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 44: Natural Hazards

Hearings Panel Members

Keith Hovell

Glenys Dickson

Cliff Bolger

Maria Bartlett

Date of Hearing
10 - 11 March 2025

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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 submissions lodged to the Natural Hazards chapter. The Hearings Commissioners comprising the Panel for this hearing were Commissioners Keith Hovell, Maria Bartlett, Cliff Bolger 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, we have adopted the recommendations and the underlying evaluation contained in the section 42A Report prepared by Brett Osborne.

1.1.3 The updated provisions for the Natural Hazards chapter are attached, 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 Environment Southland lodged a number of submissions opposing changes to the zoning within areas subject to actual or potential inundation where the PDP provided for more intensive development than allowed under the provisions of the Operative District Plan (ODP). These submissions are considered within each of the zone decisions.

1.1.5 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.

1.1.6 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
Australian Emergency Management Institute Guideline	AEMI Guideline
Environment Southland	ES
Fire and Emergency New Zealand	FENZ
Hearings Panel	Panel
Hokonui Rūnanga Incorporated	Hokonui Rūnanga
New Zealand Transport Agency Waka Kotahi	NZTA
Operative District Plan	ODP
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

Full Text	Abbreviation
Southland Regional Policy Statement	RPS
Tonkin and Taylor	T+T

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 Natural Hazards 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.

2 The Hearing

2.1 Introduction

2.1.1 The hearing in relation to this topic was held on 10 – 11 March 2025 at the Gore District Council administration building, in Gore. Set out below is a summary of the material provided to the Panel, all of which is available on the Council's web site.

2.2 Section 42A Report and Supporting Material

Tonkin and Taylor (T+T) Reports

2.2.1 T+T was engaged by the Council to provide expert evidence relating to the Natural Hazards chapter and possible upzoning of areas subject to flooding, producing the following reports

- Gore District Council Proposed Plan Change Rural Lifestyle and Settlement Zones - Flooding Assessment, authored by Tonkin & Taylor, June 2024
- Gore District Council Proposed Plan Change Industrial Zones - Flooding Assessment, authored by Tonkin & Taylor, July 2024
- Gore District Council Proposed Plan Change – Rural Buildings in Inundation Areas, authored by Tonkin & Taylor, January 2025
- Gore District Council Proposed Plan Change – Mataura River Flood Model - Commentary, authored by Tonkin & Taylor, February 2025
- Gore District Council Proposed Plan Change Māori Special Purpose Zones – Flooding Assessment, authored by Tonkin & Taylor, February 2025

2.2.2 Those reports focusing on site and zone specific issues have been utilised by the Panel in considering whether changes in zoning to allow more intensive development (upzoning) should proceed. Environment Southland lodged a generic submission opposing upzoning changes in the PDP and this is considered in the decisions for each of the zone chapters.

2.2.3 The Mataura River Flood Model – Commentary report was authored by Richard Brunton. He noted ES commissioned Land River Sea Consulting (LRS) to develop a detailed flood model of the Mataura River with the methodology and results summarised in the LRS report 'Matura River Flood Modelling', dated 29 October 2024. The Commentary report then provided a technical overview of the limitations of the model, both stated in the LRS and arising from the review by T+T. The overview noted that while the model has undergone a peer review process and review recommendations have been implemented, the model hydrology was based on a flood frequency analysis of river flow gauges undertaken by Environment Southland. The model was at that time being reviewed by NIWA, and that may result in a different hydrology estimate.

2.2.4 The Report Summary (section 4.1) also stated:

> Taking into consideration the limitations of the model, in our opinion, the ES flood model provides an understanding of potential flooding within Gore and Mataura townships for the 2% and 1% AEP flood events based on current information including historical river flows.
>
> Based on the ES flood model results, there is a risk of flooding to both Gore and Mataura townships in a 1% AEP flood event, caused by flood water overtopping the stop banks and flowing into the townships. The model results indicate that should a stop bank breach also occur during the flood event, the risk of flooding could be higher, depending on the location of the breach.
>
> Flood hazards within Gore and Mataura during a 1% AEP event vary, but there are significant areas of H3 to H4 hazard and in some areas, H5. The hazard indicates that for a significant area of Gore township and most of Mataura township, flooding may be unsafe for children, the elderly and vehicles, and in some parts all people, with some buildings also vulnerable to structural damage.

It may be feasible to mitigate flooding for new development within the stop bank protected areas of Gore and Mataura townships during a 1% AEP event, where the flood hazard is lower (H3 to H4). We recommend that provisions are made for new development within these areas to safeguard people and property from flood hazards, which could include the following:

- Setting minimum floor levels for new development within the stop bank protected area.
- Ensuring people can escape the stop bank protected area in the event of a flood event. i.e. emergency egress.

The ES flood model does not currently consider the potential effects of climate change. We recommend that if the ES flood model is used to inform setting minimum floor levels, that the effects of climate change are considered. This would typically require the model to be rerun with climate change adjusted hydrology (i.e. river inflows).

Section 42A Report

2.2.5 This Report was prepared by Brett Osborne who has over 24 years' experience in planning and resource management, including policy development and associated report and evidence preparation. His report was supported by the following technical reports:

- Gore District Council Proposed Plan Change – Economic Assessment, authored by Savvy Consulting, January 2025
- Email from Council's Economist, Ms Natalie Hampson, of Savvy Consulting, dated 29 January 2025

2.2.6 As part of the available information informing the Report, Brett Osborne referred to the ES modelling that categorises depth and velocity of water for different event scales, and which also includes the stop bank infrastructure. However, he noted it does not include climate change or cover the entire flood plain thereby limiting its ability to be used immediately in Plan making and, given natural justice issues, should not be introduced directly into the PDP hazard maps. Despite this, Brett Osborne considered it still represents the most recent and comprehensive assessment of flood hazard risk to the district and once the catchment modelling is complete it would provide an ability to undertake a future variation or specific plan change to update the natural hazard chapter.

2.2.7 Brett Osborne stated the notified flood hazard overlays relate to identified flood hazard areas over time based on historic events, observed extents and flood depth recordings with all land within the Actual and Potential Inundation overlay treated at the same hazard risk status. As such, his advice was that the policy and rule framework of the District Plan must take a precautionary approach to flood hazard risk in accordance with policy NH.4 of the RPS until more robust flood model mapping is available. In his view however there is still an ability to distinguish more sensitive activities for subdivision and development relative to the hazard risk area, recognising residential activities are more sensitive to hazards than non-habitable buildings.

2.2.8 Much of the Report responds directly to submissions to individual Plan provisions, and where relevant the advice of Brett Osborne is noted and had regard to considering those submissions.

2.2.9 A key theme contained throughout the Report relates to the statutory requirement for the Council to give effect to the provisions of the Regional Policy Statement in particular Policy NH.5 that states:

Policy NH.5 – Avoid areas of significant risk from natural hazards

Avoid new subdivision, development and placement of critical infrastructure in areas at significant risk from natural hazards, unless:

(a) there is no reasonable alternative, in which case critical infrastructure must be designed to maintain, as far as practicable, its integrity and function during natural hazard events; or

(b) avoidance is impossible or impractical and adverse effects are mitigated to an acceptable level; or

(c) subdivision is solely for the purpose of boundary adjustments.

2.2.10 The explanation to the Policy in part states:

Areas potentially at significant risk include but are not limited to:

- areas that have flooded to a depth of more than 100 millimetres previously (marine and riverine inundation but excluding urban stormwater inundation in reticulated areas) and for which the likelihood of inundation has not been reduced by flood alleviation works designed to protect the area from floods with a 2% or less annual exceedance probability (AEP);

2.2.11 It is the view of Brett Osborne that the RPS policy direction is not absolute and does not explicitly require avoidance of subdivision and development and furthermore, the degree of the natural hazard impact on an activity is dependent on its sensitivity. He recommended amendments to the notified PDP that in his view gives effect to the RPS provisions.

2.2.12 Brett Osborne clarified that the natural hazard provisions as notified do not apply within the Stop Bank Protection area but given that the modelling undertaken by both T+T and ES predict the stop banks within Gore and Mataura are expected to overtop in a 1% AEP (1 in 100 year) event, he agrees with Tonkin & Taylor that provisions should be included in the Plan to manage development within the Stopbank Protection Area. He recommended that:

(a) extensions to existing sensitive activities should be enabled as a permitted activity subject to compliance with a minimum floor level above the 0.5% AEP flood level, otherwise defaulting to a restricted discretionary activity.

(b) a resource consent pathway be required for new buildings for sensitive activities within the stop bank protection area as a restricted discretionary activity and a minimum finished floor level above the 0.5% AEP flood level. Where the minimum floor level was not met then he recommended the activity be non-complying.

2.2.13 Outside of the Stopbank Protection Area he recommended:

(c) in the General Rual Zone new accessory non-habitable buildings used for primary production be permitted subject to limits on size and setbacks from dwellings and flood protection works.

(d) subject to minimum finished floor level above the 0.5% AEP flood level the following be a restricted discretionary activity, defaulting otherwise to non-complying:

- A sensitive activity and located within the SETZ, RLZ or MPZ;
- A sensitive activity and located within the GRZ of Mataura; or
- Not a sensitive activity within all zones.

2.2.14 At paragraphs 118 and 119 of his Report, Brett Osborne discussed the issue of “managed retreat” as follows:

> MfE describes managed retreat as moving homes, businesses and sites of cultural significance or taonga out of harm's way in a carefully planned process. That somewhat understates a very complex process that requires significant, pointed and ongoing engagement with the community to explore the issues and implications before any attempt should be made to regulate the actions. The Report of the Expert Working Group on Managed Retreat identifies the lack of national direction on relocation, unclear roles or responsibilities including funding responsibilities and insufficient legal powers to coordinate a planned approach as representing some of the challenges to managed retreat.
>
> Notwithstanding the above, the concept of retreating from a hazard risk area has obvious merits. However, the feasibility of such an option requires investment in time, resources and potentially funding. Whether managed retreat is "cheaper" than mitigation has not been specifically investigated but advice from the Council's consultant Economist (Attachment 5, Appendix C) is that the average cost of mitigation is minor with respect to total development cost and yet the benefits are significant in terms of resilience from future flood hazard events. This is based on the PDP provisions which represent managing hazard risk in the immediate future (together with flood protection works managed by ES) and therefore does not preclude Council and community considering managed retreat as a longer term option.

Economic Assessment

2.2.15 Natalie Hampson has worked in the field of economics for over 20 years for commercial and public sector clients with a particular focus on economic assessment within the framework of the RMA. She provided a statement of evidence underpinned by a detailed spatial analysis of residential zoned land both inside and outside of the Operative District Plan (ODP) flood hazard overlays focussing on the Stopbank Protection Area and the Actual and Potential Inundation Overlay Area as it applies across the main residential zones of the PDP.

2.2.16 Natalie Hampson concluded that when measured against the status quo the net additional economic benefits of the rules recommended in the s42A Report for buildings used for sensitive activities outweigh the net additional economic costs. She therefore supported the recommended rules that apply to buildings (or additions) used for sensitive activities from an economic efficiency perspective, stating:

> Key to reaching this conclusion is that the recommended rules will not constrain Gore District or any of the individual townships or settlements from achieving projected dwelling growth over the life of the PDP. The transaction and compliance costs attributable to each rule are considered minor and would not be expected to impact the feasibility of dwelling development in most cases.
>
> The opportunity cost on the Mataura General Residential Zone is a significant effect, particularly on owners of vacant land within the overlay area of that zone. This in turn may create a minor opportunity cost on a compact urban form in Mataura over the medium and long term relative to the status quo provisions.
>
> However, the economic benefits attributable to the recommended rules for buildings used for sensitive activities – both quantified and unquantified – are potentially significant. This includes the avoided (or reduced) cost that may be incurred to remediate flood damage on new dwellings that may have developed in flood overlays (with little or no mitigating factors) under the status quo provisions. Improving the resilience of new additions to existing dwellings in the flood overlays also generates positive benefits that would not be achieved under the ODP hazard provisions.
>
> I understand that some minor amendments to PDP notified zone boundaries have been recommended to remove some areas/parcels from more significant flood risk that may not be effectively mitigated. I would support such amendments that limit the number of sensitive activities (or buildings in general) exposed to flood risk. This would further lower

the economic costs measured in my evidence and would still not have any material effect on projected district growth over the medium term.

While the recommended provisions maintain the status quo and do not seek to further regulate the development of new buildings for non-sensitive activities, including within the district's business zones, I have considered the economic efficiency of a rule that required a prescribed final floor level (FFL) as a performance standard. I do not consider that a blanket FFL rule for buildings used for non-sensitive would be efficient from an economic perspective given the range of zones this potentially applies to. The economic costs of such a rule may be high and the economic benefits relatively low.

Landowners in each zone may be best placed to consider how flood risks could be mitigated for buildings used for non-sensitive activities while still creating functional buildings for the activities intended for those zones and buildings. Policy direction or performance standards that enabled development but provided scope for this type of site specific determination of flood mitigation factors to occur would be supported on the basis that it may help generate some further net economic benefits.

2.2.17 Following completion of the s42A Report, Natalie Hampson was requested to comment on the economic implications of amending the status of residential activities from non-complying to restricted discretionary. The conclusion of her response was as follows:

> Overall, I consider the proposed change to RDA status is supportable and better helps the Mataura GRZ community to provide for their economic wellbeing. While it will expose additional households to flood risk (by allowing growth in the Actual and Potential Inundation Overlay), the proposed rule achieves the benefit of better resilience to the effects of future flooding for any new sensitive activities developed over the life of the PDP.

2.2.18 In her presentation at the hearing, Natalie Hampson advised she did assess the compliance cost of achieving a 0.5% floor level, however, did not have any information on what those floor levels would be. Rather she relied on advice from T+T that the floor level proposed would mitigate the effect of flood damage and construction methods would allow different floor level heights. She accepted there is a degree of uncertainty and if the intent is to adopt the ES model based on the 0.5% AEP then additional economic analysis should be undertaken. She also stressed that the maps should be available to the public with clear information on how to interpret them so landowners can make informed decisions on future development options of their land.

2.3 Evidence and Submissions from Environment Southland

Kate Dickson

2.3.1 Kate Dickson, legal counsel for Environment Southland, provided precirculated written submissions for the Panel to consider and appeared at the hearing by video link. Arising from the s42A Report she considered a key issue was the scope to include the latest modelling plans from Environment Southland in the Gore District Plan to assist in identifying what the Southland Regional Policy Statement referred to as "significant risk".

2.3.2 Kate Dickson cited case law, including *Re Vivid Holdings Ltd (1999) 5 ELRNZ 264, Albany North Landowners v Auckland Council 2017 NZHC 138, Well Smart Holding (NZQN) Limited v Queenstown Lakes District Council 2015 NZEnvC 214, Campbell v Christchurch City Council 2002 NZRMA 332 (EnvC)*]. Of note she stated at paragraphs 22 and 23 of her legal submissions:

> An amendment can be anywhere on the line between the proposed plan and the submission. Consequential changes can flow downwards from whatever point on the first line is chosen, as a submission may only be on an objective or policy, but there may be methods or rules which are then incompatible with the new objective or policy in the

proposed plan change as revised, which would then also require an amendment, as a consequential change. [*Campbell v Christchurch City Council 2002 NZRMA 332 (EnvC)*]

Further, amendments required for clarity and refinement of detail are allowed on the basis that such amendments are considered to be minor and unprejudicial. [*Oyster Bay Developments Limited v Marlborough District Council EnvC C081/2009*]

2.3.3 It was the submission of Kate Dickson that the request of Environment Southland to include the most recent flood hazard data in the PDP is consistent with its submission points seeking to give effect to the SRPS. In particular, submission S85.087 to Policy NH-P1 referred to work being undertaken to develop updated modelling in its submission on NH-P1, and that this submission point applies to all maps that show flood inundation. She referred to the further submission by Hamish Weir supporting the ES submission and submitted this "demonstrates that the prospect of this modelling and its influence on the PDP provisions was apparent to other submitters, such that prejudice does not arise".

2.3.4 Kate Dickson added that if the Panel decides there is no scope to include the latest maps it would be appropriate that reference to the hazard risks as identified in the Environment Southland Model should be contained within the PDP. That would provide a trigger to both the public and the Council to consider the most relevant and recent information available when planning development.

2.3.5 Kate Dickson also referred to various provisions in the Regional Policy Statement noting the Council must give effect to these, [*Environmental Defence Society Inc v New Zealand King Salmon Co 2014*] in particular the requirement to avoid significant risk and that is best achieved by adopting the hazard classification in the ES model. She submitted that such an approach is consistent with the precautionary approach provided for within the RPS and also recognises that the management of significant risks from natural hazards is a matter of national importance under the RMA.

2.3.6 In reply to questions, Kate Dickson accepted that the explanation to RPS Policy NH5 was secondary to the policy itself and if more refined criteria were available to determine significant risk, as set out in the ES model, then it is appropriate to use that.

<u>Matthew Gardner</u>

2.3.7 Matthew Gardner is the managing director of Land River Sea Consulting Limited, the company commissioned by Environment Southland to build a 2D flood model of the Mataura River. He appeared at the hearing by video link.

2.3.8 The written evidence of Matthew Gardner provided an overview of the process undertaken to construct the model. He also described how the model was calibrated using the February 2020 flood which was the biggest flood on record at the time and the 1999 Mataura River flood debris survey information. In his view the model calibrated well overall and while there was uncertainty for flood levels through the narrow Mataura Gorge area, the results outside of this area, including through the Mataura residential and rural areas were in his view reliable.

2.3.9 Matthew Gardner advised that the model shows the existing flood protection scheme fails at 1% AEP events, leading to significant risk in Gore and Mataura. The primary cause of flooding in Gore is due to a lack of capacity under the railway bridge at Gore and while the Boundary Creek stop bank has been recently raised, it is still likely to overtop in a 1%AEP event, causing significant flooding to the main Mataura township. He also referred to breach scenarios that show extensive flooding, emphasising the need for stop bank maintenance and evacuation planning.

2.3.10 In reply to questions from the Panel, Matthew Gardner indicated rerunning the model at 0.5% AEP was straight forward but he did acknowledge existing historic data used to achieve the 1% modelling created some uncertainty and greater uncertainty occurs at the 0.5% modelling, although it is standard practice in NZ.

Jo Paterson

2.3.11 Jo Paterson is the Flood Risk Management Project Manager at Environment Southland and she appeared at the hearing by video link. It was her recommendation that the recent flood modelling completed on behalf of Environment Southland for the Mataura River floodplain be used to inform the PDP. She stated this model includes the 2024 Tonkin + Taylor flood modelling and the 2024 Land River Sea flood modelling as well as knowledge of the flood events across the Mataura floodplain outside of these areas.

2.3.12 Jo Paterson noted there are some refinements required to improve the data inputs as well as including climate change projections, but despite this it still forms the most accurate picture of flood hazard and risk in the Gore District and the current level of service for the Environment Southland flood scheme assets. In her view the ES model is a step above that prepared by Tonkin and Taylor, but that model should be used to inform the PDP provisions outside of the area covered by the ES Model. It was her view that both models present more accurate and detailed information on flood hazard risk than the maps currently included in the PDP.

2.3.13 Jo Paterson explained that in assessing the degree of risk there was no NZ standard currently available. Both ES and T+T referred to the Australian Institute for Disaster Resilience (AIDR) 2017, Guideline 7-3 Flood Hazard and that should be adopted by the Council as well. That guideline determines the degree of flood hazard posed to people, buildings, infrastructure and the environment having regard to the flood extent, depth, velocity but also the rate of rise of flooding (how quickly the water is rising), isolation and access to help. She considered all these factors as important in determining the vulnerability of communities, the environment and critical infrastructure to flooding and are important considerations in managing flood risk.

Marcus Roy

2.3.14 Marcus Roy, the Policy and Government Reform Manager at Environment Southland, attended the hearing in person. In his written statement of evidence, he referred to Policy NH.2 of the RPS that requires where practicable, areas subject to known natural hazard risk to be identified in district plans, and that the most up-to-date information available be used. He considered the Tonkin & Taylor and Environment Southland Models provide an accurate overview of the potential flood risk to the Gore and Mataura townships and while the Environment Southland Model does not extend across the whole District, the Tonkin & Taylor one does. In his view, these models are far superior to the natural hazard maps provided in the notified version of the PDP as they show depth and velocity.

2.3.15 Marcus Roy recommended adoption of the Australian Emergency Management Institute (AEMI) Guideline 2014 Risk Categories, summarised as follows:

Risk Category	Description
H1	Relative benign flow conditions. No vulnerability constraints.
H2	Unsafe for small vehicles
H3	Unsafe for all vehicles, children and elderly.
H4	Unsafe for all people and all vehicles.
H5	Unsafe for all people and all vehicles. Buildings require special engineering design and construction.

H6	Unconditional dangerous. Not suitable for any type of development or evacuation access. All building types considered vulnerable to failure.

2.3.16 Marcus Roy considered this guideline supports the implementation of the RPS as it identifies where the flood risk should be considered as significant and where there is a lower risk exposure. In his view hazard classification "H3" and above should be classified as a significant risk due to it being unsafe and (therefore a risk to life) for children and elderly and will cause wide spread damage to property. These classes are shown on both the ES and T+T models and adopting these will provide a level of certainty about management of flood risk within the District, avoiding the need for assessments when making an application for resource consent, and also providing confidence that the provisions of the RPS have been given effect to. While the RPS included a definition of significant risk, Marcus Roy considered the AEMI Guideline a more robust and preferable approach.

2.3.17 Marcus Roy referred to the 2018 Southland Climate Change Impact Assessment that outlined Southland is likely to experience more frequent heavy rain days and increases in accumulated five-day rainfalls towards the end of this century adding the Environment Southland Model clearly demonstrates the flood banks in their current form will not be able to withstand a modern day 1% or worse AEP event.

2.3.18 Marcus Roy also stressed there is often a perception in the community that "stop banks" will stop floodwater and land behind the flood banks is safe to build on, but there is still a residual flood risk behind the flood banks and a permissive planning regime can exacerbate the intensity of development and therefore the impact of flood inundation. He advocated a precautionary approach as directed in Policy NH.3 of the RPS, using up-to-date information to establish a "fit for purpose" natural hazard framework in the PDP that manages development around known risk. He acknowledged this approach will not disrupt existing use rights for existing activities located in floodable areas, rather it seeks to enable development to occur in a way that creates a resilient community in the medium and long-term.

2.3.19 Marcus Roy noted RPS Policy NH.5 directs avoiding areas of significant risk and to give effect to that he stated new subdivision and development should be limited to locations that do not have a significant risk (i.e. H2 and below). Having regard to other RPS provisions he would also expect mitigation measures for new critical infrastructure that has a functional need to be located within an area of medium or high risk and mitigation provisions should be included in the PDP for when small scale developments such as additions, alterations and boundary adjustments are proposed within flood prone area.

2.3.20 Marcus Roy was of the opinion that the PDP natural hazards chapter should be a policy only chapter and natural hazard rules should be located within the respective zones. He considered that any upzoning, expanding zones, identifying development areas and enabling growth and development in identified natural hazard areas is not taking a precautionary approach nor "avoiding" the natural hazard risks.

2.3.21 Finally, Marcus Roy recommended using the term "flood banks" rather than "stopbanks" because they do not stop floods. Rather, they provide a level of protection against floods.

2.3.22 In his oral presentation to the Panel, Marcus Roy stated the modelling also shows secondary flow paths during a flooding event. Additionally, the prospect of insurance withdrawal was not envisaged when the RPS was prepared and in his view insurance withdrawal would align as a proxy to the RPS category of significant risk.

2.3.23 Marcus Roy also highlighted at the hearing that RPS Policy NH4 sets avoidance as a priority, and then what can't be avoided is then managed (for example floor level requirements), and thirdly infrastructure is used to support existing development. His view of the circumstances where management is appropriate is narrower than Brett Osborne in the s42A Report. For example, he does not consider it practical, and likely not economic, to raise dwellings more than 1.5m above ground level and meet the other requirements of Policy NH-P5.

2.3.24 In reply to questions from the Panel, Marcus Roy stated that even if funding was available to increase the height of flood banks there is no guarantee that would give security, adding despite the considerable public investment in existing towns throughout NZ, development should be encouraged to locate elsewhere outside areas of significant risk. He also noted the Gore Rail bridge embankment is currently higher than the main street of the Gore township and raising it would limit the ability of flood waters to flow back towards the east from the built up area.

2.3.25 Marcus Roy stated that the 1% model data is the version he considers should be included in the District Plan and that aligned closely with the limits of what was shown in the Plan at notification, so in having regard to scope the areas are almost the same. He added that the benefit of the model was to also show depth and velocity, which are factors that should be taken into account, and H3 and above in his view shows areas of significant risk. He also highlighted that regard needs to be given to the ease and time taken to evacuate areas, especially for the elderly, expressing concern that evacuation itself for some elderly can give rise to additional health concerns.

2.3.26 At the request of the Panel, Marcus Roy introduced the GNS Report "Southland Regional Natural Hazard Provision Review" (2020) noting the provisions in the report recommending the adoption of mapping as a technique to manage flooding issues in district plans and in his view that is relevant to the issue of scope. He added that if the Panel concludes it cannot adopt the maps and classifications used in the ES modelling then the amendments recommended in the supplementary evidence of Brett Osborne is the next best position until a plan change is undertaken, but there is currently no "avoid" policy applying to subdivision, use and development within the stop bank protection area. He therefore does not support the reference to "manage" in Policy NH-P2. He would prefer "avoid".

2.3.27 Marcus Roy also addressed the Panel regarding the design of the flood banks, noting the advice of Jo Paterson that these are not designed to cope with extended periods of overtopping, and if that occurred the integrity of the structures would be at risk resulting in breaches.

2.4 Evidence and Submissions from Other Parties

KiwiRail

2.4.1 Louise Taylor, who has more than 25 years' experience within the planning and resource management field appeared by video link on behalf of KiwiRail. Her written evidence included relevant provisions from the Regional Policy Statement. She also referred to the government's 2022 Emissions Reduction Plan (ERP) that was a matter for the Council to have regard to, noting the ERP supported the decarbonisation of freight and this was consistent with the NZ Rail Plan to invest in the national rail network to restore rail freight and provide a platform for future investments for growth. In reply to a question from the Panel she did acknowledge the 2020 ERP had been superseded by the current government and the provision she referred to was not now included.

2.4.2 Louise Taylor advised she supported the majority of the recommendations in the s42A Report to the KiwiRail's submissions. However, she sought the following additional changes:

- Amending the definition of critical infrastructure to include "rail activities within the rail corridor".
- Amending NH-R4 (previously EW-R13) to enable work within the Mataura River Floodway to support rail network activities
- Amending NH-R8 and NH-R9 to exempt all infrastructure.
- Adding a specific exclusion for activities supporting the rail network in INFR-R9(1)(c) (as it applies to the Mataura River Bridge)

Telecommunication Companies

2.4.3 Tom Anderson appeared by video link representing Chorus, Connexa, FortySouth, One NZ and Spark (the Telcos). In a written statement of evidence, he referred to the single submission point lodged by the Telcos, seeking an exemption for telecommunications infrastructure from the provisions within the Natural Hazards Chapter of the PDP. He advised that while the reporting officer had accepted the submission the recommendation did not give full effect to the relief sought. That recommendation did exempt activities under the NESTF but did not take into account that the NESTF did not extend to installing facilities on private land in urban areas and as a result resource consents would still be required in some cases.

2.4.4 Tom Anderson stated the issue could be resolved by simply providing in Note 3 for telecommunication infrastructure to be exempt from complying with the provisions of the Natural Hazards chapter. He provided an assessment under s32AA noting this is the most efficient and effective option available.

2.4.5 In response to questions from the Panel, Tom Anderson advised that best practice and always the first choice is to avoid placement of telecommunication infrastructure within hazard areas, but that is not always practical. If a hazard area location is used then resilience is built into the design to avoid any flood waters affecting the installation.

Alliance Group Ltd

2.4.6 Doyle Richardson appeared in person on behalf of Alliance, noting the outstanding concerns of Alliance related to new recommended Policy NH-P9 and new recommended Rule NH-R6. In a written statement of evidence, he stated the new recommended Rule NH-R6 has broadened the scope of buildings requiring consent from sensitive activities to any new or converted buildings within the Actual and Potential Inundation Areas, regardless of the type of activity that will be contained within the building. He also noted the activity status if the relevant standards are met has also changed from being permitted (falling to restricted discretionary if the standards are not met) to restricted discretionary (falling to non-complying if the relevant standard is not met).

2.4.7 Doyle Richardson observed that achieving these minimum floor levels for a 0.5% AEP event will be potentially challenging for any industrial development by Alliance across much of the Mataura Plant, and as such, any new buildings will likely require consent as a non-complying activity. He considered this presents an overly restrictive consenting pathway. It was his recommendation that:

> … the restricted discretionary standards for Rule NH-R6 be amended so that the requirement to achieve a finished floor level above the 0.5% AEP flood design level only

apply to sensitive activities. This would mean that within the Actual and Potential Inundation Area, the construction of any new buildings for non-sensitive activities would be a restricted discretionary activity provided that the building platform is located outside the stream channel. I also recommend that the activity status for non-sensitive activities that do not meet the restricted discretionary standards be amended from non-complying to discretionary to reflect that non-sensitive activities are typically less vulnerable the effects of flooding and inundation.

2.4.8 Doyle Richardson also considered the matters of discretion for any buildings that met the restricted discretionary standards should be written as performance standards to be achieved, as opposed to matters of discretion to be assessed against, and as a result, are not straight forward to satisfy. As such, he sought amendments as follows:

Matters of Discretion:

1. The flood effect from a 0.5% AEP event for non-sensitive activities~~; is low due to the mitigation or~~
2. ~~The design does not increase the f~~ Flood effects on people and property or displacement of flood waters onto adjacent sites;
3. ~~That people can safely evacuate~~ Evacuation of properties during a 0.5% Annual Exceedance Probability flood event.

Activity status where compliance is not achieved for buildings containing nonsensitive activities: Discretionary.

Activity status where compliance is not achieved for buildings containing sensitive activities: Non-Complying

2.4.9 With regard to new recommended Policy NH-P9 Doyle Richardson stated the hydro-electric scheme located on the Mataura River (within the Mataura River Floodway) is classed as critical infrastructure and as such, any works to the hydro-electric scheme is provided for as a discretionary activity in the Infrastructure Chapter. For consistency an exemption should be provided in the policy.

2.4.10 In reply to questions from the Panel, Doyle Richardson agreed that the Alliance hydro-electric scheme did have a functional need and operational need to locate within the floodway and added that the rule linked to the policy would not disadvantage Alliance. Arising from the discussion that followed, Brett Osborne advised the Panel that he had now reached the view that new recommended Policy NH-P9 was not required because it was covered by Policy NH-P6.

Federated Farmers

2.4.11 Rachel Thomas appeared at the hearing by video link representing Federated Farmers. In a statement of evidence by herself and Bernadette Hunt she advised of acceptance of the majority of the recommendations in the s42A Report, with particular reference to Policy NH-P3 where she cautioned against the approach proposed by Environment Southland which would unnecessarily capture properties where risks can be mitigated.

2.4.12 With regard to the new recommended Rule NH-R2, Federated Farmers opposed the 20m setback for non-habitable buildings from a residential building in a rural area as this would not allow for farmyard situations where often a dwelling may be located within an existing farm yard and in close proximity to accessory buildings used for primary production. An amendment to a 10 metre setback was requested.

New Zealand Transport Agency

2.4.13 Helen Dempster, Principal Planner for NZTA advised the Panel by way of an email dated 10 February 2025 that she has reviewed the s42A Report and that NZTA accepted the changes recommended including those where submission points had been rejected.

Silver Fern Farms

2.4.14 Steve Tuck of Mitchell Daysh Ltd advised by email dated 11 February 2025, Silver Fern Farms accepted the s42A report recommendations regarding its submissions.

Transpower NZ Ltd

2.4.15 Rebecca Eng Technical Lead, Environmental Policy at Transpower advised the Panel by way of an email dated 21 February 2025 that Transpower generally supported the recommendations in the s42A Report. She did request however that as a consequence to the amendment recommended to Rule INF-R9 an exemption for critical infrastructure be included in the new Natural Hazards chapter rules where these matters are otherwise regulated by INFR-R9, for example, NHR4 and NH-R6.

2.5 Legal Submissions and Supplementary Evidence from the Council

Legal Submissions

2.5.1 Shelley Chadwick, Counsel for the Gore District Council, referred to her submissions dated 3 March 2025 regarding case law on the matter of scope and submitted there is no scope for the Panel to decide to insert any changes to the current hazard mapping in the district plan based on the recent modelling undertaken by ES since no maps were provided with the original ES submission, and no maps have been provided with the ES evidence filed for the hearing. Nor did ES explicitly seek an amendment to the mapped extent of the hazard area.

2.5.2 Shelley Chadwick did not accept that an indication in a submission that future modelling would be undertaken provided a sufficient basis for the changes to the plan maps that ES is now seeking. She acknowledged that while the Panel may have the ability to make changes to lower order provisions to implement a change to a policy sought in a submission, she submitted that special care needs to be taken in respect of Plan maps because changes to boundaries on a Plan map can change the extent of private land captured by a particular PDP provision.

2.5.3 Shelley Chadwick also submitted that the GDC reporting officer sought to integrate the updated ES information into the PDP as best he can within the present process, and the position set out in the s42A report and his supplementary evidence (supported by Tonkin and Taylor) presents the Panel with the best outcome based on the information available.

2.5.4 In response to questions from the Panel regarding scope, Shelley Chadwick submitted that the submission of ES clearly authorises changes to Policy NH-P2, but she did not agree this enabled a “flow down” amendment to the rules because in her view the changes sought in evidence go beyond what could reasonably be considered as consequential.

Tim Morris

2.5.4 In a supplementary statement of evidence, Tim Morris discussed the uncertainty and limitations in the accuracy of both the ES and T+T models arising from the model input data and assumptions. These limitations include:

(a) The Environment Southland model report states:

> If the model is to be used for designing stopbank levels, setting floor levels, and district planning purposes then a range of sensitivity scenarios should be run through the model including increasing channel roughness, bridge blockage and changes in inflows.

This limitation has not yet been actioned by Environment Southland for the PDP process.

(b) The Tonkin & Taylor model was not specifically developed for Gore District Council and the PDP process but rather as a general indication of areas which could flood across the whole of New Zealand. Together with historic records and local topography the model provides input in determining what areas will flood.

(c) The Tonkin & Taylor model has several limitations as follows:

- it is relatively coarse with minimal topographic detail;
- it does not necessarily represent an accurate crest level of stopbanks;
- it is not calibrated to historical flood events;
- the model has not been peer reviewed;
- it does not include hydraulic structures such as bridges and culverts; and
- it is based on simplistic hydrological inputs which are not calibrated.

These deficiencies are acknowledged in the T+T Report stating:

> The model is not suitable for design purposes of any form, assessing flooding at a property level scale or assessing potential damage to existing infrastructure. The model does not include stopbanks or other flow control structures which could affect flood depths.

(d) Neither model makes any allowance for the potential future impacts of climate change on flood hazard.

2.5.5 Arising from the limitations, Tim Morris disagrees with Marcus Roy that the two models provide an accurate overview of the potential flood risk to the Gore and Mataura townships. In his view, neither model is suitable for incorporation into the District Plan at this stage. He does however agree with Marcus Roy that a residual flood risk exists on land behind stop banks and this risk should be assessed when planning new developments.

2.5.6 Tim Morris drew attention to the definition of “significant risk” in the RPS, noting the criteria referred to previous flooding exceeding 100mm in depth, but excluding areas protected by flood banks, during a 2% AEP event. Given both models showed the current flood banks would not overtop in a 2% AEP event, he concluded Gore and Mataura do not meet the RPS definition of significant risk.

2.5.7 Tim Morris considers the approach of avoiding development within AEMI H3 classification and above is too simplistic and regard needs to be given to:

- The safety of people within buildings that are adequately protected.

- The development does not increase flood effects on people or property, nor does it adversely displace floodwaters onto adjacent sites.
- People can safely evacuate the development during a flood event

2.5.8 He considers it is neither practical nor economically viable to mitigate flooding at H5 or H6, and it can also be difficult at H4, so these are the areas where development should be avoided. In reply to a question Tim Morris advised that in his professional opinion H3 areas would be capable of remediation works to enable development to be undertaken, while also noting that his firm is assisting with a development in Canterbury where elevating of an area of H5 classification would facilitate future development.

2.5.9 Tim Morris also stated:

- He did not oppose the request of Federated Farmers to reduce the setback of new non-habitable use buildings in rule NH-R2 from 20 m to 10 m.
- Given the nature of telecommunications infrastructure (poles, cabinets, antennas etc) which are typically small, isolated structures, the effect on flooding is likely to be minimal, so he did not oppose them being exempted from the rules in the Natural Hazards chapter.
- He did not agree with the request of KiwiRail to provide for protection and maintenance works undertaken by KiwiRail to the rail network within the Mataura River Floodway as a permitted activity because any works undertaken within the floodway have the potential to reduce its capacity, which could result in more overtopping and higher flood hazard within Gore and Mataura.
- With regard to the request of Alliance in Rule NH-R6 to remove the minimum finished floor level requirement for non-sensitive activities, potential impacts of floodwater displacement and the ability of occupants to evacuate safely should still be considered for these non-sensitive activities.

2.5.10 Tim Morris was asked by the Panel, when determining the areas where the flood risk is significant, can the ES model plans be relied on for the area they covered, and the T+T model used for other areas. In reply he indicated that the ES modelled maps were far more accurate within the areas covered and the T+T maps were also appropriate to use for other areas. However, he did not consider it appropriate to use them in their current state because of the consequences on people's lives and businesses, noting calibration was required against existing floods.

2.5.11 When asked how the Panel should use the T+T model maps, Tim Morris replied that the T+T modelling provides a general perspective on relative flood risk and highlights areas more likely or less likely to flood but because of the deficiencies he had referred to was not suitable for incorporating into the Plan, although it is a good indicator of the likelihood of flooding.

<u>Brett Osborne</u>

2.5.12 Relying on the evidence of Tim Morris, Brett Osborne considered it inappropriate to incorporate either the ES or T+T models, or a combination of the two into the District Plan. In the interim, until the models are refined and a plan change notified, he recommended relying on the notified natural hazard overlays within the PDP, providing direct links to the policy and rules with those layers and distinguishing sensitive activities from non-sensitive activities while also demonstrating consistency with the relevant RPS policy directions. It is his view the recommended s42A Report

amendments to the rule framework do provide the ability for the ES model to be applied through the following rules to identify flood hazard levels and determine corresponding finished floor levels, as follows:

- NH-R3 – The addition to existing buildings for sensitive activities within areas subject to Actual and Potential Inundation and the Stopbank Protection area
- NH-R5 – The construction of new buildings, including conversion of existing buildings for sensitive activities within the Stopbank Protection area
- NH-R6 - The construction of new buildings, including conversion of existing buildings for sensitive activities within areas subject to Actual and Potential Inundation.

2.5.13 Brett Osborne understood the evidence of Marcus Roy that RPS Policy NH.5 required avoidance of areas of significant risk, but noted the policy is not absolute and does not explicitly require avoidance of subdivision and development. Rather, it includes provision for situations where avoidance may be impossible or impractical and the adverse effects can be completely mitigated. He referred to Policy NH.5 that states:

Avoid new subdivision, development and placement of critical infrastructure in areas at significant risk from natural hazards, unless… (b) avoidance is impossible or impractical and adverse effects are mitigated to an acceptable level…"

2.5.14 Based on his assessment of the evidence provided Brett Osborne made the following further recommendations:

(a) In response to Environment Southland:

- Not incorporating the ES model directly in the PDP due to outstanding uncertainty and limitations of the model and the lack of coverage over known flood prone areas.
- Not incorporating the Tonkin & Taylor model to fill in the uncovered areas of the ES Model for the district due to advice from Tonkin & Taylor on the uncertainty and limitations of the model as it was not developed for the purpose of the PDP; and the model does not assess the 0.5% AEP flood event as identified within the proposed Plan provisions.
- Rejecting the redefinition of 'significant risk' within the RPS as hazard category H3 or greater without undertaking a comprehensive review of the RPS.
- Rejecting the identification of hazard risk categories H3 to H6 as Non-Complying activities so that mitigation can only be considered for H1 and H2 areas.
- Acknowledging the support to the identified provisions within Appendix 1 of Mr Roy's evidence and rejecting the requested amendments to the remaining identified provisions in favour of the recommendations within the s42A report.

(b) In response to the Telecommunication Companies, accepting the requested amendment to Note 3.

(c) In response to Alliance:

- Accepting in part the amendment sought to new recommended rule NH-R6 regarding the requirement for finished floor levels for non-sensitive buildings.
- Accepting the amendment sought to new recommended policy NH-P9 to exclude critical infrastructure (although he concluded by the close of the hearing process that the policy was not required).

(d) In response to KiwiRail:

- Rejecting the insertion of a new rule.
- Rejecting amendments to NH-R7, NH-R8 and NH-R9.

(e) In response to Federated Farmers rejecting the proposed amendment to NH-R2.

2.5.15 While introducing his reports at the hearing, Brett Osborne noted the strong support from submitters to the risk based approach as set out in Policy NH-P1. In his view, the majority of submitters fall into two groupings, one focusing on property implications and the other from service providers on how their infrastructure should be provided for. He then described that ES is examining the issue in terms of how it aligns with the RPS and their submissions seek changes primarily to Objective NH-O3, Policies NH-P2, NH-P3 and Rule NH-R2 to ensure effect is being given to the RPS. He said, it is apparent ES considers the Plan provisions overly permissive, particularly Rule NH-R2 that allowed sensitive activities provided floor levels were constructed above previous flood levels in flood prone areas, excluding the Mataura River Stopbank Protection Area where no controls applied.

2.5.16 Brett Osborne is satisfied on the basis of the evidence from ES that people and buildings are at risk in the high hazard areas and this needs to be managed in both the policies and rules in order to give effect to Policy NH.5 of the RPS. In his view the key to changes recommended in the s42A Report arise from the ES submission to Policy NH-P2 which sought to:

(a) Avoid new subdivision on unprotected flood plains; and

(b) Manage use and development on existing lots; and

(c) Manage new subdivision, use and development on protected flood plains.

2.5.17 Brett Osborne sought to create a link between the submission of ES and the three overlay areas of the Plan as notified, being the Mataura River Floodway, Stop Bank Protection Area and Areas of Actual or Potential Inundation.

2.5.18 In reply to questions from the Panel it was the view of Brett Osborne that where there was a flood hazard within residential areas the erection of dwellings on vacant sites and the erection of a second dwelling on a site should not be allowed as a permitted activity. He does not consider raising floor levels is an appropriate tool within areas where significant risk is present. He added that the issue of managed retreat from the existing urban areas subject to flooding is a bigger issue than the current review, but in the meantime non-complying status within some areas is appropriate. He did not support the ES viewpoint of avoiding development in these areas totally.

2.5.19 When asked if it is appropriate for the Plan to include a definition of significant risk focusing on the AEMI classifications of H4 – H6 Brett Osborne advised there is merit in that, either by way of a definition or through the provisions themselves. He added

that a check of the policies would be required to ensure a clear link through to the rules and the status of the rules.

2.5.20 In the context of the Matters of Discretion in Rule NH-R2.1(1) Brett Osborne agreed reference could be included to the AEMI classification but care would be needed on the wording.

2.6 Minute 43 And Responses

Minute 43

2.6.1 Following the hearing, on 15 March 2025, the Panel issued Minute 43 in which the Panel sought to further explore the role of the Natural Hazards chapter in giving effect to the Southland Regional Policy Statement policies and methods. The Panel noted the RPS utilises the concept of "significant risk" in its policies but does not contain a definition of "significant risk", although a non-exhaustive list of examples is provided in the explanatory text accompanying Policy NH.5.

2.6.2 The Panel directed the expert planning witnesses to confer regarding:

(a) the addition of a new definition of "significant risk" that corresponds with best practice understanding of flood hazard risk;

(b) the relationship between the new definition of "significant risk" and the notified planning maps, which show extent of potential inundation without depths and velocities;

(c) the relationship between a new definition of "significant risk" and "sensitive activities" and "non-sensitive activities", with reference to best practice, best available information and the RPS provisions;

(d) amendments to the objectives, policies and rules of the Natural Hazards chapter to reflect the new definition of "significant risk" and its relationship with RPS policy, notified planning maps, best practice and best available information. The Panel considered it desirable there be separate rules for "sensitive activities" and "non-sensitive activities" and that may also require separate objectives and policies differentiating these activities. The output expected was a revised "Appendix A" to the supplementary evidence of Mr Osborne; and

(e) the potential to improve access to best available information for Plan users wishing to understand areas of "significant risk", including through an information layer on a publicly available Council GIS system or some other means.

2.6.3 The Panel also requested mapped outputs from the ES Model for a 0.5% AEP event within Gore and Mataura. These were subsequently provided.

Joint Witness Statement

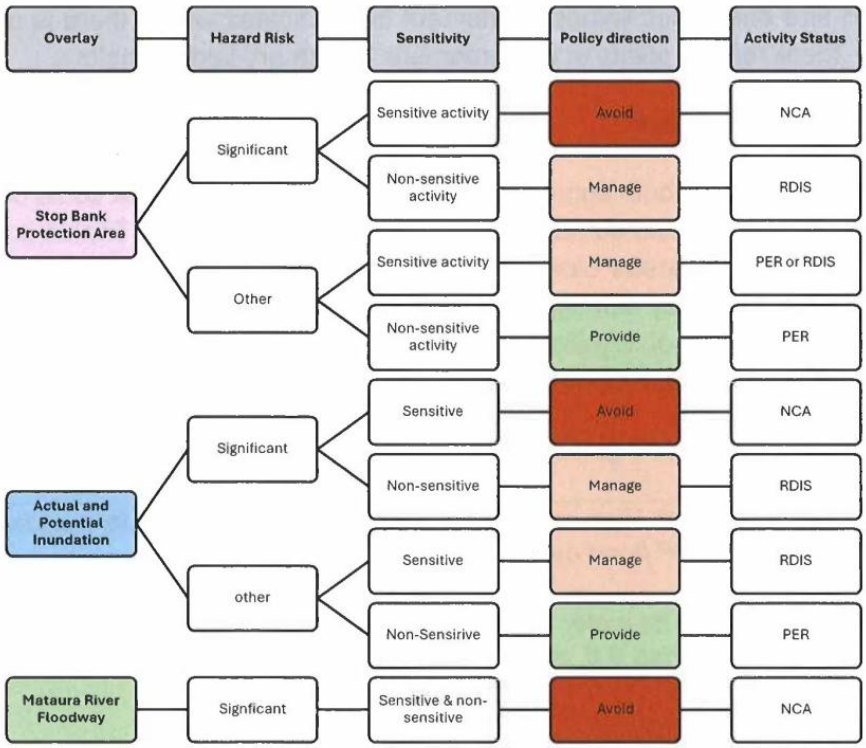
2.6.3 In response to Minute 43, the Panel received a joint witness statement from Mishka Banhidi and Marcus Roy dated 1 April 2025 in which they agreed a definition of significant risk could be incorporated into the PDP worded as follows:

> Significant Risk means flood hazard areas subject to inundation during a 0. 5% AEP flood event where:
> - The water depth (metres) x velocity (metres per second) is greater than 0.6, or
> - The water depth (meters) is greater than 1.2, or
> - The velocity (meters per second) is greater than 2.0.
>
> Note: Flood depth and velocity (hazard risk) information can be obtained from Environment Southland Flood Modelling.

Significant Risk in the context to Natural Hazards means mapped flood hazard areas where the 1% AEP modelled flood risk is 4, 5, or 6 of AEMI guideline based on the best available information.

2.6.4 While it was agreed it was appropriate to include areas categorised as Hazard Category H4, H5 and H6 within the Australian Emergency Management Institute Guideline 2014 - Risk Categories Guideline, as areas of Significant Risk, there was disagreement however in relation to the return period. In Marcus Roy's view a 1 % AEP return period may reduce issues of scope, while in Mishka Banhidi's view a 0.5% AEP return period is current best practice and supported by expert evidence, but she considers issues of scope remain with either return period.

2.6.5 Mishka Banhidi introduced the diagram below, which illustrated the implication of the new definition to distinguish between sensitive activities and non-sensitive activities within the chapter framework.



2.6.6 The Panel was advised there was broad consensus on the above diagram, with the exception of a separation between sensitive and non-sensitive activities, as follows:

- In Marcus Roy's view, the RPS specifically Policies NH.4 and NH.5, do not differentiate between non-sensitive and sensitive activities. He considers non-sensitive activities should be avoided unless there is an operational need or function need. This would mean development in flood bank protection areas and actual and potential areas that met the definition of significant risk, would be avoided and therefore require resource consent as non-complying activities for both sensitive and non-sensitive activities.
- In Mishka Banhidi's view the policy is less absolute, as demonstrated within the explanatory text of the RPS Policy NH.5:
  "Some forms of development, residential for example, will be more at risk, and more inappropriate, than others, such as, agriculture or boundary adjustment subdivision"
  This combined with the expert input from Tonkin and Taylor suggests non-sensitive activities within significant risk areas could be "managed" and therefore supports the proposal as outlined within the diagram.

Further Response from Mishka Banhidi

2.6.7 Mishka Banhidi provided an additional response to Minute 43 as Brett Osborne, the author of the s42A Report, was unavailable. In that response she highlighted a number of technical issues and challenges associated with the incorporation of the ES Model information into the Natural Hazard Chapter. She also had concerns in using a 'significant risk' definition to guide the policy direction of the Natural Hazards chapter and in turn determine the status of activities until the flood model is finalised over the entire Mataura River catchment and peer reviewed. She advised, at present the ES model only covers 24% of the notified flood overlays in the District Plan.

2.6.8 Having regard to the table included in the Joint Statement, Mishka Banhidi considered this highlights the need to include new policies and rules into the Plan in a way that extends beyond any submissions lodged and potentially excludes submitters and affected property owners from being involved in the amendments including the resultant changes to the regulatory settings.

2.7 Key Findings

Chapter Content

2.7.1 Marcus Roy recommended that the Natural Hazards chapter should contain only objectives and policies with rules in each zone chapter. The Panel disagrees, in part given the direction of the National Planning Standards, but also to avoid undue repetition in the Plan. In that regard the Panel accepts the advice of Brett Osborne in the s42A Report. Rules in the Natural Hazards chapter apply across the whole District regardless of zoning and that future proofs changes in zoning as well.

Terminology

2.7.2 The Panel agrees with Marcus Roy that "flood bank" is a more appropriate term than "stop bank" accepting his description given at the hearing that the banks do not "stop" flooding of land behind in extreme events. In addition, as described by Marcus Roy, the land behind the flood banks is not "protected" in a manner understood by the general public. As a minor matter under clause 16(2) of RMA First Schedule the Panel adopts "flood bank" and "Flood Bank Mitigation Area" instead of "stop bank" and "Stopbank Protection Area." Arising from that a number of consequential changes are required in the Plan provisions.

Scope

2.7.3 Having regard to the evidence of Tim Morris and legal submissions of Shelley Chadwick on behalf of the Council, the Panel accepts there is no scope for the modelled flood maps to be included in the Gore District Plan. The Panel does not accept the submissions of Kate Dickson on behalf of ES that reference to updated modelling in a submission gives standing in incorporate the results of that modelling into the District Plan, particularly when the impact and potential regulatory consequences of that modelling was not available to affected landowners to consider in determining whether they should lodge a further submission.

2.7.4 The outer limits of the area shown as actual and potential inundation in both the Operative and Proposed District Plans corresponds to the T+T Model maps and to the 1.0% AEP Flow Peak Depth scenario utilising the ES model and approximates the 0.5% AEP Flow Peak Depth scenario utilising the ES model. No submissions were lodged opposing the imposition of a minimum floor level above the 0.5% AEP design flood level within the areas subject to Actual or Potential Inundation. The Panel has

not therefore considered the appropriateness of that standard as there is no scope to do so.

Modelling

2.7.5 During the hearing process, in considering whether to provide for upzoning (allowing for more intensive use of land) from that enabled by the Operative Plan, the Panel received advice from T+T through reports and evidence prepared by Richard Brunton and Tim Morris. Their advice was derived from a number of sources, including:

- Historic data
- Environment Southland Data Hydro Statistics
- NIWA River Flow Statistics
- Indicative flood extents from T+T national flood model.

2.7.6 The T+T letter dated 11 June 2024 attached to the s42A Report, described the T+T Model as "2-dimensional rain-on-grid hydraulic model. Model estimates potential flooded areas based on present climate rainfall from NIWA's HIRDS database and Southlands (2020 – 2024) DEM". The letter also described the following limitations of the Model:

> Part of our assessment has been informed by T+T's national flood model. The flood levels estimated by the model have not been verified or calibrated to actual historical flood events. The purpose of the model is to provide a high-level indication of broad scale areas that could be flooded or not flooded in a 1% AEP present day climate rainfall event. The model results are not suitable for any other purpose other than stated above. The model is not suitable for design purposes of any form, assessing flooding at a property level scale or assessing potential damage to existing infrastructure. The model does not include stopbanks or other flow control structures which could affect flood depths.

2.7.7 The Panel notes the model covers all of the Gore District and the areas shown as being subject to actual and potential inundation are the same as those contained in the Operative Plan and also shown in the PDP. The advice given to the Panel in determining the zoning (and upzoning) of land did not rely solely on the model but rather was based on an expert assessment of several data sources as noted above. Given its limitations, described further in paragraph 2.5.4 above, the majority view of the Panel is that the map outputs from the T+T model are not of a standard that enables incorporation into the Planning Maps, nor to be used as a means to differentiate the status of activities.

2.7.8 Environment Southland advised it had commissioned Land River Sea Consulting (LRS) to develop a detailed flood model of the Mataura River with the methodology and results summarised in the LRS report 'Matura River Flood Modelling', dated 29 October 2024. A series of maps was provided to the Panel at the hearing illustrating maximum water depth and water flow for the length of the Mataura River from above the Gore Township to Below Mataura for 1% and 2% Annual Exceedance probability (AEP) events. The Panel requested additional maps showing a 0.5% AEP event, and these were subsequently provided.

2.7.9 The Panel notes the ES model only covers 24% of the notified flood overlays in the District Plan and does not take into account the effect of other water ways including Pukerau Stream, Charlton Stream or Waimumu Stream. The Panel also notes from the LRS Report the following extracts

> **Limitations**
> Due to the lack of recent high flow gaugings and changes to the reach of river through Gore as a result of the removal of willows and aggradation, there is considerable

uncertainty in the flow inputs used in the model. As a result, ES and LRS staff have scaled the calibration flow (February 2020 event) down from the original estimate. Furthermore, at the time of publication of this report, the hydrology for the Mataura was being reviewed by NIWA, which may result in a refined estimate of the design flow rates.

Recommendations
If the model is to be used for designing stopbank levels, setting floor levels, and district planning purposes then a range of sensitivity scenarios should be run through the model including increasing channel roughness, bridge blockage and changes in inflows.

2.7.10 Given these factors and taking into account the technical assessment of Tim Morris and the planning evidence of Brett Osborne, it is the conclusion of the majority of the Panel that the modelled maps produced by ES and presented in evidence lack the precision and certainty required to enable inclusion into the District Plan. This lack of certainty was acknowledged in the Environment Southland model report where it was stated:

> If the model is to be used for designing stopbank levels, setting floor levels, and district planning purposes then a range of sensitivity scenarios should be run through the model including increasing channel roughness, bridge blockage and changes in inflows.

2.7.11 The Panel does accept the evidence of the technical witnesses for both the Council and ES that as a consequence of a 1% AEP event there is a flood risk to the Gore township and the and that part of the Mataura township on the true right bank of the Mataura River. To that extent the ES model outputs for part of the main stem of the Mataura River and the T+T model outputs elsewhere provide best available information. However, it is the majority view of the Panel that the models are not suitable as a tool to differentiate the status of activities. Rather they are one tool available to suitably experienced experts to assess the risk of inundation associated with development proposals, be that through resource consents or consents under the Building Act.

Australian Emergency Management Institute (AEMI) Guideline

2.7.12 In determining the degree of risk, the Panel agrees that the Australian Emergency Management Institute (AEMI) Guideline 2014 Risk Categories provides an appropriate method to assess risk and it was used as a tool in reports and evidence from both the Council and ES. .

2.7.13 ES lodged submissions to all zones seeking a review of the zoning where “upzoning” had occurred from the Operative Plan. The Panel received reports from T+T for all the zones subject to actual and potential inundation with assessment focusing on those areas subject to hazard categories H4 - H6. Tim Morris acknowledged the ES model outputs were of a higher quality than those used by T+T. Following submission of the ES evidence he reviewed previous reports, noting with regard to the Gore racecourse, while the T+T model indicated development should be limited to only part of the site, the ES model showed the land free of inundation. In the Panel’s view, this also demonstrated the lack of reliance that could be placed on the T+T model results as a tool to determine the status of activities in the District Plan.

2.7.14 The Panel did give regard to defining “significant risk” and using that as a basis for differentiating the status of sensitive and non-sensitive activities. The Panel in Minute 43 had sought advice on such an approach. In the joint witness statement from Mishka Banhidi and Marcus Roy the following definition was promoted:

> Significant Risk means flood hazard areas subject to inundation during a 0. 5% AEP flood event where:

- The water depth (metres) x velocity (metres per second) is greater than 0.6, or
- The water depth (meters) is greater than 1.2, or
- The velocity (meters per second) is greater than 2.0.

Note: Flood depth and velocity (hazard risk) information can be obtained from Environment Southland Flood Modelling.

Significant Risk in the context to Natural Hazards means mapped flood hazard areas where the 1% AEP modelled flood risk is 4, 5, or 6 of AEMI guideline based on the best available information.

2.7.15 The Panel notes that Marcus Roy preferred adopting hazard categories H3 - H6 but the Panel in general terms, if it was to adopt a definition of "significant risk" prefers the advice and range of H4 - H6 promoted by Tim Morris, Brett Osborne and Mishka Banhidi. Mishka Banhidi considered a 0.5% AEP figure more appropriate, although she acknowledged this gave rise to scope issue but in her view scope issues arose regardless of which level was adopted.

2.7.16 A further factor influencing the Panel's view is the range of sensitive activities enabled in the Plan, with sensitive activities being defined as:

Sensitive activity means any:
(a) health care centre or hospital.
(b) *educational facility,* including school, early childhood facility, play centre.
(c) *residential activity,* including *retirement village* and supported residential accommodation.
(d) *visitor accommodation.*
(e) places of worship.
(f) *marae or Papatipu Rūnanga complex.*
(g) Graveyard or *urupā.*

2.7.17 In the Panel's view not all sensitive activities are the same. While some forms of residential activity may be acceptable at a AEMI risk level of H4 , that is unlikely to be the case for supported residential accommodation or a hospital. Equally, it can be anticipated that a graveyard or urupa is not a suitable activity within areas with an AEMI risk level of H1 or H2.

2.7.18 It is the majority view of the Panel that a definition of "significant risk" together with a rule framework differentiating sensitive and non-sensitive activities cannot practically and fairly be applied at this time. None of the evidence assessed the economic costs and benefits of such an approach nor had Natalie Hampson assessed the compliance cost of achieving a 0.5% floor level. Without such assessments, consideration of s32AA cannot be undertaken at the level required. It was the view of Brett Osborne that once the modelling process is completed for all water ways in the District with the current deficiencies rectified, a future plan change could be considered to update the natural hazard chapter and the Panel supports that view.

2.7.19 Having regard to the RPS provisions, the Panel notes the notified PDP is consistent with the RPS description of "significant risk" referring to previous flooding exceeding 100mm in depth, but excluding areas protected by flood banks, during a 2% AEP event.

Management Versus Avoidance

2.7.20 Evidence drew the attention of the Panel to RMA s6 and the provisions of the Southland Regional Policy Statement (RPS). While the evidence of Brett Osborne referred briefly to the Building Act, the Panel was not provided with an assessment how the provisions of that Act apply within areas subject to actual or potential inundation, particularly in relation to s71 - s74 of that Act, nor how the provisions of RMA s106 apply to the

processing of resource consents. In the Panel's view, these provisions together with other non-statutory options, provide alternative approaches to the management of natural hazards.

2.7.21 The Panel acknowledges the directive of s6(h) that the Plan shall recognise and provide for the management of significant risks from natural hazards. The Panel notes the reference is to "management of significant risk", does not refer to "all risk" and it refers to "management" not "avoidance".

2.7.22 The RPS contains a number of provisions referred to by witnesses. Those considered most relevant are:

> Objective NH.1 – Communities becoming more resilient
> The risks to people, communities, their businesses, property and infrastructure from the effects of natural hazards are understood and avoided, remedied or mitigated, resulting in communities becoming more resilient.
>
> Policy NH.1 – Awareness and understanding of risks
> Raise public awareness and promote an understanding of the risks of natural hazards, and encourage people, businesses and communities to reduce their long term risk.
>
> Policy NH.3 – Precautionary approach
> Take a precautionary approach towards managing the effects of climate change and sea level rise, and any associated changes in the scale and frequency of natural hazards, to ensure potential adverse effects are avoided or mitigated.
>
> Policy NH.4 – Management priorities
> In managing natural hazards, the following implementation priorities are to be adopted:
> 1. avoid exposure to areas at significant risk from natural hazards where practicable by adopting a precautionary approach;
> 2. mitigate the effects of natural hazards by managing land use in areas known to be susceptible to the effects of natural hazards;
> 3. undertake physical works needed to reduce the potential for the natural hazard to affect people and infrastructure.
>
> Policy NH.5 – Avoid areas of significant risk from natural hazards
> Avoid new subdivision, development and placement of critical infrastructure in areas at significant risk from natural hazards, unless:
> (a) there is no reasonable alternative, in which case critical infrastructure must be designed to maintain, as far as practicable, its integrity and function during natural hazard events; or
> (b) avoidance is impossible or impractical and adverse effects are mitigated to an acceptable level; or
> (c) subdivision is solely for the purpose of boundary adjustments

2.7.23 These provisions have guided the Panel in consideration of submissions, for example in recognising the need for information sharing and educations (Policy NH.1) and including an additional policy adopting a precautionary approach (Policy NH.3).

2.7.24 The Panel places emphasis on Policy NH.4(1) to avoid exposure to areas at significant risk from natural hazards where practicable and Policy NH.5(b) if avoidance is impossible or impractical and adverse effects are mitigated to an acceptable level. It is the view of the majority of the Panel that it is not practical to avoid natural hazard risk within the developed areas of the Gore and Mataura townships and having regard to NH.4(2), the appropriate approach is management. Having regard to the evidence of Brett Osborne and his response to questions from the Panel at the hearing, the Panel concludes that retreating from the flooding hazard within the Gore and Mataura townships is not an option at this time, with future development being managed in these areas having regard to the level of mitigation provided, as opposed (depending on the

degree of risk) to considering the avoidance of development within greenfield areas subject to actual or potential inundation.

2.7.25 The Panel also notes that the Overview to the PDP Natural Hazards chapter described three key principles to the approach adopted to natural hazards in the Plan as follows:

- Gathering accurate *natural hazard* information.
- Avoiding significant *natural hazard* risks when undertaking greenfield development and *subdivision*.
- Managing and mitigating the risk in areas already developed or subdivided.

2.7.26 No submissions were lodged opposing those principles and the approach, in particular that within areas already developed, risk would be managed and mitigated, rather than avoided.

2.8 Applying the Key Findings

Flood Bank Mitigation Area

2.8.1 In his statement of evidence Brett Osborne noted the notified natural hazard provisions did not apply within the Flood Bank Mitigation Area. That would mean that only the provisions of each zone within the Flood Bank Mitigation Area would apply. He recommended provisions be included in the Plan to manage development within this area with:

(a) extensions to existing buildings used for sensitive activities being permitted subject to:

- a minimum finished floor level above the 0.5% AEP flood level, otherwise defaulting to restricted discretionary activity; and
- no additional residential units being created, defaulting to non-complying.

2.8.2 The Panel agrees with this approach noting its understanding of the intent is for the minimum floor level requirement to apply only to habitable rooms, defined in the Plan as follows:

> **Habitable room** Has the same meaning as per the National Planning Standards – means any room used for the purposes of teaching or used as a living room, dining room, sitting room, bedroom, office or other room specified in the Plan to be a similarly occupied room.

2.8.3 Given the range of activities included in the definition of sensitive activity, the Panel considers the rule would provide better focus if referring to “habitable room” facilitating more practical application of the rule and avoiding what the Panel considers the unnecessary cost of applying for resource consent. The Panel also considers such a change consistent with the objectives of the Natural Hazard chapter, the purpose of the RMA and s6(h) of the RMA. The Panel further considers this change to be effective and efficient by enabling a garage, garden shed, storage and service areas (for example laundry) to be provided at ground level.

(b) new buildings for sensitive activities being a restricted discretionary activity subject to a minimum finished floor level above the 0.5% AEP flood level, or in the case of converting an existing building the floor level accommodating a sensitive activity be above the 0.5% AEP flood level, otherwise defaulting to a non-complying activity.

2.8.4 The Panel notes the Matters of Discretion recommended referred to:

- The effect from a 0.5% AEP event

- Building design
- The ability to safely evacuate people

2.8.5 Natalie Hampson in her evidence advised the recommended approach of requiring a consent although more stringent than the Operative District Plan is an economically efficient approach. The Panel does not agree, as her analysis did not consider the cost of the additional expert advice landowners would be required to obtain in preparing a resource consent with regard to the matters of discretion and the additional fees charged by the Council in that being peer reviewed.

2.8.6 Both Marcus Roy in his reply to questions from the Panel and Brett Osborne in his evidence (for example at paragraph 211) acknowledged the difference between the circumstances and risks between the Flood Bank Mitigation Area and the Areas of Actual and Potential Inundation. In the Panel's view that should be reflected in the status of activities, both in the primary rule and the default rule when the stated criteria are not met. As a consequence, in the event the primary rule is not met the Panel considers a discretionary status should apply.

2.8.7 The Panel is of the view that within the Flood Bank Mitigation Area the provisions of the Building Act provide a suitable level of control without the need to duplicate procedures through the District Plan framework. The Panel reaches this view also having regard to the almost total absence of vacant lots within the Flood Bank Mitigation Area and the provisions within the Subdivision chapter to adequately assess the effects of new lots being created.

2.8.8 The Panel is of the view that amending the rule to provide permitted activity status of new sensitive activities within the Flood Bank Mitigation Area subject to compliance with the floor level requirement and excluding additional residential activities (minor residential unit) is consistent with the objectives of the Plan and not contrary to the purpose of the RMA or s6(h). The Panel considers such a rule will be more efficient and effective than that recommended.

<u>Mataura River Floodway</u>

2.8.9 The notified Plan provided for new structures or buildings, critical infrastructure and sensitive activities as non-complying activities in the Mataura River Floodway. In response to submissions from infrastructure providers the Panel agrees this regime is overly restrictive on infrastructure, accepting there will be circumstances when structures are required to be located in the Floodway, for example, river monitoring equipment, bridge supports and poles associated with lines. Subject to appropriate controls identified in the policy framework, a less rigid Discretionary Activity consenting pathway is appropriate applying to areas subject to Actual or Potential Inundation and the Mataura River Floodway.

2.8.10 The Panel accepts that within Mataura River floodway, where there is an undeniable risk to life and property from flood events. Permanent physical development, other than critical infrastructure, should generally be excluded, although that should not create an obstacle for mahinga kai and customary activity, recreation activity or temporary activities. For the avoidance of doubt the Panel includes a permitted activity rule to enable these activities. The Panel too recognises the need for a consenting Discretionary Activity pathway for natural hazard mitigation works, otherwise non-comply status should apply to any other activity as recommended by Brett Osborne.

Primary Production Activities Within Areas Subject to Actual or Potential Inundation

2.8.11 Brett Osborne in response to submissions recommended buildings used for Primary Production in the General Rural Zone in areas subject to Actual or Potential Inundation be permitted provided they are not used for a sensitive activity and comply with limits on size and setbacks from residential buildings and flood protection assets. At the hearing, following the evidence of Federated Farmers he recommended adopting a 10 metre separation distance from dwellings, rather than the 20 metres included in his s42A recommendation. The Panel agrees with the amended recommendation and considers that the same approach should also apply to land within the Rural Lifestyle Zone.

Activities Within Other Areas Subject to Actual or Potential Inundation

2.8.12 The Panel notes that within other areas, not assessed above, only the Open Space Zone and Camp Columba Zone are completely free of any flooding hazard overlay. Sensitive activities to varying degrees are provided for as permitted activities in all zones and outside of Gore township, flood banks are only present at Mataura and even then they do not provide 360 degree relief from all potential sources, as provided for at Gore. The Panel notes this was reflected in the notified PDP not assigning a "flood Bank Protection Area" status to any part of Mataura.

2.8.13 Brett Osborne in his supplementary evidence recommended an additional rule that required compliance with minimum floor levels for new sensitive activities in areas subject to actual or potential inundation within the Settlement Zone, Rural Lifestyle Zone and General Residential Zone at Mataura, and for non-sensitive activities in all zones. The Panel accepts the intent of the recommendation but as noted above sensitive activities are permitted in a wider range of zones. This is reflected in the Panel's revision of the recommended new rule NH-R6, noting this rule only applies to new buildings not extensions to existing buildings that are subject to a separate rule.

3. Natural Hazards General and Overview

3.1 General

Submitter (S)	Decision Requested
S152.017 Nigel Cowburn	The overview is more wordy than it needs to be, and makes it hard to read, in particular in relation to natural values. Riparian aspects are out of date. Happy to see that plant species in flood control areas allows for the use of exotics as this is an engineering issue and setting it to native only (as in some other jurisdictions) would impede successful design. Variable width riparian should be emphasised through text as it would put the function where it needs to be (tends to be headwaters and gully heads) and free up productive land. Retain allowance for use of exotics in flood control areas

3.1.1 The Panel is unsure precisely what Nigel Cowburn is seeking and that was echoed by Brett Osborne in his s42A Report. The Panel notes the reference in the submission to the Overview being wordy but is of the view that it is appropriate. Similarly, the submission refers to riparian planting and that is considered in Policy NH-P7 which encourages use, maintenance and enhancement of natural features and buffers such as riparian planting to manage natural hazard risks. The Panel agrees that riparian planting in the upper catchments can slow water movement and assist with hazard mitigation downstream, but as the headwaters of the major rivers and streams that flow through the Gore District are located in the Southland District, the Panel does not consider there is just cause, or a legal basis, to make such planting mandatory. Hence the focus of the policy is on encouragement. Accordingly, submission S152.017 Nigel Cowburn is rejected.

Submitter (S)	Decision Requested
S124.006 Fire and Emergency NZ	Retain definition of natural hazard as notified

3.1.2 The submission supporting the definitions is acknowledged. No other submissions refer to this provision and no changes are being made to it. Accordingly, submission S124.006 Fire and Emergency NZ is accepted.

3.2 Natural Hazards General

Submitter (S)	Decision Requested
146.016 Southland District Council	Alignment with National and Regional directives on Natural Hazard and Hazard sensitive Development and with natural hazard objectives and policies with Southland District Council. Modify policies to identify specific levels of risk within the district. The submitter is concerned about the absence of hazard-sensitive development in the Plan.
S146.027, S146.018, S146.019, S146.021, S146.023, S146.024, S146.025, S146.026 Southland District Council	Modification of all policies to identify specific levels of risk within the district while future proofing the District Plan. Consider the proposed National Policy Statement for Natural Hazard Decision-Making 2023
S146.076 Southland District Council	GRZ - General: Review zoning classification to minimise issues adapting to climate change and flood risk. Much of the centre of Gore lies in the flood plain of the Mataura.

3.2.1 The Panel notes the National Policy Statement for Natural Hazard Decision-Making 2023 is at the daft stage and until such time that it is finalised it is unclear what will be required in District Plans. The submission also seeks consistency between the Gore and Southland Plans particularly to identify levels of risk. The Panel assumes that it relates primarily to flooding issues. In that regard when the PDP was being prepared there was insufficient accurate knowledge of the extent of flooding within areas subject to actual or potential inundation. While Environment Southland has since undertaken some more detailed modelling of flooding on the Mataura River that does not consider climate change impacts or factor in rivers and streams connecting to the Mataura River. The Panel anticipates that during the life of the Plan regard will be given to a risk based approach, both for areas and activities, in a manner that is more refined than what can be achieved through the current process.

3.2.2 The Panel also notes that the advice to the Panel is that the Proposed Plan is consistent with the provisions of the Regional Policy Statement (RPS) currently in force. Other than amendments being made in response to submissions in this decision, the Panel is satisfied that, despite the desirability of changes sought by the submitter, no additional action is appropriate at this time. Accordingly, submissions S146.016, S146.027, S146.018, S146.019, S146.021, S146.023, S146.024, S146.025, S146.026 by Southland District Council are rejected.

3.2.3 In response to submissions from Environment Southland, the Panel on the basis of advice primarily from T+T has assessed the suitability of areas being upzoned from the Operative Plan. Where recommended, the Panel has amended the zoning. As set out in section 2.7 above, the Panel on the basis of guidance from higher level instruments including the RPS and taking into account what is practical at this time, adopted a management approach is considering future development in the Gore and Mataura townships. As changes have been made to the zoning of some areas of land and additional rules introduced into the Plan, submission S146.076 Southland District Council is accepted in part.

3.3 Natural Hazards Overview

Submitter (S)	Decision Requested
S121.044 Alliance Group Limited S40.035 Silver Fern Farms	Retain as notified
S115.066 Kevin Robertson S143.077 Rural Ratepayers Group S148.078 Alistair & Bernadette Hunt S60.068 Ronald Crispin S68.186 John Baynes S126.065 Southland Federated Farmers of New Zealand	Amend Overview for clarity to enable non-livable farm ancillary buildings as permitted activities within the natural hazard areas as long as this has been clearly communicated to the landowners along with the associated risks of doing so.
FS5.18 Hamish Weir	Allow Southland Federated Farmers of New Zealand

3.3.1 The submissions supporting the Overview are acknowledged. Changes have been made to this section in response to other submissions. Consequently, submissions S121.044 Alliance Group Limited S40.035 Silver Fern Farms are accepted in part.

3.3.2 The Panel agrees with Brett Osborne at paragraph 281 of his s42A Report where he states that the purpose of the Overview section is to outline the general scope and key issues relevant to the topic chapter. Providing detail about the rules in the chapter would result in an extremely long section, and it would likely be misleading without the detail of the qualifications that are included in some of the rules. Accordingly, submissions S115.066 Kevin Robertson are others are rejected.

3.3.3 Notwithstanding that outcome the Panel draws attention of Kevin Robertson and others to the revised rules, and specifically the new Rule NH-R4 that provides for accessory building within areas subject to actual or potential inundation, used for Primary Production as a permitted activity.

Submitter (S)	Decision Requested
S85.084 Environment Southland	Oppose zone changes or provisions within existing zones which have the potential to intensify land use, development or risk within natural hazard areas (particularly flood inundation). Draft the chapter to take on board the 2020 GNS report titled "Southland Regional Natural Hazard Provision Review" and to rectify the deficiencies outlined in the Operative Gore District Plan to ensure the new plan sufficiently managed natural hazard risks. The chapter overview should recognise that there are some existing historical flood protection works within GDC but acknowledge that these works were established to a design standard which have limits. Climate change impacts are likely to test and exceed flood protection works into the future and a precautionary approach is best when considering future development. Stop banks do not provide 100% protection from flood inundation. The February 2020 flood met the maximum design capacity for the Mataura River through Gore and Mataura. In the future it is anticipated that floods will get larger and accordingly the level of protection currently provided by the stop banks will diminish over time.
FS5.19 Hamish Weir	Disallow S85.084 Environment Southland. Gore Township cannot avoid development protected by the existing flood banks as it would require the entire town centre to be relocated.
FS28.031 Kāinga Ora	Disallow in part S85.084 Environment Southland The relief sought is too restrictive given: - Climate change related mapping is not static, so flood mapping should sit outside of statutory plans to ensure that they can be updated as needed and reflect recent and up-to-date modelling - Some restrictions may be appropriate; however provisions should provide for management and mitigation which may include engineered solutions - Provisions should enable flood management to be managed at an area level (rather than property-by property), as this can sometimes allow for more effective and efficient management across a wider area

3.3.4 The Panel notes that the ES submission is one of a series to each of the parts of this chapter (Overview, Objectives, Polices and Rules). Submissions have also been lodged by ES to each of the zone chapters seeking assessment of areas where intensification has been provided compared to the Operative Plan. Each of these more focused zone submissions are considered in the context of the separate provisions and chapters.

3.3.5 With regard to the Overview, the Panel accepts and adopts the recommendation of Brett Osborne at paragraph 289 of his s42A Report, subject to minor wording changes, to make an addition to the Overview to highlight that flood banks have design limitations and cannot provide absolute protection. Equally, the Panel considers it important to recognise that retreating from the flooding hazard within the Gore and Mataura townships (that are subject to intensive development) is not an option at this time, with future development being managed in these areas having regard to the level of mitigation provided, as opposed (depending on the degree of risk) to considering the avoidance of development within greenfield areas subject to actual or potential inundation.

3.3.6 The Panel is mindful of the critical need to share information, such as the recently completed flood modelling by Environment Southland, to ensure there is full knowledge and understanding of its implications. That is a process that will take some time and which is beyond the scope of what can be dealt with through the current process. Given the Mataura River is some 240km in length, this is an issue requiring co-ordination between local and regional government together with many affected landowners and stakeholders. IT is also desirable to have guidance from central government and government agencies.

3.3.7 The Panel agrees with the intent of the further submission from Kāinga Ora in advocating the use of flood mapping outside of the formal planning document. While the District Plan needs to provide certainty as to the areas are subject to rules by showing that on maps, the Panel considers regard should be had to best available information to assist decision-making. Current modelling is one source, but given its limitations, that needs to be supplemented by expert assessment. As information with greater reliability comes available regard can be had to it by landowners in making development decisions and also the Council in managing activities and their effects.

3.3.8 Having regard to matters above, submission S85.084 Environment Southland is accepted by adding the following to the Overview:

Flood protection measures such as flood banks built and maintained by the Regional Council help protect the communities within the Mataura River floodplain. However, flood banks have design limitations and cannot provide absolute protection. Future high rainfall events are expected to increase in intensity and scale in the future and it is highly likely these will test the extent of the current flood protection. Retreating from the hazard is not an immediate solution for existing developed communities, such as Gore and Mataura, so planning for subdivision, use and development that recognises the degree of risk within these areas is necessary to manage the adverse effects on people and property....

4. Natural Hazards Objectives

4.1 Objectives NH-O1 and NH-O2

Submitter (S)	Decision Requested
S112.053 Waka Kotahi NZ Transport Agency S121.045 Alliance Group Limited S40.036 Silver Fern Farms S132.041 KiwiRail Holdings Ltd	Retain NH-O1 as notified
S109.043 Department of Conservation	Retain NH-O2 as notified

S112.054 Waka Kotahi NZ Transport Agency S121.046 Alliance Group Limited	

4.1.1 The submissions supporting the objectives are acknowledged. No other submissions refer to these provisions and no changes are being made to them. Accordingly, these submissions are accepted.

Submitter (S)	Decision Requested
S143.005, S143.006 Rural Ratepayers Group	NH-O1 and NH-O2. Council shall ensure public are aware of all risks and dangers in the Rural Zone. For example, bulls, livestock, electric fencing etc to the public who access streams and rivers. Council shall indemnify landowners for any risk or harm that may occur to a member of the public as Council is encouraging and expediting public access.

4.1.2 The Panel notes the issue raised relates to legal access over private land and exposure of the landowner to health and safety requirements. This is outside the scope of the provisions for this chapter and therefore submissions S143.005, S143.006 Rural Ratepayers Group are rejected.

4.2 Objective NH-O3

Submitter (S)	Decision Requested
S121.047 Alliance Group Limited S125.017 Ministry of Education	Retain NH-O3 as notified
S85.085 Environment Southland	Provide for the avoidance of development where there is significant risk from natural hazards as required by the Southland Regional Policy Statement.
FS5.20 Hamish Weir	Disallow S85.085 Environment Southland as current provisions are adequate.
S112.056 Waka Kotahi NZ Transport Agency	Amend NH-O3 as follows: 2. not exacerbated on other sites and on land transport infrastructure**.**
S132.042 KiwiRail Holdings Ltd	Strengthen NH-O3 to protect the safe and efficient operation of the rail network from new subdivisions and development activities. Amend 1. appropriately ~~adequately~~ managed; and 2. not exacerbated on other sites and the rail network**.** The term adequate refers to something that meets a minimum requirement; where appropriately refers to something that is well suited to a specific situation.

4.2.1 The submissions supporting the objective are acknowledged. Changes have been made to this provision in response to other submissions. Consequently, submissions S121.047 Alliance Group Limited and S125.017 Ministry of Education are accepted in part.

4.2.2 Brett Osborne considered the submissions to this objective at paragraphs 131 - 137 of the s42A Report. With regard to the ES submission he stated:

> The relevant RPS policy is NH.5 which states “Avoid new subdivision, development and placement of critical infrastructure in areas at significant risk from natural hazards, unless… (b) avoidance is impossible or impractical and adverse effects are mitigated to an acceptable level…”.
>
> I agree that the notified wording of NH-O3 does not extend to directly address the outcome sought for development in relation to significant risk areas and could be amended to clarify this outcome. However, the RPS policy direction is not absolute and does not explicitly require avoidance of subdivision and development. Rather it includes provision for situations where avoidance may be impossible or impractical and the adverse effects can be completely mitigated.
>
> Furthermore, the degree of the natural hazard impact on an activity is dependent on its sensitivity. The explanation to Policy NH.5 highlights this point, noting some forms of

development such as residential will be more at risk than others. I therefore accept in part the requested amendment, subject to including recognition it is not always possible to avoid significant risk and that some activities are more sensitive to the risk than others….

With regard to the identifying significant risk, the explanation to RPS policy NH.5 states areas potentially at significant risk include areas that have flooded previously and for which the likelihood of inundation has not been reduced by flood alleviation works designed to protect the area from floods with at least 2% or less AEP.

4.2.3 Marcus Roy did not speak to this objective at the hearing and as a consequence the Panel accepts the assessment of Brett Osborne, noting the PDP provisions are consistent with the explanation of RPS Policy NH.5 and is generally supportive of his recommended amendment to the objective. Having regard the Panel's view that what is significant risk varies with different activities, the Panel prefers to refer to a risk that creates a danger to people and property, consistent with use of that phrase elsewhere in decisions (for example, the Trees chapter).

4.2.4 Helen Dempster by email on behalf of NZTA and Louise Taylor in her evidence on behalf of KiwiRail both supported the recommendation. The changes made by the Panel to the wording do not, in the Panel's view, alter the intent of the recommendation and align closer to the RPS provision.

4.2.5 Submissions S112.056 Waka Kotahi NZ Transport Agency, S132.042 KiwiRail Holdings Ltd and S85.085 Environment Southland are accepted in part by amending Objective NH-O3 as follows:

~~Ensure new~~ New subdivision and development for sensitive activities ~~are not only located~~ is avoided in areas where the natural hazard risk ~~is,~~ creates a danger to people and property and where it is not practical, the adverse effects are:

1. ~~adequately~~ appropriately managed to mitigate the hazard effect on people and property; and
2. not exacerbated beyond the ~~on other~~ site~~s~~

4.3 Objective NH-O4

Submitter (S)	Decision Requested
S85.086 Environment Southland	Clarification is needed about whether this objective is more permissive or restrictive than the Southland RPS that requires "critical infrastructure" to be located outside of natural hazard areas.
FS5.21 Hamish Weir FS21.067 Yrless Limited	Disallow S85.086 Environment Southland
S112.057 Waka Kotahi NZ Transport Agency	Amend NH-O4 to either explain or define the term 'regional significant infrastructure' or amend the wording to 'critical infrastructure' as 'regional significant infrastructure' is not defined in the Plan. Clarify the objective applies to the transport network.
S132.043 KiwiRail Holdings Ltd	Amend NH-O4 as follows: Critical ~~Regionally significant~~ infrastructure is located outside hazard risk areas where practicable. Or define Regionally significant infrastructure in the proposed plan.
S101.041 Transpower New Zealand Limited	Amend Objective NH-O4 as follows: "NH-O4 ~~Regionally significant~~ Critical infrastructure is located outside hazard risk areas except where there is an operational need or functional need for its location ~~where practicable. "~~ It is not always possible for infrastructure to be located outside of hazard risk areas because: (a) Transpower is required to connect to electricity generation that may be located in a hazard risk area; and (b) linear infrastructure, such as the National Grid, necessarily traverses areas susceptible to hazards (such as rivers) in order to convey electricity over long distances between two points.

FS24.026 Contact Energy Ltd	Allow S101.041 Transpower New Zealand Limited

4.3.1 The Panel agrees with Brett Osborne at paragraph 349 of his s42A Report where he states RPS policy NH.5 does not require absolute avoidance of critical infrastructure within areas of significant risk. Rather, it recognises critical infrastructure cannot always avoid locating within significant risk areas and in such circumstances the design should be undertaken to maintain its integrity and function. The Panel accepts the advice of Brett Osborne that the objective is consistent with the RPS. Accordingly, submission S85.086 Environment Southland is rejected.

4.3.2 The remaining submissions all seek similar outcomes, and Brett Osborne recommends the changes sought be accepted. The Panel agrees with the intent of the submissions and the recommendation but has amended the wording and order of the text to what it considers is a more appropriate outcome for an objective with the recognition of operational need or function need having primacy.

4.3.3 Submissions S112.057 Waka Kotahi NZ Transport Agency, S132.043 KiwiRail Holdings Ltd and S101.041 Transpower New Zealand Limited are accepted in part by amending Objective NH-O4 as follows:

~~Regionally significant~~ Unless there is an operational need or functional need, locate critical infrastructure ~~is located~~ outside hazard risk areas ~~where practicable~~.

4.4 Objective NH-O5

Submitter (S)	Decision Requested
S112.055 Waka Kotahi NZ Transport Agency	Retain NH-O5 as notified

4.4.1 The submission supporting the objective is acknowledged. No other submissions refer to this provision and no changes are being made to it. Accordingly, submission S112.055 Waka Kotahi NZ Transport Agency is accepted.

5. Natural Hazards Policies

5.1 General

Submitter (S)	Decision Requested
S85.088 Environment Southland	New subdivision on unprotected flood plains should be avoided. Minimal development should be allowed on existing properties within unprotected flood plains. Existing stop banks have a design limitation and climate change impacts will mean that the design standard will be exceeded in the future. A restrictive approach should be taken to land use development behind stop banks. Split policy NH-P2 so that there are two parts, the first being change "manage" to "avoid" for new subdivision and the second part to manage the use and development on existing lots. Create a new policy to establish some management criteria for new subdivision and development where there is existing flood protection (eg Gore Main Street)
FS5.23 Hamish Weir	Disallow S85.088 Environment Southland. This is very restrictive to the Gore township.
FS28.033 Kainga Ora	Disallow in part S85.088 Environment Southland The relief sought is too restrictive given: - Climate change related mapping is not static, so flood mapping should sit outside of statutory plans to ensure that they can be updated as needed and reflect recent and up-to-date modelling - Some restrictions may be appropriate; however provisions should provide for management and mitigation which may include engineered solutions - Provisions should enable flood management to be managed at an area level (rather than

	property-by property), as this can sometimes allow for more effective and efficient management across a wider area
FS29.038 Silver Fern Farms Limited	Disallow S85.088 Environment Southland. A blanket avoidance policy for all subdivision in flood prone areas is excessively restrictive, fails to consider differing levels of risk exposure for different activities and forecloses scope for appropriate mitigation. Otherwise, the submission seeks changes which are not specified in sufficient detail to allow potentially affected parties to comment meaningfully at this stage.
FS22.044 Clark Fortune McDonald & Associates	Disallow S85.088 Environment Southland. not all subdivision is for the purpose of development. The focus should be on managing development in flood hazard areas, not trying to restrict subdivision without evidence that confirms a nexus between subdivision and development.

5.1.2 The Panel considers the Environment Southland submission raises a significant point in terms of the structure of the policies in this chapter. As notified, the policies were structured as follows:

- Policy NH-P1: Identify and Map. Adopt a risk-based approach to the management of subdivision, use and development.
- Policy NH-P2: Manage use, development and subdivision of land mapped as Actual or Potential Inundation, excluding Stopbank Protection Areas, with methods listed.
- Policy NH-P3: Avoid subdivision, use and development and critical infrastructure within the "Mataura River Floodway" unless it can be mitigated

5.1.3 Having regard to the submissions, Brett Osborne in his s42A Report recommended:

- Policy NH-P2 only apply to the Stopbank Protection Area (Flood Bank Mitigation Area)
- Policy NH-P3 apply to other areas shown as Actual or Potential Inundation
- A new policy apply to the Mataura River Floodway.

5.1.4 The Panel accepts the desirability of the restructuring of the policies recognising the three different risk areas. However, it does not agree that altering the chapeaux of the policies while retaining much of the remaining text provides an appropriate outcome. For example, with the Flood Bank Mitigation Area, given the density of existing development, it is not practical to maintain the functioning of the flood plain and given the size of properties any development unless on poles will displace water onto other properties. Nor does the Panel consider the new simplified policy applying to the Mataura River Floodway has sufficient regard to the activities that currently take place there or require recognising.

5.1.5 Reference to the risk based approach and the manner in which it is to be applied is set out in notified Policy NH-P1. The Panel considers this policy an important guide to the structure and content of the remaining policies. The Panel does not consider there is a need to repeat the matters listed in other policies. Having regard to the overall structure of the chapter as modified by the Panel and to provide consistency with the changes being made to the policies two minor wording changes are required to Policy NH-P1 as follows:

- Reference to "updated information" being amended to "best available information", primarily because updated information may be less reliable than the best available existing information.

- As a guide "the level and severity of risk from natural hazards" does not require qualifying, and as a consequence "preventing risk to people and managing risk to property" can be deleted. The Panel considers the intent of the deleted words is better expressed elsewhere in the policies.

5.1.6 While being consequential to other decisions, the Panel considers these to be minor changes without material effect, therefore also authorised under clause 16(2) of the RMA First Schedule. The Policy therefore will read:

Policy NH-~~P1~~P2 Identify and map areas subject to natural hazards, taking into consideration the effects of climate change and ~~updated information~~ the best available information, and apply through zoning and rules, a risk-based approach to the management of subdivision, use and development based on the following:

1. the type of natural hazard that applies; and
2. the level and severity of risk from natural hazards~~, preventing risk to people and managing risk to property~~; and
3. the sensitivity of activities to loss of life or damage to property from a natural hazard; and
4. the ability for communities to recover after a natural hazard event

5.1.7 The chapeaux applying to areas mapped as subject to actual or potential inundation was notified as Policy NH-P2 but has been recommended to be shifted to Policy NH-P3. Having regard to all of the submissions lodged to these provisions the Panel considers there are aspects of both notified policies that should apply to the areas mapped Subject to Actual or Potential Inundation, Flood Bank Protection Area and Mataura River Floodway.

5.1.8 Submission S85.088 Environment Southland is accepted in part by adopting the decisions in paragraphs 5.3.3, 5.4.5 and 5.9.2.

5.2 Policy NH-P1

Submitter (S)	Decision Requested
S112.058 Waka Kotahi NZ Transport Agency S126.066 Southland Federated Farmers of New Zealand S115.067 Kevin Robertson S143.078 Rural Ratepayers Group S148.079 Alistair & Bernadette Hunt S60.069 Ronald Crispin S68.187 John Baynes S85.087 Environment Southland	Retain NH-P1 as notified
FS5.22 Hamish Weir	Allow in part S85.087 Environment Southland. More accurate modelling of flood hazard would be a positive outcome as it provides certainty. Any modelling should be ground truth tested by records from Feb 2020, Nov 1999 and earlier flood events and not entirely mathematical / theoretical.

5.2.1 The submissions supporting the Policy are acknowledged. Changes have been made to this provision as set out in paragraph 5.1.6 above. Consequently, these submissions are accepted in part.

5.3 Policy NH-P2

Submitter (S)	Decision Requested
S121.048 Alliance Group Limited S125.018 Ministry of Education S16.041 Fuel Companies	Retain NH-P2 as notified

S40.037 Silver Fern Farms	

5.3.1 The submissions supporting the Policy are acknowledged. As changes have been made to this provision these submissions are accepted in part.

Submitter (S)	Decision Requested
S112.059 Waka Kotahi NZ Transport Agency	The Actual or Potential Inundation Areas as shown in the planning maps are often located near or directly adjacent to the State highway network. Add to NH-P: 8. ensuring that the activity does not result in adverse effects on the safe and efficient operation and function of critical infrastructure.
S122.004 Fulton Hogan	Use the same wording for NH-P2 clause 1 as clause 1 of NH-P3: NH-P2 Manage the use, development and subdivision of land in all mapped Actual or Potential Inundation Areas, with the exception of the Stopbank Protection Areas by: ~~1. ensuring that the activity is not likely to result in significant damage in a flood event; and~~ in the event of a natural hazard, there is likely to be no loss of life or serious injury and any built development is not likely to suffer significant damage or loss...
FS28.032 Kainga Ora	Allow S122.004 Fulton Hogan

5.3.2 Having regard to the submissions lodged, in particular S85.088 Environment Southland, the Panel agrees a more structured policy framework is required, with separate policies applying to the Matura River Floodway, the Flood Bank Mitigation Area and Areas Subject to Actual of Potential Inundation. The focus of Policy NH-P2 is the areas Subject to Actual of Potential Inundation and NZTA and Fulton Hogan have both identified additional matters that can usefully be added to the policy.

5.3.3 Submissions S112.059 Waka Kotahi NZ Transport Agency and S122.004 Fulton Hogan are accepted and submission S85.088 Environment Southland accepted in part by amending Policy NH-P2 as follows:

NH-P~~2~~3 ~~Manage the use, development and subdivision of land in all mapped~~ Within areas mapped as Subject to Actual or Potential Inundation Areas~~, with the exception of the Stopbank Protection Areas by~~:

~~1. ensuring that the activity is not likely to result in significant damage in a flood event; and~~

~~2. maintaining the functioning of the flood plain, and not displacing water onto other properties;~~

~~5. ensuring adverse effects on people, cultural values, and property are avoided or mitigated; and~~

~~6. ensuring increased risk on other sites is avoided; and~~

~~7. requiring the identification of suitable buildable areas, for example via building platforms, at the time of subdivision.~~

1. As part of any subdivision require assessment of the flood risk identifying and providing for areas where future development should be:

   (a) avoided; and

   (b) managed, including the location of suitable building platforms; and

   (c) enabled.

2. Require hazardous substance storage to be resilient to inundation; and

3. Have regard to the ability of people within buildings to evacuate safely and in a timely manner in the event of a natural hazard event.

4. Require a minimum floor level above the 0.5% AEP design flood level for buildings used for sensitive activities.

5. Locate and design buildings to avoid significant damage in a flood event.

6. Consider the off-site effects of any development or change in ground level, including

   (a) on the functioning of the flood plain;

   (b) the impact of displacing or diverting water onto other land or into waterways.

   (c) potential risks to the safe and efficient operation and function of critical infrastructure.

7. Limit the extent and location of any future development to avoid the need for new or upgraded public hazard mitigation works to mitigate the natural hazard

5.4 Policy NH-P3

Submitter (S)	Decision Requested
S125.019 Ministry of Education	Retain NH-P3 as proposed.
S126.067 Southland Federated Farmers of New Zealand S115.068 Kevin Robertson S143.079 Rural Ratepayers Group S148.080 Alistair & Bernadette Hunt S60.070 Ronald Crispin S68.188 John Baynes	Amend NH-P3: Add italics emphasis to 'mahinga kai' as it is defined in the Plan's interpretation
S132.044 KiwiRail Holdings Ltd	Amend as follows: Avoid subdivision, use and development and critical infrastructure (excluding the Rail Network) within the 'Mataura River Floodway' as work may be required in the future to protect the Gore rail bridge and this work may be required outside of the KiwiRail designation within the Mataura Floodway
S85.089 Environment Southland	Remove "unless it can be demonstrated that the risks can be mitigated". All development, with the exception of critical infrastructure which has a specific need to be sited there, should be avoided.

5.4.1 The submission supporting the Policy is acknowledged. As changes are being made to this provision, submission S125.019 Ministry of Education is accepted in part.

5.4.2 The Panel notes the policy as notified focuses on the Mataura River Floodway and it is an area that during high river flows creates a danger to people and structures. The submissions and evidence from KiwiRail and Environment Southland highlighted deficiencies in the policy, both in terms of what was included and not included. The Panel accepts provision needs to be made at a policy and rule level for those activities that have a functional need and operational need to locate within the floodway. That includes critical infrastructure and activities associated with it. In addition, the Panel accepts that activities provided for as permitted within the Temporary Activities chapter should not be excluded for this area.

5.4.3 As noted in paragraph 5.1.3 above, Brett Osborne in his s42A Report recommended a new policy apply to the Mataura River Floodway. That recommendation was simply expressed as:

> Avoid subdivision, use and development (except for critical infrastructure) within the “Mataura River Floodway”.

5.4.4 Having regard to the submissions lodged, including S85.088 Environment Southland referred to in section 5.1 above, and discussions at the hearing, the Panel concludes a more substantial policy is appropriate. The opportunity is also taken to correctly refer to mahinga kai.

5.4.5 Submissions S126.067 Southland Federated Farmers of New Zealand and others, S132.044 KiwiRail Holdings Ltd and S85.089 Environment Southland are accepted in part by replacing Policies NH-P3 and NH-P8 with the following:

NH-P4 Avoid new subdivision, use and development within the Mataura River Floodway, while recognising:

1. the functional need and locational need for critical infrastructure to locate there, subject to adopting a built design that avoids as far as practical impeding the flow of water in the river;
2. natural hazard mitigation works to mitigate the natural hazard and activities that reduce flood risk;
3. recreational use and temporary activities undertaken within the Mataura River and its margins;
4. the need to undertake maintenance, provide protection to, and upgrade, bridges and other existing structures located within the Floodway;
5. gravel removal within the Floodway is a necessary activity to maintain river flows; and
6. the importance of *mahinga kai* and customary activities to mana whenua.

5.5 Policy NH-P4

Submitter (S)	Decision Requested
S125.021 Ministry of Education	Retain NH-P4 as proposed.

5.5.1 The submission supporting the policy is acknowledged. To provide consistency of wording throughout this chapter and arising from submission S85.089 Environment Southland a minor change in wording is required to refer to "sensitive activity" rather than "residential unit".

5.5.2 Accordingly, submissions S125.021 Ministry of Education and S85.089 Environment Southland are accepted in part by amending Policy NH-P4 (now NH-P6) as follows:

NH-~~P4~~P6 Avoid locating any ~~*residential unit*~~ sensitive activity or other asset of high value between any *water body* and any *defence against water* designed or used to contain floodwater from that *water body*, unless ~~that asset has~~ there is a *functional need* or *operational need* to be in that location.

5.6 Policy NH-P5

Submitter (S)	Decision Requested
S121.049 Alliance Group Limited S125.023 Ministry of Education S40.038 Silver Fern Farms	Retain NH-P5 as notified
S85.090 Environment Southland	A precautionary approach should be taken with medium liquefaction risk given fault lines in the Gore District. Add in medium liquefaction risk to the policy
FS5.25 Hamish Weir	Disallow S85.090 Environment Southland. Adding this will increase insurance costs unnecessarily and require unnecessary reporting for resource consents such as expensive geotechnical reports.

5.6.1 The Panel notes Policy NH.P5 refers to managing subdivision, use and development in areas subject high liquefaction risk. Environment Southland requested that reference be added to medium liquefaction risk. Brett Osborne at paragraph 447 of his s42A Report recommended rejecting this submission and the Panel agrees. Accordingly, submission S85.090 Environment Southland is rejected.

5.6.2 As corollary to the deletion of Rule NH-R6, as provided for in paragraph 6.5.2 below, reference to liquefaction is deleted from the policy. The Panel also notes the poor grammar used in the policy, with amendment being required.

5.6.3 Submissions S121.049 Alliance Group Limited and others requested the policy be retained. As a consequence of changes being made to the policy these submissions are accepted in part.

5.6.4 Submission S85.090 Environment Southland is accepted in part by amending Policy NH-P5 (now NH-P7) as follows:

Manage subdivision, use and development in areas subject to risks of slope instability, and subsidence ~~and high liquefaction risk~~ to ~~demonstrate the appropriateness of the site for subdivision, use or development in a way that can~~ avoid or mitigate hazard risks to people and property.

5.7 Policy NH-P6

Submitter (S)	Decision Requested
S112.060 Waka Kotahi NZ Transport Agency	Retain NH-P6 as notified
S139.054 Hokonui Rūnanga Inc	Amend to read: 3. any significant adverse effects on people, ~~cultural values,~~ and property will be avoided and effects on mauri, any wāhi tapu, and access to and use of mahinga kai can be avoided, remedied or off-set."

5.7.1 The submission supporting the Policy is acknowledged. As changes have been made to this provision the submission is accepted in part.

5.7.2 Brett Osborne at paragraph 377 of his s42A Report recommended accepting the submission from Hokonui Rūnanga with one change, replacing the word “offset” with mitigate. He considered that in the context of the various matters listed in the policy offsetting cannot be reasonably applied to them all. He noted that offsetting is usually associated with biodiversity issues where the effects management hierarchy is being applied and that is not the case here. The Panel agrees with his conclusion.

5.7.3 Submission S139.054 Hokonui Rūnanga Inc is accepted in part by amending clause 3 in Policy NH-P6 (now NH-P8) to read:

3. any significant adverse effects on people, ~~cultural values, and~~ property ~~will be avoided,~~ cultural values liste din MW-1.2 can be avoided, remedied or mitigated.

Submitter (S)	Decision Requested
S85.091 Environment Southland	Alignment of terms provides clarity with definitions. Provide consistency with objective 4 that uses "regionally significant infrastructure". "Critical infrastructure" is not defined.
S101.042 Transpower New Zealand Limited	It is not always possible for infrastructure to be located outside of hazard risk areas. Amend Policy NH-P6 as follows: "NH-P6 Avoid the placement of critical infrastructure in identified and mapped areas subject to natural hazards ~~areas at risk from natural hazards,~~ unless: 1. there is ~~no reasonable alternative due to the~~ an operational need or functional need for the location; and 2. it will be designed to ~~maintain its integrity and~~ function to the fullest possible extent, even though this may be at a reduced level**,** during and after a natural hazard event, or can be readily re-instated after a natural hazard event; and 3. any significant adverse effects on people, cultural values, and property will be avoided or mitigated to the extent practicable**."**
FS24.027, FS24.030, FS24.050 Contact Energy Ltd	Allow S101.042 Transpower New Zealand Limited

5.7.4 Submission 85.091 Environment Southland is rejected as “critical infrastructure” is defined. Objective NH-O4 has been amended to also refer to critical infrastructure.

5.7.5 The Panel accepts the intent of the Transpower submission and adopts the recommendation of Brett Osborne at paragraph 378 of his s42A Report to accept this submission in part. The Panel notes that written confirmation was received from Rebecca Eng of Transpower accepting the outcome on this submission.

5.7.6 Submission S101.042 Transpower New Zealand Limited is accepted in part by revising Policy NH-P6 (now P8)as follows:

NH-P~~6~~8 Avoid the placement of critical infrastructure in ~~areas at risk from natural hazards~~ identified and mapped areas subject to natural hazards, unless:

1. there is ~~no reasonable alternative due to the~~ an operational need or functional need for the location; ~~and~~
2. it will be designed to ~~maintain its integrity and~~ function to the fullest possible extent, even though this may be at a reduced level, during and after a natural hazard event, ~~or~~ and can be readily re-instated after a natural hazard event; and

5.8 Policy NH-P7

Submitter (S)	Decision Requested
S126.068 Southland Federated Farmers of New Zealand S115.069 Kevin Robertson S143.080 Rural Ratepayers Group S148.081 Alistair & Bernadette Hunt S60.071 Ronald Crispin S68.189 John Baynes S109.142 Department of Conservation	Retain NH-P7 as drafted.
S110.025 Royal Forest and Bird Society of NZ Inc	If the definition of Nature Based Solutions is included as suggested, this can include natural features, buffers, riparian plantings and more. Change P7: Encourage the use, maintenance and enhancement of ~~natural features and buffers such as riparian planting~~ Nature Based Solutions to manage the risks of natural hazards on people, property, and the environment.
FS17.002 Federated Farmers	Disallow S110.025 Royal Forest and Bird Society of NZ Inc. NH-P7 as notified provides a clear nonregulatory approach for plan users.

5.8.1 The Panel agrees with Brett Osborne at paragraph 421 of his s42A Report that the notified wording of the policy is preferred to that suggested by Forest and Bird. No additional information was provided by Forest and Bird specific to this submission point. Accordingly, submission S110.025 Royal Forest and Bird Society of NZ Inc is rejected.

5.8.2 The submissions supporting the policy are acknowledged. No changes are being made to it. Accordingly, submissions S126.068 Southland Federated Farmers of New Zealand are accepted.

5.9 Policy NH-P8

Submitter (S)	Decision Requested
S16.042 Fuel Companies S112.061 Waka Kotahi NZ Transport Agency	Retain NH-P8 as proposed.

5.9.1 The submission supporting the policy is acknowledged. As the policy has been amended, submissions S16.042 Fuel Companies and S112.061 Waka Kotahi NZ Transport Agency are accepted in part.

5.9.2 Arising from submission S85.088 Environment Southland referred to in section 5.1 above, policy NH-P8 (now NH-P5) is amended as follows:

Policy NH-P5 ~~Identify and map areas subject to stopbank protection and~~ Within areas mapped as Flood Bank Mitigation Area:

1. As part of any subdivision require assessment of the flood risk identifying and providing for areas where future development should be:
   (a) avoided;
   (b) managed, including the location of suitable building platforms; and
   (c) enabled;
2. Require hazardous substance storage to be resilient to inundation;
3. Have regard to the ability of people within buildings to evacuate safely and in a timely manner in the event of a natural hazard event;
4. Require a minimum floor level above the 0.5% AEP design flood level for those parts of buildings containing habitable rooms;
5. Avoid damage to any Flood Bank Structure when undertaking development, including any earthworks;
6. ~~encourage~~ Adopt non-regulatory methods to inform the community of the risk and appropriate response in event of flood bank failure.

5.10 Additional Policies Sought

Submitter (S)	Decision Requested
S124.021 Fire and Emergency NZ	Amendment sought - the inclusion of NH-P9 and NH-P10 as outlined.
S124.022 Fire and Emergency NZ	NH-P9 In areas assessed or identified as being potentially subject to elevated fire risk, ensure that an appropriate design and layout, including a buffer area or setback, is provided for new subdivision and development, and the following matters are considered: (a) Access for emergency service vehicles, (b) Provision of and access to emergency firefighting water supply. (c) Separation and management of vegetation (with regard to slope, aspect, management regimes and use of less flammable vegetation), and (d) The design and materials of any buildings.
S124.023 Fire and Emergency NZ	NH-P10 Manage wildfire risk by making provision for water supplies and access to buildings for firefighting and appropriate buffers are maintained between new building platforms and forest and bush areas.

5.10.1 The Panel is unclear what is intended by “elevated fire risk” and what quantifiable tests the Council could impose requiring compliance through rules, other than matters that are had regard to as part of the building consent process. The Panel notes too, submissions have been lodged by FENZ to the Ecosystems and Indigenous Biodiversity chapter seeking creation of clear areas around buildings located within areas of indigenous vegetation. Matters of access to sites is also considered in the Transport chapter submissions. It is the view of the Panel, supported by Brett Osborne at paragraphs 311 to 317 of his s42A Report, that the issues raised are more appropriately considered in other chapters of the Plan. As FENZ has provided no additional material to enable these issues to be considered further submissions S124.021, S124.022 and S124.023 Fire and Emergency NZ are rejected.

Submitter (S)	Decision Requested
S85.097 Environment Southland	Consider using the terminology of the draft NPS-NHD. Create a new policy to establish some management criteria for new subdivision and development where there is existing flood protection (eg Gore Main Street).
FS5.30 Hamish Weir FS27.014 Alliance Group Limited FS29.040 Silver Fern Farms Limited	Disallow S85.097 Environment Southland. Existing provisions are satisfactory
S85.167, S85.134 Environment Southland	Establish a new policy which takes a precautionary approach to development in areas prone to natural hazard risk.
FS5.169 Hamish Weir FS22.066 Clark Fortune McDonald & Assoc	Disallow S85.167, S85.134 Environment Southland

5.10.2 The Panel agrees that more extensive policy direction is required within areas subject mitigation and in other areas as well. In paragraph 5.3.3 above Policy NH-P2 referring to Areas of Actual or Potential Inundation has been expanded, in paragraph 5.4.5 above a new policy is added referring to the Mataura River Floodway, while in paragraph 5.9.2 above the policy referring to the Flood Bank Mitigation Area has also been expanded.

5.10.3 The draft NPS-NHD focuses on using “best information” and making decisions on the basis of information held, namely adopting a precautionary approach. In Decision 36 Subdivision, at paragraph 4.4.4 a new policy has been added to this chapter that incorporates the issues referred to by ERS, as follows:

> Adopt a precautionary approach and use best available information when assessing the risk from natural hazards.

5.10.4 Submissions S85.097 and S85.167, S85.134 Environment Southland are accepted in part by adopting the changes referred to above.

5.11 Notes

Submitter (S)	Decision Requested
S154.039 Spark New Zealand Trading Limited S32.039 One New Zealand Group Ltd S33.039 FortySouth S37.039 Connexa Limited S35.039 Chorus New Zealand Ltd	Activities regulated under the NESTF are exempt from having to comply with District Plan rules about natural hazards. Add Note 3: Telecommunications infrastructure is exempt from having to comply with the provisions in this chapter

5.11.1 The Panel has considered Note 1 to this chapter as part of decision to remove unnecessary duplication within the Plan and determined that it 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. The Panel has also deleted Note 2 under the same clause, and not adopted Note 3, in favour of adding two new paragraphs to the end of the Overview.

5.11.2 Submissions S154.039 Spark New Zealand Trading Limited and other are accepted in part by adding to the Natural Hazards chapter Overview:

> while the construction and maintenance of defences against water may require resource consent from Environment Southland.
>
> Telecommunication infrastructure is a regulated activity under the National Environmental Standard for Telecommunication Facilities and is exempt from complying with the provisions in this chapter.

6. Natural Hazards Rules

6.1 Rule NH-R1

Submitter (S)	Decision Requested
S132.045 KiwiRail Holdings Ltd	Retain NH-R1 as proposed.

6.1.1 The submission supporting the rule is acknowledged. No changes are being made to it. Accordingly, submission S132.045 KiwiRail Holdings Ltd is accepted.

6.2 Rule NH-R2

Submitter (S)	Decision Requested
S121.050 Alliance Group Limited S125.025 Ministry of Education S40.039 Silver Fern Farms	Retain NH-R2 as notified
S139.056 Hokonui Rūnanga Inc	Make consequential amendments to align with the amendments sought to NH-P6. 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.
S85.092 Environment Southland	Avoiding significant natural hazard risk is an important policy in the Regional Policy Statement. Establishing a minimum floor level as a permitted activity will incentivise land use change and development in areas of medium and high risk. A precautionary approach is needed with new subdivision, and development on land subject to natural hazards, particularly with climate change impacts moving forward. The rule should consider all natural hazards not just inundation. Exclude sensitive activities from being established on flood prone land as a permitted activity. Internal alterations should be a permitted activity. However, extensions, additions or new buildings on natural hazard prone land should trigger resource consents.
FS5.26 Hamish Weir FS22.045 Clark Fortune McDonald & Associates	Disallow S85.092 Environment Southland. These provisions should only apply to flood plain and not theoretically / mathematically flood prone land
FS28.034 Kainga Ora	Disallow in part S85.092 Environment Southland. The approach should also be flexible in being able to address the direct level and effect of a perceived risk and not be unnecessarily restrictive.

6.2.1 The Panel recognises that as a consequence of the changes made to the structure and content of the policies within the Natural Hazards chapter, significant changes and additions are necessary to the rules. In the Panel's view submission S85.092 provides scope to revise the rules and introduce additional provisions applying to existing and new sensitive activities within the Areas Subject to Actual and Potential Inundation and the Flood Bank Mitigation Area. The Panel also considers that the submissions lodged to other provisions in this chapter, particularly the policy framework authorise the changes the Panel considers necessary arising from the revision of the policies.

6.2.2 The Panel notes that Rule NH-R2 as notified did not apply to the "Stopbank Protection Area" and for the Areas Subject to Actual or Potential Inundation buildings used for sensitive activities are permitted subject to providing a minimum floor level above the 0.5% AEP design flood. The Panel accepts the advice of Marcus Roy and Brett Osborne that Rule NH-R2 should be replaced by rules focusing on the three different areas shown on the planning maps as being subject to flooding. However, the Panel holds a different view as to how those rules should be structured.

6.2.3 The Panel also notes Rule NH-R2 provided for the Environment Southland Planning Department to direct different requirements. In the Panel's view this is ultra vires and must be severed from the provision.

6.2.4 The Panel has been guided by the following advice in the s42A Report of Brett Osborne:

> 210. Tonkin & Taylor have reviewed the ES flood model for the Mataura River (Attachment 4, Appendix C) and advise that despite the presence of stop banks there is a flood risk within the stop bank protection area during a 1% AEP event and it is recommended provisions be made for new development to mitigate the hazard risk to safeguard people and property. The subject area comprises a range of zones including MUZ, GRZ, MRZ and MPZ which provide for sensitive activities as a permitted activity. Therefore, based on this advice and the level of hazard risk to sensitive activities, I recommend the stop bank protection area should not be excluded, and instead development for sensitive activities within this area should be managed by the rule framework as part of addressing the ES submission. This is also consistent with the RPS policy direction (in particular policy NH.6).
>
> 211. In doing so, the provisions also need to distinguish between the Actual and Potential Inundation area and the Stopbank Protection area, as highlighted by the ES submission, so as to be consistent with the higher order direction of the RPS. Therefore, I recommend amendments to the rules that recognise the risk within the unprotected Actual and Potential Inundation area, contrasted to that of the protected Stop Bank Protection area. This aligns with the amendments recommended to the policy direction within the natural hazard chapter in order to be consistent with the RPS direction in turn based on whether an area is protected or not.
>
> 212. However, I do not agree with ES that extensions or additions to existing development within this area should automatically require resource consent. The hazard risk already exists for these properties and as such, extensions could be provided for as a permitted activity where a minimum floor level standard can be achieved to address the risk to property, while recognising the risk to occupants would not necessarily increase as the number of household units or intensity of residential units on the site would not be changing. The benefits of requiring a resource consent process for an extension would therefore be marginal.

6.2.5 Brett Osborne at paragraph 220 of his s42A Report also referred to the advice from Tonkin and Taylor that commercial activities are less sensitive to hazard risk compared to residential activities but there is still a risk of damage to infrastructure and buildings should the flood banks overtop in Gore. Tonkin & Taylor advised there are some areas where buildings may be vulnerable to structural damage and on this basis, there should be a clear public awareness of the risk to infrastructure and buildings for development within the Flood Bank Protection Area.

6.2.6 The Panel considers the advice supports the adopted policy framework. The Panel has reviewed the s32AA Evaluation provided by Brett Osborne at paragraph 243 of his s42A Report and considers he has had regard to all relevant matters and no additional assessment is required.

6.2.7 Submission S85.092 Environment Southland is accepted in part by deleting Rule NH-R2 and inserting the following:

> **NH-R2 The addition to existing *buildings* used for *sensitive activities* within areas subject to Actual and Potential Inundation and the Flood Bank Mitigation Area**
>
> **All Zones**
>
> **Activity status:** Permitted
>
> Where:

1. Any habitable room must have a minimum floor level above the 0.5% AEP design flood level; and
2. No additional *residential units* are created.

Activity status where compliance is not achieved:

Restricted Discretionary

Matters of discretion:

1. The flood effect from a 0.5% AEP event.
2. Flood effects on people and property or displacement of flood waters onto adjacent sites;
3. Evacuation of properties during a 0.5% Annual Exceedance Probability flood event.

NH-R3 The construction of new buildings, including conversion of existing buildings, within the Flood Bank Mitigation Area.

All Zones

Activity status: Permitted

Where:

1. The finished floor level for any habitable room must be above the 0.5% AEP flood design level or in the case of converting an existing building, must ensure the finished floor level of all habitable rooms are above the 0.5% AEP design flood level.
2. No more than one residential unit is created on the site

Activity status where compliance is not achieved:

Discretionary

NH-R6 The construction of new buildings, including conversion of existing buildings within areas subject to Actual and Potential Inundation excluding Flood BAnk Mitigation Area and Mataura River Floodway.

All Zones

Activity status: Restricted Discretionary

Where:

1. The building platform is located outside of the stream channel;
2. The finished floor level for any new building must be above the 0.5% AEP flood design level;
3. The finished floor level of any habitable room when converting an existing building must be above the 0.5% AEP flood design level.
4. No more than one residential unit is created within that part of the site subject to Actual or Potential Inundation.

Matters of Discretion:

1. The flood effect from a 0.5% AEP event for non-*sensitive activities*
2. Flood effects on people and property or displacement of flood waters onto adjacent sites;
3. Evacuation of properties during a 0.5% Annual Exceedance Probability flood event.

Activity status where compliance is not achieved for buildings containing non-sensitive activities: Discretionary

Activity status where compliance is not achieved for buildings containing sensitive activities: Non-Complying

6.2.8 The submissions supporting the rule are acknowledged. As changes are being made to it submissions S121.050 Alliance Group Limited, S125.025 Ministry of Education and S40.039 Silver Fern Farms are accepted in part.

6.2.9 The Panel agrees with the comments of Brett Osborne at paragraph 238 of his s42A Report where he opines that the matters raised by Hokonui Rūnanga with regard to Policy NH-P6 do not readily transfer to the revised rules controlling buildings within the areas subject to flooding hazards. Accordingly, submission S139.056 Hokonui Rūnanga Inc is rejected.

6.3 Rule NH-R3

Submitter (S)	Decision Requested
S85.093 Environment Southland	Keep rule. Establishing new flood protection works should be undertaken with detailed work and in partnership with numerous agencies.
S132.046 KiwiRail Holdings Ltd	Amend NH-R3 as follows: NH-R3 The construction of new or extended defences against water All Zones Activity Status: Discretionary 1. Excluding the Rail Network.
FS27.013 Alliance Group Limited FS29.039 Silver Fern Farms Limited	Disallow S132.046 KiwiRail Holdings Ltd. The construction of new or extended defences for the Rail Network is most appropriately considered as a discretionary activity in part to allow consideration of possible adverse effects on neighbouring/ nearby land.

6.3.1 Brett Osborne at paragraph 426 of his s42A Report commented on the KiwiRail submission as follows:

> The KiwiRail bridge is located within a significant hazard risk area where any changes within the Mataura River Floodway could impact the existing flood defences and exacerbate the flood risk to surrounding properties. As such, I agree with the further submitters that it would be appropriate to carefully assess the scope and scale of any works where they extended beyond the designation footprint to consider the actual and potential adverse effects on the existing flood protection measures including any potential change in hazard risk to people and property within the surrounding area.

6.3.2 Louise Taylor in her statement of evidence advised KiwiRail is planning the upgrade of Mataura River rail bridge which will require protection of the bridge piers and some of these works are likely to be outside of KiwiRail's designation. That by itself, in the Panel's view is insufficient to justify providing an exemption. The Panel notes that while works within the KiwiRail designation removes the need for a land use consent from the Gore District Council, an Outline Plan is still required under RMA s176A, and any disturbance to the bed of the river potentially triggers the need for a resource consent from Environment Southland. In addition, within the flood plain itself the Panel does not support a bespoke exemption rule as a matter of principle. The effects of works within the floodway have the potential to give rise to river dynamics effects that require consideration. Submission S132.046 KiwiRail Holdings Ltd is therefore rejected.

6.3.3 The Panel does wish to draw the attention of KiwiRail to the new Policy NH-P4 that recognises within the Mataura River Floodway the need to undertake maintenance, provide protection to, and upgrade, bridges and other existing structures located within the floodway. This has been included having regard to the issues raised by KiwiRail in their submissions.

6.3.4 The submission supporting the rule by Environment Southland is acknowledged. No changes are being made to it. Accordingly, submission S85.093 Environment Southland is accepted.

6.4 Rules NH-R4 and NH-R5

Submitter (S)	Decision Requested
S85.094 Environment Southland	Keep rule NH-R4 but include earthworks and afforestation. These activities shouldn't be allowed as of right on the floodplain.
S85.095 Environment Southland	Amend Rule NH-R5. Earthworks (cut or fill) and establishing trees can have an impact on the performance of the Mataura River Floodway.
FS5.27 Hamish Weir	Allow in part S85.094 Environment Southland. The Flood plain should be protected from obstruction but not a blanket ban on earthworks. The focus should be on large obstructions such as forestry not individual small accessory farm buildings and minor earthworks
FS22.046, FS22.047 Clark Fortune McDonald & Associates	Disallow S85.094, S85.095 Environment Southland. making all earthworks within the floodway a non-complying activity is not practical. Minor earthworks should remain a permitted activity.
S101.043 Transpower New Zealand Limited	Opposes Rules NH-R4 on the basis that the Rule, insofar as it relates to the National Grid, fails to give effect to the NPSET. Non-complying activity status does not give effect to the NPSET. Amend Rule NH-R4 as follows: "Activity status: Non-Complying Where: 1. The following activity is undertaken: (a) new structures or building, that is not critical infrastructure; (b) ~~critical Infrastructure (c)~~ Sensitive Activities." As a consequence, amend Rule INFR-R9.
S132.047 KiwiRail Holdings Ltd	NH-R4 imposes limitations on KiwiRail protecting critical infrastructure as some works may fall outside of the designation, specifically the Gore Rail bridge. Amend NH-R4 as follows: 2. This rule does not apply to activities in the Rail Network including the rail bridge over the Mataura River.
S101.044 Transpower New Zealand Limited	The Rule fails to give effect to the NPSET. Amend Rule NH-R5 as follows: "Activity Status: Non-complying Where: 1. The activity is not infrastructure and involves constructing new buildings or structures, or additions to an existing building or structure on the river side of a Southland Regional Council stopbank." As a consequence, amend Rule INFR-R9- as stated in provision
S132.048 KiwiRail Holdings Ltd	Some works may fall outside of the designation. Amend NH-R5 as follows: 2. This rule does not apply to activities in the Rail Network

6.4.1 Decision 37 Earthworks, at paragraph 5.7.12 provides for the transfer of the rule applying to earthworks into the Natural Hazards chapter. Consequential to that, and consistent with the submissions above, Rule NH-R4 and Rule NH-R5 require amending to delete reference to and exempt critical infrastructure from the rules.

6.4.2 The Panel agrees that the planting of trees and shrubs should be excluded from the Mataura River Floodway. Brett Osborne at paragraph 393 of his s42A Report suggested that the Southland Flood Control and Drainage Management Bylaw 2020 provided for control of trees and shrubs within the floodway. However, that is not the case. The Bylaw only refers to trees located on or adjacent to flood banks. However, with the redrafting of the rule to list permitted activities, with all other activities non-comply, by default the planting of trees or shrubs will be non-complying.

6.4.3 The Panel notes that “defences against water” are not included in the definition of “critical infrastructure”. Notified Rule NH-R3 provides for defences against water as a discretionary activity. For the avoidance of doubt an exemption is required in Rules NH-R4 and NH-R5.

6.4.4 Also arising from submissions S85.088 Environment Southland, S139.040 Hokonui Rūnanga Inc and responses to questions asked by the Panel at the hearings, there are

activities that are appropriate within the Mataura River Floodway that should be recognised within the rule.

6.4.4 Submissions S101.043 and S101.044 Transpower New Zealand Limited, S132.047 and S132.048 KiwiRail Holdings Ltd, S85.094 and S85.095 Environment Southland, together with S85.088 Environment Southland, S139.040 Hokonui Rūnanga Inc, are accepted by:

(a) Amending Rule NH-R4 (now NH-R5) as follows:

Activity status: ~~Non-Complying~~ Permitted

Where:

1. The following activity is undertaken:

   (a) ~~new *structures or building*~~ *mahinga kai* and customary activity;

   (b) ~~critical infrastructure~~ *recreational* activity

   (c) temporary activity, subject to compliance with Rules TEMP-R1, TEMP-R4, TEMP-R5, TEMP-R6, TEMP-R7, TEMP-R10 or TEMP-R11; ~~Sensitive activities~~

2. The activity does not use any structure, other than a temporary structure such as a tent.

Except: This rule does not apply to:

(i) *critical infrastructure*

(ii) *defences against water*

Activity status where compliance is not achieved: Non-complying

(b) Adding to Rule NH-R5 (now NH-R8):

Except: This rule does not apply to:

(i) *critical infrastructure*

(ii) *defences against water*

6.5 Rule NH-R6

Submitter (S)	Decision Requested
S112.062 Waka Kotahi NZ Transport Agency	Retain NH-R6 as notified
S101.045 Transpower New Zealand Limited	Delete Rule NH-R6 in its entirety as it fails to give effect to the NPSET. And amend Rule INFR-R9 as stated in that provision
S144.009 Contact Energy Limited	Oppose the non-complying activity status for critical infrastructure in NH-R6 and seek that NH-R6 be deleted
S85.096 Environment Southland	Expand to cover sensitive activities within this rule.
FS5.28 Hamish Weir	Disallow S85.096 Environment Southland. Current provisions are suitable

6.5.1 The Panel in Decision 39 Infrastructure has amended Rule INFR-R9 to require resource consent as a discretionary activity where critical infrastructure is proposed to be located within areas of high liquefaction, noting there are no areas within the Gore District of very high liquefaction. The Panel accepts the advice of Brett Osborne that as a corollary to that decision, Rule NH-R6 is no longer required and can be deleted. Brett Osborne also noted at paragraphs 406 and 407 of his s42A Report that changes made to the Building Act 2004 effectively manage building construction on land susceptible to liquefaction and as a consequence it would be a duplication to include provisions in the District Plan. The Panel agrees. As a consequence, submissions

S112.062 Waka Kotahi NZ Transport Agency seeking the rules be retained and S85.096 Environment Southland seeking an addition to the rule are rejected.

6.5.2 Submissions S101.045 Transpower New Zealand Limited and S144.009 Contact Energy Limited are accepted by deleting Rule NH-R6.

6.6 Additional Rules Sought

Submitter (S)	Decision Requested
S115.070 Kevin Robertson S143.081 Rural Ratepayers Group S148.082 Alistair & Bernadette Hunt S60.072 Ronald Crispin S68.190 John Baynes S126.069 Southland Federated Farmers of New Zealand	Include New Rule. There should be provision for unoccupied farm buildings in natural hazard areas as these have a lower risk than occupied buildings.
FS5.29 Hamish Weir	Allow S126.069 Southland Federated Farmers of NZ

6.6.1 Brett Osborne at paragraph 294 of his s42A Report agreed with the submitters, subject to conditions, that it is appropriate to provide for non-habitable buildings within the Area Subject to Actual and Potential Inundation. He did highlight however that buildings can have an impact on flood water displacement and if located near flood protection works or other buildings, including dwellings, then they can increase the adverse effects of the hazard, depending on the design and location. Arising from these considerations Brett Osborne recommended a permitted activity rule for farm buildings within areas of actual and potential inundation with conditions applying to floor area size and setbacks from residential buildings and flood banks.

6.6.2 Federated Farmers in evidence presented at the hearing generally supported the recommendation but requested that the 20m separation required between residential buildings and farm buildings be reduced to 10 metres. Brett Osborne in a statement of evidence opposed that change but following discussion at the hearing and having regard to advice from Tim Morris agreed that 10 metres was acceptable. The Panel agrees.

6.6.3 Submissions S115.070 Kevin Robertson and others are accepted by inserting the following new rule:

NH-R4 Construction of an accessory building used for Primary Production within areas subject to actual or potential inundation

General Rural Zone

Activity status: Permitted

Where:

1. The building is for a non-habitable use; and
2. The building Is no greater than 500m^2 in floor area; and
3. The building is set back a minimum 10m from any residential building; and
4. The building is set back a minimum 10m from any flood protection asset or hydraulic control structure.

Activity status where compliance is not achieved: Restricted Discretionary

Matters of Discretion:

1. The risk to people and property from the displacement or diversion of flood waters; and
2. The incorporation of design methods to mitigate the hazard risk; and
3. The ability to avoid adversely affecting existing flood protection assets and structures.

Submitter (S)	Decision Requested
S132.049 KiwiRail Holdings Ltd	NH-R3, NH-R4, and NH-R5 place limitations on KiwiRail protecting critical infrastructure. Create an additional rule that provides clarity and certainty for protection and maintenance of the rail network as a Permitted Activity in relation to defences against water.

6.6.4 The KiwiRail submissions raise the same issue as considered in sections 6.3 and 6.4 above and no additional consideration is required. For the reasons set out above submission S132.049 KiwiRail Holdings Ltd is accepted in part by adopting the earlier decisions.

7. Other Plan Provisions

7.1 Maps

Submitter (S)	Decision Requested
S99.004 Clark Fortune McDonald & Associates	Consult with Environment Southland in relation to this flood hazard to accurately identify the extent of it. The flood hazard that appears in the PDP in relation to the PDP Rural Lifestyle zone around Mandeville appears to be inaccurately identified.

7.1.1 In Decision 15 Rural Definitions and Maps, the Panel had regard to the Rural Lifestyle zoning shown coloured blue on the plan below.

7.1.2 The decision of the Panel, having regard to the flood prone nature of the land, is to rezone the area Rural General. As a consequence, submission S99.004 Clark Fortune McDonald & Associates is accepted.

7.2 Environment Southland Submissions

7.2.1 Environment Southland has lodged submissions to each of the spatial zones and also other chapters in the PDP seeking additional objectives, policies and rules relating to hazard areas and with regard to spatial zones opposing any upzoning of land. There are in excess of 300 submission points referring to these issues. For convenience, to avoid undue repetition, these submissions are grouped together. As the summarised text of the submissions is almost the same in dealing with each of the issues and given their high number, each submission point is not list separately. Further submission points have been lodged to a number of these submissions by Kainga Ora (FS28) generally in support and Alliance Group Ltd (FS27), Hamish Weir (FS5), Clark Fortune McDonald & Associates (FS22) and Charlton Rise Limited (FS6) in opposition.

<u>Zoning of Land</u>

Submitter (S)	Decision Requested
S85.311 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. Additionally, re-align GRZ to align with potential mining overlay. This comment applies to all zones and maps.
FS5.199 Hamish Weir	Disallow S85.311 Environment Southland

7.2.2 Within those zones subject to actual or potential inundation regard has been given to the appropriateness of any upzoning that has been provided in the PDP. In some zones, such as Sport and Recreation, the zoning does not necessarily allow for land use change and development intensification. Rather, it is endorsing the existing activities occurring on the sites. In other cases where intensification is enabled, reports and evidence provided advice to the Panel as to the appropriateness of the upzoning having regard to the degree of risk. The Panel through various decisions has, where it considers it appropriate, amended the zoning to enable either avoidance or management of that risk. In that regard, the individual submission points are variously accepted, accepted in part or rejected.

7.2.3 Submission S85.311 Environment Southland was coded specifically to the Natural Hazards chapter. The zoning issue is considered above. The reference to "potential mining overlay" relates to land with Development Area 2 (DEV2). Joanne Skuse at paragraph 456 of her s42A Report to the Development Areas chapter considered submission S85.302 Environment Southland, that raised a similar issue, stating:

> The Outline Development Plan contains two Hazard Overlay Areas (see Figure 8 below). Hazard Area 1 has known mines, whereas Hazard Area 2 has a possible mined area. Development within these areas will not be appropriate without further intrusive investigations being completed and appropriate geotechnical data provided to support such development. The objectives, policies and rule of the zone (including subdivision rules) reflect this.

7.2.4 The outcome of submission S85.302, in Decision 22 at paragraph 5.3.8, is the inclusion of an additional policy as follows:

> DEV2-P6 Avoid land use within sites that are identified as Hazard Area 1 and Hazard Area 2 until further investigations have been completed in the mapped area to determine that either:
>
> 1. there is no risk from historic mining activity, or
> 2. that any identified risk can be managed to mitigate risk from the historic mining activity to people or property.

7.2.5 The Panel considers the framework for managing activities within the area previously subject to mining within the DEV2 area is appropriate and rezoning to rural is not necessary. Accordingly, submission S85.311 Environment Southland is accepted in part by adopting the decision at paragraph 5.3.8 in Decision 22 Development Areas.

Submitter (S) Further Submitter (FS)	Decision Requested
S85.296 (MPZ), S85.283 (SARZ), S85.232 (MUZ), S85.280 (GIZ), S85.213 (LCZ), S85.249 (TCZ) Environment Southland	Include an objective and policy relating to natural hazard risk and set performance standards regarding minimum floor levels in areas still vulnerable to flood risk. Manage development within secondary flow paths
S85.251, S85.252, S85.253, S85.254, S85.255, S85.256, S85.257, S85.258, S85.259, S85.260, S85.261, S85.262, S85.263, S85.264, S85.265, S85.266 Environment Southland	LIZ-R1 – R14, LIZ-S5: Include an objective and policy relating to natural hazard risk and set performance standards regarding minimum floor levels in areas still vulnerable to flood risk. Include a performance standard regarding minimum floor levels. New buildings or activities should only be established where they will be designed and built to minimise impacts associated with natural hazards, flood inundation. Consideration should also be given to effectively providing for secondary flow paths by preventing buildings structures

	and earthworks which could impede or redirect secondary flow paths.
S85.268, S85.269, S85.270, S85.271, S85.272, S85.273, S85.274, S85.275, S85.276, S85.277, S85.278, S85.279, S85.155, S85.156,S85.157, S85.158, S85.159, S85.160, S85.161, S85.162, S85.163, S85.165, S85.200, S85.201, S85.202, S85.203, S85.204, S85.205, S85.206, S85.207, S85.208, S85.209, S85.213, S85.210, S85.211, S85.212, S85.313, S85.234, S85.235, S85.236, S85.237, S85.241, S85.238, S85.239, S85.242, S85.240, S85.243, S85.248, S85.244, S85.245, S85.246, S85.247, S85.215, S85.216, S85.217, S85.218, S85.219, S85.220, S85.221, S85.222, S85.223, S85.224, S85.231, S85.225, S85.226, S85.227, S85.228, S85.229, S85.230, S85.285, S85.286, S85.287, S85.288, S85.289, S85.290, S85.291, S85.292, S85.293, S85.294, S85.295, S85.282**,** S85.299 Environment Southland	GIZ-R1 to GIZ-R11, GIZ-S5, GRUZ-R5 - R14, LCZ-R1 – R13, LCZ-S6, TCZ-R1 – R14¸TCZ-S6, MUZ-R1 – R15, MUZ-S1, S5, MPZ-R3 – R8, MPZ-R10 – R12, MPZ-S5, MPZ-R9, DEV1-R1: Include a performance standard regarding minimum floor levels. New buildings or activities should only be established where they will be designed and built to minimise impacts associated with natural hazards, flood inundation. Consideration should also be given to effectively providing for secondary flow paths by preventing buildings structures and earthworks which could impede or redirect secondary flow paths.
FS27.027 Alliance Group Ltd	*Disallow S85.268 Environment Southland*
FS7.4 HWR Property Ltd	*Disallow S85.270 Environment Southland in part. Should only be a requirement where flood hazard is identified for the site.*
FS29.081 Silver Fern Farms Ltd	*Disallow S85.280 Environment Southland*
S85.002, S85.168, S85.003, S85.004, S85.170, S85.005, S85.171, S85.006, S85.175, S85.176, S85.178, S85.177, S85.179, S85.180, S85.181, S85.183, S85.184, S85.185, S85.186, S85.187, S85.120, S85.122, S85.123, S85.124, S85.125, S85.126, S85.133, S85.135, S85.136, S85.137, S85.138, S85.139, S85.140, S85.141, S85.142, S85.143, S85.144, S85.145, S85.146, S85.147, S85.148, S85.149, S85.150, S85.151 Environment Southland Environment Southland	RLZ-R2, RLZ-R3, RLZ-R4, RLZ-R7, RLZ-R8, RLZ-S7, SETZ-R1, SETZ-R2, SETZ-R3, SETZ-R4, SETZ-R5, SETZ-R6, SETZ-R7, SETZ-R9, SETZ-R10, SETZ-PREC8-R1, SETZ-PREC8-R9 SETZ-S7, GRZ-R1 - R6, GRZ-S7, MRZ-R1 – R6, MRZ-R8, MRZ-R12 – R14, MRZ-PREC7-R2 MRZ-PREC9-R1 MRZ-PREC9-R2, MRZ-S7: Include "<u>not within an identified natural hazard area</u>" criteria into these rules.
FS22.092, FS22.093, FS22.094, FS22.097, FS22.098, FS22.095, FS22.099, FS22.096, FS22.073, FS22.081, FS22.083, FS22.082, FS22.084, FS22.085, FS22.086, FS22.087, FS22.088, FS22.091, FS22.120, FS22.121, FS22.122, FS22.123, FS22.124, FS22.125, FS22.126, FS22.127, FS22.128, FS22.129, FS22.130, FS22.133, FS22.134,FS22.135, FS22.131, FS22.136, FS22.074, FS22.100, FS22.101, FS22.102, FS22.103, FS22.104, FS22.111 *Clark Fortune McDonald & Associates*	*Disallow S85.002, S85.168, S85.003, S85.004, S85.170, S85.005, S85.171, S85.006,* S85.175, S85.176, S85.178, S85.177, S85.179, S85.180, S85.181, S85.183, S85.184, S85.185, S85.186, S85.187, *S85.135, S85.136, S85.137, S85.138, S85.139, S85.140, S85.141, S85.142, S85.143, S85.144, S85.145, S85.146, S85.147, S85.149, S85.150, S85.151* S85.120, S85.122, S85.123, S85.124, S85.125, S85.126, S85.133 *Environment Southland*
FS5.145, FS5.146, FS5.147, FS5.148, FS5.152, *FS5.155 FS5.156 FS5.157* Hamish Weir	Disallow S85.122, S85.124, S85.125, S85.126, S85.133, *S85.135 S85.137 S85.139* Environment Southland
FS28.056, FS28.058, FS28.057, FS28.059, FS28.060, FS28.065 FS28.066 FS28.067 FS28.068 Kainga Ora	Disallow S85.120, S85.123, S85.122, S85.124, S85.125, *S85.135 S85.139 S85.143, S85.143, Environment Southland. Provisions should enable development where it may be appropriate (following mitigation or management measures) and dependent on the level of risk associated with the hazard.*
S85.154 Environment Southland	GRUZ-R4 New buildings or activities should only be established where they will be designed and built to minimise

	impacts associated with natural hazards flood inundation. Consideration should also be given to effectively providing for secondary flow paths by preventing buildings structures and earthworks which could impede or redirect secondary flow paths Include a performance standard regarding minimum floor levels

7.2.6 The Panel notes that a number of rivers and streams flows through the District and from time to time flooding of properties occurs, both from water ways that spread out of their river beds and from ponding of water that collects in low lying areas. During extreme rainfall events overland flow can be a hazard and cause damage. The Panel does not consider this out of the ordinary within rural areas and manging the effects of such flooding is part of rural activities.

7.2.7 Areas known to be subject to actual and potential inundation, throughout the District, in both rural and urban areas, are shown on the planning maps and rules within the Natural Hazards chapter manage activities and structures within those areas as set out elsewhere in this decision. This includes requiring the floor levels for a number of activities to be located above the 0.5% AEP flood level. Adopting a minimum floor level in each of the zone rules is an unnecessary duplication when the same outcome can be achieved through the Natural Hazards chapter.

7.2.8 As a consequence, those submissions of Environment Southland seeking new objectives and policies and additions to the rules and standards (other than in the Natural Hazards chapter) are rejected.

7.2.9 Arising from evidence provided during the hearing process, the issue of overland (or secondary) flows following heavy rainfall events was raised on a number of occasions. Marcus Roy was the only witness to refer to the location of overland flows noting in his oral presentation with regard to the flood hazard maps provided by Environment Southland that the modelling also shows secondary flow paths during a flooding event. However, on reviewing the flood hazard maps it was not apparent to the Panel where the overland flow paths were located.

7.2.10 As a consequence, the Panel has concluded that there is insufficient information to include provisions specifically related to use and development within any areas that may be subject to overland flows. The Panel does accept however, that overland flows is a matter that regard should be had to in considering the subdivision of land. In that regard, in response to submissions lodged, the Panel has included reference to consideration of overland flows in the various relevant rules in the Subdivision chapter, either as a matter of control or an assessment matter. In that regard, submission S85.249 Environment Southland, together with other submissions of Environment Southand referring to secondary flow paths, are accepted in part.

Submitter (S) Further Submitter (FS)	Decision Requested
S85.167 Environment Southland	GRUZ-Additional policy sought: Establish a new policy which takes a precautionary approach to development in areas prone to natural hazard risk.
FS5.169 Hamish Weir FS22.066 Clark Fortune McDonald & Assoc	Disallow S85.167 Environment Southland

7.2.11 The submission point above is an example of the submissions lodged to all zones and a number of other chapters in the PDP. In Decision 36 Subdivision, at paragraph 4.4.4 the following policy has been added to the Natural Hazards chapter:

Adopt a precautionary approach and use best available information when assessing the risk from natural hazards.

7.2.12 The Panel considers it unnecessary to include a provision in other chapters of the Plan providing for a similar outcome. Accordingly, submission S85.249 Environment Southland, together with other submissions of Environment Southand seeking the inclusion of provisions referring to a precautionary approach, are accepted in part.

7.3 Subdivision Chapter

Submitter (S) Further Submitter (FS)	Decision Requested
S85.103 Environment Southland	In SUB-P4 recognise that natural hazard mapping is not entirely accurate and a precautionary approach to development should be taken. Enabling development in natural hazard areas with minimum floor levels will unnecessarily expose communities to a medium and high level of risk during a flood event. Include "medium, high and" in front of significant natural hazards ....
FS5.83 Hamish Weir FS28.038 Kainga Ora FS22.005 Clark Fortune McDonald & Associates	S85.103 Environment Southland
S100.002 Charlton Rise Limited	In SUB-P4 remove "avoid" from the policy. Alternatively use "or" as per SUB-P5. Removing the word avoid will ensure hazards are managed. Subdivision may be for land management purposes, not always necessarily resulting in risk to human life or property.
FS28.037 Kainga Ora	Allow in part S100.002 Charlton Rise Limited. Kāinga Ora considers that the SUB-P4 should be amended as per S100.002 as follows: Significant natural hazard risk is avoided and other natural hazard risk is managed ~~and~~ or mitigated through mitigation measures such as compliance with lot density and minimum floor levels.
FS22.004 Clark Fortune McDonald & Associates	Allow S100.002 Charlton Rise Limited. There are situations where constraints or hazards are present but subdivision is still appropriate or necessary for various purposes. Provided hazards are managed appropriately those subdivisions can be undertaken without increasing the risk from hazards.

7.3.1 Notified Policy SUB-P4 reads as follows:

> Significant *natural hazard* risk is avoided and other *natural hazard* risk is managed and mitigated through mitigation measures such as compliance with lot density and minimum floor levels.

7.3.2 The Panel agrees with Environment Southland that a precautionary approach is warranted when assessing risk from natural hazards, and a new policy NH-P1 has been included in the Plan recognising that. The Panel does not agree it is appropriate to avoid all levels of risk associated with natural hazards. The Panel is of the view that if the risk is not a potential danger to people and property then a management approach, if practical, should be adopted. That is a factor the Panel has taken into account in determining the suitability of zoning within areas subject to the natural flooding hazard.

7.3.3 The Panel has not included a definition of “significant risk” in the Plan and equally does not consider there to be benefit in quantifying levels of risk, such as medium, high or significant” as requested by Environment Southland. The risk will vary depending on the circumstances and the activities and can be assessed on a case by case basis when consents are lodged. Accordingly, submission S85.103 Environment Southland is rejected.

7.3.4 The Panel accepts the advice of Brett Osborne at paragraph 437 of his s42A Report that the removal of "avoid" would be inconsistent with RPS policy NH.5. As the Panel agrees that a risk cannot be both managed and mitigated, the word "and" should replaced by "or" as referred to by Charlton Rise Ltd and Kainga Ora. As a consequential amendment to the Panel's decision not to include a definition of "significant risk" in the Plan amendment is required to this policy. In that regard the Panel adopts similar wording used in paragraph 4.2.5 above.

7.3.5 Submission S100.002 Charlton Rise Limited is accepted in part and consequential to paragraph 4.2.5 above, Policy SUB-P4 is amended to read:

~~Significant~~ Avoid a *natural hazard* risk that creates a danger to people and property ~~is avoided~~ and for other *natural hazard* risk ~~is~~ manage~~d~~ and mitigate~~d~~ that risk through mitigation measures such as compliance with lot density and minimum floor levels.

Submitter (S) Further Submitter (FS)	Decision Requested
S85.106, S85.107, S85.108 Environment Southland	SUB-R5, SUB-R6, SUB-R7: The wording in the areas of discretion are enabling and potentially cannot be relied on in their own right to decline a subdivision in a natural hazard area. Give greater emphasis on natural hazards (more emphasis on avoid in the first instance)
FS5.106 Hamish Weir	Opposes submission S85.107 Environment Southland
FS22.021 Clark Fortune McDonald & Associates	Opposes submission S85.107 Environment Southland. Many subdivisions in natural hazard areas remain appropriate and hazards can be managed and a natural hazard assessment is already required as part of the subdivision process

7.3.6 The rules referred are as follows:

Rule SUB-R5 All Other Subdivisions: Restricted Discretionary Activity

Rule SUB-R6 Subdivision in Gore South Development Area: Restricted Discretionary Activity

Rule SUB-R7 Subdivision Gore West Development Area: Restricted Discretionary Activity

7.3.7 At paragraph 279 of the s42A Report for the Subdivision chapter Joanne Skuse noted no clear relief such as suggested rewording was sought, nor was any additional information provided to the Panel by Environment Southland. At paragraph 5.4.13 of Decision 36 Subdivision the Panel expressed the view that the reference to the "adequacy of measures to address the risk of natural hazards" in policy SUB-P5 provided sufficient guidance to indicate the greater the risk then the more difficult it will be to put adequate measures in place. Further, it is the degree of risk that dictates the response required. Accordingly, in Decision 36 submission S85.106 Environment Southland is rejected.

7.3.8 The Panel considers the same reasoning applies to the submissions lodged to rules SUB-R6 and SUB-R7, particularly given, as noted by Clark Fortune that assessment of natural hazards is required as part of any subdivision application. As a consequence, submissions S85.107 and S85.108 Environment Southland are rejected.

7.4 Urban Form and Development Chapter

Submitter (S)	Decision Requested
S85.068 Environment Southland	In UFD-Overview a better evaluation of stormwater capacity is needed during flood events, particularly with regard to areas targeted for future development. Identify the importance of adequately mapping and protecting secondary flow paths in planning documents. Restrictions should be imposed for buildings, driveways and fences which are likely to impede

	secondary flow paths and redirect floodwater into other properties and assets.
FS5.8 Hamish Weir	Disallow in part S85.068 Environment Southland. Secondary flow paths are already covered under the Gore District Council Subdivision and Land Development Bylaw 2019.
FS28.006 Kainga Ora	Disallow in part S85.068 Environment Southland The relief sought is too restrictive given: - Climate change related mapping is not static, so flood mapping should sit outside of statutory plans to ensure that they can be updated as needed and reflect recent and up-to-date modelling - Some restrictions may be appropriate; however provisions should provide for management and mitigation which may include engineered solutions - Provisions should enable flood management to be managed at an area level (rather than property-by property), as this can sometimes allow for more effective and efficient management across a wider area
S85.154 Environment Southland	GRUZ-R4: New buildings or activities should only be established where they will be designed and built to minimise impacts associated with natural hazards flood inundation. Consideration should also be given to effectively providing for secondary flow paths by preventing buildings structures and earthworks which could impede or redirect secondary flow paths include a performance standard regarding minimum floor levels

7.4.1 In response to submissions, including S85.104 Environment Southland, the Panel has added to Policy SUB-P7 the following:

> Ensure subdivision is appropriately serviced and integrated with existing or planned *infrastructure* that is proposed in ~~an~~ a safe, efficient, integrated and co-ordinated manner by:
>
> 10. Requiring subdivision designs to provide for the treatment and safe disposal of stormwater that avoids any increase in overland flows, flooding or erosion risk; and

7.4.2 Marcus Roy at paragraph 71 of his statement of evidence to the Natural Hazards hearing stated:

> At previous hearings I have outlined the need to maintain infrastructure in a way that is resilient to natural hazards, the need to manage development with respect to secondary flow paths once the stormwater network becomes overwhelmed.

7.4.3 The Panel does not consider there is a need to make an addition as requested to the Urban Form and Development (UFD) chapter, agreeing with Brett Osborne at paragraph 437 of his s42A Report that the level of detail required by these submissions is not appropriate in the UFD chapter. Given the comment from Marcus Roy above, the Panel concludes the issue is appropriately dealt with in the Subdivision chapter. As a consequence, submissions S85.068 and S85.154 Environment Southland is accepted in part by adopting the decision in paragraph 4.8.3 in Decision 36 as described above.

Submitter (S)	Decision Requested
S140.001 Robina Johnston	Managed retreat is needed for the Gore community, that growth needs to be projected for 30 years and the west of Gore is most appropriate for growth.

7.4.4 Brett Osborne discussed the issue of managed retreat at paragraphs 118 and 119 of his s42A Report with relevant extracts provided in paragraph 2.2.14 above. He described how managed retreat is a complex issue with a lack of national direction on how an entire town such as Gore would relocate, together with unclear roles, legal powers and responsibilities and funding. Such an option requires investment in time, resources and potentially funding and is outside the powers of the Panel to consider

as part of the hearing process. In reply to questions, Brent Osborne expressed the view that the issue of managed retreat from the existing urban areas subject to flooding is a bigger issue than the current review, but in the meantime non-complying status within some areas is appropriate.

7.4.5 The issue of planning for growth over the next 30 years was discussed in considering this and other submissions to the Urban Form and Development chapter, where it was noted that in preparing the PDP growth options were projected over a 30 year period, with additional provision made for urban development to the west and north of Gore. This opens opportunities for the future, which is far as the Panel considers it can take the issue at this time. Accordingly, submission S140.001 Robina Johnston is rejected.

8.0 Minority View of Commissioner Bartlett

8.1 Commissioner Bartlett wishes to express a minority view for the Natural Hazards Decision. This is attached at Attatchment 1.

Attachment 1 - Minority View of Commissioner Bartlett

1. Overview

1. Commissioner Bartlett overall favours the evidence of Environment Southland, including the legal advice of Kate Dickson, and considers that certainly development for "sensitive activities" should be avoided in areas of "significant risk" in order to accord with policy direction in the Regional Policy Statement (Policy NH.5) and s6(h) of the RMA.

2. Evidence from Marcus Roy also sought avoidance of other kinds of activities in areas at significant risk of inundation, but Commissioner Bartlett considers that the chapter framework ought to differentiate between "sensitive activities" and other activities in terms of their management in such areas.

2. Significant risk

3. Commissioner Bartlett considers that sufficient evidence was received from the technical experts and planning experts to be able to define "significant risk". The technical experts relied upon assessments using the AEMI Guidelines, as current best practice. Evidence from the planning experts, Marcus Roy and Mishka Banhidi, provided a basis for definition. Commissioner Bartlett notes that "significant risk" could be defined as follows, in order to reflect current best practice:

> **Significant Risk** in the context of flood hazard risk means mapped flood hazard areas where the 1% AEP modelled flood risk indicates risk category H4, H5, or H6 using the Australian Emergency Management Institute (AEMI) Guideline 2014.

4. The technical experts agreed on these three risk categories, but disagreed about whether or not risk category H3 should be considered to represent "significant risk", and therefore Commissioner Bartlett has left out risk category H3 from the proffered definition.

5. Commissioner Bartlett agrees with the remainder of the Panel that what is known about flood hazard risk will evolve as new modelling results become available, and that it is important to rely on "best available information" when determining levels of risk present in any location.

3. Amendment to provisions based on definition of significant risk

Objectives

Commissioner Bartlett considers that **NH-O3** should read as follows:

> NH-O1 Ensure new subdivision and development for sensitive activities ~~are only~~ is not located in areas where there is significant ~~natural hazard~~ risk from a natural hazard that creates a danger to people and property.
>
> ~~1. adequately managed; and~~
>
> ~~2. not exacerbated on other *sites*.~~

Policies

Commissioner Bartlett considers that the policy suite should rely on the definition of "significant risk" and apply that definition in the context of all Actual or Potential Inundation Areas, including the Flood Bank Mitigation Area. This position is based on evidence provided to the Panel, particularly from Environment Southland as the managers of the flood bank scheme, that the Mataura River flood banks are certain to overtop in a 1% AEP and may well breach in a 2% AEP. Commissioner Bartlett also considers that some activities are anticipated within the Mataura River floodway and should be provided for in policy. Commissioner Bartlett has identified a policy suite that accords with this understanding and the submissions and evidence received, as follows:

NH-P1 Adopt a precautionary approach and use best available information when assessing the risk from natural hazards.

NH-P~~1~~2 Identify and map areas subject to natural hazards, taking into consideration the effects of climate change and ~~updated~~ the best available information, and apply through zoning and rules, a risk-based approach to the management of subdivision, use and development based on the following:

1. ~~1.~~ the type of natural hazard that applies; ~~and~~
2. ~~2.~~ the level and severity of risk from natural hazards, preventing risk to people and managing risk to property; ~~and~~
3. the sensitivity of activities to loss of life or damage to property from a natural hazard; and
4. the ability for communities to recover after a natural hazard event.

NH-P~~2~~3 Manage the use, development and subdivision of land in all mapped Actual or Potential Inundation Areas~~, with the exception of and~~ including the ~~Stopbank Protection~~ Flood Bank Mitigation Areas by:

1. ~~1.~~ ensuring that the activity is not likely to result in significant damage in a flood event; ~~and~~
2. ~~2.~~ maintaining the functioning of the flood plain, and not displacing water onto other properties; ~~and~~
3. ~~3. requiring a minimum floor level for buildings above the 0.5% AEP design flood level; and~~
4. ~~4~~3. requiring hazardous substance storage to be resilient to inundation; ~~and~~
5. ~~5~~4. ensuring adverse effects on people, cultural values, and property are avoided or mitigated; ~~and~~
6. ~~6~~5. ensuring increased risk on other sites is avoided; ~~and~~
7. ~~7~~6. requiring the identification of suitable buildable areas, for example via building platforms, at the time of subdivision; and
8. ensuring that people can evacuate safely and in a timely manner during a flood event.

NH-P4 Manage new sensitive activities in all mapped Actual or Potential Inundation Areas and the Flood Bank Areas, where there is not a significant risk, by requiring a minimum floor level for buildings above the 0.5% AEP design flood level.

NH-P~~3~~5 Avoid new subdivision, use and development ~~and critical infrastructure~~ within the "Mataura River Floodway", ~~unless it can be demonstrated that the risks of the natural hazard can be mitigated so that~~ with the exception of:

~~1. in the event of a natural hazard, there is likely to be no loss of life or serious injury and any built development is not likely to suffer significant damage or loss; and~~

~~2~~1. ~~it will not require new or upgraded public~~ natural hazard mitigation works ~~to mitigate the natural hazard~~ and activities that reduce flood risk; ~~and~~

~~3. it is not likely to exacerbate the potential effects of the natural hazard on adjoining land or surrounding land; and~~

~~4. will not result in adverse effects to water quality due to storage of hazardous substances in the floodway; and~~

~~5~~2. ~~it would not exacerbate adverse effects on~~ mahinga kai and customary activities ~~on the event of a flood hazard~~;

3. critical infrastructure; and

4. recreational activities and temporary activities.

NH-P~~4~~6 Avoid locating ~~any residential unit or other asset of high value between any waterbody and any defence against water designed or used to contain floodwater from that waterbody, unless that asset has a functional need or operational need to be in that location~~ new sensitive activities within mapped Actual or Potential Inundation Areas, including Flood Bank Mitigation Areas, where there is a significant risk.

NH-P~~5~~7 Manage subdivision, use and development in areas subject to risks of slope instability, subsidence and ~~high~~ liquefaction risk to demonstrate the appropriateness of the site for subdivision, use or development in a way that can avoid or mitigate hazard risks to people and property.

NH-P~~6~~8 Avoid the placement of critical infrastructure in ~~areas at risk from natural hazards, identified and~~ mapped areas subject to natural hazards, unless:

~~1.~~ there is ~~no reasonable alternative due to the~~ an operational need or functional need for the location; ~~and~~

2. it will be designed to ~~maintain its integrity and~~ function to the fullest possible extent, even though this may be at a reduced level, during and after a natural hazard event, ~~or~~ and can be readily re-instated after a natural hazard event; and

3. any significant adverse effects on people~~, cultural values,~~ and property ~~will be avoided~~, mauri, any wahi tapu, or the ability to practice mahinga kai activities, can be avoided, remedied or mitigated.

NH-P~~7~~9 Encourage the use, maintenance and enhancement of natural features and buffers such as riparian planting to manage the risks of natural hazards on people, property, and the environment.

NH-P~~8~~10 Identify and map areas subject to stopbank protection and encourage non-regulatory methods to inform the community of the flood risk as a result of flood ~~stop~~bank failure.

Rules

Commissioner Bartlett has identified a rule framework that accords with her preferred amendments to objectives and policies, which is outlined overleaf.

Rules

NH-R1	The maintenance of existing *defences against water*	
All Zones	**Activity status:** Permitted Where: 1. Pre-existing legal *access* to ~~waterways~~ water bodies for mahinga kai activities is retained. 2. No increase in scale (height, length or width) is proposed.	**Activity status where compliance is not achieved:** Restricted Discretionary **Matters of discretion:** 1. Ecological impacts on in-stream or stream-adjacent indigenous wildlife. 2. Impacts on Ngāi Tahu cultural values~~, including those~~ listed in the MW-~~2.3.~~1.2
NH-R1	***Buildings*** ~~**used for *sensitive activities***~~ **within areas subject to actual or potential inundation, including Flood Bank Mitigation Areas, where there is no significant risk**[1]	
All Zones	**Activity status:** Permitted Where: 1. Any new *building* or *building* addition that is used for sensitive activities ~~must have~~ has a minimum floor level above the 0.5% AEP design flood level~~; unless otherwise directed by the Southland Regional Council planning department.~~ 2. Any new *building* or *building* addition is not used for *sensitive activities*. ~~Except that:~~ ~~(a) This rule does not apply to areas in the mapped Stopbank Protection Area.~~	**Activity status where compliance is not achieved:** NH-R2(1) and NH-R2(2): Restricted Discretionary **Matters of discretion:** 1. Suitable methods to mitigate the hazard risk. 2. The *functional need* and/or *operational need* to be located the *building* or *structure* in this location. 3. Nature and extent of hazard risk to people, Ngāi Tahu cultural values and property.

	~~*Note: Regional Council recommendations take precedence over NH-R2.*~~	
NH-~~R4~~R3	**Activities within the Mataura River Floodway, other than *earthworks* and *land disturbance*** **Activity status:** ~~Non-Complying~~ Permitted Where: 1. The following activity is undertaken: (a) ~~new *structures* or *building*~~ *mahinga kai* and customary activity; (b) ~~critical infrastructure~~ *recreational* activity or permitted temporary activity; (c) ~~sensitive activities~~ existing lawfully established activity. **Except:** This rule does not apply to *critical infrastructure*[2]	**Activity status where compliance is not achieved:** NH-R7(1): Restricted Discretionary Where: 1. The following activity is undertaken: (a) natural hazard mitigation works; (b) an activity for the purpose of reducing flood risk. **Matters of discretion:** 1. The potential to create new or exacerbate existing *natural hazards*, impact natural drainage patterns, redirect overland flow paths or flood flows. 2. Impacts on recreation and amenity values. 3. Impacts on Ngāi Tahu cultural values listed in MW-1.2. 4. Effects on indigenous biodiversity and ecological connection. Otherwise, all other activities: Non-complying
Mataura River Floodway		
NH-R4	***Earthworks* and *land disturbance* within areas subject to Natural Hazards (Flooding)**	
All Zones	**Activity status:** ~~Non-Complying~~ Permitted Where: 1. The work is not undertaken within the Mataura River Floodway;	**Activity status where compliance is not achieved:** NH-R4(3), EW-S1, EW-S2, EW3, EW-S4, EW-S5; and NH-R4(1) or NH-R4(2) for critical infrastructure:

	2. The work is not undertaken on the river side of a flood bank; 3. The work is within the Actual or Potential Inundation Area and; (a) The activity is undertaken within the Flood Bank Area; or (b) Cut depth or fill height (measured vertically) does not exceed 0.5 metres; and 4. All Earthworks Standards are complied with.	Restricted Discretionary **Matters of discretion:** 1. The potential to create new or exacerbate existing *natural hazards*, impact natural drainage patterns, redirect overland flow paths or flood flows. 2. *Effects* on water quality. 3. Sediment and erosion *effects* and management. 4. The matters of discretion of any infringed Standard(s). 5. Effects on indigenous biodiversity and ecological connection. 6. Vehicle movements to and from the area related to the earthworks and controls to manage adverse effects on traffic safety and amenity. **Activity status where compliance is not achieved:** NH-R4(1) or NH-R4(2), other than for critical infrastructure, or EW-S6: Non-complying
NH-R~~3~~5	**The construction of new or extended *defences against water*, other than within the Mataura River Floodway**	
All Zones	**Activity Status:** Discretionary	
NH-R6	**The establishment of *critical infrastructure* on land ~~subject to a high or very high risk of liquefaction~~ within mapped areas subject to natural hazard risk**	
All Zones	**Activity Status:** Discretionary Where: 1. The activity has a functional need or operational need to be in that location.	**Activity status where compliance is not achieved:** NH-R6(1): Non-complying

NH-R7	***Buildings* within areas subject to actual or potential inundation, including Flood Bank Mitigation Areas, where there is a significant risk**	
All Zones	**Activity Status:** Discretionary Where: 1. Any new *building* or *building* addition is not used for *sensitive activities*.	**Activity status where compliance is not achieved:** NH-R7(1): Non-complying
NH-R5~~8~~	***Buildings* or *structures* located on the *river* side of a flood ~~stop~~bank**	
All Zones	**Activity Status:** Non-complying Where: **1.** The activity involves constructing new *buildings* or *structures*, or additions to an existing *building* or *structure* on the *river* side of a Southland Regional Council flood ~~stop~~bank**.** **Except:** This rule does not apply to *critical infrastructure* [3]	

[1] Decision 44, paragraph 6.2.7
[2] Decision 44, paragraph 6.4.2