

**Before the Independent Hearings Panel at Gore District Council**

**Under** Schedule 1 of the Resource Management Act 1991

**In the matter of** Hearing Submissions and Further submissions on the Proposed  
Gore District Plan.

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**Right of Reply planning evidence of Tina Carlson-McColl on behalf of Gore District Council for Hearing Stream 11 – Minute 27 National Planning Standards, Earthworks, Energy & Infrastructure Chapters**

**Date: 3 March 2025**

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## **Introduction:**

1. My name is Tina Carlson-McColl. My Section 42A report sets out my qualifications and experience as an expert in planning.
2. I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's practice Note 2023, as applicable to this independent hearing panel.
3. I have prepared this supplementary evidence to provide a response to expert evidence and statements presented in relation to Minute 27 of the Hearings Panel in relation to National Planning Standards, Earthworks, Energy & Infrastructure Chapters.
4. This includes the evidence of:

### **Stoney Creek Station Limited (S3 & FS25)**

- Claire Rose Perkins

### **Southland Federated Farmers of New Zealand (S126 & FS17)**

- Rachel Shalini Thomas
- Bernadette Ellen Hunt

### **KiwiRail Holdings Limited (KiwiRail) (S132)**

- Louise Elizabeth Robertson Taylor

### **Environment Southland (S85)**

- Marcus Roy

## **Recommendations Overview**

5. The Section 42A reports for the Earthworks Chapter provides an overview of issues raised in submissions and the changes recommended relating to the chapter. The supplementary evidence for Hearing Stream 7 and the right of reply response to Minute 27 should also be read in conjunction with this evidence. I do not propose to repeat those here but instead focus on responding to submitters evidence, and in particular matters which remain in contention.
6. In relation to whether district-wide overlay chapters should apply in addition to or instead of the district-wide activity earthworks chapter, I maintain my recommendation as per the Minute 27 response, and consider that the approach where each chapter applies in addition to each other is the most appropriate.
7. In relation to whether earthworks for fencing should be exempt from the earthworks standards and farm tracks should not have an area limit, I consider that the provisions already seek to enable these activities whilst managing the earthworks effects. I maintain my recommendation

that earthworks for construction of fences should be subject to all standards, which is consistent with expert advice, and to not remove or increase scale limitations further for farm tracks.

8. In relation to the Earthworks and land disturbance within areas subject to Natural Hazards (Flooding) rule (now NH-R4), I maintain my recommendations consistent with expert advice to allow for some small-scale earthworks to be undertaken as a permitted activity within the Actual or Potential Inundation area, and do not recommend to permit works for rail network activities within the Mataura River Floodway.
9. No further changes are recommended to the Earthworks chapter.

### **Detailed Responses to Evidence seeking changes to Minute 27 Recommendations**

#### Stoney Creek Station Limited (Stoney Creek Station) evidence

10. Claire Perkins on behalf of Stoney Creek Station generally agrees with the Minute 27 recommendation in relation to retaining provisions for earthworks within the NFL overlay within the Natural Features and Landscapes Chapter, and the approach to simplify the Earthworks Chapter rule framework. Ms Perkins has indicated that she prefers the exemptions to be located within rule EW-R14 or in the standards rather than as chapter wide exemptions. However, matters of contention remains in relation to:
  - Whether district-wide overlay chapters should apply in addition to or instead of the district-wide earthworks chapter
  - Whether earthworks for fencing should be exempt from the earthworks standards and farm tracks should not have an area limit.

#### District wide matters – district wide activities and overlays

11. Ms Perkins does not agree that the general earthworks provisions should apply in addition to the landscape provisions and recommends that the note and overview be amended to specify that these provision apply ~~in addition to~~ instead of the earthworks chapter.
12. The suggested approach is not dissimilar from the original approach of the notified version of the PDP, which had area exclusions noted in the left-hand column of the rules e.g. “All areas excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes and Outstanding Natural Features”, which had the intention to highlight to plan users that more restrictive/specific rules apply in these overlay areas.
13. As set out in the Minute 27 response<sup>1</sup>, the National Planning Standards lack clear direction regarding the location of provisions that relate to multiple district-wide matters, but none of the reviewed plans specified within the general earthworks rules that overlay areas are excluded

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<sup>1</sup> Paragraphs 34-36 Right of Reply planning evidence of Tina Carlson-McColl and Mishka Banhidi on behalf of Gore District Council for Hearing Stream 7 – Minute 27 National Planning Standards, Earthworks, Energy & Infrastructure Chapters Date: 14 January 2025

from the permitted district-wide activities, but typically noted in the introduction to the rules that other district wide matters apply in addition to the earthworks chapter rules. For consistency this approach is recommended to be adopted, but it has the same intent in providing clarity that the district-wide activities do not override the district-wide overlay rules.

14. Typically rules within overlays are more restrictive than the district-wide activity or zone rules, and providing that there are either rule conditions requiring compliance with earthworks standards, or matters of discretion relating to general earthworks effects, then that approach can also be acceptable. However, in terms of the revised Natural Features and Landscape chapter, this overlay is a little unusual in that the permitted earthworks and land disturbance allowances within NFL-R3 are in some cases more permissive than the general earthworks chapter, and these activities therefore need to be subject to the earthworks standards/rules.
15. I maintain my recommendation as per the Minute 27 response<sup>2</sup>, and consider that the approach where each chapter applies in addition to each other is the most appropriate. Allowing the chapters to work in concert also means that each chapter can solely focus on the resource management issues it is seeking to address, and there is less risk of potential unintended consequences, such as having a more permissive allowance for earthworks in a landscape overlay than the rest of the district. However, in either case, the approach to multiple district wide matters should be clearly set out to assist plan users, both in chapter Note 1 and the How the Plan Works Chapter.

#### Earthworks for fencing and farm tracks

16. Ms Perkins does not consider that there is sufficient justification for the management of earthworks for farm fences and farm tracks, and highlights policy direction that she considers indicates that the main focus on managing earthworks cut and batter slopes are on other sites and should not apply within rural properties.
17. Ms Perkins also considers that the Minute 27 response does not specifically address the Stoney Creek supplementary evidence from the 18 November 2024, in particular in relation to earthworks for fencing being exempt from the standards, and farm tracks needing a more generous area allowance. Ms Perkins considers that farm tracks are more appropriately managed only by the earthworks standards.
18. As set out in the Minute 27 response<sup>3</sup>, the approach taken within the earthworks chapter to enable a range of specific activities, such as fencing or farm tracks, either through exemptions or permitted activities, relates to the recognition of the necessity of earthworks and to enable people and communities to provide for their social, economic and cultural well-being. The earthworks chapter is not seeking to specifically manage fencing or farm tracks, but allow for land disturbance and earthworks for them subject to standard requirements to manage the

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<sup>2</sup> Paragraphs 37-38 as above

<sup>3</sup> Paragraphs 51-54 as above

effects, which is consistent with the identified resource management issues<sup>4</sup>, earthworks objective and policies.

19. The direction for the management of earthworks effects is set out in the policies, in particular EW-P4 and EW-P5, and need to be read as a whole. The policy direction is reflected in the matters of discretion within the rules and standards. Although I agree that the potential adverse effect on other sites is of relevance and that there is policy direction in relation to this, I do not agree with Ms Perkins that earthworks effects for cut and batter slopes are not relevant considerations within rural properties, regardless of the purpose of the earthworks.
20. I have previously in my supplementary evidence<sup>5</sup> highlighted that the cut and batter slopes standard requirements which are recommended to apply to earthworks for fences is consistent with expert advice, the cut and batter slopes standards are consistent with the current restrictions as these standards are derived from the Subdivision and Land Development Bylaw, and are relatively permissive as compared to many other district plans. For these reasons I maintain my recommendation as set out in the Section 42A report<sup>6</sup> that earthworks for construction of fences should be subject to all standards, and highlight that the original EW-R1 rule did not allow for earthworks for fences. I have also previously raised the issue that the relief Ms Perkins is now seeking is inconsistent with Stoney Creek Station Limited original submissions in relation to land disturbance for fences (EW-R1) and earthworks for farm tracks (EW-R9) which were:
- to permit land disturbance for fences subject to EW-S3, EW-S5 and EW-S7 with no other restrictions (S3.039).
  - to limit the 2500 square metre earthworks area allowance to the construction of new farm tracks (S3.042).
21. Earthworks and land disturbance for fencing is recommended to be permitted without an area or volume limitation as the scale is typically limited by the nature of the activity. The scale of general earthworks activities are however limited by volume restrictions (EW-R14). The earthworks provisions also allow for some larger scale activities associated with farming activities, including farm tracks and farm infrastructure. The area allowances for farming activities are consistent with provision for infrastructure activities, such as construction of roads and network utilities, and the allowances have generally been supported through submissions<sup>7</sup>. I consider that the scale and effect of these activities are not necessarily limited by their nature

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<sup>4</sup> Issue 1 - Earthworks are a necessary part of land use, development and subdivision but can have adverse effects on the surrounding environment.

Issue 2 - Unmanaged earthworks can adversely affect the life-supporting capacity of the natural environment, the health and safety of people, and the cultural well-being of communities, or have adverse effects on amenity values or the quality of the environment.

<sup>5</sup> Paragraphs 21-24 Statement of supplementary planning evidence of Tina Carlson-McColl on behalf of Gore District Council for Hearing Stream 7 – Earthworks and Activities on the Surface of Water Date: 5 November 2024

<sup>6</sup> Paragraph 178, Section 6.13 Rule EW-R1, Section 42A Report: Part 2: Earthworks

<sup>7</sup> 6.15 Rule EW-R7 to EW-R9 Earthworks for farming activities and 6.16 Rule EW-R10 to EW-R11 Transport network and network utilities, Section 42A Report: Part 2: Earthworks

in the same way as fencing generally is, as Stoney Creek and Ms Perkins have stated in their evidence, standard farm tracks on the station are 7m wide, which is the same width as a dual lane carriageway for a Rural Connector road<sup>8</sup>. As set out in my supplementary evidence<sup>9</sup> and Minute 27 response<sup>10</sup> the earthworks effects of these activities are comparable, and the scale allowance is already greater than the general rule. I maintain my recommendation as set out in the Section 42A report<sup>11</sup> to not remove or increase scale limitations further.

22. In terms of specifically responding to the Stoney Creek response from the 18 November 2024 to my supplementary evidence, this was not included in the direction of Minute 27. I consider my position on these matters is relatively clear through the supplementary evidence and the minute response, however brief comments are included below to matters raised by Stoney Creek.

- a) Environment Southland Water and Land Plan (pSWLP) - The regional plan does not have specific earthworks or land disturbance rules, but there are rules in relation to discharges to air, land and water, and some land use activities are managed. Farming activities are primarily managed through Farm Environmental Management Plans in terms of freshwater effects, and cultivation is restricted on high altitude land, steep slopes and within setbacks to waterways.
- b) National Environmental Standard for Commercial Forestry (NES-CF) - Under the NES-CF a forestry earthworks management plan is required for all earthworks that involve more than 500 m<sup>2</sup> of soil disturbance in any 3-month period, and the regional Council must be notified 20-60 working days prior to commencement. The plan must identify the environmental risks associated with the earthworks and provide measures to avoid, remedy, or mitigate the adverse effects of the activity on the environment and be in place at least 20 working days before the earthworks begin. Conditions also require stormwater management, sediment control, setback to waterways and site stabilisation.
- c) Current requirements - The current approach to manage earthworks standards is through the Subdivision and Land Development Bylaw process, which sits outside the ODP. The PDP earthworks standards are generally derived from the bylaw requirements, including in relation cut and fill batters and erosion, sediment, and dust control.
- d) Cultivation – As set out in the Minute 27 response<sup>12</sup>, there is direction in the Southland Regional Policy Statement to prevent or minimise soil erosion and sedimentation from land use soil disturbance in rural areas, which would include cultivation. There is also

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8 TABLE-S10 Road design requirements, Rural Connectors

9 Paragraph 28, Statement of supplementary planning evidence of Tina Carlson-McColl on behalf of Gore District Council for Hearing Stream 7 – Earthworks and Activities on the Surface of Water Date: 5 November 2024

10 Paragraph 63, Right of Reply planning evidence of Tina Carlson-McColl and Mishka Banhidi on behalf of Gore District Council for Hearing Stream 7 – Minute 27 National Planning Standards, Earthworks, Energy & Infrastructure Chapters Date: 14 January 2025

11 6.15 Rule EW-R7 to EW-R9 Earthworks for farming activities

12 Paragraph 59 Right of Reply planning evidence of Tina Carlson-McColl and Mishka Banhidi on behalf of Gore District Council for Hearing Stream 7 – Minute 27 National Planning Standards, Earthworks, Energy & Infrastructure Chapters Date: 14 January 2025

direction to protect historic heritage, including through accidental discovery protocols. However, I agree that duplication with the regional council plan is not efficient, and the recommendation is to permit earthworks and land disturbance permitted by the regional plan in EW-R14, which includes those aspects of cultivation activities.

- e) Fencing – These matters are also addressed in paragraph 19 of this evidence. EW-R1 as notified allowed for land disturbance for fences, and the bulk and scale was managed through rule conditions rather than standards. Through the Section 42 recommendation<sup>13</sup> this rule is recommended to also allow for earthworks, and is therefore recommended to be subject to all earthworks standards.
- f) In terms of the potential risk of earthworks for livestock fencing, it is correct the Council’s geotechnical advisor has stated that the risk may be less of concern if works are remote and limited in width. However, through the Section 42 recommendation<sup>14</sup> there is no longer any width limitation recommended for fencing to limit bulk and scale, and it is therefore appropriate that all standards apply.
- g) The earthworks standards are generally derived from the current requirements in the bylaw. The issue of the effectiveness of the bylaw approach to manage earthworks was raised in the Section 32 report<sup>15</sup>, and is the reason the earthworks standards are included in the PDP.
- h) In terms of boundary fences, there are two parts of the EW-S1 standard, the first condition is in relation to general cut depth or fill height and is 3 metres, the second condition is cut depth or fill height in relation to boundaries of other sites, and is 0.5 metre within 1 metre of a boundary. The recommended exemption for earthworks for post and wire boundary fences only applies to the 0.5m limitation, as opposed to the 3 meter requirement. Post and wire fences are considered to generally require less land disturbance to construct than other types of fencing, and include most types of common farm fencing.
- i) In terms of batter slopes, the EW-S2 standard are minimum requirements for permitted activities and is consistent with expert advice. There may be instances where steeper batter slopes could be appropriate, however since this is on a case by case basis it would require specialist input to determine, and I consider the resource consent pathway is an appropriate management tool.
- j) Management of land stability – The suggested standard requirement by Stoney Creek to instead manage land stability is to state that “earthworks and land disturbance must not result in the instability of land or structures at or beyond the boundary of the site where the earthworks occur”. Although this describes the desired outcome, I do not consider the suggested wording is appropriate for a standard requirement. As raised by Council’s

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<sup>13</sup> Paragraph 178, Section 6.13 Rule EW-R1, Section 42A Report: Part 2: Earthworks

<sup>14</sup> As above

<sup>15</sup> Clause 4.3 Effectiveness of Operative Plan, Proposed Gore District Plan Section 32 Report – Earthworks

geotechnical expert, it is not good practice as non-compliance with the standard is only evident after slope failure occurs. I agree with expert advice and my position on this has not changed.

- k) Setback to waterways – The standard manages a range of potential earthworks effects, including but not limited to water quality. I do not agree that earthworks for fencing within stream setback has the same potential effect as land disturbance, as earthworks have a permanent effect on the land and do not recommend any further allowances. I agree that erosion and sedimentation control is managed separately by EW-S5, and note the regional council also have rules in relation discharges.
- l) Scale limitations – These matters are also addressed in paragraphs 20 and 21(b) of this evidence. The volume and area limitations for the General Rural Zone are greater to reflect the character of the zone, and in addition there is a larger area allowance for specific farming activities and infrastructure, this limit is consistent with the allowances for roads and network utilities. Earthworks for forestry tracks are managed by the NES-CF, and a forestry earthworks management plan is required for all earthworks that involve more than 500 m<sup>2</sup> of soil disturbance in any 3-month period. In comparison, the PDP allows for 5 times the area of disturbance for farm tracks as a permitted activity without a management plan.

Southland Federated Farmers of New Zealand (Southland Federated Farmers)

- 23. Rachel Shalini Thomas and Bernadette Ellen Hunt on behalf of Southland Federated Farmers fully agree with the recommendations of Ms Perkins for Stoney Creek Station, and support the changes to make a more user friendly rule framework. They consider that the scale of earthworks and land disturbance for fencing is limited by the nature of the activity and seek that fencing in the rural zone be exempt from any standards and earthworks for farm tracks have no areal limit.
- 24. Ms Thomas and Ms Hunt are however concerned that if the exemptions are provided for within rule EW-R14 the rule may then be read that the exemptions may contribute to the maximum volumes. Ms Thomas and Ms Hunt are also concerned that earthworks and land disturbance activities may be unnecessarily captured or restricted by EW-R14.
- 25. I have responded to Ms Perkins evidence above, and will not repeat those matters here. I do however note that Ms Thomas and Ms Hunt position is inconsistent with Southland Federated Farmers original submissions, which in relation to land disturbance for fencing (EW-R1) and earthworks farm tracks (EW-R9) were:
  - to allow for land disturbance for fences subject to EW-S3, EW-S5 and EW-S7 with no other restrictions (S126.122).
  - in support of Stoney Creek S3.042 to limit the earthworks area allowance to the construction of new farm tracks (FS17.066).

26. In relation to EW-R14, I note that although Southland Federated Farmers did not originally submit on the rule or chapter exemptions, however I acknowledge the Minute 27 recommended changes were relatively significant in relation to the reliance on the rule. It is however unclear from Ms Thomas and Ms Hunt evidence which earthworks and land disturbance activities they consider may be unnecessarily captured or restricted by EW-R14. As highlighted in the Minute 27 response<sup>16</sup> many of the permitted or exempted activities in the notified earthworks chapter would likely be permitted under EW-R14, and the volumes do not apply to land disturbance activities. I consider the recommended changes to the EW-R14 rule sufficiently clear that the listed activities under condition 5 are permitted without volume limitations in all zones, however if the panel considers it appropriate an advice note could be included.

KiwiRail Holdings Limited (KiwiRail)

27. Louise Elizabeth Robertson Taylor on behalf of KiwiRail has suggested changes to rule NH-R4 which was previously located in the earthworks chapter as EW-R13. The changes are consistent with the S132.081 submission and supplementary evidence responded to in Hearing Stream 7<sup>17</sup>. I note that the Maitava River Floodway is a high risk area and KiwiRail has not provided any expert evidence in relation to the flood risk. My recommendation has not changed in that I consider a permitted activity status inappropriate due to the level of risk, and that it is appropriate with a consenting pathway where the management of the flood risk can be assessed for the project.
28. The potential issue of a non-complying activity status resulting in a consent not being able to be granted was raised at the Hearing Stream 7 hearing. Under Section 104D of the Act a non-complying activity can only be granted resource consent if the adverse effects on the environment will be minor, or it is for an activity that will not be contrary to the objectives and policies of the plan. Since the extent of the adverse effects for the project are not known, I have reviewed the objectives and policies of the Natural Hazards chapters. The following direction is considered particularly relevant:

NH-O4 ~~Regionally significant~~ Critical infrastructure is located outside hazard risk areas except where there is an operational need or functional need for its location where practicable.

NH-P6 Avoid the placement of critical infrastructure ~~in areas at risk from natural hazards~~ identified and mapped areas subject to natural hazards, unless:

1. there is ~~no reasonable alternative due to the~~ an operational need or functional need for the location; and

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<sup>16</sup> Paragraph 53 Right of Reply planning evidence of Tina Carlson-McColl and Mishka Banhidi on behalf of Gore District Council for Hearing Stream 7 – Minute 27 National Planning Standards, Earthworks, Energy & Infrastructure Chapters Date: 14 January 2025

<sup>17</sup> Paragraphs 36-38 Statement of supplementary planning evidence of Tina Carlson-McColl on behalf of Gore District Council for Hearing Stream 7 – Earthworks and Activities on the Surface of Water Date: 5 November 2024

2. it will be designed to ~~maintain its integrity and function to the fullest possible extent, even though this may be at a reduced level,~~ during and after a natural hazard event, ~~or~~ and can be readily re-instated after a natural hazard event; and
3. any significant adverse effects on people, ~~cultural values, and property, mauri, any wahi tapu, or the ability to practice mahinga kai activities can~~ be ~~will be~~ avoided, remedied or mitigated.

NH-P9 Avoid subdivision, use and development within the “Mataura River Floodway”.

29. In reviewing these provisions, I consider that the project, depending on specific details, may be contrary to some of the objectives and policies, in particular NH-P9, and may therefore not comply with the 104D(1)(b) condition. However, this tension I believe is resolved as per Mr Osbornes evidence to include an exception for critical infrastructure within NH-P9, as shown in Appendix A.
30. Overall, I consider the non-complying status appropriate given the potential significance of the flood risk. However, the panel could also consider a Discretionary consenting pathway for critical infrastructure if concerns remain regarding the potential issue with a non-complying status. However, given the lack of expert advice provided to understand the potential risk I find it difficult to recommend a change to the activity status. A suggestion on how the rule could be amended is however provided below for consideration.

**Activity status where compliance is not achieved with:**

**EW-R13(1) or EW-R13(2):** ~~Non-complying~~ Discretionary

Where:

4. The work is associated with critical infrastructure

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**EW-R13(3):** Restricted Discretionary

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**EW-R13(4):** Non-complying

Environment Southland

31. Marcus Roy on behalf of Environment Southland support the relocation of EW-R13 from the Earthworks Chapter to the Natural Hazards Chapter NH-R4 but oppose the wording. Mr Roy considers that Environment Southland should be able to provide input into earthworks in these locations to manage potential impacts and cumulative effects. However, Mr Roy does not specify what changes to the rule are sought in his evidence.
32. The Environment Southland submission (S85.011) on EW-R13 sought that the permitted activity status be removed, which is addressed in paragraph 235 and 236 of the S42A report for the

Earthworks chapter, and was recommended to be rejected based on expert advice. Environment Southland did not provide any further evidence for the Hearing Stream 7 hearing in relation to this.

33. Although I agree that earthworks within areas of actual or potential inundation may have an effect on the flood risk, the allowances recommended by Mr Brunton are limited in bulk and scale to limit the effect. In my opinion consideration also needs to be given to the level of risk being managed by the proposed restrictions, the practical application and the efficiency of plan rules, and the recommended allowances are supported by expert advice. I acknowledge that there is no mechanism for consultation with Environment Southland for permitted activities, however there is for a Restricted Discretionary Activity once the low-level threshold is exceeded. However, there is nothing in the rule that would direct plan users to contact Environment Southland, and an advice note is therefore recommended to be included, as shown below:

*Note: Technical advice on the management of the flood risk can be sought and obtained from Environment Southland.*

34. The recommended change is shown in the Natural Hazards chapter attached in Appendix A to Mr Osbornes evidence. The change is considered to be an alteration of minor effect consistent with Clause 16 and no Section 32AA evaluation is therefore considered necessary.