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 42: Notable Trees

Hearings Panel Members

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Date of Hearing
2 December 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 Notable Trees chapter. The Hearings Commissioners comprising the panel for this hearing were Commissioners Cliff Bolger, Keith Hovell, Glenys Dickson and Maria Barlett.

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 Section 42A Report prepared by Bridget Sim.

1.1.3 Attached is the updated provisions for the Light chapter, referencing changes authorised by this and other Decisions of the 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
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
Standard Tree Evaluation Method	STEM

1.3 Statutory Considerations

1.3.1 Decision 1 – Statutory Overview sets out the legal framework and requirements for preparing a District Plan, as well as case law referred to in submissions and evidence provided to the Panel. This framework will not be repeated in this Decision. Rather, this Decision should be read in conjunction with Decision 1.

1.3.2 In s42A reports to the Panel, the authors are required to consider any alternative provisions put forward in the context of what s32 requires, 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 recommend changes as a result of 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 / or rights-of-reply the Panel has adopted the s32AA analysis contained within those reports, 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 Notable Trees chapter.

1.4.4 No matters of trade competition were raised.

2 The Hearings

2.1 Notable Trees Hearing

2.1.1 The hearing in relation to the Notable Trees chapter was held on 2 December 2024 at the Gore District Council administration building, in Gore. Submissions with regard to the Notable Trees chapter were heard together with the Historic Heritage.

2.1.2 Prior to the hearing, the Panel received a s42A Report from Bridget Sim that considered all submissions lodged to the Notable Trees chapter and relevant definitions. Her report contained comment from arborist Brad Cadwallader on issues raised by submitters, including requests to delete trees from the Trees Schedule.

2.1.3 At the commencement of the hearing, the Panel received supplementary evidence from Bridget Sim responding to matters raised in the evidence and additional information received by the Panel. The Panel sought clarification from her and Brad Cadwallader regarding matters contained in the s42A Report and supplementary evidence at the commencement of the hearing.

2.1.4 Ainsley Jean McLeod provided evidence on behalf of Transpower in which she agreed with the recommendations in s42A Report.

2.1.5 Department of Conservation advised by email it would not provide any additional material to the hearing in the Notable Trees chapter.

2.1.6 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 this decision in relation to particular provisions of the chapter.

3 Trees Provisions

3.1 General Submissions

Submitter (S)	Decision Requested
S146.033 Southland District Council	The submitter supports this section
S146.100 Southland District Council	The submitter supports the Maps

3.1.1 The submissions in support by Southland District Council are acknowledged. As changes have been made to some of the provisions in this chapter and the maps, these submissions are accepted in part.

Submitter (S)	Decision Requested
S136.015 Jenny Campbell	Heritage tree register for both native & introduced species

3.1.2 The Panel accepts the advice of Bridget Sim at paragraphs 74 – 75 of her s42A Report where she noted both indigenous and introduced species are included in the District Plan. Whether a tree is worthy of inclusion in the Plan is determined using the accepted Standard Tree Evaluation Method (STEM) assessment tool, with a single list developed. The Panel does not consider there to be any benefit in splitting the tree register in two. Accordingly, S136.015 Jenny Campbell is rejected.

3.2 Interpretation

Submitter (S) Further Submitter (FS)	Decision Requested
S126.042 Southland Federated Farmers of New Zealand S115.043 Kevin Robertson S143.054 Rural Ratepayers Group S148.055 Alistair & Bernadette Hunt S60.045 Ronald Crispin S68.163 John Baynes	Rename root protection area definition: ~~Root protection area~~ Tree protection zone
FS5.32 Hamish Weir	Allow S126.074 Southland Federated Farmers of New Zealand

3.2.1 The Panel agrees with the submitters and the advice of Brad Cadwallader that in the New Zealand context the appropriate term to use is “Tree Protection Zone”.

3.2.2 Accordingly, submissions S126.042 Southland Federated Farmers of New Zealand and others is accepted by:

(a) deleting the definition of “Root protection area” from the Interpretation Chapter and adding the following:

Tree Protection Zone (TPZ)
Means a circle taken from the centre of the trunk with a radius equal to 12 times the diameter of the trunk measured at 1.4m diameter at breast height (DBH) above ground level.

(b) Replacing “Root protection area” with “Tree protection zone” in Rule TREE-R3.

3.3 Policy TREE-P1

Submitter (S)	Decision Requested
S139.057 Hokonui Rūnanga Inc	Amend the reference to 'Māori cultural expert' to read 'mana whenua representative

3.3.1 The Panel accepts the intent of the change sought by the Hokonui Rūnanga as recommended by Bridget Sim. However, it has reworded the provision in a slightly different way to achieve clarity.

3.3.2 Submission S139.057 Hokonui Rūnanga Inc is accepted in part by amending Policy TREE-P1 as follows:

Identify *notable trees* and notable groups of trees on the basis of an assessment undertaken by an arborist, holding a qualification approved by the NZ Qualification Authority, utilising the Standard Tree Evaluation Method (STEM), ~~or~~ and where relevant, in consultation with a ~~Māori cultural expert~~ mana whenua representative.

3.4 Policy TREE-P4

Submitter (S)	Decision Requested
S101.047 Transpower NZ Ltd	Amend Policy TREE-P4 as follows: "TREE-P4 Subject to being undertaken in accordance with recognised arboricultural practices, or where relevant, Māori cultural practices, enable: (...) (c) there is a ~~high~~ quantifiable risk to people, property, buildings or infrastructure; or (...)

3.4.1 The Panel agrees with Bridget Sim that Transpower has raised a valid point and accepts the comment she has made at paragraph 111 of her s42A Report where she states:

> The submission from Transpower however raises an important point in respect to how ‘high quantifiable risk’ is to be assessed by an individual and by decision makers in a practical sense. The term ‘high quantifiable risk’ is potentially a value that is hard to measure

consistently and does not necessarily provide a practical limit to be referenced in a rule to which this policy relates to. A quantifiable risk refers to the potential for loss or harm that can be measured and expressed in numerical terms.

3.4.2 Bridget Sim, recommended the Panel adopts the approach promoted by Heritage NZ in FS11.025, discussed in Decision 41 at paragraph 3.9.1, to include the following definition of "risk" derived from the Building Act 2004 in the Proposed Plan:

> Risk: In relation to an *historic heritage* item or *notable* tree or trees the risk posed by the item has the same meaning as per Section 133BV of the Building Act 2004 — means a risk to:
> (a) persons, of injury or death; or,
> (b) critical infrastructure, of damage or disruption to its operation or use.

3.4.3 The Panel notes the term "high quantifiable risk" only occurs three times in the PDP, all in the Notable Trees chapter. The Panel therefore prefers an approach that resolves the issue within the provisions themselves rather than by way of a definition. The Panel also notes paragraph (b) in the recommended definition limits impacts on infrastructure to "critical infrastructure" and does not refer to property or buildings. It is the view of the Panel that adopting the recommended approach would potentially narrow the policy.

3.4.4 The Panel concludes that a better approach is to replace the term "significant risk" with the word "danger". Having regard to RMA s32AA the proposed amendment is considered to be a more appropriate way to achieve the purpose of the Act than the notified version of the PDP or that recommended in the s42A Report.

3.4.5 Submission S101.047 Transpower NZ Ltd is accepted in part by amending Policy TREE-P4(2)(c) as follows:

there is a ~~high quantifiable risk~~ danger to people, property, *buildings* or *infrastructure;* or

3.4.6 Consequential to this Decision an amendment is also required to Rule TREE-R2 as follows:

TREE-R2 Removal of any *notable tree* or trees within a notable group of trees in TREE-SCHED
Activity status: Controlled
Where: …
2 There is a ~~high quantifiable *risk*~~ danger to people, property, *buildings* or *infrastructure*.

3.5 Policy TREE-P5

Submitter (S)	Decision Requested
S101.048 Transpower New Zealand Limited	Amend Policy TREE-P5 as follows: TREE-P5 Avoid the removal of a notable tree or trees within notable groups of trees unless at least one of the following circumstances apply: (...) 2. there is a ~~high~~ quantifiable risk to people, property, buildings or infrastructure.

3.5.1 This is the same issue as discussed in section 3.4 above and an identical outcome is appropriate.

3.5.2 Submission S101.048 Transpower New Zealand Limited is accepted in part by amending Policy TREE-P5(2) as follows:

2. there is a ~~high quantifiable *risk*~~ danger to people, property, *buildings* or *infrastructure*.

3.6 Policy TREE-P6

Submitter (S)	Decision Requested
S122.005 Fulton Hogan	Add a cross reference to other relevant objectives and policies, using the wording suggested below or similar: TREE-P6 Avoid damage to notable tree or trees within notable groups of trees, including tree roots, unless provided for by Policy TREE-P4 or TREE-P5.

3.6.1 The Panel considers it inappropriate to cross-reference or qualify policies as sought by Fulton Hogan. Policies give effect to objectives and should be read as a whole. Policy TREE-P6 is a policy of principle, in this case providing direction to the outcome required to be achieved if a consent is sought following non-compliance with Rule TREE-R3 "Activities within the root protection area of any notable tree or trees within a notable group of trees in TREE-SCHED". While other policies may also be relevant, it is when resource consent applications are being considered that regard should be given to the policies and relevant weighting that should apply. It is the view of the Panel that should not occur in the way sought by the submitter. Accordingly, submission S122.005 Fulton Hogan is rejected.

3.7 New Policy Sought

Submitter (S)	Decision Requested
S115.075 Kevin Robertson S143.086 Rural Ratepayers Group S148.087 Alistair & Bernadette Hunt S60.077 Ronald Crispin S68.195 John Baynes S126.074 Southland Federated Farmers of New Zealand	Include a new policy: Consult and engage landowners where a notable tree or trees is located on private land.

3.7.1 The Panel agrees with Bridget Sim at paragraphs 101 and 102 of her s42A Report where she noted that to add trees to the tree schedule would require a plan change and through that process landowner consultation would be undertaken. In addition, the Panel notes that listing a tree on the District Plan Schedule does not require provision to be made for public access nor does it override the right of landowners to control who may access their property. Accordingly, these submissions are rejected.

3.8 Note 1

3.8.1 The Panel has reviewed all Notes in the Plan as part of considering submissions to remove unnecessary duplication and determined that in this 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.

3.9 Rule TREE-R1

Submitter (S)	Decision Requested
S101.049 Transpower New Zealand Limited	The Rule requires a resource consent for an activity that is mandatory. Amend Rule TREE-R1 as follows: "Activity status: Permitted Where: (...) 2. Except for the removal of broken branches, deadwood or diseased vegetation, trimming is of branches which are less than 75mm in diameter; or 3. Trimming is required to: a. remove a potential fire risk associated with the National Grid; or b. for the safe operation or maintenance of the National Grid, including access for these purposes and as required by the Electricity (Hazards from Trees) Regulations 2003. Activity status where compliance is not achieved with: ~~TREE-R1(1) and TREE-R1(2): Controlled Where: 3. The trimming is required under the Electricity (Hazards from Trees) Regulations 2003. ...~~"

3.9.1 The Panel agrees with Bridget Sim at paragraph 145 of her s42A Report in response to Transpower where she concluded on the basis that no notable trees are located within the National Grid and trimming of notable trees under the Tree Regulations requires matters of control to protect the amenity and heritage value of notable trees. The Panel notes Transpower accepted the recommendation in their evidence. Accordingly, submission S101.049 Transpower New Zealand Limited is rejected.

3.10 Rule TREE-R2

Submitter (S)	Decision Requested
S101.050 Transpower New Zealand Limited	Amend as follows: "Activity status: Controlled- Where: 2. There is a ~~high~~ quantifiable risk to people, property, buildings or infrastructure. Matters of control: 3. The necessity of what is proposed, including the benefits to the health, safety and wellbeing of people and communities, and alternatives. Activity status where compliance is not achieved with: ~~TREE-R2(1) and TREE-R2(2):~~ Discretionary Where~~: 3. The removal is subject to a notice issued under the Electricity (Hazards from Trees) Regulations 2003. TREE-R2(3): Non-complying~~

3.10.1 In paragraph 3.4.6 above, “high quantifiable risk” has been replaced with “ danger” and the expectation of the Panel is this will achieve the outcome sought by Transpower with regard to clause R2(2). It is the view of the Panel that change also incorporates part of what Transpower is seeking in Matters of Control (3).

3.10.2 The Panel does not support the requested change to Matters of Control (3) as issues such as the well-being of people and communities is potentially subject to wide interpretation diverging from what the Panel considers the intent of the rule to protect the values associated with trees. Nor does the Panel accept the request to amend the status of the Rule, removing reference to the Electricity (Hazards from Trees) Regulations 2003 for the reasons given by Bridget Sim. And, as noted in paragraph 149 of the s42A Report, the Regulations only direct the cutting or trimming of a tree only to the extent necessary, and do not direct the felling of trees.

3.10.3 Accordingly, submission S101.050 Transpower New Zealand Limited is accepted in part by adopting the decision in paragraph 3.4.6 above.

Submitter (S) Further Submitter (FS)	Decision Requested
S85.013 Environment Southland	Include an ability to remove trees if they become weedy and are shown to cause wilding issues. Additionally, the ability to remove trees in flood plains is needed should they pose a problem.
FS5.17 Hamish Weir	Allow S85.013 Environment Southland

3.10.4 The Panel accepts the advice of Brad Cadwallader at paragraphs 83 and 84 of the s42A Report where he states that although certain species can be problematic due to their ability to self-seed, this depends upon the location of the tree, and the trees potentially in this category in the Gore District are all located in well maintained areas so the risk of wilding trees occurring is minimal. Further, there are no trees on the register near waterways, thereby avoiding the risk of waterborne dispersal. Brad Cadwallader also highlighted STEM assessments consider the species of the tree and their ability to self-seed. Environment Southland did not attend the hearing to provide any additional information or assessment. Accordingly, the Panel agrees with the recommendation of Bridget Sim that submission S85.013 Environment Southland be rejected.

3.11 Trees Schedule

Submitter (S)	Decision Requested
S65.002 Gore District Council	Update the Notable tree list. Some trees on the Notable Tree List have died while others have been removed.

3.11.1 The Panel was advised that between 30 January 2024 and 10 May 2024 site visits were undertaken to all the listed trees on the schedule to determine if the tree or group of trees were still present and in accordance with the individual STEM reports. It was determined five trees had been removed and as these were all included on the register in the Operative District Plan that is a matter for the regulatory department of the Council to consider. The Panel agrees these trees should be removed from the PDP Register.

3.11.2 Bridget Sim in her s42A Report at paragraph 78, advised TREE-65, a kauri, with resource consent approval had been relocated to Dolamore Park. The Panel agrees the details regarding the location of this tree required updating.

3.11.3 The site visits undertaken also established that the details associated with the scheduled trees at 11 Norton Street (TREE 59) and 30 Huron Street (TREE 94) have been updated. The Panel agrees these details should be amended as a minor factual change.

3.11.4 Submission S65.002 Gore District Council is accepted by updating the Tree Register as follows:

(a) Deleting Notable Trees 45, 68, 69, 85, 86 and 87;

(b) Amending the location of TREE-65 from 136 Broughton Street to Dolamore Park Reserve;

(c) Correcting the details of the scheduled trees at 11 Norton Street (TREE 59) and 30 Huron Street (TREE 94);

With consequential changes in the numbering.

Submitter (S)	Decision Requested
S41.001 Michele Gentle	Request TREE-59 be removed from the Register. Concerned that tree on property is at a size that in high winds could cause severe damage to house and power lines nearby. Tree blocks sunlight from gardens and house. Keith McRobie viewed the tree and it is his belief it is a type of deciduous tree not an Evergreen Ash.

3.11.5 This submission is assessed at paragraphs 88 – 93 of the s42A Report. The Panel notes following testing, the details of the species has been amended and that an updated STEM Assessment assigns the tree a high score, with an 'excellent' rating in vigour and vitality, being in excellent condition, stable and not a safety risk. In the absence of any contrary technical evidence this submission is rejected.

3.11.6 The Panel does note, as discussed in the s42A Report, if the landowner has concerns regarding the tree then the matter should be discussed with Council staff. Advice is freely available, and some assistance may also be forthcoming.

Submitter (S)	Decision Requested
S85.014, S85.015, S85.016 Environment Southland	Remove Silver Birch TREE-14, TREE-23 and TREE-81 as is a known weedy tree and could spread

3.11.7 The Panel accepts the advice of Bridget Sim and Brad Cadwallader at paragraphs 82 – 85 of the s42A Report, noting the probable error in referring to TREE-23 when the likely focus of the submitter is TREE-24. Brad Cadwallader, while accepting birch trees

can be problematic, considers the well-maintained urban and school locations of these trees will ensure spread will not occur. In the absence of any contrary technical evidence submissions S85.014, S85.015, S85.016 Environment Southland are rejected

Submitter (S)	Decision Requested
S49.001 Gore District Memorial RSA (Inc)	Allow the removal of the two beach trees (TREE-9) on the south-western entryway to the cenotaph. The root system is growing under the pathway causing an uneven surface and is a safety hazard to community/veterans. The current trees drop large branches and debris. RSA intends to replace the trees with a Gallipoli pine from the veteran community of the RSA. This pine has been seeded from a tree on the Gallipoli peninsula holding large significance to past veterans and community of the district and does not grow as large as the existing trees with a maximum height of 5 meters.

3.11.8 The Panel acknowledges the concerns of the RSA and their desire to replace the trees. However, the current District Plan process is not the appropriate one to adopt given the current high rating of the trees and an absence of technical advice to the contrary of that provided by advisers to the Panel. Accordingly, submission S49.001 Gore District Memorial RSA (Inc) is rejected.

3.11.9 The Panel wishes to draw the attention of the RSA to comments made by Bridget Sim at paragraph 86 of her s42A Report where she describes that the rules under the chapter do provide a consenting pathway to enable notable trees listed to be removed under TREE-R2 if the tree(s) no longer meet the STEM threshold to be classed as notable; or there is a danger to people, property, buildings or infrastructure. The submitter may wish to discuss this further with Council staff.