

**BEFORE THE COMMISSIONERS APPOINTED ON BEHALF OF
GORE DISTRICT COUNCIL**

Under	The Resource Management Act 1991 (the Act)
In the Matter	of an appeal pursuant to clause 14 of schedule 1 of the Act
Between	GREENBRIAR LIMITED Submitter (S128)
And	GORE DISTRICT COUNCIL Territorial Authority

**BRIEF OF EVIDENCE OF MEGAN JUSTICE REGARDING HEARING
STREAM 1 PROPOSED GORE DISTRICT PLAN**

DATED 21 MAY 2024



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BRIEF OF EVIDENCE OF MEGAN JUSTICE

1. My full name is Megan Justice. I hold a Masters degree in Regional and Resource Planning from Otago University, obtained in 1999 and I am a full member of the New Zealand Planning Institute. I am a certified Resource Management Act decision maker. I am a Partner with the firm Taylor Planning which practices as a planning and environmental consultancy throughout New Zealand.
2. I have been engaged in the field of resource and environmental management for 22 years. My experience includes a mix of local authority, Government and consultancy resource management work. In recent years, this experience has retained a particular emphasis on providing consultancy advice with respect to Unitary and District Plans, plan changes, district plan reviews, designations, resource consents and environmental effects assessments for various infrastructure activities. This includes extensive experience with large-scale projects involving inputs from a multidisciplinary team.
3. While this is not a hearing before the Environment Court, I confirm that I have read, and agree to comply with, the Environment Court's Code of Conduct for Expert Witnesses (Environment Court of New Zealand Practice Note 2023). This evidence I am presenting has been prepared in accordance with the Code and is within my area of my expertise, except where I state that I am relying on the evidence of another person. To the best of my knowledge, I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.
4. The purpose of this evidence is to discuss two submission points that have been allocated to this hearing stream. S128.009 and S128.012. Both of these submissions seek acknowledgement of activities that need to occur within the District that have locational constraints or functional and operational needs. In my opinion it is important that

some acknowledgment of these constraints is reflected in the provisions of the District Plan to:

- (a) Achieve the functions of the Council set out in section 30. Particularly, integrated management of the resources in the district.
 - (b) Give effect to national policy direction including:
 - (i) National Policy Statements for Renewable Electricity Generation 2011
 - (ii) National Policy Statement for Electricity Transmission 2008;
 - (iii) National Policy Statements Indigenous Biodiversity 2023
 - (iv) National Policy Statement for Highly Productive Land 2022
 - (v) National Policy Statement Freshwater Management 2020
 - (c) Give effect to Southland Regional Policy Statement.
5. Whilst Greenbriar operates the New Vale Mine, the provisions it has sought are also important for other activities reliant on locationally constrained resources including aggregate, renewable energy such as wind, hydrogeneration, solar and various Crown Minerals.
6. In my opinion the existing provisions do not cover the field as suggested in the section 42A report.

National policy statements

7. I briefly discuss the relevant provisions of the various National Policy Statements. The purpose of this is to demonstrate the policy 'theme' provided through those documents that recognised locational, operational and functional constraints associated with some activities, and how these constraints should be provided for:

NPSREG and ET

8. Policy C1 of the NPSREG identifies the need to have particular regard to the requirement to locate the renewable electricity generation activity where the renewable energy resource is available and the logistical or technical practicalities associated with developing, upgrading, operating or maintaining the renewable electricity generation activity.
9. Policy 3 of the NPSET reflects a similar approach, requiring that when considering measures to avoid, remedy or mitigate adverse environmental effects of transmission activities, decision-makers must consider the constraints imposed on achieving those measures by the technical and operational requirements of the network.

NPSIB

10. Policy 10 of the NPSIB recognises that activities that contribute to the country's social and economic wellbeing are recognised and provided for, whilst clause 3.5 notes that the protection, maintenance and restoration of indigenous biodiversity does not preclude use and development in appropriate places and forms.
11. Most notably for the purposes of this submission clause 3.11 provides a clear pathway for exemption from the 'protection' requirement in favour of a 'management' approach for certain activities including

specified infrastructure, mineral extraction, aggregate extraction and coal extraction at existing mines.

12. All of these activities are locationally constrained and have a functional need or operational need to locate in particular places.

NPSHPL

13. The NPSHPL adopts a similar approach. It's starting position is that Highly Productive Land is protected from inappropriate use and development. Clause 3.9 provides guidance that use or development will be inappropriate except where it qualifies under the clause. Clause 3.9(2)(j) provides an exemption for specified infrastructure, defence facilities, mineral and aggregate extraction. Once again, these activities are all locationally constrained and have a functional and operational need to locate in particular places, including land identified as being highly productive.

NPSFM

14. Whilst not directly relevant to the District Council's functions the NPSFM takes a similar approach requiring a management approach to be adopted for activities that have locational constraints and/or functional and operational needs. This is demonstrated at clause 3.22 in relation to natural inland wetlands.

Southland Regional Policy Statement 2017

15. The regional policy statement is also instructive with respect to this issue. Provisions in the Coastal Chapter¹, Energy Chapter², Beds of

¹ SRPS Policy COAST.4 Infrastructure, port, aqua culture, mineral extraction and energy projects

² SRPS Issue ENG.3, Policy ENG.5 – Mineral and non-renewable energy resources,

Lakes and Rivers³ and Infrastructure⁴ all adopt a similar approach highlighted in the NPS discussion above. That being recognition that some activities have locational constraints, or functional operational and technical needs to locate in particular environments.

Section 42A Report

16. The section 42A report recommends some of Greenbriar's submission points are accepted. In particular those related to the UFD Overview Chapter. I agree with those recommendations.
17. The section 42A report has recommended that the relief sought in relation to a new proposed objective below be refused:

UFD-O12 – activities reliant on locationally constrained resources or with functional and operational needs that dictate their location are provided for.

18. The basis for rejecting this submission is that UFD-O11 already addresses the issue. Objective UFD-O11 states:

~~Productive, versatile~~ *Highly productive land and natural, physical and cultural resources located within rural areas that are of significance to the District are protected and maintained.*⁵

19. UFD-O11 seeks to 'protect and maintain' these resources identified in this objective, which are of significance to the District. However, the submission sought a new objective to recognise and provide for those activities that are locationally, operationally, or functionally constrained. The new objective is intended to enable the use of resources such as

³ SRPS Policy BRL.1 Managed effects on values and physical processes, Policy BRL.3 Managing gravel resources, BRL.5 Social, economic and cultural benefits, Method BRL.2 – Regional Rules

⁴ Policy INF.2 Infrastructure and the environment, Method INF.2 District Plans

⁵ Proposed Objective UFD-011 showing amendments recommended by the s42A report author.

minerals and aggregate, or to support the development of wind resources, for example. The provision promoted by Greenbriar reflects the higher order policy regimes that this plan must give effect to, and will provide some guidance for how potential tensions between competing land use might be resolved at a district level.

20. Likewise, UFD-O10 does not address the lacuna of concern. That objective is focussed on the efficient operation of activities, which is useful. However, it does not recognise the specific constraints associated with those types of activities I have discussed at paragraph 5 of my evidence. In my opinion recognising the need for activities to operate efficiently and effectively is not an equivalent for recognising that certain resources exist in particular places. The current provisions provide little guidance for circumstances where use of a resource, such as aggregate or minerals may compromise the productive capacity of a farming operation for example.
21. In my opinion the current suite of Strategic Objectives within the Urban Form and Development chapter do not provide sufficient support for the types of activities that might need to establish in certain locations. This is a gap which in my opinion means the plan does not currently give effect to the relevant NPS's I have discussed in paragraphs 7 to 14 in my evidence.
22. In my opinion the proposed new UFD-O12 is an appropriate response to the provisions of the NPS's that I have highlighted as it directs the lower order chapters to provide a pathway for such activities. That will not necessarily equate to a permitted activity regime, but would ensure that lower order chapters address these issues by establishing a consenting pathway that reflects NPS's where the matters of national significance are engaged, and elsewhere in the district where locationally constrained activities may need to establish.

23. For similar reasons I also disagree with the section 42A report's rejection of submission point S128.009, which sought an additional clause be included in objective UFD-O1. Objective UFD-O1 is an overarching objective that seeks to manage how the District is developed. Greenbriar sought the following additional clause be added into this objective:

x. *“recognises that some resources and associated activities are locationally constrained;”*

24. I consider that some recognition of locationally constrained activities is required within overarching objective UFD-O1, as this objective will be relevant to the consideration of the location of zones and spatial layers in the District Plan, as well as resource consent applications for new development.
25. The proposed provisions would also serve to support other changes that the section 42A report author has recommended be accepted, such as the new clause UFD-O1 5.b which acknowledges the need to transition away from non-renewable energy sources. Increased generation and use of renewable energy will in some cases be in tension with efficient operation of primary production. The proposed new objectives provide objective level recognition that the use of these resources should be provided for in these certain situations.
26. Overall, the provisions proposed by Greenbriar provide clearer direction to support the integrated management of the District's resources by recognising and providing for those activities that rely on natural and physical resources that are location dependent. Providing objective level support that acknowledges these constraints gives effect to the national and regional level provisions which provide a consenting pathway for these activities.

Dated 21 May 2024

Megan Justice