

Before the Hearing Panel
Appointed by the Gore District Council

Under The Resource Management Act 1991 (**RMA**)
In the matter of Submissions on the Proposed Gore District Plan

**Legal submissions of Counsel on behalf of Gore District Council – Hearing
Stream 11**

6 March 2025

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Introduction

- 1 We act for Gore District Council (**Council**). These legal submissions are filed in preparation for Hearing Stream 11, when the topics of Natural Hazards and Earthworks will be considered.

Natural Hazards

Scope

- 2 The Panel has previously received summaries of the case law applicable to legal issues of scope for hearing streams 8, for both the McNab and SASM/NTCV topics.¹ Those case law summaries are relied on but not repeated here, including because they do not directly conflict with the case law summary provided by counsel for ES in their submissions dated 3 March 2025.
- 3 The main difference between the Gore District Council and ES on scope issues in relation to the natural hazards topic, concerns each party's preferred treatment of any mapping derived from the most recent ES flood modelling. On behalf of the Gore District Council it is submitted that there is no scope at all for the Panel to decide to insert any changes to the current hazard mapping in the district plan based on the recent modelling undertaken by ES.
- 4 No maps were provided with the original ES submission, and no maps have been provided with the ES evidence filed for the hearing. It is submitted that this point alone tends to show how problematic it might be for ES to seek amendments to the PDP maps – particularly given how difficult it would be for any member of the public or submitter wanting to understand more about the mapping changes ES are seeking.
- 5 As the Panel is aware, a key starting point when considering scope is what the notified plan provides, and how much those provisions are sought to be extended or changed by the submissions received on the plan. Because no mapping was provided with the ES submission, and because they did not explicitly seek an amendment to the mapped extent of the hazard area, it is submitted that there was insufficient information in that submission to sufficiently notify members of the community and/or affected landowners of the potential extent of any change to the notified plan maps that was sought.

¹ Legal submissions for hearing stream 1, paras 16-17; submissions for hearing stream 8 (McNab topic) paras 7-16; submissions for hearing stream 8 (SASM/NTCV topic) paras 10-16; hearing stream 9a (SASM/NTCV topic) paras 19-20.

- 6 The summary of ES' submission point S85.311, being the regional council's only submission point concerning the PDP hazards map, records:

Prevent any new zone changes from the current District Plan which have the potential to intensify land use change and development within a flood inundation area. Additionally, re-align GRZ to align with potential mining overlay. This comment applies to all zones and maps.

- 7 Because there was no notice given in this submission that ES would seek a change to the plan maps, it is entirely reasonable to assume that members of the community made decisions not to be further involved in this plan process, including because they understood that the extent of the flood hazard mapping appeared to be settled based on the scope of the notified plan maps and decisions requested in the ES submission.
- 8 It is not accepted that an indication that future modelling would be undertaken, in the written section of a submission, could provide sufficient basis for the changes to the plan maps that ES is apparently now seeking.² It is accepted that the future modelling could provide the basis for development in the natural hazards provisions and that there are aspects of the ES submission which provide scope for those changes, however it is submitted that any changes to the mapping required something much more explicit. Again, there is nothing in the words of this summary of the decision requested by ES (noted above) that signals to the community that ES might seek a change to the mapped extent of this overlay.
- 9 It is further submitted that the extent of any changes sought to plan maps do carry a higher obligation in terms of providing sufficient notice to potentially interested parties in a submission to give a clear indication of potential changes to boundaries. This would preferably need to be signalled a) in an original submission or further submission, and b) in evidence filed for a hearing. While it is accepted that the Panel may have the ability to make changes to lower order provisions to implement a change to say a policy sought in a submission, it is submitted that especial care needs to be taken in respect of plan maps – including because changes to boundaries on a plan map can considerably change the potential extent of private properties captured by a particular PDP provision.
- 10 GDC accepts and endorses the position that the RMA and the SRPS tend to require further steps to be taken by this Council in the near term to seek to update the information in the PDP in line with progressive improvements

² Legal submissions on behalf of Environment Southland (Natural Hazards) para 3(c)

in modelling and understanding of this hazard. It is not however accepted that this imperative overrules the requirements of due process and careful district plan development, particularly given the potential impacts on private property rights and need for full and clear notice to be given to potentially affected landowners (and appropriate consultation processes followed).

- 11 Mr Osborne, the GDC reporting officer has sought to integrate the updated ES information into the PDP as best he can within the present process, and it is submitted that the position set out in the section 42A report and his supplementary evidence (supported by Tonkin and Taylor) presents this Panel with the best outcome based on the information available at present, and with due regard for the context and requirements of the present plan development process.

Public access to key technical information from ES

- 12 It is submitted that a basic tenet of this Schedule 1 RMA plan development process is that all technical information supporting a change in the proposed district plan must be publicly available, and readily accessible to be able to be properly considered and tested by all parties involved in the plan development process. For this reason, Council has consistently signalled to ES that the updated modelling and associated information that might be used to support any changes to the proposed plan needs to be publicly available, thereby ensuring that all interested parties have the ability to test the information appropriately. This is a public plan development process, and submitters must be enabled to fully participate in the process.
- 13 On this point, it is noted that there is a difference between the parties regarding the date of provision of the ES modelling. Ms Paterson and counsel for ES record that the modelling was made available to GDC in November 2024,³ however GDC does not agree that this statement reflects all of the dialogue that has occurred between the parties in relation to the public release of this information. It is agreed that access to the ES modelling was provided to the Council's expert team on a provisional basis in November 2024. A dialogue then continued between the parties, with GDC consistently seeking full public release of this information. To be clear, the ES modelling was not made available to the public in November 2024, and I understand the first date that the information was available via a public link on the ES website was 21 February 2025 (i.e. the date of circulation of the ES evidence).

³ Evidence of J Paterson for ES dated 21 February 2025, para 7

Earthworks

Scope for administrative change

- 14 Ms Carlson-McColl identified that the proposals set out in her Minute 27 response dated 14 January 2025 could include a relatively substantial administrative change in terms of the framework of the Earthworks provisions.
- 15 The case law that has been summarised for this Panel in relation to legal scope issues to date (and noted above in these submissions), has focused on the extent of substantive change that may be made through submissions more than on administrative changes.⁴ As the Panel is aware it may also make consequential or administrative changes to provisions as a part of this process,⁵ though to date this provision has predominantly been relied on for smaller administrative changes than is under consideration for this earthworks topic. It is appropriate to note at this point that clause 10 also provides that the Panel may include in its decision discussion of any other matter relevant to the proposed plan arising from submissions.⁶
- 16 It is submitted that taking each of the parts of clause 10 together, there is scope for the Panel to restructure the provisions in the manner set out in the Minute 27 response. However given the potential extent of administrative change under consideration, it is submitted that there is an associated higher onus on the Panel to:
 - (a) Clearly reference the reasons for this extent of change, perhaps due to the noted potential for an increased ease of use and application of the provisions;
 - (b) Clearly record the shift from the notified provisions to the new structure so that the decision accurately records and reflects the extent of change (being a relevant other matter under clause 10(2)(b)(ii)); and
 - (c) Ensure that careful consideration is given to any potential substantive changes to the provisions that might result from the re-structuring, to ensure that the decision records that consideration has been given to whether any substantive scope issues do or do not arise.

⁴ Clause 10(2)(a)

⁵ Clause 10(2)(b)(i)

⁶ Clause 10(2)(b)(ii)

SFF & SCSL scope for change to fencing/farm track

- 17 Again, the summaries of the case law relating to legal issues of scope noted earlier in these submissions is referenced and relied on for this point. It is submitted that the position taken by Ms Carlson-McColl regarding the scope of the SCSL position in evidence filed for this hearing on the earthworks provisions concerning fencing/farm tracks,⁷ is consistent with that case law.

Dated this 6th day of March 2025



Shelley Chadwick
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⁷ Supplementary evidence of T Carlson McColl paras 20-21, paras 23-26