

**Before the Hearings Panel
At Waimakariri District Council**

Under Schedule 1 of the Resource Management Act 1991

In the matter of the Proposed Waimakariri District Plan

Between **Various**

Submitters

And **Waimakariri District Council**

Respondent

**Initial reply on Earthworks Ketuketu Whenua – Peter Wilson on behalf of
Waimakariri District Council**

Date: 29 September 2023

INTRODUCTION:

- 1 My full name is Peter Gordon Wilson. I am employed as a Senior Policy Planner with the Waimakariri District Council. I am the Reporting Officer for the Earthworks topic and prepared the s42A Report.
- 2 I have read the evidence and tabled statements provided by submitters at hearing five and relevant to the Section 42A Report – Earthworks Ketuketu Whenua.
- 3 I have prepared this Council reply on behalf of the Waimakariri District Council (**Council**) in respect of matters raised through Hearing Stream 5.
- 4 I am authorised to provide this evidence on behalf of the District Council.

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

- 5 Appendix D of my section 42A report sets out my qualifications and experience.
- 6 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023.

SCOPE OF REPLY

- 7 This reply follows Hearing Stream 5 held between 21 - 24 August 2023. Minute 9 requires me to submit an initial right of reply by 29 September 2023 and a final right of reply by 30 November 2023, following expert caucusing.
- 8 The questions asked of myself are:
 - a) Please respond to the narrowed relief sought by of NZPork and HortNZ to include particular provisions in respect of biosecurity.
 - b) Please set out your final position in respect of the proposed setbacks in EW-S3 and the depth of excavation in EW-S5, taking into account the Panel's questions before and during the hearing, Ms Dale's and Federated Farmers' evidence and other submitter responses. In doing so, please provide an updated position as to whether a District

Plan should include policies and rules for managing the use of land for the purpose of managing water quality and the discharge of contaminants, bearing in mind the questions from the Hearings Panel and submitters evidence, including whether rules and standards need to be the same in district and regional plans, even when they may have a different purpose, or conversely, are for managing the same effect.

- c) Please respond to Ms McLeod's requested amendments to EW-P1 for enabling earthworks for infrastructure; noting that the Panel identified that there appears to be a policy gap in respect of earthworks associated with energy and infrastructure activities.
- d) Please provide recommendations on WIL's submission points that seek:
- That the upgrade of community scale irrigation / stockwater networks should be a permitted activity.
 - That Earthworks associated with targeted stream augmentation and managed aquifer recharge are a permitted activity.
- e) Please respond to Ms Dale and Ms Foote's suggested new rule/provision that would make earthworks that are subject to a building consent for a new building within a defined footprint a permitted activity? If you recommend such a rule/provision be included, what is the district planning consideration, if any, and what conditions if any, should apply?
- f) Please provide your advice as to whether EW-P6 is required, given the wording of EW-P1(2). Would there be scope to delete EW-P6 if it was determined that there is duplication?
- g) Please respond to ECan's submission in respect of earthworks in flood areas - EW-R5 in light of Mr Willis's recommended amendments to the NH rules

h) Please respond to the tabled statement of Mr Rowe for the Fuel Companies and Z Energy.

9 The main topics addressed in this reply include:

Biosecurity request

10 I have undertaken further consideration of the NZPork and HortNZ request for biosecurity provisions. I noted the Biosecurity Act overrides for national and potentially regional biosecurity emergencies, however, these submitters have focused on the localised biosecurity emergency that can occur before any official declaration. I now accept that there is a need for some provision or guidance within the district plan on this matter. One approach would be to extend my recommended advice note that applies before, during, and after civil defence emergencies to cover localised biosecurity events and to, at the suggestion at para 4 of Mr Hodgson's hearing 5 evidence, to link it to the actions of an authorised person under the Biosecurity Act 1993.

11 The amended advice note, including changes resulting from questions from Commissioner Sweetman at hearing 5 on grammar, is as follows:

These standards do not apply in the following situations:

- a) during a state of emergency or transition period declared ~~under the Civil Defence Emergency Management Act 2002~~ or where direction to undertake specific earthworks has been issued by the controller or recovery manager under the Civil Defence Emergency Management Act 2002¹; or
- b) during a biosecurity emergency declared by an authorised person under the Biosecurity Act 1993

12 I consider that this would achieve a permitted activity pathway under Rule EW-R11-earthworks not subject to Rules EW-R1 to EW-R10 for the burial of animals and material during a biosecurity emergency, as the

¹ Amended in response to Commissioner questions at hearing 5.

overall activity status is permitted, but as the standards do not apply during the emergency, there would be no volume threshold limitations.

Earthworks setbacks in EW-S3 and depth of excavation in EW-S5

- 13 In considering this question, I start with the role of a District Council under s31 RMA. There is no explicit District Council RMA function in relation to water quality and/or contamination, however I consider this is somewhat complicated by the requirements on all councils, including territorial local authorities, to achieve integrated management of freshwater under section 3.5 NPSFM. I accept that achieving a policy requirement within the NPSFM is not the same as the jurisdiction of a district council under s31 in respect of freshwater. In practice, it likely means that district plans that relate to freshwater or freshwater environments cannot be inconsistent with regional plans, and integration could be achieved through addressing and removing inconsistencies whilst still reflecting the clear demarcation between regional and district council functions under ss 30 and 31 respectively.
- 14 In resolving this, Commissioners raised the question of “*does the Council have expertise in assessing a water quality matter when assessing a consent application*” as a practical test. Whilst Council does have in-house specialist ecologists, including freshwater ecologists, who can and do advise on water quality matters from time to time, I accept that this type of assessment and advice is not a routine function of the Council’s consent authority.
- 15 In light of this discussion, I consider that Policy EW-P6 is inconsistent with the functions of District Councils, and should be deleted. I note my s42A recommendation to add mahinga kai to EW-P1(2), this retaining explicit reference to this value. I consider that the deletion of EW-P6 gives better effect to the objective EW-O1 as the objective does not explicitly refer to water quality.
- 16 The recommended deletion requires consequential reassessment of the rules and standards. I consider that without EW-P6, that the setback

standards in EW-S3 are no longer required, and I also note the questions from Commissioners and evidence from submitters about the need for and status of these setback standards to begin with. I am also conscious of the freshwater natural character overlay, which sets setbacks of varying width on all freshwater bodies in the district, for the primary purposes of controlling structures, and the controls and setbacks that apply through the NESF on wetlands, and through the Canterbury Land and Water Regional Plan on rivers.

17 I stated in my s42A and in my preliminary responses to questions that I considered that the EW-S3 setbacks were about as consistent as could be achieved with respect to the NESF wetland setbacks and CLWRP river setbacks, however, I noted that the NESF and CLWRP regimes were very different. To recap on those regimes:

- the NESF requires setbacks from natural inland wetlands of a variety of widths between 10m to 100m based on the type of activity being undertaken near the wetland.
- the CLWRP sets a restricted discretionary activity for vegetation clearance and earthworks within 10m of a bed of a lake or river or wetland in hill, high country, and high soil erosion risk areas and within 5m on all other land (rule 5.169).

18 Given my reflection on Council jurisdiction, the existence of the natural character setbacks for structures near waterways, and the NESF and regional rules governing earthworks near waterways (both implemented by the Canterbury Regional Council), I consider that the effects of earthworks will still be appropriately managed in and around waterways if EW-S3 is deleted.

19 I note EW-R9 which already provides controls on earthworks stockpiling within 20m of rivers and lakes and 50m from wetlands, and consider that because this rule already references EW-S3, it is actually internally inconsistent, and would put all stockpiling into a consent situation. Deletion of EW-S3 would improve the implementation of this rule, which

I consider is within the role of a district council, as earthworks stockpiles adjacent to banks of rivers, lakes, and wetlands can create a natural hazard. Natural hazards are within the role of a district council.

20 A stockpile may also be considered as a structure for the purposes of the natural character setbacks as well.

21 I consider that it is necessary to reference the CLWRP to ensure that plan users are made aware of these rules as follows:

Other potentially relevant plan provisions:

Canterbury Land and Water Regional Plan Rule 5.175 which outlines setbacks for earthworks adjacent to waterbodies.

22 If EW-S3 is deleted the standards and references to them would then be renumbered accordingly, from EW-S1 to EW-S6. I will undertake this exercise following decisi

Groundwater

23 For the groundwater standard EW-S5, my consideration is similar. CLWRP rule 5.175 controls the water quality aspects of that activity. If there is a district council function for earthworks of this nature, it would need to be within the ambit of a s9 function, for instance, land stability, visual amenity and appearance, reverse sensitivity and nuisance. I also note standard EW-S2 which sets a 300mm and 2m setback from a neighbouring parcel in different ownership requirement.

24 If the standards of 1.5m maximum height and 2m depth are then continued with, this would be in the context of the s9 district council functions above.

25 I am conscious of the Summerset submission opposing EW-S5 as it is more stringent than the CLWRP. However, if the CLWRP is managing water quality issues and PDP managing land stability, visual amenity, and appearance, then these are different effects, and stringency should not

be a concern. I would still recommend rejecting the Summerset relief [207.1]

Consequential changes to EW-MD7

26 The recommendations above will require consequential changes to the matters of discretion, in particular, EW-MD7. I recommend the removal of ...and water quality of any water body ... from EW-MD7(3)

Earthworks EW-P1

27 Ms McLeod considers that EW-P1 fails to give effect to the NPSET and requests the inclusion of²:

x. are ancillary to the operation, maintenance, upgrading and development of the National Grid.

28 Conceptually, I agree with the need to include a reference to infrastructure in EW-P1, but given that the exact nature of the wording to reference infrastructure may be subject to the final outcome of conferencing, I request to provide my final recommendations on wording in my 30 November Right of Reply.

Waimakariri Irrigation Limited

29 WIL have requested the following amendments to the proposed plan:

- a) That the upgrade of community scale irrigation / stockwater networks should be a permitted activity.
- b) That Earthworks associated with targeted stream augmentation and managed aquifer recharge are a permitted activity.

30 My s42A recommendations were to extend the scope of EW-R3 to include community scale irrigation/stockwater networks. However, I accept that this is not the same scope as the equivalent rule EI-R49 which includes upgrades, where the upgrade excludes extensions or expansions. The title of EW-R3 could be further amended as follows:

² Para 14.5 EIC, Ms Hayes

Earthworks for maintenance and upgrading of existing community scale irrigation/stockwater networks, public water races or drains

Where upgrading excludes extensions or expansions

- 31 I have considered the issue of earthworks for targeted stream augmentation and managed aquifer recharge (MAR). My understanding of these types of systems is based on the Hinds MAR in mid-Canterbury, where the headworks involves a system of water races, infiltration basins and soak fields, and bore wells designed to inject surface water into an aquifer. The Hinds scheme sits across a large area of land, however MAR schemes can vary in size. From my perspective, the critical consenting pathway for MAR schemes are the water take and discharge permits required under the CWLRP, with the proposed plan land use component involving construction of the facility being of lesser importance.
- 32 The earthworks involved in the construction of an MAR scheme are covered by proposed plan rules, including:
- Wells, which are permitted by EW-R6, but noting that wells usually have requirements under the CLWRP
 - Infiltration basins, and soak pits, which are permitted by EW-R11, provided the various standards are met. In rural areas, which consider are the most likely locations for MAR schemes, the thresholds in EW-S1 are up to 500m³ or 100m³ per ha per year, whichever is greater, along with the depth and height requirements in EW-S3, primarily for land stability.
- 33 I consider that small to perhaps medium scale MAR schemes which did not require a new race network could be a permitted activity under the proposed plan rules. Larger schemes would trigger earthworks consents, as well as consents for the activity overall, noting rule EI-R50 which sets a discretionary status for new, extension, or expansion of existing community scale irrigation/stockwater networks, under which

the overall activity of MAR would be captured in most instances anyway.

- 34 I do not consider that there is a need to treat an MAR activity separate from any other earthworks activity, further noting that such a scheme which involves both land use and use of freshwater components would likely trigger joint decision-making between Waimakariri District Council and the Canterbury Regional Council.

Building consent pathway for earthworks

- 35 I have reviewed the requirements of the Building Act 2004, the Building Regulations 1992 (otherwise known as the Building Code) around surface water and land stability³. Clause E1 provides objectives (in the meaning of the Building Act), functional requirements and performance standards that buildings must meet.

- 36 The Functional Requirements (E1.2) is to:

The functional requirement is to:

Buildings and sitework shall be constructed in a way that protects people and other property from the adverse effects of surface water.

- 37 My assessment is that the Building Code and Act does not provide for land stability matters, especially in relation to a boundary, to be assessed using the building consent process. The closest relevant provision in the Building Code is clause E1-surface water, which requires other property to be protected from damage caused by surface water. There is a requirement to build to a 10% AEP and to dispose of that surface water, and to avoid 2% AEP events entering buildings, except where as otherwise required under planning legislation. I consider that the Building Act processes, and related engineering standards and codes⁴ primarily deal with the management of erosion, damage, or

³<https://www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html#DLM164914>

⁴ See for instance NZS4431-2022

environmental deterioration resulting from the building site or footprint during the period of construction only.

38 The wider issues of land stability, reverse sensitivity, and nuisance with activities at boundaries, is outside the scope of the Building Act and remains with the RMA.

39 I have investigated the CDP exemption discussed by Ms Dale to understand the nature of it. The CDP has a number of exemptions from earthworks rules and standards that relate to the building consent process. The most indicative of them is the following:

8.93 – exemptions (to earthworks provisions)

Any earthworks subject to an approved building consent where they occur wholly within the footprint of the building. For the purposes of this rule, the footprint of the building extends 1.8m from the outer edge of the wall. This exemption does not apply to earthworks associated with retaining walls/structures which are not required for the structural support of the principal building on the site or adjoining site.

40 This exemption applies to the building platform itself with a 1.8m surrounding buffer, and excludes retaining structures at the boundary where that retaining structure is not part of the building.

41 The standards in EW-S2 would be applied in conjunction with existing boundary setbacks (prior to Variation 1). Earthworks on the boundary of sufficient height or depth requiring them to be treated as a structure require consent, as they do under the CDP provisions. Earthworks further than 2m from the boundary are a permitted activity and do not require consent.

42 The differences are:

- a) the setback of 1.8m in Christchurch versus 2m in Waimakariri.
- b) The envelope approach taken in Christchurch which extends 1.8m from the building wall, and would presumably include the wall if the building wall itself is on or near the boundary
- c) The explicit reference to the building consent process.

43 I think the intent and application of the earthworks provisions is essentially the same, however, they are written in different ways, and the lack of explanation of the interface with the building consent process has created the confusion.

44 Therefore I recommend the following changes to clarify the application of EW-S2:

1. Earthworks more than 300mm in height or depth shall be set back a minimum of 2m from any boundary of a site in different ownership.

For clarity, these standards do not apply to earthworks wholly within the footprint of a building where subject to an approved building consent

EW-P6

45 In my discussion on the earthworks setbacks and scope for them within the role of a District Council I have recommended the deletion of EW-P6.

ECan

46 I have read the evidence of Ms Mitten and discussed the issue with Mr Willis.

47 For EW-R5, given that Mr Willis has recommended to accept Ms Mitten and Mr Griffiths' proposed new rule for above ground earthworks into the NH chapter, I consider that there is no longer any need for EW-R5, and it should be deleted as the content of it would be duplicating, and potentially inconsistent with, the new NH rule.

48 I note my s42A recommended amendments to EW-R4, which will need further amendment to reference the new ECan NH rule numbering once this is determined, as well as a subsequent renumbering of the entire chapter.

Fuel companies

49 I agree with the fuel companies that the EW chapter is currently silent on the matter of earthworks associated with the removal or replacement of a fuel storage system. They would not typically be infrastructure in the meaning of EW-R8, although large or strategic tanks could be considered infrastructure. Because of this, I consider that there is a need for a new rule.

50 Mr Rowe proposes such a rule at para 2.5 of his statement of evidence as follows:

Earthworks undertaken in relation to the removal or replacement of a fuel storage system

Activity status: PER

Where:

1. The activity complies with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 (NESCS); and
2. the activity shall not be located within 20m of the bank of any river or lake, 50m from the margin of any wetland; and
3. EW-S4, EW-S6 and EW-S7 are met;

51 Given that I have recommended the deletion of EW-S3 – setbacks from waterbodies, I have consequentially deleted this reference from Mr Rowe’s proposed rule. However, I consider, as Mr Rowe considered, that there is a need for a setback to apply to place a buffer between waterbodies and underground tanks, and I have recommended applying the same setback as for earthworks stockpiles.

52 The numbering of this rule should be determined following decisions.

53 Mr Rowe has requested further amendments to the amendments I have already recommended on EW-AN1. A further amendment to link EW-AN1(4) to the proposed new rule would be as follows:

(4) The NESPF regulates earthworks for forestry purposes, and the NESCS manages the effects on human health from the disturbance or removal of contaminated soil. Specific activities (i.e. soil sampling and removing or replacing fuel storage systems) are regulated under the NESCS74 as well as under the rules of this chapter. Earthworks managed under the ~~NESCS and~~ NESPF are not subject to provisions in this chapter other than where the District Plan deals with terms and conditions not covered in the NES or in the circumstances where the District Plan is allowed to be more stringent.

Date: 29/09/2023

Peter Wilson

Updated Appendix A – Recommended Changes

This captures changes as a result of:

- Response to questions prior to hearing stream 5
- 29 September Right of Reply

Changes arising from expert conferencing will be incorporated in the final right of reply on 30 November

Introduction

This chapter provides for and manages earthworks across the District and recognises that earthworks are an integral part of the use and development of land for residential activities, industrial⁵, rural and commercial activities at a variety of scales.

Other potentially relevant plan provisions:

Canterbury Land and Water Regional Plan Rule 5.175 which outlines setbacks for earthworks adjacent to waterbodies.

Insert following policy into urban environment zone chapters RESZ, CMUZ, INZ, OSRZ, SPZ(HOS), SPZ(HOS), SPZ(KR), SPZ(PBKR), SPZ(PR), SPZ(MCC):

avoiding quarry, landfill, cleanfill area, mining, or dam activities within to urban environments⁶.

⁵ Daiken New Zealand Limited [145.23]

⁶ Fulton Hogan [41.33]

Definitions

Coastal hazard mitigation works: Any means work and or structure designed to prevent or mitigate coastal hazards, such as coastal erosion and seawater inundation. It includes soft engineering natural hazard mitigation beach re-nourishment, dune replacement, and sand fences, seawalls, groynes, gabions and revetments and hard engineering natural hazard mitigation⁷.

Rehabilitation: In relation to the Earthworks chapter⁸, means restoring land that has been damaged by earthworks activity, to as near to pre-disturbance conditions as possible.

EW-P1	Enabling earthworks Enable earthworks where they: 1. are compatible with the <u>character amenity values and qualities</u> ⁹ of the location and surrounding environment;
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⁷ DOC [419.8]

⁸ DOC [419.23]

⁹ Summerset [207.16]

	<ol style="list-style-type: none"> 2. avoid, remedy or mitigate any adverse effects on any sites or areas identified as ONL, ONF, SAL, Coastal Environment Overlay, SNA, <u>mahinga kai</u>¹⁰ and sites and areas of significance to Māori, Natural Open Space Zone, surface freshwater bodies and their margins, or any notable tree, historic heritage or heritage setting; 3. minimise erosion and avoid adverse effects from stormwater or sediment discharge from the site; 4. avoid increasing the risk to people or property from natural hazards; 5. maintain the stability of land including adjoining land, infrastructure, buildings and structures; 6. minimise the modification or disturbance of land, including any associated retaining structures, on the visual amenity values of the surrounding area¹¹; and 7. minimise adverse dust, vibration and visual effects beyond the site.
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EW-P4	<p>Scale of earthworks within or adjacent to urban environments</p> <p>Minimise adverse effects related to the scale of earthworks on character, and amenity values within or adjacent to urban environments by:</p>
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¹⁰ ECan [316.156], Summerset [207.16]

¹¹ Summerset [207.16]


	<ol style="list-style-type: none"> 1. encouraging the integrated design and management of earthworks associated with subdivision, development and use; 2. minimising any off-site effects of earthworks by controlling the duration and sequencing of earthworks; and 3. avoiding quarry, landfill, cleanfill area, mining, or dam activities within or adjacent to urban environments.¹²
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<p>EW-P6</p>	<p>Water resources</p> <p>-</p> <p>Avoid, Manage adverse effects of earthworks on ground and surface water bodies that could result in water contamination and adverse effects on mahinga kai¹³.</p>
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EW-R1 to be finalised in 30 November 2023 Right of Reply

¹² Fulton Hogan [41.33]


¹³ ECan [316.156], Summerset [207.16]

EW-R1	Earthworks for the maintenance and repair of roads, footpaths, cycleways, tracks, carparks, accessways and transmission line, or NESTF regulated activity¹⁴
All Zones	<p>Activity status: PER</p> <p>Where:</p> <ol style="list-style-type: none"> EW-S4 and EW-S7 are met;  the earthworks are within the formed area of the road, footpath, cycleway, track, carpark or accessway <u>or transmission line</u>; and the earthworks are contained within ground previously disturbed through construction of the road, footpath, cycleway, track, carpark, accessway, <u>transmission line, or NESTF regulated activity</u>. <u>Where the activity is an NESTF regulated activity, that all relevant earthworks NESTF standards are applied;</u>

EW-R3 to be finalised in 30 November 2023 Right of Reply

¹⁴ Transpower [195.105]


EW-R3 Earthworks for maintenance of existing community scale irrigation/stockwater networks¹⁵, public water races or drains

EW-R4	Earthworks for community scale natural hazards mitigation works	
<p>Urban Flood Assessment Overlay</p> <p>Non-Urban Flood Assessment Overlay</p>	<p>Activity status: PER</p> <p>Where:</p> <p>1. EW-S1 to EW-S7 are met. </p> <p>Rules NH-R8, NH-R9, NH-R10 and new ECan rule are met¹⁶</p>	<p>Activity status where compliance not achieved: DIS</p>


EW-R5	Earthworks within an overland flow path	
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¹⁵ WIL [210.43, 210.44]

¹⁶ ECan [316.157]

<p>Urban Flood Assessment Overlay</p>	<p>Activity status: PER</p>
<p>Non-Urban Flood Assessment Overlay</p>	<p>Where:</p> <ol style="list-style-type: none"> 1. EW-S1 to EW-S7 are met;  and 2. the height of any filling does not exceed 0.25m above the ground level at (18 September 2021); or <u>activity does not exacerbate flooding on any other property by displacing or diverting floodwater on surrounding land in a 0.5% AEP event¹⁷</u> 3. the filling is for a building platform that is located greater than 2m from any site boundary within the Urban Flood Assessment Overlay, or greater than 10m from any site boundary within the Non-Urban Flood Assessment Overlay; or 4. the flood depth in a 0.5% AEP event is less than 100mm.

¹⁷ ECan [316.158] and consequential from Mr Willis's s42A for natural hazards chapter

EW-R10	Earthworks for farm quarries¹⁸
General Rural Zone	<p>Activity status: PER</p> <p>-</p> <p>Where:</p> <ol style="list-style-type: none"> EW-S1 to EW-S7 are met;  and the maximum area of any farm quarry shall be 1500m² per site.

Earthworks undertaken in relation to the removal or replacement of a fuel storage system¹⁹		
All zones	Activity status: PER	Activity status when compliance not achieved: RDIS
	Where:	Matters of discretion are restricted to:
		<ul style="list-style-type: none"> EW-MD1 - Activity operation, scale, form and location

¹⁸ CI 16(2), sch 1, RMA minor error
¹⁹ EIC Miles Rowe, hearing stream 5

1. The activity complies with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 (NESCS); and
2. the activity shall not be located within 20m of the bank of any river or lake, 50m from the margin of any wetland; and
3. EW-S4, EW-S6 and EW-S7 are met;

- [EW-MD2](#) - Nuisance and [reverse sensitivity](#)
- [EW-MD3](#) - [Land](#) stability
- [EW-MD4](#) - [Natural hazards](#)
- [EW-MD5](#) - [Rehabilitation](#)
- [EW-MD6](#) - [Coastal environment](#) and hazards
- [EW-MD7](#) - [Water bodies](#), vegetation and fauna
- [EW-MD8](#) - Natural features and landscapes

EW-S2 General setbacks

1. [Earthworks](#) more than 300mm in [height](#) or depth shall be set back a minimum of 2m from any boundary of a [site](#) in different ownership.

Activity status when compliance not achieved: RDIS

Matters of discretion are restricted to:

- [EW-MD1](#) - Activity operation, scale, form and location
- [EW-MD2](#) - Nuisance and [reverse sensitivity](#)
- [EW-MD3](#) - [Land](#) stability

For clarity, these standards do not apply to earthworks wholly within the footprint of a building where subject to an approved building consent

- [EW-MD4](#) - [Natural hazards](#)
- [EW-MD5](#) - [Rehabilitation](#)
- [EW-MD6](#) - [Coastal environment](#) and hazards
- [EW-MD7](#) - [Water bodies](#), vegetation and fauna
- [EW-MD8](#) - Outstanding natural features and landscapes

EW-S3 ~~Setback from water bodies~~

- ~~1. [Earthworks](#) shall not be undertaken:
 - ~~within 20m from the bank of any stream, [river](#); or~~
 - ~~within 50m of the edge of any [wetland](#) or [lake](#).~~~~

~~**Activity status when compliance not achieved: RDIS**~~

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~~**Matters of discretion are restricted to:**~~

- ~~• [EW-MD7](#) - [Water bodies](#), vegetation and fauna~~

EW-S5 Excavation and filling

1. Except for the burial of dead animals, and for offal pits, earthworks shall achieve the following:
 - a. a maximum height of 1.5m above ground level,

- b. a maximum depth of 1m²⁰ below ground level;
- c. material used for filling of land must be cleanfill material.

Table EW-1 General standards for earthworks

Special Purpose Zone (Pegasus Resort), Special Purpose Zone (Museum and Conference Centre), Special Purpose Zone (Pines Beach and Kairaki Regeneration Zone), Local Centre Zone, Large Format Zone, Town Centre Zone, Industrial Zones	1000m ² or 50m ³ per 100m ² of site area, whichever is greater ²¹
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²⁰ Summerset [207.21]

²¹ Ngai Tahu Property [411.30]

EW-AN1 to be finalised in 30 November 2023 Right of Reply

EW-AN1

Activities and structures may also be subject to controls outside the District Plan. Reference should also be made to any other applicable rules or constraints within other legislation or ownership requirements including the following:

1. Earthworks may require building consent under the Building Act 2004.
2. The Stockwater Race Bylaw 2019, the Waimakariri River Regional Plan 2004, and the Canterbury Land and Water Regional Plan 2018 may apply.
3. Resource consent may be required under regional plans including the Canterbury Land and Water Regional Plan 2018 and the Canterbury Air Regional Plan 2017. Earthworks within the beds of lakes and rivers is regulated under the regional planning framework (Canterbury LWRP) and earthworks in the coastal marine area under the Canterbury Regional Coastal Environment Plan²².
4. The NESPF regulates earthworks for forestry purposes, and the NESCS manages the effects on human health from the disturbance or removal of contaminated soil. Specific activities (i.e. soil sampling and removing or replacing fuel storage systems) are regulated under the NESCS as well as under the rules of this chapter²³. Earthworks managed under the NESCS and NESPF are not subject to provisions in this chapter other than where the District Plan deals with terms and conditions not covered in the NES or in the circumstances where the District Plan is allowed to be more stringent. The District Plan can be more stringent than the NESPF for forestry in outstanding natural features and landscapes, and SNAs.

²² ECan [316.159],

²³ Z Energy Limited, BP Oil New Zealand Limited, Mobil Oil New Zealand Limited [276.39]

- ~~5. The NESETA and the NESTF have controls for earthworks in relation to infrastructure. Earthworks managed under the NESETA and the NESTF are not subject to provisions in this chapter other than where they address terms and conditions not covered in the NES, or in the circumstances where the District Plan is allowed to be more stringent than the NESTF, including if the activity is located:~~
- ~~a. within the root protection area of a notable tree or other vegetation in the road reserve listed in the District Plan;~~
 - ~~b. within the root protection area of a notable tree, group of trees, or other vegetation outside the road reserve identified as being of special significance listed in the District Plan;~~
 - ~~c. in a place identified in the District Plan as having heritage values;~~
 - ~~d. in a landscape feature identified in the District Plan as having special visual amenity values (however described);~~
 - ~~e. in an area identified in the District Plan as a significant habitat for indigenous vegetation (however described);~~
 - ~~f. on an area identified in the District Plan as a significant habitat for indigenous fauna;~~
 - ~~g. in an area identified in the District Plan as an outstanding natural landscape or feature;~~
 - ~~h. in an area where the District Plan has rules to protect the adjoining CMA.²⁴~~
6. If any activity associated with a project, including earthworks, may modify, damage or destroy an archaeological site(s), an authority from HNZPT must be obtained for the work to proceed lawfully. The Heritage New Zealand Pouhere Taonga Act 2014 contains penalties for unauthorised site damage.

EW-AN4

These standards do not apply in the following situations:

²⁴ Transpower [195.106]

- a) during a state of emergency or transition period declared ~~under the Civil Defence Emergency Management Act 2002~~ or where direction to undertake specific earthworks has been issued by the controller or recovery manager under the Civil Defence Emergency Management Act 2002²⁵; or
- b) during a biosecurity emergency declared by an authorised person under the Biosecurity Act 1993²⁶.

²⁵ Amended in response to Commissioner questions at hearing 5.

²⁶ Federated Farmers [414.170, 414.173], NZPork & HortNZ hearing 5 EIC

EW-MD1 to be finalised in 30 November 2023 Right of Reply

EW-MD1	Activity operation, scale, form and location <ol style="list-style-type: none">1. Location, volume and area of earthworks.2. The operational need or functional need for the earthworks in the location.3. Any effects on the natural character and amenity values of the site and surrounding area.4. Any effects on archaeological sites, heritage values or the heritage setting of the site or within the surrounding area.5. Any disturbance of culturally significant sites and any proposed mitigation measures.6. Any effects on the health and structural integrity of any notable tree and any effects on the values that have been identified for the notable tree.7. Public health and safety including contingency provisions for emergency response.8. Mitigation including fencing, planting and landscaping.9. Effects on soil quality.10. Final contour and ground level resulting from excavation or filling.11. Vehicle movements associated with earthworks.12. Any effects on the operation, maintenance, upgrade and development of the National Grid <u>and transmission lines</u>²⁷.
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²⁷ Mainpower [249.33]

13. Any constraint on the future development potential of the site or surrounding sites.
14. The safe and efficient functioning of infrastructure²⁸

EW-MD5

Rehabilitation

1. Any proposed site rehabilitation, considering:
 - a. the location, gradient and depth of the earthworks;
 - b. availability of clean fill material and time frames for rehabilitation;
 - c. any adverse effects on traffic, dust, groundwater, drainage and landscape;
 - d. any re-vegetation, including the use of indigenous and non indigenous plant varieties from seed sourced from the relevant ecological district within which the planting is to take place²⁹, and any weed and pest control proposed, and
 - e. any mitigation or proposed mitigation.
2. Any quarry site rehabilitation plan, prepared by a person suitably qualified or experienced in site rehabilitation

²⁸ Waka Kotahi [275.42], WIL [210.60]

²⁹ Federated Farmers [414.29]

<p>EW-MD7</p>	<p>Water bodies, vegetation and fauna</p> <ol style="list-style-type: none"> 1. The extent to which the disturbance of the soil, including disturbance of contaminated land, adversely affects areas of significant indigenous vegetation and significant habitats of indigenous fauna. 2. Any removal of, or disturbance to, indigenous vegetation <u>shall be in accordance with the provisions in the ECO chapter.</u>³⁰ 3. Any effects on the natural character and water quality of any water body³¹. 4. The extent to which the earthworks will restrict public access and enjoyment of the margin of any water body. 5. The extent to which the habitat of trout, salmon, and indigenous aquatic species, may be adversely affected by any disturbance on the <u>riparian margin</u>³² margin of the water body. 6. Fencing, planting and landscaping. 7. The extent to which the land use will adversely affect wahi taonga and mahinga kai. 8. For ngā wai, the matters specified in SASM-MD3 Nga Wai.
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³⁰ DOC [419.123]

³¹ Consequential to removal of EW-P6 and EW-S3

³² DOC [419.123]

