

Before the Independent Hearings Panel at Gore District Council

Under Schedule 1 of the Resource Management Act 1991

In the matter of Hearing Submissions and Further submissions on the Proposed
Gore District Plan.

**Statement of supplementary planning evidence of Mishka Banhidi and Joanne Skuse on
behalf of Gore District Council for Hearing Stream 6 – Public Access and Subdivision**

Date: 11 October 2024

Introduction:

1. Our full names are Mishka Banhidi and Joanne Skuse. Our Section 42A reports set out our qualifications and experience as experts in planning. For the purpose of this evidence Mishka Banhidi has provided comments on submitter evidence relating to Public Access, and Joanne Skuse has provided comments on submitter evidence relating to Subdivision.
2. We confirm that we are continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's practice Note 2023, as applicable to this independent hearing panel.
3. We have prepared this statement of evidence to provide a response to expert evidence and statements presented in relation to Hearing Stream 6 – Public Access and Subdivision Chapters. This includes the evidence of:

New Zealand Transport Agency (s112)

- a. Helen Dempster

Silver Fern Farms Limited (s40)

- a. Steve Tuck Mitchell Daysh Limited

Clarke Fortune McDonald and Associates (s99)

- a. Ben Wilson

Department of Conservation (s109):

- a. Elizabeth Moya Williams

Southland Federated Farmers (s126)

- a. Bernadette Hunt
- b. Rachel Thomas

Transpower (s101 & FS30)

- a. Ainsley McLeod

Recommendations Overview

4. The Section 42A reports for the Public Access and Subdivision Chapters provides an overview of issues raised in submissions and the changes recommended relating to those chapters. We do not propose to repeat those here but instead focus on responding to submitters evidence, and in particular matters which remain in contention.

5. Further recommended amendments to the Subdivision Chapter are provided in **Appendix 1** to reflect the recommendations made within this evidence.
6. Further recommended amendments to the Public Access Chapter are provided in **Appendix 2** to reflect the recommendations made within this evidence.

Detailed Responses to Evidence seeking changes to Section 42A Recommendations

New Zealand Transport Agency (NZTA) (s112)

7. NZTA support the recommendation of the Section 42A report in relation to subdivision.

Silver Fern Farms Limited (s40)

8. Silver Fern Farms Limited support the recommendation of the Section 42A report in relation to subdivision provisions SUB-P5, SUB-P19 and SUB-R5.

Clarke Fortune McDonald & Associates (CFMA) (s99)

9. CFMA support the recommendation of the Section 42a report as they relate to the following:

- SUB-P8 (FS22.007)
- Infrastructure and Financial Contributions (FS22.079, FS22.052, FS22.078, FS22.076, FS22.077 & FS22.080)
- Sliding scale approach for GRZ minimum allotment size
- SUB-P10 (FS22.008)
- SUB-P11 (FS22.009)
- SUB-P15 (FS22.010)
- SUB-R3 (FS22.016)

10. Outstanding areas of disagreement are addressed in the following sections.

SUB-S1 – Minimum Lot Sizes for LLRZ and SETZ (S99.011, S99.014, S99.016 & FS22.019)

11. CFMA considers, in line with the sliding scale approach for the GRZ, that SUB-S1 should be amended to enable a discretionary activity status for minimum lots sizes which achieve more than 87.5% of the proposed minimum allotment size. This would result in a discretionary activity status for allotments between 1750m² and 2000m², and a non-complying activity status for allotments less than 1750m².

12. In my opinion, the activity status of 'non-complying' is purposefully strong to ensure that proposed development is consistent with the existing and intended character and amenity of the zone, whilst enabling a suitable level of density.
13. Whilst I note in the Section 42A report that a minor non-compliance may result in a more onerous consenting process, I highlight that provided a proposal can demonstrate no more than minor effects and consistency with the relevant objectives and policies, there is no reason a resource consent approval couldn't be granted.
14. In order to maintain the integrity of a zone, a signal is necessary through the activity status. Lot sizes less than that prescribed by the PDP are not anticipated, unless other pathways are provided. For example, in the General Residential zone and the Medium Density Residential zone, comprehensive residential developments are enabled to encourage larger scale developments which are developed cohesively and may provide for higher densities.
15. The Large Lot Residential zone is generally upzoned land, rather than infill, and therefore subdivisions can be, and should be, designed to meet the minimum lot size.
16. I have reviewed the recommendations for the Settlement zone from Hearing Stream 3 and note that a similar sliding scale standard was proposed for density. This is in response to the varying lot sizes in the Settlements. I therefore recommend that the minimum lot size standard SUB-S1 is amended to align with the density provision of the Settlement zone.

New Rule: SUB-R5 Certification of existing allotments under s226 of the RMA 1991 (S99.005 & FS22.043)

17. CFMA agree in part with the inclusion of a rule providing for Certification of existing allotments under s226 of the RMA. CMFA believe that recommended SUB-R5(6)(c) is unnecessarily restrictive as buildings are existing. CFMA propose the following alternative wording:

New title boundaries enabled by s226 certification comply with all setback standards, height in relation to boundary and building coverage standards of the relevant zone chapter; and

18. I agree with the submitter that consideration should be focused on the relationship of existing buildings and new boundaries created. The bulk and location of existing buildings in relation to existing boundaries is an existing situation that does not require assessment. I proposed the following amendment:

6 c. Existing buildings on site comply with ~~all~~ setback standards, height in relation to boundary and building coverage standards of the relevant zone chapter, as they relate to new title boundaries enabled by s226 certification; and

SUB-P7 (FS22.006)

19. CFMA seeks the deletion of the following from the policy:

~~Ensuring that subdivision designs provide for the treatment and safe disposal of stormwater that does not result in increased flooding and erosion risk; and~~

20. CFMA consider the bylaw has sufficient authority to require robust assessments of rainwater and stormwater and the duplication within SUB-P7(10) is considered unnecessary.
21. In my opinion, subdivision developments must demonstrate feasibility at resource consenting stage. The policy requires consideration of a subdivision design which provides for the treatment and safe disposal of stormwater, that does not result in increased flooding and erosion risk. It does not necessarily require detailed design of infrastructure.
22. Stormwater has far-reaching impacts. Poor stormwater management can lead to increased flooding, erosion, and degradation of water quality, which affects not only infrastructure but also private property, public safety, and the natural environment. I consider this should be addressed through the consenting stage.

SUB-R1

23. CFMA considers that boundary adjustments have minimal implications for land use. CFMA seek changes to remove the restrictions for boundary adjustment of sites containing ONL, ONF or SNAs, historic heritage or notable trees, or limit the trigger to when new boundaries pass through these features.
24. CFMA also seek that the rule is amended to enable boundary adjustments to be a controlled activity where an existing lot is below the current minimum area requirement, but the boundary adjustment does not reduce the size of that lot further.
25. In relation to subdivision of land containing areas of ONL, ONF or SNAs, I maintain my recommendation from the Section 42a report. In my opinion, subdivision (including boundary adjustments) of land including ONLs, ONFs and SNAs, require assessment to ensure they do not result in adverse effects on the ecological values, visual integrity, or biodiversity of these areas. Whilst a matter of control could be included to assess boundary treatment, I do not consider a controlled activity status is appropriate. I consider a discretionary activity status is proportionate to the significance of the RMA Section 6 matters. I therefore make no further amendments in this regard.
26. The condition clauses of the rule are set out separately so that where compliance is not achieved it is clear what other rules apply.
27. I have considered the point raised by CFMA, regarding boundary adjustments of lots which are already below the minimum lot size. I consider a small change can be included to enable boundary adjustments of lots which are already undersized provided the adjustment does not result in an even smaller lot.
28. In relation to the request for the clauses to apply only where 'new boundaries are created which pass through', I consider a boundary adjustment can generate effects which need to be assessed, for example, if a site is within a flood area. The matters of control do not enable this. As such I consider a proposed boundary adjustment, if within land mapped as being subject to actual or potential inundation, should be assessed as a restricted discretionary activity under SUB-R7.

SUB-R4

29. The submitter requests changes to SUB-R4 in line with their requests for SUB-R1.
30. I have made amendments to SUB-R4 in line with the discussion relating to SUB-R1 above.

SUB-R12

31. CFMA do not believe it is necessary to apply a non-complying status subdivision within a flood zone as there are subdivision activities such as boundary adjustments which may be valid or necessary within the floodplain and without any effect on or increased risk from flooding.
32. The Mataura River Floodway is a significant hazard area, and in my opinion, subdivision should be discouraged. The activity status is proportionate to this. In general, and consistent with the wider drafting style of the PDP, activities which should be avoided have a non-complying activity status.

SUB-R12 – Subdivision Within The National Grid Corridor

33. CFMA state the NZECP already clearly sets out requirements for setback distances etc from the National Grid for various activities therefore CFMA consider it is redundant to require specific building platforms to be identified for all subdivisions within the National Grid Subdivision Corridor.
34. I have proposed amendments to this rule as outlined in the response to Transpower's supplementary evidence below. Mainly, a change to require the subdivision design to demonstrate it can locate buildings outside of the National Grid Yard, rather than requiring a fixed building platform. I have amended Matter of discretion (1) to require consideration of the mechanism utilised to ensure buildings are located outside the National Grid Yard. I have removed the reference to platforms as there may be other means to ensure this, for example a 'no build area'.
35. I consider it is necessary to assess a subdivision under this rule if the National Grid Subdivision Corridor crosses part of a site in order to align with the NPSET. I do not consider this causes additional subdivision costs, as the activity status remains restricted discretionary.
36. The change proposed are outlined in **Appendix 1**.

Department of Conservation (DOC) (s109):

37. DOC support the recommendation of the Section 42A report as they relate to the following:
 - a) Public Access Chapter
 - b) SUB-04 (s109.093)
 - c) SUB-P18 (s109.094)

- d) DOC further support the changes proposed within the Section 42A report providing plan user clarity around which rule applies if the site does contain an SNA, ONL or ONF.

- 38. Outstanding areas of disagreement are addressed in the following sections:
- 39. In relation to DOCs submission points s109.095 and s109.096 seeking to reference unmapped SNAs in SUB-R1 and SUB-R4, I consider that as the proposed definition of a SNA also includes areas that meets the criteria outlined in Appendix 4 of the Plan, it is not necessary to repeat this within the rule. It should be noted that this may need to be revisited as a consequential amendment following Hearing Stream 9, as we are awaiting the outcome of the Resource Management (Freshwater and Other Matters) Amendment Bill relating to the SNA mapping requirements under the NPS-IB.
- 40. In regard to the reference to 'highly mobile fauna', DOC reference the recommendations made in the Councils Section 42A on the Transport chapter and for consistency would agree to similar changes being made within the subdivision chapter rule provisions SUB-R1 and SUB-R4.
- 41. Highly mobile fauna areas are defined separately to SNAs under the NPS-IB and are required to be mapped and identified. Adverse effects of subdivision, use, and development must be managed consistently with the NPS-IB (Section 3.20). For consistency, I therefore consider it appropriate to include reference to highly mobile fauna areas in the rules together with Significant Natural Areas. A consequential change to SUB-R14 is necessary to include highly mobile fauna areas. Changes to SUB-R1 and SUB-R4 are shown in **Appendix 1**.

Federated Farmers (s126):

- 42. Federated Farmers support the recommendation of the Section 42A report as they relate to the following:
 - a) Definition of 'access strip' (s126.003) and 'wetland' (s126.052)
 - b) SUB-O5
 - c) SUB-P13
 - d) SUB-R5
 - e) SUB-S1

- 43. Outstanding areas of disagreement are addressed in the following sections.

Public Access:

- 44. Federated Farmer, has supported the clarification of the mechanism in which public access is provided for, however seeks some changes to the wording as follows:

"There are no specific rules within this District Plan relating to Esplanade Reserve provision. As such, the provision defaults to Section 230 of the Resource Management Act (RMA). Under

this section, when land is subdivided and an allotment of less than 4 hectares is created, a 20-metre-wide esplanade reserve ~~must~~ shall be set aside from that allotment along the mark of mean high-water ~~mark~~ springs of the sea, the bank of any river, or the margin of any lake, as applicable. This reserve shall vest with Council in accordance with Section 231 of the RMA.

This chapter does not grant the public unrestricted access to private land. Access is primarily provided through Esplanade Reserves, Council reserves, or ~~by negotiating~~ by way of agreement with private landowners, primarily via the Esplanade Strip process. Permission from landowners is required over private land unless explicitly indicated by signage or maps."

45. These proposed changes are considered suitable in that they provide greater alignment with the wording within Section 230 of the RMA. The proposed changes from "negotiate" to "by way of agreement" is also considered suitable. While a synonym of negotiate, this change does alter the tone and aligns better with the intent of the amendment to clarify the mechanism for the provision of public access.

PA-P2

46. The submitter retains their original position of requesting that the wording of PA-P2 be amended to focus on the provision of public access within urban areas, with their concerns being that public access through rural environment will have a detrimental impact on farming.
47. As outlined within the Section 42A, this change is not supported. While public access is primarily intended for urban areas, rural access, particularly along the Maitake River and Waikaka Stream, remains important for cultural, recreational, and fishing purposes.
48. As outlined within my Section 42A report and acknowledged within the submitter's evidence, the General Rural Zone minimum lot size is 8 ha. The required assessment for any 4ha subdivision, would consider any risk that a subsequent esplanade reserves would adversely affect farming within the General Rural Zone. Therefore, no change to PA-P2 is recommended.

Subdivision

SUB-O4

49. Federated Farmers seek changes to SUB-O4 to align the reference to physical and natural resources with the definition within the plan. I have reviewed the definition and agree it follows to amend the objective so that it reflects the phrase defined in the plan, the Resource Management Act and the Planning Standards definition.
50. In relation Hokonui Runanga's proposed wording for clause 2, I consider that the wording does make sense. "Maintains or enhances mahinga kai values and protects wāhi tapu from inappropriate access or disturbance" emphasises both the proactive management of mahinga kai values and the safeguarding of wāhi tapu sites from harmful subdivision. Enhancing mahinga kai values may involve protecting and restoring ecosystems, improving water quality, restoring habitats and promoting sustainable land use. I therefore do not propose any amendment in this regard.

SUB-R1

51. Subdivision of land containing areas of ONL, ONF or SNAs are provided for as a discretionary activity through Rule SUB-R11. Boundary adjustments, while often seen as administrative changes to property lines, can have significant implications for land use and the relationship between different land uses. Whilst, I accept that boundary adjustments are useful to facilitate farm sales or succession, I have encountered boundary adjustment applications that go beyond administrative boundary changes, encompassing more significant alterations.
52. Subdivision (including boundary adjustments) of land including ONLs, ONFs and SNAs, require assessment to ensure they do not result in adverse effects on the ecological values, visual integrity, or biodiversity of these areas. Whilst a matter of control could be included to assess the potential impact on ONF and SNA, I do not consider a controlled activity status is appropriate. I consider a discretionary activity status is proportionate to the significance of the RMA Section 6 matters. I therefore make no further amendments.

Transpower (s101 & FS30):

53. Transpower support the recommendations of the Section 42A reports as they relate to the following:
 - a) Subdivision - New Rule for Subdivision for network utilities
 - b) Objective SUB-O4
 - c) Policy PA-P5
54. Outstanding areas of disagreement are addressed in the following sections.

SUB-P3

55. Transpower do not agree with the Section 42A Report conclusion that the minor amendments recommended to Policies SUB-P3 and SUB-P5 achieve the relief sought by Transpower and the National Policy Statement for Electricity Transmission (NPSET). Transpower consider that as both Policies include a direction to 'avoid, remedy or mitigate effects' on the National Grid, the direction fails to give effect firm direction in Policies 10 and 11 of the NPSET.
56. Ms McLeod highlights that Policies 10 and 11 of the NPSET are strong directives to manage activities to avoid reverse sensitivity effects on the electricity transmission network and ensure that sensitive activities will generally not be provided for in plans and/or given resource consent.
57. I have recommended a new rule is included within the Subdivision chapter to manage subdivisions that occur within the National Grid Corridor. The activity requires a restricted discretionary consent if building platforms are identified on the subdivision plan outside of the National Grid Yard. Non-compliance results in a non-complying activity status.
58. I acknowledge the evidence provided from Ms McLeod and have reviewed the NPSET again along with the Southland Regional Policy Statement (SRPS). I consider that as I have

recommended a separate rule for subdivision within the National Grid Corridor and that the rule has a non-complying activity status for non-compliance, a specific policy provision can be adopted.

59. I am comfortable that the wording proposed by Transpower align with the NPSET. I recommend the following policy is included in the plan:

“SUB-P22. Avoid subdivision in the National Grid subdivision corridor where future activities may result in adverse effects on the National Grid, including reverse sensitivity effects, that would compromise the operation, maintenance, upgrading and development of the National Grid.”

Additional Rule – Subdivision within the National Grid Subdivision Corridor

60. Transpower support the Section 42A Report recommendation to include new for subdivision within the national grid subdivision corridor. Transpower acknowledge that this Rule generally reflects the approach taken to regulating subdivision in the vicinity of the National Grid in district plans across New Zealand, in a manner that gives effect to SRPS Policy INF-6 and responds to the Preamble to the NPSET.
61. That said, Transpower seek amendments to the recommended Rule as follows:
- a) Amending clause (1) to include a requirement to demonstrate that buildings and sensitive activities are able to be located outside of the National Grid Yard.
 - b) Amending Matter of Discretion (2) to make explicit reference to achieving access to National Grid assets.
 - c) Including an additional Matter of Discretion to allow for a consideration of setbacks for activities in addition to building platforms.
 - d) Including an additional Matter of Discretion to allow of a consideration of any outcomes of consultation with Transpower.
62. I have reviewed the wording amendments proposed by Ms McLeod.
63. I agree with the proposed amendments to the condition of the rule and matters of discretion. Notably, that the subdivision design must demonstrate it can locate buildings outside of the National Grid Yard, rather than requiring a fixed building platform. I don't think it is necessary to include all the text as the matters of discretion are intended to manage the building platform (or alternative) mechanism. I have amended Matter of discretion (1) to require consideration of the mechanism utilised to ensure buildings are located outside the National Grid Yard. I have removed the reference to platforms as there may be other means to ensure this, for example a 'no build area'.
64. The change proposed are outlined in **Appendix 1**.

Section 32AA Evaluation:

65. The proposed recommendations seek to improve the effectiveness and efficiency of the subdivision and public access chapters. The need for a detailed assessment under Section 32AA is not necessary.
66. The recommendations are minor in scope and primarily focus on enhancing the clarity and comprehensibility of the existing recommended provisions. These amendments do not significantly alter the intent of the existing provision framework. Instead, they seek to clarify existing rules and requirements, making it easier for decision makers and plan users to understand and implement them. The changes do not have any substantive impacts on the environment, social or economic conditions, or community well-being.
67. The proposed amendments are considered to be a more appropriate way to achieve the objectives than the notified version of the PDP.