the mapped Stopbank Protection Area; or
 - (b) Cut depth or fill height (measured vertically) does not exceed 0.5 meters.

Activity status where compliance is not achieved with:

EW-R13(1) or EW-R13(2): Non-Complying

EW-R13(3): Restricted Discretionary

Matters of discretion:

1. The potential to create new or exacerbate existing natural hazards, impact natural drainage patterns, redirect overland flow paths or flood flows.
2. Effects on water quality.
3. Sediment and erosion effects and management.
4. Impacts on Ngāi Tahu cultural values, including those listed in MW-2.3.
5. The matters of discretion of any infringed Standard(s).

227. Royal Forest and Bird Society of NZ Inc (S110.045) seek the inclusion of an additional matter of discretion in relation to the effects on indigenous biodiversity and ecological connections. Hamish Weir (FS5.127) has further submitted in opposition to the proposal.

228. Waka Kotahi NZ Transport Agency (S112.093) support EW-R13, but seek the inclusion of an additional matter of discretion in relation to the effects on traffic safety:

6. Vehicle movements to and from the area is related to the earthworks and the controls to manage adverse effects on traffic safety and amenity.

229. KiwiRail Holdings Ltd (S132.081) oppose EW-R13 and seek an exemption for critical infrastructure such as rail.

230. Silver Fern Farms (S40.046) and Alliance Group Limited (S121.065) support EW-R13, in particular that the activity statuses recognises the varying environmental risk and seek that the rule is retained.

231. Environment Southland (S85.110) oppose EW-R13 in part and seeks that the permitted activity status is removed. Hamish Weir (FS5.128) and Kāinga Ora (FS28.050) has further submitted in opposition to the proposal.

Assessment

232. In relation to EW-R13 and the Royal Forest and Bird Society of NZ Inc (S110.045) submission to include an additional matter of discretion for consideration of the effects on indigenous biodiversity and ecological connections, these matters are primarily managed through the Ecosystems and Indigenous Biodiversity chapter and include ECO-R1 relating to indigenous vegetation clearance and land disturbance. Moreover, earthworks in proximity to waterways is managed by EW-S3 river and stream setbacks and include a matter of discretion in relation to indigenous biodiversity. As the matters are already addressed elsewhere in the PDP I reject the submission.

233. In relation to the Waka Kotahi NZ Transport Agency (S112.093) submission, although I agree that vehicle movements to and from a site related to earthworks can have an adverse effect on traffic safety, I reject the proposal to include the additional matter of discretion in EW-R13 because the rule is solely in relation to flooding. However, I note that traffic safety is included as a matter of discretion for EW-R7 to EW-R11 and EW-R14.

234. In relation to the KiwiRail Holdings Ltd (S132.081) submission I do not consider it appropriate to exempt critical infrastructure such as rail from the rule as flooding effects are relevant within areas subject to flooding, and I reject the submission for a blanket exemption. However, I note that where the rail network is subject to a KiwiRail Designation the district plan rules do not apply to works or projects undertaken under the designation.

235. In relation to the Environment Southland (S85.110) submission in opposition to EW-R13 permitted activity status for earthworks in an Inundation Area, Council's flood hazard advisor Mr Brunton considers that although undertaking earthworks within an inundation area can cause an increase in flooding, it is possible to undertake at least some amount of earthworks within a site without causing a significant impact on flooding provided the height and volume of earthworks is limited. Based on his general experience observing floodwaters, building and interpreting flood models and assessing the effects of infilling using flood models, Mr Brunton recommends the following depth and volume limits replaces the limits in EW-R13.3(b):

- Cut depth (measured vertically) not to exceed 0.6 metres;
- Fill height (measured vertically) not to exceed 0.3 metres;
- A maximum volume of filling above ground level of 10 m³ per site; and
- A maximum cumulative volume of filling and excavation of 25 m³ per site in each case within any period of 10 years.

236. I accept Mr Brunton's specialist advice and therefore reject the Environment Southland (S85.110) submission that no permitted earthworks are allowed for, and I accept the Hamish Weir (FS5.128) and Kāinga Ora (FS28.050) further submissions.

237. The support of Silver Fern Farms (S40.046) and Alliance Group Limited (S121.065) for EW-R13 is acknowledged and accepted in part as although the rule is proposed to be changed, the activity statuses recognises the varying environmental risk is retained.

Recommendation

238. I recommend, for the reasons given above, that EW-R13 is amended as shown in **Appendix A** and below:

EW-R13 Earthworks and land disturbance within areas subject to Natural Hazards (Flooding)

Activity status: Permitted

Where:

1. The work is not undertaken within the Maitai River Floodway; and
2. The work is not undertaken on the river side of a stopbank.
3. The work is within the Actual or Potential Inundation area and:
 - (a) The activity is undertaken within the mapped Stopbank Protection Area; or
 - (b) The bulk and scale do not exceed:
 - i. Cut depth ~~or fill height~~ (measured vertically) ~~does not exceed of~~ 0.56 meters;
 - ii. Fill height (measured vertically) of 0.3 metres;
 - iii. Fill volume above ground level of 10 m³ per site; and

iv. Cumulative volume of filling and excavation of 25 m³ per site/ 10 years.

239. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

240. The following evaluates the recommendation to amend EW-R13 under section 32AA of the RMA.

Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner and will give effect to the earthworks objective EW-O1 in that it facilitates earthworks and land disturbance activities to be undertaken in a manner that minimises adverse effects. The proposed changes to EW-R13 rule:

- are consistent with specialist flooding advice,
- will assist in giving effect to the objectives of the natural hazards chapter generally,
- is consistent with NH-O1 in that it identifies and manage the risks associated with natural hazards to human health, property, infrastructure and the wider environment,
- is consistent with NH-O2 in that the risks associated with natural hazards and their impact on people, property and the environment are recognised and avoided or mitigated, including the likely long-term effects of climate change,
- is consistent with the RPS regional direction in relation to natural hazards and the territorial authority responsibilities for the control of the use of land to avoid or mitigate stormwater inundation and riverine inundation,
- is consistent with the RPS policy direction including NH.2 to identify and manage risks from natural hazards using the most up to date information available and NH.4 to avoid exposure to areas at significant risk, and mitigate the effects of natural hazards by managing land use in areas known to be susceptible to the effects of natural hazards, and
- is also consistent with the purpose of the Act to enable people and communities to provide for their social and economic well-being and for their health and safety, whilst recognising and providing for Section 6 matter of national importance in the management of significant risks from natural hazards.

Costs and benefits

The benefits of the changes to the EW-R13 rule to the community are that some limited earthworks activities can be undertaken without the need for resource consent which reduces compliance costs, whilst the potential flooding effects are managed. There is a small opportunity cost in that there are greater restrictions on volume and height of fill, however overall the benefits to the community outweigh the cost.

Risk of acting or not acting

The risk with not acting means that there is a potential adverse effect on the environment from unmanaged earthworks, and that Council is not fully fulfilling statutory obligations if the proposed amendments are not made. The risk with acting is considered low as although more restrictive limited earthworks activities are allowed for which allows appropriate management of adverse effects.

Conclusion as to the most appropriate option

The proposed amendments are a more appropriate way to achieve the Objectives than the notified version of the PDP.

6.19 Rule EW-R14 General

Matters raised by submitters

241. EW-R14 provides for earthworks and land disturbance not otherwise provided for and is copied in below:

EW-R14 Earthworks and land disturbance not otherwise provided for

Commercial and Mixed Use Zones, Residential Zones, Natural Open Space Zone, Sport and Active Recreation Zone, Maori Purpose Zone, Rural Lifestyle Zone, Settlement Zone, Field Days Zone, Camp Columba Zone
Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

Activity status: Permitted

1. In any 12-month period, the total volume of *earthworks* does not exceed 250m³ per *site*.
2. All Earthworks Effects Standards are complied with.

General Rural Zone, Industrial Zone, Airport Zone

Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

Activity status: Permitted

3. In any 12 month period, the total volume of earthworks does not exceed 1,000m³ per site.
4. All Earthworks Effects Standards are complied with.

Activity status where compliance is not achieved: Restricted Discretionary

Matters of discretion:

1. Whether the *earthworks* are of a type, scale and form that is appropriate for the location and character of the zone.
2. The timing and duration of the works.
3. *Effects* on ground stability.
4. *Effects* on any surrounding *site*, including visual *effects*, *dust*, *noise*, vibration or loss of privacy.
5. Visual amenity and landscape *effects*.
6. Sediment and erosion control *effects* and management.
7. The potential to create new or exacerbate existing *natural hazards*, impact natural drainage patterns, redirect overland flow paths or flood flows.

8. *Vehicle movements* to and from the *site* related to the *earthworks* and the controls to manage *effects* on traffic safety and amenity.
9. Impacts on Ngāi Tahu cultural values, including those listed in MW-2.3.
10. The matters of discretion of any infringed Standard(s).

242. Silver Fern Farms (S40.047) and Alliance Group Limited (S121.066) support EW-R14 in relation to the General Industrial Zone and seek that it is retained.
243. Fuel Companies (S16.045) support EW-R14 and seek that it is retained.
244. New Zealand Defence Force (S147.007) support EW-R14 and seek that it is retained.
245. Waka Kotahi NZ Transport Agency (S112.094) support EW-R14 and the matters of discretion, in particular matter 4, 6, 7 and 8, and seek that they are retained.
246. Royal Forest and Bird Society of NZ Inc (S110.046) seek the inclusion of an additional matter of discretion in relation to the effects on indigenous biodiversity and ecological connections.
247. Fulton Hogan (S122.012) oppose EW-R14 as they consider the volumes to be too restrictive and seek that the volumes are amended in the General Rural or Industrial zones and based on the scale of the lot as follows: General Rural - 100m³/ha, and Industrial - 1000m³/ha
248. Stoney Creek Station Limited (S3.043) and a number of identical submissions as listed below seek the removal of the exclusions for ~~Significant Natural Areas and Outstanding Natural Landscapes or Features~~ and an additional matter of discretion to consider: Whether there is a functional or operational need for the location of the activity. Hamish Weir (FS5.130) and Federated Farmers (FS17.067) support the submission and seek that it is allowed.

Stoney Creek Station Limited	S3.043,
Trudy Bokser	S113.043,
Nathan Bokser	S116.043,
AW+ JA Johnston Family Trust	S118.043,
Reaby Downs Farm Ltd	S18.045,
Karen Temple	S19.045,
Sarah and Peter Barclay	S20.045,
Helen McIntosh	S24.045,
John Baynes	S68.047,
Peters Farm Ltd/ Karen Peters	S127.079,
Greg Bokser	S117.043

Assessment

249. The support of Silver Fern Farms (S40.047) Alliance Group Limited (S121.066) Fuel Companies (S16.045) New Zealand Defence Force (S147.007) Waka Kotahi NZ Transport Agency (S112.094) is acknowledged and accepted as the rule is generally retained.

250. In relation to the Fulton Hogan (S122.012) submission that the earthworks volumes are too restrictive, the specified volumes are comparable to those of other districts as outlined in the Section 32 report⁶, including Southland and Invercargill locally, and recently reviewed plans of comparable districts, such as New Plymouth and Selwyn. In terms of basing the volume on the scale of the property and specifying the volume per hectare rather than per site, although I acknowledge that sites vary in size and this is not recognised in the allowance, the change could potentially result in some very large earthworks areas for rural properties unless there is an associated area limitation. However, it should be noted that typically area restrictions are also specified per site, and the benefits of only specifying volume, which is a function of area multiplied by height or depth, is that it allows for greater flexibility, where the depth or height of the earthworks is small a larger area can be disturbed. Overall, I consider that the primary effects of earthworks are related to the scale of the works rather than the size of the site, and specifying earthworks limits per site is a commonly adopted approach, and basing the limits on volume allows for flexibility in area. I therefore reject the submission.

251. In relation to the Royal Forest and Bird Society of NZ Inc (S110.046) submission to include an additional matter of discretion for consideration of the effects on indigenous biodiversity and ecological connections, these matters are primarily managed through the Ecosystems and Indigenous Biodiversity chapter and include ECO-R1 relating to indigenous vegetation clearance and land disturbance, and in relation to river margins through EW-S3. As the matters are already addressed elsewhere in the PDP I reject the submission.

252. In relation to the amendments sought by Stoney Creek Station Limited (S3.043) and the identical submissions and supporting further submission listed in paragraph 248, I reject the removal of the exclusion for Significant Natural Areas and Outstanding Natural Landscapes or Features as the earthworks chapter excludes earthworks provisions relating to Historic Heritage sites, Significant Natural Areas, and Outstanding Natural Landscapes or Features. However, in terms of the changes to the matters of discretion, I accept that the functional need or operational need are relevant considerations as these rules are area specific, and therefore accept the submissions and further submissions in part.

Recommendation

⁶Page 20, summary and conclusions, Analysis of best practice, Section 32 - Earthworks [Section 32 Reports | Let's Talk Gore District \(goredc.govt.nz\)](#)

253. I recommend, for the reasons given above, that EW-R14 is amended as shown in **Appendix A** and below:

EW-R14 Earthworks and land disturbance not otherwise provided for

Commercial and Mixed Use Zones, Residential Zones, Natural Open Space Zone, Sport and Active Recreation Zone, Maori Purpose Zone, Rural Lifestyle Zone, Settlement Zone, Field Days Zone, Camp Columba Zone

Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

Activity status: Permitted

3. In any 12 month period, the total volume of *earthworks* does not exceed 250m³ per *site*.
4. All Earthworks Effects Standards are complied with.

General Rural Zone, Industrial Zone, Airport Zone

Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features

Activity status: Permitted

3. In any 12 month period, the total volume of earthworks does not exceed 1,000m³ per site.
4. All Earthworks Effects Standards are complied with.

Activity status where compliance is not achieved: Restricted Discretionary

Matters of discretion:

1. Whether the *earthworks* are of a type, scale and form that is appropriate for the location and character of the zone.
2. The timing and duration of the works.
3. *Effects* on ground stability.
4. *Effects* on any surrounding *site*, including visual *effects*, *dust*, *noise*, vibration or loss of privacy.
5. Visual amenity and landscape *effects*.
6. Sediment and erosion control *effects* and management.
7. The potential to create new or exacerbate existing *natural hazards*, impact natural drainage patterns, redirect overland flow paths or flood flows.
8. *Vehicle movements* to and from the *site* related to the *earthworks* and the controls to manage *effects* on traffic safety and amenity.
9. Impacts on Ngāi Tahu cultural values, including those listed in MW-2.3.
10. Whether there is a functional or operational need for the location of the activity.
11. The matters of discretion of any infringed Standard(s).

254. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

255. The following evaluates the recommendation to amend EW-R14 under section 32AA of the RMA.

Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner and will give effect to the earthworks objective EW-O1 in that it facilitates earthworks and land disturbance activities to be undertaken in a manner that minimises adverse effects. The proposal also means improved efficiency in that an additional matter of discretion allows for consideration of the functional or operational need for the location of the activity which improves clarity for plan users.

Costs and benefits

The benefits of the proposal are that the change provides Council with assessment criteria which reflect that the functional or operational need are area specific and for the nature of activities undertaken. There are no apparent costs with the proposal.

Risk of acting or not acting

The risk with not acting is generally low as consideration of the location and character of the zone is already a matter of discretion, but means that functional or operational need are not considered with a potential opportunity cost to the applicant. The risk with acting is considered low as although an additional matter of discretion is included the activity status and thresholds are maintained.

Conclusion as to the most appropriate option

The proposed amendment is a more appropriate way to achieve the Objectives than the notified version of the PDP.

6.20 Standards EW-S1 Cut depth and fill height and EW-S2 Unretained batters

Matters raised by submitters

256. EW-S1 and EW-S2 relate to cut depth and fill height and unretained batters and are copied in below

EW-S1 Cut depth and fill height

1. Cut depth or fill *height* shall not:
 - (b) exceed a cut depth or fill *height* (measured vertically) of 3 meters; or
 - (c) exceed a cut depth or fill *height* (measured vertically) of 0.5 meters within 1.5m of a *boundary* with a *site* in different ownership.

Note: a building consent may be required for retaining structures.

Activity status where compliance is not achieved: Restricted Discretionary

EW-S2 Unretained batters

1. Unretained cut and fill batters shall not:

- (a) be steeper than 2 horizontal to 1 vertical;
- (b) be constructed using moisture content susceptible soils;
- (c) have a bench with a width of more than 1.8m; or
- (d) be closer than 0.6m from the edge of a batter to the *kerb* or back edge of any *footpath*.

Activity status where compliance is not achieved: Restricted Discretionary

257. Waka Kotahi NZ Transport Agency (S112.095) (S112.096) and KiwiRail Holdings Ltd (S132.082) (S132.083)) supports the EW-S1 and EW-S2 earthworks standards and seek that they are retained.

EW-S1 Cut depth and fill height

258. Hamish Weir (S74.024) considers that the EW-S1 setback should be reduced to 1m to align with general building setbacks in urban areas and the batter slopes specified in EW-S2.

259. Clark Fortune McDonald & Associates (S99.017) considers that the EW-S1 cut depth fill height limit in relation to boundary should be amended to be a 1 in 1 batter slope. Kāinga Ora (FS28.051) support the submission in part and consider that the setback should consider what is permitted with relation to building setbacks and the earthworks that would be permitted through a building consent process.

EW-S2 Unretained batters

260. Fulton Hogan (S122.014) considers that a definition needs to be provided of “moisture content susceptible soils”, or to use an alternative term for this in standard EW-S2(b).

Assessment

261. The support of Waka Kotahi NZ Transport Agency (S112.095) (S112.096) and KiwiRail Holdings Ltd (S132.082) (S132.083) is acknowledged and accepted as EW-S1 and EW-S2 are generally retained.

262. EW-S1 restricts cut depth or fill height to 3m and requires earthworks to be limited to 0.5m height/depth within 1.5m of boundaries in all areas. The Section 32 report analysis of the commonly adopted practice approach⁷ shows that in comparison to other district plans the 3-metre allowance, which is a standard derived from the Gore Subdivision and Land

⁷ Page 19, Earthwork Provisions Comparison Table, Analysis of Best Practice, Section 32 Report – Earthworks, [Section 32 Reports | Let's Talk Gore District \(goredc.govt.nz\)](https://www.goredc.govt.nz/section-32-reports/)

Development Bylaw 2019, is relatively generous, in particular within urban areas. The height/depth restriction in relation to boundary is however consistent with the commonly adopted approach, and is primarily to protect the amenity of the adjoining site as a 3m retaining wall could otherwise potentially be built up to the boundary. Building setbacks in the zones may or may not capture retaining walls, depending on whether structures as well as buildings are specified in the relevant zone standard. For example, boundary setbacks in the rural zones only apply to buildings, not structures, and retaining walls would therefore not be captured.

263. In relation to the Hamish Weir (S74.024) submission to reduce the setback to 1 metre to align the earthworks setback with the zone building setback, the zone setbacks vary in distance from no setback requirements within the Commercial Centre Zones, up to a distance of 4 metres in the Large Lot Residential and Settlement Zones. I consider that aligning the distance to boundary in EW-S1 to the zone setback distances would mean a potentially overly restrictive approach in some zones. However, I acknowledge that a 0.5m depth/height and a 1 metre distance would align with the 2 horizontal to 1 vertical requirement for unretained batter slopes specified in EW-S2 and that a consistent approach is desirable. Moreover, Council geotechnical advisor Mr Adams advises that there are no issues with the proposal to reduce the distance from a land stability aspect, and I accept his advice. The Clark Fortune McDonald & Associates (S99.017) submission to amend the distance to a 1 in 1 batter slope would however contradict EW-S2 and, consistent with geotechnical advice, I therefore reject the submission. In relation to the Kāinga Ora further submission (FS28.051), as discussed above, I do not consider it desirable to align the setback distance with the building setbacks which are in some instances more restrictive. Moreover, I consider that relying on the building consent process would be insufficient to manage environmental effects, as it does not consider the amenity of adjoining sites and would allow a 3 metre retaining wall to be built up to the boundary, and I therefore reject the further submission.

264. EW-S2 relates to unretained batters and specifies that these should not be steeper than 2 horizontal to 1 vertical, be constructed using moisture content susceptible soils, have a bench with a width of more than 1.8m, or be closer than 0.6m to the kerb or back edge of any footpath. The standard is derived from the Gore Subdivision and Land Development Bylaw 2019. In terms of the Fulton Hogan (S122.014) submission that a definition needs to be provided of “moisture content susceptible soils”, or to use an alternative term, Council’s geotechnical advisor Mr Adams agrees that moisture content susceptible soils is not a defined geotechnical term and recommends to either remove the requirement or amend the standard to use terms defined by New Zealand Geotechnical Society (NZGS). I consider that if the requirement is not necessary to manage the stability of unretained batters it should be removed from the district plan standard to reduce unnecessary complexity for plan users.

Recommendation

265. I recommend, for the reasons given above, that EW-S1 and EW-S2 are amended as shown in **Appendix A** and below:

EW-S1 Cut depth and fill height

1. Cut depth or fill *height* shall not:
 - (d) exceed a cut depth or fill *height* (measured vertically) of 3 meters; or
 - (e) exceed a cut depth or fill *height* (measured vertically) of 0.5 meters within ~~1.5m~~ 1 metre of a *boundary* with a *site* in different ownership.

Note: a building consent may be required for retaining structures.

EW-S2 Unretained batters

2. Unretained cut and fill batters shall not:
 - (e) be steeper than 2 horizontal to 1 vertical;
 - ~~(f) be constructed using moisture content susceptible soils;~~
 - (g) have a bench with a width of more than 1.8m; or
 - (h) be closer than 0.6m from the edge of a batter to the *kerb* or back edge of any *footpath*.

266. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

267. The following evaluates the recommendation to amend EW-S1 and EW-S2 under section 32AA of the RMA.

Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner and will give effect to the earthworks objective EW-O1 in that it facilitates earthworks and land disturbance activities to be undertaken in a manner that minimises adverse effects. The proposal also means improved efficiency in that a consistent approach to height in relation to boundary for retained and unretained earthworks is applied, and the removal of the reference to moisture content susceptible soils improves clarity and reduce unnecessary complexity for plan users.

Costs and benefits

There are benefits to plans users and individuals in that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. The changes are supported by geotechnical advise, and although the change means that the setback to boundary is reduced, the benefits are considered to outweigh the cost.

Risk of acting or not acting

The risk with not acting is generally low, but means that there may be unnecessary complexity for plan users if the changes are not made.

Conclusion as to the most appropriate option

The proposed amendment is considered to be a more appropriate way to achieve the Objectives than the notified version of the PDP.

6.21 Standard EW-S3 River and stream setback

Matters raised by submitters

268. EW-S3 relates to river and stream setbacks and is copied in below:

EW-S3 Setbacks from rivers and streams

1. Earthworks shall be set back the minimum distances from the top of the closest bank of a river or stream as follows:
 - (d) 20m for high order rivers or streams (order 5 and above);
 - (e) 10m for middle order rivers or streams (order 3 and 4); and
 - (f) 5m for low order rivers or streams (order 1 and 2).

Refer to Appendix 3 for river and stream orders

Activity status where compliance is not achieved:

Restricted Discretionary

Matters of discretion:

1. Whether there is a *functional need* for the works to locate in a riparian margin, and the extent to which alternative practicable options have been considered and their feasibility.
2. The effects on water quality and the stability and health of the stream bed and banks, including erosion and *sedimentation control measures*.
3. The nature of existing riparian vegetation and the effects of proposed planting or modification on indigenous *biodiversity* and /or habitats.
4. The natural character of the riparian margin and the effects of the activity on landscape values and the ability to restore, rehabilitate or enhance riparian areas. Refer to Natural Features and Landscapes – Appendix 5 in regard to the Mataura River.
5. Impacts on Ngāi Tahu cultural values, including those listed in MW.2.3.
6. The effects on public and customary access to the stream or *river*.
7. The potential for flooding and to create new or exacerbate existing *natural hazards*, impact natural drainage patterns, redirect overland flow paths or flood flows, including on to other *sites*.

269. Waka Kotahi NZ Transport Agency (S112.097) and KiwiRail Holdings Ltd (S132.084) supports the EW-S3 earthworks standards and seek that it is retained.

270. Southland District Council (S146.062) supports the setbacks from Rivers and Streams being tied to the stream order and the matters of discretion for EW-S3 are fitting and should reduce impacts downstream.

271. Southland Federated Farmers of New Zealand (S126.125) Stoney Creek Station Limited (S3.044) and a number of identical submissions listed below seek exemptions for fencing for stock exclusion within the EW-S3 river and stream setbacks, and Southland Federated Farmers also seek exemptions for drainage, including around waterways, or pest control.

Stoney Creek Station (FS25.122) and Federated Farmers (FS17.068) further support each other's submissions and seek they are allowed.

Stoney Creek Station Limited	S3.044,
Trudy Bokser	S113.044,
Nathan Bokser	S116.044,
AW+ JA Johnston Family Trust	S118.044,
Reaby Downs Farm Ltd	S18.046,
Karen Temple	S19.046,
Sarah and Peter Barclay	S20.046,
Helen McIntosh	S24.046,
John Baynes	S68.048,
Peters Farm Ltd/ Karen Peters	S127.080,
Greg Bokser	S117.044
Southland Federated Farmers of New Zealand	S126.125,
Kevin Robertson	S115.126,
Ronald Crispin	S60.128,
Rural Ratepayers Group	S143.137,
Alistair & Bernadette Hunt	S148.138,
John Baynes	S68.246
Alan Taylor	S142.003
Oakland Farming Ltd	S153.003

272. The Department of Conservation (DoC) (S190.112) supports the EW-S3 setback from stream and rivers but recommends that a setback also applies to wetlands, and that the assessment matters are amended, as shown below, to align with higher order document including NPS-IB and NPS-FM.

Matters of Discretion

...

2. The effects on water quality and the stability and health of the stream bed and banks or wetland, including erosion and sedimentation control measures.

3. The nature of existing riparian vegetation and ~~the effects~~ opportunities for enhancement and restoration of proposed planting or modification ~~or for~~ for indigenous biodiversity and /or habitats. (...)

6. The effects on public and customary access to the stream, ~~or river~~, or wetland.

7. ...

X. any adverse effects on indigenous vegetation and habitats of indigenous fauna and proposed mitigation measures.

Y. methods proposed to monitor or inspect the works undertaken

z.the timing of works to minimise adverse effects on threatened or at risk indigenous species.

x. management of potential adverse effects through a Council Authorised Biodiversity Management Plan.

Assessment

273. The setback standard for rivers and streams applies to buildings and structures across all zones, and for earthworks. Submissions with similar content in relation to the stream setback standard in the General Rural Zone (GRUZ-S7) were considered as part of Hearing Stream 3b, and the recommendations and assessment are found in Section 6.5.6 of the Section 42A Report for the Rural Zones. A consistent approach is generally recommended.
274. In relation to the DoC (S190.112) submission, an overview of the NPS-FM, NES-F and NPS-IB are provided in the Earthworks Section 32 report and Section 4.2 of this report. Moreover, as detailed in the Section 42A Report for the Rural Zones, the NES-F has specific rules relating to land use and development around natural inland wetlands that does not have a river or stream equivalent. Due to the comprehensive nature of the NES-F rules in relation to natural inland wetlands it is possible that activities, works and development managed under the NES-F would also be captured under the district plan if wetlands were included in the stream setback. This potential duplication is not considered efficient or effective and I therefore reject this part of the DoC submission.
275. In relation to the DoC submission point to expand on the matters of discretion in relation to indigenous biodiversity to align with the NPS-IB, I agree that the changes provide additional guidance for plan users in relation to management of effects, and a *Council Authorised Biodiversity Management Plan* is a defined term within the PDP that seeks to give effect to the NPS-IB. However, I consider that these considerations should be incorporated in to Clause 3 that directly relate to indigenous biodiversity, rather than as additional stand-alone matters. In addition, the changes sought to clause 3 would restrict consideration of planting or modification to opportunities for enhancement and restoration, rather than the effects, which can be both positive or negative and I therefore do not agree with the change as it narrows the scope of consideration. I do however accept that opportunities for enhancement and restoration is a relevant consideration. Moreover, biodiversity is defined, as per the RMA, to mean “the variability among living organisms, and the ecological complexes of which they are a part, including diversity within species, between species, and of ecosystems.” The definition of biodiversity encompasses both vegetation and fauna and it is therefore not necessary to refer to indigenous fauna, as it would be covered within indigenous biodiversity. I therefore recommend that the submission is accepted in part with amendments.
276. In relation to the Southland Federated Farmers of New Zealand (S126.125) Stoney Creek Station Limited (S3.044) and the identical submissions listed in paragraph 271 seeking exemptions for fencing for stock exclusion, drainage and pest control, it should be noted that the EW-S3 standard only applies to earthworks, it does not apply to land disturbance. Moreover, the definition of earthworks specifically excludes gardening, cultivation, and disturbance of land for the installation of fence posts and these activities would therefore not be captured by the standard. In addition, the chapter rule exemptions include earthworks either permitted by a rule in a regional plan or Resource Consent issued by Environment Southland, which would include discharges from drains and structures in riverbeds such as intake and drainage pipes and culverts as detailed in the Proposed Southland Water and Land Plan (May 2024). The weed and sediment removal for drainage maintenance rule is currently under appeal. However, for the avoidance of doubt and to

improve clarity I consider that the exemptions should be noted in the standard, and I therefore accept the submissions in part.

277. The support of Waka Kotahi NZ Transport Agency (S112.097) KiwiRail Holdings Ltd (S132.084) and Southland District Council (S146.062) is acknowledged and accepted as the provision is generally retained as notified.

Recommendation

278. I recommend, for the reasons given above, that EW-S3 is amended as shown below and in Appendix A.

EW-S3 Setbacks from rivers and streams

1. Earthworks shall be set back the minimum distances from the top of the closest bank of a river or stream as follows:
 - (g) 20m for high order rivers or streams (order 5 and above);
 - (h) 10m for middle order rivers or streams (order 3 and 4); and
 - (i) 5m for low order rivers or streams (order 1 and 2).

Refer to Appendix 3 for river and stream orders

Note:

This standard does not apply to land disturbance activities and excludes gardening, cultivation, and disturbance of land for the installation of fence posts.

Earthworks either permitted by a rule in a regional plan or Resource Consent issued by Environment Southland, including in relation to drainage, vegetation and weed management, are also exempt from the rules in this chapter.

Activity status where compliance is not achieved:

Restricted Discretionary

Matters of discretion:

1. Whether there is a *functional need* for the works to locate in a riparian margin, and the extent to which alternative practicable options have been considered and their feasibility.
2. The effects on water quality and the stability and health of the stream bed and banks, including erosion and *sedimentation control measures*.
3. The nature of existing riparian vegetation and the effects of proposed planting or modification on indigenous *biodiversity* and ~~for habitats~~ proposed mitigation measures, including:
 - (a) opportunities for enhancement and restoration;
 - (b) methods proposed to monitor or inspect the works undertaken;
 - (c) the timing of works to minimise adverse effects on threatened or at risk indigenous species; and

(d) the extent to which potential adverse effects are managed through a Council Authorised Biodiversity Management Plan.

4. The natural character of the riparian margin and the effects of the activity on landscape values and the ability to restore, rehabilitate or enhance riparian areas. Refer to Natural Features and Landscapes – Appendix 5 in regard to the Mataura River.
5. Impacts on Ngāi Tahu cultural values, including those listed in MW.2.3.
6. The effects on public and customary access to the stream or *river*.
7. The potential for flooding and to create new or exacerbate existing *natural hazards*, impact natural drainage patterns, redirect overland flow paths or flood flows, including on to other *sites*.

279. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

280. The following evaluates the recommendation to amend EW-S3 under section 32AA of the RMA.

Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner and will give effect to the earthworks objective EW-O1 in that it facilitates earthworks and land disturbance activities to be undertaken in a manner that minimises adverse effects. The proposed changes will not materially change the standard but provide greater direction and clarity to plan users and is therefore considered to improve its efficiency and effectiveness in giving effect to the objective. The proposal also means improved efficiency in greater direction around matter of discretion for indigenous biodiversity, and improved alignment with the NPS-IB and ECO-O1 and ECO-P6 around the maintenance and restoration of indigenous biodiversity.

Costs and benefits

The benefits of the proposal are that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. Expanding on matters of discretion in relation to indigenous biodiversity provides more guidance for plan users which should reduce overall costs while benefiting specific biodiversity values. There are no apparent costs with the proposal.

Risk of acting or not acting

The risk with acting or not acting is generally low, but providing greater guidance on biodiversity matters of discretion will reduce the risk of a broad range of matters being considered, and confusion around activities that are exempt from the standard if the proposed amendments are not made.

Conclusion as to the most appropriate option

The proposed amendment is a more appropriate way to achieve the Objectives than the notified version of the PDP.

6.22 Standard EW-S4 Instability of Land

Matters raised by submitters

281. EW-S4 restricts earthworks based on slope angle and is copied in below:

EW-S4 Instability of Land

1. Earthworks shall not be undertaken on land with an existing slope angle exceeding 15 degrees.

Notes:

A 15 degree slope angle is also expressed as: 1 vertical to 3.7 horizontal, or 26.8 percent.

Earthworks or land disturbance must not result in any instability of land or structures at or beyond the boundary of the site where the earthworks occur. If there is reason to suspect that the earthworks may result in instability of any land, notwithstanding the slope degree, a site-specific geotechnical assessment undertaken in accordance with engineering best-practice may be required.

Activity status where compliance is not achieved: Restricted Discretionary

Matters of discretion:

1. The stability of *land* or *structures* in or on the *site* or adjacent *sites*
2. Erosion management and sediment control.
3. The natural landform and landscape *effects*.
4. The potential to create new or exacerbate existing *natural hazards*, impact natural drainage patterns, redirect overland flow paths or flood flows.
5. Impacts on Ngāi Tahu cultural values, including those listed in MW-2.3.

282. Waka Kotahi NZ Transport Agency (S112.098) KiwiRail Holdings Ltd (S132.085) support EW-S4 and seek that it is retained.

283. Hamish Weir (S74.025) seeks the deletion of matter of discretion 5 which relates to Ngāi Tahu cultural values.

Slope angle submissions

284. Chorus New Zealand Limited (S35.054) Connexa Limited (S37.054) One New Zealand Group Limited (S32.054) Spark New Zealand Trading Limited (S154.054) FortySouth (S33.054) seek that the slope degree is increased to 34 degrees. Transpower New Zealand Limited (FS30.014) (FS30.016) (FS30.018) (FS30.030) (FS30.038) Stoney Creek Station Ltd (FS25.123) (FS25.126) (FS25.127) (FS25.128) (FS25.128) and Kāinga Ora (FS28.053) support the submissions and seek that they are allowed.

285. David Pullar (S133.005) seeks an amendment to allow for an average slope degree angle over 50 metres.

286. Clark Fortune McDonald & Associates (S99.018) considers that there is no justification for a slope degree limit and seeks that EW-S4 is deleted.

287. Farm Manager - Wantwood Station (S105.022) Peters Farm Ltd Karen Peters (S127.022) McLeod-Wantwood Trust/Wantwood Station (S104.022) considers that the slope degree is over the top and seek it is deleted, this is supported by Stoney Creek Station Ltd FS25.124

288. Stoney Creek Station Limited (S3.045) and a number of identical submissions listed below considers that the slope degree is onerous and seek amendments to the standard requiring earthworks not to results in land instability on other sites as follows:

1. Earthworks shall not result in any instability of land or structures beyond the boundary of the site where the earthworks occur. ~~be undertaken on land with an existing slope angle exceeding 15 degrees.~~

Stoney Creek Station Limited	S3.045,
Trudy Bokser	S113.045,
Nathan Bokser	S116.045,
AW+ JA Johnston Family Trust	S118.045,
Reaby Downs Farm Ltd	S18.047,
Karen Temple	S19.047,
Sarah and Peter Barclay	S20.047,
Helen McIntosh	S24.047,
John Baynes	S68.049,
Peters Farm Ltd/ Karen Peters	S127.081,
Greg Bokser	S117.045

The Stoney Creek Station submission is supported by Hamish Weir FS5.131 and FS17.069 Federated Farmers that seek it is allowed.

Assessment

289. The Section 32 report analysis of best practice⁸ shows that restricting earthworks in relation to slope angle is a consistent with the commonly adopted approach for district plans, the reviewed plans had slope degree standards that ranged from 12 degrees (most restrictive) up to 15 degrees (least restrictive), although the Southland District plan makes an allowance for earthworks for farm tracks up to a 20 degrees slope angle. The intent with the standard is to manage works in areas with an increased risk of potential slope instability.

⁸ Page 19, Earthwork Provisions Comparison Table, Analysis of Best Practice, Section 32 Report – Earthworks, [Section 32 Reports | Let's Talk Gore District \(goredc.govt.nz\)](https://www.goredc.govt.nz/section-32-reports/)

290. A number of submissions and further submissions oppose the slope angle restriction and either seek greater allowances, or the deletion of the standard, as detailed in paragraphs 284 to 288. Council geotechnical advisor Mr Adams advises that any earthworks cut into a sufficiently steep slope would require batters, and cuts, that would not be permitted under EW-S1 and EW-S2. It is therefore likely that works on slopes greater than around 15 degrees may not be permitted regardless of EW-S4, and he recommends that the standard can therefore be removed. I accept the expert advice and consider that if the requirement is not necessary to manage land stability it should be removed from the district plan standard to reduce unnecessary complexity and restrictions for plan users. However, as a consequential change where the reference to EW-S4 is removed from a rule, it needs to be ensured that both EW-S1 and EW-S2 applies as they are being relied on to manage the slope instability risk.
291. Waka Kotahi NZ Transport Agency (S112.098) KiwiRail Holdings Ltd (S132.085) support of EW-S4 is acknowledged but is rejected as the standard is proposed to be removed for the reasons set out in paragraph 290 above.
292. In relation to Hamish Weir (S74.025) submission regarding matter of discretion 5 which relates to Ngāi Tahu cultural values, this matter is included in all rules and standards to allow consideration of those matters, which is consistent with the mana whenua chapter approach and I therefore do not agree with the submission. However, since the entire standard is proposed to be removed, all the matters of discretion will also be deleted, and I therefore accept the submission.

Recommendation

293. I recommend, for the reasons given above, that EW-S4 is deleted, and a reference to EW-S2 is included in EW-R1 to EW-R6, as shown below and in **Appendix A**

~~EW-S4 Instability of Land~~

~~1. Earthworks shall not be undertaken on land with an existing slope angle exceeding 15 degrees.~~

~~Notes:~~

~~A 15 degree slope angle is also expressed as: 1 vertical to 3.7 horizontal, or 26.8 percent.~~

~~Earthworks or land disturbance must not result in any instability of land or structures at or beyond the boundary of the site where the earthworks occur. If there is reason to suspect that the earthworks may result in instability of any land, notwithstanding the slope degree, a site-specific geotechnical assessment undertaken in accordance with engineering best practice may be required.~~

~~Activity status where compliance is not achieved: Restricted Discretionary~~

~~Matters of discretion:~~

- ~~1. The stability of land or structures in or on the site or adjacent sites~~
- ~~2. Erosion management and sediment control.~~
- ~~3. The natural landform and landscape effects.~~
- ~~4. The potential to create new or exacerbate existing natural hazards, impact natural drainage patterns, redirect overland flow paths or flood flows.~~
- ~~5. Impacts on Ngāi Tahu cultural values, including those listed in MW 2.3.~~

EW-R1 to EW-R6

...

The works are undertaken in accordance with Earthworks Standard [EW-S2](#)

...

294. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

295. The following evaluates the recommendation to delete EW-S4 and amend EW-R1 to EW-R6 under section 32AA of the RMA.

Effectiveness and efficiency

The proposed changes to the standards are consistent with technical expert advice in relation to the management of land stability effects and will remove potential duplication with EW-S1 and EW-S2, which is considered to improve the efficiency and effectiveness in giving effect to the earthworks objective. The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner and will reduce unnecessary complexity for plan users.

Costs and benefits

There are benefits to plans users and individuals in that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. Although the change means that the land stability standard is removed, the management of land stability effects is consistent with geotechnical expert advice.

Risk of acting or not acting

The risk with not acting is generally low but means that there may be unnecessary complexity for plan users if the changes are not made.

Conclusion as to the most appropriate option

The proposed amendment is a more appropriate way to achieve the Objectives than the notified version of the PDP.

6.23 Standards EW-S5 Erosion, sediment, and dust control EW-S6 Site Reinstatement and EW-S7 Accidental Discovery Protocol

Matters raised by submitters

296. Waka Kotahi NZ Transport Agency (S112.099) (S112.100) (S112.101) support EW-S5, EW-S6, EW-S7 and seek that they are retained.

297. KiwiRail Holdings Ltd (S132.086) (S132.087) support EW-S6, EW-S7 and seek that they are retained, and (S132.088) support in part EW-S5 with amendment to reference rail and corrections to the numbering as shown below.

EW-S5 Erosion, sediment, and dust control

1. For the duration of *earthworks* or *land disturbance* measures must be implemented to:
 - (a) ~~(b)~~ prevent silt or sediment from entering the *stormwater* system, overland flow paths, rail or *roads*;
 - (b) ~~(c)~~ control erosion; and
 - (c) ~~(d)~~ control *dust* beyond the boundaries of the *site*.

...

Assessment

298. The support of Waka Kotahi NZ Transport Agency (S112.100) (S112.101) and KiwiRail Holdings Ltd (S132.086) (S132.087) support EW-S6, EW-S7 is acknowledged and accepted as no changes are proposed.

299. In terms of the KiwiRail Holdings Ltd (S132.088) submission and amendments sought to EW-S5, I agree that the rule should also refer to rail as well as roads and that the numbering should be corrected and therefore accept the submission.

300. The support of Waka Kotahi NZ Transport Agency for EW-S5 is acknowledged and accepted, as the additional reference to rail does not significantly amend the standard and it is generally retained as notified.

Recommendation

301. I recommend, for the reasons given above, that EW-S6, EW-S7 are retained as notified and EW-S5 is amended as shown below and in **Appendix A**.

EW-S5 Erosion, sediment, and dust control

1. For the duration of *earthworks* or *land disturbance* measures must be implemented to:
 - (a) ~~(b)~~ prevent silt or sediment from entering the *stormwater* system, overland flow paths, rail or *roads*;
 - (b) ~~(c)~~ control erosion; and
 - (c) ~~(d)~~ control *dust* beyond the boundaries of the *site*.

...

302. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

303. The following evaluates the recommendation to amend EW-S5 under section 32AA of the RMA.

Effectiveness and efficiency

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner provides greater direction and clarity to plan users and is therefore considered to improve its efficiency and effectiveness in giving effect to the earthworks objective EW-O1 and transport objective TRANS-O1.

Costs and benefits

The benefits of the proposal are that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. There are no apparent costs with the proposal.

Risk of acting or not acting

The risk with acting or not acting is generally low, but there is the potential for confusion about the sediment controls that apply to rail if the proposed amendments are not made.

Conclusion as to the most appropriate option

The proposed amendment is a more appropriate way to achieve the Objectives than the notified version of the PDP.

7. Consequential and Minor Amendments

304. Clause 10(2)b of the RMA allows decisions on the PDP to include matters relating to consequential alterations to the PDP which are necessary, relevant or arising from submissions. Consequential amendments to the Earthworks chapter may be required based on previous Section 42A report recommendations to align:

- Objectives and policies relating to Mana Whenua and Ngāi Tahu cultural values,
- EW-S3 stream setback standard alignment across the PDP, and
- EW-R9 allowance with the proposed farm infrastructure definition.

305. Consequential amendments to the PDP as a result of submissions on the Earthworks chapter may include:

- In order to avoid process duplication it is recommended that the Subdivision and Land Development Bylaw 2019 is repealed and converted to an engineering Code of Practice as a consequential amendment once the plan becomes operative.

8. Conclusions and Closing Recommendation

8.1 Conclusions

306. This report has provided an assessment of submissions received on the Earthworks Chapter and associated definitions and mapping of the PDP.

307. The submissions were broadly supportive of the objectives and policies, with amendments or additional provisions sought to a range of provisions. Submissions sought amendments to definitions, allowances for additional earthworks activities, management of effects on heritage values and indigenous biodiversity and the national grid, conversion of exemptions to permitted activities, and the earthworks standards.

308. I consider that the submissions on the Earthworks topic and associated definitions and mapping assessed in this report be accepted, accepted in part, rejected or rejected in part, as set out in my recommendations in this report including **Appendix B**.

309. Overall, I recommend that the provisions are amended as shown in **Appendix A** for the reasons set out in this report. The changes are broadly summarised as follows:

- More specific references to the Ngāi Tahu cultural values of importance in the policies.
- Converting exemptions to permitted activities subject to stream setback, sediment erosion controls and accidental discovery protocol.
- Clarifications around exclusions and exemptions to the rules and standards.
- Greater allowance for earthworks and land disturbance for fences, subject to standards
- Regrouping of spoil from drain clearance work with fencing, subject to standards, instead of land disturbance activities.
- Greater allowance for farming infrastructure and area restriction at any one time instead of annual restriction.
- Allowance for earthworks associated with renewable electricity generation activities.
- Greater allowance for earthworks and land disturbance within National Grid Yards, subject to standards.
- Amendments to earthworks design standards including for;
 - Reducing boundary distance restriction for cut/fill,
 - Removing soil type restriction for retained batters,
 - Removing slope gradient,
 - Clarification for exceptions and exemptions to stream setbacks and indigenous biodiversity matters

310. I consider that the amended provisions will be efficient and effective in achieving the purpose of the RMA, the relevant objectives of the PDP and other relevant statutory documents, for the reasons set out in the Section 32AA evaluations undertaken throughout this report.

8.2 Closing Recommendation

311. The Hearing Panel accept, accept in part, or reject all submissions (and associated further submissions) as outlined in **Appendix B** of this report.

Signed:

Name and Title	Signature	Date
Tina Carlson- McColl Consultant Planner		27 September 2024