

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

**AND**

**IN THE MATTER** of Hearing Stream 5 for the  
Hazards and Risks, Earthworks and Subdivision topics  
of the Proposed Central Hawkes Bay District Plan.

**BY FEDERATED FARMERS OF NEW ZEALAND**

**TO Central Hawke's Bay District Council**

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**Statement of Evidence**

**Rhea Dasent  
On behalf of Federated Farmers**

**24 August 2022**

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## INTRODUCTION

1. This Statement of Evidence is for Hearing Stream 5 for: *Hazards and Risks, Earthworks and Subdivision*.
2. My name is Rhea Jane Dasent and I am a senior regional policy advisor for Federated Farmers of New Zealand. I am authorised to speak on behalf of Federated Farmers.
3. I have thirteen years of experience in resource management issues to do with farming, having worked for Federated Farmers as a regional policy advisor since 2009. My role is to provide policy advice and advocacy on behalf of Federated Farmers members in processes arising under the Resource Management Act, Local Government Act and Local Government (Rating) Act. I analyse, submit, present at hearings and conduct Environment Court appeals on behalf of members. My work is informed and mandated by our elected representatives and local members. I also have practical farming experience, being currently employed on the family farm in the Hastings District.
4. I hold a Bachelor of Science Degree and a Bachelor of Arts Degree from Victoria University of Wellington, and I have previous experience as a resource consent officer working for local government.
5. My views are closely aligned with those of Federated Farmers, due to my personal farming background.
6. Federated Farmers is a voluntary membership-based organisation that represents farmers and other rural businesses. Federated Farmers has a long and proud history of representing the needs and interests of New Zealand's farmers and as such has a keen interest in the Central Hawke's Bay District Plan.
7. Federated Farmers made a submission and further submissions on the Hazards and Risks, Earthworks and Subdivision topics of the District Plan. These submissions are representative of our members' views and experiences with the management of the resources in the Central Hawke's Bay District and reflect the fact that these chapters of the proposed Plan will have a significant impact on our members' daily lives relying on the rural environment as their workplace and their home.
8. I wish to acknowledge and support submissions made by individual members of Federated Farmers.

## Key Issue 2: Hazardous Substances – Introduction, Issues, Objectives & Policies

9. Federated Farmers submitted S121.253 seeking a new policy to acknowledge that the Hazardous Substances and New Organisms Act 1996 already regulates hazardous substances and there is no need for District Plan duplication. This new policy should be the same as in Hastings District Plan, and will be the policy to achieve Objective HAZS-02. We also sought HAZS-R1 be deleted as a consequence.

10. The Section 42a Report discusses this in paragraph 5.3.41, and recommends that instead of a new separate policy, Policy HAZS-P4 is replaced with wording similar to what we sought:

*HAZS-P4 To not regulate the use, storage, or transportation of hazardous substances in the District Plan where adequate levels of community and environmental protection is already provided by the Hazardous Substances and New Organisms Act 1996, Health and Safety at Work Act 2015, or the Regional Plan. To avoid any unnecessary duplication of regulation with other statutory processes for hazardous substance activities.*

11. Federated Farmers agrees with this recommendation.

### **Key Issue 3: Hazardous Substances Rules, Methods & Assessment Matters.**

12. Federated Farmers submitted S121.121 seeking deletion of Rule HAZS-R1, for the reason that all activities are already adequately managed by the Hazardous Substances and New Organisms Act. Federated Farmers agrees that Major Hazardous Facilities are an exception, and it is appropriate these are managed by the District Plan. However, even with permitted status, the storage, handling or use of hazardous substances will be unnecessary duplication of the HASNO Act and will still require monitoring and enforcement. Federated Farmers is concerned that this will create a regulatory drag on both the Council and on hazardous substances activities in the district.

13. Of especial concern with HAZS-R1 was the condition that required all other underlying zone standards to be complied with, in order for the hazardous substances activity itself to be permitted. This meant an unrelated factor, such as a farm shed height being oversized, could consequently require a resource consent for the agricultural hazardous substances being stored in it. The Council would find itself assessing a hazardous substances matter that is already permitted under the HASNO Act: an undesirable scenario for both the farmer and the Council.

14. The Section 42a Report discusses HAZS-R1 starting paragraph 6.3.2 and determines that the condition is contrary to the drafting norms of the District Plan and recommends to delete it.

15. Federated Farmers supports the recommendation to remove the condition, but we still do not think the rule is needed at all.

16. Policy HAZS-P4 (the Section 42a version) seeks to not regulate the use, storage, or transportation of hazardous substances in the District Plan, where adequate levels of protection are already provided by the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015, or the Regional Plan. However HAZS-R1 does precisely that, it regulates hazardous substances that are already well managed by other means.

17. Although the Hastings District Plan has a similar permitted rule, this was written before Section 31(1)(b)(ii) was repealed in 2017, and territorial authorities still had a function to manage hazardous substances.

## EARTHWORKS

### Key Issue 1 – Earthworks – General Definitions, Objectives & Policies

#### Objective EW-O1

18. Federated Farmers submitted S121.072 in support of Objective EW-O1, but seeking amendments to *enable* people and communities to carry out earthworks, while managing the adverse effects. This is consistent with the enabling aspect of having permitted activities for earthworks, and the enabling purpose of Section 5(2) of the Resource Management Act.

19. The Section 42a Report concurs with our submission point in paragraph 4.3.18 and recommends new wording for EW-O1:

*EW-O1 ~~Protect the safety of~~ Enable people and communities to carry out earthworks, while avoiding, remedying or mitigate mitigating the adverse environmental effects of earthworks, including on the health and safety of people.*

20. Federated Farmers supports this recommendation.

#### Policy EW-P2

21. Federated Farmers submitted S121.074 for seeking that existing land use is recognised in Policy EW-P2(1) alongside the role, function and predominant character of each zone, when it comes to ensuring earthworks are appropriately located. This was so existing farming land uses are considered when looking at what the role, function and character of the rural zone is. Likewise zoning and land uses are recognised in Policy EW-P2(2) when avoiding nuisance and adverse amenity effects of the dust and sediment from earthworks.

22. Farming earthworks like tracking for safe vehicle passage across paddocks, or earthworks during fence construction for stock management and stock exclusion from waterways, should be considered in keeping with the role, function, character and the primary production land uses of the rural zone.

23. In paragraph 4.3.24, the Section 42a Report author does not agree and says our amendments would have the undesirable effect of elevating existing land uses and affording a level of consideration in terms of earthworks that is not in keeping with the objective or the purpose of the RMA.

24. Federated Farmers does not view our amendments as not being in keeping, rather we deem that they are a continuation of the policy as it was proposed – by adding in the land use in conjunction with the role, function and character of the zone.

#### Policy EW-P3

25. For Policy EW-P3 Federated Farmers submitted S121.075 that functionality is a matter when ensuring earthworks are designed to reflect natural landforms and landscaped to soften their visual impact. A farm track will need to cut into

a hillside in order for it to be safe and useable by vehicles, the natural form like spurs will need to be disrupted visually in order for the track to be functional.

26. The Section 42a Report addresses this in paragraph 4.3.27 and recommends to reject the submission, and similar to the previous policy considers the amendments sought would have the undesirable effect of elevating existing land uses and affording a level of consideration in terms of earthworks that is not in keeping with the purpose of the RMA.
27. Our concern is if resource consent is needed, for example the farm track, any conditions that require the earthworks be designed to reflect natural landforms would reduce the functionality of that track.

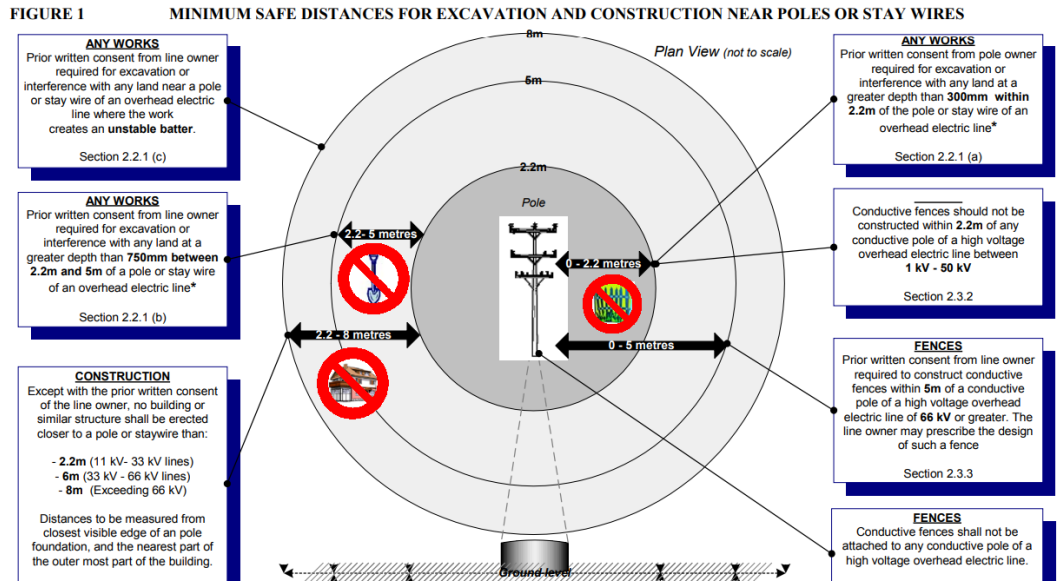
#### Policy EW-P4

28. Federated Farmers agrees with the recommendation to accept submission S121.076 to amend Policy EW-P4 to read *Where appropriate, to require the re-pasture or re-vegetation of land where vegetation is cleared as a consequence of earthworks.*

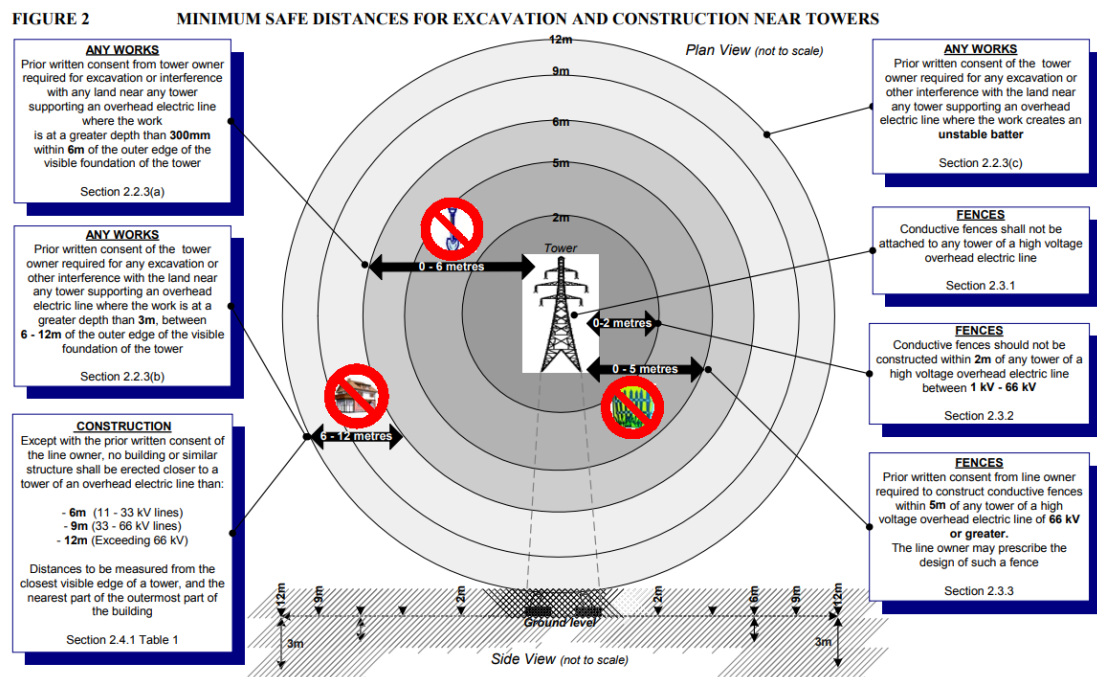
#### Key Issue 2 – Earthworks - General Rules, Standards & Assessment Matters

##### Earthworks in the National Grid Yard.

29. Federated Farmers submitted S121.087 and S121.097 seeking EW-R5 and Standard EW-S6 for earthworks in the National Grid Yard to be consistent with Section 2.2 of the *New Zealand Code of Practice for Electrical Safe Distances* NZECP34:2001. This would permit earthworks for vertical holes (like fence post holes) near the National Grid to a depth of 300mm within 2.2m of a National Grid pole; and 750 mm between 2.2m and 5m of the pole, and 300mm within 6m of a National Grid tower; and 3m between 6m and 12m of a tower.
30. The Section 42a Report in paragraph 5.3.8 accepts Transpower's position and rejects Federated Farmers, yet we disagree and consider the proposed restriction for fence post holes in EW-R5(a)(iii)(b) to be 6m away from tower foundations to be onerous compared to what NZECP34 permits. The Section 42a Report addresses Standard EW-S6 starting paragraph 5.3.40.
31. NZECP34 has different depths for poles compared to towers, to recognise the different safety distances for stability. Below are diagrams from pages 6 and 7 of the NZECP34. The first diagram shows safe distances from poles, the second from towers.
32. On the right side, the first box details that excavation can be up to 300mm within 2.2m of a pole without needing consent. On the left side, the second box details excavation can be up to 750mm from the 2.2m mark to the 5m mark before it needs consent. Beyond 5m from the pole, there are no restrictions on excavation depth, other than that an unstable batter must not occur.



33. For towers, the safe distance for hole excavation is shown on the first box on the left, with no deeper than 300mm within 6m of the tower. After the 6m mark, excavation can be up to 3m deep.



34. The District Plan restriction for post holes to be at least 6m away from a tower foundation as proposed in EW-R5 is in excess of NZECP34, and it would be disingenuous for the National Grid operator to decline permission under the District Plan if it is permitted under NZECP34.

35. Many National Grid structures have been located along road corridors much closer than 6m from farm boundary fencing. It appears that National Grid structures have been located so close to farm boundaries so they are further away from the formed road, which means the poles and towers have been

preferentially located so close to existing fences. The boundaries pre-date the National Grid, so the fences were likely already present when Transpower erected poles and towers as close as 1m.

36. Farmers must be able to maintain their fences as a permitted activity, especially on roadsides, to avoid livestock escaping. Farmers must also be able to construct new fences to meet freshwater and stock exclusion obligations, as a permitted activity, where they meet NZECP34 standards. Sometimes, Transpower itself will re-build a fence closer than 6m from its structures, after finishing National Grid construction or maintenance.
37. This is a case of reverse sensitivity, where Transpower is complaining about the activities of the existing and legitimately established farming land uses, and seeking to stifle normal post hole excavation beyond the safe engineering distances in NZECP34. The issues that are detailed in paragraph 5.38 like dust on the wires, reduction of clearance between overhanging wires and the ground, excavation restricting Transpower's access to its structures, and network integrity, are not problems that arise from fence post holes but rather large scale development earthworks.
38. Rule EW-R5 and Standard EW-S6 for earthworks in the National Grid Yard must be consistent with Section 2.2 of the *New Zealand Code of Practice for Electrical Safe Distances* NZECP34:2001, and have the same depths and setback distances for vertical holes.

#### Earthworks within 20m of the Gas Transmission Network

39. Federated Farmers submitted S121.088 that Rule EW-R6 and all other provisions for the Gas Transmission Network be deleted, because legal easement agreements already address any issues.
40. High pressure gas pipelines have 100% easement agreement coverage where they cross over private land, which already stipulate setbacks, no build zones, and manage earthworks for the purpose of protecting the line and safety. District Plan provisions must not undermine legal easement agreements. In addition, there are no National Policy Statements for gas transmission to give effect to.
41. The Section 42a Report in paragraph 5.3.10 recommends to reject our submission, and refers us to their discussion on gas transmission lines in Hearing Stream 3 for GRUZ-S12 / RPROZ-S14. Paragraph 2.3.31 of the Hearing Stream 3 Section 42a Report says *I do not support Federated Farmer's request to delete Standards GRUZ-S12 and RPROZ-S14, as the setbacks for new residential buildings (being sensitive activities) from the Gas Transmission Network are important to ensure there are no reverse sensitivity effects on the transmission network that could interfere with its ongoing operation as infrastructure of national, regional and local importance. The setback for residential activities is also important to ensure the health and safety of owners and occupiers of the residential buildings.*

42. The health and safety matter that the Section 42a Report mentions will be the relevant matter for this earthworks chapter.
43. The safety of earthworks or digging near gas transmission lines is already managed by the [First Gas permit system](#)<sup>1</sup>. Any earthworks, excavation, landscaping, fencing, drain construction, road and track construction, planting or removal of trees in the easement needs prior permission from First Gas. There is no need for a District Plan to have an additional permit system by requiring a resource consent. Council staff will not have any greater knowledge than First Gas on the matter, that justifies a duplicate permit regime. First Gas even provide the permit for free in order to avoid a disincentive for applications.
44. The District Plan 20m setback is in excess of the easement widths of 12 metres wide for a single pipeline, with an additional 4 metres for each additional pipeline. There is no justification why the district plan requires a setback that is 66% greater than the legal easement to manage safety.
45. Health and safety of owners and occupiers of property that has a gas transmission line is a commendable concern, but this is already managed through the easements, and the safety campaigns run by First Gas, and WorkSafe monitoring and enforcement under the Gas Act 1992. First Gas has a wealth of educational and guidance material for a range of audiences, a Dial-before-you-Dig helpline, and free access to their staff for advice. First Gas clearly describe the health and safety at work obligations in their pamphlets, including this one [specifically for farmers](#)<sup>2</sup>. This level of health and safety service provided by First Gas and WorkSafe cannot be bettered by the District Plan.
46. Therefore, all provisions (other than the mapping of the gas transmission lines) should be deleted from the District Plan.

### Key Issue 3 – Rural Earthworks

#### Definition of Ancillary Rural Earthworks

47. Federated Farmers submitted S121.231 supporting the definition of *ancillary rural earthworks* as a separate activity from the definition of *earthworks*, and sought some amendments.
48. The Section 42a Report in paragraph 6.3.10 recommends some amendments to the definition in response to other submitters:

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<sup>1</sup> <https://firstgas.co.nz/safety-work-home/safety-for-contractors/pipeline-easement-permits/>

<sup>2</sup> <https://firstgas.co.nz/wp-content/uploads/FGL-HSE-Guide-to-First-Gas-Obtaining-Access-over-farm-property.pdf>



<p>ANCILLARY RURAL EARTHWORKS (PRIMARY PRODUCTION)</p>	<p>means <u>earthworks associated with normal agricultural and horticultural practices, such as:</u></p> <p>a. <del>Normal agricultural and horticultural practices, such as cultivating and harvesting crops, ploughing, planting trees, root ripping, digging post holes,</del> maintenance of drains, troughs and installation of their associated pipe networks, <del>and realignment of fencelines,</del> drilling bores and ofal pits, <del>and</del> burying of dead stock and plant waste <u>(including material infected by unwanted organisms as declared by the Ministry of Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993);</u></p> <p>b. <del>Land preparation and vegetation clearance undertaken as part of horticultural plantings;</del> and</p> <p>c. Maintenance of existing walking tracks, farm and forestry tracks, driveways, roads and accessways <del>within the same formation width.</del></p> <p><u>Note: for clarification purposes, the alteration or disturbance of land associated with 'gardening, cultivation, and disturbance of land for the installation of fence posts' is excluded from the definition of 'earthworks'.</u></p>
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49. Federated Farmers supports the shift of normal agricultural and horticultural practices out of article (a) and into the top of the definition.
50. However, I am not sure that relying on the exemptions from the *earthworks* definition and a note is sufficient for the list of other ancillary activities, alteration/disturbance of land for gardening, cultivation, fence posts.
51. Given the discussion in paragraph 3.6.21, the Section 42a Report considers cultivation to be outside even ancillary rural earthworks and not subject to the 500m<sup>3</sup> ancillary rural earthworks volume limit in ONLs/HNCs and SNAs of Standard EW-S1(1) by reasoning *I note that 'cultivation' and fence post holes are excluded from the definition of 'earthworks' and therefore are not subject to this permitted volume limit.*
52. This leaves me somewhat confused, is cultivation an ancillary rural earthworks activity and permitted by the rules, or is it unregulated? I seek clarification from the Reporting Officer. Federated Farmers will prefer that cultivation is unregulated by the District Plan, because it is such a necessary and ubiquitous farming activity it does not need District Council oversight.

### New Policy for Ancillary Rural Earthworks

53. As part of the ancillary rural earthworks topic, Federated Farmers also submitted S121.079 seeking a new policy: Provide for ancillary rural earthworks as unlimited, to recognise that they normal and anticipated within the rural zones, with de minimus effects. Such a policy will align with the regulatory approach to permit ancillary rural earthworks with no area or volume limit in Rule EW-R2, and for most of Standard EW-S2.
54. The Section 42a Report rejects the new policy for ancillary rural earthworks starting in paragraph 6.3.11, as well as Federated Farmers, Horticulture New Zealand and New Zealand Pork also sought similar new policies. The Section 42a Report reasons that 'ancillary rural earthworks' are a subset of 'earthworks' generally, therefore such earthworks are already appropriately covered by the existing policies in the EW – Earthworks chapter.

55. Given the repeated presence of ancillary rural earthworks throughout the rules and standards, and a regime that mostly permits it with no volume or area limits compared to other earthworks, it deserves its own policy to explain why.
56. A new policy recognising and providing for ancillary rural earthworks will also align with objectives RPROZ-O1 and GRUZ-O1: *The General Rural Zone/Rural Production Zone is predominantly used for primary production activities and ancillary activities.*

### Standards for Ancillary Rural Earthworks

57. Federated Farmers was concerned that activities like cultivation would be limited on farms that are identified as ONFLs, HNCs, SNAs and the Coastal Environment, leaving farmers unable to continue cultivating their paddocks that fall within these mapped areas.
58. We submitted S121.090 on EW-S2(1) and (2) explicitly concerned that cultivation will be limited to only 500m<sup>3</sup>, especially on a large scale ONFL that has existing farming land uses. As with our submission in Hearing Stream 1 for the Natural Environment, we continue to seek the category of High Natural Character Areas to be deleted.
59. We agree with the Section 42a Report in paragraph 6.3.23 where it recommends to clarify the 500m<sup>3</sup> limit applies only to the *site inside the identified feature*, rather than the Record of Title as defined in the District Plan.

EW-S2 Extent of Earthworks	
Identified areas of:	1. Ancillary rural earthworks – maximum of 500m <sup>3</sup> per site <u>within the identified area/feature</u> in any 12-month period. Refer also Standard EW-S7.
- High Natural Character (HNCs)	
- Outstanding Natural Features and Landscapes (ONFs/ONL)	2. All other earthworks – maximum of 200m <sup>3</sup> per site <u>within the identified area/feature</u> in any 12-month period.
- Significant Natural Areas (SNAs)	

60. I am still unsure whether cultivation is classified as ancillary rural earthworks and therefore limited to only 500m<sup>3</sup>. Federated Farmers will oppose such a restriction on cultivation.
61. Federated Farmers submitted S121.092 on Standard EW-S2(5) and (6) concerned that the 200m<sup>3</sup> limit for earthworks in the Coastal Environment is much too small and doesn't recognise that much of this environment consists of existing pastoral farms.

EW-S2 Extent of Earthworks	
General Rural Zone (except Coastal Environment, and any identified HNC, ONF/ONL or SNA areas)	<p>3. Ancillary rural earthworks – unlimited.</p> <p>4. All other earthworks – maximum of 2,000m<sup>3</sup> per hectare of site in any 12-month period.</p>
Coastal Environment (except any identified	<p>5. Ancillary rural earthworks – unlimited.</p> <p>6. All other earthworks – maximum of 200m<sup>2</sup> per hectare of site in any 12-month period.</p>

62. Federated Farmers supports the Section 42a Report’s recommendation to delete (5) and (6) for the Coastal Environment, and with the reasoning in paragraph 6.3.26 that *identification of HNCs, ONFs and SNAs in the coastal environment and the earthworks standards applying to those, the PDP arguably already gives effect to the New Zealand Coastal Policy Statement in terms of protecting the natural character of the coastal environment from inappropriate use and development (Policy 13 of the NZCPS); protecting outstanding natural features (Policy 15); and ensuring activities do not result in a significant increase in sedimentation in the coastal marine area or other coastal water (Policy 22). Outside of those identified areas/features, I accept that there is little need for a separate volume limit applying to the coastal environment, and that it is reasonable to apply the underlying zone provisions for earthworks – in this case, those applying in the General Rural Zone.*

### Key Issue 6 - Mining & Quarrying

63. Federated Farmers was satisfied with the quarrying regime, on the condition that farm quarries were clearly differentiated from industrial/commercial quarries. We supported the definition of farm quarries.
64. Farm quarries are:
- a. small scale;
  - b. the winnings are used on the property;
  - c. the winnings not for sale but for personal use;
  - d. used intermittently when needed;
  - e. ancillary to existing farm land use;
  - f. effects are contained within the property.
65. This is in contrast to industrial/commercial quarries that are: large scale; winnings are for sale; winnings are transported off the property using roads; used daily/weekly; permanent presence of equipment and employees; a commercial enterprise in own right; and effects can extend beyond the site/property. A higher level of District Plan oversight of these types of quarries is appropriate.
66. The Section 42a Report paragraph 9.3.14 recommends amendments to Policy EW-P9 in response to our submission S121.081:

*EW-P9 To provide for enable farm quarries and ancillary to farming and forestry quarrying activities to be established in rural areas where the adverse effects on the environment are avoided, remedied or mitigated.*

67.

However it does not appear that any submitters asked for *enable* to be deleted, and replaced with *provide for*. Federated Farmers prefers *enable* to remain, and it will be consistent with Objective EW-O1 which the Section 42a Report recommends to use the word *enable*. We do not object to the addition of adverse effects are to be avoided, remedied or mitigated, as this is consistent with RMA Section 5(2)(c).

