

**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

SUBMISSIONS OF COUNSEL ON BEHALF OF GREENBRIAR LIMITED

DATED 5 JUNE 2024



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SUBMISSIONS OF COUNSEL ON BEHALF OF GREENBRIAR LIMITED**May it please the Commissioners:**

1. Greenbriar Limited owns the New Vale Mine. The mine is located on Miller Road, near Waimumu. Mining has been undertaken at New Vale since the 1940's. The site owned by Greenbriar comprises approximately 350Ha, although mining activities are confined to 178ha of the site. This includes ~40ha of open pit, ~46ha of engineered land forms (overburden mounds) and the balance of the mining area containing the likes of settling ponds, processing facilities, service areas and administrations buildings etc.
2. The Land that is not utilised as part of the mining operation is farmed. As mining operations progress, areas previously mined are rehabilitated and reintegrated into the farming operation. When mining is completed the site will be fully rehabilitated for farming purposes (save for a small lake, and associated wetland restoration works)
3. Under the operative district plan the site is zoned a mixture of Industrial and Rural. The industrial area of the site is located where the processing facilities etc are and reflects the nature of the activities that occur within that area of the property. The balance of the site is zoned rural. The site is identified as having Highly Productive Soils (as is the case for much of the Gore District).
4. Greenbriar was somewhat surprised by the proposal to rezone the entirety of the site as Rural under the proposed District Plan. In Greenbriar's view this approach does not enable the natural and physical resources of the site (which include the existing mining operations and the facilities) to be sustainably managed.
5. As a result of this Greenbriar made submissions in relation to the PDP seeking that the site be rezoned to better support the existing and

future mining activities and support the rehabilitation works that will need to be undertaken. This was by way of a special zone for the site.

6. The purpose of the relief sought by Greenbriar is to provide a framework in the District Plan and to recognise the importance of the resources within the site in supporting the wider primary production sector in Southland.
7. In the Urban Form and Development Chapter this relief requires support via the higher order provisions that recognise the existence of locationally constrained resources and the need to manage them in the District Plan. In support of this approach Greenbriar is calling the following evidence:

(a) Meg Justice – Planner

FRAMEWORK FOR CONSIDERING PROPOSED PLAN.

8. At Appendix 1 I have set out the legal framework applicable to the proposed plan. I don't propose to take you through that as I expect you will be familiar with the framework.
9. It is submitted that the function of the provisions in the Urban Form and Development chapter is to chart the course for how the subsequent chapters will manage the resources of the District. It is the scaffolding for the rest of the Plan providing high level direction on the matters that need to be identified and addressed by the Plan. It is submitted for that chapter to serve its function it needs to clearly identify the nature of the different resources to be managed. Good District Planning inevitably requires the mediation of certain tensions.
10. In the present case that is tension between the natural and physical resource present within the Rural Zone. In particular:

- (a) Presence of Highly Productive Land – a finite resource, but widely distributed within Gore District;
 - (b) Presence of mineral resources – a finite resource which is not widely distributed within Gore;
 - (c) Presence of existing physical resources within the New Vale Site – located at the existing site only.
 - (d) A community that is heavily reliant on the Agricultural sector for its social and economic wellbeing.
11. Provision for activities that have locational constraints (or functional and/or operational needs) is an important part of achieving sustainable management. This is evidenced by the recognition of such activities in the higher order planning framework discussed in Ms Justice's evidence. In the various National Policy Direction there is a consistent approach of providing a 'pathway' for activities that might otherwise be halted by 'avoidance' directions if their practical, locational or functional constraints are not acknowledged. Such an approach is consistent with sustainable management.
12. It is submitted that the notified provisions of the Urban Form and Development chapter are deficient due to their failure to provide direction in such circumstances. The section 42A report indicates that this is because the issue is already addressed by provisions that require rural resources to be protected and maintained.
13. With respect, we disagree. It is submitted that this interpretation of the provisions requires their meaning to be stretched and contorted. It fails to recognise the inevitable tensions at play within the District and provide guidance to plan makers (and subsequent decision makers on resource consents) about how to manage those tensions. It would tend to lead to an all or nothing outcome.

14. By including the additional provisions proposed by Greenbriar, plan makers are provided with direction in relation to the relatively narrow class of activities that are subject to true locational or functional constraints. Activities such as mining, quarrying, renewable energy generation, electricity distribution etc – all of which are fundamental to the ability for Gore District to provide for its sustainable management. Without such direction these important activities or resources may be unable to find a pathway through highly directive policies that support the environmental protection limb of section 5. That outcome would be inconsistent with the purpose of the Act.

Signed:



B Irving

Counsel for Greenbriar Limited

APPENDIX 1 - FRAMEWORK FOR ASSESSING PROPOSED DISTRICT PLAN

1. The following provides an outline of the statutory requirements relevant for a decision maker in preparing a District Plan. It is hoped that this will assist the panel.
2. This outline is in accordance with the most recent and relevant authorities *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17] onwards, updates to capture amendments made by the Resource Management Amendment Act 2013 and *R Adams and others v Auckland Council*, Decision [2018] NZEnvC 008 at [53].
3. The Council must prepare its plan in accordance with¹ its functions under section 31² and the provisions of Part 2. The district plan must also be prepared in accordance with any regulation³ and any direction given by the Minister for the Environment⁴.
4. A district plan must give effect to:⁵
 - (a) Any national policy statement and New Zealand Coastal Policy Statement; and
 - (b) Any operative regional policy statement.
5. The relevant NPS's in this case are:

¹ Section 74 (1) RMA

² As described in section 31 RMA, See also Section 72 – purpose of district plans.

³ Section 74 (1)(f) RMA

⁴ Section 74 (1) RMA

⁵ Section 75 (3) RMA

- (a) National Policy Statement - Urban Development.
 - (b) National Policy Statement – Highly Productive Land
 - (c) National Policy Statement – Indigenous Biodiversity
 - (d) The New Zealand Coastal Policy Statement is not relevant.
6. When preparing or changing a district plan, a territorial authority shall have regard to:⁶
- (a) Any proposed regional policy statement (of which there isn't one);
or
 - (b) Proposed regional plan in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4.
7. A district plan must not be inconsistent with a regional plan for any matter specified in section 30(1)⁷.
8. A district plan must also:
- (a) Have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register⁸; and to consistency with plans and proposed plans of adjacent territorial authorities⁹;

⁶ Section 74 (2)

⁷ Section 75 (4) (b) RMA

⁸ Section 74 (2) (b) RMA

⁹ Section 74 (2) (c) RMA

- (b) Take into account any relevant planning document recognized by an iwi authority¹⁰; and
 - (c) Not have regard to trade competition or the effects of trade competition.¹¹
9. There is a formal requirement that a district plan must¹² also state its objectives, policies and the rules (if any) and may state other matters¹³.
 10. Each proposed objective in a district plan is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act¹⁴. The provisions (policies and rules) are to be evaluated on the extent to which they achieve the objectives by considering the matters set out in section 32(1)(b).¹⁵ The evaluation under section 32 is to be had particular regard to when assessing the proposal under section 74.¹⁶
 11. The policies are to implement the objectives. The rules are for the purpose of carrying out the Council's functions under the Act and achieving the objectives and policies of the plan¹⁷
 12. Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to

¹⁰ Section 74 (2A) RMA

¹¹ Section 74 (3) RMA

¹² Section 75 (1) RMA

¹³ Section 75 (2) RMA

¹⁴ Section 32(1)(a)

¹⁵ Section 32(1)(b)

¹⁶ Section 74(1)(e)

¹⁷ Section 76 (1)

whether it is the most appropriate method for achieving the objectives¹⁸ of the district plan taking into account:

- (a) The benefits and costs of the proposed policies and methods (including rules), where possible these should be quantified; and
 - (b) The risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the policies, rules, or other methods¹⁹; and
 - (c) If a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances²⁰. This provision is not considered to be relevant in this case.
13. Rules may be included for the purpose of carrying out the Council's functions or achieving the Objectives and Policies of the Plan²¹. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment²².

¹⁸ Section 32 (3) (b) RMA

¹⁹ Section 32 (4) RMA

²⁰ Section 32 (3A) RMA

²¹ Section 76(1). Note that as per section 32(3) the rules are to achieve both the objectives in the amending proposal and the existing objectives.

²² Section 76 (3) RMA