

**Before Independent Hearing Commissioners appointed by
The Gore District Council**

Under

the Resource Management Act 1991
(Act)

And

In the Matter

of submissions and further submissions
on the Proposed Gore District Plan

**Legal Submissions on behalf of
Hokonui Rūnanga Incorporated**

Submitter No. 139

Dated: 31 May 2023

INTRODUCTION

1. These legal submissions are presented on behalf of Hokonui Rūnanga Incorporated (**Hokonui Rūnanga**) in relation to Hearing Stream 1 – Introduction, General Provisions and Urban Form and Development to the Proposed Gore District Plan (**PDP**). Hokonui Rūnanga made submissions (S139) and further submissions (FS20) on the PDP.
2. Hokonui Rūnanga largely supports the PDP as notified, but seeks amendments to some of the provisions through their submission.
3. The purpose of these legal submissions in Hearing Stream 1 is twofold:
 - (a) to address matters of scope in relation to the submission of Hokonui Rūnanga and the Mana Whenua chapter of the PDP; and
 - (b) to respond to recommendations made in the section 42A report in relation to Hearing Stream 1 and address the key issues for Hokonui Rūnanga.
4. Evidence in support of the Hokonui Rūnanga submission as it relates to Hearing Stream 1 has been filed by Dr Lynda Murchison.¹ Further evidence will be filed in subsequent hearing streams.

SUMMARY

5. In subsequent hearing topics Hokonui Rūnanga will be presenting evidence to respond to other submissions filed on the PDP. We consider there is clear scope for Hokonui Rūnanga to do this.
6. Case law has confirmed that as long as it is clear that a submission has broadly referred to a provision or matter, this is sufficient to establish scope. For reasons that follow, we submit that the submission made by Hokonui Rūnanga is sufficiently worded so as to constitute a submission on the entirety of the PDP, including the Mana Whenua chapter.
7. Given its role as tangata whenua, it is necessary for Hokonui Rūnanga to be actively involved in this plan review process in order to be able to effectively exercise its kaitiakitanga in the Gore district.
8. In relation to Hearing Stream 1, Hokonui Rūnanga agrees with the recommendations in the section 42A report. In my submission, the amendments sought by Hokonui Rūnanga and recommended in the section 42A report will better

¹ Statement of Evidence of Dr Lynda Murchison dated 21 May 2024.

give effect to Part 2 of the RMA, recognise the Principle of Partnership between Hokonui Rūnanga and the Council and are ultimately the most appropriate way to achieve the sustainable management purpose of the RMA.

HOKONUI RŪNANGA

9. Ngāi Tahu is an entity established under Te Rūnanga o Ngāi Tahu Act 1996. It is the collective of 18 papātipu rūnanga who are, in turn, the modern assemblages that represent the whānau and hapū who hold mana whenua over Ngāi Tahu takiwā.
10. Hokonui Rūnanga is the mandated representative of those who are mana whenua within the Hokonui Rūnanga Region of the Ngāi Tahu takiwā and is one of the 18 papatipu Rūnanga who collectively form Te Rūnanga o Ngāi Tahu (**Ngāi Tahu**).
11. The role of Hokonui Rūnanga and Ngāi Tahu is to ensure its takiwā is protected and enhanced for future generations. This role is recognised under the Ngāi Tahu Claims Settlement Act 1998 (**NTCSA**) and exercised in accordance with the history of Ngāi Tahu and Ngāi Tahu environmental values.
12. The relationship between Hokonui Rūnanga and Ngāi Tahu is further discussed in the statement of evidence of Dr Murchison.²

HOKONUI RŪNANGA SUBMISSIONS AND OVERVIEW OF RELIEF SOUGHT

13. The submissions of Hokonui Rūnanga generally support the notified version of the PDP in its entirety, except where amendments are sought to specific provisions. Hokonui Rūnanga seeks to ensure its values, interests and aspirations are appropriately reflected and provided for in the PDP. Hokonui Rūnanga also made further submissions on the PDP.
14. The particular matters Hokonui Rūnanga seeks to address in Hearing Stream 1 relate to the Urban and Future Development section. In particular, Hokonui Rūnanga seeks appropriate recognition of its cultural values in order to achieve the purpose of the RMA, including:
 - (a) recognising and providing for matters of national importance under section 6;
 - (b) having particular regard to kaitiakitanga as required under section 7(a) of the RMA; and

² Above, n 1 [17]-[21].

- (c) taking into account the principles of Te Tiriti o Waitangi under section 8 of the RMA.
- 15. The section 42A report for Hearing Stream 1 has accepted the relief sought by Hokonui Rūnanga.
- 16. In addressing the submissions of Hokonui Rūnanga, the Panel must do so within the framework of the RMA as will be outlined below.

SCOPE OF HOKONUI RŪNANGA SUBMISSION

- 17. We understand that there may be some uncertainty in relation to scope when considering the submission made by Hokonui Rūnanga as it relates to the Mana Whenua chapter of the PDP. Hokonui Rūnanga wish to assist the Hearings Panel (**Panel**) at this initial hearing by addressing this procedural point.
- 18. For reasons that follow, my submission is that scope issues do not arise in relation to the Hokonui Rūnanga submission.

The Law

- 19. The Panel is required to make its decision on the final provisions of the PDP in accordance with Clause 10 of Schedule 1 of the RMA. In making its decision on the provisions of the PDP and any matters raised in submissions, the Panel must be satisfied that there is scope to make such amendments. In doing so, the Panel must consider whether:
 - (a) the Hokonui Rūnanga submission is “on” the PDP; and if so
 - (b) any amendments are within the scope of the original submission such that the Panel has jurisdiction to make the amendments.
- 20. Whether the Hokonui Rūnanga submission is “on” the PDP is not at issue. Our submissions therefore focus on the scope of the Hokonui Rūnanga submission.
- 21. Where there is any doubt as to the validity of a submission, the Court in *Campbell v Christchurch City Council*³ held that the test is whether the submission as a whole fairly and reasonably raises some relief, expressly or by reasonable implication, about an identified issue. Submissions can be made on either a specific provision or matter.⁴ The Court in *Option 5 Inc v Marlborough District Council* held that the words “provision or matter” should be given a liberal interpretation, avoiding a

³ *Campbell v Christchurch City Council* [2002] NZRMA 332 at [18].

⁴ Clause 14 of Schedule 1 Resource Management Act 1991.

narrow technical interpretation of the words.⁵ As long as it is clear that the submitter has broadly referred to the provision or matter in its submission, this is sufficient for the submission to be within scope.

22. Further, the case law is clear that any amendments to a planning instrument as notified must be within scope of a submission. The Courts have established that for an amendment to be considered within scope of a submission, the amendment must be fairly and reasonably within the general scope of:⁶
 - (a) An original submission; or
 - (b) The proposed change as notified; or
 - (c) Somewhere in between.
23. Additionally, further submissions can be made in support or opposition to an original submission.⁷ Where a further submission is made, this essentially extends the scope of what has already been included in an individual's original submissions. However, the failure to make a further submission is not fatal to the issue of scope if the relief sought is already validly and fairly within the scope of the original submission.⁸
24. The question of whether an amendment sought goes beyond what is reasonably and fairly raised in submissions will usually be a question of degree, to be judged by the terms of the proposed change and the content of submissions.⁹ This should be approached in a realistic workable fashion rather than from the perspective of legal nicety,¹⁰ with consideration of the whole relief package detailed in submissions.¹¹
25. In applying the above, the Court in *Motiti Avocados Ltd v Minister of Local Government*¹² considered that the fact that the relief sought on appeal was not explicitly raised in a submission or further submission was not determinative.¹³ The test is whether the matter was “reasonably and fairly” raised in the submission, which should not be approached with a legalistic or pedantic view, but in a realistic workable fashion.¹⁴ The Court held that while the relief sought relating to a Hapu Management Plan had not appeared until late in the hearing, it was clearly related

⁵ *Option 5 Inc v Marlborough District Council* 16 ELRNZ 1.

⁶ *Re Vivid Holdings Ltd* (1999) 5 ELRNZ 264 at [19].

⁷ Clause 8(2) of Schedule 1 Resource Management Act 1991.

⁸ Above, n 6 at [31].

⁹ *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC).

¹⁰ *Royal Forest and Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 (HC) at 10. This position was recently endorsed by the High Court in *Gertrude's Saddlery Limited v Queenstown Lakes District Council* [2020] NZHC 3387 at [74].

¹¹ *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59 at [58]-[60].

¹² *Motiti Avocados Ltd v Minister of Local Government* [2013] NZHC 1268.

¹³ Above, n 12 at [44].

¹⁴ Above, n 12 at [44].

to issues that had been broadly raised in earlier submissions relating to tangata mana and tangata whenua such that it was within scope.¹⁵

26. Further, in *General Distributors Ltd v Waipa District Council*, Wylie J said:¹⁶

[56] One of the underlying purposes of the notification/submission/further submission process is to ensure that all are sufficiently informed about what is proposed. Otherwise, the plan could end up in a form which could not reasonably have been anticipated resulting in potential unfairness.

[57] There is of course a practical difficulty. As was noted in *Countdown Properties* at p170, p 165, councils customarily face multiple submissions, often conflicting, and often prepared by persons without professional help. Both councils, and the Environment Court on appeal, need scope to deal with the realities of the situation. To take a legalistic view and hold that a council, or the Environment Court on appeal, can only accept or reject the relief sought in any given submission would be unreal.

27. Another way to consider the issue is whether the amendment in question can be said to be a “foreseeable consequence” of the relief sought in a submission. It has been confirmed by the Court that the scope to change a plan is not limited by the words of the submission.¹⁷ Consequently, changes that are incidental to, consequential upon or directly connected to the submission are to be considered in scope.
28. The purpose of the scope test outlined above is to ensure an effective public consultation process that provides the opportunity to oppose any changes sought in submissions.¹⁸ An informed and reasonable member of the public, having read all of the original submissions, should have appreciated that the decision-maker might have made the amendments had those submissions been accepted.¹⁹

Applying Scope Law to Hokonui Rūnanga Submission

29. The original submission of Hokonui Rūnanga highlighted the overarching support of the PDP as notified, except where specific amendments were sought to the provisions. Consequently, Hokonui Rūnanga sought the following relief in their original submission:²⁰

Retain provisions as notified, except for those which have been submitted against as part of the submission of Hokonui Rūnanga.

¹⁵ Above, n 12 at [45].

¹⁶ Above, n 11 at [56]-[57].

¹⁷ *Westfield (NZ) Limited v Hamilton City Council* [2004] NZRMA 556 at [73].

¹⁸ Above, n 10.

¹⁹ *Foodstuffs (Otago Southland) Properties Ltd v Dunedin City Council* (1993) 2 NZRMA 497 (PT) at page 59.

²⁰ S139.093.

30. As outlined in the case law discussion above, scope is not limited to the particular relief sought in the Hokonui Rūnanga submission. Consequential or directly connected amendments are considered to be within scope. This needs to be determined through the broader content of the submissions. Accordingly, I submit that the relief sought by Hokonui Rūnanga falls squarely within the scope of the Hokonui Rūnanga submissions for the following reasons:
- (a) The Hokonui Rūnanga submission raises concerns and issues with the provisions of the PDP relating to mana whenua matters.²¹ The relief sought by Hokonui Rūnanga can therefore be reasonably foreseen as a direct or otherwise logical consequence of the broad relief sought in the original submission;
 - (b) Hokonui Rūnanga sought particular relief relating to the entire plan;²²
 - (c) An informed and reasonable member of the public having read the submission should have appreciated that the decision-maker might have made the amendments sought; and
 - (d) There would not be any prejudice to any person who has not lodged a submission.
31. Applying the case law above, we submit that when taking a realistic approach with consideration of the relief sought by Hokonui Rūnanga as a whole, it is clear that Hokonui Rūnanga has made a submission on the entirety of the PDP, including the Mana Whenua chapter. To take any other approach risks meaningful participation of Hokonui Rūnanga in the PDP process. Accordingly, we submit that the relief sought by Hokonui Rūnanga is within scope of the Hokonui Rūnanga submission.

STATUTORY CONSIDERATIONS

32. In this section, I briefly outline the provisions of the Act that are relevant to the preparation and change of a district planning document with a focus on those statutory considerations particularly relevant to Hokonui Rūnanga as an iwi authority.
33. In relation to RMA considerations, the Panel's decision on the Proposed Plan must be in accordance with (relevantly):
- (a) the Council's functions under sections 30 and 31;

²¹ For example, refer to S 139.091 and FS20.003.

²² For example, refer to S 139.093.

- (b) its obligation to prepare and have regard to an evaluation report prepared in accordance with section 32;
- (c) a national policy statement or a New Zealand coastal policy statement;
- (d) any regulations; and
- (e) the provisions of Part 2.

Part 2

34. Ultimately, the purpose of the preparation, implementation, and administration of district plans is to assist councils to carry out their functions in order to achieve the purpose of the Act.
35. As the Panel will be aware, it must exercise its role in the preparation of the PDP in accordance with the provisions of Part 2 of the RMA.²³ This includes, in achieving the purpose of the RMA:
 - (a) Recognising and providing for the matters of national importance listed in section 6 RMA, including the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.²⁴
 - (b) Having particular regard to other matters in section 7 RMA, specifically kaitiakitanga,²⁵ being the “exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural or physical resources and includes the ethic of stewardship.”²⁶
 - (c) Taking in account the principles of Te Tiriti o Waitangi,²⁷ in particular the principles of active protection and partnership.
36. It is well recognised that the trinity of sections 6(e), 7(a) and 8 are “strong directions to be borne in mind at every stage of the planning process”.²⁸ While no individual Part 2 provision equates to a right to veto, nevertheless in achieving the RMA’s single broad purpose “all the authorities concerned are bound by certain requirements and these include particular sensitivities to Māori issues”.²⁹

²³ Section 74(1)(b) Resource Management Act 1991.

²⁴ Section 6(e) Resource Management Act 1991.

²⁵ Section 7(a) Resource Management Act 1991.

²⁶ Section 2 Resource Management Act 1991.

²⁷ Section 8 Resource Management Act 1991.

²⁸ *McGuire v Hastings District Council* [2002] 2 NZLR 577 at [21] – [22].

²⁹ Above, n 28.

Functions of Council

37. Section 30 and 31 of the RMA provide that a function of councils is, through the establishment of objectives, policies and methods, to achieve integrated management of the effects of the use, development or protection of land and natural and physical resources.

Proposed Plan Preparation

38. When preparing or changing a combined district and regional plan, a council shall have regard to the matters listed in section 61, 66 and 74, which include any management plans and strategies, prepared under other legislation.
39. It must have regard to any management plan and take into account any relevant planning document recognised by an iwi authority. It must also have particular regard to an evaluation report prepared in accordance with section 32.

Section 32

40. Section 32 sets out the legal framework within which a council (and therefore the Panel) must consider the submissions, evidence and reports before it in relation to a proposed plan, in conjunction with the matters specified in sections 61, 66 and 74.
41. Under section 32, an evaluation report on a proposed plan must examine whether proposed objectives are the most appropriate way to achieve the purpose of the Act, and whether the provisions are the most appropriate way of achieving the objectives. To do that, a council must identify other reasonably practicable options and assess the efficiency and effectiveness of the proposed provisions through identifying the benefits and costs of the environmental, economic, social and cultural effects including opportunities for economic growth and employment.
42. Section 32AA requires a further evaluation to be undertaken for any changes made or proposed to the Proposed Plan since the section 32 evaluation was completed. This further evaluation can be published as a separate report, or referred to in the decision making record in sufficient detail to demonstrate it was carried out in accordance with section 32AA. The evidence of Hokonui Rūnanga will also be relevant to the section 32AA analysis of amendments sought to the notified version of the PDP provisions.

Ngāi Tahu Claims Settlement Act 1998

43. In addition to the above statutory considerations under the RMA, the obligations and principles contained in the NTCSA apply. These include co-operation, partnership and active participation in decision-making by Ngāi Tahu. Planning documents are
-

a key mechanism for meeting these obligations and achieving these outcomes. The NTCSA also provides for statutory acknowledgements throughout the Ngāi Tahu takiwā which are statements of the particular cultural, spiritual, historical and traditional associations of Ngāi Tahu within specific areas.

44. The role of the Hokonui Rūnanga submission is to assist in ensuring the Panel has the necessary evidence to support the most appropriate relief to best apply the above statutory framework to the PDP.

KEY ISSUES

45. In this section, I address the overarching issues for Hokonui Rūnanga with the PDP as it relates to Hearing Stream 1.
46. The Strategic Direction chapter plays an important role in guiding the interpretation of the wider plan.

Strategic Direction - Urban Form and Development

UFD-O1

47. Hokonui Rūnanga made a submission³⁰ requesting the following amendment to UFD-O1:
2. minimises adverse impacts on natural, historic heritage, and cultural values including but not limited to whakapapa, mauri, mahingakai, wāhi tapu, the retention of mātauranga associated with knowing the landscape, and the ability to exercise kaitiakitanga; and
3. recognises and provides for the relationship of Māori with their culture, traditions, lands, waterbodies, sites, areas and landscapes and other taonga of significance; mana whenua with whenua (land), wai (water) and mahingakai.
48. As set out in the section 42A report, this submission was accepted in part.³¹ Hokonui Rūnanga supports the recommendations made in the section 42A report.³²
49. In our submission, the amendments proposed to UFD-O1, which includes reference to the cultural values set out in clause 2.3 of the Mana Whenua chapter, adequately specify the particular effects of concern to Hokonui Rūnanga as mana whenua. The amendments proposed ensure that the PDP provisions are clear and that appropriate cultural effects are identified and assessed, including when Hokonui Rūnanga may be considered an affected party.

³⁰ S139.041.

³¹ Section 42A Report Hearing Stream 1 at [316].

³² Above, n 1 at [30].

50. One of the fundamental principles under Te Tiriti o Waitangi is consultation with iwi and Hokonui Rūnanga seeks this is recognised appropriately under the PDP. The identification of the particular effects of concern to Hokonui Rūnanga will assist with this.
51. The principle to consult with iwi authorities and consider the impacts of activities on cultural values is vital to ensure iwi authorities can exercise their role of kaitiakitanga, uphold the principles of Te Tiriti and ultimately assist councils in sustainably managing the natural and physical environment.

UFD-Overview

52. Hokonui Rūnanga made a further submission³³ on a submission made by Greenbriar Ltd³⁴ proposing amendments to the UFD-Overview section of the PDP. Hokonui Rūnanga supports this submission in part however notes that the OFD-Overview does not identify non-renewable or renewable energy resources.
53. As set out in the section 42A report, Hokonui Rūnanga's further submission on this point was accepted in part, with provision being recommended for the promotion of renewable energy resources as follows.³⁵

Growth locations have also recognised the effects of climate change and infrastructure/transport integration by encouraging an efficient urban form and settlement pattern focussed around existing developed areas and through the promotion of renewable energy resources.

54. Hokonui Rūnanga supports the amendments proposed in the section 42A report.³⁶
55. We submit that renewable energy should be included in the PDP in order to achieve the purpose of the Act.

UFD – Additional Provisions Sought

56. Hokonui Rūnanga made a further submission³⁷ on a submission made by the Director-General of Conservation³⁸ (**DOC**) seeking to include a new strategic direction for the natural environment. Hokonui Rūnanga generally supports this submission but also seeks that mana whenua connections with Te Taiao be included.

³³ FS20.029.

³⁴ S128.008.

³⁵ Above, n 31 at [276].

³⁶ Above, n 1 at [30].

³⁷ FS20.003.

³⁸ S109.021.

57. As set out on the section 42A report, Hokonui Rūnanga's submission seeking that mana whenua connections with Te Taiao be included in the Urban and Future Development chapter was accepted in part. However, no amendments to the UFD provisions were proposed on the basis that provisions UFD-O1(2)-(3) of the PDP already refer to cultural values and taonga of significance, and Clause 2.3 of the Mana Whenua chapter outlines mana whenua and Te Taiao values, which are referenced across the PDP.³⁹
58. Hokonui Rūnanga concurs with the recommendations made in the section 42A report.⁴⁰

Whole Plan

59. Hokonui Rūnanga made a submission⁴¹ seeking to retain the provisions of the PDP as notified, except where specific amendments are sought.
60. This submission was accepted in the Section 42A report given that the PDP is generally aligned with national and regional directions, iwi planning documents, the purpose of the RMA and meets the requirements of section 32 of the RMA.⁴²
61. Further, Hokonui Rūnanga made a further submission⁴³ on Environment Southland's submission⁴⁴ generally supporting the proposal to introduce a new wilding exotic trees chapter be included in the PDP. The section 42A reporting officer recommended that this submission be rejected on the basis that the PDP takes a targeted approach and required that the planting of exotic weed species identified in the Southland Regional Pest Management Plan are a non-complying activity within Significant Natural Areas, and their removal is permitted.⁴⁵
62. Hokonui Rūnanga will abide by the decision of the Panel on this point.

CONCLUSION

63. Given its role as mana whenua, it is necessary for Hokonui Rūnanga to be actively involved in this plan review process to, amongst other things, be able to effectively exercise its kaitiakitanga in the Gore district. On that basis, it is important that Hokonui Rūnanga is given an opportunity to provide evidence to assist the Panel on these matters to support the most appropriate relief to respond to the statutory framework.

³⁹ Above, n 31 at [300].

⁴⁰ Above, n 1 at [30].

⁴¹ S139.093.

⁴² Above, n 31 at [141].

⁴³ FS20.006.

⁴⁴ S85.001.

⁴⁵ Above, n 31 at para [225].

64. Hokonui Rūnanga generally supports the PDP as notified but considers there are some aspects that fail to appropriately recognise the matters in Part 2 of the RMA and the principles of Te Tiriti. It also opposes several submissions made on the PDP. The amendments sought by Hokonui Rūnanga will, in my submission, better give effect to Part 2 of the RMA, recognise the Principle of Partnership between Hokonui Rūnanga and the Council and, in my submission, are the most appropriate way to achieve the sustainable management purpose of the RMA.

DATED 31 May 2024



Joshua Leckie

Counsel for Hokonui Rūnanga Rūnanga Incorporated
