

BEFORE THE HEARING PANEL

Under	Resource Management Act 1991 (RMA)
In the matter	of an original submission on the Proposed Gore District Plan
Between	Southland Federated Farmers Submitter Number 126 Further Submitter Number 17
AND	Gore District Council Local Authority

**LEGAL SUBMISSIONS ON BEHALF OF FEDERATED FARMERS OF NEW
ZEALAND (INCORPORATED) – SOUTHLAND PROVINCE**

Dated: 21 February 2025



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INTRODUCTION

1. These legal submissions are presented on behalf of Federated Farmers of New Zealand (Incorporated) – Southland Province's (**Southland Province**) in respect of Hearing Stream 9 – Natural Features and Landscapes and Natural Character to the Proposed Gore District Plan (**PDP**).
2. As a result of the s42A report on Natural Features & Landscapes, of which the Southland Province did not submit on, a new Natural Character chapter has been proposed by the Hearings Panel. Evidence on the proposed chapter has been provided by Ms Kate Sannazzaro.
3. These supplementary legal submissions are structured as follows:
 - (a) Introduction.
 - (b) Summary.
 - (c) Issue of legal scope.
 - (d) Relief sought.

SUMMARY

4. It is submitted that there is no legal scope to introduce the proposed new natural character chapter into the PDP.
5. The proposed natural character chapter should not be progressed further and the current provisions throughout the PDP relied upon.
6. If the Hearings Panel is still of the mind that it would like a natural character chapter placed into the PDP then it is requested that a variation to the PDP occurs to ensure appropriate engagement and compliance with the Schedule 1, RMA requirements occurs.
7. It is formally requested that Federated Farmers and the Southland Province is involved in the development of a new natural character chapter as an affected stakeholder.¹

¹ It is understood that the Panel can only recommend that this occurs to the Council who then will make the decision whether or not to grant the relief sought.

ISSUE OF LEGAL SCOPE

Southland District Council submission

8. In its minute 18,² the Hearings Panel directed the Council's reporting officers to prepare a draft Natural Character chapter to reflect the position of the Hearings Panel.
9. The Panel expressed the view that it had the scope for its request through the submissions lodged by the Southland District Council (submitter number S146).³
10. Upon reviewing the submissions made by Southland District Council, it is noted:
 - (a) the submitter made comments generally in respect of the Natural Features and Landscapes chapter and Appendix 5 'Landscape Values – NFL-APP' but did not ask for specific relief in respect of these parts of the PDP;
 - (b) in respect of policy NFL-P2 in the NFL – Natural Features and Landscapes chapter, the Council made comment that the policy be placed in the natural character chapter. However, it did not seek any specific relief to request that a natural character chapter be introduced into the PDP;
 - (c) in respect of the additional NFL provisions sought in respect of the Mataura River, the provisions should be addressed in a natural character section. Again, the submitter did not specify any specific relief;
 - (d) for the entire ASW – Activities on the Surface of Water chapter, the submitter made the comment that:

*"Some of the provisions in this section dealing with natural character and waterbody margins may be better placed in a NATC - Natural Character chapter or supported in such a chapter."*⁴

² Minute of the Hearing Panel, Natural Character, Minute 18, dated 10 September 2024.

³ Ibid.

⁴ Submission 101-156 document, p1045, accessed [here](#) on Thursday, 20 February 2025 at 11.45am. Please note that the page references given related to the submission document, not individual submissions.

No specific relief was sought by the Council in respect of this statement; and

- (e) for policies ASW-P4 and ASW-P5, the Council asked for the consideration of placing ASW-P4(1) and ASW-P5(1) into a Natural Character chapter or be supported in such a chapter.⁵ Again, no specific relief is sought and the statement is not definite about what is being requested.
- 11. The passive language used by Southland District Council in its submissions to the PDP in respect of what it was seeking creates an ambiguity as to what it really wanted. The Council is not a lay person and should not be treated as such by the Hearings Panel.
 - 12. Southland District Council should be well aware of how to write submissions under the Resource Management Act 1991 (RMA). The RMA is one of the major pieces of legislation that local government works with. To lodge a submission without stating the specific relief sought is inappropriate and the Council should not rely on the Hearings Panel to correct the mistakes it has made by not specifying the specific relief it sought.
 - 13. The recent Section 32AA report has relied on additional submissions to provide the scope needed to introduce a new natural character chapter into the PDP. Having reviewed these submissions, the following is noted:
 - (a) the New Zealand Transport Agency (submitter number S112.184) has not asked for a natural character chapter to be introduced into the NPS in its submissions on Natural Features and Landscapes.⁶

Its submissions to Appendix 5 'Landscape Areas – ONL – APP sought to the amendment of the Appendix 5 text to accurately identify and name the specific outstanding natural features and landscapes within the Gore District, and make any necessary consequential changes to the 'Natural Features and Landscapes' map and provisions in the NFL chapter as well as checking the accuracy of the location for the Mataura ONF;⁷ and

⁵ Above at 4, p1045.

⁶ Ibid, p224.

⁷ Ibid, p272-3.

- (b) the Alliance Group (submitter number S121) sought the retention of policy NFL-P2 as notified⁸ as well as public access policies PA-03, PA-05,⁹ and the general industrial zone policy GIZ-P5;¹⁰ and
- (c) the Alliance Group also sought the amendment of standard GIZ-S5 so that it did not apply to its site.¹¹ As well it sought clarification about the purpose of the High Natural Character Feature that had been placed across the Mata-Ura / Mataura River in Appendix 5 so that it was able to gauge the implications arising from this.¹²

Legal Scope

- 14. Federated Farmers and the Southland Province do not believe that there is legal scope to introduce a new natural character chapter into the PDP through the hearings process.
- 15. None of the submissions referred to as providing scope by Council reporting officers and which have been relied upon by the Hearings Panel, directly requested the inclusion of a natural character chapter in the PDP.
- 16. The Hearings Panel and Council's legal counsel will be familiar with the issue of scope and how it is determined in a resource management process. The legal framework in respect of scope is well established and requires application on a case by case basis.
- 17. The leading case on scope is the High Court decision in *Palmerston North City Council v Motor Machinists Limited*.¹³ The Court held that for a submission to be 'on' a plan change, a two-limbed test must be satisfied:
 - (a) the submission must address the proposed plan change itself. That is, it must address the extent of the alteration to the status quo which the proposed plan change entails; and
 - (b) the Council must consider whether there is a real risk that any person who may be directly affected by the decision sought in the

⁸ Above at 4, p405.

⁹ Ibid, p406.

¹⁰ Ibid, p413

¹¹ Ibid, p415.

¹² Ibid, p416.

¹³ [2013] NZHC 1290.

submission has been denied an effective opportunity to respond to what the submission seeks.

18. In respect to the first part of the test the High Court held that whether the submission fell within the ambit of the plan change may be examined by asking whether it raises matters that should be addressed in the s32 report, or whether the management regime in the plan for a particular resource would be altered by the plan change. Submissions seeking relief beyond that ambit are unlikely to be 'on' the plan change.
19. Some extensions to a plan change are not excluded if they are incidental or consequential extensions and do not require a substantial s32 analysis.¹⁴
20. The understanding that Federated Farmers and the Southland Province have of the assessment to be made under the first limb of the test is that it is an inquiry as to what matters should have been included in the s32 evaluation report and whether the issue raised in the submission addresses one of those matters.
21. The Hearings Panel should not make the inquiry about whether the s32 evaluation report did or did not address the issue raised in the submission. This approach would enable a planning authority to ignore a relevant matter and avoid the fundamentals of an appropriately thorough analysis of the effects of a proposal with robust, notified and informed public participation.
22. In respect of the second part of the test outlined in *Motor Machinists*, it was identified that the key risk to guard against is whether the reasonable interests of others might be overridden by a 'submissional side-wind' so that the plan change is so altered by additional requests in submissions that people who were not affected by the plan change as notified became affected through a submission, which had not been directly notified to them.

¹⁴ The Environment Court in *Bluehaven Management Limited v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [39] set out what its understanding of what the first limb test required.

23. It is submitted that if a submission is found not to be on a plan change or variation, the Council has no jurisdiction to consider it.¹⁵
24. The High Court¹⁶ has also concluded that the local authority must consider whether any amendment made to the plan change as notified goes beyond what is reasonably and fairly raised in submissions on the plan change. This will usually be a question of degree to be judged by the terms of the proposed change and of the content of the submissions.
25. In summary, for there to be scope to make an amendment to a plan change the two part test set out in *Motor Machinists* must be achieved. Any amendment made to a plan change following notification must be fairly and reasonably within a range of options between what was originally notified, and the relief requested in submissions.
26. It is respectfully submitted that there is no jurisdiction for a Hearings Panel to make amendments to such an extent where those who are potentially affected have not had the opportunity to participate. The purpose of notifying a plan, along with the submissions and further submissions process, is to inform everyone about what is proposed and is done for procedural fairness so that all parties have the same opportunity to participate.
27. Through the resource management policy and planning process, the Panel can only make amendments to the PDP to the extent that the Panel has jurisdiction (or scope) to do so.
28. The proposed amendments seek to alter the structure of the PDP from what was notified as well as introducing new information (being the proposed new natural character chapter) into the PDP after the submissions process had closed. It is considered irrelevant that no new rules have been introduced and that the proposed objectives and policies are largely similar to the objective and policies in the NFL chapter.¹⁷

¹⁵ *Paterson Pitts Limited Partnership v Dunedin City Council* [2022] NZEnvC 234.

¹⁶ *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150 (HC).

¹⁷ Hearing Panel Minute 18 – Section 32AA Report of Mishka Banhidi on behalf of Gore District Council, dated 29 November 2024 at para [31].

29. It is considered that there is a real risk that people who did not originally submit on the notified version of the PDP, that did not have a natural character chapter, would have submitted if the PDP had contained such a chapter. It would not have been reasonably foreseeable to other submitters that after the notified PDP, which did not have a separate natural character chapter, would then have such a chapter introduced at the hearings stage based primarily on a submission by another party who had not directly asked for the new chapter.
30. This situation is the reverse of what has occurred with the SASMs chapter of the PDP. The Council did not consider that it was relevant to have a natural character chapter when it notified the PDP for submissions and further submissions. Unless there is a submission that directly asked for the inclusion of a natural character chapter, the Council considered that the notified natural features and landscapes chapter was sufficient to address any natural character matters.
31. The Hearings Panel falls within the mandate of the RMA and as such, is required to follow the Schedule 1, RMA process as well as making decisions consistent with RMA precedent.
32. It is considered that there is no legal scope for the proposed amendments to be made and that the amendments go beyond what was reasonably and fairly raised in submissions on the PDP.¹⁸

RELIEF SOUGHT

33. It is submitted that there is no legal scope to introduce the proposed new natural character chapter into the PDP.
34. The proposed natural character chapter should not be progressed further and the current provisions throughout the PDP relied upon.
35. If the Hearings Panel is still of the mind that it would like a natural character chapter placed into the PDP then it is requested that a variation

¹⁸ *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150 (HC).

to the PDP occurs to ensure appropriate engagement and compliance with the Schedule 1, RMA requirements occurs.

36. It is formally requested that Federated Farmers and the Southland Province is involved in the development of a new natural character chapter as an affected stakeholder.



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21 February 2025