

Before the Hearing Panel
Appointed by the Gore District Council

Under The Resource Management Act 1991 (**RMA**)

In the matter of Submissions and hearings on the Proposed Gore District Plan

**Memorandum of counsel for Gore District Council in respect of SFF application
for adjournment**

Date: 31 January 2025

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May it please the Panel

- 1 This memorandum is filed on behalf of Gore District Council (**GDC**) in response to the adjournment sought by Southland Federated Farmers (**SFF**) in relation to parts of the GDC Proposed District Plan (**PDP**) process, in it's memorandum filed on 18 December 2024 (**SFF memorandum**).
- 2 It is noted that the request made on 18 December 2024 is the second adjournment request by SFF relating to the Site of significance to Māori/Ngāi Tahu Cultural Values (**SASM/NTCV**) topic. In Minute 28 issued on 26 November 2024, the Panel allocated a new hearing date and issued bespoke timetabling directions to enable SFF to participate fully in this SASM/NTCV topic. Against this background, and the considerable steps taken by Council and Hokonui Rūnanga in particular to accommodate the resulting out of order presentation of evidence for SFF, the Council would be reluctant to see any further adjournments affecting this topic in particular.
- 3 At the outset it is also noted that the SFF memorandum does not:
 - (a) Reflect on the likely consequences of the request made on the existing evidence and hearings timetable;
 - (b) Consider the impact on the other parties involved in the upcoming topics or on parties involved in earlier topics that have already been heard; or
 - (c) Propose any alternative timetable post 19 February 2025 to enable evidence provision and/or hearings on the affected topics to continue.
- 4 Particularly because SFF has not proposed an alternative approach or new timetable for consideration and comment by the other parties, it has been difficult for Council to fully quantify the potential impacts of the adjournment sought by SFF. It is submitted that the level of uncertainty associated with the SFF adjournment request combined with the considerable negative consequences of the resulting delays and additional costs for the PDP process outweigh any perceived benefits from SFF's proposal.
- 5 The Panel must consider this request under the applicable provisions and principles of the Resource Management Act 1991 (RMA) and separately from the political matters before the full Council to be considered under the Local Government Act 2002. Overall it is Council's assessment that, in resource management terms, there would be significant adverse consequences if the Panel was to grant the current uncertain SFF request – for the GDC Proposed District Plan (**PDP**) process; for Council as regulator and promoter of the notified PDP; and for the submitters who have

already invested heavily and appeared at previous hearings in this process. Council seeks that the SFF adjournment request be refused.

- 6 It is submitted that it is appropriate and in the interests of justice for the PDP process and hearings under the RMA to continue in parallel, and if any changes are required after the Council meeting on 18 February 2025, those can be put forward and/or implemented in accordance with the details of the Council's decision after that date.

Principles and legislative considerations relevant to adjournment requests

- 7 Decision making responsibilities have been delegated to the Hearing Panel to manage the hearings in accordance with all of the RMA requirements. The RMA provisions and principles from case law to be taken into account when considering an adjournment or other procedural request relating to a PDP are summarised below.
- 8 There is a duty under s21 RMA for the Panel, as persons exercising functions and powers under the RMA to hear and issue decisions as promptly as is reasonable in the circumstances. Under the procedural principles in section 18A the Panel is also required to use timely, efficient, consistent and cost-effective processes that are proportionate to the functions and powers being performed. These obligations are echoed in s272(2) of the RMA which requires the Environment Court, when considering plan appeals, to determine proceedings on a planning instrument as soon as practicable.
- 9 GDC has responsibilities under the RMA to review its operative District Plan. Under Clause 10 and 10A of the first schedule of the RMA, Council has a statutory requirement to deliver decisions on the PDP by August 2025 (2 years after notification of the PDP). Care needs to be taken to meet this deadline, and Council cannot delay issuing the decision beyond this timeframe without special permission of the Minister. Any application for an extension to the timeframe for issuing a decision must set out the reason for the request and the duration of the extension requested.
- 10 There is an overriding duty for the Panel to manage procedures without undue formality but also to adopt procedures that are fair to all participants and comply with the principles of natural justice and fairness, including for example the following considerations:
 - (a) A clear and predictable hearings timetable is important to ensure that all of the 156 submitters involved in the PDP process have sufficient notice of the process and to ensure that they are available to review

the section 42A report responding to their submissions, and to provide evidence and attend the hearings of their topics of interest.

- (b) An alteration to a timetable made for the benefit of one party can have considerable consequences not just for the Panel and the Council team involved with each topic, but also for all of the other submitters who made a submission on provisions in the relevant chapters.
 - (c) Parties involved in the PDP process have scheduled their work programmes and personal commitments around the timetable set in 2024 and the upcoming 2025 hearings schedule.
 - (d) Costs already incurred by parties who participated in all of the 2024 hearings completed to date are also relevant to adjournment requests, and the extent that already expended costs and expectations might be affected by further delays is a relevant matter for the panel to consider.
 - (e) Any changes to a directed timetable should be proportionate and fair.
- 11 The overarching or general principle frequently applied by the Environment Court when considering adjournment applications is an assessment of whether an adjournment would be in the interests of overall justice. This could be in the context of the full PDP process, as between parties seeking different outcomes, or in relation to the obligations of Council and the requirements of the RMA.

Hearings timetable

- 12 The hearings timetable for the GDC PDP was confirmed on 16 April 2024 in Minute 5 issued by the Panel. Considerations that were relevant in setting that original timetable included:
- (a) Observing RMA requirements for plan processes including the legislative direction in clause 10(4) of Schedule 1 of the Resource Management Act 1991 (**RMA**) that decisions on the notified plan be issued by 31 August 2025 (being the date that is two years from the date the PDP was notified);
 - (b) Providing a procedurally fair, regular and efficient hearing timetable, without being unduly onerous on submitters involved in the process, including the many parties who have prepared evidence for and attended numerous hearings held to date;
 - (c) Ensuring a sustainable and manageable workload for the Hearings Panel and the Council consultant team supporting the PDP hearings

process, and providing for their ongoing availability across 12 months of PDP hearings; and

- (d) The local government election cycle, including to enable hearings to be completed, deliberations concluded, and decisions issued before the next election with nominations for members due in August 2025.
- 13 The hearings timetable was also the subject of a more recent Minute, Minute 31. To be clear the timetable set out in Minute 31 was not a new timetable as appears to be suggested in paragraph 2 of the Memorandum seeking directions on behalf of SFF dated 18 December 2024. The topics NFL, ECO and NH have been scheduled to be heard in February 2025 since April 2024.
- 14 What Minute 31 does do however, is consolidate various changes to the 2025 schedule that had already been made by the Panel either orally during hearings held in 2024, or in Minutes issued in 2024. For example, the specific directions made in Minute 28 issued on 26 November 2024 in response to the last SFF adjournment request that related to the SASM/NTCV topic are consolidated in Minute 31 to ensure all parties are aware of the current SASM/NTCV timetable.

Practical consequences of SFF adjournment request on 2025 schedule

- 15 The SFF request made in paragraph 8 of its memorandum seeks that the Panel issue a direction that the timetable for filing evidence in chief for the NFL, NC, SASM/NTCV and ECO chapters be extended until after 18 February 2025. In paragraph 9 of its memorandum SFF also proposes that the Panel provide updated timetabling directions after 19 February 2025.
- 16 The consequences of this SFF request are understood to be that all evidence and other hearing preparation should be put on hold until 19 February 2025 for the following topics:
- (a) Natural Features and Landscapes;
 - (b) Sites of Significance to Māori/Ngāi Tahu Cultural Values; and
 - (c) Ecosystems and Indigenous Biodiversity.
- 17 The further consequences of the Panel accepting the SFF proposal would also be that the hearings for NFL, SASM/NTCV and ECO chapters would need to be postponed with no new dates set until after 19 February 2025.
- 18 Beyond this, another consequence of the deferral of the evidence and hearings for these topics would also be that the Wrap up hearing would

need to be re-scheduled, as the Wrap up hearing by logical necessity must be the last step in the PDP hearings schedule.

- 19 Thus if the SFF request was granted, then subject to the outcome of the Council meeting scheduled for 18 February 2025, it could become necessary for the Panel to propose, after 19 February 2025 a draft new schedule for all of these deferred steps of the hearings timetable to be re-scheduled including new evidence dates and new hearing dates. This would be an extremely complex exercise as the availability of many parties and experts for the first half of 2025 will already be constrained (as evidenced in the Transpower memorandum dated 28 January 2025 at para 3(b)), and this will mean that the GDC PDP hearings schedule would almost certainly need to be pushed out significantly beyond the first half of 2025.
- 20 Wider considerations that then become relevant in response to this scenario include that:
 - (a) The matters listed in para 12(a)-(d) remain of considerable importance to Council, the Panel and the Gore community.
 - (b) Any potential delay should preferably be accommodated to still ensure both that decisions on the PDP can still be issued before 31 August 2025 (because of the clause 10(4) requirement) and preferably also to seek to accommodate the new election cycle (which could have some bearing on the method of appointment of the Panel).
 - (c) There is a high level of public interest in ensuring a clear and certain timetable for hearings, and the consequences for all of these parties from any change to the timetable can be considerable. As the hearings timetable is set, the Panel, Council officers, Council consultants and experts, submitters and their experts, have all scheduled their work programmes and personal commitments around this hearings timetable.
 - (d) As recorded in the memorandum 23 December 2024 filed on behalf of the Director-General of Conservation/Tumuaki Ahurei in response to the SFF request (and possibly others that are yet to be filed in accordance with the Panel's directions), submitters have already commenced work on evidence and preparations for the 2025 hearings.
 - (e) Present availability of the Panel, Council Officers, all Council consultants and experts has not been able to be checked or confirmed for any new dates, and parallel work programmes for the

first half of 2025 for counsel and many key consultants have already been scheduled.

21 In relation to specific chapters currently scheduled to be heard in 2025, it is also noted:

- (a) For SASM/NTCV an earlier request by SFF seeking changes to the timetable for this topic was granted, with considerable consequences for the hearing process. It is submitted that against this background it would not be in the overall interests of justice to grant a further adjournment request for this topic, including because of the additional steps and costs that have been necessary for Council and other parties involved in this topic.
- (b) For the ECO chapter, the economic evidence of Council records that the significant majority (97.5%) of private land does not contain areas of significant indigenous vegetation or indigenous vegetation areas so will be unaffected by this chapter. The interests of justice in delaying this topic as between the weighty majority of landowners not affected by these provisions, vs the very small percentage who are, would tend to support that this topic should also proceed.

(Noting also that the submissions set out in paragraphs 29-32 below are of particular relevance to the ECO topic, where Council's preference would be that the more refined rules agreed with the directly affected landowners should take legal effect as soon as possible, in preference to the more restrictive rules in the notified PDP that currently have legal effect.)

22 It is submitted that, if granted, the actual consequences of the SFF adjournment request are therefore much broader and significant than just altering directions for filing evidence on the NFL, NC, SASM/NTCV and ECO chapters as SFF proposes. It is further submitted that if a new schedule was to be set after 19 February 2025, it is very unlikely that it could enable decisions on the PDP to issue before the 31 August 2025 deadline set by Clause 10(4) of Schedule 1 of the RMA.

Consequences of adjournment request on topics/parties already heard

23 A significant adverse consequence of the SFF proposal is that any change to the timing of the 2025 hearings will affect the currently scheduled Wrap up hearing. If the Wrap up hearing is delayed, this would by itself greatly affect the Panel's final deliberations and determination of all issues relating to the 45/50 chapters of the plan (i.e. 90% of the PDP) that have already been heard by the Panel throughout 2024, for which decisions would

otherwise expected to be issued shortly after the Wrap up hearing concludes on 10 April 2025.

- 24 Council recognises that there are parts of the PDP that have been submitted on and opposed by sectors of the community, however is also very mindful that there are large parts of the plan which are extremely positive for the District, and which provide a much needed update from the currently operative district plan (ODP). The GDC ODP is well out of date and does not:
- (a) Sufficiently provide for economic growth in the district (including due to existing zoning constraints);
 - (b) Reflect the range of sustainable housing options the community requires (both in terms of larger and smaller lots and with due consideration for current levels of knowledge about natural hazards);
 - (c) Adequately manage loss of rural productivity through rural fragmentation (smaller rural lots are enabled); and
 - (d) Protect significant heritage, cultural and natural features and values within the district.
- 25 Many of the 45 (of 50) chapters of the PDP that have already been heard respond directly to these issues and include provisions that seek to bring positive change to provide for the social, economic and cultural well-being of the community including by:
- (a) Providing for new residential, rural lifestyle and industrial zoned land to enable growth;
 - (b) Enabling and securing infrastructure including through designations; and
 - (c) Protecting highly productive land.
- 26 In support of a number of these new approaches and PDP provisions, submitters including developers and public entities, have invested significant financial resources into the process to date and are likely to be relying on the outcome of the PDP to inform commercial and personal decisions.
- 27 The Council's understanding is that the newly permissive and enabling nature of the new PDP provisions are of particular import, and will in fact promote new development and an easier regulatory environment in a number of ways and for a number of submitters. Examples include:

- (a) Land developers such as Charlton Rise Limited (S100), Dwayne Smith (S5) and McNab Management Limited (S103) who support the enabling of large areas of additional land re-zoned to enable residential and rural lifestyle development in the district;
- (b) The PDP enabling minor units in residential zones to accommodate the ageing population, encourage additional rental properties and in turn providing secondary income options for all residents;
- (c) Kowhai Trust (S42) seeking additional rural lifestyle development which Council Officers supported following evidence presented at the hearing;
- (d) The introduction of a Rural Lifestyle zone enabling further subdivision of existing fragmented land in order to protect highly productive land;
- (e) The introduction of Settlement zones to recognise Mandeville, Waikaka and Pukerau and thereby support and enable township activities which are not presently provided for at all in the ODP;
- (f) Additional industrial zoning to support existing businesses in the Gore district such as Mataura Valley Milk and Alliance Group Ltd (S101);
- (g) Additional industrial zoning in Gore South to support growth of new business, in response to the shortfalls identified through the Spatial Plan and reports analysing business growth in Gore;
- (h) Providing for and enabling quarry operations at the Greenbriar site for submitter Greenbriar Ltd (S128);
- (i) Generally enabling new and additional consenting pathways proposed through the PDP GRUZ chapter;
- (j) Substantial regulatory relief for infrastructure providers such as the Telcos and the fuel companies, including the inclusion of an Energy Chapter to align with National Direction supporting renewable energy;
- (k) Key infrastructure operators such as NZTA (S112), Transpower (S101) and Kiwirail (S132) and aligning the PDP with National Direction;
- (l) The inclusion of Special Zones to recognise and provide for activities at the Gore Airport, the Field Days site and Camp Colomba (S61).

28 The consequential deferral of the Wrap up hearing raises considerable issues of natural justice for those parties who have already been heard on

the topics for which hearings were held in 2024, and who are expecting that the decisions on these more enabling plan provisions will be issued as soon as possible following the conclusion of the hearing.

Consequences of adjournment request on PDP rules with legal effect

- 29 As the Panel is aware, under section 86B of the RMA a number of provisions of the notified PDP have legal effect from the date of notification. This includes provisions relating to soil protection/earthworks, sites of significance to Māori, heritage, areas of significant indigenous vegetation and habitats of indigenous fauna.
- 30 As submissions have been received and considered, it has become clear that the submitters, Council consultants, and potentially also the Panel, are expecting changes to a range of the notified PDP provisions that already have legal effect, and that these changes that will result in less onerous versions of these rules.
- 31 If less onerous versions of these rules are confirmed in decisions issued by the Panel, then under section 86B(1) of the RMA that later form of the rules will take legal effect from the date of the relevant decisions on these chapters of the PDP. This means that the longer that it takes for decisions on the PDP to issue, the longer that the notified version and more restrictive rules of the PDP will have legal effect, thus actually constraining use and development of land.
- 32 From Council's perspective, for many of the chapters which contain rules that already have legal effect, it will be preferable for all parties to have the less restrictive and more refined version of these rules, that have been developed with the input of submitters, come into effect sooner rather than later. The only way for this to occur is for the decisions version of the PDP to be issued by the Panel. This will not be possible if the SFF adjournment is granted and the decisions of the Panel are delayed. Put another way, if the SFF adjournment is granted, the notified versions of those more restrictive provisions (such as those regulating earthworks) will apply for much longer.

Uncertainty of adjournment request

- 33 As noted above, the consequences of the adjournment request for Council and submitters have not been addressed by SFF, nor has any alternative timetable or approaches been put forward to seek to address the impacts on these parties. It is submitted that without this information SFF has failed to put the Council, other submitters or the Panel in a position of being able to adequately assess or respond to the request.

- 34 If the Panel was minded to approve the SFF request, it is submitted that a further step will be necessary before a final decision can be made, so that the Panel would first direct SFF to propose a new timetable post 19 February 2025 to potentially replace the current hearings timetable. This would then need to be considered by Council and all submitters to comment and advise availability for that timetable, and only after those further steps would the Panel be in a position to properly appreciate the potential delays and impacts involved, and then decide to confirm or refuse the deferral as sought. It is submitted that without a new proposed timetable, or alternative approach to manage the consequences of the adjournment, the Panel does not have sufficient information to consider the SFF request.
- 35 The Council advises that it has undertaken a preliminary review of alternative timetables, and has not identified any feasible alternative approaches at this stage to the current timetable that would enable decisions to issue before 31 August 2025, including because:
- (a) There is at least one key consultant for Council who will not be available beyond the currently scheduled final hearing dates due to other commitments confirmed for 2025, so any adjournment would necessitate the engagement and briefing of a completely new expert to assist Council at a very late stage of the PDP process; and
 - (b) The current hearings schedule for February-April 2025 is already very busy due to the need to accommodate extended and additional hearing dates for certain topics in 2025 and before the wrap up hearing, and also before the key legislated date for decisions of 31 August 2025 and the commencement of the new election cycle.

Gore District Council meeting and RM reform

- 36 As indicated in the SFF memorandum, the Gore District Council will meet at 4pm on 18 February 2025, and it is intended that Council will consider a request that Council pause the GDC PDP process for nine months. The Council paper for this item is still under development, and the potential options that may be decided on by Council are unknown at this time.
- 37 If the full Council is minded to take any steps to pause the PDP process at that meeting, then as a part of it's consideration of the available options, the Council will need to consider how it might then review it's previous delegations to the Hearings Panel to consider, hear and decide on the PDP in accordance with Schedule 1 of the RMA; and/or how it will direct the PDP process to be paused, how long for, and how it might provide for it to resume.

- 38 SFF refers to the fact that this item is up for Council consideration on 18 February 2025 as providing a basis for seeking its adjournment. However it is submitted that the agenda item to be considered by Council on 18 February 2025 is not a matter that is directly relevant in RMA terms, and in fact is a political decision, to be made by the full Council in accordance with its separate obligations under the Local Government Act 2002.
- 39 For present purposes it is clear that the full Council delegated hearing and RMA decision making responsibilities for the GDC PDP to this Hearing Panel. The Hearing Panel is made up of experienced and accredited commissioners in accordance section 39B of the RMA, and the Panel is obliged to manage the process carefully, fairly and in accordance with all of the RMA requirements. It is submitted that in order to properly observe the separation of Council's roles here, when considering this adjournment request the Panel should turn its mind to the RMA provisions and principles relevant to adjournments that have been summarised at paragraphs 7-11 of this memorandum.
- 40 It is submitted that in the present circumstances, the Council and the Panel must properly observe the imperatives in section 39 of the Local Government Act 2002, which is that regulatory functions of a Council should be kept separate from political matters. It is submitted that the Panel should make its decision with due consideration for the RMA and other regulatory responsibilities of Council, and leave any political matters to be determined in accordance with the quite separate processes provided for under the LGA. Extending the timetabling of the hearings to accommodate the Council meeting to make a political decision suggests a blurring of this line.

RM Reform

- 41 Because it has been referred to in the pause request referred and relied on by SFF, the Council has prepared a summary of the Government's current indications on the RM Reform programme to assist the Panel with understanding the extent of actual and likely impacts of this programme on the notified PDP. This summary is attached as Appendix 1.
- 42 This review shows no urgent changes will be required in response to the Government's programme of reform over the next two years, and only very limited evolution of the PDP will continue, which is well within the usual rate of change that has been occurring in the RM sector for the past five years. The information in the final row of the table is also noted, where there may actually be particular benefits to the Gore District in having a bespoke and up to date district plan when the new direction is introduced by the government to require consolidated regional plans, likely obliging Gore to

combine it's core planning documents with Southland, Invercargill and Environment Southland.

- 43 It is submitted that overall this review of current and signalled RMA amendments suggest that the PDP will not require urgent revision in the near future as is suggested in the material provided by SFF. The majority of the changes are focussed on regional council matters, not land use for which GDA has responsibility under the RMA. Subject to the outcome of the present adjournment request, further information on this topic is able to be provided as part of the Wrap up hearing as required.

Dated this 31st day of January 2025

A handwritten signature in black ink, appearing to be 'Shelley', written over a horizontal line.

Shelley Chadwick
Counsel for Gore District Council