IN THE MATTER AND IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Hearing of Submissions and Further Submissions on the Proposed Gore District Plan

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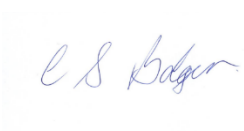
Gore District Plan - Decisions on Submissions

Topic 37: Earthworks

Hearings Panel Members



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Date of Hearing
6 November 2024

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Appendix A. Submissions (attached as a separate document)

Appendix B. Plan Chapter (attached as a separate document)

1 Introduction

1.1 Scope of this Decision

1.1.1 This document details the evaluation and decisions of the Hearings Panel (Panel) on the submissions and evidence considered in relation to the Earthworks chapter of the Proposed Gore District Plan (PDP). The Hearings Commissioners comprising the panel for this hearing were Commissioners Cliff Bolger, Maria Bartlett and Glenys Dickson.

1.1.2 This Decision focuses on the key issues in contention. Where there is no contention, such as submitter support for certain provisions, or minor matters where proposed changes are recommended in response to submissions, the Panel has adopted the recommendations and the underlying evaluation contained in the Section 42A Report prepared by Tina Carlson-McColl.

1.1.3 Attached is the updated provisions for the Earthworks chapter, referencing changes authorised by this and other Decisions of the Panel. Changes made in response to submissions are shown in normal black font, with text either underlined for additions or as ~~strikethrough~~ for deletions. A reference is also provided of the decision and paragraph number giving rise to the changes in response to submissions. Amendments made to the PDP pursuant to clause 16(2) are shown in the updated District Plan chapters in a green font. Shown in a red font are consequential numbering changes arising from provisions being added or deleted.

1.1.4 Appendix A lists the submissions considered in this decision and their outcome, described as accepted, accepted in part or rejected. For convenience, the Panel has chosen to make decisions on original submissions only. By implication, but not explicitly, it has also made decisions in relation to further submissions.

1.1.5 Attention is also drawn to Decision 2, Whole of Plan and Repeated Submissions that responds to submissions lodged to the District Plan as a whole, together with those lodged to multiple zones and/or chapters in the PDP. In some cases, these submissions may result in amendments to this chapter as well. Any such changes are annotated as a footnote in the updated provisions.

1.2 Abbreviations

1.2.1 In preparing this decision we have used the following abbreviations:

Full Text	Abbreviation
Clause 16(2) of the First Schedule of the RMA	cl 16(2)
Department of Conservation	DoC
Environment Southland	ES
Gore District Council	Council
Gore District Plan	Plan
Hearing Stream	HS
Hearings Panel	Panel
Heritage New Zealand Pouhere Taonga	HNZPT
Hokonui Rūnanga Incorporated	Hokonui Rūnanga
Mana Whenua	MW
National Planning Standards 2019	National Standards
New Zealand Transport Agency Waka Kotahi	NZTA
Proposed Gore District Plan	Proposed Plan or PDP
Report prepared under section 42A of the RMA	s42A Report
Resource Management Act 1991	RMA
RMA section	S

Full Text	Abbreviation
Sites & Areas of Significance to Māori	SASM
Proposed Southland Water and Land Plan	PSWLP
Southland Province of Federated Farmers of New Zealand	Federated Farmers
Southland Regional Policy Statement	RPS
Stoney Creek Station Limited	Stoney Creek
Transpower New Zealand Limited	Transpower
Wantwood Station (McLeod-Wantwood Trust)	Wantwood

1.3 Statutory Considerations

1.3.1 The Panel's Decision1 Preliminary Matters and Statutory Requirements Relevant to Decisions sets out the legal framework and requirements for preparing a District Plan, as well as case law referred to in legal submissions and evidence provided to the Panel. This framework is not repeated in this Decision. Rather, this Decision should be read in conjunction with Decision 1, and in particular section 3.6 (referencing s7 of the RMA), section 3.7 (discussion of national standards), and section 4.3 of that decision (section 32AA of the RMA).

1.3.2 In s42A reports to the Panel, the authors are required to consider any alternative provisions put forward in the context of s32, and when changes are recommended, a further assessment under s32AA is provided if the change is a material departure from what was notified. That same obligation to make a further assessment under s32AA also applies to the Panel if it decides to make changes to the Plan in response to submissions which materially depart from the notified version.

1.3.3 Through Minute 5, the Panel requested submitters seeking changes to District Plan provisions to have regard to the s32 provisions and provide material to the Panel that would facilitate any additional s32AA assessment required if it was of a mind to accept the changes they sought.

1.3.4 Where the Panel has made amendments to the Proposed Plan that are consistent with the recommendations contained within the s42A Reports and associated evidence the Panel has adopted the s32AA analysis contained within those reports and evidence, unless expressly stated otherwise. Those reports are part of the public record and are available on the Council's website.

1.3.5 Where the Panel has made amendments to the Proposed Plan that are not contained within the s42A Report, or which were not subject to a s32AA assessment provided by submitters, the Panel has undertaken the required s32AA analysis and has incorporated it into the body of the decision, with the required assessment forming part of the evaluation. The Panel is satisfied that the required substantive assessment has been undertaken where required.

1.3.6 The Panel has summarised legal advice on scope that was received during the hearing process in Decision 1, section 3.4, and the approach taken in decisions. This decision, and related decisions on earthworks provisions, reference scope of submissions relied upon to make amendments to the notified Plan.

1.3.7 In her s42A Report, Tina Carlson McColl summarised submissions on the Earthworks chapter, identifying a total of 395 submission points and 50 further submission points as relevant. She summarised the key issues as including: definitions; management of earthworks across the Plan; exemptions and exclusions; relationship with historic heritage, particularly archaeology; relationship with effects on indigenous biodiversity; commercial forestry; earthworks on steep land; relationship with farming activities;

specific provisions for the Hokonui Hills; relationship with infrastructure and utilities; and concerns with sediment and erosion control, including site rehabilitation.

1.3.8 The Panel adopts Tina Carlson-McColl's summary of submissions, unless otherwise stated. The Panel recognise the high level of interest in this chapter, as reflected in the number of applicable submission points, received from 49 principal submitters, and two further submitters that were not also principal submitters (Kāinga Ora and Yrless). The Panel note that Federated Farmers (S126) were a principal submitter, although they are missed off Tina Carlson-McColl's table on page 6 of her s42A Report, appearing there only as a further submitter.

1.3.9 The Panel are also satisfied that the decision on the Earthworks chapter meets statutory requirements, including the purpose and principles in Part 2 of the RMA and directions contained in National Planning Standards, and that it appropriately gives effect to the Southland Regional Policy Statement (RPS). Further discussion of statutory matters occurs in this decision where relevant to a particular aspect of the decision.

1.4 Procedural Matters

1.4.1 There were no pre-hearing meetings or meetings undertaken in accordance with clause 8AA of Schedule 1, on the submissions relating to the Earthworks chapter.

1.4.2 Commissioner Hovell identified a potential conflict of interest in response to concerns expressed by Yrless (S149.029), as referenced in paragraph 1.5 of Minute 5 issued by the Panel on 16 April 2024 and section 2.7 of Decision 1 of the Panel. Commissioner Hovell chaired some of HS7 but did not participate in decision-making on the Earthworks chapter, except to the extent required to ensure integration across other chapters of the Plan.

1.4.3 No other procedural matters were raised at the hearing.

1.4.4 No matters of trade competition were raised.

2 The Hearings and Panel Minute

2.1 Earthworks Hearing

2.1.1 The hearing in relation to this topic was held on 6 November 2024 at the Gore District Council administration building, in Gore. Submissions with regard to the Earthworks chapter were heard together with other matters in Hearing Stream 7.

2.1.2 Prior to the hearing, the Hearings Panel received a s42A Report from Tina Carlson McColl and also received a statement from her at the hearing. Her report and evidence was assisted by specialist advice from Mark Adams (Engineering Geologist at RDA Consulting Ltd), Richard Brunton (Water Resources Engineer at Tonkin And Taylor), and legal advice from Shelley Chadwick (Anderson Lloyd).

2.1.3 Submitters who appeared at the hearing on the Earthworks chapter, or submitted further information for the Panel to consider are shown in Table 1.

Table 1. Earthworks Chapter – Submitters Attending the Hearing

No.	Submitter	Attendees	Nature of Evidence
S32, S35, S37, S33, S154	Telecommunications Companies	Tom Anderson	Video Link
S3	Stoney Creek Station	Brett Highsted Claire Perkins	In person Video Link
S132	KiwiRail	Louise Taylor	Video link
S101	Transpower	Ainsley McLeod	Video link

2.1.4 Submitters forwarding information for the Panel to consider in assessing the submissions lodged to the Earthworks chapter were:

- Silver Fern Farms (S40)
- Kainga Ora (FS28)
- The Fuel Companies (S16)
- Department of Conservation (S109)

2.2 Other Hearings

2.2.1 This decision considers all evidence received in relation to earthworks from various hearing streams and is to be read in conjunction with Decision 14 (Mana Whenua), Decision 30 (Transport), Decision 38 (Energy), Decision 39 (Infrastructure), Decision 41 (Historic Heritage), Decision 43 (notified SASM Chapter), Decision 45 (Ecosystems and Indigenous Biodiversity) and Decision 46 (Natural Features and Landscapes).

2.2.2 Decision 2 lists the submissions lodged to the Whole of the Plan. Submission S139.040 Hokonui Rūnanga Inc raises issues relevant to this decision and in that regard, relevant evidence was received by the Panel during the hearings to consider submissions to the Mana Whenua and Sites of Significance to Māori chapters from:

- Courtney Bennett for the Gore District Council
- Amy Beran for Hokonui Rūnanga

2.2.3 The Panel received evidence in HS3 on 22 July 2024, HS8 on 5 December 2024 and HS9A on 19 February 2025 from Courtney Bennett and Amy Beran, which included recommendations on provisions in the Field Days Zone that manage effects on Ngāi Tahu cultural values. For provisions where there were no matters in contention or further recommendations arising from evidence received in HS8 or HS9A, these are not discussed further in this decision. Otherwise, discussion the evidence is included in this decision in relation to particular provisions of the chapter.

2.3 Panel Minute 27

2.3.1 Following the hearing of evidence on the Earthworks chapter, the Panel issued Minute 27, dated 15 November 2024, that covered matters arising in HS7. Application of the National Planning Standards was queried in relation to Earthworks, Energy and Infrastructure; in particular, concerns of the Panel that the proposed structure of the Plan may not give effect to mandatory national standards.

2.3.2 The Panel also raised questions about the treatment of exemptions in the Earthworks Chapter and how best to manage them, with reference to the definition of “earthworks” and the implications of applying permitted activity standards to them. The Panel also asked the s42A reporting officer, Tina Carlson-McColl, to consider further the matter of identified resource management issues in the district associated with earthworks, and the scale and significance of adverse effects of particular earthworks activities.

2.3.3 Overall, the Panel indicated the need to be mindful of s9(3) of the RMA and avoid unintended consequences of making activities subject to rules and standards, particularly activities that were notified as “exemptions”. The Panel invited a response from the s42A Reporting Officer to these matters by 14 January 2025 and provided the opportunity for submitters to respond with supplementary evidence by 28 January 2025, to align with the timetable for HS9.

2.3.4 The Panel received a right of reply and response to Minute 27 from Tina Carlson-McColl, along with Mishka Banhidi, on 14 January 2025. This included discussion of

scope issues were highlighted by the reporting officer in relation to some options put forward for consideration by the Panel in response to Minute 27.

2.3.5 The Panel received a request on 29 January 2025 from the planner representing Stoney Creek Station, Claire Perkins, to extend the deadline for lodging evidence in response to the s42A Reporting Officer's reply to Minute 27 by three days to 31 January 2025. The Panel had a concern that other submitters may have also missed the opportunity to provide evidence, due to the time of year, the number of hearing communications, and changes in the hearing schedule. Only Ainsley McLeod for Transpower included the matter in her evidence for HS9. The Panel issued Minute 36, dated 29 January 2025, providing all submitters until 31 January 2025.

2.3.6 The only evidence received by the Panel in HS9 from submitters in response to the s42A Reporting Officer's reply to Minute 27 was from Transpower and Stoney Creek Station.

2.3.7 The Panel received evidence from Federated Farmers, dated 21 February 2025, in HS11 from Rachel Thomas and Bernadette Hunt. This evidence explained that Federated Farmers were unable to meet the HS9 deadline due to preparations for the resumption of the SASM hearing. The Panel accepted this evidence, due to the Wrap-up hearing timetable providing opportunity for the s42A Reporting Officer to respond, despite the three week delay in receipt of Federated Farmers evidence.

2.3.8 The Panel received evidence for the Wrap-up hearing (HS12) from Tina Carlson-McColl, on 14 March 2025, that provided further consideration of application of the national standards in relation to earthworks and changes to relevant plan provisions, in light of Minute 27 and all evidence received through the process.

2.3.9 All written material received by the Hearings Panel is available on the Council's website.

3 Definitions

3.1 Standalone Submissions in Support

Submitter	Decision Requested
S126.010 Southland Federated Farmers of NZ S115.011 Kevin Robertson S143.022 Rural Ratepayers Group S148.023 Alistair & Bernadette Hunt S60.013 Ronald Crispin S68.131 John Baynes	Interpretation: bore Retain as notified
S126.015 Southland Federated Farmers of NZ S3.085 Stoney Creek Station Ltd S113.085 Trudy Bokser S116.085 Nathan Bokser S118.085 AW+ JA Johnston Family Trust S127.121 Peters Farm Ltd Karen Peters S18.087 Reaby Downs Farm Ltd S19.087 Karen Temple S20.087 Sarah and Peter Barclay S24.087 Helen McIntosh S68.089 John Baynes S115.016 Kevin Robertson S143.027 Rural Ratepayers Group S148.028 Alistair & Bernadette Hunt S60.018 Ronald Crispin S68.136 John Baynes S117.085 Greg Bokser	Interpretation: dead holes Retain as notified
S126.016 Southland Federated Farmers of NZ S3.086 Stoney Creek Station Ltd	Interpretation: earthworks Retain as notified

S113.086 Trudy Bokser S116.086 Nathan Bokser S118.086 AW+ JA Johnston Family Trust S127.122 Peters Farm Ltd Karen Peters S18.088 Reaby Downs Farm Ltd S19.088 Karen Temple S20.088 Sarah and Peter Barclay S24.088 Helen McIntosh S68.090 John Baynes S115.017 Kevin Robertson S143.028 Rural Ratepayers Group S148.029 Alistair & Bernadette Hunt S60.019 Ronald Crispin S68.137 John Baynes S117.086 Greg Bokser	

3.1.1 The Panel acknowledges the submissions in support of the definitions for "bore", "dead Holes" and "earthworks" noting those for bores and earthworks come from the National Standards. No submissions were received opposing these definitions or seeking amendments. They are therefore retained as notified and the listed submissions accepted.

3.1.2 In her evidence for HS7 dated 18 October 2024, Claire Perkins for Stoney Creek discussed use of the term "cultivation", which she noted was exempt from the definition of "earthworks" and therefore should not be covered by the Earthworks Chapter. She noted that cultivation is adequately managed by the Proposed Southland Water and Land Plan (PSWLP). This matter arose in relation to how the chapter manages exemptions that were part of the notified chapter.

3.1.3 Tina Carlson-McColl responded on this matter in her HS7 supplementary evidence dated 5 November 2024, with reference to the submissions of Transpower and HNZPT, expressing concern about the need to manage undiscovered archaeological sites, as well as erosion, sediment and dust control. She therefore considered that "cultivation" should be a permitted activity, subject to notified EW-S7 (the Accidental Discovery Protocol) and notified EW-S5 (erosion, sediment and dust), although she was satisfied the PSWLP could be relied upon in relation to the setbacks from rivers and streams.

3.1.4 Bret Highsted for Stoney Creek provided further information in supplementary evidence dated 18 November 2024, as part of HS9, supporting the evidence of Claire Perkins, arguing against the need to manage cultivation through a permitted activity and consenting regime.

3.1.5 The Panel disagrees with Tina Carlson-McColl that there is a need to apply notified EW-S5 to cultivation, given the thorough nature of Rule 25 of the PSWLP and therefore agree with Claire Perkins. The Panel is guided by the national standards, which define both "cultivation" and "earthworks". The Panel notes that "cultivation" is specifically excluded from the definition of "earthworks", and therefore considers that it is not appropriate for the Earthworks Chapter (the form and content of which is also directed by the national standards) to manage the activity of cultivation. The Panel considers that a definition is still required in the Plan, however, in order to correctly interpret the "earthworks" definition.

3.1.6 The Panel accepts that there is some potential for accidental discovery of archaeology during cultivation activity, and given that the Earthworks Chapter cannot manage cultivation, this potential must be addressed by other means. This is acknowledged by Tina Carlson-McColl in paragraph 74 of her s42A Report. The Panel considers that HH-R5 and the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPT Act) will apply in these circumstances.

3.2 Farm Track

Submitter (S) Further Submitter (FS)	Decision Requested
S126.018 Southland Federated Farmers of NZ S115.019 Kevin Robertson S143.030 Rural Ratepayers Group S148.031 Alistair & Bernadette Hunt S60.021 Ronald Crispin S68.139 John Baynes	Interpretation: farm track Retain as notified
S113.088 Trudy Bokser S116.088 Nathan Bokser S118.088 AW+ JA Johnston Family Trust S127.124 Peters Farm Ltd Karen Peters S18.090 Reaby Downs Farm Ltd S19.090 Karen Temple S20.090 Sarah and Peter Barclay S24.090 Helen McIntosh S68.092 John Baynes S117.088 Greg Bokser S3.088 Stoney Creek Station Ltd	Amend the definition for farm track to read: Means ~~vehicle access~~ tracks for the movement of vehicles and/or stock associated with agriculture, pastoral and horticultural activities.
FS17.095 Federated Farmers	

3.2.1 The submissions in support of the definition are acknowledged. As the provision has been altered, these submissions are accepted in part.

3.2.2 The Panel agrees with the assessment of Tina Carlson-McColl at paragraph 83 of her s42A Report where she recommends accepting the submissions to amend the definition.

3.2.3 Submissions S113.088 Trudy Bokser and others are accepted by amending the definition of "farm track" as follows:

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

3.3 Land Disturbance

Submitter (S)	Decision Requested
S113.095 Trudy Bokser S116.095 Nathan Bokser S118.095 AW+ JA Johnston Family Trust S3.095 Stoney Creek Station Ltd S127.131 Peters Farm Ltd Karen Peters S18.097 Reaby Downs Farm Ltd S19.097 Karen Temple S20.097 Sarah and Peter Barclay S24.097 Helen McIntosh S68.099 John Baynes S117.095 Greg Bokser	Interpretation: land disturbance Retain 'land disturbance' definition as drafted
S104.019 McLeod-Wantwood Trust/Wantwood Station S105.019 Farm Manager - Wantwood Station S127.019 Peters Farm Ltd Karen Peters	Amend all sections that land disturbance appears in to reflect its true meaning or remove if applicable. As it states that land disturbance does not permanently alter the profile, contour or height of the land, therefore, why have it? Land disturbance is controlled in the ECO and NFL chapters, given its meaning this is inappropriate.

3.3.1 The s42A Report identified that "land disturbance" is defined in the national standards and therefore its definition cannot be altered. The Panel also considers there are reasons for the Plan to separately manage "land disturbance" that does not permanently alter the land form, for example to protect known archaeological sites (e.g. HH-R5). The Panel therefore considers the use of the definition appropriate in

specific provisions of the Earthworks chapter, and as a consequence submissions Wantwood Station (S104.019) and others are rejected.

3.3.2 The submissions in support of the definition are acknowledged. As the provision has been retained unaltered, these submissions are accepted.

3.4 Landscape Gardening

Submitter (S)	Decision Requested
S126.029 Southland Federated Farmers of NZ S115.030 Kevin Robertson S143.041 Rural Ratepayers Group S148.042 Alistair & Bernadette Hunt S60.032 Ronald Crispin S68.150 John Baynes	Amend definition of landscape gardening and make any necessary consequential amendments: 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. To avoid doubt, this definition excludes agricultural activities.

3.4.1 Tina Carlson-McColl in her s42A Report advised the term “landscape gardening” is not used in the Plan, although the term “gardening” is used and is specifically exempt from the “earthworks” definition. She therefore recommended change accepting the submissions seeking an addition to the wording and altering the definition heading by deleting reference to “landscape”.

3.4.2 The Panel disagrees with the s42A Report recommendations and submitters regarding any need for a definition of “landscape gardening” or “gardening”. As the term is not used anywhere in the Plan, the Panel considers that this definition should be deleted.

3.4.3 The term “gardening” appears within the notified Plan in the definition of “earthworks” as an exclusion, HH-R4 and the rules section of the Earthworks Chapter as an exemption. The Panel does not consider there is any need to refer to “gardening” at all in the Earthworks chapter because it is exempt from the definition of “earthworks” and that is sufficient, particularly since the chapter does not manage the activity. The Panel also considers that the term can be readily understood by plan users with reference to its ordinary meaning, without the need for a definition.

3.4.4 Accordingly, as a minor matter under clause 16(2) the definition of “landscape gardening” is deleted and submissions S126.029 Southland Federated Farmers of NZ and others are rejected.

3.5 Silage Pit

Submitter (S)	Decision Requested
S113.113 Trudy Bokser S116.113 Nathan Bokser S118.113 AW+ JA Johnston Family Trust S127.149 Peters Farm Ltd Karen Peters S18.115 Reaby Downs Farm Ltd S19.115 Karen Temple S20.115 Sarah and Peter Barclay S24.115 Helen McIntosh S68.117 John Baynes S117.113 Greg Bokser S3.113 Stoney Creek Station Ltd	Amend the definition of silage pit as follows: Means ~~an area constructed and used for the purpose of fermentation and storage for animal feed~~. 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.
FS17.0100 Federated Farmers	*Allow S117.113 Greg Bokser*
S126.047 Southland Federated Farmers of NZ S115.048 Kevin Robertson S143.059 Rural Ratepayers Group S148.060 Alistair & Bernadette Hunt S60.050 Ronald Crispin	Amend definition and make any necessary consequential amendments: Means an area constructed and used for the purpose of ensilement and fermentation of pasture, and storage of silage for animal feed.

S68.168 John Baynes	

3.5.1 Tina Carlson-McColl recommended amending the definition of "silage pit", intending to focus on the earthworks component of the activity, rather than its use; and accepting in part the submissions and evidence from Federated Farmers and Stoney Creek. She recommended the following wording:

> **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.

3.5.2 The Panel considers that further simplification of the definition of "silage pit" is warranted in order to focus only on the earthworks component of the construction of the pit, rather than its use, which was the intention of the reporting officer. The Panel does not consider it necessary to include the words "in relation to earthworks" because silage pits are only referenced in the Earthworks chapter and in relation to excluded activities in the Designations chapter. The Panel does not consider the words "and used" to be necessary either, because it is the construction that is of relevance to the chapter. The Panel agrees that "fermentation" can be replaced with "ensilement of pasture" and does not think that "processing or use" is relevant, since the "area constructed" is for silage and that is sufficient in terms of what needs to be assessed in relation to earthworks.

3.5.3 Accordingly, submissions S126.047 Southland Federated Farmers of NZ and others and S113.113 Trudy Bokser and others are accepted in part by amending the definition of silage pit as follows:

> **silage pit**
> Means an area constructed ~~and used~~ for the purpose of ~~fermentation~~ ensilement of pasture and storage of silage for animal feed.

4. General, Overview, Objectives and Policies

4.1 General

Submitter (S) Further Submitter (FS)	Decision Requested
S111.011 Aggregate and Quarry Association	Retain chapter as notified
S128.031 Greenbriar Ltd.	Support full chapter

4.1.1 The submissions in support of the chapter are acknowledged. As provisions in the chapter have been altered, these submissions are accepted in part.

Submitter (S) Further Submitter (FS)	Decision Requested
S144.011 Contact Energy Ltd	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. There does not appear to be recognition within district wide matters that in developing large scale renewable electricity generation activities there may be associated earthworks.

4.1.2 Tina Carlson-McColl at paragraph 64 of her s42A Report stated that overlay chapters may apply to renewable electricity generation, that the Plan needed to be read as a whole and that spatial layers may apply to renewable electricity generation activities in other chapters of the Plan. No particular changes were recommended. The Panel has considered this submission in the context of Minute 27 and other submissions seeking clarity about the relationship of the Earthworks chapter with other chapters of the Plan,

and as a consequence submission S144.011 Contact Energy Ltd is accepted in part due to amendments to the How the Plan Works section of the Plan.

Submitter (S) Further Submitter (FS)	Decision Requested
S140.012 Robina Johnston	Considers that land with more than 60% over 10 degrees should provide swales and a vegetation to mitigate the runoff from the new dwelling and buildings to stabilize slopes and beautification.

4.1.3 Tina Carlson-McColl at paragraph 72 of her s42A Report advised that the Council's geotechnical advisor Mark Adams considered the provision of swales and a vegetation to mitigate the runoff from the new dwelling and buildings to stabilize slopes and beautification may be impractical to implement and that swales on slopes may have the opposite effect and decrease slope stability. Based on that advice Tina Carlson-McColl recommended rejecting the submission. She also noted there are existing earthworks standards that apply to manage the potential stability issues. The Panel agrees with the assessment of Tina Carlson-McColl and accordingly submission S140.012 Robina Johnston is rejected.

Submitter (S) Further Submitter (FS)	Decision Requested
S123.013 Heritage NZ Pouhere Taonga	Amend: ~~Historic Heritage site~~ Heritage Item through PDP as is defined.
FS5.116 Hamish Weir	Disallow S123.013 Heritage NZ Pouhere Taonga
FS17.060 Federated Farmers	Allow S123.013 Heritage NZ Pouhere Taonga

4.1.4 At paragraph 72 of her s42A Report, Tina Carlson-McColl referred to the definitions of "Heritage Item" and "Historic Heritage" noting:

> 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

4.1.5 The Panel agrees with that assessment and notes that HNZPT did not provide any additional material for the panel to consider. Accordingly, submission S123.013 Heritage NZ Pouhere Taonga is rejected.

Submitter (S) Further Submitter (FS)	Decision Requested
S3.034 Stoney Creek Station Limited, S113.034Trudy Bokser S116.034 Nathan Bokser S118.034 AW & JA Johnston Family Trust, S18.036 Reaby Downs Farm Limited S19.036 Karen Temple S20.036 Sarah & Peter Barclay S24.036 Helen McIntosh S68.038 John Baynes S127.070 Peters Farm Limited Karen Peters S117.034 Greg Bokser	Preferred relief: Insert an exemption in the preamble of the chapter for any earthworks and land disturbance activities within the Hokonui Hills Special Precinct. Develop appropriate earthwork provisions for the Hokonui Hills Special Precinct, in consultation with key stakeholders, that reflect the site specific conditions and challenges of this area. Stoney Creek Station Limited S3.037 EW - Earthworks EW - General Oppose It is unclear how Rules and Standards interact and there is no guidance clarifying the applicability of Amend table headings from
FS11.038 Heritage NZ Pouhere Taonga	Disallow in part S3.034 Stoney Creek Station Ltd
S104.023 McLeod-Wantwood Trust S105.023 Farm Manager – Wantwood Station S127.023 Peters Farm Ltd Karen Peters	Clarification is required whether areas subject to the ONL are excluded from the provisions in the earthworks chapter.

4.1.6 The s42A Report referenced the request of Stoney Creek (S3.034) for a Hokonui Hills Special Precinct area with different earthworks rules, to reflect specific conditions on the hills, which was supported by other submitters. Tina Carlson-McColl considered the matter of a precinct to be most relevant to consideration of the Natural Features

and Landscapes Chapter, and earthworks rules in that chapter, given that the Hokonui Hills area is the only identified ONL in the district.

4.1.7 The s42A Report considered the submission of Wantwood Station (S105.023) and others regarding whether areas in the ONL overlay are excluded from provisions in the earthworks chapter. Tina Carlson-McColl indicated, similar to Historic Heritage, that the Natural Features and Landscapes Chapter contains earthworks provisions that apply in that area. She identified that there was variability in the rules around whether the overlay chapter exemptions were recorded, which she determined needed to be corrected.

4.1.8 The joint right of reply evidence of Tina Carlson-McColl and reporting officer for the Infrastructure Chapter, Mishka Banhidi, dated 14 January 2025, responded to Minute 27. Overall, their joint position, after reviewing the national standards and a range of district plans, was that chapters dealing with matters of national importance could have bespoke rules, rather than be governed by the general district-wide rules; which was found to be an approach used in other district plans, and also generally consistent with the structural design of the PDP, although there were found to be anomalies amongst rules (e.g. ENRG-R1, INFR-R9, TRANS-R1, HAZS-R1, SIGN-R4 and EW-R13). They considered that the lack of direction in the national standards for cross-referencing in Historic Heritage, Ecosystems and Indigenous Biodiversity, and Natural Features and Landscapes may be an indication that all provisions applying to the overlays are anticipated to be located there.

4.1.9 The reporting officers found a high degree of variability across district plans, as each territorial authority has attempted to resolve competing instructions in the national standards. They summarised their findings from review of eight recent plans[1] by territorial authorities as follows:

- Earthworks chapters contain general earthworks provisions for zones;
- District-wide overlay chapters often include earthworks rules, but only sometimes infrastructure rules;
- Rules for earthworks associated with infrastructure activities are often found in the infrastructure chapter;
- Rules for earthworks associated with the transport network are typically not located in the transport chapter;
- Rules for earthworks associated with the construction of roads are sometimes found in the infrastructure chapter;
- Rules for infrastructure within overlay areas are often located in the infrastructure chapter, but sometimes in the overlay chapter; and
- Some plans specify that infrastructure rules take precedence over zone chapter rules.

4.1.10 The reporting officers emphasised that the choice made regarding application of the national standards should be clear within the “How the Plan Works” section of the Plan, within chapter Overviews (including the specific example of the Earthworks Chapter) and a consistent use of cross-referencing in the Plan established. They did not consider that the costs of restructuring the plan would outweigh the benefits, but saw some opportunity to improve consistency in approach across the Plan. They therefore

[1] Partially operative Selwyn District Plan, proposed Porirua District Plan, Wellington City District Plan, proposed Timaru District Plan, proposed New Plymouth District Plan, partially operative Mackenzie District Plan, Southland District Plan, partially operative Dunedin City District Plan

recommended that EW-R13 should be moved to the Natural Hazards Chapter, reasoning that this would reinforce the approach that favoured locating bespoke earthwork rules in overlay chapters.

4.1.12 Claire Perkins in her 3 February 2025 evidence for Stoney Creek Station responded to the Minute 27 response of Tina Carlson-McColl with the position that earthworks provisions in the Natural Features and Landscapes Chapter should prevail over provisions in the Earthworks Chapter.

4.1.13 The Panel considered the evidence provided by the reporting officers and submitters' planners about the variety of structural responses taken by district plans around the country for earthworks and infrastructure. The Panel considered the structure of the notified Plan and determined that:

- it is appropriate that mining and quarrying activities are not managed by the Earthworks Chapter, in accordance with the National Planning Standards, Section 7: District-wide Matters Standard, mandatory direction 31, with all such activities anticipated and managed in the rural zones and precincts (as referenced in Decision 16, Decision 17 and Decision 26); therefore, the Earthworks Chapter must cross-reference to mining and quarrying provisions in the rural zones and precincts; and
- it is appropriate that earthworks impacting scheduled historic heritage sites and areas are managed in the Historic Heritage Chapter, in accordance with the National Planning Standards, Section 7: District-wide Matters Standard, mandatory direction 15(b), as discussed in Decision 41.

4.1.14 The notified Natural Features and Landscapes Chapter, contained provisions managing land disturbance and earthworks, NFL-R3 and NFL-R5, which is discussed in Decision 46. The Panel have focussed on ensuring that the Plan retains integrity between the provisions of the Earthworks Chapter and the provisions of the Natural Features and Landscapes Chapter.

4.1.15 "Ground disturbance" and "land disturbance" are referenced in the notified Notable Trees Chapter (TREE-P3) and the notified Ecosystems and Indigenous Biodiversity Chapter (ECO-R1) respectively. The Panel's decision is that these chapters should not specifically reference "land disturbance", which is managed by the Earthworks Chapter because land disturbance is part of the definition of "earthworks". The Panel note that any activities occurring within the root protection area of a notable tree will be captured by TREE-R3, including any earthworks activities. The Panel consider that the Ecosystems and Indigenous Biodiversity Chapter manages vegetation clearance, which may or may not be associated with earthworks, and that the chapters are therefore performing different roles. These matters are discussed further in Decision 42 and Decision 45.

4.1.16 The Earthworks chapter in the notified Plan contained a rule relating to earthworks in an area subject to flooding hazard risk (EW-R13). As discussed further in section 4.7 of this decision, the Panel have moved this rule to the Natural Hazards Chapter of the Plan, in accordance with the National Planning Standards, Section 7: District-wide Matters Standard, mandatory direction 10.

4.1.17 The notified Plan included earthworks issues as matters of control or restricted discretion within rules in the Hokonui Hills Rural Lifestyle Precinct, the Natural Open Space Zone, the Gore West Development Area and Subdivision Chapters, as discussed in Decision 17, Decision 7, Decision 22 and Decision 36. These matters of control or restricted discretion, where they are retained, will link to policies in the

Earthworks Chapter in the Plan. The notified Plan also contained a reference to earthworks in the Energy Chapter, policy ENRG-P11, which the Panel determined to be anomalous, and therefore that policy is amended, as discussed in Decision 38.

4.1.18 Overall, the Panel's decision is that in order to give effect to the National Planning Standard, Section 7: District-wide Matters Standard, mandatory direction 29, the Earthworks Chapter will manage all earthworks in the district, with the exception of earthworks: impacting a scheduled historic heritage site or area; impacting an outstanding natural feature or landscape; occurring in an area subject to flooding hazard risk; or impacting a notable tree. The Panel therefore accept in part submissions S3.034 Stoney Creek Station and others and S105.023 Wantwood Station.

4.2 Overview

Submitter (S)	Decision Requested
S109.107 Department of Conservation	Retain reference to which rules apply for SNAs and ONL/Fs.
S123.015 Heritage NZ Pouhere Taonga	The Earthworks chapter overview states that "This chapter excludes earthworks provisions relating to Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features and Amenity Landscapes. For earthworks rules relating to these topics, refer to those chapters". Some of the rules under this chapter restate that these provisions exclude historic heritage sites and some of the rules do not. This may lead to plan users incorrectly applying certain rules in the earthworks chapter to historic heritage sites. HNZPT recommends either restating the exemption of historic heritage sites under all rules within the earthworks chapter or under none of them. Amend All earthworks chapter rules to consistent re`state or not state that Historic Heritage sites are exempt.
S146.066 Southland District Council	Support Note 4

4.2.1 In her right of reply evidence dated 14 January 2025, Tina Carlson-McColl recommended amending the Overview to state that the chapter applies to all zones, however other district-wide chapters may apply to earthworks and land disturbance activities. Her recommended amendments specifically referenced Historic Heritage, Significant Natural Areas, Outstanding Natural Landscapes and Features and Natural Hazards. She recommended text indicating that provisions for mining, quarries and gravel extraction are in the General Rural Zone. In addition, she recommended changes to Note 1 Provisions in Other Chapters to include reference to Historic Heritage, Notable Trees, Natural Hazards, Ecosystems and Indigenous Biodiversity and Natural Features and Landscapes as chapters that may also be relevant for earthworks and land disturbance activities.

4.2.2 Claire Perkins in her 3 February 2025 evidence for Stoney Creek Station responding to the Minute 27 response of Tina Carlson-McColl raised concerns about disparity between the new recommended wording for the Overview and for Note 1 Provisions in Other Chapters. Her recommendation was to make it clear that earthworks rules in an overlay chapter apply instead of those in the Earthworks Chapter.

4.2.3 The Panel agrees with Tina Carlson-McColl that amendment is required to the Overview as a result of decisions reached on the chapter as a whole. The Panel also agrees with Claire Perkins that earthworks rules in an overlay chapter should take precedence over a rule managing the same activity in the Earthworks chapter. The Panel has identified four chapters where this would be the case in the decision version of the Plan, namely Historic Heritage, Natural Features and Landscapes, Natural Hazards and Notable Trees.

4.2.4 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A included an analysis of reliance on the Accidental Discovery Protocol (ADP) to manage potential adverse effects on Ngāi Tahu cultural values at unknown archaeological sites, as discussed in Decision 14 and Decision 43. In her evidence dated 12 February 2025, Amy Beran provided advice that the HNZPT and Ngāi Tahu ki Murihiku ADPs should be combined in notified EW-S7 to provide clarity for plan users that there is only one protocol to follow, as contained in that standard.

4.2.5 The Panel has reviewed all Notes in the Plan as part of considering submissions to remove unnecessary duplication and determined that:

(a) Note 1 can be deleted because reliance can be placed on the introductory sections of the Plan.

(b) Note 2 can be deleted in favour of incorporating additional text in the table within the How the Plan Works section Relationship with other plans and documents, as discussed in Decision 3.

(c) Note 3 can be deleted because notified EW-S7, re-numbered EW-S6, contains the Accidental Discovery Protocol, and for the reasons outlined in the evidence of Amy Beran, plan users will benefit from being able to rely on that standard to manage matters of concern to both HNZPT and Hokonui Rūnanga when archaeological remains are accidentally uncovered during earthworks.

(d) Note 4 can be deleted in favour of incorporating text at the end of the Overview to the chapter, as has also been incorporated in the Overview to the Historic Heritage chapter.

4.2.6 These changes are made as an amendment under Clause 16(2) of the First Schedule, including addition to the end of the Overview to the chapter.

4.2.7 Submissions S109.107 Department of Conservation, S104.023 McLeod-Wantwood Trust/ Wantwood Station and others, and S123.015 Heritage New Zealand Pouhere Taonga are accepted in part by:

(a) amending the second paragraph of the Overview as follows:

~~This chapter excludes~~ ~~e~~*E*arthworks and *land disturbance* provisions relating to *Historic Heritage* ~~*sites*~~ items in HH-SCHED2 and archaeological sites in HH-SCHED3, ~~*Significant Natural Areas*~~, Outstanding Natural Landscapes, ~~or Features and Amenity Landscapes~~ areas of flooding hazard risk and the root protection area of notable trees are contained in the Historic Heritage, Natural Features and Landscapes, Natural Hazards and Notable Trees~~. For *earthworks* rules relating to these topics, refer to those c~~C hapters. Provisions for mining and quarrying are found in the rural zone chapters.

(b) adding a new paragraph at the end of the Overview as follows:

An archaeological alert layer included on the online council maps provides a mechanism to highlight areas where archaeology is known to be present or where current or future development may impact upon as yet unrecorded archaeological sites, both above ground and subsurface. The layer does not indicate that these are the only places where archaeology may be encountered. Any proposed development, within the layer or not, should assess whether there is reasonable cause to suspect that archaeology may be present to ensure compliance with the archaeological provisions of the Heritage New Zealand Pouhere Taonga Act 2014. If a previously unknown archaeological site is discovered during works, then the accidental discovery protocol outlined in EW-S6 applies.

4.3 Objective EW-O1

Submitter (S) Further Submitter (FS)	Decision Requested
S109.108 Department of Conservation S121.062 Alliance Group Ltd S35.050 Chorus NZ Ltd S40.044 Silver Fern Farms S132.068 KiwiRail Holdings Ltd S154.050 Spark NZ Trading Ltd S32.050 One NZ Group Ltd S33.050 FortySouth S37.050 Connexa Ltd	Retain as notified
S146.063 Southland District Council	Separate provision into more than one objective.
S146.108 Southland District Council	Review EW-01 and environmental areas, such as sedimentation, water quality risks from earthworks and visual effects in landscapes adjoining Southland District, particularly in Outstanding Natural Landscapes or Visual Amenity Landscapes.
S113.035 Trudy Bokser S116.035 Nathan Bokser S118.035 AW+ JA Johnston Family Trust S127.071 Peters Farm Ltd Karen Peters S18.037 Reaby Downs Farm Ltd S19.037 Karen Temple S20.037 Sarah and Peter Barclay S24.037 Helen McIntosh S68.039 John Baynes S117.035 Greg Bokser S3.035 Stoney Creek Station Ltd	Amend EW-O1 as follows: Earthworks and land disturbance for subdivision, land use and development are facilitated and undertaken in a manner that avoids, remedies o**r** minimises adverse effects on the ~~surrounding~~ environment and protects the natural environment, Ngāi Tahu cultural values, people and property.
FS17.061 Federated Farmers	Allow S3.035 Stoney Creek Station Ltd
S139.063 Hokonui Rūnanga Inc	Amend to read: "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."
FS5.117 Hamish Weir	Disallow S139.063 Hokonui Rūnanga Inc

4.3.1 Tina Carlson-McColl did not recommend any changes to the objective in response to submissions and evidence, in her s42A Report, hearing statements or right of reply.

4.3.2 None of the evidence received at the November hearing, the HS9, HS11 or HS12 hearings provided particular support for amendment of the objective.

4.3.3 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A included an analysis of EW-O1 in relation to Ngāi Tahu cultural values and the Hokonui Rūnanga submission point S139.063 that sought for plan provisions to specify particular effects of concern to mana whenua. The Hokonui Rūnanga submission point included amendments to EW-O1 to reference mauri, wāhi tapu and mahinga kai, and restructured the objective to accommodate these concepts.

4.3.4 The Panel considered the options of separating out elements of the objective as proposed by Southland District Council, or adding clauses as proposed by Hokonui Rūnanga. The Panel considers that the specific Ngāi Tahu cultural values identified by Hokonui Rūnanga to include in the objective constitute detail better suited at the policy or rule level. The Panel also notes that the requested wording of Hokonui

Rūnanga introduces the word "avoid" which is also better suited at a policy level, where it should be used with care and in relationship with corresponding rule classifications.

4.3.5 The Panel agrees with Stoney Creek Station and others that the word "surrounding" is not necessary. However, the Panel does not support "avoids, remedies or minimises" as proposed by the submitters because it deviates from RMA s5 and therefore the Panel prefers to retain the word "minimises" at the objective level. While the Panel sees potential issues with the relationship between the word "minimises" and the word "protects", the Panel considers that minimising effects on the environment generally assists to protect those elements of the environment specifically listed, including Ngāi Tahu cultural values. The objective will therefore require achievement of both minimisation of adverse effects and protection of the specified elements of the environment.

4.3.6 Having regard to the above:

(a) Submissions S146.063, S146.108 Southland District Council and S139.063 Hokonui Rūnanga Inc are rejected.

(b) Submissions S109.108 Department of Conservation and others and S113.035 Trudy Bokser and others are accepted in part by amending Objective EW-O1 as follows:

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 as listed in MW-1.2, people and property.

4.4 Policy EW-P1

Submitter (S) Further Submitter (FS)	Decision Requested
S112.084 Waka Kotahi NZ Transport Agency S121.063 Alliance Group Ltd S126.121 Southland Federated Farmers of NZ S132.069 KiwiRail Holdings Ltd S154.051 Spark NZ Trading Ltd S32.051 One NZ Group Ltd S33.051 FortySouth S37.051 Connexa Ltd S115.122 Kevin Robertson S143.133 Rural Ratepayers Group S148.134 Alistair & Bernadette Hunt S60.124 Ronald Crispin S68.242 John Baynes S35.051 Chorus NZ Ltd	Retain as notified
S113.036 Trudy Bokser S116.036 Nathan Bokser S118.036 AW+ JA Johnston Family Trust S127.072 Peters Farm Ltd Karen Peters S18.038 Reaby Downs Farm Ltd S19.038 Karen Temple S20.038 Sarah and Peter Barclay S24.038 Helen McIntosh S68.040 John Baynes S117.036 Greg Bokser S3.036 Stoney Creek Station Ltd	Retain EW-P1(2) as drafted.
FS5.118 Hamish Weir	Allow S3.036 Stoney Creek Station Ltd
FS21.084 Yrless Ltd	Allow S35.051 Chorus NZ Ltd
S122.009 Fulton Hogan	Amend EW-P1 as follows: EW-P1 2. associated with ~~rural~~ primary production, where these are located in the General Rural Zone

4.4.1 The submissions in support of the policy are acknowledged. As the provision has been amended, these submissions are accepted in part.

4.4.2 Tina Carlson-McColl supported the amendment sought by Fulton Hogan because "primary production" is a defined term in the Plan.

4.4.3 The Panel notes that the "primary production" definition comes from the National Planning Standards and includes "aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities". In addition, the Panel notes that the NESCF manages earthworks associated with commercial forestry and the Earthworks chapter does not manage mining and quarrying activities. The Panel concludes "Rural production" better describes the activities managed by this policy, however the Panel accepts that the term is not defined in the Plan and therefore it is preferable to use the defined term.

4.4.4 Submission S122.009 Fulton Hogan is accepted by amending clause (2) of Policy EW-P2 as follows:

2. associated with ~~rural~~ primary production, where these are located in the General Rural Zone;

4.5 Policy EW-P2

Submitter (S) Further Submitter (FS)	Decision Requested
S101.069 Transpower NZ Ltd	Retain Policy EW-P2 as notified.

4.5.1 The submission in support of the policy is acknowledged. No other submissions have been lodged to this provision and it has not been altered. Accordingly, submission S101.069 Transpower NZ Ltd is accepted.

4.6 Policy EW-P3

Submitter (S) Further Submitter (FS)	Decision Requested
S112.085 Waka Kotahi NZ Transport Agency S121.064 Alliance Group Ltd S40.045 Silver Fern Farms S132.070 KiwiRail Holdings Ltd	Retain as notified
S122.010 Fulton Hogan	Amend EW-P3 as follows: EW-P3 Allow for earthworks of a limited bulk and scale within areas of potential inundation ~~to ensure~~ provided these do not exacerbate inundation or flooding effects on other
FS28.049 Kainga Ora	Allow S122.010 Fulton Hogan

4.6.1 The Panel considered the wording as notified in comparison to the wording as proposed by Fulton Hogan and favoured the position of Tina Carlson-McColl on the wording. However, EW-P3 links to rule EW-R13, which the Panel has determined is better located within the Natural Hazards Chapter, and as a consequence EW-P3 is superfluous and superseded by policies in the Natural Hazards Chapter. The Panel has reviewed the submission of Fulton Hogan, including the general submission point made in paragraph 6(b) of that submission which expresses support for approaches consistent with national direction and other districts where appropriate. The Panel agrees that it is important to give effect to national direction, and the Panel has received evidence about the approaches taken by other districts, which has guided decisions on the chapter as whole. The Panel is taking a consistent approach to locating earthworks rules in chapters dealing with RMA s6 matters, where relevant.

4.6.2 The Panel's decision is therefore to delete Policy EW-P3, as a consequential amendment arising from acceptance of the general submission point of Fulton Hogan.

The Panel notes that this submission point was not considered in the s42A Report given that it is supported by the Act in terms of the need to give effect to higher order instruments (e.g. S74(1)(ea)).The Panel considers this decision to be consistent with acceptance of the submission point and giving effect to the Act and National Planning Standards.

4.6.3 Submission S122.010 Fulton Hogan is accepted in part, and as a consequence of the decision in paragraph 4.3.21, Policy EW-P3 is deleted.

4.6.4 As a corollary to deletion of the policy, submissions S112.085 Waka Kotahi NZ Transport Agency and others supporting the policy are rejected.

4.7 Policy EW-P4

Submitter (S) Further Submitter (FS)	Decision Requested
S123.014 Heritage NZ Pouhere Taonga	Amend EW-P4 Require earthworks to be appropriately designed, located and undertaken so that: ... 8. historic heritage values are maintained or enhanced.
S132.071 KiwiRail Holdings Ltd	Amend as follows: 1. the cut depth and fill height does not detract from the amenity or stability of other sites

4.7.1 Tina Carlson-McColl in her s42A Report recommended rejecting the HNZPT submission on the basis that scheduled historic heritage is managed in the Historic Heritage chapter, and the policy already manages unknown archaeological sites in clause (7), which corresponds with notified standard EW-S7. The Panel agrees with this recommendation. Accordingly, submission S123.014 Heritage NZ Pouhere Taonga is rejected.

4.7.2 Tina Carlson-McColl also recommended the KiwiRail submission be accepted as it corrected a typo in clause (1). The Panel agrees with that recommendation also.

4.7.2 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A included an analysis of EW-P4 in relation to Ngāi Tahu cultural values, identifying that clause (7) ensures tikanga is followed as part of the accidental discovery protocol such that there is no policy gap.

4.7.3 Submission S132.071 KiwiRail Holdings Ltd is accepted by amending clause 1 of notified Policy EW-P4 as follows:

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

4.8 Policy EW-P5

Submitter (S) Further Submitter (FS)	Decision Requested
S112.086 Waka Kotahi NZ Transport Agency S109.109 Department of Conservation	Retain as notified
FS27.019 Alliance Group Ltd	Allow S109.109 Department of Conservation
S110.042 Royal Forest and Bird Society of NZ Inc	Add: 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.
FS17.062 Federated Farmers	Disallow S110.042 Royal Forest and Bird Society of NZ Inc
S139.064 Hokonui Rūnanga Inc	Amend to read: 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;"
S132.072 KiwiRail Holdings Ltd	Amend as follows: Manage earthworks that are of a nature, scale or in a location where there may be adverse effects to ensure that: 2. the natural character of rivers and their margins are protected ~~preserved~~ and water quality, stream health, the intrinsic values of ecosystems, Ngai Tahu cultural values, and public access are maintained or enhanced.

4.8.1 The submissions in support of the policy are acknowledged. As the provision has been amended, submissions S112.086 Waka Kotahi NZ Transport Agency and S109.109 Department of Conservation are accepted in part.

4.8.2 The s42A Report recommended rejecting the Forest & Bird submission that sought to include an additional clause specific to indigenous biodiversity on the basis that policies in the Ecosystems and Indigenous Biodiversity chapter apply, and that clauses (2) and (4) in EW-P5 also consider indigenous biodiversity. In considering this submission, the Panel considered whether there was a gap in the policy or in the Plan in relation to effects on indigenous biodiversity. The Panel agrees with Tina Carlson-McColl that the Ecosystems and Indigenous Biodiversity Chapter policies guide management of effects on indigenous biodiversity, and that notified ECO-P8 and notified ECO-P10 are particularly relevant to earthworks occurring outside of areas of significant indigenous vegetation and significant habitats of indigenous fauna that do not involve indigenous vegetation clearance, as discussed in Decision 45. The Panel considers matters of control and matters of restricted discretion in the rules and standards later in this decision, which would provide for connection to policies in the Ecosystems and Indigenous Biodiversity Chapter as relevant. Submission S110.042 Royal Forest and Bird Society of NZ Inc is therefore rejected.

4.8.3 The s42A Report also recommended rejecting the KiwiRail submission seeking to replace the word “preserve” with “protect” on the basis that preservation of natural character is the intent of s6(a) of the RMA. The Panel agrees with that advice. Louise Taylor on behalf of KiwiRail advised acceptance of that recommendation. Accordingly, submission S132.072 KiwiRail Holdings Ltd is rejected.

4.8.4 The s42A Report recommended partially accepting the submission of Hokonui Rūnanga that sought to clarify management of effects on Ngāi Tahu cultural values and recommended the following amendments to clauses (2) and (3) of the policy.

> 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;

4.8.5 Evidence received from Courtney Bennett and Amy Beran in HS3, HS8 and HS9A included an analysis of EW-P5 in relation to Ngāi Tahu cultural values. In the s42A Report for the Mana Whenua Chapter from HS3, Courtney Bennett recommended removing reference to “cultural sites of significance” because the Plan does not identify

these, in response to the Hokonui Rūnanga submission S139.039 and linking reference to Ngāi Tahu cultural values in clause (3) with notified MW-2.3, in response to the Hokonui Rūnanga submission S139.040. However, clause (3) was further amended in Courtney Bennett's supplementary statement of 22 July 2024, including in response to the Hokonui Rūnanga submission point S139.064, after reaching agreement with Amy Beran, to read as follows:

> 3. the design, location and undertaking of *earthworks* recognise Ngāi Tahu cultural values associated with the area, including whakapapa, ~~a consideration of cultural landscapes,~~ protects *archaeological sites*, any wāhi tapu and ~~cultural sites of significance, and limits any adverse effects on the underlying relationship Ngāi Tahu hold with the natural environment~~ mitigates any other adverse effects on mana whenua.

4.8.6 Taking into account and relying on Hokonui Rūnanga submissions S139.039, S139.040 and S139.064, the Panel considers a combination of the recommendations of Tina Carlson-McColl, Courtney Bennett and Amy Beran is appropriate, on the basis that the final phrase of clause (3) is linked to values "listed in MW-1.2" (as discussed in Decision 14 and Decision 43).

4.8.7 Submission S139.064 Hokonui Rūnanga Inc is accepted in part by amending clauses (2) and (3) of Policy EW-P5 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, and public *access* are maintained or enhanced;
>
> 3. the design, location and undertaking of *earthworks* recognise Ngāi Tahu cultural values listed in MW-1.2, including whakapapa ~~a consideration of~~ and cultural landscapes, protects archaeological sites, any wāhi tapu and ~~cultural sites of significance, and limits any adverse effects on the underlying relationship Ngāi Tahu hold with the natural environment.~~ mitigates any other adverse effects on mana whenua

5. Earthworks Rules

5.1 Exemptions

Submitter (S) Further Submitter (FS)	Decision Requested
S101.070 Transpower NZ Ltd	Amend the Rules as follows: Earthworks and Land Disturbance of the following activities are exempt from the rules in this chapter, other than Rule EWR12, of the District Plan: As a consequence, embed the exemptions in NZECP34:2001 in Rule EW-R12.
S122.011 Fulton Hogan	Amend exemption 7 using the below or other similar wording: 7. Filling ~~of building foundation~~ with granular fill, such as under concrete slab building foundations, and sub-grade for roads and other sealed areas.
S123.016 Heritage NZ Pouhere Taonga	Amend: Activity status where compliance not achieved: ...Visual amenity, heritage values including archaeology, and landscape effects.
S104.024 McLeod-Wantwood Trust/Wantwood Station S105.024 Farm Manager - Wantwood Station S127.024 Peters Farm Ltd Karen Peters	Include the list of exemptions as permitted activities in the Natural Features and Landscapes (ONL) along with farm fencing (as previously mentioned, proposed rule NFL- R5).
S112.087 Waka Kotahi NZ Transport Agency S132.073 KiwiRail Holdings Ltd S109.110 Department of Conservation	Retain as notified
S133.004 David Pullar	Include fences for primary production purposes in the list of exempt activities.

S113.038 Trudy Bokser S116.038 Nathan Bokser S118.038 AW+ JA Johnston Family Trust S127.074 Peters Farm Ltd Karen Peters S18.040 Reaby Downs Farm Ltd S19.040 Karen Temple S20.040 Sarah and Peter Barclay S24.040 Helen McIntosh S68.042 John Baynes S117.038 Greg Bokser S3.038 Stoney Creek Station Ltd	Convert the exclusions note to a permitted activity rule in the Earthworks chapter.
S35.052 Chorus NZ Ltd S32.052 One NZ Group Ltd S154.052 Spark NZ Trading Ltd S33.052 FortySouth S37.052 Connexa Ltd	Add 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 to the list of earthworks and land disturbance activities that are exempt from the rules in this chapter
FS5.119 Hamish Weir	Allow S35.052 Chorus NZ Ltd
FS21.085 Yrless Ltd	Allow S35.052 Chorus NZ Ltd
FS11.003, FS11.004 Heritage NZ Pouhere Taonga	Disallow S32.052 One NZ Group Ltd, S154.052 Spark NZ Trading Ltd
S16.043 Fuel Companies	Add a new exclusion at the beginning of the earthworks rules table as follows: Earthworks and Land Disturbance of the following activities are exempt from the rules in this chapter of the District Plan: 12. 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.
FS11.040 Heritage NZ Pouhere Taonga	Disallow S16.043 Fuel Companies
S138.004 Port Blakely Ltd	Amend the list of activities exempt from the Earthworks rules, to include earthworks carried out in relation to commercial forestry; or insert new rule for earthworks associated with commercial forestry, permitting those activities where they comply with regulations 24 to 33 of the NES-CF.
FS11.055 Heritage NZ Pouhere Taonga	Disallow S138.004 Port Blakely Ltd

5.1.1 In her s42A Report, Tina Carlson-McColl recommended:

- accepting the Fulton Hogan submission because granular fill is a “low risk” activity;
- rejecting the telecommunications companies’ submission because their activities are included in EW-R6, subject to notified EW-S7;
- rejecting the Fuel Companies’ submission because the activity is managed under EW-R5, although Tina Carlson-McColl acknowledges that some standards may be difficult to meet for the activity;
- rejecting the Wantwood Station submission on the basis that this is a matter for the Natural Features and Landscapes Chapter;
- rejecting the submission point of David Pullar on the basis that disturbance of land for the installation of fence posts is exempt from the definition of “earthworks”;
- rejecting the Port Blakely Ltd submission point because earthworks for commercial forestry are managed by the NESCF (also discussed at paragraph 77 of her Report);
- accepting the Transpower submission, including converting the exemptions to permitted activities; and
- accepting the HNZPT submission that seeks to protect undiscovered archaeological sites.

5.1.2 In the recommended amendment to provisions, Tina Carlson-McColl deletes all exemptions under the "Rules" heading of the chapter, except for exemptions 10 and 11, which are "earthworks either permitted by a rule in a regional plan or Resource Consent issued by Environment Southland" and "earthworks for natural hazard mitigation undertaken by or on behalf of a statutory authority". Tina Carlson-McColl then recommends introducing seven new rules to cover the deleted exemptions, and including sub-grade for roads and other sealed areas as requested by Fulton Hogan, with all of these activities (excepting earthworks for the restoration of indigenous vegetation) being subject to standards EW-S3 (river and stream setback), and all activities being subject to notified EW-S5 (erosion, sediment and dust control) and notified EW-S7 (accidental discovery protocol).

5.1.3 Evidence for Transpower, dated 18 October 2024, from Ainsley McLeod provided further discussion of the need to control activities within the National Grid Yard, and therefore ensure activities, including exempted activities, were controlled by EW-R12. She generally supported the migration to permitted activities, which she saw as a way to assist management within the National Grid Yard, although she remained concerned about exemptions for natural hazard mitigation undertaken by or on behalf of a statutory authority, or permitted by a rule in a regional plan. She expected these activities to also be subject to EW-R12.

5.1.4 Evidence for Stoney Creek dated 18 October 2024, from Claire Perkins expressed concern that the migration of exemptions to permitted activities created a more restrictive framework for the previously exempted activities than that envisaged by the Stoney Creek submission.

5.1.5 Evidence for the DoC dated 18 October 2024, from Elizabeth Williams supported the migration of exemptions to permitted activities, provided that EW-S3 did not apply to earthworks for the restoration of indigenous vegetation. She also supported the exclusions for overlays specified in the rules.

5.1.6 In her supplementary evidence dated 5 November 2024, Tina Carlson-McColl further considered the exemptions as permitted activities. She agreed with Ainsley McLeod regarding the need to control activities within the National Grid Yard, including earthworks for natural hazard mitigation undertaken by or on behalf of a Statutory Authority, or earthworks permitted by a rule in a regional plan, which she considered should be subject to EW-R12. She did not respond to the request of the Director General to exempt earthworks for restoration of indigenous vegetation from EW-S3 and recommended no amendments in response to the evidence of Claire Perkins.

5.1.7 Tina Carlson-McColl further considered this matter in response to Minute 27. At paragraph 66 of her combined statement with Mishka Banhidi dated 14 January 2025 she stated that greater reliance could be placed on the general rule notified EW-R14 to manage most permitted or exempted activities, which would reduce the length and complexity of the rule framework for plan users. However, she was not clear that there was scope to undertake that scale of change to the Plan. She provided two options to the Panel as part of her response, allowing for the matter of scope to be considered by the Panel in relation to her "Option A", which contained a suite of changes arising from greater reliance on notified EW-R14.

5.1.8 Claire Perkins on behalf of Stoney Creek Station, in her evidence of 3 February 2025, supported "Option A" in Tina Carlson-McColl's response to Minute 27 but preferred that exemptions be included in notified EW-R14 or the relevant standards. She was concerned that previously exempted activities would be inadvertently caught by the

"catch-all" rule, effectively meaning that all "land disturbance" and "earthworks" in the district would be captured, rather than being able to rely on section 9 of the RMA.

5.1.9 The Panel notes that Stoney Creek Station and other submitters sought for exemptions to become permitted activities, which means that the advice of Claire Perkins in response to Minute 27 must be read with this point in mind.

5.1.10 In issuing Minute 27, the Panel sought to achieve clarity around the issues in the district that the Earthworks chapter is intending to manage, and to ensure that activities are not captured by regulation unnecessarily. The Panel accepts that earthworks activities within the National Grid Yard need to be managed, and that EW-R12 should therefore have broad application, as discussed further in relation to that rule.

5.1.11 As noted earlier in this decision, some of the notified exemptions are unnecessary because they fall outside the definitions of "earthworks" and "land disturbance". These include "cultivation" (as defined in the National Planning Standards) and gardening (undefined), which correspond with notified exemptions 1, 2 and 4.

5.1.12 The Panel considers that fill activities, as described in exemptions 7 and 8 are not matters that the Earthworks Chapter should manage, and neither is sub-grade for roads, as raised in the submission of Fulton Hogan. The Panel considers that notified exemption 10 (referring to rules in a regional plan or an approved resource consent) is not within the jurisdiction of the Plan, and therefore also unnecessary. The Panel considers that notified exemption 11 is a matter for the Natural Hazards chapter, in accordance with decision to move EW-P3 and EW-R13 to that chapter.

5.1.13 The remaining exemptions considered by the Panel are, therefore:

- notified exemption 3, restoration of indigenous vegetation;
- notified exemption 5, drilling bores;
- notified exemption 6, interments in a burial ground cemetery or urupā, within the burial plot of that interment (noting the notified Plan incorrectly uses the term "internment); and
- notified exemption 9, the digging of hāngī pits or other small-scale cooking methods.

5.1.14 The Panel is conscious of the impact of RMA s9. If the Plan is silent, then the land use is automatically permitted. Notified EW-R14 has the effect of requiring consent for all earthworks in the district that exceed a particular volumetric limit or are not undertaken in accordance with earthworks standards. The Panel considers it unlikely that volumetric limits will be exceeded at a site (as defined by National Planning Standards) during restoration of indigenous vegetation but notes that EW-S3 may not be met (as identified by DoC). The Panel considers that the drilling of bores is unlikely to exceed volumetric limits, and that Rule 53 of the Southland Water and Land Plan manages the drilling of bores and wells, such that no exemption is required for this activity. Similarly, it unlikely that the digging of hāngī pits at a site will exceed volumetric limits. The Panel also considers that an exemption for interments is warranted because it is possible that volumetric limits may be exceeded and it is not necessary for the Plan to manage this activity.

5.1.15 As a consequence of the analysis above, the Panel has identified three activities that warrant some exemption from application of notified EW-R14, which is considered further in discussion of that rule and the applicable standards, namely restoration of indigenous vegetation, interments, and fill activities.

5.1.16 With regard to the request of HNZPT to add consideration of heritage values including archaeology, where consent is required, the Panel considers this unnecessary on the

basis that the combination of notified EW-S7, including its default to non-complying status, and the Historic Heritage chapter provisions are sufficient, and the exemptions to EW-R14 will be low risk activities. Accordingly, submission S123.016 Heritage NZ Pouhere Taonga is rejected.

5.1.17 The Panel agrees with Tina Carlson-McColl that disturbance of land for the installation of fence posts is exempt from the definition of "earthworks" and consequently an exemption is not required. Accordingly, submissions S133.004 David Pullar and S104.024 McLeod-Wantwood Trust/Wantwood Station and others are rejected.

5.1.18 Submissions S113.038 Trudy Bokser and others are accepted in part by deleting the provision "Earthworks and Land Disturbance Exempt from District Plan Rules in this Chapter" in its entirety.

5.1.19 As a consequence of deleting the exemption list:

(a) the submissions of S112.087 Waka Kotahi NZ Transport Agency and others seeking retention of the exemptions are rejected; and

(b) submissions S101.070 Transpower NZ Ltd, S122.011 Fulton Hogan, S113.034 Trudy Bokser and others, S35.052 Chorus NZ Ltd and others, S16.043 Fuel Companies and S138.004 Port Blakely Ltd are rejected. However, it should be noted that activities referred to in these submissions are considered further in assessing the rules of the Earthworks chapter.

5.2 Rule EW-R1

Submitter (S) Further Submitter (FS)	Decision Requested
S109.111 Department of Conservation	Retain as notified
S113.039 Trudy Bokser S116.039 Nathan Bokser S118.039 AW+ JA Johnston Family Trust S127.075 Peters Farm Ltd Karen Peters S18.041 Reaby Downs Farm Ltd S19.041 Karen Temple S20.041 Sarah and Peter Barclay S24.041 Helen McIntosh S68.043 John Baynes S115.123 Kevin Robertson S143.134 Rural Ratepayers Group S148.135 Alistair & Bernadette Hunt S60.125 Ronald Crispin S68.243 John Baynes S117.039 Greg Bokser S3.039 Stoney Creek Station Ltd S126.122 Southland Federated Farmers of NZ S142.004 Alan Taylor	Amend Rule EW-R1 to read: Land disturbance for the construction of fences (All zones except ONLs) 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. No other Earthworks Standards apply.
FS5.121, FS5.122 Hamish Weir	Allow S3.039 Stoney Creek Station Ltd, S126.122 Southland Federated Farmers of NZ
FS17.063 Federated Farmers	Allow S3.039 Stoney Creek Station Ltd
FS11.043, FS11.052 Heritage NZ Pouhere Taonga	Disallow S3.039 Stoney Creek Station Ltd, S126.122 Southland Federated Farmers of NZ
FS25.119 Stoney Creek Station Ltd	Allow S126.122 Southland Federated Farmers of NZ
S153.004 Oakland Farming Ltd	Land disturbance for the construction of fences Activity status: Permitted ~~Where:1. Any land disturbance does not exceed:(a) 1 metre in width for more than 10 metres in any 100metre length; and/or(b) 1 metre in height or depth; and2. the ground is reinstated to original levels within 48 hours of work being completed.~~
FS5.120 Hamish Weir	Allow S153.004 Oakland Farming Ltd

S74.023 Hamish Weir	The permitted baseline for fencing construction needs to be expanded; Rewritten as follows; 1. Any land disturbance ~~does not exceed~~: is limited to the amount practically required to install the fence. ~~(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.
FS25.120 Stoney Creek Station Ltd	Allow S74.023 Hamish Weir
FS11.046 Heritage NZ Pouhere Taonga	Disallow S74.023 Hamish Weir

5.2.1 The submission in support of the rule is acknowledged. As the provision has been amended, submission S109.111 Department of Conservation is accepted in part.

5.2.2 Tina Carlson-McColl in her s42A Report, on the basis of advice from the Council's geotechnical advisor Mark Adams, recommended retaining land disturbance for the construction of fences as a permitted activity but amending the rule so it is subject only to compliance with the Earthworks standards.

5.2.3 Claire Perkins in her evidence of 18 October 2024 on behalf of Stoney Creek Station emphasised that installing fences on the station required the use of a bulldozer to provide a benched area wide enough to drive a tractor along, with a fence post driver. She considered that this would make it difficult to comply with the conditions of the notified rule. She supported the amendments proposed by Tina Carlson-McColl but expressed reservations about application of standards EW-S1 and EW-S2, which she thought were ill-suited to farming on steep land.

5.2.4 In her supplementary statement dated 5 November 2024, Tina Carlson-McColl noted that the standards EW-S1 and EW-S2 are currently applicable because they are derived from the Subdivision and Land Development Bylaw 2019. She considered that Stoney Creek Station did not have scope to request amendments to EW-S1 and EW-S2. She retained this recommendation in her "Option B" in response to Minute 27, with the addition of a note specifying that disturbance of land for the installation of fence posts is exempt from the earthworks rule. She also recommended deleting the exclusions for overlays in her "Option B", relying on amendments to the Overview and Note 1.

5.2.5 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A included an analysis of EW-R1 in relation to Ngāi Tahu cultural values, identifying a relevant matter restricted for discretion (s42A Report for the SASM Chapter). Their analysis also identified that non-compliance with notified standard EW-S7 resulted in a non-complying activity status, but this did not appear in the rules, only the standard (Appendix E in the evidence of Amy Beran dated 12 February 2025). Further discussion with mana whenua resulted in a record of support for standards EW-S3, EW-S5 and notified EW-S7 to apply to EW-R1, and agreement to remove the matter restricted for discretion that referred to impacts on Ngāi Tahu cultural values, as shown in Appendix G to the evidence of Amy Beran dated 12 February 2025.

5.2.6 The Panel does not consider there to be scope in submissions to delete the rule and rely on the catch-all rule EW-R14. Neither does the Panel find scope in submissions for the addition of "earthworks" to the title of the rule or application of all the earthworks standards, as proposed by Tina Carlson-McColl following the advice of Mark Adams. The Panel agrees with submitters that the relevant standards are EW-S3, EW-S5 and notified EW-S7, as notified. The Panel also agrees with Tina Carlson-McColl that a note to the rule is required to make it clear that the rule does not manage disturbance

of land for the installation of fence posts, in accordance with the National Planning Standards definition of "earthworks". The Panel finds that the benching activity described by Stoney Creek Station is not covered by EW-R1 because the rule is only concerned with "land disturbance", rather than "earthworks" that modify the landform.

5.2.7 The Panel has also considered the submission of HNZPT (S123.015) in light of decisions on the Overview and Note 1 and agree with Tina Carlson-McColl that there is no need for each rule to reiterate what is already stated at the outset of the chapter.

5.2.8 The Panel concludes that EW-R1 can be amended in response to the submission and evidence of Stoney Creek Station and others, and evidence of Courtney Bennett and Amy Beran in relation to the submission of Hokonui Rūnanga, in order to improve clarity about the relationship between the rule and applicable standards.

5.2.9 Submissions S113.039 Trudy Bokser and others, S153.004 Oakland Farming Ltd and S74.023 Hamish Weir are accepted in part by amending Rule EW-R1 as follows:

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.~~1. The works are undertaken in accordance with Earthworks Standards EW-S3, EW-S~~5~~4 and EW-S~~7~~6.

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

Activity status where compliance is not achieved ~~with~~ with EW-S3 or EW-S4:

Restricted Discretionary

Matters of discretion:

1. The timing and duration of the works.
2. *Effects* on ground stability.
3. *Effects* on any *adjoining land*, including visual *effects*.
4. Visual amenity and landscape *effects*.
5. Sediment, erosion and *dust* management.

~~6. Impacts on Ngāi Tahu cultural values, including those listed in MW-2.3.~~

~~7.~~6. The matters of discretion of any infringed Standard(s).

Activity status where compliance is not achieved with EW-S6: Non-complying

5.3 Rules EW-R2 to EW-R6

Submitter (S) Further Submitter (FS)	Decision Requested
S132.074 KiwiRail Holdings Ltd	Retain EW-R2 as proposed.
S122.013 Fulton Hogan	Amend the conditions for EW-R2 to EW-R6 as follows Where: 1. The ground is reinstated to original levels within 48 hours of

	work being completed, with the exception of work undertaken under EW-R4.
S132.076 KiwiRail Holdings Ltd S132.077 KiwiRail Holdings Ltd	Retain EW-R4 as proposed.
S146.064 Southland District Council S132.075 KiwiRail Holdings Ltd	Supports Rule EW-R3
S16.044 Fuel Companies	Delete Rule EW-R5 as the NESCS sufficiently provides for remediation measures where earthworks are undertaken to install and remove underground fuel storage tanks.
FS11.002 Heritage NZ Pouhere Taonga	Disallow S16.044 Fuel Companies
S132.078 KiwiRail Holdings Ltd	Retain EW-R6 as proposed.

5.3.1 The submissions in support of the rules are acknowledged. As the provisions have been amended the submissions are accepted in part.

5.3.2 Tina Carlson-McColl in her s42A Report recommended adding exclusions for overlay chapters, as in notified EW-R1, in response to the HNZPT submission (S123.015) and amending rules EW-R2, EW-R3 and notified EW-R6 to require compliance with EW-S2, but not EW-S4, which she recommended deleting. However, in her response to Minute 27 "Option B" Tina Carlson-McColl recommended not including the exclusions for overlays, relying instead on amendments to the Overview and Note 1. Tina Carlson Mc-Coll advised that it was the view of Mark Adams in relation to notified EW-R5 that EW-S1 should apply, and she noted that the NESCS manages different effects, so she did not recommend any additional amendments to that rule in response to the Fuel Companies submission. Tina Carlson-McColl also recommended separating out notified EW-R4 in response to the submission of Fulton Hogan and applying all earthworks standards to the rule.

5.3.3 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A included an analysis of EW-R2, EW-R3, EW-R4, EW-R5 and EW-R6 in relation to Ngāi Tahu cultural values, identifying a relevant matter restricted for discretion (s42A Report for the SASM Chapter). Their analysis also identified that non-compliance with notified standard EW-S7 resulted in a non-complying activity status, but this did not appear in the rules, only the standard (Appendix E in the evidence of Amy Beran dated 12 February 2025). Further discussion with mana whenua resulted in a record of support for standards EW-S3, EW-S4, notified EW-S5 and notified EW-S7 to apply to these rules, and agreement to remove the matter restricted for discretion that referred to impacts on Ngāi Tahu cultural values, as shown in Appendix G to the evidence of Amy Beran dated 12 February 2025. Mana whenua also indicated that they were not concerned with breach of EW-S1, as long as the Accidental Discovery Protocol in notified EW-S7 was followed. Federated Farmers, in their response to the evidence of Amy Beran dated 28 March 2025, requested EW-R4 be removed from the Plan or the matter of restricted discretion be removed regarding Ngāi Tahu cultural values.

5.3.4 The Panel do not find scope in submissions to delete rules EW-R2, EW-R3 or EW-R6 and rely on the catch-all rule EW-R14.

5.3.5 The Panel agrees with Fulton Hogan that conditions and standards of rule EW-R4 are problematic for the activity concerned. Drain clearance activity would appear to be managed by the PSWLP under Rule 20, Rule 55A and Rule 78, so under the notified exemptions of the Earthworks Chapter only matters other than those managed under the PSWLP rules would be relevant to EW-R4. The Panel has assessed the earthworks standards applied to the rule and find that only EW-R3 and EW-R6 seem applicable to the deposition of spoil from drain clearance, assisting to prevent migration of material back into the waterway. These matters would appear to be covered by Rule 55A(i) of the PSWLP, and when undertaken on a farm would be covered by Rule 20(b)

of the PSWLP. On that basis, the Panel find scope to delete rule EW-R4 because it falls within the notified exemptions, specifically notified exemption 10, and is not a matter for the jurisdiction of this Plan.

5.3.6 The Panel finds scope for deletion of EW-R5 on the basis of the submission from the Fuel Companies, however this would mean that the activity would fall to the "catch-all" rule EW-R14 and be required to meet all earthworks standards. This would be a worse outcome for the Fuel Companies as the concerns in their submission were specific to application of EW-S1. While Tina Carlson-McColl relied on the advice of Mark Adams that EW-S1 is necessary, the Panel understands on the basis of the submission from the Fuel Companies that this would mean they would require a resource consent for a restricted discretionary activity every time they replaced, removed or installed an underground storage tank, which seems to go against the intent of the notified rule EW-R5. The issue raised by Mark Adams was to do with the stability of cut at depths of 5m. The Panel has received no evidence to suggest that issues have arisen from the replacement, removal or installation of underground storage tanks in the district in the past and therefore has amended the rule so this activity is not subject to EW-S1 but is subject to an additional condition, as alternative relief for the Fuel Companies.

5.3.7 The Panel does not find scope in submissions for EW-S2 to be applied to these rules, as proposed by Tina Carlson-McColl. The Panel agrees with the advice of mana whenua that the matter of restricted discretion can be deleted, relying on the Accidental Discovery Protocol in notified EW-S7, and that the relationship between the rule and applicable standards can be improved, similar to amendments to EW-R1. The Panel also considers that the wording of the exemption sought by telecommunications companies can be included as a condition in relation to notified EW-R6.

5.3.8 Relying on the submissions listed in section 6.2 above and accepting in part submissions S122.013 Fulton Hogan and S16.044 Fuel Companies Rules EWR2 - EWR6 are amended as follows:

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-R~~5~~4 Replacement, removal and installation of underground storage tanks
EW-R~~6~~5 Service connections

All Zones

EW-R2 to EW-R~~6~~5

Activity status: Permitted

Where:

1. The ground is reinstated to original levels within 48 hours of work being completed.
2. Trenching for connection to services is no deeper than 1.0m and no wider than 1.0m for underground infrastructure, provided that no more than 120m of trench is open at any one time.
~~2~~3. The works are undertaken in accordance with Earthworks Standards EW-S1, EW-S3, EW-S4~~, EW-S5~~ and EW-S~~7~~6; except that for the replacement, removal and installation of underground storage tanks the Earthworks Standards EW-S3, EW-S4, and EW-S6 apply, and sides of the cut are prevented from slumping.

Activity status where compliance is not achieved with Conditions (1) and (2) or EW-S1, EW-S3 or EW-S4: Restricted Discretionary

Matters of discretion:

1. The timing and duration of the works.

2. *Effects* on ground stability.

3. *Effects* on any *adjoining land*.

4. Visual amenity and landscape effects.

5. Sediment, erosion and *dust* management.

~~6. Impacts on Ngāi Tahu cultural values, including those listed in MW-2.3.~~

~~7~~6. The matters of discretion of any infringed Standard(s).

Activity status where compliance is not achieved with EW-S6: Non-complying

5.4 Rules EW-R7 to EW-R9

Submitter (S) Further Submitter (FS)	Decision Requested
S115.124 Kevin Robertson S143.135 Rural Ratepayers Group S148.136 Alistair & Bernadette Hunt S60.126 Ronald Crispin S68.244 John Baynes S112.088 Waka Kotahi NZ Transport Agency S126.123 Southland Federated Farmers of NZ	Retain EW-R7 as notified.
S116.040 Nathan Bokser S118.040 AW+ JA Johnston Family Trust S127.076 Peters Farm Ltd Karen Peters S18.042 Reaby Downs Farm Ltd S19.042 Karen Temple S20.042 Sarah and Peter Barclay S24.042 Helen McIntosh S68.044 John Baynes S117.040 Greg Bokser S3.040 Stoney Creek Station Ltd	Amend Rule EW-R7 as follows: General Rural Zone Excluding Historic Heritage sites, ~~Significant Natural Areas, Outstanding Natural Landscapes or Features.~~ EW-R7 Activity status: Permitted Where: 1. The total earthworks area <u>for any new dead hole, farm rubbish pit, silage pit or farm track</u> 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 EWS7. <u>No other Earthworks Standards apply.</u> Activity status where compliance is not achieved: Restricted Discretionary. Matters of discretion: 4. Visual amenity and landscape effects, and whether there is a functional <u>or operational</u> 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).~~ <u>10. Whether the earthworks are of a type, scale and form that is appropriate for the location and character of the zone.</u>
FS5.123 Hamish Weir	Allow S3.040 Stoney Creek Station Ltd
FS17.064 Federated Farmers	Allow S3.040 Stoney Creek Station Ltd
S115.125 Kevin Robertson S143.136 Rural Ratepayers Group S148.137 Alistair & Bernadette Hunt S60.127 Ronald Crispin S68.245 John Baynes S112.089 Waka Kotahi NZ Transport Agency S126.124 Southland Federated Farmers of NZ	Retain EW-R8 as notified.
S116.041 Nathan Bokser S118.041 AW+ JA Johnston Family Trust S127.077 Peters Farm Ltd Karen Peters S18.043 Reaby Downs Farm Ltd S19.043 Karen Temple S20.043 Sarah and Peter Barclay S24.043 Helen McIntosh S68.045 John Baynes	Amend Rule EW-R8 as follows: General Rural Zone Excluding Historic Heritage sites, ~~Significant Natural Areas, Outstanding Natural Landscapes or Features.~~ EW-R8 Activity status: Permitted Where: 1. The total earthworks area <u>for any new dead hole, farm rubbish pit, silage pit or farm track</u> in any 12 month period does not exceed 2,500 m2 per site.

Submitter (S) Further Submitter (FS)	Decision Requested
S117.041 Greg Bokser S3.041 Stoney Creek Station Ltd	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 EWS7. No other Earthworks Standards apply. Activity status where compliance is not achieved: Restricted Discretionary - Matters of discretion: 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.
FS5.124 Hamish Weir	Allow S3.041 Stoney Creek Station Ltd
FS17.065 Federated Farmers	Allow S3.041 Stoney Creek Station Ltd
S112.090 Waka Kotahi NZ Transport Agency	Retain EW-R9 as notified
S116.042 Nathan Bokser S118.042 AW+ JA Johnston Family Trust S127.078 Peters Farm Ltd Karen Peters S18.044 Reaby Downs Farm Ltd S19.044 Karen Temple S20.044 Sarah and Peter Barclay S24.044 Helen McIntosh S68.046 John Baynes S117.042 Greg Bokser S3.042 Stoney Creek Station Ltd	Amend Rule EW-R9 as follows: General Rural Zone Excluding Historic Heritage sites, ~~Significant Natural Areas, Outstanding Natural Landscapes or Features.~~ EW-R9 Activity status: Permitted: Where: 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. 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 EWS7. No other Earthworks Standards apply. Activity status where compliance is not achieved: Restricted Discretionary. Matters of discretion: 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.
FS17.066 Federated Farmers	Allow S3.042 Stoney Creek Station Ltd
S130.030 Mercury NZ Ltd	EW-R9 - Earthworks for the construction, maintenance and repair or upgrade of a farm track, including associated with Renewable Electricity Generation activities.
FS24.051 Contact Energy Ltd	Allow S130.030 Mercury NZ Ltd
FS11.054 Heritage NZ Pouhere Taonga	Disallow S130.030 Mercury NZ Ltd
S148.007 Alistair & Bernadette Hunt	Earthworks for essential farm services (drainage, water supply etc) should not be restricted to an amount per year. We oppose the restriction on these activities in these provisions.

5.4.1 The submissions in support of the rules are acknowledged. As the provisions have been amended the submissions are accepted in part.

5.4.2 The Panel notes the response of Tina Carlson-McColl to the Mercury submission, at paragraph 202 of her s42A Report where she states that issues associated with the NPSREG are considered in the Energy chapter and while there are no specific

earthworks rules in relation to Renewable Electricity Generation activities in the Earthworks chapter, she noted transmission and distribution matters would be covered by EW-R11, including associated vehicle access tracks, and EW-R14 allows for earthworks up to 1,000 cubic metres/year in the General Rural Zone. Tina Carlson-McColl did 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. Mercury did not provide any further material for the Panel to consider on this matter. The Panel considers that notified EW-R11 can capture earthworks for Renewable Electricity Generation activities and that accordingly, submission S130.030 Mercury NZ Ltd is accepted in part.

5.4.3 In response to the submission of Alistair and Bernadette Hunt (S148.007) seeking to remove restrictions on the annual volume of earthworks associated with farming activities, Tina Carlson-McColl recommended restricting the area of earthworks open at any one time, rather than a volumetric limit to apply over a year and including "farm infrastructure" in the title of the rule as a result of recommendations on definitions in the rural zones.

5.4.4 Tina Carlson-McColl also recommended:

- retaining the exclusions for overlay chapters;
- retaining the matter of discretion that referred to infringed standards;
- maintaining the application of the rule to existing activities in response to the Stoney Creek Station submissions
- adding "operational need" and other matters of discretion sought

54.5 In her supplementary evidence of 5 November 2024, Tina Carlson-McColl considered that some of the recommendations in the evidence of Claire Perkins on behalf of Stoney Creek Station fell outside the scope of the original submission, particularly deletion of the area limitation. Having regard to the advice of Mark Adams, she considered the rule to be relatively generous and maintained this position in her response to Minute 27. In her "Option B" in response to Minute 27 she recommended deletion of the reference to overlay exclusions.

5.4.6 Claire Perkins on behalf of Stoney Creek Station, in her evidence dated 3 February 2025 in response to Minute 27 and the evidence of Tina Carlson-McColl, expressed concern about the volumetric limit for farm tracks, considering it to be impractical, which she had previously identified in her evidence of 18 October 2024. She considered application of standards EW-S1, EW-S2 and EW-S5 to satisfactorily manage the issue and stated that in her opinion there would not be a lot of new farm tracks created in the district because farming activities are well established.

5.4.7 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A included an analysis of EW-R7, EW-R8 and EW-R9 in relation to Ngāi Tahu cultural values, identifying a relevant matter restricted for discretion (s42A Report for the SASM Chapter). Their analysis also identified that non-compliance with notified standard EW-S7 resulted in a non-complying activity status, but this did not appear in the rules, only the standard (Appendix E in the evidence of Amy Beran dated 12 February 2025). Further discussion with mana whenua resulted in Hokonui Rūnanga reaffirming the matters of discretion and applicable standards for these rules, as identified in Appendix G to the evidence of Amy Beran dated 12 February 2025. Federated Farmers, in their response to the evidence of Amy Beran dated 28 March 2025, requested the matter of restricted discretion be removed regarding Ngāi Tahu cultural values or that it be restricted to wāhi tapu.

5.4.8 The Panel agrees with the amendments recommended by Tina Carlson-McColl in her "Option B" in response to Minute 27 and submitters. However, the Panel notes that she has not included the additional matter of discretion requested by Stoney Creek Station and others, even though her s42A Report analysis accepted the point. The Panel considers this to be a useful addition to the matters of discretion. The Panel agrees with Tina Carlson-McColl that it is not necessary to amend the rule to specify only new activities because existing activities are unlikely to exceed the permitted activity conditions or associated standards. The Panel is not concerned about the area limit because the application of the second condition will provide for linear works progressing and stabilising, filling or recontouring as they proceed, and notified EW-S6 does not apply.

5.4.9 The Panel does not agree with Federated Farmers that the matter of discretion specific to Ngāi Tahu cultural values listed in the Mana Whenua Chapter should be deleted or replaced with only reference to wāhi tapu, based on the advice from Hokonui Rūnanga and decisions on the Mana Whenua Chapter and notified SASM Chapter.

5.4.10 Submissions S116.040, S116.041 and S116.042 Nathan Bokser and others and S148.007 Alistair & Bernadette Hunt are accepted in part by amending Rules EW-R7 - EW-R9 as follows:

EW-R~~7~~6 Digging of *dead holes* and farm rubbish pits

EW-R~~8~~7 *Earthworks* for *silage pits*

EW-R~~9~~8 *Earthworks* for the construction, maintenance and repair or upgrade of a *farm track* or *farm infrastructure*

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

EW-R~~7~~6 to EW-R~~9~~8 *Earthworks* for the construction, maintenance and repair or upgrade of a *farm track* or *farm infrastructure*

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-S~~7~~6.

Activity status where compliance is not achieved with Conditions (1) and (2) or EW-S1, EW-S2, EW-S3 or EW-S4: 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 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~~1.2.
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.

Activity status where compliance is not achieved with EW-S6: Non-complying

All Other Zones

Non-Complying

Activity status where compliance not achieved: N/A

5.5 Rules EW-R10 and EW-R11

Submitter (S) Further Submitter (FS)	Decision Requested
S112.091 Waka Kotahi NZ Transport Agency S112.092 Waka Kotahi NZ Transport Agency S132.079 KiwiRail Holdings Ltd	Retain EW-R10 as notified
S110.043 Royal Forest and Bird Society of NZ Inc	Add to EW-R10 Matters of discretion 11. Effects on indigenous biodiversity and ecological connections.
FS5.125 Hamish Weir	Disallow S110.043 Royal Forest and Bird Society of NZ Inc
S35.053 Chorus NZ Ltd S132.080 KiwiRail Holdings Ltd S154.053 Spark NZ Trading Ltd S32.053 One NZ Group Ltd S33.053 FortySouth S37.053 Connexa Ltd	Retain Rule EW-R11 as notified.
S130.031 Mercury NZ Ltd	RW 11 Earthworks and land disturbance for network utilities, and Renewable Electricity Generation activities, including associated vehicle access tracks
S110.044 Royal Forest and Bird Society of NZ Inc	Add: Matters of discretion 11. Effects on indigenous biodiversity and ecological connections.
FS5.126 Hamish Weir	Disallow S110.044 Royal Forest and Bird Society of NZ Inc
FS25.121 Stoney Creek Station Ltd	Disallow S110.044 Royal Forest and Bird Society of NZ Inc

5.5.1 The submissions in support of the rules are acknowledged. As the provisions have been amended the submissions are accepted in part.

5.5.2 Tina Carlson-McColl in her s42A Report recommended accepting the submission of Mercury but rejecting the submission of Forest and Bird on the basis that the matter is addressed in the Ecosystems and Indigenous Biodiversity Chapter. In her "Option B" in response to Minute 27, Tina Carlson-McColl recommended deletion of the reference to overlays.

5.5.3 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A included an analysis of EW-R7, EW-R8 and EW-R9 in relation to Ngāi Tahu cultural values, identifying a relevant matter restricted for discretion (s42A Report for the SASM Chapter). Their analysis also identified that non-compliance with notified standard EW-S7 resulted in a non-complying activity status, but this did not appear in the rules, only the standard (Appendix E in the evidence of Amy Beran dated 12 February 2025). Further discussion with mana whenua resulted in Hokonui Rūnanga reaffirming the matters of discretion and applicable standards for these rules, as identified in Appendix G to the evidence of Amy Beran dated 12 February 2025. Federated Farmers, in their response to the evidence of Amy Beran dated 28 March 2025, requested the matter of

restricted discretion to be removed from EW-R11 regarding Ngāi Tahu cultural values or that it be restricted to wāhi tapu.

5.5.4 The Panel agrees with the amendments recommended by Tina Carlson-McColl in her "Option B" in response to Minute 27 and submitters. However, the Panel disagree with her recommendation to reject the submission of Forest and Bird. The Panel notes that there are no earthworks rules in the Ecosystems and Indigenous Biodiversity Chapter so the only way to connect to relevant policies in that chapter, particularly ECO-P8 and ECO-P10, is to ensure there is a matter of discretion in relevant Earthworks Chapter rules. The Panel does not agree with Federated Farmers that the matter of discretion specific to Ngāi Tahu cultural values listed in the Mana Whenua Chapter should be deleted or replaced with only reference to wāhi tapu, based on the advice from Hokonui Rūnanga and decisions on the Mana Whenua Chapter and notified SASM Chapter.

5.5.5 Submission S130.031 Mercury NZ Ltd is accepted and submission S110.043 and S110.044 Royal Forest and Bird Society of NZ Inc are accepted in part by amending Rules EW-R10 and EW-R11 as follows:

EW-R~~10~~9 ***Earthworks*** **for the construction, upgrade or maintenance and repair of the** ***transport network*** **and recreational walking and cycling tracks.**

EW-R~~11~~10 ***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-R~~10~~9 to EW-R1~~1~~0

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-S~~7~~6

Activity status where compliance is not achieved with Conditions (1) and (2) or EW-S1, EW-S2, EW-S3, EW-S4 or EW-S5: Restricted Discretionary

Matters of discretion:

1. The timing and duration of the works.
2. The functional and operational needs of, and benefits derived from, the works, including the potential impact on the levels of service if the work is not undertaken.
3. *Effects* on ground stability.
4. *Effects* on any adjoining site, including visual effects, dust, noise, vibration or loss of privacy.
5. Visual amenity and landscape *effects*.
6. Sediment and erosion *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~~1.2
10. The matters of discretion of any infringed Standard(s).

11. Effects on indigenous biodiversity and ecological connections.

5.6 Rule EW-R12

Submitter (S) Further Submitter (FS)	Decision Requested
S101.072 Transpower NZ Ltd	Amend Rule EW-R12 as follows: Rule EWR12 Earthworks and land disturbance within National Grid Yards: All Zones~~- Excluding Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features.~~ Earthworks and land disturbance within National Grid Yards 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 **x**. 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 2. The stability of the National Grid support structure is not compromised; and 3. Physical and practical access to the National Grid support structures is maintained; and 4. The earthworks or land disturbance does not result in a reduction in the ground to conductor clearance distances, below what is required by Table 4 of NZECP34:2001; and 5. The e~~E~~arthworks~~ that~~ otherwise comply with clause 2.4.1 of NZECP34:2001. Note: ~~Clauses (1)~~ Rule EW-R12~~ above~~ does not apply to earthworks or land disturbance: 1. (...) Activity status where compliance is not achieved: Noncomplying
FS11.020 Heritage NZ Pouhere Taonga	Disallow 101.072 Transpower NZ Ltd. The depth of earthworks, and distance from the support structure, may affect identified or unknown archaeological sites. This activity should not be assigned a permitted status as the proposed works should be assessed to determine the effects on historic heritage, including archaeology

5.6.1 Tina Carlson-McColl in her s42A Report recommended accepting the submission of Transpower, as well as a further submission from HNZPT concerned that the rule should ensure adherence to notified EW-S7 in order to protect unknown archaeological sites. Tina Carlson-McColl recommended that all earthworks standards should apply.

5.6.2 Ainsley McLeod on behalf of Transpower supported the s42A Report recommendations in her evidence dated 22 October 2024 but sought to ensure that exempted activities would be subject to EW-R12 in order to give effect to Policy 10 of the NPSET and sought that the rule apply in overlay chapters as well in order to appropriately protect the National Grid. Tina Carlson-McColl agreed with this position in her supplementary statement of 5 November 2024.

5.6.3 The Panel agrees with the amendments recommended by Tina Carlson-McColl in response to submissions and evidence, with the exception that it is not necessary to add “land disturbance” to the rule because this is encompassed in the definition of “earthworks” and only needs to be separated out when a rule does not intend to also cover earthworks that change land form. The Panel notes EW-R12 will apply in all zones and overlay areas and is therefore a good example of the need for the Earthworks chapter to be read in conjunction with other chapters of the Plan that contain rules covering “earthworks” and “land disturbance”. Rules covering “earthworks” and “land disturbance” in other chapters of the Plan are designed to protect values or reduce risks specific to the subjects of those chapters, but do not necessarily “cover the field” in the same way as the suite of rules in the Earthworks chapter. Stricter rule requirements in other chapters of the Plan will prevail over requirements in the Earthworks chapter when the chapters are read together, and vice versa in the case of EW-R12 which protects the National Grid wherever it is located in the district.

5.6.4 Submission S101.072 Transpower NZ Ltd is accepted in part by amending Rule EW-R12 as follows:

EW-R~~12~~11 *Earthworks* 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* 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

~~2~~3. The stability of the *National Grid* support *structure* is not compromised; and

~~3~~4. Physical and practical *access* to the *National Grid* support *structures* is maintained; and

4~~5~~. The *earthworks* do not result in a reduction in the ground to *conductor* clearance distances, below what is required by Table 4 of NZECP34:2001; and

~~5~~6. The *Earthworks* ~~that~~ otherwise comply with clause 2.4.1 of NZECP34:2001; and

7. All Earthworks Standards are complied with.

Note: Rule EW-R~~12~~11 ~~Clauses (1) above~~ does not apply to *earthworks* or *land disturbance*:
1. Undertaken as part of normal agricultural, horticultural or domestic cultivation, or repair, sealing or resealing of a road, footpath, driveway or farm track;
2. Involving vertical holes not exceeding 500mm in diameter provided they:
   a. are more than 1.5m from the outer edge of the pole *structure* or stay wire; or
   b. are a post hole for a farm fence or horticulture *structure* more than 6m from the visible outer edge of the tower or support *structure* foundation.

Activity status where compliance is not achieved: Non-complying

5.7 Rule EW-R13

Submitter (S) Further Submitter (FS)	Decision Requested
S121.065 Alliance Group Ltd S40.046 Silver Fern Farms	Retain as notified
S112.093 Waka Kotahi NZ Transport Agency	Amend Rule EW - R13 Matters of Discretion as follows: ... 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.
S132.081 KiwiRail Holdings Ltd	Amend as follows: Where: 4. Earthworks and land disturbance on critical infrastructure such as rail is exempt from this rule
S110.045 Royal Forest and Bird Society of NZ Inc	Add: Matters of discretion 6. Effects on indigenous biodiversity and ecological connections.
FS5.127 Hamish Weir	Disallow S110.045 Royal Forest and Bird Society of NZ Inc
S85.110 Environment Southland	Remove from permitted status
FS5.128 Hamish Weir	Disallow S85.110 Environment Southland
FS28.050 Kainga Ora	Disallow S85.110 Environment Southland

5.7.1 The submissions in support of the rule are acknowledged. As the provision has been amended and relocated to the Natural Hazards chapter, the submissions are accepted in part.

5.7.2 Tina Carlson-McColl in her s42A Report recommended:

- rejecting the Forest & Bird submission point on the basis that indigenous biodiversity is managed by the Ecosystems and Indigenous Biodiversity Chapter and that EW-S3 will apply within river and stream setbacks.
- rejecting the NZTA submission on the basis that the rule was primarily about management of risks associated with flooding.

- rejecting the KiwiRail submission on the basis that flood risks need to be managed for critical infrastructure as well, and because KiwiRail could rely on their designation to undertake necessary works.

5.7.3 Tina Carlson-McColl accepted the advice of the Council's flood hazard advisor Richard Brunton who in response to the Environment Southland submission stated that some activity could safely take place in an area at risk of inundation without exacerbating flooding risk provided that:

- Cut depth (measured vertically) does not to exceed 0.6 metres;
- Fill height (measured vertically) does not to exceed 0.3 metres;
- A maximum volume of filling above ground level of 10 m^3 is undertaken per site; and
- A maximum cumulative volume of filling and excavation of 25 m^3 is undertaken per site in each case within any period of 10 years.

5.7.4 The tabled statement of Kāinga Ora in support of their further submission supported acceptance of the advice of Richard Brunton while the tabled statement of Silver Fern Farms supported the position in the s42A Report.

5.7.5 Louise Taylor in her evidence of 18 October 2024 on behalf of KiwiRail explained that works around the Mataura rail bridge would fall outside of the footprint of their designation and therefore be caught by the rule. Examples she provided were riprap to protect the bank or bund within the Mataura River floodway, which would become a non-complying activity under notified EW-R13(1). She considered that there would be benefit in narrowing the response to the submission point, so that not all critical infrastructure would be included, and recommended clause (1) be amended to say "other than works for or to support rail network activities".

5.7.6 In her supplementary evidence dated 5 November 2024, Tina Carlson-McColl did not support the proposed amendment from KiwiRail on the basis that a consenting pathway would be appropriate for the activity and that the concerns being raised were in relation to a specific project. In her joint response to Minute 27, she recommended moving notified EW-R13 to the Natural Hazards Chapter but did not otherwise propose amendment to the rule.

5.7.7 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A included an analysis of EW-R13 in relation to Ngāi Tahu cultural values, identifying a relevant matter restricted for discretion (s42A Report for the SASM Chapter). The gap analysis in Appendix E of Amy Beran's evidence dated 12 February 2025 identified that the matters restricted for discretion in the rule refer to "matters of discretion of any infringed standard" but the rule is not subject to any Earthworks Standards. Further discussion with mana whenua resulted in Hokonui Rūnanga identifying that the matter of discretion could be removed in favour of ensuring adherence to the Accidental Discovery Protocol in notified EW-S7, as recorded in Appendix G to the evidence of Amy Beran dated 12 February 2025.

5.7.8 The final form of the rule remained unresolved at the close of the Earthworks hearing as a result of the recommendation of Tina Carlson-McColl to shift the rule to the Natural Hazards chapter. However, none of the submitters sought to comment further on the issue at that hearing.

5.7.9 The Panel's decision is that including the advice of Mr Brunton in the permitted activity conditions would not be within the scope of submissions, other than that of

Environment Southland (S85.110). Environment Southland provided evidence in the Natural Hazards hearing, which is addressed in Decision 44 and did not specifically endorse the advice of Mr Brunton.

5.7.10 The Panel agree with Courtney Bennett and Amy Beran that there is a discrepancy in the rule between the permitted activity conditions and the matters restricted for discretion because the matters restricted for discretion refer to "infringed standards" but none are identified in the permitted activity conditions. The Panel assume this to be an error in the Plan at the time of notification, which requires correction through addition of compliance with the Earthworks Standards in the permitted activity conditions. The Panel accept the advice of Hokonui Rūnanga that the relevant matter of restricted discretion can be deleted as long as notified EW-S7 applies to the activity. The Panel note that inclusion of a matter of discretion related to indigenous biodiversity will correspond with some Ngāi Tahu cultural values identified in MW-1.2.

5.7.11 The Panel disagree with Tina Carlson-McColl regarding rejection of the Forest & Bird submission point because earthworks are not managed in the Ecosystems and Biodiversity Chapter, so the matter of discretion is required to connect with relevant policies in that chapter. The Panel also disagree with her regarding rejection of the submission point of Waka Kotahi because vehicle movements may be a relevant consideration relating to traffic safety in areas subject to flooding hazard risk.

5.7.12 Submissions S110.045 Royal Forest and Bird Society of NZ Inc, S112.093 Waka Kotahi NZ Transport Agency and S132.081 KiwiRail Holdings Ltd are accepted and submission S85.110 Environment Southland is accepted in part by amending Rule EW-R13 as follows and shifting it to the Natural Hazards chapter:

~~EW-R13~~ NH-R4 *Earthworks* and *land disturbance* within areas subject to Natural Hazards (Flooding)

Areas subject to Natural Hazards (Flooding)

Activity status: Permitted

Where*:*

1. The work is not undertaken within the Mataura 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 metres;

4. All Earthworks Standards are complied with.

Activity status where compliance is not achieved with NH-R4(1) or NH-R4(2), other than for critical infrastructure, or with EW-S6: ~~EW-R13(1) or EW-R13(2):~~ Non Complying

Activity status where compliance is not achieved with NH-R4(3), or NH-R4(1) or NH-R4(2) for critical infrastructure, or with EW-S1, EW-S2, EW-S3, EW-S4, or EW-S5: ~~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~~4. The matters of discretion of any infringed Standard(s).

5. Effects on indigenous biodiversity and ecological connection.

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

5.8 Rule EW-R14

Submitter (S) Further Submitter (FS)	Decision Requested
S112.094 Waka Kotahi NZ Transport Agency S121.066 Alliance Group Ltd S147.007 NZ Defence Force S16.045 Fuel Companies S40.047 Silver Fern Farms	Retain as notified
S110.046 Royal Forest and Bird Society of NZ Inc	Add: Matters of discretion 11. Effects on indigenous biodiversity and ecological connections
S116.043 Nathan Bokser S118.043 AW+ JA Johnston Family Trust S127.079 Peters Farm Ltd Karen Peters S18.045 Reaby Downs Farm Ltd S19.045 Karen Temple S20.045 Sarah and Peter Barclay S24.045 Helen McIntosh S68.047 John Baynes S117.043 Greg Bokser S3.043 Stoney Creek Station Ltd	Amend EW-R14 as follows: Earthworks and land disturbance not otherwise provided for General Rural Zone, Industrial Zone, Airport Zone Excluding Historic Heritage sites~~, Significant Natural Areas, Outstanding Natural Landscapes or Features.~~: 11. Whether there is a functional or operational need for the location of the activity
FS5.129 Hamish Weir	Allow S122.012 Fulton Hogan
FS5.130 Hamish Weir	Allow S3.043 Stoney Creek Station Ltd
FS17.067 Federated Farmers	Allow S3.043 Stoney Creek Station Ltd
S122.012 Fulton Hogan	Amend the volume of earthworks that can be undertaken in the General Rural or Industrial zones, we request the following, which are consistent with the Christchurch District Plan: General Rural -100m^3/ha Industrial - 1,000m^3/ha

5.8.1 The submissions in support of the rule are acknowledged. As the provision has been amended the submissions are accepted in part.

5.8.2 Tina Carlson-McColl in her s42A Report recommended:

- rejecting the request of Stoney Creek Station and others to delete the exclusion for ONLs, similar to other recommendations on the rules in this chapter but recommended accepting the additional matter of discretion on the basis that the rules are area specific so the matter would be an appropriate consideration.
- rejecting the submission of Fulton Hogan on the basis that the rule limits were comparable to plans in neighbouring districts, and that applying volumetric limits per site was an approach consistent with other jurisdictions. She noted a concern that a limit per hectare could result in some large areas of earthworks on rural properties.
- rejecting the Forest & Bird submission point on the basis that indigenous biodiversity is managed in the Ecosystems and Indigenous Biodiversity Chapter.

5.8.3 The tabled statement of Silver Fern Farms continued to support retaining the rule as notified.

5.8.4 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A included an analysis of notified EW-R14 in relation to Ngāi Tahu cultural values, identifying a relevant matter restricted for discretion (s42A Report for the SASM Chapter). Their analysis also identified that non-compliance with notified standard EW-S7 resulted in a non-complying activity status, but this did not appear in the rules, only the standard (Appendix E in the evidence of Amy Beran dated 12 February 2025). Further

discussion with mana whenua resulted in Hokonui Rūnanga identifying that the matter of discretion should remain due to the range of activities that may be subject to the "catch-all" rule, and the need to give effect to EW-O1 and EW-P5, as recorded in Appendix G to the evidence of Amy Beran dated 12 February 2025. Federated Farmers, in their response to the evidence of Amy Beran dated 28 March 2025, requested the matter of restricted discretion to be removed from EW-R14 regarding Ngāi Tahu cultural values or that applicable cultural values be identified.

5.8.5 Evidence received on the relationship between rule exemptions and notified EW-R14 has been summarised earlier in this section of the Decision. The Panel's decision on exemptions to be included in notified EW-R14 and associated standards is indicated in that section. The Panel considers that the exemption of earthworks for restoration of indigenous biodiversity is better included in EW-S3, as supported by the evidence of the Director General and as discussed further in relation to that standard. Otherwise, the Panel include the interment and fill activities as exemptions in EW-R14.

5.8.6 The Panel agrees with Tina Carlson-McColl that an additional matter of discretion as requested by Stoney Creek Station and others can be accepted, and as contained in her "Option B" in response to Minute 27, the exclusions for overlay chapters can be deleted based on reliance on the Overview and the introductory sections of the Plan.

5.8.7 The Panel also agrees that submission S122.012 Fulton Hogan is rejected on the grounds identified in the s42A Report. The Panel, however, considers that the Forest & Bird submission point should be accepted because the Ecosystems and Indigenous Biodiversity Chapter does not manage earthworks and the matter of discretion is needed in order to connect to the policies in that chapter. The Panel also considers that the matter of discretion addressing Ngāi Tahu cultural values should be retained, but amended in line with Decision 14 and Decision 43. In response to the concerns expressed by Federated Farmers, decision on notified policy EW-P5, re-numbered EW-P4, provides guidance.

5.8.8 Submission S110.046 Royal Forest and Bird Society of NZ Inc is accepted and submissions S116.043 Nathan Bokser and others are accepted in part by amending Rule ES-14 as follows:

EW-R~~14~~12 *Earthworks* and *land disturbance* not otherwise provided for

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

Activity status: Permitted

Where:

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, Industrial and Airport Zones ~~Excluding *Historic Heritage* sites, *Significant Natural Areas*, Outstanding Natural Landscapes or Features~~

Activity status: Permitted

Where:

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 <u>with Conditions (1) or (3), or EW-S1, EW-S2, EW-S3, EW-S4 or EW-S5</u>:

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~~1.2.
10. The matters of discretion of any infringed Standard(s).
11. <u>Effects on indigenous biodiversity and ecological connection.</u>
12. <u>Whether there is a functional need or operational need for the location of the activity.</u>

<u>Activity status where compliance is not achieved with EW-S6:</u> <u>Non-complying</u>

<u>The following activities are exempt from this rule:</u>

(i) <u>Interments in a burial ground, cemetery or *urupā;*</u>

(ii) Filling of building foundation with granular fill under a concrete slab foundation, or filling with drainage metal behind a retaining wall.

5.9 Additional Rules Sought

Submitter (S) Further Submitter (FS)	Decision Requested
S138.005 Port Blakely Ltd	Insert a new rule for earthworks associated with commercial forestry, permitting those activities where they comply with regulations 24 to 33 of the NES-CF.

5.9.1 The Panel agrees with Tina Carlson-McColl in her s42A Report where she recommended rejecting the submission of Port Blakely that sought a permitted activity for earthworks associated with commercial forestry, on the basis that the NESCF already provides for such earthworks as a permitted activity. Accordingly, submission S138.005 Port Blakely Ltd is rejected.

6. Earthworks Standards

6.1 Standards General

Submitter (S) Further Submitter (FS)	Decision Requested
S3.037 Stoney Creek Station Ltd S113.037 Trudy Bokser S116.037 Nathan Bokser S118.037 AW+ JA Johnston Family Trust S127.073 Peters Farm Ltd Karen Peters	Amend table headings from 'Standards' to 'Standards for Permitted Activities'. Insert a guidance note clarifying whether Standards are applicable to all activities or only those listed within the relevant Rule. Clarify the relationship between rules and standards

S18.039 Reaby Downs Farm Ltd S19.039 Karen Temple S20.039 Sarah and Peter Barclay S24.039 Helen McIntosh S68.041 John Baynes S117.037 Greg Bokser	and whether standards are to be treated as standalone rules.

6.1.1 The s42A Report recommended rejecting these submissions on the basis that the How the Plan Works section of the Plan provides sufficient guidance about the relationship between rules and standards.

6.1.2 Claire Perkins provided evidence on behalf of Stoney Creek Station in HS7, dated 18 October 2024, highlighting that the "How the Plan Works" section described standards as providing a threshold for permitted activity status. She identified that where compliance with a standard is not achieved then a restricted discretionary activity status applies, with the exception of notified standard EW-S7, similar to the permitted activity rules. She provided an example of how the rules might be amended to incorporate the activity classification in the standards, referencing EW-R1, in order to improve clarity for Plan users.

6.1.3 Tina Carlson-McColl in her supplementary statement dated 5 November 2024 stated that if there was any difference between the activity classification of a rule and a related standard then the most restrictive activity status will apply. She also considered that the example provided by Claire Perkins was correct, but that if that approach were to be applied then it would need to be applied consistently in the Plan. She advised that taking a similar approach to rules other than EW-R1 would potentially make the rules longer and more complex for Plan users, so she recommended no amendments as a result of the Stoney Creek Station submission and evidence on this matter.

6.1.4 The Panel is sympathetic to the position presented in evidence by Stoney Creek Station. Aside from the example provided by Claire Perkins, the Panel did not receive any additional evidence to guide restructuring of the rules in relation to the standards. The Panel has considered the issue in the context of each rule and whether amendment could be made, based on the example provided. The Panel accepts the position of Tina Carlson-McColl that where there is any difference between a rule and a standard the most restrictive activity classification will apply. However, the matter becomes more complex where both activity classifications are restricted discretionary and the matters restricted for discretion are different. The Panel concludes that all matters of restricted discretion in both the rule and the standard will apply. This is reflected in amendments made to the How the Plan Works section of the Plan.

6.1.5 As a consequence of these matters, submissions S3.037 Stoney Creek Station Ltd and others are accepted in part.

6.2 Standard EW-S1

Submitter (S) Further Submitter (FS)	Decision Requested
S112.095 Waka Kotahi NZ Transport Agency S132.082 KiwiRail Holdings Ltd	Retain as notified
S74.024 Hamish Weir	Conflict with urban setback rules need to be resolved. Rewrite: 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~~ 1m of a boundary with a site in different ownership
S99.017 Clark Fortune McDonald & Associates	Amend EW-S1 to be a batter slope of no more than 1 in 1 as measured from the boundary.

FS28.051 Kainga Ora	Allow in part S99.017 Clark Fortune McDonald & Associates. There is a risk that provisions to control earthworks within boundary setbacks could be a duplication of what is controlled elsewhere in the plan, or through other processes

6.2.1 The submissions in support of the Standard are acknowledged. As the provision has been amended the submissions are accepted in part.

6.2.2 The s42A Report identifies that the Council advisor Mark Adams endorsed the 1 in 2 batter and reduction to within 1m of the boundary, so Tina Carlson-McColl recommended accepting the submission of Hamish Weir and rejecting the submission of Clark, Fortune McDonald and Associates. The Panel agrees with the recommendations.

6.2.3 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A included an analysis of EW-S1 in relation to Ngāi Tahu cultural values, identifying a relevant matter restricted for discretion (s42A Report for the SASM Chapter). Further discussion with mana whenua did not result in any recommended changes, as recorded in Appendix G to the evidence of Amy Beran dated 12 February 2025.

6.2.4 Claire Perkins provided evidence on behalf of Stoney Creek Station that recommended changes to EW-S1 in order to accommodate fencing and farm tracks in the General Rural Zone. As Stoney Creek Station did not submit on EW-S1, and EW-S1 does not apply to EW-R1 (which they did submit on), the Panel did not consider this evidence further.

6.2.5 Submission S99.017 Clark Fortune McDonald & Associates is rejected, while submission S74.024 Hamish Weir is accepted by amending clause (1) of Standard EW-S1 as follows:

1. Cut depth or fill height shall not:

   (~~b~~a) exceed a cut depth or fill height (measured vertically) of 3 metres; or

   (~~c~~b) exceed a cut depth or fill height (measured vertically) of 0.5 metres within ~~1.5m~~ 1 metre of a boundary with a site in different ownership.

6.3 Standard EW-S2

Submitter (S) Further Submitter (FS)	Decision Requested
S112.096 Waka Kotahi NZ Transport Agency S132.083 KiwiRail Holdings Ltd	Retain EW-S2 as proposed.
S122.014 Fulton Hogan	Either provide a definition of "moisture content susceptible soils", or use an alternative term for this in standard EW-S2(b).

6.3.1 The submissions in support of the Standard are acknowledged. As the provision has been amended the submissions are accepted in part.

6.3.2 On the advice of Mark Adams that the term “moisture content susceptible soils” be removed from the standard because it is not a defined geotechnical term, Tina Carlson-McColl recommended accepting the submission of Fulton Hogan. The Panel accepts that advice.

6.3.3 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A included an analysis of EW-S2 in relation to Ngāi Tahu cultural values, identifying a relevant matter restricted for discretion (s42A Report for the SASM Chapter). Further discussion with mana whenua did not result in any recommended changes, as recorded in Appendix G to the evidence of Amy Beran dated 12 February 2025.

6.3.4 Claire Perkins provided evidence on behalf of Stoney Creek Station that recommended changes to EW-S2 in order to accommodate fencing and farm tracks in the General Rural Zone. As Stoney Creek Station did not submit on EW-S2, and EW-S2 does not apply to EW-R1 (which they did submit on), the Panel did not consider this evidence further.

6.3.5 Submission S99.017 S122.014 Fulton Hogan is accepted by amending clause (1) of Standard EW-S2 as follows:

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~~b) have a bench with a width of more than 1.8m; or

   (~~d~~c) be closer than 0.6m from the edge of a batter to the kerb or back edge of any footpath.

6.4 Standard EW-S3

Submitter (S) Further Submitter (FS)	Decision Requested
S109.112 Department of Conservation	Amend EW-S3 to include an appropriate setback from any wetland. Amend the assessment matters listed in matters of discretion to include (or words to similar effect): (...) 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 on~~ for indigenous biodiversity and /or habitats. (...) 6. The effects on public and customary access to the stream, ~~or~~ river, or wetland. 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**.** 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.
S112.097 Waka Kotahi NZ Transport Agency	Retain as notified
S153.003 Oakland Farming Ltd S132.084 KiwiRail Holdings Ltd S113.044 Trudy Bokser S116.044 Nathan Bokser S118.044 AW+ JA Johnston Family Trust S127.080 Peters Farm Ltd Karen Peters S18.046 Reaby Downs Farm Ltd S19.046 Karen Temple S20.046 Sarah and Peter Barclay S24.046 Helen McIntosh S68.048 John Baynes S117.044 Greg Bokser S3.044 Stoney Creek Station Ltd	Amend EW-S3 as follows: Setback from rivers and streams 1. Earthworks (excluding where required for fencing for stock exclusion) shall be set back the minimum distance from the top of the closest bank of a river or a stream as follows:
FS17.068 Federated Farmers	Allow S3.044 Stoney Creek Station Ltd
S143.137 Rural Ratepayers Group S148.138 Alistair & Bernadette Hunt S60.128 Ronald Crispin S68.246 John Baynes	Amend EW-S3: Setbacks from rivers and streams 1. Earthworks (excluding earthworks required for farm fencing for stock exclusion, drainage, including around waterways or pest control) shall be set back

S126.125 Southland Federated Farmers of NZ	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). Refer to Appendix 3 for river and stream orders
FS25.122 Stoney Creek Station Ltd	Allow S126.125 Southland Federated Farmers of NZ
S146.062 Southland District Council	Support in part. 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.

6.4.1 The submissions in support and support in part of the Standard are acknowledged. As the provision has been amended submissions S112.097 Waka Kotahi NZ Transport Agency and S146.062 Southland District Council are accepted in part.

6.4.2 The s42A Report identified a correlation between recommendations on the General Rural Zone and EW-S3, signalling a need for consistency. Tina Carlson-McColl recommended rejecting the submissions of Stoney Creek Station and others, and Federated Farmers, on the basis that the installation of fence posts is not captured by the standard because this is excluded from the definition of "earthworks". She also considered that the exemptions sought by Federated Farmers would be part of the rule exemptions because of being permitted by a rule in a regional plan or resource consent issued by Environment Southland.

6.4.3 Tina Carlson-McColl recommended rejecting the DoC request to incorporate reference to wetlands on the basis that the relationship between earthworks and wetlands is managed by the regulations of the NESF. She otherwise accepted the DoC submission in part, considering that clause (3) could be amended to accommodate the additional matters introduced in that submission. She also incorporated the exemption for earthworks for restoration of indigenous vegetation in EW-S3 in response to the DoC submission (S109.110) and evidence of Elizabeth Williams dated 18 October 2024, in which this consequential amendment was identified.

6.4.4 Claire Perkins in her evidence dated 18 October 2024 on behalf of Stoney Creek Station noted that the exclusion for installation of fence posts may not be sufficient, including in light of EW-R1, so the standard may well be breached by fencing for stock exclusion as a consequence of the terrain. She recommended an addition to the exemption for restoration of indigenous vegetation in EW-S3 so earthworks for the installation of fences for stock exclusion were also exempt. Tina Carlson-McColl responded to this in her supplementary evidence of 5 November 2024 acknowledging that a similar exemption was provided in the General Rural Zone but did not change her position, on the basis that the works exempted may be substantial and have adverse effects on waterbodies, and on the basis of her understanding of the definitions of "earthworks" and "land disturbance".

6.4.5 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A included an analysis of EW-S1 in relation to Ngāi Tahu cultural values, identifying a relevant matter restricted for discretion (s42A Report for the SASM Chapter). Further discussion with mana whenua did not result in any recommended changes, as recorded in Appendix G to the evidence of Amy Beran dated 12 February 2025.

6.4.6 The Panel has considered the relationship between EW-R1 and EW-S3, as well as the definitions of "earthworks" and "land disturbance". The Panel agrees with Tina Carlson-McColl that land disturbance for the installation of fence posts is excluded from the definition of "earthworks", although the Panel understands that "land disturbance" for other purposes is part of the definition of "earthworks". Rule EW-R1 will therefore manage "earthworks" (rather than "land disturbance") for fencing, which

involves modifying the land form, and is subject to EW-S3. Fencing for stock exclusion that involves "land disturbance" within the waterway setbacks is therefore unaffected by either EW-R1 or EW-S3. On this basis the Panel agrees with Tina Carlson-McColl that no specific exemption is required.

6.4.7 The Panel agrees that the NESF applies to earthworks in relation to wetlands, so wetlands do not need to be added to the standard. The Panel also agrees with recommended amendments to the matters of discretion clause (3) in response to the DoC submission, with the exception that reference to a "Council Approved Biodiversity Management Plan" is changed to a "Biodiversity Management Plan" to align with Decision 45. The Panel also adopts the exemption for earthworks associated with restoration of indigenous vegetation in response to DoC submission (S109.110), to align with the approach taken to the notified exemptions elsewhere in this decision.

6.4.8 As a consequence of these matters, submissions S153.003 Oakland Farming Ltd and S143.137 Rural Ratepayers Group are rejected.

6.4.9 Submission S109.112 Department of Conservation is accepted in part by:

(a) amending Standard EW-S3 as follows:

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

(b) amending Standard EW-S3 Matters of Discretion (3) as follows:

3. The nature of existing riparian vegetation and the effects of proposed planting or modification on indigenous *biodiversity* and ~~*/or 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) management of potential adverse effects through a biodiversity management plan.

6.5 Standard EW-S4

Submitter (S) Further Submitter (FS)	Decision Requested
S132.085 KiwiRail Holdings Ltd	Retain as notified
S133.005 David Pullar	Amend to: Earthworks shall not be undertaken on land with an existing slope angle exceeding an average of 15 degrees measured over a horizontal distance of 50 meters.
S74.025 Hamish Weir	Remove the following matter of discretion; ~~5. Impacts on Ngāi Tahu cultural values, including those listed in MW-2.3.~~
S105.022 Farm Manager - Wantwood Station S127.022 Peters Farm Ltd Karen Peters	Delete in Rule EW-S4

S99.018 Clark Fortune McDonald & Associates S104.022 McLeod-Wantwood Trust/Wantwood Station	
FS25.124 Stoney Creek Station Ltd	Allow S104.022 McLeod-Wantwood Trust/ Wantwood Station
FS28.052 Kainga Ora FS25.125 Stoney Creek Station Ltd	Allow S99.018 Clark Fortune McDonald & Associates
S116.045 Nathan Bokser S118.045 AW+ JA Johnston Family Trust S127.081 Peters Farm Ltd Karen Peters S18.047 Reaby Downs Farm Ltd S19.047 Karen Temple S20.047 Sarah and Peter Barclay S24.047 Helen McIntosh S68.049 John Baynes S117.045 Greg Bokser S3.045 Stoney Creek Station Ltd	Amend EW-S4 as follows: Instability of Land 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.~~
FS5.131 Hamish Weir	Allow S3.045 Stoney Creek Station Ltd
FS17.069 Federated Farmers	Allow S3.045 Stoney Creek Station Ltd
S32.054 One NZ Group Ltd S35.054 Chorus NZ Ltd S37.054 Connexa Ltd S33.054 FortySouth S154.054 Spark NZ Trading Ltd	Amend EW-S4 as follows: Earthworks shall not be undertaken on land with an existing slope angle exceeding ~~15~~ 34 degrees.
FS28.053 Kainga Ora	Allow S32.054 One NZ Group Ltd
FS30.061, FS30.014, FS30.018, FS30.030, FS30.083 Transpower NZ Ltd	Allow S32.054 One NZ Group Ltd, Allow S35.054 Chorus NZ Ltd, S37.054 Connexa Ltd, S33.054 FortySouth, S154.054 Spark NZ Trading Ltd
FS25.126, FS25.123, FS25.128, FS25.127, FS25.129 Stoney Creek Station Ltd	Allow in part S32.054 One NZ Group Ltd, S35.054 Chorus NZ Ltd, S37.054 Connexa Ltd, S33.054 FortySouth, S154.054 Spark NZ Trading Ltd - limiting earthworks on slopes greater than 15 degrees is too restrictive.

6.5.1 The s42A Report outlined advice from the Council's geotechnical advisor Mark Adams that EW-S1 and EW-S2 would likely achieve the same result as EW-S4 and that on that basis there was no need to rely on notified EW-S4. Tina Carlson-McColl accepted this advice and recommended deleting the standard, but on the proviso that EW-S1 and EW-S2 apply in order to manage slope instability risk for all rules that contained notified EW-S4.

6.5.2 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A included an analysis of EW-S1 in relation to Ngāi Tahu cultural values, identifying a relevant matter restricted for discretion (s42A Report for the SASM Chapter). Further discussion with mana whenua did not result in any recommended changes, as recorded in Appendix G to the evidence of Amy Beran dated 12 February 2025.

6.5.3 The Panel is satisfied that deleting EW-S4 as recommended in the s42A Report is appropriate. Rules EW-R2, EW-R3, EW-R4 and EW-R5 (as re-numbered in this decision) are subject to EW-S1, while all other rules that follow are subject to EW-S1 and EW-S2. Rule EW-R1 was never subject to EW-S4. The Panel agrees with those submitters that identified the notified standard as problematic and considers that its removal will not result in adverse effects on the stability of land.

6.5.4 Accordingly, submissions S105.022 Farm Manager - Wantwood Station and others are accepted by deleting Standard EW-S4 and consequently submission S132.085 KiwiRail Holdings Ltd seeking retention of the Standard and other submissions seeking changes to the Standard are rejected.

6.6 Standard EW-S5

Submitter (S)	Decision Requested
S112.099 Waka Kotahi NZ Transport Agency	Retain as notified
S132.088 KiwiRail Holdings Ltd	Amend as follows: 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) c~~ontrol erosion; and (c) ~~(d)~~ control dust beyond the boundaries of the site.

6.6.1 The submission in support of the Standard is acknowledged. As the provision is subject to a minor amendment, submission S112.099 Waka Kotahi NZ Transport Agency is accepted in part.

6.6.2 The Panel agrees with the s42A Report recommendation to accept the KiwiRail submission to include reference to rail in the standard, and correct typos. Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A identified no amendments.

6.6.3 Submission S132.088 KiwiRail Holdings Ltd is accepted by amending Standard EW-S5 as follows:

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.

6.7 Standard EW-S6

Submitter (S) Further Submitter (FS)	Decision Requested
S132.086 KiwiRail Holdings Ltd S112.100 Waka Kotahi NZ Transport Agency	Retain EW-S6 as proposed.

6.7.1 The submissions in support of the Standard are acknowledged. As the provision has been retained with only minor numbering amendments these submissions are accepted.

6.7 Standard EW-S7

Submitter (S) Further Submitter (FS)	Decision Requested
S132.087 KiwiRail Holdings Ltd S112.101 Waka Kotahi NZ Transport Agency	Retain EW-S7 as proposed.

6.7.1 The submissions in support of the Standards are acknowledged. As the provision is subject to a minor consequential amendment, these submissions are accepted in part.

6.7.2 The definition of “accidental discovery” in the notified Plan stated that in the event of an accidental discovery the protocol set out in notified EW-S7 should be followed, as well as the procedure set out in notified MW-4.1 in the Mana Whenua Chapter. The notified Mana Whenua Chapter contained a full description of the Ngāi Tahu ki Murihiku Accidental Discovery Protocol from the iwi management plan Te Tangi a Tauira and included a note to refer to the HNZPT Accidental Discovery Protocol for further information. Note 2 in the Historic Heritage Chapter stated that the HNZPT Accidental Discovery Protocol applies when managing unidentified archaeological sites. Notified

EW-P4(7) stated that the accidental discovery protocol inclusive of Ngāi Tahu tikanga and values should be followed in the event of finding an unknown archaeological site. Note 3 in the Overview of the notified Earthworks Chapter included reference to both the Heritage New Zealand Pouhere Taonga Act 2014 and the Ngāi Tahu ki Murihiku Accidental Discovery Protocol. Notified EW-S7, titled "Accidental Discovery Protocol" contained detailed actions and a further note stating that the HNZPT Accidental Discovery Protocol applies when managing unidentified archaeological sites.

6.7.3 Evidence received from Courtney Bennett and Amy Beran in HS8 and HS9A provided analysis and recommendations on the Accidental Discovery Protocol (ADP). The s42A Report for the notified SASM Chapter identified that the ADP reflected Ngāi Tahu cultural values, as well as historic heritage legal requirements, and triggered the need for resource consent when not followed. In Appendix D of that report, analysis indicated that the text of notified MW-4.1 was suited to converting to a provision, in response to Minute 15. The text of notified MW-4.1 and recommended draft provisions were revised a number of times in the evidence received from Courtney Bennett and Amy Beran during the process of reconciling the relationship between the Mana Whenua Chapter and the notified SASM chapter and responding to Minute 15.

6.7.4 In her evidence dated 12 February 2025, Amy Beran confirmed that mana whenua were supportive of consolidating the direction contained in notified MW-4.1 into EW-S7 so that there was no cross-referencing required or reference to two protocols that need to be followed, which would simplify use of the Plan. She provided consolidated text that she recommended for inclusion in EW-S7. Courtney Bennett in her statement of 17 February 2025 preferred that the text remain in the Mana Whenua Chapter.

6.7.5 Evidence received from HNZPT in HS8 emphasised the importance of ensuring reference to the Heritage New Zealand Pouhere Taonga Act 2014.

6.7.6 Decision 14 records the Panel's decision on the Mana Whenua Chapter and its relationship with this decision. The protocol was notified as part of provisions, including notified EW-P4(7) and EW-S7, as well as appearing in explanatory text, notes and the definitions section. The Panel therefore considers that the protocol is not simply a matter of process but is also a matter of regulation, particularly as EW-S7 defaults to a non-complying activity status when not followed. Evidence from Hokonui Rūnanga in HS9A emphasised the importance of the ADP in addressing effects on Ngāi Tahu cultural values within the Earthworks Chapter and relied on the ADP as a basis for removing matters restricted for discretion from some of the rules in the chapter. The Panel finds that such reliance cannot be placed on EW-S7 if it does not incorporate elements of the Ngāi Tahu ki Murihiku Accidental Discovery Protocol and only references the HNZPT Accidental Discovery Protocol. Either the matters restricted for discretion remain, or EW-S7 ensures that the Ngāi Tahu ki Murihiku Accidental Discovery Protocol is followed.

6.7.7 The Panel considers that the two protocols should be followed, which gives effect to notified EW-P4(7), renumbered EW-P3 in this decision. However, the Panel finds that consolidating the two protocols as outlined in Amy Beran's evidence of 12 February 2025 added to potential confusion rather than ameliorating it. The Panel has reviewed notified EW-S7 to determine if the link to the Ngāi Tahu ki Murihiku Accidental Discovery Protocol can be improved. The Panel's view is that direct reference at the outset of the protocol to the relevant section of the Mana Whenua Chapter pulls that text in to the application of the protocol. Rather than attempting to blend the text, this requires Plan users to consult that section of the Plan and read it alongside the remainder of the text in notified EW-S7, in order to give effect to the protocol. While somewhat cumbersome, the Panel consider that it does achieve the outcome of

ensuring both the Ngāi Tahu ki Murihiku Accidental Discovery Protocol and the HNZPT Accidental Discovery Protocol are followed. The Panel, however, considers that the note at the end of notified EW-S7 is confusing and unnecessary, since both protocols are already incorporated in to the standard.

6.7.8 As a consequential change to Decision 14 Mana Whenua and Decision 41 Historic Heritage, and as a minor change under clause 16(2) of the First Schedule, the Panel amends reference to MW-4.1 in the protocol to read MW-3.2, and deletes the following note at the end of the standard:

~~*Note: Where the Heritage New Zealand Pouhere Taonga Act 2014 applies the Heritage New Zealand Pouhere Taonga Accidental Discovery Protocol manages unidentified archaeological sites that may be discovered as a result of earthworks separate to District Plan requirements.*~~