

18 November 2024

The Hearing Panel Commissioners
Gore District Council – Proposed District Plan
Bowler Avenue
Gore

Dear Commissioners

Thank you for the opportunity to have some time to provide a response to the Supplementary S42A report prepared by Tina Carson-McColl following the hearing for the Earthworks chapter on 6th November. We have included our comments below in response to specific comments in that report along with some comments in reply to questions from the panel during our presentation.

Ms Dickson queried whether there were any rules in the Environment Southland (ES) rules relating to earthworks for tracks or fences. On briefly reading through these rules following the hearing we cannot find any rules restricting these activities unless they are within the bed or banks of rivers/streams.

Mr Bolger asked whether the National Environmental Standards for Commercial Forestry (NES-CF) permitted tracks for forestry activities. From our reading of the NES-CF it appears that the majority of the Gore District, including Stoney Creek Station, is in the “green zone” or “yellow zone” which has no limit on earthworks cuts or volumes where required for Commercial Forestry activities including the cutting of tracks. We would suggest that forestry earthworks are at much higher risk of erosion or slope failure than earthworks for farm fences and tracks.

In general, we firmly do not believe there should be any earthworks restriction for fencing activities on rural properties where it is required for agricultural, horticultural and pastoral activities. Our property alone has 150,000 metres of farm fencing requiring regular maintenance, upgrade & extension in the normal course of existing farming activity. There are no restrictions on this in the current District Plan for a very good reason and there is no evidence to suggest that there has been any concern to date regarding stability of cuts for fencing on Stoney Creek Station or in the wider district.

It is not in our best interest to create a cut that fails and the best people who understand the variability in land stability and soil types across the property are those that work on the farm, which in our case our two managers have been there for 10 and 15 years respectively. The Letter tabled at the hearing from K2 Kontracting that has 32 years experience in rural excavator services who has been on our property over the last 20 years, his observations in our view are superior to a remote Geotech company because the K2 comments reflect the reality.

The Hokonui Hills have been farmed for 120 years and we assume the rest of the district has been farmed for a similar time period. We ask what is the issue you are addressing and why are you now imposing a consent based farming framework?

Specific responses to s42A Supplementary Evidence

Para 15

Ms Carson-McColl notes that clearer detail could be included in the “How the Plan Works” section to explain that standards are not standalone and are only to be considered under the relevant rules that reference them. We consider this would be helpful so that standards are not mistakenly read as if they were standalone rules.

Para 16-17

Cultivation involves land disturbance for the purpose of sowing, growing, or harvesting of pasture and crops and was initially excluded from compliance with any standards in the notified version of the Plan.

These paragraphs of the s42A supplementary report relate to the proposed inclusion of cultivation as a permitted activity rule that must comply with all the EW standards. By including this as a permitted activity that now has to comply with the EW standards is now placing controls at District level over an everyday agricultural and horticultural activity, in particular by requiring compliance with EW Standard S5 (erosion and sediment control measures).

We are unclear what type of measures Ms Carson-McColl would consider appropriate and reasonable to install at the scale of farm cultivation over the entire district in order for this standard to be complied with as this is not a typical requirement in other districts that we are aware of.

For context, if the cultivation was considered to be earthworks and not land disturbance then it would be exempt from these rules/standards if it is permitted by the Regional Plan as cultivation is provided for under the ES rules.

The wording of clause (10) exclusion should be amended as suggested by Ms Perkins below and not subject to any EW standards:

“10. *Earthworks or cultivation* either permitted by a rule in a regional plan or Resource Consent issued by Environment Southland.”

Para 19

Ms Carson-McColl considers there may be a scope issue as Stoney Creek Station did not originally submit on EW-S1 or EW-S2 as the rules as notified did not require compliance with these for fencing. We consider there is full scope within our submission to address these standards as our original submission opposed the EW chapter in its entirety and specifically submitted on removing the notified limits from the fencing rule (EW-R1).

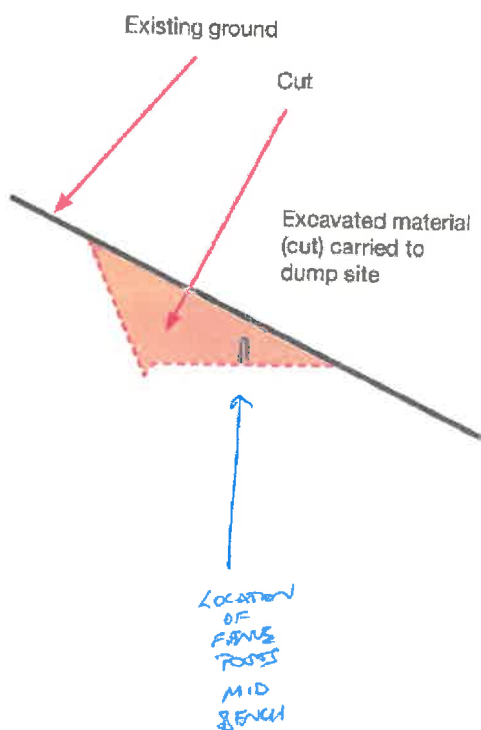
As the standards have now been introduced into EW-R1, and we included a submission point on this rule, there is no reason why we cannot make further

comment on these standards which seek to limit the cut depth and batter slopes of earthworks.

We note that the current rules in the Operative District Plan (Rule 4.13.1 and Rule 2.2.9) exclude earthworks for fencing from the rules/consent requirements, however accept that the recent Land Development and Subdivision Bylaws 2019 appear to control any earthworks including those for regular farming activities in terms of cut depths and batter slopes. We are unsure how many farmers are aware that these predominately urban development focused bylaws now apply across their whole farming areas. None that we have spoken to are.

The consequences of these standards applying to earthworks for fencing in the rural zone is essentially going to mean Stoney Creek Station will need consent for almost any fence they plan to install on their hill slopes.

Ms Carson-McColl also makes the statement in paragraph 19 that "*Ms Perkins in her evidence specifies that on the Stoney Creek property a farm track generally needs to be constructed to erect fences, ...*" This is not correct. As we have described in our evidence, an earthwork cut is undertaken to create a bench for safe access along the fence alignment for machinery required to install the fence. We have included a schematic and photo below that may help to demonstrate this. The fences are often installed in the centre of these cuts leaving only approximately 2m either side which gets re-grassed and does not function as a track, however, in some limited cases vehicle access will be retained along the bench with the fence installed to one side.



Para 22

Ms Carson-McColl discusses the suggested amendment to EW-S1 proposed by Ms Perkins in her evidence that exceedances of the 3m height limit could occur if this *“does not result in instability of the land or any structures in or on the site or adjacent sites”*.

In reference to discussions with the Council’s geotechnical advisor, she indicates that this proposed change would not be appropriate as non-compliance would only be evident after slope failure occurs. We note that those on the ground plan the proposed cuts in advance taking into account the soil types, presence of rock and upgradient slopes. The evidence of K2 Contracting is clear that in their experience there have been no known slope failure issues that have required re-work. We do not believe this approach would be inappropriate if the standards need to apply.

This approach is also similar to a standard in the New Plymouth District Plan which states that:

“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.”

Attached images & video clip

I attach separately a series of photos and a video of the cycle trail in the Cromwell Gorge, an iconic area of NZ. This area is highly visible & provides a very good example of a track or what could be a fence line on a steep & rocky property, with similarities to Stoney Creek Station.

The purpose of the images is to demonstrate the reality of the need for exceedance of any base cut limit & the need for flexibility of a batter limit where 90 degrees or almost vertical is best for the purpose in this case. One size does not fit all.

Para 23

In this paragraph, Ms Carson-McColl states that *“Mr Adams considers that livestock fences in a rural setting and related earthworks may be less of a concern for slope instability, if limited in width, and as they are more remote.”* Yet they go on to conclude that because the width of earthworks is not limited to just the fence there is a higher risk. Through the photos we have presented to you we see no justification to suggest that there is any higher risk with the width of earthworks that are undertaken for fencing activities at Stoney Creek Station.

Para 24

Ms Carson-McColl concludes here that the main issue of amenity effects for boundary fencing is not relevant on rural properties where they are typically post and wire construction and so has proposed to exempt rural boundary fencing from any cut limit. Why are rural boundary fences given an exemption when there is lower risk within a property in its entirety as opposed to between two properties and no amenity issues to manage within a single property. This same exemption should apply to earthworks for all rural fences.

We also note that any reference to “post and wire fence” needs to include all types of rural farm fences.

Para 25

The suggestion in this paragraph that if a cut batter is constructed in rock it can be down to 1:1 from notified 2:1 limit in EW-S2. In reality if there is a rock cut it may be up to 90 degree slope not just 45 degrees. The below photos show batter slopes of between 45 and 90 degrees where they have been cut into rock. As with cut heights, the landowners/managers have the best knowledge as to what batter slope would be most appropriate for the proposed earthworks, particularly those required for fencing.

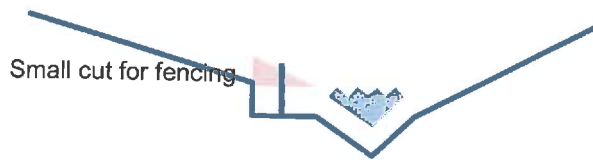
Again also refer to the attached images from the Cromwell Gorge.



Para 27

Ms Carson-McColl states that land disturbance for fencing within proximity to streams is exempt from the setback distances in EW-S3. As we have noted, sometimes earthworks are still required to create a small cut for stock exclusion fencing in steeper gullies (see schematic below). In our view, there is no real difference in potential effects on stream values in terms of water quality between land disturbance and earthworks which both result in exposed soil.

Including Ms Perkins recommended exclusion for fencing earthworks in EW-S3 relating to setbacks from rivers and streams will not result in increased risk on stream values as compliance with EW-S5 is still required, which is the manner by which effects/risks to stream values from erosion and sediment runoff would be managed.



Para 28

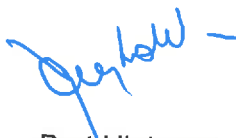
Stoney Creek Station opposed the whole EW chapter and sought a more bespoke solution be arrived at for the land area within Stoney Creek Station on the Hokonui Hills. Given where have arrived at in discussions with Council representatives, a "Precinct" as originally sought in the submissions is not the approach that has been agreed. Instead changes to the rules in the NFL and ECO chapters, alongside changes to the EW chapter are required.

This includes practical changes to reflect the permitted area limit for farm track establishment, maintenance and upgrade at a farm scale. A more generous allowance than the "catch-all" limit of 1,000m³ (EW-R14) for any other earthworks in the rural zone not already covered by a rule can be included here. There is nowhere that says certain activities that are limited in their definition, as *farm tracks* are, can't have a more generous limit, or no limit as is sought by Stoney Creek Station. We have identified the impracticality of only being allowed to construct up to 357 lineal metres of farm track (2,500m² / 7m width) at any one time and seek for this to be removed, or increased to address the way in which farm track are actually constructed as we have already addressed in our evidence.

We note that the NPS-CF does not include any volume or area limit for forestry tracks in the Gore District.

If we are able to assist the panel in any way or clarify the points covered, I would be happy to appear again or respond in writing.

Kind regards



Bret Highsted
Director
Stoney Creek Station Ltd