

Before the Hearing Panel
Appointed by the Gore District Council

Under the Resource Management Act 1991 (**RMA**)

In the matter of Submissions on the Proposed Gore District Plan

Hearing Stream 5A: Legal submissions for Gore District Council (regulatory role)

16th October 2024

Gore District Council's solicitors:

Michael Garbett | Shelley Chadwick

Anderson Lloyd

Level 12, Otago House, 477 Moray Place, Dunedin 9016

Private Bag 1959, Dunedin 9054

DX Box YX10107 Dunedin

p + 64 3 477 3973

michael.garbett@al.nz | shelly.chadwick@al.nz

**anderson
lloyd.**

Introduction

- 1 These legal submissions are made on behalf of the Gore District Council (**Council**) in its regulatory role advancing the proposed district plan (**PDP**), where this plan also includes designations for the Gore District Council as the owner and operator of the relevant Council infrastructure (**Council as the requiring authority**).
- 2 Council's legal submissions for Hearing 5 dated 12 September provided a summary of the process for the panel's consideration of designations generally, particularly the designations of Council which fall to be assessed under section 168A of the Resource Management Act 1991 (**RMA**).¹
- 3 The Council's recommendation today is that the requirement GDC-10 should be included in the PDP with the modifications (amending and adding conditions) as recommended in the further evidence of Tina Carlson-McColl dated 26 September 2024.

Consideration of designation

- 4 A designation is a method by which a requiring authority can protect the use of a parcel of designated land for a public project or work. With this tool the requiring authority can obtain further certainty to protect the ongoing operation of that public work. Once in place, a designation has the following effects (pursuant to section 176(1) RMA):
 - (a) It removes any need for the requiring authority to obtain resource consents for activities within the scope of the designation which might otherwise be necessary under the district plan;
 - (b) It gives the requiring authority consent to do anything in accordance with the designation, subject to Part 2 and the outline plan requirements of section 176A;
 - (c) It prevents any other use of the land subject to the designation which could prevent or hinder the work without written permission of the requiring authority.
- 5 Where a requirement is made in general terms then any future expansion of the activity is to be addressed through an outline plan process. Outline plan processes demonstrate the proposed new details of the project or work in an outline plan for further comment by Council, and a dialogue may potentially follow about refining the plan/development. Any outline plan

¹ Refer paras 7-10

must show the bulk and location of the work, finished contours of the site, access, landscaping, and any other matters to avoid, remedy or mitigate any adverse effects on the environment arising from the work.

Statutory considerations applicable to considering designation GDC-10

- 6 As the panel is aware, it has full decision-making powers in respect of deciding on the inclusion, or not, of the requirements sought by Gore District Council.² Because this is a new requirement and because submissions have been received on this designation, then clauses 9(1) and 9(2) of Schedule 1 of the RMA require the Panel to comply with sections 168A(3) of the RMA in making it's decision.³ A final decision is then made by the panel under section 168A(4) RMA to:
 - (a) Confirm the requirement as notified; or
 - (b) Modify the requirement, including by amending or adding any conditions; or
 - (c) Withdraw the requirement.
- 7 Under section 168A, before making it's decision, the Panel must consider the effects on the environment of allowing the requirement, and when doing so, the Panel must, subject to Part 2, have particular regard to:
 - (a) The matters set out in the Notice of Requirement;
 - (b) Any relevant provisions of:
 - (i) A national policy statement;
 - (ii) A New Zealand Coastal Policy Statement;
 - (iii) A regional policy statement, or proposed regional policy statement; or
 - (iv) A plan, or proposed plan;
 - (c) Whether the work and designation are reasonably necessary for achieving the project objectives;

² RMA, Schedule 1, cl9(2).

³ Refer also copy of section 168A of the Act provided with Council's previous submissions on designations

- (d) Any other matter that the Panel considers is reasonably necessary in order to make a recommendation or decision; and
 - (e) Any positive effects on the environment offered by the requiring authority as an offset or compensation by the requiring authority may be considered.
- 8 In relation to the consideration summarised at paragraph 7(d) above, the Environment Court has previously observed that a public work and associated designation would be reasonably necessary where:⁴
- (a) There is a connection between the works proposed and the requiring authority's objectives for which the designation is sought;
 - (b) The land required for the area of the designation is justified in relation to the works proposed; and
 - (c) The land is able to be used for the purpose of achieving the requiring authority's objectives for which the designation is sought.
- 9 It is noted that the consideration of alternatives under section 168A(3)(b) has not been included in the matters for the panel to consider listed above, because it is not a relevant consideration where the site is owned by GDC, and where Ms Carlson-McColl has assessed that there will not be significant adverse effects from this public work.

Assessment of GDC-10

- 10 With reference to section 168A(3)(a), it is noted that the inclusion of GDC-10 is supported by the policies reviewed and recorded by the Council reporting officer in her section 42A report at paragraphs 68 of her section 42A report (pages 23-24). The supportive policy framework is also set out in more detail at pages 6-11 of the notice of requirement.
- 11 With reference to section 168A(3)(c), the vital role of the treatment plant is referenced at paragraphs 69-70 of the section 42A report, and expanded upon in the evidence of Matt Bayliss dated 17 September 2024.
- 12 It is noted that any positive improvements of the site agreed to by Council as requiring authority, such as the landscaping and other conditions proposed by Ms Carlson-McColl are able to be considered by the panel in it's assessment under section 168A(3A).

⁴ Re Queenstown Airport Corporation Limited [2017] NZEnvC 46, para 9

- 13 The Council does not recommend that this requirement GDC-10 be confirmed as notified, including because it was originally notified as including a buffer area which all parties have agreed should be removed.
- 14 The Council's position is that the requirement GDC-10 should be included in the PDP with the modifications recommended in the further evidence of Tina Carlson-McColl dated 26 September 2024.

Order of presentation

- 15 Assuming that the noise experts have given evidence at the same time and shortly after the presentation from Council as requiring authority, it is proposed that I assist with any questions on these legal submissions first, followed by further evidence and any questions of Ms Carlson-McColl.

Dated this 16th day of October 2024

A handwritten signature in black ink, appearing to be 'Sh', followed by a horizontal line.

Shelley Chadwick
Counsel for Gore District Council (as regulatory authority)