IN THE MATTER AND IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Hearing of Submissions and Further Submissions on the Proposed Gore District Plan

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Gore District Plan - Decisions on Submissions
Topic 13: Mixed Use Zone

Hearings Panel Members

Keith Hovell

Glenys Dickson

Cliff Bolger

Date of Hearing
24 June 2024

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1 Introduction

1.1 Scope of this Decision

1.1.1 This document details the evaluation and decisions of the Hearings Panel on the submissions and evidence considered in relation to the Mixed Use Zone. The Hearings Commissioners comprising the panel for this hearing were Commissioners Cliff Bolger, Keith Hovell and Glenys Dickson.

1.1.2 This Decision focuses on the key issues in contention. Where there is no contention, such as submitter support for certain provisions, or minor matters where proposed changes are recommended in response to submissions, the Panel has adopted the recommendations, and the underlying evaluation contained in the s42A Report prepared by Mishka Banhidi.

1.1.3 Attached is the updated provisions for the Mixed Use Zone, referencing changes authorised by this and other Decisions of the Hearings Panel. Changes made in response to submissions are shown in normal black font, with text either underlined for additions or as ~~strikethrough~~ for deletions. A reference is also provided of the decision and paragraph number giving rise to the changes in response to submissions. Amendments made to the PDP pursuant to clause 16(2) are shown in the updated District Plan chapters in a green font. Shown in a red font are consequential numbering changes arising from provisions being added or deleted.

1.1.4 Appendix A lists the submissions considered in this decision and their outcome, described as accepted, accepted in part or rejected. For convenience, the Panel has chosen to make decisions on original submissions only. By implication, but not explicitly, it has also made decisions in relation to further submissions.

1.1.5 Attention is also drawn to Decision 2, Whole of Plan and Repeated Submissions that responds to submissions lodged to the District Plan as a whole, together with those lodged to multiple zones and/or chapters in the PDP. In some cases, these submissions may result in amendments to this chapter as well. Any such changes are annotated as a footnote in the updated provisions.

1.2 Abbreviations

1.2.1 In preparing this decision we have used the following abbreviations:

Full Text	Abbreviation
Mixed Use Zone	MUZ
KiwiRail Holdings Ltd	KiwiRail
New Zealand Transport Agency Waka Kotahi	NZTA
Fire and Emergency New Zealand	FENZ
Hearings Panel	Panel
Proposed Gore District Plan	Proposed Plan or PDP
Resource Management Act 1991	RMA
RMA section	s

1.3 Statutory Considerations

1.3.1 The Panel's Decision1 Preliminary Matters and Statutory Requirements Relevant to Decisions sets out the legal framework and requirements for preparing a District Plan,

as well as case law referred to in legal submissions and evidence provided to the Panel. This framework is not repeated in this Decision. Rather, this Decision should be read in conjunction with Decision1.

1.3.2 In s42A reports to the Panel, the authors are required to consider any alternative provisions put forward in the context of s32, and when changes are recommended, a further assessment under s32AA is provided if the change is a material departure from what was notified. That same obligation to make a further assessment under s32AA also applies to the Panel if it decides to make changes to the Plan in response to submissions which materially depart from the notified version.

1.3.3 Through Minute 5, the Panel requested submitters seeking changes to District Plan provisions to have regard to the s32 provisions and provide material to the Panel that would facilitate any additional s32AA assessment required if it was of a mind to accept the changes they sought.

1.3.4 Where the Panel has made amendments to the Proposed Plan that are consistent with the recommendations contained within the s42A Reports and associated evidence the Panel has adopted the s32AA analysis contained within those reports and evidence, unless expressly stated otherwise. Those reports are part of the public record and are available on the Council's website.

1.3.5 Where the Panel has made amendments to the Proposed Plan that are not contained within the s42A Report, or which were not subject to a s32AA assessment provided by submitters, the Panel has undertaken the required s32AA analysis and has incorporated it into the body of the decision, with the required assessment forming part of the evaluation. The Panel is satisfied that the required substantive assessment has been undertaken where required.

1.4 Procedural matters

1.4.1 There were no pre-hearing meetings or meetings undertaken in accordance with clause 8AA of Schedule 1, on the submissions relating to the Mixed Use Zone chapter.

1.4.2 None of the Panel members identified any conflicts of interest.

1.4.3 No procedural matters were raised at the hearing.

1.4.4 No matters of trade competition were raised.

1.4.5 Prior to the hearing, the Panel issued Minute 10 requesting a map of the Mixed Use Zone, showing the extent of the Council's reticulation network.

2 The Hearings

2.2.1 Mixed Use Zone Hearing

2.1.1 The hearing in relation to the Mixed Use Zone was held on 24 June 2024 at the Gore District Council administration building, in Gore. Submissions with regard to the Mixed Use Zone were heard together with other matters in Hearing Stream 2, including all of the commercial zones.

2.1.2 Prior to the hearing, the Panel received a s42A Report from Victoria Woodbridge and Tina Carlson-McColl. The Report considered all submissions lodged to the commercial zones, Mixed Use Zone and mapping.

2.1.3 At the commencement of the hearing, the Panel received supplementary evidence from Victoria Woodbridge responding to matters raised in the evidence of submitters

and in response to Minute 10, providing details of the extent of the Council's reticulation network in the Mixed Use Zone. The Panel sought clarification from her regarding matters contained in her s42A Report and supplementary evidence at various times during the hearing.

2.1.4 Submitters who appeared at the hearing, speaking to matters dealt with in this Decision are shown in Table 1.

Table 1 Mixed Use Zone – Submitters Attending the Hearing			
No.	**Submitter**	**Attendees**	**Nature of Evidence**
S107	Ronald Ashby	Self	In person
S132	KiwiRail	Kristen Gunnell Michelle Grinlinton-Hancock Louise Taylor	Video Link Video Link Video Link
S85	Environment Southland	Marcus Roy	Video Link
S77	NZ Heavy Haulage Association	Jonathon Thompson	Video Link

2.1.5 Submitters who submitted further information for the Panel to consider were:

- New Zealand Transport Agency (S112, FS14)
- Fuel Companies (s16)

2.1.6 During the hearing various questions were put to the representatives of KiwiRail with regard to their submission seeking a setback of buildings from adjoining KiwiRail land, with the setback distance dependent on the height of the buildings. Minute 11 from the Panel dated 26 June 2024 confirmed the issues for which a response was sought. A memorandum from Kristen Gunnell, legal counsel for KiwiRail, filed on 5 July 2024 responded to those questions and also to supplementary evidence filed on behalf of Gore District Council on 24 June 2024. The submission by KiwiRail was identical to that lodged to other zones, and these are considered collectively in Decision 2.

2.1.6 In Minute 13, dated 1 July 2024, the Panel sought clarification from Victoria Woodbridge on several issues, including the wording of MUZ-S6 that refers to a tree being required every 3 metres. A reply to that Minute was received on 10 July 2024.

2.2 Other Relevant Hearings

2.2.1 Decision 2 lists the submissions lodged to the Whole of the Plan. Submission S139.040 Hokonui Rūnanga Inc raises issues relevant to this decision and in that regard, relevant evidence was received by the Panel during the hearings to consider submissions to the Mana Whenua and Sites of Significance to Māori chapters from:

- Courtney Bennett for the Gore District Council
- Amy Beran for Hokonui Rūnanga

2.2.2 Plan provisions applying within areas subject to inundation were considered in the context of the HS11 Natural Hazards. Arising from submissions by Environment Southland this included consideration of zoning changes within areas of actual and potential inundation. In that regard, evidence from the following witnesses is relevant to matters considered in this decision:

- Brett Osborne, author of the s42A Report
- Tim Morris for the Gore District Council

- Marcus Roy, Jo Patterson and Matthew Gardner for Environment Southland

2.3 All written material received by the Panel is available on the Council's web site.

3 Mixed Use Zone Submissions

3.1 General

Submitter (S)	Decision Requested
S146.089 Southland District Council	The submitter supports this chapter.

3.1.1 The Panel acknowledges the submission in support of the chapter. As minor changes have been made to the chapter, this submission is accepted in part.

3.2 Overview and Purpose

Submitter (S)	Decision Requested
S85.214 Environment Southland	Recognise that a residual flood risk exists despite stop banks

3.2.1 The Panel notes that parts of the Mixed Use Zone are located within areas subject to potential and actual inundation in the event of a flood bank breach, but not all. In the Panel's view, inclusion of a statement as sought by Environment Southland is potentially confusing as a consequence. At the hearing, Marcus Roy in an oral presentation stated that in his view the zone chapters should be all encompassing so as to avoid the need to refer to other chapters of the Plan. The Panel disagrees, noting to do so would result in significant duplication of provisions and increased complexity in what is already a complex framework. In that regard the Panel agrees with Victoria Woodbridge at paragraph 107 of the s42A Report where she expresses the view that provisions applying to flood hazard should be located within the district wide Natural Hazards chapter, as directed by the National Planning Standards. Accordingly, submission S85.214 Environment Southland is rejected.

3.3 Objectives and Policies

Submitter (S)	Decision Requested
S125.071 Ministry of Education	Retain MUZ-O1 as proposed.
S16.051 Fuel Companies S132.199 KiwiRail Holdings Ltd	Retain MUZ-P3 as proposed
S16.052 Fuel Companies S132.200 KiwiRail Holdings Ltd	Retain MUZ-P7 as proposed

3.3.1 The Panel acknowledges the submissions in support of the objective and two of the policies. No other submissions have been lodged to these provisions and they remain as notified. Accordingly, the submissions are accepted.

Submitter (S)	Decision Requested
S139.074 Hokonui Rūnanga Inc	Objective MUZ-O4 is unclear and should be amended. Amend to read:~~"Adverse environmental effects or impacts on Ngāi Tahu cultural values generated by activities within the Mixed Use Zone are managed, particularly at the zone interfaces.~~ Potential sensitivity effects or reverse-sensitivity effects on people their values and activities resulting from activities within the MUZ are managed, particularly at the zone interfaces."

3.3.2 In response to this submission, Victoria Woodbridge at paragraph 226 of the s42A Report stated:

I also note that the purpose of MUZ-O4 is to ensure that adverse environmental effects are managed within the zone with a particular focus on zone interfaces, that is boundaries where the zone adjoins other zones where there may be a greater presence of sensitive activities, such as the Residential Zone. MUZ-O4 is given effect to by MUZ-P4 and MUZ-P5 and subsequently by the Chapter standards which provide performance standards to manage the effects of activities. This includes, bulk and location standards, screening and landscaping requirements to mitigate the effects of activities being enabled within the zone. In my view MUZ-O4 as notified therefore provides sufficient direction, clarity of outcome and alignment with the provision hierarchy.

3.3.3 Victoria Woodbridge therefore recommended rejecting this submission.

3.3.4 Lynda Murchison, appearing on behalf of Hokonui Rūnanga, did not agree with the recommended outcome and requested the Panel to defer making a decision on this until the hearing on the Mana Whenua chapter took place. However, no explicit reference was made to the submissions lodged to the Mixed Use Zone at that hearing. Similarly, Courtney Bennett and Amy Beran in their joint response to Minute 15 did not provide any comment on this objective. Courtney Bennett in her evidence presented to HS12 on 7 April 2025 did however recommend including reference to MW-2.3, now MW-1.2, and that is consistent with the Panel's Decision 43 Sites and Areas of Significance to Māori.

3.3.5 Having regard to the reports and evidence submitted, the Panel concludes that the amendment sought to the objective in the submission is not appropriate for the reasons stated by Victoria Woodbridge. The Panel does accept however that, consequential to Decision 43, the intent of the recommendation of Courtney Bennett is appropriate.

3.3.6 Accordingly, submission S139.074 Hokonui Rūnanga Inc is rejected. Consequential to Decision 43 the Objective MUZ-O4 is amended to read:

Adverse environmental effects or impacts on Ngāi Tahu cultural values <u>listed in MW-1.2</u> generated by activities within the Mixed Use Zone are managed, particularly at the zone interfaces.

Submitter (S)	Decision Requested
S124.183 Fire and Emergency NZ	Retain MUZ-P2 as notified
S112.151 NZ Transport Agency Waka Kotahi	Amend MUZ - P2 as follows: 4. the activity can be adequately serviced with existing and planned infrastructure<u> including land transport infrastructure;</u>
S132.198 KiwiRail Holdings Ltd	KiwiRail generally supports MUZ-P2 but considers it critical that the plan provides for adequate management of the interface between development and lawfully established critical infrastructure, such as the railway network. Add to MUZ-P2: <u>5. any activity can be managed to ensure the continued safe, connected and efficient transport network</u>**.**

3.3.7 The Panel acknowledges the submission in support of the policy by FENZ. While other submissions have been lodged to this provision, no changes have been made to it. Accordingly, submission S124.183 Fire and Emergency NZ is accepted.

3.3.8 Victoria Woodbridge at paragraphs 233 – 234 of the s42A Report set out that the definition of 'infrastructure' includes "*structures for transport on land by cycleways, rail, roads, walkways, or any other means*" and as a consequence she did not recommend any changes to the policy. NZTA advised by way of an email that it accepted the

recommendation. Accordingly, submission S112.151 NZ Transport Agency Waka Kotahi is rejected.

3.3.9 Victoria Woodbridge at paragraphs 236 – 241 of the s42A Report referred to provisions in the Transport chapter that are relevant to submission S132.198 and described what she saw as the potential for inconsistencies in Policy MUZ-P2 if the relief sought by KiwiRail was granted. Louise Taylor, on behalf of KiwiRail, acknowledged at paragraph 7.1 of her written evidence that the change sought to the policy was not appropriate. Accordingly, submission S132.198 KiwiRail Holdings Ltd is rejected.

Submitter (S)	Decision Requested
S139.075 Hokonui Rūnanga Inc	Wherever possible the plan provisions should specify the particular effects of concern to mana whenua to ensure the plan provisions are clear and that appropriate effects are identified and assessed, including when Hokonui Rūnanga Inc may be an affected party. Amend MUZ-P4 to read: 4. requiring appropriate setbacks to waterways which are appropriate to maintain and enhance amenity, ~~Ngāi Tahu cultural values and natural character.~~ and ecological values, maintain access to mahinga kai; and reduce effects on mauri, ki uta ki tai and natural character.

3.3.10 Victoria Woodbridge at paragraph 252 of the s42A Report recommended accepting this submission because it would help focus on issues of potential concern. Lynda Murchison, appearing on behalf of Hokonui Rūnanga, supported the recommendation but suggested the matter be deferred pending presentations at other hearings. In that regard Amy Beran at later hearings providing evidence on behalf of Hokonui Rūnanga supported a more general approach as set out in the notified policy.

3.3.11 Arising from Decisions 14 and 43 and having regard to decisions on submissions to the Mixed Use Zone, the Panel prefers a modified form of what was sought in the submission with an amendment to clause (5).

3.3.12 Submission S139.075 Hokonui Rūnanga Inc is accepted in part by amending Policy MUZ-P4(4) to read:

~~requiring~~ providing appropriate setbacks to ~~waterways~~ water bodies to maintain and enhance amenity~~, Ngāi Tahu cultural values and~~ natural character and access by mana whenua for mahinga kai and customary activities.

3.4 Rules and Standards

Submitter (S)	Decision Requested
S16.053 Fuel Companies	Retain MUZ-R3 as notified
S124.196 Fire and Emergency NZ	Retain MUZ-R8 as notified

3.4.1 The Panel acknowledges the submissions in support of the rules. The submitters support service stations and emergency service facilities being listed as permitted activities and are accepted.

Submitter (S)	Decision Requested
S99.042 Clark Fortune McDonald & Associates	MUZ-R10 is amended to include clarification as to whether the 60m² maximum floor area applies to a residential unit or minor residential unit.

3.4.2 Victoria Woodbridge at paragraph 262 of the s42A Report acknowledges that the wording of the rule does not reflect the intent and recommended an amendment to the rule that the Panel adopts for the reasons she gave.

3.4.3 Submission S99.042 Clark Fortune McDonald & Associates is accepted by amending Rule MUZ-R10(2) as follows:

Minor residential units have a m~~M~~aximum floor area of 60 ~~square metres~~ m^2~~;~~ and

Submitter (S)	Decision Requested
S125.072 Ministry of Education	The submitter supports MUZ-R15 in principle to manage the establishment and operation of educational facilities.
S125.073 Ministry of Education	Where relevant bulk, height and location standards are met, the activity should be permitted. MUZ-O1 states the zone provides for a wide range of activities to meet the economic, cultural and social needs of the Gore District. Educational facilities are social infrastructure and should be provided for as a permitted activity where appropriate standards can be met and Councils discretion should be restricted to matters of relevance when not met.

3.4.4 The Panel acknowledges the submission in support of the rule that provides for educational facilities to be located in the Mixed Use Zone where there is a functional need to do so. This implies training facilities related to manufacturing are appropriate but not primary schools because of the need for higher amenity of the latter. Educational facilities being provided for would include those run by the State, private training bodies and manufacturing businesses. Submission S125.072 Ministry of Education is therefore acknowledged and accepted.

3.4.5 However, it is the view of the Panel that not all educational facilities are appropriate within the environment of the Mixed Use Zone and enabling them as a permitted activity may well give rise to reverse sensitivity effects. The Panel agrees with Victoria Woodbridge at paragraphs 264 – 266 of the s42A Report that restricted discretionary status for educational facilities is appropriate. No further information was provided to the Panel by the Ministry of Education and accordingly submission S125.073 Ministry of Education is rejected.

Submitter (S)	Decision Requested
S124.199 Fire and Emergency NZ	Retain MUZ-S4 as notified
S124.200 Fire and Emergency NZ	Amend MUZ-S6 as follows: 3.Landscaping shall not obscure emergency or safety signage or obstruct access to emergency panels, hydrants, shut-off valves, or other emergency response facilities.
S124.201 Fire and Emergency NZ	Amend MUZ-S10as follows: 4.Screening shall not obscure emergency or safety signage or obstruct access to emergency panels, hydrants, shut-off valves, or other emergency response facilities.

3.4.6 The Panel acknowledges the submission in support of standard MUZ-S4. No other submissions have been lodged to this provision. Accordingly, submission S124.199 Fire and Emergency NZ is accepted.

3.4.7 The two other submission points by FENZ seek to ensure safety signage remains visible and access remains to emergency response facilities following any landscaping or screening. The Panel agrees with Victoria Woodbridge at paragraph 88 of the s42A Report that such a provision is appropriate for safety reasons.

3.4.8 Submission S124.200 Fire and Emergency NZ is accepted by including an additional clause in Standard MUZ-S6 as follows:

3. Landscaping must not obscure emergency or safety signage located on or adjacent to the road boundary, or obstruct access to emergency panels, hydrants, shut-off valves, or other emergency response facilities.

3.4.8 Submission S124.201 Fire and Emergency NZ is accepted by including an additional clause in Standard MUZ-S10 as follows:

4. Screening must not obscure emergency or safety signage located on or adjacent to the road boundary, or obstruct access to emergency panels, hydrants, shut-off valves, or other emergency response facilities.

3.5 Zoning

Submitter (S)	Decision Requested
S85.056 Environment Southland	Prevent any new zone changes from the current District Plan which have the potential to intensify land use change and development within a flood inundation area. This comment applies to all zones and maps

3.5.1 Marcus Roy on behalf of Environment Southland in an oral presentation to the Panel stressed the need to send the right development signals to land owners and developers within areas subject to potential or actual inundation in an enduring way that goes beyond the life of the PDP. He stated that Environment Southland has concerns with the lack of understanding that areas located behind stop banks still have a residual risk from flooding, arising from events beyond their design capacity and in event of failure. He referred to other flood events elsewhere in NZ and the growing difficulty land owners are now having in securing ongoing property insurance.

3.5.2 The approach of the Panel in having regard to this submission, noting the same submission point has been lodged to all zones, is to utilise the reports and information presented at this hearing and also at the hearing to consider submissions to the Natural Hazards chapter to determine whether the risk from inundation is significant to the extent that no "upzoning" as referred to by Marcus Roy should take place using best available information.

3.5.3 Having regard to the National Planning Standards, the Panel is of the view that issues related to minimum floor levels raised by Environment Southland should be considered within the Natural Hazards chapter and the submissions lodged to it.

3.5.4 The Panel therefore in considering this submission has sought to compare the zoning in the Operative District Plan to that in the PDP. This is the same assessment that was undertaken jointly by Tina Carlson-McColl and Victoria Woodbridge in the s42A Report. At paragraph 102 of the Report they state:

> In relation to the Mixed Use Zone, other than in East Gore where some very minor corrections to zone boundaries are included to reflect existing land use activities, the Mixed Use Zone Section 32 Evaluation Report included an audit of areas proposed to be zoned Mixed Use. This evaluation noted that these areas are currently zoned Industrial or Mixed Use under the ODP which allows for commercial and industrial activities and subdivision as a Restricted Discretionary Activity without any minimum lot size specified. In comparison the PDP zoning reflects the existing use of land within these areas and allows for a greater range of activities than the ODP with subdivision remaining a Restricted Discretionary Activity with no minimum lot size.

3.5.5 The Panel has reviewed the maps of the Operative Plan and the PDP and is satisfied with the description given and the Panel concludes that for the Mixed Use Zone there is no "upzoning" nor increase in intensification of land use of the type referred to by Marcus Roy. As a consequence, no changes to the MUZ zoning are required on these grounds and submission S85.056 Environment Southland is rejected.

Submitter (S)	Decision Requested
S107.004 Ronald Ashby	Retain Mixed Use zoning. Unlike the perimeter area being rezoned Industrial to Mixed Use this current area is characterised as framed by recreation/ parkland and centre of town with established dwellings. Plan supports new retail however rejects established element.

3.5.6 Ronald Ashby in an oral presentation to the Panel indicated his family had owned property in the Stratford Street / Hyde Street area for 75 years, running a boarding house. He described issues with noise nuisance being generated within the Mixed Use Zone and is concerned that a change in zoning to Light Industrial Zone over the land between Mersey Street and Oldham Street would make the situation worse for the three residences in the area in the future. He noted that rezoning was accompanied by an increase in the allowable noise levels.

3.5.7 The Panel undertook a viewing of the areas being referred to by Ronald Ashby and concludes that the Light Industrial Zoning is more appropriate in the rezoned area than Mixed Use. The nature of the area is clearly industrial and a number of community focused activities allowed in the Mixed Use Zone are in the view of the Panel better located elsewhere.

3.5.8 The Panel understands the concerns raised with regard to increasing noise levels being allowed and notes the response given by Victoria Woodbridge that regardless of the zone rules, RMA s16 provides protection to residents in the area from nuisance noise.

3.5.9 Ronald Ashby also expressed concern with the development of Hyde Park for Mixed Use Zone activities. The Panel notes that this park has been held in fee simple since 2019, when the Reserve status was uplifted. The opportunity to develop the land has therefore been available for some time.

3.5.10 Given the Panel concludes no action is appropriate in response to this submission, submission S107.004 Ronald Ashby is rejected.

4 Other Matters

4.1 Notes

4.1.1 The Panel has considered notes to this chapter as part of decision to remove unnecessary duplication within the Plan and determined that Notes 1 and 2 can be deleted because reliance can be placed on the introductory sections of the Plan. This change is made as an amendment under Clause 16(2) of the First Schedule.

4.2 Section 32AA

4.1 The s42A Reports prepared for Mixed Use Zone and Natural Hazards hearings included assessment of section 32AA matters. In considering the submissions included on this decision, the Panel has had regard to the relevant s32AA provisions. Given the nature of changes made to the Mixed Use Zone chapter, which in the view of the Panel are minor in nature, no additional s32AA assessment is required.