



IN THE MATTER AND IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

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

Minute 27 of the Hearings Panel

**National Planning Standards,
Earthworks, Energy & Infrastructure Chapters**

15 November 2024

MINUTE OF THE HEARINGS PANEL

- 1 The hearing to consider submissions on the Earthworks, Energy and Infrastructure chapters of the proposed Gore District Plan was held on 6 and 7 November 2024. The Hearings Panel received Section 42A Reports and statements of evidence from Tina Carlson-McColl and Mishka Banhidi.
- 2 There are some matters arising from the hearing that require further attention, in relation to the application of National Planning Standards, the treatment of exemptions and assessment of provisions against higher order instruments.

National Planning Standards

- 3 During the hearing there was some discussion of the National Planning Standards as they pertain to Earthworks, Energy and Infrastructure within the structure of the proposed plan.
- 4 The evidence of Ainsley McLeod for Transpower New Zealand Limited included examples of how other recent district plan processes have addressed National Planning Standard directions.
- 5 Of particular interest to the Hearings Panel are the following from Section 7 of the National Planning Standards, District-wide Matters Standard:

“5. Provisions relating to energy, infrastructure and transport that are not specific to the Special purpose zones chapter or sections must be located in one or more chapters under the Energy, infrastructure and transport heading.

...

6. The chapters under the Energy, infrastructure and transport heading must include cross-references to any energy, infrastructure and transport provisions in a Special purpose zones chapter or sections.

7. Zone chapters must include cross-references to relevant provisions under the Energy, infrastructure and transport heading.

...

29. If provisions for managing earthworks are addressed, they must be located in the Earthworks chapter.

...

30. The Earthworks chapter must include cross-references to any relevant earthworks provisions under the Energy, infrastructure and transport heading.

31. The Earthworks chapter must include cross-references to any provisions for mining, quarries and or gravel extraction in a Special purpose zone or zone chapter or section.”

- 6 The Hearings Panel is concerned that the current structure of the proposed plan does not give effect to the imperatives contained in the National Planning Standards, which use the term “must”.
- 7 In particular the s42A report covering the Earthworks chapter refers to earthworks provisions in other chapters, as in paragraph 4:

“The Earthworks chapter excludes earthworks provisions relating to Historic Heritage sites, Significant Natural Areas, Outstanding Natural Landscapes or Features and Amenity Landscapes and direct plans users to earthworks rules within those chapters.”

- 8 In relation to the Infrastructure chapter, Ms McLeod has identified adherence to the National Planning Standards as an outstanding matter of concern, whilst otherwise supportive of the s42A report recommendations.
- 9 The Hearings Panel consider that it is necessary for the s42A reporting officers to review their recommendations in light of these standards and adopt a consistent approach to cross-referencing that will assist to ensure the proposed plan is fully compliant with National Planning Standards. The s42A reporting officers may wish to consider the approach of the Mackenzie District Plan or an alternative that will work best with the format of the proposed plan.
- 10 The Hearings Panel is aware that addressing these matters will have an impact on provisions in chapters that are the subject of upcoming hearings. The Hearings Panel propose that the timetable for preparation of evidence for Hearing 9 is utilised so that recommended amendments to earthworks and infrastructure provisions are visible to submitters preparing evidence in that hearing. As such the Hearings Panel directs the s42A reporting officers to provide further supplementary evidence on this matter no later than **14 January 2025**.

Exemptions to earthworks rules

- 11 During the Earthworks hearing there was discussion about the migration of a number of activities from exempt activities to permitted activities, with the consequence being that parameters and standards would be applied to those activities that were previously exempt. It was acknowledged by the s42A reporting officer in response to the evidence of Ms McLeod for Transpower New Zealand Limited that earthworks activities would need to be controlled within the National Grid Yard, including some previously exempted activities.
- 12 Some exemptions referenced in the chapter are also exempt from the definition of “earthworks” in the plan.
- 13 The Hearings Panel assume that the intention of the chapter is to manage activities that fall within the definition of “earthworks” and apply permitted activity standards to those activities, or otherwise specifically exempt them from rules and standards in the chapter. The Hearings Panel have identified that care needs to be taken when choosing whether to exempt an activity or apply permitted activity standards, largely because non-compliance with a standard will result in a resource consenting pathway, which is a significant consequence of migrating exempt activities to permitted activities.

- 14 The Hearings Panel have identified that rule EW-R14, which is the catch-all rule in the chapter, may be the appropriate place to include specific exemptions, particularly when acknowledging that there is a need to manage activities within the National Grid Yard as per EW-R12.
- 15 The Hearings Panel invites Ms Carlson-McColl to review recommendations and advise of any recommended changes, in order to:
- manage earthworks activities where there is an identified resource management issue in the district relevant to the functions of the territorial authority, thinking about s9(3) of the Resource Management Act 1991;
 - apply a rule framework commensurate with the scale and significance of adverse effects of particular earthworks activities;
 - clarify, and ensure, that only activities defined as “earthworks” in the plan will be subject to the provisions of the Earthworks chapter;
 - identify activities that it is appropriate to exempt from the permitted activity standards and any consequential resource consenting pathway; and
 - identify appropriate standards to apply to activities not exempt from the permitted activity standards, with reference to relevant identified resource management issues and submissions.
- 16 In general, the Hearings Panel wish to ensure provisions are designed to address identified issues within the district and avoid unintended consequences of making activities subject to rules and standards, particularly activities that had been notified as exempt and in relation to triggers for permitted activities that then lead to a resource consenting pathway.
- 17 Ms Carlson-McColl may wish to provide the results of her review of recommendations ahead of this date but will need to provide advice no later than **14 January 2025**.

Infrastructure and higher order instruments

- 18 The Hearings Panel understand that as a consequence of reviewing plan provisions to give effect to the National Planning Standards some infrastructure provisions in other parts of the plan may need to be moved in to the Infrastructure chapter. If this occurs then submissions will also need to be revisited that seek for RMA Part 2 matters and higher order instruments to be better reflected in provisions in the Infrastructure chapter (e.g. Director General of Conservation, S103.030).
- 19 For instance, INFR-O3 does not differentiate between different types of infrastructure (e.g. critical, nationally significant, regionally significant, specified) and requires that infrastructure generally “is protected”, without clear higher order instrument support, whereas RMA Section 6 matters of national importance do incorporate requirements for “preservation” and “protection”. The Hearings Panel note that the telecommunications companies have recommended alternative wording for this objective.
- 20 When looking at giving effect to higher order instruments the Hearings Panel consider it would be useful to also have an assessment of use of the terms “functional need” and “operational need” in those instruments and relate that to use of the terms within the proposed plan.

- 21 The Hearings Panel expects that it will be most efficient for Ms Banhidi to review her recommendations with reference to higher order instruments at the same time as addressing the matter of application of National Planning Standards, and to provide her advice no later than **14 January 2025**.
- 22 Submitters wishing to respond to the supplementary evidence of Ms Carlson-McColl and Ms Banhidi will need to do so following the same evidence schedule as for Hearing 9, with expert evidence due on **28 January 2025**.
- 23 Any responses or queries regarding this Minute, should be directed to the Planning Department of the Gore District Council, phone (03) 2090330 or email hearings@goredc.govt.nz.

A handwritten signature in blue ink, appearing to read 'Cliff Bolger'.

Cliff Bolger
Chair, District Plan Hearing Panel
Under delegated authority