

BEFORE THE HEARINGS PANEL FOR THE GORE DISTRICT COUNCIL

UNDER

the Resource Management Act 1991

IN THE MATTER

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

**STATEMENT OF EVIDENCE OF BEN WILSON FOR CLARK FORTUNE
MCDONALD & ASSOCIATES
SUBMITTER S99 & FURTHER SUBMITTER FS22**

HEARING STREAM 6

Dated: 30th September 2024



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Qualifications and experience

1. My name is Benjamin Joseph Wilson. I hold a degree of Bachelor of Surveying from Otago University, I am a Licensed Cadastral Surveyor and a member of the *Survey & Spatial New Zealand* and *Consulting Surveyors of New Zealand* professional bodies.
2. I have sixteen years' experience as a surveyor and resource management practitioner, primarily in Otago and Southland. I currently manage the Gore branch of Clark Fortune McDonald & Associates Limited (**CFMA**).
3. I have lived and worked as a Surveyor in the Gore District since 2009 so I am very familiar with the landscape and locations within the Gore District and the subject site of this evidence.
4. I have been a practicing consultant involved in a wide range of subdivisions, land development projects and resource consents in the Gore District and other surrounding districts.

Code of conduct of expert witnesses

5. Whilst not a Court hearing, I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

Scope of evidence

6. In preparing this statement of evidence I have considered the following documents:
 - (a) Section 32 Evaluation Reports: Energy / Infrastructure and Subdivision.
 - (b) Section 42A Hearing Report for Hearing Stream 6 – Subdivision.
7. I generally structured my evidence to correspond with the primary submission and further submission points made by CFMA as they are identified and assessed in the s.42A report for Subdivision. However, in

relation to considerations of non-complying activities for minor breaches to minimum allotment sizes, I have grouped the relevant submission points together.

S42A Part 6.4.1 – Submissions in Support¹

FS22.007

8. Further submission point FS22.007 supports the submission of Federated Farmers (s126.117) which in turns supports notified SUB-P8 which has been retained as notified by the s42A report. Based upon the recommendation of the s42A report, the intention and relief sought by further submission point FS22.007 is satisfied.

S42A Part 6.6.1 – Infrastructure and Financial Contributions²

FS22.079, FS22.052, FS22.078, FS22.076, FS22.077 & FS22.080

9. The intention of these further submission points is accurately expressed at paragraph 53 of the s42A report. Based upon the assessment and recommendation of the s42A report, the intention and relief sought by further submission points listed above is satisfied.

NON-COMPLYING ACTIVITIES FOR MINOR BREACHES

S42A Part 6.6.2 – Non-complying Activity Status³

S42A Part 6.7.10 – SUB-R5⁴

S42A Part 6.7.12 – SUB-R1⁵

S99.011, S99.014, S99.016 & FS22.019

10. The intention of these submission points relates to avoiding minor breaches to minimum allotment sizes being regarded as non-complying activities.

¹ From para 42 (Page 12), s42A Report Hearing Stream 6, 16th September 2024.

² From para 51 (Page 14), s42A Report Hearing Stream 6, 16th September 2024.

³ From para 63 (Page 16), s42A Report Hearing Stream 6, 16th September 2024.

⁴ From para 260 (Page 55), s42A Report Hearing Stream 6, 16th September 2024

⁵ From para 288 (Page 58), s42A Report Hearing Stream 6, 16th September 2024

11. I believe the section 104(d) gateway test for non-complying activities should not be applied to minor non-compliances if this can be avoided. I agree with the s42A report where it states that minor non-compliances would *likely pass the gateway test*.⁶ However, in my opinion, that is signalling the non-complying test has been inappropriately applied and these minor non-compliances can be adequately assessed and refused if required as discretionary activities.
12. In my experience, there is a considerable time and cost inefficiency within the consenting process by assessing and determining activities as non-complying activities when they can be adequately dealt with as discretionary activities.
13. I believe that by approving multiple non-complying activities for breaches to minimum allotment sizes leaves the District Plan open to integrity issues stemming from precedence, as the number of approved non-complying activities under a certain rule or standard rises it becomes increasingly harder for any local authority to refuse applications by having to set any application refusal aside of those previously approved.
14. This topic / issue has been contemplated previously as part of Hearing Stream 4 in relation to density and minimum allotment size where a the s42A report agreed the non-complying consenting process was more onerous⁷ and recommended a “sliding scale” approach for minor breaches.
15. Part 6.7.12 of the s42A report⁸ recommends a sliding scale approach in relation to the minimum allotment size in the GRZ and with reference to my submission point S99.014. I consider the “sliding scale” approach to be a pragmatic one and agree with the s42A report recommendation in relation to avoiding minor breaches as non-complying activities.
16. What exactly is a minor breach is somewhat subjective in my mind. However, I find the sliding scale approach for GRZ minimum allotment size provides a practical working example where the discretionary pathway is enabled for those breaches that achieve more than 87.5% of the minimum allotment

⁶ At para 66 (Page 16), s42A Report Hearing Stream 6, 16th September 2024.

⁷ At para 297 (Page 60), s42A Report Hearing Stream 4, 22.07.24.

⁸ From para 288 (Page 58), s42A Report Hearing Stream 6, 16th September 2024

size. While the exact thresholds are open to debate, this percentage is based on the recommendation from the residential zone hearing and I believe it is an appropriate starting point for ascertaining the extent of a minor breach.

17. Based upon the above, I recommend that the same or similar sliding scale approach is considered for the large lot residential and settlement zones to avoid a non-complying consenting pathway in favour of a discretionary pathway for minor breaches. I have set out my suggested amendments in “red”:

SUB-S1 Minimum Lot Size	Activity status where compliance is not achieved:
1. No lots to be created by subdivision, including balance lots, shall have a net gross site area less than the minimum specified: (a) General Residential – 400m² (b) Medium Density Residential – 300m² (c) Large Lot Residential – 2000m² (d) Large Lot Residential Precinct 12 – 8000m² (e) Settlement – 2000m² (f) Rural Lifestyle (excluding Gore West Development Area) – 1ha (g) Rural Lifestyle Gore West Development Area - 2000m² provided the average lot size over the whole Rural Lifestyle Gore West Development Area is not less than 1 hectare (h) General Rural – 8ha Except that: (i) This rule does not apply to the Medium Density Zone or General Residential Zone where allotments each contain an existing residential unit. (ii) There is no minimum density for zones not listed above, however site size for all subdivisions is a considered under Rules SUB-R5, SUB-R6 and SUB-R7.	With SUB-S1(1): (a) but the minimum lot size exceeds 350m² (c) but the minimum lot size exceeds 1750m² (e) but the minimum lot size exceeds 1750m² A Discretionary activity status applies Otherwise, a Non-Complying activity status applies where compliance is not achieved with the minimum lot size specified in (a), (c) or (e) above or SUB-S1(b), SUB-S1(f) - SUB-S1(h)

18. In terms of section 32AA considerations, I believe my additions as set out above are able to be accommodated in the section 32AA evaluation provided in the s42A report⁹ in relation to the sliding scale approach.
19. However, without derogating, should the Panel agree with the merits of my additions yet find a section 32AA is necessary: With notice, I can provide this

⁹ At para 303 (Page 61), s42A Report Hearing Stream 6, 16th September 2024

assessment for the hearing or respectfully seek leave to provide the Panel with this section 32AA by way of a memorandum which I can file following the hearing and prior to the Panel entering into any formal deliberations.

S42A Part 6.6.5 – s 226 Certificate¹⁰

S99.005 & FS22.043

20. The intention of these submission points are accurately expressed at paragraph 99 of the s42A report.
21. I agree (in part) with the recommendation made in the s42A report, yet I believe that recommended SUB-R5 6. (c) is unnecessarily restrictive. In my opinion, to reconsider by way of resource consent any legitimate buildings in existing environment achieves very little. Therefore, I recommend that limb 6 (c) is reworded to relate only to proposed or new title boundaries:

New title boundaries enabled by s226 certification comply with all setback standards, height in relation to boundary and building coverage standards of the relevant zone chapter; and

22. In terms of section 32AA evaluation, I believe that the evaluation undertaken at paragraph 110 of the s42A report is sufficient to authorise the amendment I recommend above.

S42A Part 6.7.4 – SUB-P7¹¹

FS22.006

23. The intention of this submission point is accurately expressed at paragraph 180 of the s42A report.
24. In my opinion, the Subdivision & Development Bylaw has sufficient authority to require robust assessments of rainwater and stormwater. It necessitates detailed infrastructural designs, and these are provided through the Engineering Acceptance process which is required through standard conditions of the subdivision consent.

¹⁰ From para 99 (Page 27), s42A Report Hearing Stream 6, 16th September 2024

¹¹ From para 173 (Page 40), s42A Report Hearing Stream 6, 16th September 2024

25. To provide this infrastructural detail within a resource consent to be assessed under SUB-P7(10) and then provide it again for assessment under the Bylaw is most inefficient.
26. In my opinion, it is “unfair” to require any consent applicant to bear the cost of preparing detailed engineering plans within a resource consent when it is not known the consent will be approved. Should these assessments be administered by the Bylaw only (as they are under the ODP) and as a condition of an approved consent, the developer / consent holder has certainty in the development they are seeking to undertake and the economic burden of preparing the detailed infrastructural designs is an easier “pill to swallow”.
27. Based upon the above, I recommend that SUB-P7(10) is deleted in its entirety.

~~**Ensuring that subdivision designs provide for the treatment and safe disposal of stormwater that does not result in increased flooding and erosion risk; and**~~

S42A Part 6.7.5 – SUB-P10¹²

FS22.008

28. The intention of this submission point is accurately expressed at paragraph 191 of the s42A report.
29. Based upon the opinion I have expressed under SUB-P7(10) above, I find it unnecessary for any resource consent application to address “secondary flow paths” when the Subdivision & Development Bylaw has sufficient authority that requires the same assessment. Therefore, I agree with the s42A report [para 196] that no amendments to notified SUB-P10 are required as sought by submission S85.104 made by ES.

¹² From para 190 (Page 43), s42A Report Hearing Stream 6, 16th September 2024

S42A Part 6.7.5 – SUB-P11¹³

FS22.009

30. The intention of the primary submission point is accurately expressed at paragraph 193 of the s42A report.
31. In my experience, the majority of subdivisions and boundary adjustments in these rural areas relate to land management, sale and purchase as well as succession planning. To require a non-complying activity status for subdivision and boundary adjustments on a site that contains an area of ONL and/or SNA creates an unacceptable inefficiency in the consenting process for the majority.
32. Any further development beyond a subdivision and/or boundary adjustment in any ONL and/or SNA land will be the subject of a specific assessment as required under the NFL and/or ECO Chapters of the PDP. Therefore, in my opinion, there is little credence to the notion that any subdivision or boundary adjustment under SUB-P11 would be viewed as a “stepping stone” to development in any ONL and/or SNA.
33. SUB-P11 as notified, requires a discretionary resource consent which has the authority to be refused if necessary. I believe this status is appropriate and should be retained as notified. Therefore, I agree with the s42A report [para 197] that no amendments to notified SUB-P11 are required as sought by submission S85.105 made by ES.

S42A Part 6.7.6 – SUB-P15¹⁴

FS22.010

34. The intention of the primary submission point is accurately expressed at paragraph 206 of the s42A report.
35. I agree with the assessment and revised wording of SUB-P15 as set out in the s42A report. Based upon this, the intention and relief sought by FS22.010 is satisfied.

¹³ From para 190 (Page 43), s42A Report Hearing Stream 6, 16th September 2024

¹⁴ From para 204 (Page 45), s42A Report Hearing Stream 6, 16th September 2024

S42A Part 6.7.7 – SUB-R1¹⁵

S99.006 – S99.010, FS22.014 & FS22.015

36. The intention of this submission point is accurately expressed at paragraph 220 of the s42A report.
37. Pursuant to notified SUB-R1, in order to remain as a controlled activity, the boundary adjustment must essentially maintain the status quo and remain in accordance with other relevant provisions such as minimum allotment size.
38. In my opinion, by maintaining the status quo, any boundary adjustment gives rise to only very limited if any adverse effect and it must be an effect that would otherwise be commensurate to a permitted activity within the zone.
39. The s42A report¹⁶ states that a boundary adjustment can have significant implications for land use and the relationship between different land uses. I disagree, as any change in land use which is not otherwise permitted in the zone necessitates a resource consent to authorise the change and this consent can adequately contemplate any adverse effects on the ecological values, visual integrity, or biodiversity.
40. Put another way, should any adverse effects on the ecological values, visual integrity, or biodiversity arise from a boundary adjustment, they must be within the ambit of any permitted activity in the zone, and this would be an effect deemed as acceptable in the zone.
41. The relocation of an existing boundary by way of adjustment does locate a boundary where it wasn't previously. This can give rise to a boundary fence where it wasn't previously and this can have a bearing on certain values when it occurs in ONL, ONF or SNA. Therefore, I recommend that any boundary treatment (i.e. fencing etc) should be a matter of control to ensure that there is no unacceptable physical adverse effect. With this matter of control added, I believe a boundary adjustment can be undertaken within ONL, ONF or SNA or a site that contains a *historic heritage* item or a site

¹⁵ From para 219 (Page 48), s42A Report Hearing Stream 6, 16th September 2024

¹⁶ At para 228 (Page 49), s42A Report Hearing Stream 6, 16th September 2024

listed in the Historic Heritage Schedule without giving rise to any adverse effects outside the ambit of any permitted activities enabled in the zone.

42. It would also be appropriate for boundary adjustment to be a controlled activity where an existing lot is below the current minimum area requirement, but the boundary adjustment does not reduce the size of that lot. This would be consistent with the ODP approach.
43. The 'activity status where compliance not achieved' reverting to other subdivision rules should also include SUB-R4.
44. Based upon the above, I have set out my suggested amendments in "red":

SUB-R1	Boundary Adjustments	
All areas except Development Areas	Subdivision to undertake a boundary adjustment: Activity status: Controlled Where: 1. No additional separately saleable lots are created; 2. The areas of the resultant lots either comply with the minimum lot size requirement ~~or do not reduce the size of existing lots below the minimum lot size requirement~~ for the zone (where applicable), or for zones with no minimum lot size, no lot is created that is smaller than the size of the smallest existing lot; and 3. Lots must be immediately adjoining each other; ~~4. The site does not contain a historic heritage item or site listed in the Historic Heritage Schedule;~~ 5. The site does not contain a protected tree or group of trees listed in Notable Trees Schedule ~~6. The site does not contain a Significant Natural Area or Outstanding Natural Landscape or Feature;~~ 7. The site does not contain a wastewater treatment facility or water supply treatment facility buffer area; 8. The site does not contain land within land mapped in the District Plan as being subject to actual or potential inundation; 9. The site is not within development areas DEV1 and DEV2. Matters of Control: 1. The design and provision of access; and 2. The provision, design and construction of infrastructure and services; and 3. The requirement for any easements to legalise access and services; and 4. The need for a consent notice <u>5. Boundary treatment</u>	Activity status where compliance is not achieved: Where SUB-R1(1) to (9) are not achieved, the activity is subject to the subdivision rules SUB-R4 to SUB-R13 below.

45. Further to this, the wording ‘the site does not contain’ used in multiple places is not appropriate, as it would result in unnecessary escalation of consent requirements for a boundary adjustment which happens to be within the same title as certain features, but is physically separate and unrelated.

The ODP instead refers to ‘new boundaries are created which pass through’ certain areas (such as SNA or potential inundation), or within specified distances of certain features (such as transmission lines or archaeological sites).

This is a much more practical and workable approach than the PDP approach which would apply more restrictive consent requirements to any site which contains such features, regardless of whether those features have any relationship to the proposed boundary adjustment.

As an example - under the PDP as notified, a minor boundary adjustment of a rural boundary could be disqualified from controlled activity status by an area of potential inundation kilometres away from the boundary adjustment and completely unrelated, but within the same title (and therefore defined as the same site). Under the ODP approach we recommend, the activity status would only escalate beyond controlled if the boundary adjustment actually passed through the area of potential inundation.

S42A Part 6.7.8 – SUB-R1¹⁷

FS22.016

46. I agree with the s42A report that unit title plans do utilise easements and the matter of discretion should remain. Confirmation that these matters will not be applied to cross lease plans is sufficient for me to accept this.

S42A Part 6.7.9 – SUB-R4¹⁸

FS22.018

47. I agree with the s42A report where it adjusts SUB-R4 to relate to records of title and not allotments.

¹⁷ From para 237 (Page 52), s42A Report Hearing Stream 6, 16th September 2024

¹⁸ From para 244 (Page 53), s42A Report Hearing Stream 6, 16th September 2024

48. The same issue as paragraph 45 above is also present here – instead of wording ‘the site does not contain’ various features or areas, we consider the ODP approach of referring to ‘new boundaries are created which pass through’ those areas (such as SNA or potential inundation), or within specified distances of certain features (such as transmission lines or archaeological sites) to be much more appropriate and workable.

A similar example can be made as in paragraph 45 – an area or feature such as potential inundation or SNA, ONL etc which happens to be on the same title/site but is not related to or affected by the proposed subdivision should not be a trigger for escalation to a more restrictive consent process.

FS22.020

49. This submission point opposes submission S85.106 made by ES where it seeks to have greater emphasis on avoiding natural hazards.
50. I find that the provisions within the Natural Hazards Chapter are sufficiently robust to ensure any hazard is avoided or at least, minimised to a tolerable level. As such, I do not believe it is warranted to seek a stricter approach within those provisions of the subdivision chapter beyond what has been notified. I agree with the s42A report and recommend no amendments to the notified provisions of the subdivision chapter in relation to natural hazards as sought by S85.106.

S42A Part 6.7.11 – SUB-R12¹⁹

FS22.023

51. The intention of this submission point is accurately expressed at paragraph 284 of the s42A report.
52. I do not believe it is necessary to apply a non-complying status to infrastructure / subdivision within a flood zone as there are subdivision activities such as boundary adjustments which may be valid or necessary within the floodplain and without any effect on or increased risk from flooding.

¹⁹ From para 284 (Page 58), s42A Report Hearing Stream 6, 16th September 2024

53. Given that any discretionary consent maybe refused, I would view this activity status as the requisite test and not a non-complying status.

S42A Part 6.6.3 – SUB-RX²⁰

54. As the NZECP already clearly sets out requirements for setback distances etc from the National Grid for various activities, it seems redundant and unnecessary to also require specific building platforms to be identified for all subdivisions within the National Grid Subdivision Corridor. This would increase subdivision costs with little if any benefit in most cases.
55. I do not consider the ‘risk of not acting’ noted in paragraph 82 to be a genuine risk, as buildings are already required to be located outside the national grid yard by the NZECP and requiring building platforms to be identified at the time of subdivision will not change that.
56. Identification of building platforms may be appropriate in some situations, and where necessary can be required through council discretion during the consent process.
57. The term ‘subdivision within the national grid corridor’ is somewhat ambiguous, it would be clearer to take the ODP approach of referring to ‘*where new boundaries are created within...*’, in order to avoid the rule being applied to situations where the national grid subdivision corridor crosses part of a site being subdivided but is well clear and separated from any subdivision activity (new boundaries) or development.

Dated: 30th September 2024

Ben Wilson
Surveyor

²⁰ From para 79 (Page 21), s42A Report Hearing Stream 6, 16th September 2024