



IN THE MATTER AND IN THE MATTER

of the Resource Management Act
1991 ("the RMA")

AND

IN THE MATTER

of Hearing of Submissions and
Further Submissions on the
Proposed Gore District Plan

Minute 9 of the Hearings Panel

**Hearing Stream 1
Right of Reply by the
Gore District Council**

13 June 2024

MINUTE OF THE HEARINGS PANEL

Introduction

- 1 On 5 and 6 June 2024 the hearing was held to consider submissions and further submissions to Part 1 – Introduction and General Provisions of the Proposed District Plan (excluding Mana Whenua) and the Urban Form and Development chapter, which forms the Strategic Direction provisions of Part 2 – District-Wide Matters.
- 2 Matt Heale, Planning Consultant, and Shelley Chadwick, Counsel for the Gore District Council, attended the hearing and responded to questions from the Hearings Panel regarding the Section 42A Report and the written and oral submissions and evidence presented at the hearing. In some instances, Mr Heale and Ms Chadwick advised they wished to consider matters further and provide a written response. To provide transparency, the Hearings Panel is issuing this Minute to document those matters where a written response is to be provided, in addition to other matters identified by the Hearings Panel in its deliberations.
- 3 The Hearings Panel requests Mr Heale and Ms Chadwick, jointly or separately, by Thursday 27 June 2024, to submit to the Council's Regulatory Administrator a written response on the matters listed below.
- 4 Any issues or queries regarding this Minute should be directed to the Council's Regulatory Administrator, Lindsey Crazy Wolf, phone (03) 2090330 or email lcrazywolf@goredc.govt.nz.

Gore District Council Right of Reply

- 5 While Matt Heale and Shelley Chadwick provided a verbal response on most issues, the Panel seeks also a written response on the following:

5.1 Default Discretionary Status

NZ Defence Force seeks a discretionary default status for activities not specifically listed. This is assessed at paragraphs 168 – 178 of the Section 42A Report. Comment is made at paragraph 173 that the Wellington City Council Drafting Style Guide applies a default of non-complying status to activities not otherwise included. The evidence tabled by NZ Defence Force at paragraph 2.1 questions the accuracy of this statement, indicating the Wellington City Style Guide only recommends a non-complying activity status where there is an “avoid” policy direction.

Further information on the approach adopted by the Wellington City Council is requested.

5.2 “Protect” in Objectives and Policies

Do the higher order planning documents (for example, the Southland Regional Policy Statement, National Environment Standards, National Policy Statements) together with section 6 of the RMA, provide an hierarchy that would necessitate the wording of objectives and policies to “protect” certain values and “avoid” particular effects? And, as a corollary, should “enabling” and “providing for” be used in the objectives and policies with regard to other activities and effects?

This arises in part from the submissions and evidence presented at the hearing on behalf of Federated Farmers with regard to UFD-O10 and UFD-O11.

As a corollary, is there a logical link between “protect” objectives and policies and non-complying status in rules?

5.3 Definitions Nesting Tables

At paragraph 218 of the Section 42A Report, changes are recommended to the text on page 32 of the Proposed Plan. Having to submissions of Silver Fern Farms and Transpower NZ Ltd and discussions at the hearing, does Mr Heale wish to recommend further changes to that text?

5.4 Reverse sensitivity

At paragraph 259 of the Section 42A Report changes are recommended to the definition of “reverse sensitivity”. Having regard to evidence submitted by Transpower NZ Ltd and discussions at the hearing, particularly with regard to the words “lawfully established”, does Mr Heale wish to recommend further changes to that definition?

Are consequential changes required to other provisions in the Proposed Plan, for example, ECO-R1, referred to in paragraph 9 in the evidence from Federated Farmers?

5.5 NPS Freshwater management

Megan Justice in her statement of evidence¹ supporting the submissions of Greenbriar Ltd, referred to the National Policy Statement for Freshwater Management. In reply to questions from the Hearings Panel she noted Policy 3.5(4) of the NPS for Freshwater Management states:

Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.

What are the implications of this policy and any other matters in the NPS for Freshwater Management for the content of the Proposed District Plan, and to what extent does the Hearings Panel need to have regard to these matters?

5.6 Natural Character

The manner in which natural character is provided for in the Plan is discussed on pages 56 – 59 of the Section 42A Report.

- i. Do the National Planning Standards require the inclusion of a chapter in the Proposed Plan on Natural Character?
- ii. Regardless of whether it is mandatory or discretionary, is there scope within the submissions lodged to include a chapter? Are those submissions to be considered at future hearings?
- iii. How is section 6(a) of the RMA provided for in the Proposed Plan.
- iv. If a Natural Character chapter was included in the Plan should this be similar in format to the Urban Form and Development chapter with only

¹ Paragraph 14

objectives and policies, or also include rules? What are the advantages and disadvantages of either approach?

5.7 Paragraph 180 of the Section 42A Report refers to the date “4 August 2023”. What is the significance of this date? If it was the date the Proposed Plan was intended to be notified can that be corrected, pursuant to clause 16(2) of the First Schedule of the RMA?

5.8 Potentially Out of Scope Recommendation

At paragraph 277 of the Section 42A Report it is recommended to amend the last sentence of the fourth paragraph of the Overview to the Urban Form and Development chapter. This is in response to further submission FS20.029 by Hokonui Runanga Inc. Does the further submission provide the necessary scope to make the recommended change? Or, in the alternative, is the change of a minor nature that can be made under Clause 16(2) of the First Schedule to the RMA?

5.9 Further Evidence from Transpower NZ Ltd and Environment Southland

In Minute 7, the Hearings Panel requested Ainsley McLeod representing Transpower NZ Ltd and Marcus Roy, representing Environment Southland to submit additional evidence. Are there any further recommendations arising from this additional evidence?

5.10 Urban Form and Development Chapter

- i. In the Overview, the first sentence appears unnecessary, and there may be benefit in including sub-headings in the Overview.
- ii. UDF-O5 provides a hierarchy of centres, with Maori Purpose Zones being ranked at 5. Are these zones “centres”? If reference to Maori Purpose Zones is retained in the objective, could an alternative be to delete the number and include it as a separate sentence stating “Maori Purpose Zones also provide for ...”

5.11 Style Issues

- i. Is it appropriate for acronyms be used in definitions? Is the Hearings Panel permitted to amend the text without an authorising submission pursuant to clause 16(2) of the First Schedule of the RMA?
- ii. Is it permitted for the Hearings Panel to delete definitions in the Proposed Plan where the defined word is not used in the body of the Proposed Plan, pursuant to clause 16(2) of the First Schedule of the RMA. For example, “abrasive blasting”.

Additional Questions from Commissioner Maria Bartlett

6 The following table includes additional issues from Commissioner Maria Bartlett. The purpose of raising these matters is to correct minor errors or omissions in the Proposed Plan, improve clarity and/or understand the rationale for the inclusion of some provisions in the Proposed Plan. Mr Heale may wish to respond to these issues in the Council’s right of reply or indicate they will be considered in subsequent hearings and Section 42A Reports. Some of the matters raised are outside of the scope of submissions lodged, but it may be appropriate to make some changes pursuant to clause 16(2) of the First Schedule of the RMA on the basis they are of a minor nature.

Plan text or provision	Notified Plan Reference	Question / Comment
Overall format	Before Purpose section	Before the first use of italicised text in the plan, which occurs in the Purpose section, is it appropriate to include a user guide statement that says something like “Wherever words are italicised in the text of this plan these words have a specific definition that is contained in the Definitions section”? Or alternatively include that statement within the Definitions section before the table containing definitions?
Description of the District	P13, final para, third sentence	Can the “many other activities” that also occur in the district be expanded? Potentially incorporating activities referenced in submissions?
Relationship with other Plans and Documents	P16-17, table	Should this table also reference the Matāura Water Conservation Order, strategies and plans prepared under other Acts (e.g. Southland Conservation Management Strategy), and all matters set out in legal submissions (e.g. National Emissions Reduction Plan)?
General Approach	P19, paras 1 - 2	Can these paragraphs be amended to improve clarity so that they better reflect the table on pages 16-17 and are less confusing around use of the terms “issues” and “activities-based” – i.e. to ensure they are easily understood by a lay reader? – note: text describing Zones in the table on p24 is clearer around “bundling compatible activities”
General Approach	P19, Part 3 – Area Specific Matters	Is there any reason precincts aren’t mentioned here?
General Approach	P19, Part 3 – Area Specific Matters, 1. Zones	Is the word ‘Different’ at the head of the third sentence required?
General Approach	P19, Part 4 - Appendices	Can the description of the appendices be expanded. These give effect to policies and rules, and include standards and assessment criteria?
General Approach	P19, Rule numbering and short codes	Are the short codes entirely consistent with the National Planning Standards for chapters and sections? E.g. EIT
General Approach	P21, Applications subject to multiple provisions	Is this heading an accurate description of the text? In the third sentence, is it just “relevant performance standards” for permitted activities or is it relevant thresholds and conditions for the activity to be permitted?
General Approach	P22, Consultation and Engagement	Is there any reason the iwi management plan isn’t specifically named here, as per page 16 table?
General Approach	P22, Cross-boundary matters	What is the likely nature of matters relevant to engagement with Invercargill City Council? Possibly comment can be made to a joint approach by the Southland territorial authorities on matters of regional significance, or where there are joint Committees (eg Regional Heritage Committee)
General Approach	P23, Cross-boundary matters, 2	Does the final text of the second sentence in 2 belong in 4 which covers the same matter?
General Approach	P25, Spatial layer types, table	Do heritage orders appear in the spatial layers? This is the only place in the plan they are mentioned.
General Approach	P25, Spatial layer types	The second paragraph appears to be a repeat of the “Treatment of Roads, Rails and Railways” section on p22. Are both of them needed?
General Approach	P30, Precincts, table, Multi-sports, Showground, Hospital	The text references effects being mitigated – might they also be avoided or remedied, and should all options under the Act be referenced here?

Plan text or provision	Notified Plan Reference	Question / Comment
Interpretation	P32, Definitions Nesting Tables	The heading is very 'jargony'. , Can this be described in a way that better reflects its purpose?
Interpretation	P32, Definitions Nesting Tables	Are all terms in the bulleted lists defined? Do they need to be given they are functioning as an interpretive section?
Interpretation	P32, Definitions Nesting Tables, Educational Facility	"Educational facilities" are defined in the Definitions section and include schools and tertiary education services which are missing from the bulleted list – given that the bulleted lists are serving an interpretation function, have these been checked for consistency with the Definitions section? Are additional amendments needed? (see also Industrial Activity which appears to be missing General Industrial activities from the definitions, and is Agricultural Aviation the only relevant aviation activity given the "Aviation Activity" definition?)
Interpretation	P33, Definitions Nesting Tables, Primary Production	There appear to be unnecessary double-ups for mining and quarrying, and exploration for mining activities is missing (e.g. prospecting, exploration and mining are the three stages of minerals extraction), do these need amending for clarity given their interpretive function? Should forestry stand alone as an activity? Are these descriptions consistent with National Planning Standards definitions?
Interpretation	P35, Definitions, Agricultural Aviation Activity	"Aircraft" are defined and would appear to include all varieties of flying machines, so is there any need to differentiate helicopters in this definition or can it just refer to "aircraft"?
Interpretation	P38, Definitions, Boundary	Should "road boundary" be separated out as a standalone definition?
Interpretation	P43, Definitions, Critical Infrastructure	Do the definitions give effect to the Southland Regional Policy Statement appropriately? Are all terms defined (e.g "strategic land transport network")? Is renewable electricity generation "of any scale" critical? (e.g. rooftop solar at household level) Is the critical electricity transmission network just the National Grid? What about distribution? What does "community" mean in relation to land drainage and potable water systems and is that dependent upon the ownership of those systems? Is community-scale irrigation and stock water infrastructure defined? Are transport hubs and bulk fuel supply infrastructure defined? Are radiocommunications missing from the list?
Interpretation	P44, Definitions, Demolition	Is it only buildings or structures that may be demolished? What about archaeological sites, including Māori archaeological sites?
Interpretation	P44, Definitions, Drain	Is this definition describing a "modified watercourse" and should there be differentiation between "drains" and "modified watercourses", with reference to higher order documents?
Interpretation	P44, Definitions, Earthworks	What is the relationship of between this definition and its associated chapter and mining activities, with reference to the National Planning Standards?
Interpretation	P45, Definitions, Effects management hierarchy	Is there any relationship to consider between the NPSFM definition of effects management hierarchy

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		and activities and effects managed by the Proposed Gore District Plan?
Interpretation	P46, Definitions, Equestrian Facilities	There is a typo reading "horse breeding". Is there a reason horse racing is not included?
Interpretation	P48, Definitions, Food and Beverage Activity	Are taverns and nightclubs defined, do they need to be? What category does Howl at the Moon fit in?
Interpretation	P50, Definitions, Helicopter Landing Area	The definition includes capitalisation, which appears inconsistent with other definitions, amend?
Interpretation	P51, Definitions, Heritage items	"Historic heritage" includes "areas" and "sites and areas of significance to Māori", but "areas" do not appear to be addressed in related definitions or the relevant schedules, so is there a gap in the plan with regards to protecting historic heritage areas?
Interpretation	P51, Definitions, Homestay	Is an "and" required before the final short sentence?
Interpretation	P53, Definitions, Infrastructure	Do we need an "and" before the final short sentence?
Interpretation	P57, Definitions, Modify	Is this a step before demolition or destruction of a site?
Interpretation	P60, Definitions, Net Floor Area	Typo includes two of (viii)
Interpretation	P60, Definitions, Network utilities	Electricity distribution is included here but not in "critical infrastructure", is there a reason for that? Are there clear reasons for the inclusion or exclusion of infrastructure from the "critical infrastructure" and "network utilities" definitions?
Interpretation	P62, Definitions, partial demolition	How does this relate to modification?
Interpretation	P63, Definitions, pedestrian frontage	Are "commercial core precincts" readily understood? Would a better approach be to name those precincts?
Interpretation	P64, Definitions, relocation	Is this only about buildings? Not structures or other types of historic heritage?
Interpretation	P65, Definitions, Renewable electricity generation activities - small scale and large scale	What is the origin of the threshold between small and large scale?
Interpretation	P68, Definitions, sensitive environments	Are there some environments missing here (e.g. historic heritage, sites and areas of significance to Māori)?
Interpretation	P68, Definitions, service station	Are EV charging stations missing here?
Interpretation	P69, Definitions, significant hazardous facility	Why are milk processing plants treated differently? Spillage containments also exist for other facilities (e.g. petroleum storage facilities have rigorous industry requirements)?
Interpretation	P70, Definitions, significant natural area	Is the last portion of text in a) appropriate given that either an area will meet criteria or it will not, with no need to pre-determine what will or won't meet that criteria?
Interpretation	P71, Definitions, specified infrastructure	Is lifeline utility defined and does it need to be? Are regionally and nationally significant infrastructure defined and do they need to be?
Interpretation	P71, Definitions, stream	Do ephemeral streams need to be included to give effect to or be consistent with higher order documents?
Interpretation	P73, Definitions, tangata whenua	Typo – "means" not "mans"

Plan text or provision	Notified Plan Reference	Question / Comment
Interpretation	P73, Definitions, taonga species	Some words appear missing.
Interpretation	P76, Definitions, urban area	Is this term only relevant to the Transport chapter?
Interpretation	P76, Definitions, vegetation clearance	Is mob-stocking defined or needed given there are submissions requesting deletion? Is sphagnum moss relevant?
Interpretation	Definitions	There is no definition of Māori land although the term is used in the plan and in the NPSIB, is this a gap that needs addressing?
Interpretation	Definitions	Is a definition of "land based primary production" required?
Interpretation	P79, Abbreviations, LAE	Is this a definition?
National Directions Instruments	P85, National Environmental Standards	Should the list only contain those that are relevant?
National Directions Instruments	P86, Regulations	Should the list only contain those that are relevant?

- 7 Commissioner Bartlett also has additional questions for the Hokonui Runanga, primarily regarding definitions used in the Proposed Plan. However, these can be raised, and are relevant to, matters being considered in Hearing Stream 3 on 29 July 2024.

Keith Hovell
Chair, District Plan Hearing Panel
Under delegated authority