

**BEFORE THE COMMISSIONERS APPOINTED ON BEHALF OF
GORE DISTRICT COUNCIL**

Under	The Resource Management Act 1991 (the Act)
In the Matter	of the Proposed Gore District Plan Rural Chapter
Between	GREENBRIAR LIMITED Submitter (s128)
And	GORE DISTRICT COUNCIL Territorial Authority

SUBMISSIONS OF COUNSEL ON BEHALF OF GREENBRIAR LIMITED

DATED 17 JULY 2024



GALLAWAY COOK ALLAN LAWYERS

Bridget Irving/Hannah Perkin

bridget.irving@gallowaycookallan.co.nz

hannah.perkin@gallowaycookallan.co.nz

PO Box 143

Dunedin 9054

Ph: (03) 477 7312

Fax: (03) 477 5564

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

1. New Vale Mine (**Mine**) is an existing coal and lignite mine located at 640 Miller Road Waimumu (**Site**). The Mine is owned by Greenbriar Limited (**Greenbriar**). The Site is approximately 354 ha, the mining operations take up roughly 175 ha of the Site. Under the current District Plan the Site has a mixed zoning of Rural and Industrial.
2. The notified Proposed plan identified the entire site as Rural. The reason for removing the Industrial zone was not apparent. Through submissions Greenbriar sought the establishment of a 'New Vale Special Purpose Zone' as its primary relief. The purpose of this relief is to provide a bespoke framework in the Plan to recognise the importance of the mineral resource provided by the Site to the District and wider Southern South Island region.
3. The s 42A report for the Rural Chapters recommended a New Vale Precinct be established in the General Rural Zone. Greenbriar are comfortable with this approach, subject to amendments discussed in Mrs Justice's evidence.¹
4. New Vale plays an important role in supporting the agricultural industry and primary production sector in Southland, Otago, and Canterbury. The Mine has been established for 75 years and supplies thermal coal to major customers across the three regions. The majority of New Vale's customers are in the agricultural food processing sector, with dairy and meat processing plants. There is no local alternative to New Vale's supply and the analysis completed on behalf of Greenbriar concludes that New Vale customers would experience, at least, a 118% rise in energy costs if the Mine stopped supplying coal.² At

¹ Brief of Evidence of Megan Justice 2024 at Appendix D.

² Brief of Evidence of Andrew Schoultz 2024 at [116].

current extraction rates New Vale's resources would be exhausted by 2028-2030. If the mine is extended slightly, there is resource available to continue to provide coal resources until approximately 2038.

5. The Emissions Reductions Plan currently aims for low and medium temperature coal boilers to be banned and phased out by 2037.³ New Vale's timeline aligns with the Emissions Reductions Plan, with New Vale expecting to cease coal extraction in 2038. This allows coal to be provided for coal boilers in the transitional period until renewable sources and technology are available and can be implemented.

Matters to be addressed in submissions

6. These submissions will address:
 - (a) Relevance of National Policy Statement for Highly Productive Land (**NPSHPL**).
 - (i) Functional or operational need
 - (ii) Significant national public benefit
 - (iii) Cannot be otherwise be achieved using resources within New Zealand
 - (b) Most appropriate relief
 - (i) Special Zone or Precinct
 - (ii) Section 32 assessment

³ Minister for Climate Change and Ministry for the Environment *Aotearoa New Zealand's First Emissions Reduction Plan* (ME 1639, May 2022) at 215.

7. In support of its submission and relief sought the following evidence has been filed:
 - (a) John Howes – Environmental Manager for New Vale
 - (b) Andrew Schoultz – Economics
 - (c) Meg Justice – Planning

National Policy Statement for Highly Production Land

8. The Landcare Research maps identify the Site as majority Land Use Capability (**LUC**) Class 3, with 59 ha of the Site mapped LUC Class 7. This means that majority of the Site is considered highly productive land and is subject to the NPSHPL.
9. The below *Figure 1* shows the Mine according to the New Zealand Land Resource Inventory Maps. These maps show areas already mined, and currently being mined, as LUC 3.

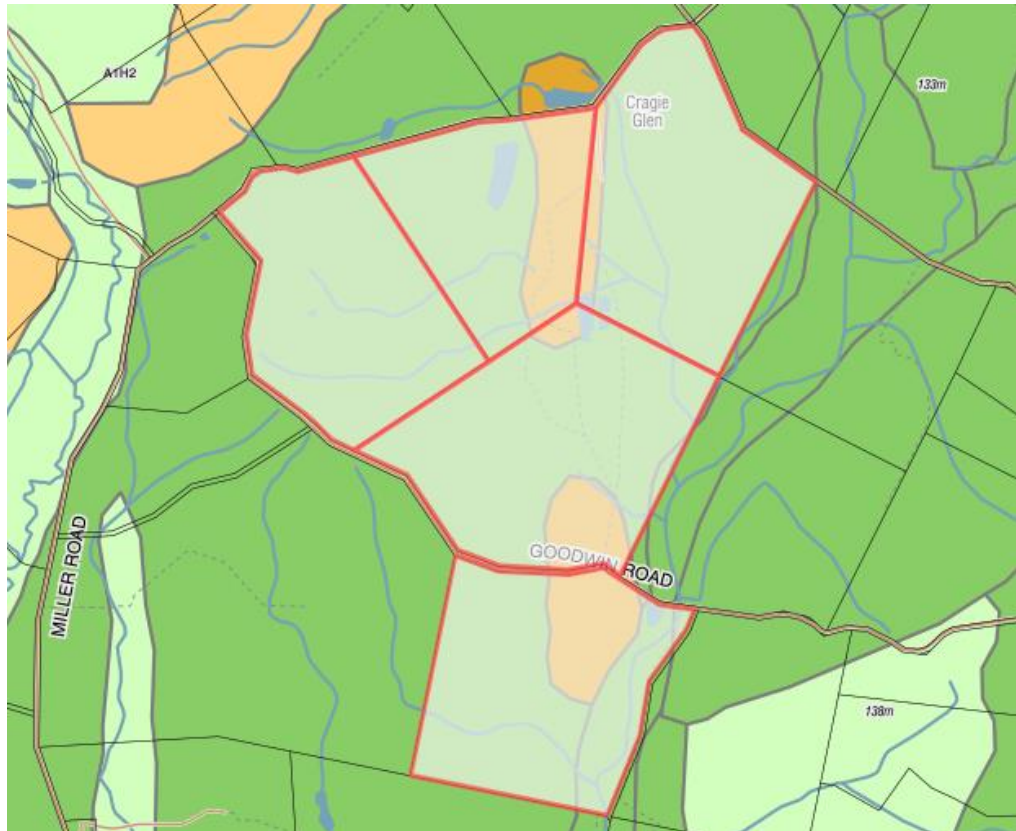


Figure 1: New Zealand Land Resource Inventory Maps identifying the area considered New Vale Mine.

10. The NPSHPL provides a pathway for consenting mineral extraction activities. Clause 3.9 provides that:

A use or development of highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause (3) are applied:

[...]

(j) it is associated with one of the following, and there is a functional or operational need for the use or development to be on the highly productive land:

[...]

(iii) mineral extraction that provides significant national public benefit that could not otherwise be achieved using resources within New Zealand:

11. The exception in the NPSHPL provides a three-tiered test to determine whether the exception applies:
 - (a) Is there a functional or operational need for the Mine to be on highly productive land?
 - (b) Does the mineral extraction provide significant national public benefit?
 - (c) Can the significant national public benefit not otherwise be achieved using resources within New Zealand?

Functional or operational need

12. A functional or operational need is defined in the Planning Standards 2019 as:

Functional need: means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.⁴

Operational need: means the need for a proposal or activity to traverse, locate, or operate in a particular environment because of technical, logistical or operational characteristics or constraints.⁵

⁴ Definitions List the National Planning Standards 2019 at page 58.

⁵ *Ibid* at page 62.

13. Mining is locationally constrained as the mine location is determined by presence of a mineral resource. The Courts have acknowledged that mining has a functional need to locate in certain areas.⁶
14. It is further submitted that due to the long history of mining at this site there exist operational needs associated with the use of the existing physical resources, processing equipment and sensible progression of mining activities on the site.
15. Therefore, there is a functional and operational need for the mining operations to be located on highly productive land in this instance.

Significant national public benefit

16. The NPSHPL provides little guidance on what 'significant national public benefit' means. It can be safely assumed that the intention of requiring "national" benefits means the positive effects of an activity must be felt wider than the local district or region. A public benefit requires a social and economic factor to the benefit provided.
17. The Mine has been established since the 1940s. The public benefits provided by the Mine are demonstrated in Andrew Schoultz's evidence. Mr Schoultz's evidence identifies the public benefits of the Mine as being⁷:
 - (a) Local employment,
 - (b) \$7.4m boost to the local GDP,
 - (c) Supporting further \$499m in economic activity,

⁶ *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2022] NZCA 598 at [152] and [153].

⁷ Brief of Evidence of Andrew Schoultz at [20] – [22] and [106] – [112].

- (d) Reducing costs for food production businesses so they can retain staff,
 - (e) Reducing extra costs to be passed on to farmers and growers.
18. The significance extends beyond regional significance as the Mine supplies coal to food processing plants in three regions. The Mine plays a key role in providing energy inputs into the food processing sectors across Southland, Otago and Canterbury.
 19. Further, New Vale understands that their customers are transitioning from coal towards renewable energy sources. Some customers have commenced this journey already. The alternatives sources of renewable energy include woody biomass and/or renewable electricity.
 20. This transition is reliant on installation of new plant and infrastructure, and ensuring there is sufficient supply of alternative renewable energy resources to power the plants. For example, biomass boilers require significant scaling up of biomass supply chains. This cannot be completed overnight. Renewable electricity relies on infrastructure upgrades along the National Grid and local distribution networks and replacement of equipment within existing factories.
 21. New Vale aims to provide coal supply in the interim while transitional arrangements are being made and implemented. Without this, New Vale customers will have to get their coal supply either from the West Coast or import from overseas.
 22. Mr Schoultz's evidence demonstrates that the lowest cost alternative would be importing coal from Indonesia. The cost of importing lignite from Indonesia would impose a 118% increase from the current cost of sourcing from New Vale.⁸ Due to New Zealand meat and dairy

⁸ Brief of Evidence of Andrew Schoultz at [116].

producers having little influence on international market prices, higher energy costs would be passed onto the primary production sector and farmers. Resulting in reduced investment and employment.

23. The NPSIB contains a similar exception provision to cl 3.9 of the NPSHPL, with similar drafting being adopted to ensure consistency in approach.⁹ The NPSIB recommendations report aimed to ensure that the exceptions to the policy statement provided a significant national or regional public benefit.¹⁰ The burden of this clause intends to set an expectation that the benefit provided by the mineral extraction is sufficient to warrant consideration of adverse effects on an SNA.¹¹
24. Any adverse effects from the loss of highly productive land are outweighed by the significant benefits provided by the Mine. The loss of highly productive land is mitigated by rehabilitation of the mined area to productive farmland. It is, in effect, predominantly temporary loss. The significance of the Mine is sufficient to warrant these adverse effects on the highly productive land resource.

Cannot otherwise be achieved using resources within New Zealand

25. The NPSIB report recommended insertion of the phrase 'could not otherwise be achieved using resources within Aotearoa New Zealand' to ensure the necessity of the activity, and to avoid unintentionally promoting the import of minerals over domestic extraction.¹² The potential for this unintended consequence is borne out by the most cost-effective alternative for coal being importing.

⁹ Clause 3.11(1)(a)(ii) of the NPSIB 2023.

¹⁰ Ministry for the Environment *Recommendations and Decisions Report on the National Policy Statement for Indigenous Biodiversity 2023* (ME 1709 July 2023) at page 95.

¹¹ *Ibid* at 95.

¹² *Ibid* at 96.

26. The only Aotearoa based alternative is on the West Coast, however, this is more expensive than importing coal, even when transport costs are factored in.
27. The benefit provided by New Vale could not be otherwise achieved in Aotearoa. Mr Schoultz's evidence demonstrates that utilising a West Coast alternative would result in at least a 148% increase in costs for New Vale customers.¹³
28. Therefore, it is submitted that New Vale satisfies the exception in cl 3.9 of the NPSHPL and the highly productive land is exempt from the NPSHPL.

Most appropriate relief

Special Zone or Precinct

29. Greenbriar is seeking a bespoke planning mechanism to provide for activities at the Site. It has been established that the activities at New Vale are a significant part of the Gore District's economy. Given the nature and scale of the activity, and its locational and functional needs, it is submitted that it is appropriate for the Plan to provide for it specifically. Greenbriar sought a New Vale Special Purpose Zone in its original submission. The s 42A report recommends that a New Vale Precinct within the General Rural Zone is the most appropriate way to manage the Site and its activities.
30. The National Planning Standards provide definitions for Zones and Precincts.

Zone: A zone spatially identifies and manages an area with common environmental characteristics or where environmental

¹³ Brief of Evidence of Andrew Schoultz at [114].

outcomes are sought, by bundling compatible activities or effects together, and controlling those that are incompatible. In regional plans, zones can only be applied to the coastal marine area. In combined plans with district plan and regional plan components, a zone can be both seaward and landward of mean high water springs.

Precinct: A precinct spatially identifies and manages an area where additional place-based provisions apply to modify or refine aspects of the policy approach or outcomes anticipated in the underlying zone(s). In combined plans with district plan and regional plan components, a precinct can be both seaward and landward of mean high water springs.

31. The Ministry for the Environment guidance on the National Planning Standards provides that additional special purpose zones should be used for local, site-specific exceptional uses that cannot be managed through any of the framework zones or spatial planning tools.¹⁴
32. Precincts enable local difference to be recognised by providing detailed place-based provisions which can vary the outcomes sought by the zone. The Plan provides that precincts generally apply to a smaller area within a zone where different rules may apply to the underlying zoning for certain activities.¹⁵
33. The objectives, policies, rules and standards of the underlying zone generally apply in addition to specific provisions relating to the precinct.¹⁶ Where there are conflicts between the precinct or zone provisions, the precinct provisions prevail.

¹⁴ Ministry for the Environment *Guidance for 12. District Spatial Layers Standard and 8. Zone Framework Standard* (INFO 869 April 2019) at page 7.

¹⁵ Introduction Chapter: How the Plan Works, Gore Proposed District Plan at page 12.

¹⁶ *Ibid.*

34. It is submitted that either a Special Zone or a Precinct would be appropriate. Greenbriar is satisfied with the approach set out in the section 42A report, subject to some further amendments.

Section 32 analysis

35. The s 32 Report for the Rural Zone did not propose or examine any specific plan mechanisms to manage New Vale Mine. As New Vale is the only active mine of its scale in the Gore District, it is appropriate to provide bespoke rules to enable and provide for the activity. It is common practice to do this for significant mines or quarries, due to the important contribution that they make to the social and economic success of their districts.
36. Greenbriar submits to the Panel that appropriate relief is the establishment of a New Vale Precinct. The objectives and policies in the Rural Zone alone are not the most appropriate way to achieve the purpose of the Act and do not manage the Mine effectively.
37. In *Briggs v Christchurch City Council* the Court identified a number of principles of general application and relevance to the implementation of s 32¹⁷:
- (a) *The Court does not start with any particular presumption as to the appropriate zone, rule, policy or objective.*
 - (b) *The Court is seeking to obtain the optimum planning solution within the scope of the appeal it has before it, based on an evaluation of the totality of the evidence given in the hearing without imposing a burden of proof on any party.*

¹⁷ C045/08 24 April 2008 at [26].

- (c) *A policy, rule or method can be considered against the purpose found in the objectives and policies in the Plan. Where the objectives and policies are challenged these will need to be judged against superior documents including any relevant regional plan, policy statements, national standards or policy statements. Nevertheless, the Court recognises that the provisions in all plans do not always fit neatly together and we regard the policies and objectives of a plan through the filter of Part 2 of the RMA when necessary.*
38. The High Court in *Rational Transport Society Inc v New Zealand Transport Agency* held that “appropriate” means suitable, there is no need to place a gloss upon the word by incorporating that it be superior.¹⁸
39. The Panel should not start with an assumption that the notified rural zoning is the most appropriate. Greenbriar and the s 42A reporting officer agree that the appropriate planning solution is a New Vale Precinct. Providing a bespoke overlay for New Vale within the wider Rural Zone framework allows the planning framework to ‘live with’ the Mine with the underlying Rural Zone operating when areas are rehabilitated and/or mining is complete (which is likely within the life of this District Plan).
40. The Court also found in *Golf (2012) Ltd v Thames-Coromandel District Council* that a plan must be forward looking, but it must also be based on the existing environment, such that it is never fully zero-based.¹⁹ New Vale is part of the existing environment, and the operations are expected continue during the life of this Plan.
41. A New Vale Precinct is consistent with the objectives and policies of the Plan and of higher order documents such as the Southland

¹⁸ CIV-2011-485-002259 15 December 2011 at [45].

¹⁹ [2019] NZEnvC 112 at [132].

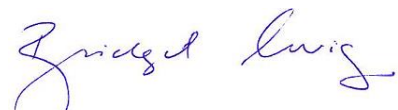
Regional Policy Statement (**SRPS**). The SRPS identified Mineral extraction activities as important to the region's economy.²⁰ The SRPS recognised that mineral extraction activities need to occur in appropriate locations within the rural environment.²¹

42. The proposed New Vale Precinct is also consistent with the relevant national policy statements. The Mine is captured by the cl 3.9 exception in the NPSHPL, there are no significant natural areas identified on site, the Mine is undertaking wetland construction and restoration.
43. The underlying rural zoning of the Site is effective, as mined areas are rehabilitation back into farmland. It is appropriate to provide for those rural activities that commence once mineral extraction is completed. Therefore, the New Vale Precinct meets the s 32 test as the most appropriate planning mechanism to manage the Mine.

Conclusion

44. Counsel submits that the s 42A report recommendation of a New Vale Precinct is adopted by the Panel, with the amendments provided in Megan Justice's evidence.²²

Dated 17 July 2024



Bridget Irving / Hannah Perkin

Counsel for Greenbriar Limited

²⁰ Chapter 5: Rural Land/Soils Southland Regional Policy Statement 2017 at page 74.

²¹ *Ibid* at page 63.

²² Brief of Evidence of Megan Justice, 8 July 2024, at Appendix D.