

**BEFORE THE HEARINGS PANEL
FOR THE PROPOSED GORE DISTRICT PLAN**

UNDER the Resource Management Act 1991 (RMA)
IN THE MATTER of Hearing Stream 11 of the Proposed Gore District Plan

**LEGAL SUBMISSIONS ON BEHALF OF ENVIRONMENT SOUTHLAND
(NATURAL HAZARDS)**

3 March 2025

Environment Southland's Solicitor
PO Box 4341 CHRISTCHURCH 8140
DX WX11179
Tel +64 3 379 7622
Fax +64 3 379 2467

WYNN WILLIAMS

Solicitor: P A C Maw / K T Dickson
(philip.maw@wynnwilliams.co.nz /
kate.dickson@wynnwilliams.co.nz)

MAY IT PLEASE THE PANEL

Introduction

- 1 The Southland Regional Council (**Regional Council** or **Environment Southland**) made a submission on Gore District Council's (**GDC**) Proposed District Plan (**PDP**). One of the main goals of that submission was to ensure that the PDP gives effect to the Southland Regional Policy Statement (**SRPS**).
- 2 The Regional Council's position is that to assist plan users and properly inform the community about potential risks from natural hazards, further integration of the most complete and accurate information on these risks into the PDP should be achieved. Doing so would also give effect to the SRPS, consistent with the RMA.
- 3 The Regional Council lodged a submission (relevantly):¹
 - (a) Opposing any zone changes or provisions within existing zones which have the potential to intensify land use change, development or risk within natural hazard areas;
 - (b) Seeking provision for the avoidance of development where there is a significant risk from natural hazards as required by the SRPS; and
 - (c) Indicating that Environment Southland would be undertaking some independent modelling analysis to ensure that flood mapping is accurate and future zoning is managed to prevent flood risk (relevant to all other natural hazard provisions and maps).
- 4 The Regional Council has filed evidence from the following experts:
 - (a) Mathew Gardner, a water resources engineer at Land River Sea;
 - (b) Jo Paterson, Flood Risk Management Project Manager at Environment Southland; and
 - (c) Marcus Roy, Policy and Government Reform Manager at Environment Southland.
- 5 Mr Gardner, Ms Paterson and Mr Roy will be present at the hearing to answer any questions that the Hearings Panel may have.

¹ Environment Southland submission on PDP, submission number 85.

Environment Southland's interest in the PDP

- 6 Environment Southland has a number of functions relating to the integrated management of natural resources, and is required to prepare and administer the SRPS, to which a district plan (including the PDP) is required to give effect.²
- 7 The intention behind Environment Southland's submission is to assist GDC in giving effect to the SRPS, but also to assist with amendments that Environment Southland considers could enhance the provisions of the PDP to highlight particular risks of natural hazards (in particular flooding) that may affect the Gore District, and to ensure that the public is aware of the potential risks that may be faced by development in particular areas.
- 8 Environment Southland considers that being informed by the most recent and comprehensive flood modelling assessments (including as part of the District Plan) will assist the community in preparing for and developing resilience against future potential flooding events.

Scope of legal submissions

- 9 These legal submissions address only the legal issues raised by Environment Southland's submission and the section 42A report, being:
 - (a) Potential scope issues regarding the introduction of the most recent flood modelling; and
 - (b) What is required to give effect to the SRPS.
- 10 Environment Southland considers that the section 42A report prepared in relation to this topic addresses a number of its submission points, and generally supports a number of the specific amendments suggested by that report.
- 11 The planning evidence of Mr Roy provides in Appendix 1 Environment Southland's specific comments on the position expressed in the section 42A report, and whether Mr Roy supports or opposes the specific amendments suggested. To the extent a matter is not addressed in these legal submissions, Mr Roy's evidence summarises Environment Southland's position.

² RMA, s 75(3).

Hazard classification – most recent modelling

- 12 One option to better give effect to the SRPS is through Environment Southland's request to include the most recent modelling information to inform the provisions of the PDP, and ensure the public is aware of particular risks faced in the district. This involves the reference to (and incorporation of) the most recent flood hazard modelling completed by Land River Sea and Environment Southland, within the PDP **(Environment Southland Model)**. This modelling was shared with GDC in November 2024.³
- 13 At the outset, it is important to note that this matter was identified within the section 42A report as being potentially outside of the scope of the submissions lodged on the PDP.⁴
- 14 The modelling process, assumptions and outputs are summarised in the evidence of Mr Gardner on behalf of Environment Southland. Ms Paterson also provides some further context to the Environment Southland Model's findings, and the relevance of this to avoiding and mitigating the risks of natural hazards.
- 15 In summary:
 - (a) The Environment Southland Model is a 2D flood model of the Maitara River, built to allow a better understanding of the current level of service provided by existing Floodbanks, and the impact of potential floodbank breaches;⁵
 - (b) While it has some limitations,⁶ the Environment Southland Model demonstrates that there is the potential for a significant risk of flooding in the Gore and Maitara townships after a 1% AEP event (1 in 100 year event);⁷
 - (c) The Environment Southland Model is the most accurate and highest quality flood model available for this area. The Environment Southland Model is considered to be more in-depth than the also recently completed Tonkin and Taylor Model,

³ Evidence of Jo Paterson, dated 21 February 2025, at [7].

⁴ Section 42A Report, Hearing Stream 11 (Part 2: Natural Hazards), 7 February 2025, at [58].

⁵ Evidence of Matt Gardner dated 21 February 2025, at [9].

⁶ Evidence of Matt Gardner dated 21 February 2025, at [17] and [22].

⁷ Evidence of Matt Gardner dated 21 February 2025, at [26].

although both of these models are considered to provide more accurate and detailed information on flood hazard risks than the maps currently included in the PDP;⁸

- (d) Both relevant models applied the same methodology for categorising hazard risk. This methodology (summarised in the evidence of Ms Paterson and Mr Roy) involves the assessment of flood hazard risks into categories based on the risk presented to people, vehicles and buildings – through consideration of the depth and velocity of the floodwaters, rather than just their extent.⁹
- (e) Hazard categorisation enables a more specific response to the particular threat faced in each case, including by ensuring that critical or particularly sensitive infrastructure is not placed in an area that could be subject to undue hazard risk, or does not provide sufficient warning the event of rising floodwaters.¹⁰

Relief sought by Environment Southland

- 16 In light of this further modelling being completed, Environment Southland seeks that this modelling is used to give more context to what is meant by “significant risk” in the SRPS. The key issue is that the PDP currently maps flood extent, but does not provide information as to the likely risks presented by that flood extent.
- 17 Environment Southland seeks that the model information containing the hazard classifications is introduced to the PDP, through the specific amendments set out in the evidence of Mr Roy. These amendments are all informed by the information presented in the Environment Southland Model, including the hazard classifications.

Principles of scope

- 18 Case law has established that for an amendment to be considered within the scope of submissions on a proposed plan, the amendment must be fairly and reasonably within the general scope of:¹¹
 - (a) An original submission; or

⁸ Evidence of Jo Paterson, dated 21 February 2025, at [8] – [10].

⁹ Evidence of Jo Paterson, dated 21 February 2025, at [15] – [16].

¹⁰ Evidence of Jo Paterson, dated 21 February 2025, at [20] – [21].

¹¹ *Re Vivid Holdings Ltd* (1999) 5 ELRNZ 264 at [19].

- (b) The plan change or variation as notified; or
- (c) Somewhere in between.

- 19 The question of whether an amendment goes beyond what is reasonable and fairly raised in submissions will usually be a question of degree, to be judged by the terms of the plan change (or in this case the proposed plan) and the content of submissions. This should be approached in a realistic workable fashion rather than from the perspective of legal nicety, with consideration of the whole relief package detailed in submissions.
- 20 Further, the courts have recognised that councils need scope to deal with the realities of the situation and a legalistic interpretation that a council can only accept or reject relief sought in any given submission is unrealistic.¹² Approaching such amendments in a precautionary manner, to ensure that people are not denied an opportunity to effectively respond to additional changes in the plan change processes, has also been endorsed by the courts.¹³
- 21 Changes that are considered to be incidental to, consequential upon, or directly connected to a plan change (or in this case the PDP) are also considered to be within scope.¹⁴
- 22 An amendment can be anywhere on the line between the proposed plan and the submission. Consequential changes can flow downwards from whatever point on the first line is chosen, as a submission may only be on an objective or policy, but there may be methods or rules which are then incompatible with the new objective or policy in the proposed plan change as revised,¹⁵ which would then also require an amendment, as a consequential change.

¹² *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [107], citing *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC) at 170.

¹³ *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59 at [58]-[60]; *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 at [82].

¹⁴ *Well Smart Holding (NZQN) Limited v Queenstown Lakes District Council* [2015] NZEnvC 214 at [16]; *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 at [91].

¹⁵ *Campbell v Christchurch City Council* [2002] NZRMA 332 (EnvC) at [20].

- 23 Further, amendments required for clarity and refinement of detail are allowed on the basis that such amendments are considered to be minor and unprejudicial.¹⁶

Scope in this case

- 24 The Environment Southland request to include the most recent flood hazard data in the PDP is consistent with its submission points seeking to give effect to the SRPS. In particular, Environment Southland flagged that it was obtaining updated modelling in its submission on NH-P1, and indicated that this submission point applies to other natural hazard provisions, and also to all maps that show flood inundation.¹⁷
- 25 Environment Southland submits that this modelling not being available at the time of lodging its submission should not prevent GDC from considering it as part of the PDP process, and incorporating the relevant content. The Environment Southland submission reasonably and fairly raises the issue of flood hazard, and consistently seeks changes to the PDP in order to ensure that the provisions do not allow further development in areas that may be at risk, consistent with the direction of the SRPS.
- 26 The fact that a further submission was made by Hamish Weir supporting Environment Southland's submission on this front demonstrates that the prospect of this modelling and its influence on the PDP provisions was apparent to other submitters,¹⁸ such that prejudice does not arise.
- 27 As the SRPS contains policies (detailed further below) that seek to "avoid exposure to areas at significant risk where practicable" from natural hazards,¹⁹ Environment Southland submits that reflecting the most recent and comprehensive information is the most appropriate way to give effect to those provisions. The Environment Southland Model contains more specific information to be able to assess whether a risk is significant.

¹⁶ *Oyster Bay Developments Limited v Marlborough District Council* EnvC C081/2009, 22 September 2009 at [42].

¹⁷ Environment Southland submission on Gore District Plan, section 42A report on Hearing Stream 11, Appendix B (submission point S85.087).

¹⁸ Further Submission of Hamish Weir, FS5.22.

¹⁹ SRPS, Policy NH.4.

- 28 It is consistent with the orthodox planning process for the technical evidence in support of a submission to be produced at this point. The Environment Southland Model is the technical evidence for the position expressed in the Environment Southland submission, seeking to give effect to the SRPS.
- 29 In light of the above reasons, Environment Southland considers that there is scope within this process to include the requested further direction within the policies, as well as further information regarding the flood extent maps.
- 30 If the Panel decides that any of the changes sought through Environment Southland's submission (and set out in the evidence of Mr Roy) are outside the scope of submissions on the PDP, it is submitted that reference to the hazard risks as identified in the Environment Southland Model should be contained within the PDP.
- 31 Even if this does not directly incorporate the material / hazard classifications from the Environment Southland Model, reference to these matters within the PDP would provide some trigger to members of the community and GDC consent planners alike to consider the most relevant and recent information available when planning development.

Giving effect to the Regional Policy Statement

- 32 As noted above, the PDP is required (by the RMA) to give effect to the SRPS. The SRPS was made operative in 2017,²⁰ and contains a number of objectives and policies in relation to natural hazards, and how these should be addressed by both the Regional Council and territorial authorities within the region. As Principal Planning Tribunal Judge Sheppard noted in *North Shore City Council v Auckland Regional Council* the regional policy statement "is to be the heart of resource management in that region".²¹
- 33 The relevant objectives and policies are outlined in further detail in Mr Roy's evidence, including an assessment of how the PDP provisions could be amended to give better effect to the SRPS. Notably, the relevant provisions include:

²⁰ Evidence of Marcus Roy dated 21 February 2025, at [16].

²¹ *North Shore City Council v Auckland Regional Council* [1994] NZRMA 521 (PT) at 7.

- (a) Policy NH.1 – raise public awareness and promote an understanding of the risks of natural hazards, and encourage people, businesses and communities to reduce their long-term risk;
 - (b) Policy NH.2 of the SRPS – identify in district plans, where practicable, areas subject to known natural hazard risk and actively engage with communities on managing those risks, using the most up to date information available;
 - (c) Policy NH.3 of the SRPS – take a precautionary approach towards managing the effects of climate change and sea level rise, and any associated changes in the scale and frequency of natural hazards, to ensure potential adverse effects are avoided or mitigated;
 - (d) Policy NH.4 of the SRPS – implement a priority hierarchy to manage natural hazards, which first avoids exposure to areas at significant risk from natural hazards where practicable by adopting a precautionary approach; and
 - (e) Policy NH.5 of the SRPS – avoid new subdivision, development and placement of critical infrastructure in areas at significant risk from natural hazards, unless certain criteria are met (e.g. there is no reasonable alternative).
- 34 As will be well known by the Panel, the Supreme Court in *King Salmon* confirmed that the direction to “give effect” to something is a strong one, creating a firm obligation on the part of those subject to it.²²
- 35 In order to give effect to a higher order document it is not necessary to repeat or paraphrase its wording – it is of most benefit where the wording is interpreted into the local context (through the subsequent plan provisions in the hierarchy).²³
- 36 The explanation to Policy NH.5 outlines some significance criteria to assist with the interpretation of what “significant risk” may mean.²⁴

²² *Environmental Defence Society Inc v New Zealand King Salmon Co* [2014] 1 NZLR 593 (SC) at [77].

²³ *Wairoa River Canal Partnership v Auckland Regional Council* [2010] NZEnvC 309, (2010) 16 ELRNZ 152. Counsel notes that this case was referred to in both the Supreme Court in *Environmental Defence Society Inc v New Zealand King Salmon Co* [2014] 1 NZLR 593, and the Court of Appeal in

²⁴ Evidence of Marcus Roy, dated 21 February 2025, at [51].

- 37 However, the benefit of having more specific and recent modelling conducted is that “significant risk” can be given a more helpful and locally specific meaning in the PDP context. While Environment Southland has the general function of the control of the use of land for the avoidance and mitigation of natural hazards,²⁵ the GDC’s function is more specific – the control of any actual or potential effects of the use, development or protection of land, including for the purpose of the avoidance or mitigation of natural hazards.²⁶
- 38 The meaning of the word “avoid” (as used in the SRPS, such as in Policy NH.5) has also been subject to lengthy discussion in case law, most recently in the Supreme Court decision of *Port Otago* (in the context of specific policies of the New Zealand Coastal Policy Statement). In this case, the Supreme Court noted that “avoidance” in that context meant the avoidance of material harm.²⁷
- 39 In this way, a hazard classification which more specifically addresses the risks to people and buildings as part of the environment, as the Environment Southland Model does, is an essential piece of the puzzle for GDC in setting the rules for development in its district. It is the modelling which demonstrates the activities which may cause material harm in the case of a natural hazard, and therefore what the SRPS seeks to be avoided.
- 40 Including this assessment within the PDP itself enables GDC to give effect to the SRPS in a more meaningful way, that the community can understand the types of risks being faced by particular developments in particular areas. For these reasons, Environment Southland submits that the hazard modelling should be incorporated within the PDP.
- 41 Environment Southland submits that such an approach is consistent with a precautionary approach, which is provided for within the SRPS. It also recognises that the management of significant risks from natural hazards is a matter of national importance under the RMA.²⁸

²⁵ RMA, s 30(1)(c)(iv); Evidence of Marcus Roy, dated 21 February 2025, at [12].

²⁶ RMA, s 31(1)(b)(i).

²⁷ *Port Otago Ltd v Environmental Defence Society Inc* [2023] 1 NZLR 205 (SC) at [65].

²⁸ RMA, s 6(h).

Conclusion

- 42 For the reasons set out above, Environment Southland seeks that further recognition of the most recent modelling in relation to flood hazards caused by the Mataura River is recognised through the provisions of the PDP.
- 43 Environment Southland considers that this risk is reasonably and fairly raised within its submission, and that incorporating it into the PDP (through the amendments suggested in the evidence of Mr Roy) will assist GDC in better giving effect to the SRPS.
- 44 In light of the significance of the potential risks highlighted by the Environment Southland Model (and Tonkin and Taylor Model), Environment Southland considers these need to be brought to the community's attention through the PDP process and provisions.

Dated this 3rd day of March 2025



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K T Dickson

Counsel for Environment Southland