

Reply to Supplementary Evidence of Ms Carson-McColl in response to Minute 27 from Claire Perkins on behalf of Stoney Creek Station

1. Minute 27 was issued by the Panel seeking further input from the s42A author (Ms Carson-McColl) on several matters including the consistency of the provisions to the National Planning Standards and the way exemptions to earthworks rules were addressed. When considering the exemptions, Ms Carson-McColl was asked to review her recommendations and advise of any changes in order to, among other things:
 - manage earthworks activities where there is an identified resource management issue;
 - consider the scale and significance of earthworks activities;
 - identify activities it is appropriate to exempt from permitted standards and consent pathway; and
 - identify appropriate standards to apply to activities not exempt from permitted standards, with reference to identified resource management issues.
2. This response has been prepared by Claire Perkins, Principal Planner, on behalf of Stoney Creek Station. My qualifications and experience are set out in my earlier briefs of evidence.

Specific response to Ms Carson-McColl's reply

National Planning Standards

3. I agree with her conclusion, that provisions relating to earthworks in the NFL overlay could be included within the relevant district-wide overlay chapter (para 34). The location of these provisions can then be cross-referenced in the district-wide earthworks chapter directing users where to go. Currently the lack of cross-referencing results in a lack of clarity and confusion as to whether the earthworks rules in the EW chapter of NFL chapter apply to areas within that overlay. This will ensure that the district-wide rules don't override the overlay rules.

4. Whilst not consistently adopted by other recent plans, this is the approach taken in Porirua, Timaru and New Plymouth (para 28) particularly for NFL overlays.
5. I do note that there is a conflict in my reading of the proposed amendments to the Earthworks Overview included in para 37 when also reading Note 1 compared to the conclusions reached by Ms Carson-McColl in the reply. I have emphasised some areas of concern in grey shading.

Earthworks Overview

The earthworks chapter provisions apply to all zones, however other provisions within District-wide Matters chapters may apply to earthworks and land disturbance activities in addition to the earthworks chapter. For example, earthworks and land disturbance provisions relating to Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features, and Natural Hazards are located in their respective chapter. Provisions for mining, quarries and or gravel extraction are found in the General Rural Zone chapter.

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Note 1 Provisions in Other Chapters

The provisions in this chapter apply in addition to the provisions of the other chapters in the District Plan and the plan should be read as a whole. This chapter also implements other chapters in the District Plan that do not have specific rules such as Sites and Areas of Significance to Māori and Mana Whenua.

The following chapters contain provisions that may also be relevant for earthworks and land disturbance activities:

- Historic Heritage
- Notable Trees
- Natural Hazards
- Ecosystems and Indigenous Biodiversity
- Natural Features and Landscapes

Provisions for mining, quarries and or gravel extraction are found in the General Rural Zone chapter.

6. My recommendation is that the use of the phrase “may apply..... in addition” when discussing the location of earthworks rules in specific overlays (e.g. NFL) should be changed to read “may apply.....instead of”.
7. I consider it needs to be clear that if there are earthworks provisions in an overlay chapter, they should be considered there instead of in the general district-wide earthworks chapter.

Exemptions

8. I am in agreement with the proposed amendments to simplify the rules/exemptions and make a more user friendly rule framework. I do however, point out that because Rule EW-R14 is a catch-all rule, all earthworks activities within the district will now be required to comply with a permitted rule and associated standards or require a consent rather than the default permitted pathway under section 9 of the RMA.
9. I do prefer the relevant exemptions to be included in EW-R14 or in the standards as this improves the clarity for a regular user picking up the plan and trying to determine if they can comply with the rules.

Resource Management Issues & Policy Direction

10. I note that the current resource management issues relating to earthworks are set out in para 46 of Ms Carson-McColl's reply.

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.

11. In relation to the matters raised by Stoney Creek Station, in particular the significant increase in control within the PDP for earthworks fencing and farm tracks compared to the ODP, there is no further evaluation of these issues provided by Ms Carson-McColl, nor explanation as to the significance of any resource management issue that has been identified as occurring as a result of these activities within the district and needing further control within the rural zone (para 48).
12. The policy direction for these activities, with my emphasis on the most relevant parts in **bold** and **bold shading**, is included below.
13. Policy EW-P4 states:

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.*

14. Policy EW-P5 states:

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:*
 - (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.*

15. This policy direction indicates that the main focus on managing earthworks cut and batter slopes in the permitted standards is to manage effects of amenity and stability on other sites to ensure people and property are protected, whilst also considering the potential visual impacts and landscape

character of the Rural Zone and, in Stoney Creek Station's case, the Natural Features and Landscape (NFL) overlay.

16. I note that in response to the Panel's questions, I have not identified any consideration of the points of concern raised by Stoney Creek in their submission and in evidence in support of that submission in relation to earthworks for fencing being exempt from the standards and farm tracks needing a more generous area allowance.
17. In para 61, Ms Carson-McColl states that there is no volume or area limit for fencing but has not considered the appropriateness of the permitted standards and points raised by Stoney Creek in their supplementary evidence of 18 November 2024. This evidence included additional photos and video illustrating the nature of fencing cuts and batter slopes on rural properties.
18. I consider the policy direction is clear that the management of effects of earthworks for fencing is in relation to protection of amenity and stability of adjoining properties and the standards should therefore not apply within a rural zoned property. As previously stated by Stoney Creek, it is in their best interests to ensure stability of any cuts they may make to protect the integrity of their land, and they are best placed to understand their soils on site to know what batter is suitable for the location.
19. My view has not changed and I consider that earthworks for fencing within a rural property should be exempt from the limits in the standards. In the case of Stoney Creek, as much of the property is located within the NFL overlay, earthworks limits for fencing will still apply to manage effects on the landscape.
20. In respect of Rule EW-R7, limiting earthworks for tracks to 2,500m², no change to this limit has been recommended by Ms Carson-McColl. She makes the inference, at para 63, that technically as there is no volume limit there could be up to 7,500m³ of earthworks if taken down to the full 3m standard limit (EW-S1) over the entire area. This is an unhelpful and impractical conclusion to draw when considering the nature and scale of farm tracks.
21. Even if there was a deep cut on the uphill side of a new track at the full 3m for the entire length, cuts are carried out on slopes such that the cut on the downhill side would be very limited or none at all.

Therefore, the volume of 7,500m³ would never be reached. The current areal limit would restrict farm track construction to only 350 lineal metres at a time (standard 7m width).

22. In my opinion, there is no need for an areal limit for earthworks for farm tracks which are a very specific activity. The number of new tracks required in the district will be limited given the established nature of farming within the district. Compliance with the permitted standards and requirement for progressive stabilisation is sufficient to manage the potential effects that could occur. My experience in applying for a number of earthworks consents in other regions/districts is that effects that are likely to be considered in the consenting process for any breach of the areal limit will be suitably covered by the permitted standards, especially EW-S5 relating to the implementation of erosion and sediment control measures.

Conclusion

23. In summary, I agree with some of the changes recommended by Ms Carson-McColl in relation to the way exemptions are dealt with and the recommendation to cross-reference to the NFL and other overlay chapters if they contain earthworks provisions so as not to result in a double up or confusion in interpretation.
24. I do not, however, consider that sufficient consideration has been given to presence of any resource management issue highlighting that earthworks for farm fencing and farm tracks in the rural zone is causing a problem that results in the need for such strict standards being complied with.
25. My recommendation remains that earthworks for fencing in the rural zone be exempt from any standards and that earthworks for farm tracks no longer have any areal limit.