

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.

**Hearing Stream 2 Reporting Officer Right of Reply of Joanne Skuse, Mishka Banhidi,
Tina Carlson-McColl and Victoria Woodbridge on behalf of Gore District Council**

Date: 10 July 2024

Introduction:

1. Our full names are:
 - Tina Carlson-McColl
 - Victoria Emily Jane Woodbridge
 - Joanne Skuse
 - Mishka Banhidi
2. Our Hearing Stream 2 Section 42A reports set out our qualifications and experience as an expert in planning.
3. We have prepared this right of reply in respect of Hearing Stream 2 and the submissions received, including evidence and statements presented and tabled.
4. This right of reply provides a response to Minute 12 released by the Hearing Panel in relation to Hearing Stream 2 – Airport Zone, Camp Columba Zone, Field Days Zone, Commercial Centres and Mixed Use Zones, Natural Open Space Zone and Sport and Active Recreation Zone.
5. A further statement of evidence in response to additional evidence provided from KiwiRail Holdings Ltd and Fire and Emergency New Zealand as requested by Minute 11 will be provided by 19 July 2024.
6. 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.

General

7. When a definition is used in the Proposed Plan, that is also included in the National Planning Standards, is it mandatory to adopt the wording of the Standards?

At paragraph 61 of the Airport Zone Section 42A Report it is recommended reference be included to “relocated buildings” in a number of rules. If the Panel was of a mind to accept that recommendation, a simpler alternative would be to amend the definition of “Building” in the Proposed Plan. That definition uses the wording from the National Planning Standards.

Reply:

The use of the National Planning Standard definitions is a mandatory direction, and as such these definitions cannot be amended. However, if required terms that have a narrower application or are a subcategory of a National Planning Standard definition can be included, as detailed below:

14. Definitions Standard

Mandatory directions

1. Where terms defined in the *Definitions List* are used in a policy statement or plan, and the term is used in the same context as the definition, local authorities must use the definition as defined in the *Definitions List*. However if required, they may define:
 - a. terms that are a subcategory of, or have a narrower application than, a defined term in the *Definitions List*. Any such definitions must be consistent with the higher level definition in the *Definitions List*.
 - b. additional terms that do not have the same or equivalent meaning as a term defined in the *Definitions List*.

FIGURE 1 NATIONAL PLANNING STANDARD- DEFINITIONS DIRECTIONS

“Building” is a defined term under the National Planning Standards, as shown below. However, although “building” is a defined term, the panel could consider introducing a new definition of “relocated building” if required.

Building

Has the same meaning as per the National Planning Standards – means a temporary or permanent movable or immovable physical construction that is: (a) partially or fully roofed; and (b) fixed or located on or in land; but excludes any motorised vehicle or other mode of transport that could be moved under its own power.

Please also refer to the legal submission of Counsel on behalf of Gore District Council, attached to this report as Appendix 1.

8. There is an inconsistency with the wording of the Standards within the zone rules. Some (e.g. TCZ-S1) use the words “shall not” while others (e.g. TCZ-S4) refer to “must not”. The latter implies a higher degree of compliance is required, with less flexibility enabled through the resource consent process. If no differentiation is intended, is it permissible for the Hearings Panel to standardise the wording under Clause 16B of the First Schedule, by adopting “shall not”?

Reply:

Please refer to the legal submission of Counsel on behalf of Gore District Council. In summary the terms “shall not” and “must not” are synonyms, however “must not” is considered a more modern usage. Amending the plan for consistency to refer to “must not” is considered an appropriate use of Clause 16 of the First Schedule.

Airport

9. Is a definition for “airfield areas” required in AIRPZ-S1? If so, how can that be provided?

Reply:

The intention of AIRPZ-S1 is to avoid the storage of goods from impacting the airstrip, it is acknowledged that the term airfield areas could be interpreted to mean the entire Airport Zone. Rather than an additional definition, it is suggested that the term Airstrip be utilised in place of airfield area. Airstrip as defined by the oxford dictionary means “a strip of ground set aside for the take-off and landing of aircraft¹” synonyms include *flight strip, landing field and runway*. It is anticipated that the meaning of the term is commonly understood, and a definition is therefore not required.

The recommended amendments have been laid out below:

1. Outdoor storage of goods and materials must not:
 - (a) encroach on ~~airfield areas~~ the Airstrip.
 - (b) exceed a height of 2 metres.
10. Standard AIRPZ-S1(2) refers to “species which grow to at least 1.5m”. It is assumed this is intended to refer to the height of plants, in the same way as TCZS2(3). Is this a matter that can be corrected under Clause 16(2) of the First Schedule?

Reply:

Please refer to the legal submission of Counsel on behalf of Gore District Council.

In summary - yes, this standard is intended to apply to height. It is considered the scope of change to amend the standard as per the following can be made under Clause 16 of the First Schedule. The recommended amendments have been laid out below:

2. Any outdoor storage area visible from an adjoining property or road must be screened from the property or road by planting and/or landscaped to a minimum depth of 1 metre with plantings that ~~species which grow to~~ a height of at least 1.5m.

Town Centre Zone

11. “Tenancy” is referred to TCZ-S1, and the panel has queried whether a definition required.

Reply:

The intention with the use of the term tenancy in TCZ-S1 is to differentiate between the building frontage and the individual activity, or number of activities that take place within the building. Referring to “per activity” is considered undesirable, as there may be multiple retail activities taking place within the building, and the standard may then be taken to apply to the combined area for the retail activity rather than the individual tenancies.

¹ Oxford Languages Dictionary

Tenancy colloquially refers to “possession of land or property as a tenant”², synonyms include tenure, lease, rental, holding, possession and occupancy. It is anticipated that the meaning of the term is commonly understood and a definition is therefore not required.

The term tenancy is used in a number of recently reviewed district plans in a similar context to the Gore Proposed District Plan, including:

- Selwyn Partially Operative District Plan – term referred to but not defined
- New Plymouth Proposed District Plan – term referred to but not defined
- Wellington City Plan 2024 – term referred to but not defined
- Porirua City Proposed District Plan - term referred to but not defined

12. Additions recommended to TCZ-S1 Activities within the Core Precinct [*officer correction*] include the following:

Any new building development or alteration must be designed so that:

1. *The maximum ground floor area per tenancy accessible to the public shall not exceed:*
(a) ~~100~~ 250 square metres; ~~and~~ or
(b) 10 metres in width.

It is assumed the 10 metres in width refers to a measurement along the street frontages, as opposed to a distance back from the boundary. Further, there is potential for confusion over the meaning of the word “or”. Does the author of the Section 42A Report wish to recommend a rewording?

Reply:

The intention is that the 10-metre limitation applies to the width of the tenancy rather than the internal depth, or as an overall minimum dimension. The panel could consider adding “10 metres in frontage width” to clarify this, however plan users may then assume the width applies to the external building frontage. What the dimension applies to is however explained in the note to the rule:

Note: the above dimensions are retail activity dimensions, not the building dimensions.

Consistent with the urban design advice from Ms Allen³ amendments to TCZ-S1 includes and increase in the ground floor area to 250 square metres and retaining the 10m width requirement. If (a) and (b) are connected by the use of “and” this means that both conditions of the standard need to be fulfilled, if “or” is used this means that one of the conditions needs to be fulfilled to comply with the standard. The urban design advice at

² Oxford Languages Dictionary

³ Hearing Stream 2 Supplementary Evidence, Appendix 5 - Urban Design advice Town Centre Core Precinct

the time of the Section 42A report⁴ was to change the “and” to an “or” to provide greater flexibility. However, with the revised supplementary evidence advice that instead allows for greater flexibility with increasing the activity area, both conditions of the standard should apply and I therefore recommend reverting the “or” back to “and”, as follows:

TCZ-S1 Activities within the Core Precinct

Any new building development or alteration must be designed so that:

1. The maximum ground floor area per tenancy accessible to the public shall not exceed:

(a) ~~100~~250 square metres; and ~~or~~

(b) 10 metres in frontage width.

Note: the above dimensions are retail activity dimensions, not the building dimensions.

The Section 32AA evaluation⁵ for the original change remains relevant to the proposed amendment.

13. Additions recommended to TCZ-S7 Screening and TCZ-S2 Frontages include the following:

Landscaping shall not obscure emergency or safety signage or obstruct access to emergency panels, hydrants, shut-off valves, or other emergency response facilities.

Street frontage landscaping is required, resulting in obscuring emergency and safety signage. Does the author of the Section 42A Report wish to recommend a rewording?

Reply:

The additions to the landscaping and screening standards in relation to not obscuring emergency response facilities is the subject of Fire and Emergency NZ submissions⁶, and was recommended to be accepted as we agreed that landscaping and screening should be positioned and maintained so that it does not obstruct emergency response facilities including those listed in the submission. However, the intention was not that any site with internal emergency or safety signage should not be screened or landscaped, but rather that the screening or landscaping required should not obscure signage where these are located within the area that is being landscaped or where the screen is erected, which typically would be at the front boundary. It would also be undesirable to require

⁴ Hearing Stream 2 Section 42A Report: Part 3 Town Centre, Local Centre, Neighbourhood Centre & Mixed Use Zones, Appendix C Town Centre Zone – TCZ-S1 – urban regeneration advice

⁵ Section 42A Report: Part 3 Town Centre, Local Centre, Neighbourhood Centre & Mixed Use Zones, Submissions Specific to the Town Centre Zone, Standard TCZ-S1 (paragraph 168)

⁶ Section 42A Report: Part 3 Town Centre, Local Centre, Neighbourhood Centre & Mixed Use Zones, Common Submissions for the Commercial Centre Zones and Mixed Use Zone, Fire and Emergency New Zealand (paragraph 65)

internal safety signage to remain unobstructed from view from adjoining properties. We therefore recommend that the standard is amended as follows:

TCZ-S7 Screening and TCZ-S2 Frontages

3. Screening/Landscaping shall not obscure emergency or safety signage located on or adjacent to the road boundary or obstruct access to emergency panels, hydrants, shut-off valves, or other emergency response facilities.

The panel may wish to include subsequent amendments to LCZ-S7, NCZ-S6, MUZ-S6 and MUZ-S10 for consistency.

The Section 32AA evaluation⁷ for the original change remains relevant to the proposed amendment.

Mixed Use Zone

14. MUZ-S6 requires development on sites fronting Hokonui Drive to include a landscaping strip which must contain a minimum of 1 tree every 3 metres. The panel considers there is *'uncertainty as to the intent and in determining what is a "tree"'*.

Reply:

15. The Section 32 Report⁸ for the Mixed Use Zone considered whether the proposed standards were the most appropriate to achieve the PDP objectives and in relation to MUZ-S6 the relevant objective is MUZ-O3 *"the Mixed Use Zone provides a safe, accessible and functional working and residential environment with a reasonable level of amenity consistent with the range of activities provided for."*
16. MUZ-S6 is also intended to give effect to the policy framework and in particular Policy MUZ-P4 which requires, at clause 1, that *"....landscaping is provided and maintained, particularly on road frontages..."*
17. The Section 32 Report for Mixed Use Zones considered a range of background information to ensure the PDP provisions were consistent with other Council policies, strategies and plans. This included the Gore District Streetscape Strategy⁹ which identifies, assesses and provides guidance on the streetscape outcomes sought for Gore and Maitāhara. Policy 9 states that within Mixed Use areas in Gore landscaping is required at the time of subdivision or redevelopment to enhance the visual appearance of a site where properties adjoin arterial roads and residential areas.
18. Hokonui Drive is a State Highway and provides the primary entrance into Gore from the north. Hokonui Drive is currently characterised by a wide road reserve with mature trees

⁷ Section 42A Report: Part 3 Town Centre, Local Centre, Neighbourhood Centre & Mixed Use Zones, Common Submissions for the Commercial Centre Zones and Mixed Use Zone, Fire and Emergency New Zealand (paragraph 91)

⁸ Proposed Gore District Plan – Section 32 Report Mixed Use Zone

⁹ Our Towns.....Our Streets A Streetscape Strategy for Gore District Council December 2011.

and wide grass berms. The requirement under MUZ-S6 for developments to have a landscaping strip which includes 1 tree every 3 metres is therefore designed to maintain and enhance the streetscape and visual amenity along Hokonui Drive based on the current characteristics and levels of amenity along the road frontage.

19. The Section 32 Report – Appendix 2 Urban Design Assessment recommended 10% landscaping for sites within the Mixed Use Zone, which *“should be supported by identification of key streetscapes that recognise and connect to some of the wider landscape and mature trees in the area to improve the overall amenity of the area over time.”*
20. I consider Hokonui Drive to be a key streetscape and therefore provision of more ‘bespoke’ landscaping is considered appropriate. The requirement to provide trees as opposed to more general landscaping is consistent with the Urban Design Assessment which supports the Section 32 Report and seeks to maintain and enhance the amenity of the streetscape along this key route.
21. In relation to determining “what is a tree” I consider there should not be any real difficulty for plan users and decision makers to determine what constitutes a tree as this is something which is generally well known. A simple internet search of ‘tree’ brings up images, definitions and details of species. I consider it to be commonly accepted what a tree would be compared to other ‘landscaping’ which might include plants, grasses, shrubs etc.
22. I also note the PDP includes other references to ‘trees’, specifically in the Notable Tree chapter but also within other provisions, including (word tree highlighted in bold):
 - a. GRUZ-S8 and SETZ-S3 Height – Note: rule TRANS-R3 also applies to height of Buildings, other structures and **trees** within airfield approach vectors.
 - b. RLZ-S11 Planting – all planting shall be comprised of locally appropriate indigenous species except that.....fruit **trees**.... are permitted.
 - c. NFL-R2 **Tree** planting other than plantation forestry within an identified ONF/L – permitted where the **tree** planting is of indigenous species.....
 - d. SARZ-P5 – require effects generated by activities.....by.....5. Minimising hard surfacing and, where possible, retaining or providing visually prominent **trees**, bush and/or landscaping.
23. The PDP includes a definition of ‘notable tree’ – *“A tree assessed and identified utilised the Standard Tree Evaluation Method (STEM) with a score of 100 and above and listed in TREE-SCHED.”* This does not explain what a tree is, although it is acknowledged that as the Notable Trees are mapped there would be no dispute as to what is or isn’t a tree in this situation.
24. However, I also note the PDP definition of woodlot refers to ‘wilding tree management’ – *“Means a stand of **trees** for the purposes of firewood, the creation of other wood products, a carbon sink, erosion control, pest, or wilding tree management purposes, but excluding plantation forestry.”* [emphasis added]

25. A review of other District Plans identifies a mixed approach to provisions which include reference to trees and whether there is a definition of 'tree'.
26. The following proposed District Plans include a similar approach to the PDP and reference 'trees' in relation to landscaping requirements but do not provide a definition for tree:
 - a. The proposed Selwyn District Plan includes a requirement for one specimen tree for every 10 metres of frontage that is 1.8m high at the time of planting and capable of achieving a height at maturity of 8m. This requirement is within all Residential Zones, the Settlement Zone and several Precincts within the General Rural Zone.
 - b. The proposed Timaru District Plan includes requirement for sites within the General and Medium Density Residential Zones to be landscaped with grass, trees, shrubs or other vegetation. Within the General Rural Zone there are limits on the heights of trees for shelterbelts and within the Rural Lifestyle Zone there is a specific standard requiring a minimum of 4 or 8 trees per site depending on the site size with specifications on the heights and density for planting. The Māori Purpose Zone also includes limits on the height of trees.
27. However, the following proposed District Plans include requirements for trees as part of landscaping and have a definition of 'tree':
 - a. The proposed New Plymouth District Plan requires trees as part of landscaping within the Mixed Use Zone and the PDP does include a definition of 'tree' - *Means any large woody perennial plant that develops into a plant of at least 4m in height.*
 - b. The proposed Wellington City District Plan does not appear to include specific requirements for tree planting but does include a definition of 'tree' – *"means a woody plant 3 metres or greater in height includes a Tree Fern, but excludes a vine with a stem diameter less than 50 mm."*
28. Whilst a definition of 'tree' could be included in the PDP the panel would need to consider whether they have scope to make such an amendment as I note there are no submissions seeking such a definition and no submissions relating specifically to the reference to 'tree' within MUZ-S6.
29. However, overall, I do not consider a definition necessary as it is commonly understood what a tree is compared to other forms of landscaping. My own experience to date is that there has not been debate, conflict or confusion from plan users or decision makers as to what constitutes a tree.
30. However, were a definition to be included in the PDP I recommend consideration is given as to how the definition would relate to other policies, rules and standards throughout the PDP where reference to 'tree' is included. I would also recommend if a definition were considered some expert advice may be required to guide the definition to ensure it was appropriate in a local context and in relation to the PDP provisions.