

Before the Hearings Panel
Appointed by the Gore District Council

Under the Resource Management Act 1991

In the matter of: the Gore Proposed District Plan

and **Andrea McMillan & Tony Harpur** (Submitter
#134)

Planning Evidence of Brett James Giddens

16 October 2024



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INTRODUCTION

- 1 My full name is Brett James Giddens.
- 2 I am the Managing Director of Town Planning Group (NZ) Limited, a specialist resource management and planning consultancy established in 2006 that provides planning and resource development advice to private clients, local authorities and government agencies New Zealand-wide.
- 3 I hold a Bachelor of Science in Geology from the University of Canterbury and a Master of Applied Science in Environmental Management from Lincoln University. I am an Associate of the New Zealand Planning Institute, a member of the New Zealand Resource Management Law Association, and a member of the Urban Design Forum of New Zealand.
- 4 I have over 22 years' experience as a practicing planner in New Zealand, with a focus on statutory planning, environmental assessment, policy development and analysis, and consenting. I am regularly engaged as an expert planning witness before Council hearings and the Courts. I have been involved in numerous district and regional plan change processes throughout New Zealand, in addition to large scale rezoning and consenting. I have advised the Ministry for Education on Notice of Requirement (**NoR**) / Designation processes throughout New Zealand since 2012, in addition to providing advice to a number of Requiring Authorities throughout the South Island.
- 5 I am familiar with the Operative Gore District Plan (**ODP**) and the notified Proposed Gore District Plan (**PDP**).

CODE OF CONDUCT

- 6 Although this is not an Environment Court hearing, I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and have complied with it in preparing my evidence. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where I state that I am relying on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

- 7 This brief of planning evidence has been prepared on behalf of Andrea McMillan & Tony Harpur (**the Submitters**). The Council is advancing the review of the PDP in a series of "streams" and this evidence relates to Stream 5 (Designations).

- 8 The general focus of the submission is on impacts of the PDP provisions on residential property of the Submitters and, in particular, impacts from and provisions relating to the East Gore Water Treatment Facility (**the facility**).
- 9 I provided a brief of planning evidence dated 7 August 2024 for Hearing Stream 4 on behalf of the Submitters. My 7 August evidence provides further context to the key issues. As set out in this evidence, I supported the Council's recommendation to remove the buffer area over the residentially zoned land around the facility. I understand that this recommendation has also been followed through into Stream 5. For completeness, I note that the NoR does not include a buffer and that method was proposed through the plan provisions.
- 10 I have read the documents that together formed the notified PDP. I have also read the section 42A report for Hearing Stream 5 (Designations) and further evidence/report provided by the Council.

NOTICE OF REQUIREMENT

- 11 The purpose is specified as "Public Utility – Water Treatment Plant and Pump Station". It is located on land owned by the Gore District Council, who is also the Requiring Authority. No lapse date is specified because it was asserted that the designation has been "given effect to".
- 12 The notified NoR contained no conditions. The section 42A report at [61] confirms that this is because the NoR is for an "established facility" which "form part of the receiving environment", and because "the effects of any future works will be managed through the outline plan process".
- 13 The section 42A report broadly sets out the legal framework for including designations within district plans.¹ The report makes it very clear that the facility is existing and that is the existing facility and its effects that have been assessed. This approach is echoed in the evidence presented by the Council (as the Requiring Authority).
- 14 At [72] of the section 42A report, the author states:
- "... although I agree that the effects of any future works are able to be properly managed through the outline plan process, submitters have raised a number of amenity effects relating to the ongoing operation of the East Gore water treatment plant... I therefore consider that it would be appropriate that conditions are included to manage these effects, including in relation to noise, light spill and landscaping to soften the visual appearance as the facilities and tanks are not necessarily consistent with anticipated residential amenity values..."
- 15 The NoR has been since refined by the Council, with conditions now being proposed relating to noise, lighting and visibility.
- 16 The NoR makes no provision for additional buildings or structures. The evidence of the Requiring Authority further confirms this through its assessment of the existing facility. Contrary to the view expressed

¹ [21] to [30] of section 42A report

at [61] of the section 42A report, it follows that any future Outline Plan of Works would be generally confined to the facility as it exists, which, as confirmed in the evidence of Mr Bayliss at his [26], can provide for the necessary expansion of the capacity of the treatment plant.

CONCERNS

- 17 My primary concern is that the facility is not lawful, yet it has been relied on as a starting point for the RMA evaluation. The assumption that the facility lawfully forms part of the existing environment has led to an erroneous evaluation in my view.
- 18 If the recent expansion of the facility was correctly established via an RMA process, it may well have transpired that the location and configuration of the facility would have been better situated on the site to reduce adverse effects on the surrounding residential properties. The process followed simply did not allow such considerations.
- 19 The fact that the facility is not legal appears to be acknowledged at [60] of the section 42A report where it states that the designation is sought to, among other reasons, provide "legal authorisation" for the works.
- 20 No assessment of alternatives was undertaken because the facilities are "well established" and "owned by the Council".² The decision made on the NoR site has been made arbitrarily and openly avoided looking at any other options available. The site has been used as the starting *and* end point in the evaluation which the NoR has been based on.
- 21 I have also not seen any consideration of the provisions of the statutory plans when considering the effects on the environment.
- 22 With regard to the operation of the facility, it is unclear as to how the Requiring Authority intends to achieve the proposed noise standards, in particular the change in noise outputs between the daytime and nighttime standards. A noise management plan would be useful in this regard.
- 23 Mr Styles' acoustic review is helpful, particularly insofar where he confirms that the zone noise standards "are not specifically designed to control noise from mechanical plant that operate constantly".³ His option 3 appears to be the only palatable option for noise in the receiving residential environment.
- 24 The Council also needs to be aware that the submitters have made an application to subdivide their property and that there will inevitably be further sensitive receivers in the immediate environment. Compliance with the noise conditions in particular become very critical. This has been previously advised to the Council but I have not seen any consideration of this. I reiterate this because Mr Shanks' assessment as set out in his evidence has been limited to the dwelling

² [70] of the section 42A report

³ [15] of planning evidence of Ms Calson-McColl, 26 September 2024

at 36 Talbot Street and does not consider the environment as enabled by the residential zoning, or the environment that will invariably arise from the grant of subdivision consent.

STATUTORY ASSESSMENT

25 I have concerns that the assessment of the NoR has not been undertaken in accordance with the requirements of the RMA, in particular section 168A(3). For instance, at [40] and [41] of the section 42A report, the author states:

40. With respect to decision-making criteria outlined in section 168A(3) and 171(1) the assessments undertaken for rolled-over designations are focused on the adverse effects of any proposed modification.

41. A detailed consideration of relevant policy statements and plan provisions has not been undertaken as the existing designations, and the Notices of Requirement for new designations, are already established. Similarly, consideration of alternative sites, routes and methods have not been explored in detail in most cases because the subject land is already owned or vested in the requiring authority, or it is likely that the work will have no significant adverse effect on the environment. However, where a more detailed assessment is required with respect to s168A(3) or s171 this is included in the assessment of the specific designation. [Emphasis added]

26 The facility appears to be treated as an existing designation. I have not seen any meaningful assessment of the statutory provisions, no assessment of alternatives, nor have I seen any consideration of the NoR against the objectives of the Requiring Authority (or the objectives themselves).

CONDITIONS

27 Notwithstanding, my concerns that the NoR fails to achieve the requirements of the RMA, I have suggested some new and refined conditions on the NoR to provide what assistance I can (additions underlined and deletions ~~struck out~~):

1. Built form on site is limited to that as shown on the plan titled "Gore WTP Site General Arrangement" and dated 10 February 2020, except where additional structures are required to specifically mitigate noise to achieve compliance with Condition 3 and such structures are visually mitigated as required by Condition 6.
2. Any emission of artificial outdoor light shall comply ~~be consistent~~ with LIGHT-R1 permitted activities, and direct light facing adjoining residential properties must not be installed.
3. The Noise (rating) level and maximum noise level arising from any activity shall not exceed:
 - a. 7am to 10pm – 50 dB LAeq
 - b. 10pm to 7am – 35 dB LAeq and 70 dB LAFmaxwhen measured and assessed at or within the boundary of any ~~other~~ site in the GRZ, LLRZ & MRZ.
4. A Noise Management Plan shall be prepared by a suitably qualified and experienced acoustic consultant that outlines how the noise from the facility is to be consistently managed, and the specific measures that will

be put in place to ensure that the noise standards in Condition 3 will be met on an ongoing basis.

5. Should the noise limits in Condition 3 not be met, then the facility must be reduced in its capacity to achieve compliance until such time that any necessary mitigation measures can be installed and confirmed as achieving compliance via an assessment from a suitably qualified acoustic expert.
6. A landscape plan shall be developed for the site by a suitably qualified landscape architect person, and planting shall be undertaken and maintained in conformity with the plan. The objectives of the landscaping are to:
 - (i) ~~landscaping shall~~ provide visual relief of the facility as viewed from ~~surrounding properties and the public roads; and~~
 - (ii) Substantially visually impair views of the facility from surrounding residential properties.

This landscape plan shall:

- a. Identify ~~areas~~ the locations and the range of species to be planted around the facility and plant.
- b. Identify any restrictions for plantings necessary for the safety and operation of the facility and access.
- c. Be prepared and submitted for certification to the Gore District Council within ~~six one months~~ of the designation being approved.
- d. Be reviewed annually for the first two years after planting and following that, at intervals not exceeding five three years for the purpose of ensuring that the planting is effective at achieving the objectives set out in (i) and (ii).

Dated: 16 October 2024



Brett James Giddens