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 35: Public Access

Hearings Panel Members

Keith Hovell

Glenys Dickson

Cliff Bolger

Date of Hearing
14 October 2024

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Appendix A. Submissions (attached as a separate document)

Appendix B. Plan Chapter (attached as a separate document)

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 Public Access chapter. 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 Public Access chapter, 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 the Panel has used the following abbreviations:

Full Text	Abbreviation
Clause 16(2) of the First Schedule of the RMA	cl 16(2)
Gore District Plan	Plan
Hearings Panel	Panel
Hokonui Rūnanga Incorporated	Hokonui Rūnanga
Proposed Gore District Plan	Proposed Plan or PDP
Report prepared under section 42A of the RMA	s42A Report
Resource Management Act 1991	RMA
RMA section	s
Southland Federated Farmers of NZ	Federated Farmers

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 this Decision.

1.4.2 No member of the Panel identified any conflicts of interest.

1.4.3 No procedural matters were raised at the hearings with regard to the Public Access chapter.

1.4.4 No matters of trade competition were raised.

2 The Hearings

2.1 Public Access Hearing

2.1.1 The hearing in relation to this topic was held on 14 October 2024 at the Gore District Council administration building, in Gore. Submissions with regard to the Public Access chapter were heard together with the Hazardous Substances, Subdivision, Noise and Contaminated Land.

2.1.2 Prior to the hearing, the Panel received a S42A Report from Mishka Banhidi that considered all submissions lodged to the Public Access chapter and relevant definitions.

2.1.3 At the commencement of the hearing, the Panel received supplementary evidence from Mishka Banhidi responding to matters raised in the evidence and additional information received by the Panel. 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 are shown in Table 1.

Table 1: Public Access Hearing – Submitters Attending the Hearing			
No.	**Submitter**	**Attendees**	**Nature of Evidence**
S126	Southland Federated Farmers	Rachel Thomas	Video Link

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

- Alliance Group Ltd (S121)
- Department of Conservation (S109)

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

2.2 Other 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 The Panel received evidence in HS3 on 22 July 2024, HS8 on 5 December 2024 and HS9A on 19 February 2025 from Courtney Bennett and Amy Beran, which included recommendations on provisions in the CCZ that manage effects on Ngāi Tahu cultural values. For provisions where there were no matters in contention or further recommendations arising from evidence received in HS8 or HS9A, these are not discussed further in this decision. Otherwise, discussion the evidence is included in his decision in relation to particular provisions of the chapter.

3 General

3.1 General Submissions

Submitter (S)	Decision Requested
S146.053 Southland District Council	The submitter supports the objective and policies and notes the new provisions should reduce any cross-boundary issues.
S143.001 Rural Ratepayers Group	Council shall ensure public are aware of all risk and dangers. Council shall indemnify landowners for any risk or harm that may occur to a member of the public as Council is encouraging & expediting public access.
S143.004, S143.010, S143.011, S143.012 Rural Ratepayers Group	Where Council imposes Public Access on landowners: - a discount on rating should be given as relief on behalf of the community that benefits. - Council shall repair any damage to rural properties. - Council shall accept responsibility as it is an exacerbator.

3.1.1 The general submission in support by Southland District Council is acknowledged. As changes have been made to some of the provisions in this chapter, this submission is accepted in part.

3.1.2 It is the view of the Panel that landowners and the wider community have a poor understanding of manner in which public access is provided to and along lakes, rivers and wetlands, and to other areas of interest including heritage sites and geologic features. The Panel accepts the legislative framework is complex and this is

compounded by the presence of public paper roads that pass through private land and are used as part of rural production activities.

3.1.3 The Panel is therefore understanding of the concerns expressed by submitters to the provisions included in the Public Access chapter of the Plan. The Panel considers the comments made by Mishka Banhidi in her Section 42A Report correctly summarise the situation and are adopted. For completeness these are included in this Decision, as follows:

> 46. The Rural Ratepayer's submission above represents a common theme of the submission on this chapter where a misunderstanding has occurred as to the role of the PA Chapter and the mechanism utilised to implement public access.
>
> 47. This chapter does not grant the public the right to access private land. The primary mechanism to provide public access is through the esplanade reserve provision through the subdivision process in accordance with Section 230 of the RMA. This process relates to the creation, through subdivision, of any allotment of less than 4 hectares adjoining the sea, river or lake an esplanade reserve 20 metres in width is required along the bank of any river. Esplanade Reserves are vested with the Council.
>
> 48. Insofar as this relates to submissions (s143.001) and (s143.004), as Esplanade Reserves are vested with the Council and the Council becomes the landowner, any associated indemnity is internal to the Council and no rates are payable on the vested land from the original landowner.

3.1.4 Accordingly, these submissions by Rural Ratepayers Group are rejected. However, the submitter should note changes have been made to the Overview for this chapter in response to submissions by Federated Farmers contained in paragraph 4.7.3 below.

3.2 Note 1

3.2.1 The Panel has reviewed all Notes in the Plan as part of considering submissions to remove unnecessary duplication and determined that in the Public Access chapter, Note 1 following the Policies 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 Public Access Provisions

4.1 Standalone Submissions in Support

Submitter (S)	Decision Requested
S109.088 Department of Conservation	Retain PA-P1 as notified
S109.090 Department of Conservation	Retain PA-P3 as notified
S139.060 Hokonui Rūnanga Inc	Retain Policy PA-P3
S109.091 Department of Conservation	Retain PA-P4 as notified

4.1.1 There were no opposing submissions or submissions seeking change to the provisions above that are supported. Accordingly, these submissions are accepted.

4.2 Objective PA-O1

Submitter (S)	Decision Requested
S109.085 Department of Conservation	Retain PA-O1 as notified
S126.111 Southland Federated Farmers of NZ S60.114 Ronald Crispin S68.232 John Baynes S115.112 Kevin Robertson S143.123 Rural Ratepayers Group S148.124 Alistair & Bernadette Hunt	Amend PA-O1: Public access, <u>when approved by a landowner</u>, is provided to and along waterbodies with high recreational, scenic, Ngāi Tahu cultural or amenity values.

4.2.1 The submission in support of Objective PA-O1 from Department of Conservation is acknowledged. As changes have been made to the provision this submission is accepted in part.

4.2.2 The Panel accepts the advice of Mishka Banhidi at paragraph 71 of her s42A Report where she described that public access will either be formalised and be held in the ownership of the Council, or established in agreement with the landowner. The Panel notes there is no intent to "force" public access onto landowners.

4.2.3 Rachel Thomas, speaking on behalf of Federated Farmers at the hearing, advised the Panel there were initial concerns with PA-O1 regarding potential confusion and a lack of clarity over public access. She added, the addition to the Overview recommended in the s42A Report, and considered in paragraph 4.7.3 below, would meet their concerns regarding the objective.

4.2.4 Accordingly, the submissions S126.111 Federated Farmers and others seeking a change to Objective PA-O1 are rejected.

Submitter (S)	Decision Requested
S121.055 Alliance Group Limited	Amend PA-O1 as follows: Public access is provided <u>in appropriate locations</u> to and along waterbodies with high recreational, scenic, Ngāi Tahu cultural or amenity values.

4.2.5 The Panel understands the concerns of Alliance, with the operational area of their Mataura Plant extending to the edge of the Mataura River, public access to or along the river edge at this location is inappropriate. The Panel agrees with the assessment of Mishka Banhidi at paragraph 72 of her s42A Report where she referred to PA-O3 and PA-P5 that provide for consideration of the issue raised by Alliance. The Panel concludes on this basis that an addition to the objective and policy framework is not required.

4.2.6 Accordingly, submission S121.055 Alliance Group Limited seeking a change to Objective PA-O1 is rejected. The Panel notes the written submission from Alliance accepting this outcome on that submission.

Submitter (S)	Decision Requested
S139.059 Hokonui Rūnanga Inc	Amend PA-O1 to read: "Public access is provided to and along waterbodies with high recreational, scenic, ~~Ngāi Tahu cultural or~~ amenity values <u>or which are valued for mahinga kai; provided public access is appropriate considering any cultural value associated with the area such as silent files or other wāhi tapu."</u>

4.2.7 Mishka Banhidi at paragraph 72 of her s42A Report recommended accepting this submission. The Panel accepts that greater certainty would be provided by replacing the term "cultural" values with a more specific reference such as "mahinga kai". However, the Panel notes for the same reason as set out in paragraph 4.2.5 above, the rest of the addition sought is not necessary.

4.2.8 The Hokonui Runanga did not attend the hearing or provide any additional material for the Panel to consider. Accordingly, submission S139.059 Hokonui Rūnanga Inc is rejected.

4.2.9 Submission S139.059 Hokonui Rūnanga Inc is accepted in part by amending Objective PA-O1 as follows:

Public *access* is provided to and along *waterbodies* with high recreational, scenic, ~~Ngāi Tahu cultural or~~ *amenity values* or which are valued for mahinga kai and customary practices.

4.3 Objective PA-O2

Submitter (S)	Decision Requested
S109.086 Department of Conservation	Retain PA-O2 as notified
S121.056 Alliance Group Limited	Amend as follows: The District's pathway network is developed in appropriate locations to provide public access to the natural environment including for the gathering of food and mahinga kai activities, to enhance recreational opportunities and to improve the District as a world-class trout fishing destination.

4.3.1 Submission S121.056 Alliance Group Limited raises the same issue considered in paragraphs 4.2.5 and 4.2.6 above and is rejected for the same reasons.

4.3.2 Department of Conservation supports the objective. As no changes are being made as a consequence of the submission by Alliance, submission S109.086 Department of Conservation is accepted.

4.4 Objective PA-O3

Submitter (S)	Decision Requested
S126.112 Southland Federated Farmers of NZ S60.115 Ronald Crispin S68.233 John Baynes S115.113 Kevin Robertson S143.124 Rural Ratepayers Group S148.125 Alistair & Bernadette Hunt	Amend PA-O3: Public access does not result in adverse effects on natural character, indigenous biodiversity, historic heritage, cultural, landscape values, ~~or~~ healthy and safety, or the rights of landowners**.**
S121.057 Alliance Group Limited S122.007 Fulton Hogan S109.087 Department of Conservation	Retain PA-O3 as notified

4.4.1 The submissions from Federated Farmers and others raises the same issue considered in section 3.1 above and are rejected for the same reasons.

4.4.2 Alliance, Fulton Hogan and Department of Conservation support the objective. As no changes are being made as a consequence of the submissions by Federated Farmers and others these submissions are accepted.

4.5 Policy PA-P2

Submitter (S)	Decision Requested
S126.113 Southland Federated Farmers of NZ S60.116 Ronald Crispin S68.234 John Baynes S115.114 Kevin Robertson S143.125 Rural Ratepayers Group S148.126 Alistair & Bernadette Hunt	Amend PA-P2: Maintain and enhance public access by: 1. requiring for urban areas through the subdivision process the provision of esplanade reserves and/or esplanade strips along waterbodies, ~~particularly in urban areas~~ and along public access corridors.
S109.089 Department of Conservation	Retain PA-P2 as notified

4.5.1 The Panel agrees with Mishka Banhidi at paragraphs 97 and 98 of her s42A Report in response to Federated Farmers and others where she noted that the primary provision of public access is obtained through subdivision of lots less than 4 ha, and within the General Rural Zone this would require subdivision consent as a non-complying activity as the minimum lot size is 8 ha.

4.5.2 Rachel Thomas, speaking on behalf of Federated Farmers at the hearing, advised the Panel the preference of the submitters was to amend the objective, but they were satisfied that as the 8 ha minimum lot size and assessment matters in other provisions

in the Plan such that there was little risk that esplanade reserves will be created that impact farming in the Rural zone. Accordingly, submissions S126.113 Federated Farmers and others are rejected.

4.5.3 Department of Conservation supports the objective. As no changes are being made as a consequence of the submission by Federated Farmers and others, this submission is accepted.

4.6 Policy PA-P5

Submitter (S) Further Submitter (FS)	Decision Requested
S121.058 Alliance Group Limited	Retain PA-P5 as notified
S122.008 Fulton Hogan	Retain PA-P5 as notified
S109.092 Department of Conservation	Retain PA-P5 as notified
S101.062 Transpower NZ Ltd	Amend Policy PA-P5 as follows: "Restrict public access in areas that would result in adverse effects on critical infrastructure**,** natural character, indigenous biodiversity, historic heritage, cultural, or landscape values. "

4.6.1 The Panel agrees with Mishka Banhidi at paragraphs 104 and 105 of her s42A Report in response to Transpower where she noted that the concern raised is covered by the reference to health and safety in Objective PA-O3 and Policy PA-P5.

4.6.2 Ainsley McLeod on behalf of Transpower in written evidence provided to the Panel supported the s42A Report recommendation. Accordingly, submission S101.062 Transpower NZ Ltd is rejected.

4.6.3 Alliance, Fulton Hogan and Department of Conservation support the policy. As no changes are being made as a consequence of the submission by Transpower these submissions are accepted.

4.7 Additional Provisions Sought

Submitter (S)	Decision Requested
S143.126 Rural Ratepayers Group S148.127 Alistair & Bernadette Hunt S60.117 Ronald Crispin S68.235 John Baynes S115.115 Kevin Robertson S126.114 Southland Federated Farmers of NZ	Include new policy for education of the public as to where public access is available, and where landowner permission is required.

4.7.1 Mishka Banhidi at paragraph 61 of her s42A Report outlined there is a common misperception over the role of the Public Access chapter, and where and how public access is provided. She acknowledged there is a deficiency with the chapter that does not make this clear and she recommended an addition to the chapter Overview.

4.7.2 Rachel Thomas, in her written evidence on behalf of Federated Farmers, generally accepted the recommendation but sought minor changes to the wording of the additional text. Mishka Banhidi in her supplementary evidence agreed with the changes sought. The Panel has generally adopted the recommended addition, excluding the reference to the mean highwater mark of the sea as that is not relevant to the Gore District.

4.7.3 Submissions S143.126 Rural Ratepayers Group and others are accepted in part by adding to the Overview of the Public Access chapter:

There are no specific rules within the District Plan relating to Esplanade Reserve provision and defaults to the requirements of the RMA. Where land is subdivided and an allotment of less than 4 hectares is created, a 20-metre-wide esplanade reserve must be set aside from that allotment

along the mean high-water mark of the sea, the bank of any *river* or the margin of any lake, as applicable. The esplanade reserve should be vested with Council in accordance with the provisions of the RMA.

The District Plan does not grant the public unrestricted access to private land. Access is primarily provided through Esplanade Reserves, Council reserves, or by negotiating with private landowners, primarily via the Esplanade Strip process.