

**Before Councillors and Independent 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 for
McNab Management Limited
Submitter 103**

Dated: 28 November 2024

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INTRODUCTION

1. These legal submissions are presented on behalf of McNab Management Limited (**McNab**) in relation to McNab's submission on the Proposed Gore District Plan (**PDP**).
 2. McNab is a joint venture between Hokonui Rūnanga Incorporated and McNab Investments Limited, a sister company of Road Transport Logistics Limited. The joint venture was formed to manage the use and development of the land at 10 McKinnon Road, Gore (**Site**). The goals of the joint venture are to:
 - (a) Move O Te Ika Rama Marae (**Marae**) to a more suitable location;
 - (b) Provide a transport depot for Road Transport Logistics;
 - (c) Provide zoning for light industrial activities with a rural supply and service focus; and
 - (d) Ensure the water quality of the stream on the Site is protected.
 3. These goals give effect to the Vision of the Gore District Council (**Council**) in its Ready for Tomorrow Spatial Plan (**Spatial Plan**), which identifies the Site as a Future Industrial Area. To achieve this vision, McNab seeks to rezone the Site to provide the necessary zoning needed to create additional land for rural industry and rural lifestyle activities to meet current and future demand for these activities in Gore.
 4. In its Minute dated 3 July 2024, the Panel advised that further information was required in relation to McNab's submission, and directed a timetable for the exchange of evidence. McNab has engaged a witness team of experts in support of the rezoning and evidence in support of McNab's submissions has been filed by:
 - (a) Terry Nicholas (cultural);
 - (b) Jason Bartlett (transport);
 - (c) Justin Ralston (three waters servicing);
 - (d) Fraser Colgrave (economics); and
 - (e) Christine McMillan (planning).
 5. Through this evidence process, McNab has refined the rezoning relief to provide a more targeted, effective and clear zoning package. This amended relief is set out in **Appendix A** attached to Ms McMillan's rebuttal evidence. Hokonui Rūnanga are
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supportive of the rezoning and confirm it has been proposed and designed to ensure consistency with the findings in the Āpiti Hono Tātai Hono assessment report.¹ The rezoning will allow their marae to be relocated away from a flood prone site and unlock their aspirations as described in Mr Nicholas' rebuttal evidence.²

6. A key consideration to the appropriateness of the amended relief are the risks caused by the National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**). On that:
 - (a) Council and McNab agree the NPS-HPL is not a barrier to the current rezoning in light of the Site being identified in the Spatial Plan as a future urban area.
 - (b) However, as the Site contains LUC3 soils there is a risk that retaining an underlying rural zoning would trigger the restrictions in the NPS-HPL in the future, for example if the Site were to be excluded from the next spatial plan for the district and no longer subject to this exemption under the NPS-HPL.
7. Accordingly, given rural industry activities are considered to be appropriate for the Site (which the Council and McNab are agreed on), an underlying urban zone is more appropriate to enable the types of activities anticipated for the Site in the longer term and not have that trumped by national direction in the future.
8. It is McNab's case that the use of the Site for local rural industry activity, rural lifestyle blocks, and the relocation of the Marae, is the most appropriate use of the land given its context in an existing rural area with nodes of industrial activity.

THE MCNAB VISION

9. McNab seeks to enable rural service industry activities, as well as the relocation of the existing Marae and rural lifestyle enclave. Providing for rural service and industry will service the Gore District which is heavily reliant on the rural industry/agricultural sector.
10. A small section of the Site adjacent to State Highway 1 is intended to be used for a rural trucking depot activity which will also service local rural industry.
11. As identified in the section 32 report for the Industrial Zones chapter, there is a lack of vacant industrial zoned land in the Gore District.³ The rezoning sought by McNab seeks to address this gap and provide more land for future industrial activity.

¹ Statement of Rebuttal Evidence of Terry Nicholas dated 21 November 2024, at para [5].

² Statement of Rebuttal Evidence of Terry Nicholas dated 21 November 2024, at para [14]-[17].

³ Section 32 Report for the Industrial Zones, at page 14.

Specifically, as set out in the evidence of Mr Colgrave, the proposed rezoning will provide significant industrial land for operators requiring larger landholdings as the Site contains around 38.5 hectares of developable land, all of which is held in a single landholding.⁴

RELIEF SOUGHT

12. In the notified PDP, the Site was split-zoned Rural Lifestyle Zone and General Rural Zone. McNab supported the general intent of the PDP as notified but sought amendments to the zoning in its original submission to allow for rural industry activities to establish on the Site.
13. The Reporting Officers agree that rural industry is an appropriate activity for the Site. The provisions that the Reporting Officers have proposed in their section 42A Report would enable a similar level of activities compared to what McNab is seeking to enable on the Site. What remains in disagreement is the appropriate underlying zoning to enable such activities.
14. The refinement of the relief through evidence and rebuttal has been in response to matters raised in the section 42A report. The following rezoning relief is now being pursued:
 - (a) Light Industrial Zone with a bespoke McNab Precinct Overlay over 44.8ha of the Site, across two areas;
 - (b) Rural Lifestyle Zone over 52.7ha of the Site;
 - (c) Māori Special Purpose Zone over 2 ha of the Site; and
 - (d) Introduction of a Mahinga Kai Overlay.
15. Site-specific objectives, policies and rules are also recommended as consequential relief, which have the effect of restricting the types of activities that are enabled within the McNab Precinct.
16. McNab seeks the introduction of one additional objective and policy within the Light Industrial Zone (**LIZ**) to set clear direction that rural industry activities are anticipated in the McNab Precinct, and not the full scale of light industrial activities that are enabled elsewhere within the LIZ. These are site specific and differentiates the McNab Precinct from the remainder of the Light Industrial Zone, where a range of activities are enabled. Objective LIZ-PREC3-O1 sets out that predominantly rural industry activities are to be enabled within the McNab Precinct. To achieve this, it is

⁴ Statement of Evidence of Fraser Colgrave dated 7 October 2024, at para [5.1].

proposed that the McNab Precinct is explicitly excluded from the policies within the LIZ that are enabling of light industrial activities. Policies LIZ-P1 and LIZ-PREC3-P1 provide policy support only for rural industry activities in the McNab Precinct and excludes policy support for wider industrial activities.

17. To address issues raised in the Section 42A Report regarding lot sizes, a 1 ha minimum lot size is proposed to provide balance between enabling rural industry activities in the McNab Precinct whilst ensuring the built form does not dominate and is responsive to the surrounding environment. A setback of 20m from the adjacent Rural Lifestyle and Māori Purpose zones is also proposed for the McNab Precinct to ensure the activities within the McNab Precinct do not result in unreasonable effects in the adjacent zones.

KEY ISSUES

18. McNab, Council and New Zealand Transport Agency (**NZTA**) are largely agreed on the appropriate outcomes for the Site in terms of enabling rural industry and relocating the existing Marae. The point of difference relates more to the methods to achieve these outcomes.
19. Overall, the key remaining legal issues in relation to McNab's submission are as follows:
 - (a) scope;
 - (b) future constraints from the NPS-HPL;
 - (c) the appropriateness of the amended relief in achieving the objectives and policies of the PDP and the purpose of the RMA; and
 - (d) whether the amended relief is consistent with higher order planning documents.

SCOPE

20. In a memorandum of counsel dated 30 July 2024, counsel for Gore District Council (**Council**) queried whether there would be scope for McNab to propose an alternative zoning for the Site other than what was originally sought in submissions or retaining the zoning as notified in the PDP.
 21. For reasons that follow, we submit that the amended relief sought by McNab is squarely within scope of its original submission on the PDP.
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The Law

22. 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.
23. There is no dispute that the McNab submission is “on”⁵ the relevant matter, being the rezoning of their land.
24. From there, 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.
25. 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.⁷ This should be approached in a realistic workable fashion rather than from the perspective of legal nicety,⁸ with consideration of the whole relief package detailed in submissions.⁹
26. In applying the above, the Court in *Motiti Avocados Ltd v Minister of Local Government*¹⁰ considered that the fact that the relief sought on appeal was not explicitly raised in a submission or further submission was not determinative.¹¹ 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.¹² 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 to issues that had been broadly raised in earlier submissions relating to tangata mana and tangata whenua such that it was within scope.¹³

⁵ *Campbell v Christchurch City Council* [2002] NZRMA 332 at [18] and *Option 5 Inc v Marlborough District Council* 16 ELRNZ 1.

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

⁷ *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC).

⁸ *Gertrude’s Saddlery Limited v Queenstown Lakes District Council* [2020] NZHC 3387 at [74].

⁹ *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59 at [58]-[60].

¹⁰ *Motiti Avocados Ltd v Minister of Local Government* [2013] NZHC 1268.

¹¹ Above, n 12 at [44].

¹² Above, n 12 at [44].

¹³ Above, n 12 at [45].

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.¹⁴ 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.¹⁵ 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.¹⁶

Applying the scope test to McNab’s relief

29. McNab originally sought that the Site be rezoned as follows:
- (a) Rural Lifestyle Zone;
 - (b) General Rural Zone with a Rural Industry Precinct Overlay;
 - (c) Māori Special Purpose Zone;
 - (d) Mahinga Kai Special Purpose Zone; and
 - (e) Deferred Light Industrial Zone.
30. The reasons we submit the Panel has scope are:
- (a) **Extension of Rural Lifestyle Zone** – the amended relief extends this to include an additional 9.3 ha of land to the south of the original submission. The additional land includes the site of the existing marae and the area of land that was originally sought to be rezoned Mahinga Kai Special Purpose Zone in McNab’s submission. The additional land to be rezoned Rural Lifestyle Zone sits entirely within land owned by McNab entities and only two external boundaries are impacted.
- The rezoning of additional land to Rural Lifestyle Zone is a consequential amendment arising from minor adjustments to the zoning package, including introducing the Mahinga Kai overlay. In terms of the effect of the activities enabled, the Rural Lifestyle Zone would generally be less enabling

¹⁴ *Westfield (NZ) Limited v Hamilton City Council* [2004] NZRMA 556 at [73].

¹⁵ *Above*, n 10.

¹⁶ *Foodstuffs (Otago Southland) Properties Ltd v Dunedin City Council* (1993) 2 NZRMA 497 (PT) at page 59.

compared to the activities enabled in the Mahinga Kai Special Purpose Zone.

Further, the extension of the notified Rural Lifestyle Zone was raised in McNab's original submission, which sought to include additional land on the eastern side of the site within the Rural Lifestyle Zone. While the evidence version of relief seeks an additional 9.3ha of land to be zoned Rural Lifestyle Zone, we consider this type of rezoning was fairly and reasonably raised in McNab's original submission. The additional 9.3ha of land is internal to the Site and the only external boundary impacted is the existing marae location. We therefore consider no neighbouring properties will be impacted by a rezoning to Rural Lifestyle Zone.

- (b) **Māori Special Purpose Zone** – The proposed new location for the Māori Special Purpose Zone is in an identical location as sought in McNab's original submission. The proposed amendments to the Māori Purpose Zone provisions to provide for education and health facilities as a permitted activity was also raised in McNab's original submission. Accordingly, we consider the proposed rezoning to Māori Special Purpose Zone is entirely within scope.
- (c) **Mahinga Kai Overlay** – the original submission sought a Mahinga Kai Special Purpose Zone over the same area as the overlay now being sought, for the purpose of providing protection to the waterbody that traverses the Site. A Mahinga Kai Overlay is an alternative spatial planning tool that achieves the same outcome as a Mahinga Kai Special Purpose zoning would, without having to create an additional Special Purpose Zone, which Council did not support.¹⁷ Accordingly, we submit that this amended relief was raised in McNab's original submission and is entirely within scope.
- (d) **Light Industrial Zone with a McNab Precinct Overlay** – the original submission sought a Deferred Light Industrial zoning for a 10 ha section of the Site adjacent to State Highway 1 and a Rural Industry Precinct Overlay over an additional 34ha. The amended relief seeks a live zoning and to extend the Light Industrial Zoning over a similar footprint (44.8 ha). Considered together, there is no change to those locations from the original submission. The change is to the methods.

The relief now being sought achieves a more targeted response to the rural yet quasi-industrial environment that the Site is located in and provides for industry supporting the rural zone in a more focused way. To achieve that

¹⁷ Memorandum of counsel for Gore District Council dated 19 June 2024, at para [2].

the McNab Precinct Overlay over the entirety of that Light Industrial Zoning will restrict activities on the Site to those of a rural industry/light industrial nature. This will better provide for the rural industrial nature of the Site and surrounding area but better integrate with the broader structure of the PDP. In our view, this is entirely within scope of the original submission as the location of the zones have not changed and the submission zoning would have allowed for similar types of activities that McNab is now seeking to establish in the McNab Precinct.

In some instances, less activities are enabled than the submission version. For example the submission version allowed for some “Industrial” (as defined) activities whereas the amended relief does not. In terms of density, the amended relief has been further aligned following feedback from Council with the anticipated environment originally sought through the introduction of a 1ha minimum lot size in the McNab Precinct. This will ensure a “peri-rural” environment is retained.

Accordingly, we submit that the issue of rural industry activities establishing on the site that support the surrounding rural area of the scale anticipated was reasonably and fairly raised in McNab’s original submission, and the amended relief is entirely within scope.

- (e) **Live zoning versus deferred zoning** – the fact that a live zoning is now sought rather than a deferred zoning is within scope as a deferred industrial zone would have changed the nature of the Site regardless of what zoning enabled it. The change to a live zoning was made in response to counsel for the Council’s concern that the National Planning Standards 2019 does not provide for a deferred zoning.¹⁸ Instead of a deferred approach, the rule package now contains “triggers” to manage future development of the Site. We submit that McNab’s original submission reasonably and fairly raised the issue of a Light Industrial Zone being established on the site.

STATUTORY FRAMEWORK

Section 32 and Section 32AA

31. The statutory framework for district plan reviews is set out in the Reporting Officer’s Section 42A report for this hearing stream.¹⁹ We agree with the Reporting Officer’s summary and in the interests of efficiency do not repeat that framework here. We emphasise that Section 32 of the RMA is of particular relevance to the PDP. This

¹⁸ Memorandum of counsel for Gore District Council dated 30 July 2024.

¹⁹ Section 42A Report for Sites and Areas of Significance to Māori at [4.1].

section sets out that the relevant statutory tests must be carried out to determine the most appropriate way to achieve the purpose of the RMA.

32. 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 RMA, 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.
33. Section 32AA requires a further evaluation to be undertaken for any changes made or proposed to the PDP 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 RMA.
34. Ms McMillan has completed a thorough section 32AA analysis on the amended rezoning relief sought, which is contained in her evidence in chief.²⁰ In our submission, and on reliance on the evidence of Ms McMillan, the relief sought by McNab should be preferred in a section 32 sense as the methods better achieve the objectives of the PDP and the purpose of the RMA. The rezoning will enable a hybrid rural lifestyle and industrial use of the Site, which will be in keeping with the surrounding context and respond to demand for these activities in the Gore district.
35. An underlying LIZ zoning rather than a rural one is important to enable the rural industry activities anticipated for the Site. This is to ensure that the land can be used for its intended development and not be subject to the restrictions of the NPS-HPL in the future.

Ready for Tomorrow – Gore Spatial Plan

36. Non-statutory urban growth strategies like the Spatial Plan are often considered in preparing regional policy statements and regional district plans.²¹ The extent to which spatial plans have been through a public participation process, and the understanding that those involved in the process had as to whether a change to an RMA document might eventuate, are important.²²

²⁰ Statement of Evidence of Christine McMillan dated 7 October 2024 at Appendix C.

²¹ *Te Roopu Manaaki O Tarawera v Rotorua District Council* EnvC A099/04, 3 August 2004 at [63]–[64].

²² *Infinity Group v Queenstown Lakes District Council* EnvC C010/05, 26 January 2005; *Pinehaven Orchards Ltd v South Wairarapa District Council* EnvC W054/06, 4 July 2006.

37. The Site is identified in the Spatial Plan as a future industrial area.²³ However, this zoning was not carried over into the notified version of the PDP as the Council was concerned that the required studies in relation to demand and constraints had not been undertaken, and the potential for adverse effects on cultural values required additional consultation with Hokonui Rūnanga.²⁴
38. These studies have now been undertaken and, as set out in the rebuttal evidence of Terry Nicholas, Hokonui Rūnanga have confirmed that the proposed rezoning is appropriate from a cultural perspective.²⁵
39. In this instance the Spatial Plan warrants material weight from the Panel despite not being a statutory planning document under the RMA. It is a policy developed by Council after carrying out special consultative processes under section 83 of the Local Government Act 2002. As part of the special consultative process, the Spatial Plan was publicly notified across the Gore District, and public submissions were made and heard. The Spatial Plan was then adopted by the full Council as setting its 30-year vision for the Gore District.
40. Accordingly, we submit that the Spatial Plan is relevant to your decision making on the PDP under Schedule 1, Clause 10(2)(b)(ii). The proposed rezoning achieves the vision set out in the Spatial Plan.

National Policy Statement for Highly Productive Land

41. Pursuant to section 74(1)(ea) of the RMA, the Council must prepare and change its district plan in accordance with a national policy statement. Your decision must therefore be in accordance with the NPS-HPL.
42. Highly productive land is defined in the NPS-HPL as land that has been mapped as highly productive land in an operative regional policy statement. However, as Environmental Southland has not yet undertaken this mapping exercise, the interim definition of highly productive land applies.
43. Importantly, for the reasons that follow, the Site is currently excluded from the definition of highly productive land due to being identified in the Spatial Plan as a future urban zone.²⁶

²³ Gore – Ready for Tomorrow Spatial Plan 2020 at page 14.

²⁴ Section 32 Report for the Industrial Zones at page 22.

²⁵ Statement of Rebuttal Evidence of Terry Nicholas dated 21 November 2024, at para [23].

²⁶ Section 42A Report for McNab Management Ltd dated 7 November at para [35].

Definition of Highly Productive Land

44. The NPS-HPL provides that while mapping is not complete, the transitional definition of highly productive land means land that, at the commencement date of the NPS-HPL:

- (i) Is
 - (A) zoned General Rural or Rural Production; and
 - (B) LUC 1, 2 or 3 land; but
- (ii) is not:
 - (A) identified for future urban development; or
 - (B) subject to a Council initiated, or an adopted, notified plan change to rezone it from General Rural or Rural Production to Urban or Rural Lifestyle.

45. It is not in dispute that the Site has a rural zoning and contains LUC3 soils. Accordingly, the Site would meet the definition of highly productive land unless it has been identified for future urban development.

Has the Site been identified for Future Urban Development?

46. The NPS-HPL defines “identified for future urban development” as meaning:²⁷

- (i) Identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or
- (ii) Identified:
 - (A) In a strategic planning document as an area suitable for commencing urban development over the next 10 years; and
 - (B) At a level of detail that makes the boundaries of the area identifiable in practice.

47. A strategic planning document is defined in the NPS-HPL as any non-statutory growth plan or strategy adopted by a local authority resolution.²⁸

48. In January 2020, the Gore District Council released the Spatial Plan. The Spatial Plan meets the definition of a strategic planning document as it provides a framework for future growth in the Gore District for the period between 2020-2030.

³⁰ National Policy Statement for Highly Productive Land 2022, clause 3.4.

³⁰ National Policy Statement for Highly Productive Land 2022, clause 3.4.

49. Under the NPS-HPL, both of the following tests need to be met for land to be excluded from the transitional definition of highly productive land:²⁹
- a) The Spatial Plan identifies the land as being suitable for commencing urban development over the next 10 years from the date of commencement of the NPS-HPL; and
 - b) The Site is identified at a level of detail that makes the boundaries of the area identifiable in practice.
50. In our submission, the entire Site has clearly been identified as a future industrial area in the Spatial Plan's Outcome Map (**Appendix A**). As the Spatial Plan has been developed to cater for growth anticipated in 2020-2030, we further submit that the Site has been identified as being suitable for urban growth within the ten-year period of the NPS-HPL commencing. Accordingly, the Site can be excluded from the transitional definition of highly productive land and the provisions of the NPS-HPL restricting the rezoning of highly productive land do not apply to the Site.
51. However, the Spatial Plan only sets out a ten year strategy for the period between 2020-2030, and there is no guarantee that the Site will be retained as a future urban area in any future spatial planning document. If the Site were no longer identified as a future urban area in a spatial planning document, there is a risk that an underlying rural zoning would trigger the provisions of the NPS-HPL that have the effect of restricting development of the Site due to the presence of LUC3 soils (either through the current LUC category or a future highly productive land mapping exercise).
52. The NPS-HPL would not be triggered if the Site had an underlying urban zoning as urban zones cannot be mapped as highly productive land.³⁰ In light of the above, we submit that a modified urban zoning such as the Light Industrial with McNab Precinct zoning recommended by Ms McMillan in her rebuttal evidence is more appropriate compared to the General Rural zoning proposed by the Reporting Officers. Both the Council and McNab agree that rural industry activities is appropriate for the Site. The rezoning sought by McNab would better achieve this outcome in the longer term compared to the zoning put forward by the Reporting Officers.

³⁰ National Policy Statement for Highly Productive Land 2022, clause 3.4.

³⁰ National Policy Statement for Highly Productive Land 2022, clause 3.4.

KEY ISSUES

Economics

53. There is currently insufficient vacant industrial zoned land in the Gore District to meet demand.³¹ The Section 32 Report for the Industrial Zone recommends that 172 hectares of additional industrial land be provided for.³² Further, the evidence of Mr Colgrave identifies that there is a shortage of larger lot industrial land supply in the PDP as notified, meaning there is a lack of suitable sized land to cater for rural industry activities requiring larger landholdings.³³
54. In our submission, the zoning sought by McNab is more appropriate than the notified zoning of General Rural given the Site's location in close proximity to an existing industrial hub and key transport routes. This, in conjunction with a lack of industrial zoned land in the Gore District, means that the rezoning will provide additional industrial land in the Gore District in an area where this type of activity is already established.
55. As summarised earlier, to address the shortage of industrial land in the Gore District, the Site was included as a future industrial area in the Spatial Plan, but this zoning was not recommended in the notified version of the PDP due to Council's concerns about Hokonui Rūnanga not being a party to these discussions. McNab has discussed the rezoning relief with Terry Nicholas, a representative of Hokonui Rūnanga. Mr Nicholas has filed rebuttal evidence confirming that Hokonui Rūnanga is supportive of the amended zoning as sought by McNab.³⁴

Planning - are Rural Industry Activities Appropriate in a Light Industrial Zone?

56. The Council section 42A Report does not appear to fundamentally disagree with the outcomes for the Site being sought by McNab in terms of enabling rural industry activities. Where the respective planners disagree is on the appropriate underlying zoning to enable such activities. Ms McMillan for McNab considers that a LIZ zoning is the most appropriate zoning, while the section 42A Reporting Officer considers that a GRUZ zoning is more appropriate.
57. In particular, the Council 42A Reporting Officer has raised some concerns about the appropriateness of enabling rural industry activities in the LIZ, or any urban zone. The Reporting Officer considers that, based on the definition of rural industry in the National Planning Standards 2019, this type of activity can only be established within

³¹ Section 32 Report for Industrial Zone chapters, at page 37.

³² Section 32 Report for Industrial Zone chapters, at page 9.

³³ Statement of Evidence of Fraser Colgrave, at [5.1].

³⁴ Statement of Rebuttal Evidence of Terry Nicholas at para [5].

a “rural environment”. “Rural environment” is not defined in the National Planning Standards but is defined in the PDP as land containing a rural zoning. On that basis the Reporting Officer considers that it is inappropriate for rural industry activities to establish in an urban zone.

58. In our submission, there is no valid reason the activities enabled by the relief cannot be provided for with the zoning sought. The Council 42A Reporting Officer acknowledge themselves that activities supporting primary production are located in various “urban” zones and activities enabled at McNab would be no different.³⁵
59. To address the PDP’s definition of “Rural Environment”, Ms McMillan has proposed to amend the definition of ‘Rural Environment’ in the PDP to specifically include the McNab Precinct, despite an underlying LIZ zoning.³⁶ We submit that this is appropriate given the Site’s location in an area that is predominantly rural in character, with some industrial activity. The inclusion of the McNab Precinct within the definition of ‘Rural Environment’ provides greater certainty for plan users and future developers of the Site that rural industry activities can establish on the Site while being consistent with the definition of Rural Industrial Activities in the National Planning Standards 2019.
60. Accordingly, we submit that the rural industry activities can appropriately be established in a LIZ, and that an underlying LIZ zoning with a precinct is more appropriate than a GRUZ zoning with a precinct given the risk the NPS-HPL poses to undertaking the intended activities under a “rural” zoning.

Planning – range of activities Enabled with the Light Industrial Zone – McNab Precinct

61. The intention for the McNab Precinct is to be enabling of rural industry activities in particular, while still providing a discretionary activity consenting pathway for other light industrial activities to establish if appropriate. This is reflected in the provisions proposed by Ms McMillan in her evidence in chief, where rural industry, trade and industrial facilities, and light industrial activities limited to logistics, storage and the distribution of construction materials are to be permitted. All other light industrial activities are a discretionary activity.
62. In the section 42A Report, the Council raised some concerns that, while the McNab Precinct is intended to be restricted to rural industry activities, the enabling policy framework of the LIZ as a whole would mean that it would be relatively straightforward to obtain consent for a broader suite of light industrial activities.

³⁵ Section 42A Report for McNab Management Limited at para [100].

³⁶ Statement of Rebuttal Evidence of Christine McMillan at para [19].

63. To address this concern and provide greater certainty in terms of the types of activities that are to be enabled in the McNab Precinct, Ms McMillan has proposed to amend the policy provisions of the LIZ to provide clarity that the activities enabled in the McNab Precinct are not as broad as under the LIZ.³⁷ This achieves proposed objective LIZ-PREC3-O1 relating to the McNab Precinct.
64. To further respond the McNab Precinct provisions with the nature of the surrounding environment, Ms McMillan has proposed introducing a minimum lot size and setbacks for the McNab Precinct to manage the intensity of built form. A minimum lot size of 1 ha is proposed for the McNab Precinct, and a minimum setback of 20m is proposed from any boundary that adjoins the General Rural Zone, Rural Lifestyle Zone or the Māori Special Purpose Zone.³⁸
65. Relying on the evidence of Ms McMillan, we submit that the above amendments to the LIZ provisions can be preferred in a section 32 sense as they provide greater certainty in terms of the types of activities that are to be enabled within the McNab Precinct.

Traffic Impacts

66. Mr Bartlett has undertaken a traffic assessment of the proposed rezoning relief sought by McNab in evidence. His evidence concludes that the proposed rezoning will have noticeable transport effects as a result of additional traffic within the road network. With the upgrade of the left turn treatment, Mr Bartlett considers that the effects will be appropriately managed.³⁹ Mr Bartlett proposes to introduce additional provisions in the Light Industrial Zone to allow for additional transport measures to be considered, if necessary, triggered at different stages of development.⁴⁰ The overall effect of the transport provisions proposed is to stage any traffic upgrades required to the network as the Site is developed. We submit that this is an entirely appropriate approach to take as it will ensure that any upgrades to the road network is undertaken in a way that responds to the level of development of the Site.
67. Following consultation with NZTA, Mr Bartlett recommended some further changes to the provisions to address concerns raised by NZTA in relation to shading of the State Highway. The traffic engineer engaged by Council has largely agreed with Mr Bartlett's recommendations.

³⁷ Statement of Rebuttal Evidence of Christine McMillan, at para [34].

³⁸ Statement of Rebuttal Evidence of Christine McMillan, at para [36].

³⁹ Statement of Evidence of Jason Bartlett dated 7 October 2024, at para [13].

⁴⁰ Statement of Evidence of Jason Bartlett dated 7 October 2024, at para [11].

Servicing

68. Mr Ralston has undertaken an assessment as to the feasibility of servicing the Site at the maximum level of development proposed. In summary, Mr Ralston considers that there are multiple options available to service the Site at higher densities. He notes that both connecting to the Council's network and establish an on-site supply are both feasible options.⁴¹
69. Accordingly, relying on the evidence of Mr Ralston we submit that there are no servicing limitation that should prevent the Site from being rezoned in accordance with the relief sought by McNab.

HIGHER ORDER PLANNING DOCUMENTS

Southland Regional Policy Statement

70. In accordance with section 73(4) of the RMA, the PDP must give effect to the Southland Regional Policy Statement.
71. The objectives and policies of the Southland Regional Policy Statement (**Southland RPS**) generally seek to manage the development of rural land in a manner that achieves sustainable development, considers the amenity of the rural environment, the potential for loss of highly productive soils and provides for development to enable people and communities to provide for their social, economic and cultural well-being.⁴²
72. As set out in the evidence of Ms McMillan, the proposed rezoning is generally consistent with the objectives and policies of the Southland RPS. She notes that the wider policy direction of the Rural Chapter of the RPS is supportive of the use and development of rural land where it supports the social, economic and cultural wellbeing of the community and takes into consideration the character of the environment.⁴³
73. As discussed above, the Site is uniquely located between existing rural residential and industrial areas. A split zoning of Rural Lifestyle and Light Industrial better achieves the outcomes sought in the RPS.
74. The rezoning proposed by McNab will support the social, economic and cultural wellbeing of the Gore District by providing additional industrial land for rural industry

⁴¹ Statement of Evidence of Justin Ralston dated 7 October 2024, at para [12].

⁴² Southland Regional Policy Statement, Objectives Rural 1 and Rural 2, and Policies Rural 4 - Rural 6.

⁴³ Statement of Evidence of Christine McMillan dated 7 October 2024 at para [78].

activities to establish, as well as provide for additional residential land in a District that is anticipating growth.

CONCLUSION

75. The relief sought by McNab will deliver on the strategic vision of the Spatial Plan and achieve the aspirations of both Hokonui Rūnanga and Road Transport Logistics.
76. The evidence filed in support of the proposed rezoning sought by McNab is robust and is largely supported by the Section 42A Report in terms of the overall outcomes sought for the Site. It is agreed by all relevant experts that rural industry activities are appropriate for the Site given its context in an existing rural and industrial area.
77. The evidence on behalf of McNab demonstrates that the proposed rezoning as set out in paragraph [14] above is the most appropriate zoning outcome for the Site. Notably, the proposed rezoning will:
- (a) Enable the existing marae to be relocated to a more appropriate location;
 - (b) provide for a robust regime that is targeted to the Site's location and will allow development to occur at an appropriate scale;
 - (c) give effect to Part 2 of the Act by providing much needed land for rural industry to establish while appropriately managing effects on the surrounding environment;
 - (d) ensure the Site is able to be utilised for its intended rural industrial purpose in the future without risk of being subject to the restrictions in the NPS-HPL; and
 - (e) be the most efficient and effective way to achieve the objectives of the PDP and give effect to higher order planning documents.

DATED 28 November 2024



Joshua Leckie / Liz Rolph
Counsel for McNab Management Ltd
