

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-290

Under the Resource Management Act 1991 (**RMA**)

In the matter of appeals under clause 14(1) of the First Schedule of the RMA
in relation to the proposed Second Generation Dunedin City
District Plan (**2GP**)

Between **Otago Regional Council**
Appellant

And **Dunedin City Council**
Respondent

Joint Memorandum of Counsel

22 December 2022

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**anderson
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May it Please the Court

- 1 This joint memorandum of counsel is filed on behalf of Otago Regional Council (**ORC**) and Dunedin City Council (**Council** or **DCC**) in relation to an application made under section 293 of the RMA.
- 2 The section 293 application is made regarding the appeal by ORC in regards to the Hazard 1 (Flood) Overlay Zone at North Taieri (Gordon Road) Spillway (DCC Reference number 94) in the proposed Second Generation Dunedin City District Plan (**2GP**).
- 3 ORC sought in its appeal to remove the North Taieri (Gordon Road) Spillway from the Hazard 1 (Flood) Overlay Zone and include it in the Hazard 1A (Flood) Overlay Zone, so that natural hazard sensitive activities would be prohibited in this area, rather than non-complying. There are no section 274 parties to this appeal.

The issue

- 4 The issue that the parties are concerned with here is that of fairness in relation to the registered owners and occupiers in the North Taieri (Gordon Road) Spillway not represented in these proceedings.
- 5 The Hazard 1A (Flood) Overlay Zone was not included in the notified version to the 2GP, rather it was created by the Natural Hazards Hearing Panel (**Hearing Panel**) in response to the submission of the ORC. Council considers that because the Hazard 1A (Flood) Overlay Zone was not in the notified 2GP, the registered owners in the North Taieri (Gordon Road) Spillway area, may not have been aware of the prohibited activity status relief sought in ORC's submission.
- 6 The parties mediated this appeal on Wednesday 7 September 2022 and agreed in principle to resolve DCC Reference number 94 by consulting with the registered landowners and occupiers of the North Taieri (Gordon Road) Spillway area, and including all or some of the area in the Hazard 1A (Flood) Overlay Zone. This was subject to the parties filing a joint application to the Court respectfully requesting that the Court make directions, including consultation with the registered landowners and occupiers within the appeal area (i.e. the North Taieri (Gordon Road) Spillway), pursuant to section 293 of the RMA.
- 7 On this basis, the parties respectfully request that the Court directs that Council is to consult with the registered owners and occupiers on the

proposed prohibited activity status for sensitive activities in the North Taieri (Gordon Road) Spillway.

- 8 The registered owners and occupiers within the appeal area that the parties consider should be consulted on are identified in Annexure B to the affidavit of Paul Freeland on behalf of Council.

The North Taieri (Gordon Road) Spillway

- 9 The North Taieri (Gordon Road) Spillway is described in detail in the affidavits filed in support of this application.
- 10 The Spillway is a designed and engineered feature on the true right bank of the Silver Stream immediately downstream of the Gordon Road Bridge at Mosgiel.
- 11 It creates a preferential overflow point to try to avoid flooding from the river of part of Mosgiel on the true left bank. The area includes the overland flow path and ponding area for floodwaters.

Background

- 12 The full planning background to the appeal is set out in the affidavit of Paul Freeland, Principal Policy Advisor City Development, on behalf of Dunedin City Council. Counsel for ORC records that ORC does not agree with the planning assessment at paragraph 36 of the affidavit of Mr Freeland. ORC considers that the whole of the North Taieri (Gordon Road) Spillway area should have a prohibited activity status for natural hazard sensitive areas. The ORC original submission and notice of appeal are attached at **Annexure A** to this joint memorandum for ease of reference for the Court.
- 13 The notified version of the 2GP proposed that natural hazards sensitive activities in the Hazard 1 Overlay Zone are non-complying activities.
- 14 The term 'natural hazards sensitive activities' is defined in the 2GP and includes residential activities (such as the use of land and buildings for residential activity) and visitor accommodation. For the purposes of the natural hazard provisions, the 2GP also defines a 'natural hazards sensitive activity' as a land use activity "*where people are regularly present and often in a vulnerable state because they sleep there, require medical treatment, or require extra assistance to evacuate; and/or which may create a significant public health issue if damaged as a result of a natural hazard event*".
- 15 ORC in its submission sought that Rule 16.3.6 be amended so that sensitive activities were prohibited instead of non-complying, in the Hazard

1 (Flood) Overlay Zone at several areas including the North Taieri (Gordon Road) Spillway (i.e. Area 14B referred to in section 5.2.3 to the original submission)¹:

5.3.6 In respect to the areas identified in section 5.3.2 of this submission, **ORC requests** that:

a) Sensitive activities classified Hazard 1 overlay be made prohibited activities in the proposed district plan; and

...

16 ORC considered in its submission that the "*Characteristics of flood hazard (depth, velocity) mean that additional sensitive development is not appropriate*".

17 Only one further submission was received to ORC's original submission, being by BP Oil NZ Limited, Mobil Oil NZ Limited and Z Energy Limited (FS2487.37). This further submission opposed ORC's submission on the basis that the prohibited activity status would preclude the establishment or expansion of a sensitive activity in exceptional circumstances.

18 As part of the hearing process, the Hearing Panel directed the planning experts representing the ORC and Council to undertake expert witness conferencing with respect to the relief sought by ORC. In regards to the North Taieri (Gordon Road) Spillway the experts did not agree on the activity status. The following comments are provided by the planning experts in their Expert Witness Conferencing Statement dated 19 October 2017:

3.8 North Taieri floodway at Gordon Road spillway (Area 14B)

DCC comments:

3.8.1 While a prohibited activity status for sensitive activities may be appropriate for a sub-set of this area, for natural justice reasons we consider that imposing prohibited activity status now is unjust. Due to the number of residents in this area, we consider a future plan change would be the most appropriate method for considering prohibited activity status.

3.8.2 Further, during the July 2017 flood event this area was subject to inundation. The ORC are currently in the process of collating and analysing data on

¹ Page 20

the characteristics of the flooding in this area which would assist in determining a potential sub-set of this area where prohibited activity status might be appropriate. We consider that at this point in time, the critical conveyance area is not defined as accurately as necessary in order to apply prohibited activity status.

ORC comments:

- 3.8.3 The Gordon Road spillway has a critical function in directing floodwaters through this area and over to the East Taieri Upper Pond area. It is difficult to determine a sub-set of conveyance as this can vary with the scale of a flooding event. Therefore ORC's position is that this function supports sensitive activities within this area as mapped being prohibited rather than non-complying.
- 19 At the expert conferencing it was identified by Council staff that although a prohibited activity status for sensitive activities may be appropriate for a sub-set of the North Taieri (Gordon Road) Spillway area, for natural justice reasons Council considered that imposing prohibited activity status would be unjust in light of the number of residents in this area. On this basis, Council staff considered that a future plan change would be the most appropriate method for considering prohibited activity status.
- 20 The Hearing Panel accepted ORC's submission in part and included an amendment which created the new Hazard 1A (Flood) Overlay Zone, however in Decision 3.6.5.1 the Hearing Panel declined to include the North Taieri (Gordon Road) Spillway in this zone, and therefore remained in the Hazard 1 (Flood) Overlay Zone (i.e. a non-complying activity).
- 21 The ORC's notice of appeal sought that:
- 34.1 Natural hazard sensitive activities are prohibited activities in area 14B, North Taieri ([Gordon] Road) floodway.
 - 34.2 The rules and planning maps are amended to give effect to this relief.
 - 34.3 Such other, further and consequential changes to 2GP as are necessary to give effect to this appeal point.
- 22 The nature and operation of the Gordon Road Spillway and associated Floodway are described in the affidavits of Dr Jean-Luc Payan, Michelle Mifflin, and Gary Bayne on behalf of ORC. The extent, depths and velocities of flood waters in the Spillway area are set out in the affidavits of Dr Payan and Dr Shrestha. Mr Bassett has peer reviewed the modelling work

undertaken by Dr Shrestha. Dr Payan used the modelling work of Dr Shrestha to evaluate the risks to people and property arising from the flood waters passing over and ponding on the Floodway. Dr Payan concludes at paragraph 34 to his affidavit that:

The flood hazard characteristics within the floodway mean that, in most of the floodway, the flood hazard categories range from unsafe for small vehicles to unsafe for vehicles and people/All buildings vulnerable to structural damage/some less robust buildings subject to failure.

- 23 Council's position is that, in light of the information in the affidavits of Dr Payan and Ms Mifflin on behalf of ORC, it would support consultation with the registered owners and occupiers of the North Taieri (Gordon Road) Spillway area to identify whether all or some of the Taieri (Gordon Road) Spillway area be included in the Hazard 1A (Flood) Overlay Zone. The prohibited activity status for 'natural hazards sensitive activities' in the Hazard 1A (Flood) Overlay Zone under Rule 16.3.6 would mean that the registered owners in the appeal area are unable to obtain resource consent for several activities, including residential activities.

Section 293 of the RMA

- 24 Section 293 of the RMA empowers the Court to direct changes to a proposed plan or plan that are not otherwise within the Court's jurisdiction due to the scope of the appeal before it². The primary purpose of section 293 is to "*provide the Court with a mechanism for expanding the nature and extent of the relief sought beyond the scope of the reference where appropriate*"³. This power is not unlimited and must be used cautiously and sparingly. The section 293 process should not be seen as an alternative mechanism to avoid using a Schedule 1 process⁴.

- 25 Section 293 of the RMA is as follows:

293 Environment Court may order change to proposed policy statements and plans

- (1) After hearing an appeal against, or an inquiry into, the provisions of any proposed policy statement or plan that is before the Environment Court, the court may direct the local authority to—

² *Federated Farmers of New Zealand Incorporated v Mackenzie District Council* [2014] NZHC 2616 at [120]

³ *Hamilton City Council v New Zealand Historic Places Trust Pouhere Taonga* [2005] NZRMA 145 (HC) at [25]

⁴ *CEP Services Matauwhi Ltd v Northland Regional Council* [2020] NZEnvC 202 at [14]

- (a) prepare changes to the proposed policy statement or plan to address any matters identified by the court;
 - (b) consult the parties and other persons that the court directs about the changes;
 - (c) submit the changes to the court for confirmation.
- (2) The court—
- (a) must state its reasons for giving a direction under subsection (1); and
 - (b) may give directions under subsection (1) relating to a matter that it directs to be addressed.

...

Scope

- 26 It is submitted that there is no issue of scope with the proposed amendment to remove the North Taieri (Gordon Road) Spillway from the Hazard 1 (Flood) Overlay Zone and include it in the Hazard 1A (Flood) Overlay Zone, so that natural hazard sensitive activities would be prohibited, rather than non-complying, in this area.
- 27 For completeness, the statutory basis for scope is clause 14 of Schedule 1 to the RMA. This clause provides for the right to appeal to the Environment Court in respect of a provision included in a proposed plan. Clause 14(2)(a) of Schedule 1 to the RMA provides that the Environment Court has jurisdiction to consider the relief sought in the appeal if it has reasonably and fairly referred to the relevant provision, or the matter, in the original submission. This question needs to be approached in a "*realistic workable fashion, rather than from the perspective of legal nicety*"⁵. The parties consider that there is no issue of scope for the following reasons:
- (a) Rule 16.3.6 of the notified 2GP applied a non-complying status for sensitive activities in the Hazard 1 Overlay Zone and this included the North Taieri (Gordon Road) Spillway);
 - (b) ORC's submission on the 2GP sought that Rule 16.3.6 be amended so that sensitive activities are prohibited instead of non-complying in the Hazard 1 (Flood) Overlay Zone at several locations, including the

⁵ *Countdown Properties (Northland) Ltd v Dunedin City Council* [1994] NZRMA 145 and *Royal Forest and Bird Protection Society Incorporated v Southland District Council* [1997] NZRMA 408 (HC)

North Taieri Spillway (it is noted that this is referred to as the North Taieri Floodway on page 19 of ORC's submission)⁶.

- (c) The Hearing Panel accepted ORC's submission in part and included an amendment which created the new Hazard 1A (Flood) overlay zone, where new natural hazards sensitive activities are prohibited. However, the Gordon Road Spillway remained in the Hazard 1 (Flood) Overlay Zone.

Consultation and natural justice

28 As previously outlined, the issue that the parties are concerned with here is that of natural justice or fairness in relation to the residents in the North Taieri (Gordon Road) Spillway not represented in these proceedings.

29 The principles of natural justice in the context of section 293 of the RMA are discussed by the Environment Court in *Taranaki Energy Watch Incorporated v South Taranaki District Council* [2020] NZEnvC 96 as follows:

[34] It follows that our approach is necessarily one that is multi-layered, with any consequential changes being premised on the "reasonably and fairly" orthodoxy and adequately responding to the natural justice.

[35] As we are concerned principally with issues of natural justice fairness, including in relation to rural residents and petroleum operators not represented in these proceedings, the observation made in the Environment Court decision of *Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council* is apposite: [38]

"It is also worth noting that reasonableness and fairness may work against each other in this context. There is a tension between a reasonable interpretation of a submission - which tends to widen the express words - and fairness, which tends to read them closely so that members of the public are not surprised."

30 It is submitted that section 293 is available to the Court to direct Council to consult with the landowners and occupiers in the appeal area in this instance. The Environment Court in *Lindis Catchment Group Incorporated v Otago Regional Council* was concerned with Plan Change 5A to the Otago Regional Water Plan (**ORP:W**). The plan change concerned

⁶ Otago Regional Council original submission, 24 November 2015, page 19

allocation limits and minimum flows for the Lindis River catchment. The Court issued directions at an early stage in the proceedings requiring consultation with the parties and all persons who hold rights to take water from four existing races on a proposal to introduce to the plan change at the appeal stage a policy and rule making the taking of water by the four races from the Lindis River a prohibited activity⁷. This Order is attached at **Annexure B** to this joint memorandum of counsel for ease of reference for the Court. In the Court's Second Decision [2019] NZEnvC 174 reserved the issue regarding whether there should be restrictions on the portability of water permits in the Lindis River catchment. The Court then directed in its Minute dated 1 November 2019 that ORC consult with farmers along the Lindis River, the Lindis Catchment Group, Otago Fish and Game Council, and the local Tarras community under section 293 of the RMA as follows⁸:

- [2] We now direct the Otago Regional Council under section 293 of the Resource Management Act 1991 to consult with the farmers along the Lindis River in general and the Lindis Catchment Group in particular as well as the Fish and Game Council and the local Tarras community as to whether the primary allocations in Schedule 2A ORP:W should be allocated further to three reaches of the river and the tributaries to be defined and managed as follows:
- (a) 132 l/s above Lindis Peak FR;
 - (b) 265 l/s from the tributaries;
 - (c) 1104 l/s from the remainder of the mainstem (ie between Lindis Peak FR and Ardour FR and the Lindis Ribbon Aquifer; and
 - (d) 138 l/s from groundwater takes below the Ardour FR.

- 31 In the Third Decision of the Environment Court, *Lindis Catchment Group Incorporated v Otago Regional Council* [2020] NZEnvC 85, the Court confirmed that ORC circulated the proposal and obtained feedback and that ORC had established that the proposed changes to Schedule 2A of the ORP:W would better achieve the objectives and policies of the plan, and

⁷ Order of the Environment Court ENV-2016-CHC-155 *Lindis Catchment Group v Otago Regional Council*, dated 9 November 2018 and see *Lindis Catchment Group Incorporated v Otago Regional Council* [2019] NZEnvC 166

⁸ Minute of the Environment Court (RE PC5A), dated 1 November 2019; this Minute is also summarised at para [2] to *Lindis Catchment Group Incorporated v Otago Regional Council* [2020] NZEnvC 85

the Court made orders accordingly⁹. After the Court's procedural directions were carried out and having considered the feedback received, the Court included in the plan change a policy and rule making the use of the four races to take water from the Lindis River a prohibited activity and added provisions that limited the transferability of water permits within the catchment.

Exercise of discretion under section 293 RMA

- 32 Section 293(1) of the RMA begins with the words '*after hearing an appeal...*'. There is limited case law on how this phrase should be interpreted. Most obviously it can be assumed to include circumstances where a substantive appeal and hearing on the matter the subject of the section 293 application has concluded. However, there are authorities that provide for the use of section 293 in other limited circumstances which are deemed to come within the meaning of '*after hearing an appeal...*' in the context of section 293, for example:
- (a) When a hearing on the papers has occurred, so long as the Court was provided with sufficient information to enable it to consider the amendments sought by the parties via the section 293 application¹⁰; or
 - (b) Where the parties have reached agreement between themselves and apply to the Court via consent memoranda¹¹.
- 33 The key requirement for this component of section 293 to be met is that the Court must have had the opportunity to adequately consider the matter that is the subject of the section 293 application, whether this occurs via formal hearing, agreement between the parties, or on the papers.
- 34 This requirement fits with the more general consideration for the Court when determining whether to exercise its discretion under section 293, being that the change requested should at a minimum arise out of the

⁹ *Lindis Catchment Group Incorporated v Otago Regional Council* [2020] NZEnvC 85, at [10]

¹⁰ *Federated Farmers of New Zealand Incorporated v Otago Regional Council* Decision No. C40/2001 at [8] and *Porter Developments Limited v Hamilton City Council* [2016] NZEnvC at [24]

¹¹ *Federated Farmers of New Zealand Inc. v Otago Regional Council* Decision No. C40/2001 at [8] and *Porter Developments Limited v Hamilton City Council* Decision No. [2016] NZEnvC at [24].

resource management issue raised by the relevant submission and appeal and have been the matter of evidence tested by the Court.

35 It is respectfully submitted that the Court has been provided by the parties with the opportunity to consider the matter on the papers as part of this application and that it would be appropriate for the Court to exercise its discretion under section 293 as sought in the joint application, being:

- (a) That Dunedin City Council and Otago Regional Council agree to resolve DCC Reference number 94 by consulting with the registered landowners and occupiers located within the North Taieri (Gordon Road) Spillway as affected persons and including some or all of the North Taieri (Gordon Road) Spillway in the Hazards 1A (Flood) Overlay Zone to the 2GP;
- (b) That Dunedin City Council is to consult with the registered landowners and occupiers of the properties located within the North Taieri (Gordon Road) Spillway, as affected persons, about the change to include some or all of the North Taieri (Gordon Road) Spillway in the Hazards 1A (Flood) Overlay Zone to the 2GP within three months of the date of this application using the process set out in the notice of consultation;
- (c) That Dunedin City Council and Otago Regional Council are to report back to the Court (and serve on registered landowners and occupiers consulted) with the equivalent of a s42A Report on any positions expressed by the parties and recommendations for the Court to consider within two months of the consultation period ending;
- (d) That Dunedin City Council is to advise all consulted registered landowners and occupiers of land within the North Taieri (Gordon Road) Spillway area that if they wish to become a party to the Environment Court proceedings for this appeal they must lodge a section 274 party notice within 15 working days of Dunedin City Council and Otago Regional Council reporting back to the Court;
- (e) Any consulted person who wishes to be heard should lodge with the Court and serve on the other parties that person's evidence in writing

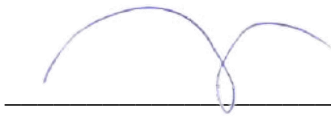
within 15 working days from the closing date of filing a section 274 party notice with the Court; and

- (f) Leave is reserved to any party or affected person to apply for further or other directions.

Dated this 22nd day of December 2022

A handwritten signature in black ink, appearing to be 'Michael Garbett' or 'Georgia Cassidy', written over a horizontal line.

Michael Garbett/Georgia Cassidy
Counsel for the Respondent

A handwritten signature in blue ink, appearing to be 'Alastair Logan', written over a horizontal line.

Alastair Logan
Counsel for the Appellant

Annexure A – Submission and notice of appeal

RMA Form 5
 Submission on a publicly notified proposed plan
Clause 6 of First Schedule Resource Management Act 1991

Otago Regional Council's Submission

to the

Dunedin City Council

on the

Dunedin City Council's Proposed Second Generation Dunedin City District plan

This is a submission on the Dunedin City Council's Proposed Second Generation Dunedin City District plan

The Otago Regional Council wishes to be heard in support of this submission.

If others make a similar submission, the Otago Regional Council will not consider presenting a joint case with them at a hearing.

The Otago Regional Council could not gain an advantage in trade competition through this submission.

Signature of submitter (or person authorised to sign on behalf of submitter):

Peter Bodeker
Chief Executive
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24 November 2015

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1 Executive Summary

- 1.1 Otago Regional Council (ORC) is working with other local authorities in the region to not only meet the challenges of managing our natural resources, but also to identify and embody the values Otago communities hold as being important now, and into their future to ensure a prosperous and vibrant Otago is available for future generations.
- 1.2 This philosophy is evident in the current process to develop a new Regional Policy Statement (Proposed RPS). The Regional Policy Statement sets the direction for future management of Otago's natural and physical resources. It provides the foundation for the development of regional and district plans, which must give effect to the Regional Policy Statement.
- 1.3 ORC looks to its local authority partners to deliver the aspirations of Otago's communities, as communicated through the Proposed RPS, through their activities, including regulatory planning documents.
- 1.4 It is important to acknowledge for the general public's benefit that under the Triennial agreement between ORC and DCC, that land use activities and their effects, are to be managed by DCC. For this reason, ORC does not have a 'land plan' to deal with the effects from land use that otherwise are under the jurisdiction of DCC.
- 1.5 Therefore, the structure of this submission follows that of the proposed RPS. This will enable the DCC to follow RPS's focus in ensuring each chapter and its relevant objectives and policies is given effect in the Dunedin City Council's (DCC) review of its district plan (the proposed district plan).
- 1.6 In respect to the preparation of proposed district plan, ORC has contributed support to DCC in technical areas. Particular focus has been given to collating and presenting information around natural hazards to inform proposed district plan process due to the significance natural hazards events can have in affecting the well-being and prosperity of the district and its communities.
- 1.7 While many land use activities and their effects under proposed district plan are foreseeable and well understood in managing, Natural hazards and the associated risks are usually more complex, particularly those with higher-magnitude/less frequent characteristics which are less well known to the general public and therefore continue to warrant a considered management approach.
- 1.8 The Proposed RPS also identifies objectives and policies in respect to ensuring Otago has high quality natural resources and that its communities are resilient, safe, healthy and can use and enjoy Otago's natural and built environment.

- 1.9 Therefore, in reviewing the DCC's proposed district plan, the ORC has identified areas where it supports provisions which give effect to the Proposed RPS, and requests changes where they will not.

2 General Comments

2.1 Wording

- 2.1.1 While ORC appreciates providing a high level of specificity in defining activities (sections 1.5.1 and 1.5.2) is for reasons of clarity, it is concerned that the degree of detail may create unintended inflexibility if a situation does not fit the prescribed definition, or that further uncertainty is created.
- 2.1.2 For example, the definition for 'moderate consequences' refers to 'serious structure damage to property. However, what constitutes 'serious structure damage' is not defined.
- 2.1.3 Network Utilities Structure Small Scale and Network Utilities are both defined but used differing terms for various water based services.
- 2.1.4 ORC notes that the term 'waterways' is used in proposed district plan but is not covered in the definitions.
- 2.1.5 **ORC requests**
- the district plan clarifies the need for two sections of definitions and ensures the definitions as written do not create further uncertainty.
 - care is taken to use consistent wording through the proposed district plan.
 - the district plan only use terminology that is recognised under the Resource Management Act 1991 (RMA), such as 'water body'. This provides greater certainty for all users of the district plan and creates a more consistent planning environment across the district and regional plans.

3 Proposed RPS Part B Chapter 1 - Kai Tahu Values

3.1 Proposed RPS Requirement

- 3.1.1 The proposed RPS recognises the importance of local authorities giving effect to the principles of the Te Tiriti o Waitangi and the relationship of Maori and Wahi Tupuna. Provisions in the proposed district plan need to ensure the effects of resource management decisions on Kai Tahu values, including those described in iwi resource management plans, are accounted for as well as enabling the exercise of customary rights.

3.1.2 **ORC supports**

- the objectives and policies of chapters 2 (strategic directions) and 14 (Manawhenua) of the proposed district plan give effect to the proposed RPS.

4 Proposed RPS Part B Chapter 2 - High Quality Natural Resources and Ecosystems

4.1 Proposed RPS Requirement

4.1.1 Chapter 2 of the Proposed RPS requires that Otago natural and physical resources recognised, maintained and enhanced. Their values, characteristics, interdependencies and associated ecosystem service functions need to be understood and considered by all those with responsibilities in managing effects from human activities. Some of Otago's highly valued and significant resources are critical to what gives 'Otago' its points of difference and contributes to our economic advantages and an enviable quality of life.

4.1.2 ORC supports the comprehensive planning approach which largely gives effect to the RPS. ORC highlights the following specific sections and requests additions and/or changes where considered necessary as set out below.

4.2 Water Quality

4.2.1 The Regional Plan: Water for Otago (the Water Plan) identifies aquifers which are subject to higher risk through leachate contamination and inappropriate excavation. Policies and methods of the Water Plan seek to have district and city councils provide for these risks in their respective plans.

4.2.2 There is a discrepancy in the mapping of groundwater protection zone b the water plan and the proposed district plan. In particular, it appears the proposed district plan has not provided for groundwater protection zone mapping in the urban areas of Outram and sections of Mosgiel.

4.2.3 ORC supports Policy 2.2.5.2 and requests

- That the policy recognise on-site storm water and wastewater disposal must not adversely affect groundwater resources. A reference to ORC's role in managing such discharges would be appropriate to highlight within an advice note.
- that discrepancies in mapping groundwater protection zones at Outram and Mosgiel are corrected so that the groundwater protection zones as mapped in the ORC Water Plan align with the district plan.

4.2.4 ORC supports

- Policy 9.2.2.10 and Rule 9.5.2(3)(iii) which seek to protect groundwater protection mapped areas.

4.2.5 The proposed district plan's Earthwork Standards are inconsistent across the management zones chapters in respect to assessing the degree to which earthworks could breach the protective mantle of an aquifer and/or risk groundwater contamination.

4.2.6 **ORC requests**

- that assessment criterion for Earthworks is provided for consistently for all earthwork activities over mapped groundwater protection zones.

4.3 **Esplanade reserves and strips**

4.3.1 Rule 10.3.1.2 (performance standard for subdivision activities) provides for esplanade strips with a minimum width of 5 metres, but gives no guidance when a wider strip will be required.

4.3.2 This rule does not address what approach for an esplanade strip will apply to water bodies/rivers not listed.

4.3.3 **ORC requests**

- That the minimum width can be increased, with guidance notes as to when this will be required, to ensure value and provisions for matters such as public access, recreation, biodiversity values, natural hazards etc. are able to be accommodated within a strip.
- The approach to esplanade strips for unlisted water bodies is clarified.

4.4 **Coastal Values**

4.4.1 The proposed district plan's approach to coastal matters, particularly the provisions of chapter 10 (Natural Environment) and the characteristics and values identified in Appendices A5 (Natural character of the coast) and A7.6 and 7.7 (coastal zones) gives good effect to the objectives and policies of the Proposed RPS that relate to coastal matters.

4.4.2 ORC notes only one of three nationally significant surf breaks located in the Dunedin district is identified in the proposed district plan for protection, that being Whareakeake (Appendix A3.2.2).

4.4.3 There is also an inconsistent use of phrases to describe the threshold of acceptable effects (e.g. 'no material effects', 'insignificant', 'no more than minor') in policies 10.2.3.2 to 10.2.3 of the proposed district plan.

4.4.4 **ORC requests**

- that the nationally significant surf breaks at Karitane and The Spit, are recognised in the district plan, including provisions for managing activities that may affect access to, and the use and enjoyment of, those surf breaks so as to give effect to the policies of the proposed RPS (proposed policies 2.2.10 and 2.2.11) and the NZ Coastal Policy Statement 2010.
- consistent references are used in these policies 10.2.3.2 to 10.2.3, and elsewhere as appropriate, to ensure consistency and robustness of the district plan's provisions. Where there is a need to use different phrases, there should be a clear reason for doing so.

4.5 **Air**

4.5.1 Management of air quality in Otago falls under the jurisdiction of ORC through its Regional Plan: Air for Otago (the Air Plan). However, many land use activities that are controlled by city and district authorities can contribute to either the degradation or enhancement of air quality. The Proposed RPS identifies the need for city and district plans to include provisions which will complement the Air Plan objectives for areas at risk of poor air quality (i.e. Dunedin, Mosgiel) with ORC's role in managing air quality and dust suppression (refer Method 4.1.3 of the Proposed RPS).

4.5.2 ORC considers that matters relating to air quality, particularly Proposed RPS Policies 2.1.4 (managing for air quality values), 2.3.5 (integrated management approach for air zones) and 3.8.1 (managing for urban growth) are not given effect to in the proposed district plan.

4.5.3 **ORC requests**

- that the plan give effect to Proposed RPS Policies 2.1.4, 2.3.5 and 3.8.1 ensuring development and subdivision activities through policies, rules, and consent conditions, have controls on the type of heating systems allowed and that are consistent with ORC's Air Plan rules.
- that dust control is provided for under the district plan's Earthworks standards as well as assessment criteria for the matters of discretion that may be considered when considering an application for land use consent.

4.6 **Biodiversity**

4.6.1 ORC considers that, overall, the strategic direction objective and policies of the proposed district plan recognise the importance of biodiversity and ecosystem services and give effect to the Proposed RPS.

4.6.2 **ORC supports**

- the retention, enhancement and restoration provisions of Indigenous Biodiversity (Objective 2.2.3) as well as policies which encourage conservation.
- policies 2.2.3.1 to 2.2.3.4 of the proposed district plan, relating to indigenous biodiversity

and requests:

- that in policy 2.2.3.3(b) 'restoration' is added to the types of conservation that form part of the assessment rule for consent applications, and to the matters of discretion for the relevant rule/s.

4.7 **Setbacks from Water Bodies**

4.7.1 Policy 10.2.2.2 of the proposed district plan requires numerous activities to be set back from the coast and water bodies due to matters of biodiversity and natural character.

4.7.2 There are also policies and provisions to address the risk of erosion/sediment run-off due to vegetation clearance and earthworks (through earthwork standards across the management zones). However, the associated rules do not clearly state when a consent application may be rejected on account of erosion risk and/or insufficient sediment control. This is inconsistent with Rule 12.C.0.3 of the ORC Water Plan which prohibits sediment discharges from disturbed land where no sediment control measure has been undertaken.

4.7.3 **ORC requests**

- Policy 10.2.2.2 should also recognise the need for setbacks due to the natural functioning and processes of rivers.
- the relevant rules of Chapter 10 provide more certainty on this matter and appropriate advice notes are added to the district plan to raise awareness of the requirements of ORC's water plan.

4.8 **Vegetation Clearance: Urban Areas**

4.8.1 Rule 10.3.2.3 b (performance standards) for indigenous vegetation clearance do not apply to urban streams or water bodies in commercial or industrial areas. Nor do they consider riparian margins, their ecological significance or long term effects of the clearance. Section 76(4A) provides for protecting trees if scheduled in a plan.

4.8.2 **ORC requests:**

- The urban conservation mapped areas of the district plan provide appropriate identification and protection for areas of indigenous and exotic vegetation.

4.9 Vegetation Clearance: Pest Control

4.9.1 Proposed rule 10.3.2.2 does not provide for the clearance of vegetation in locations where that vegetation restricts pest control of rabbits (exacerbating the pest problem) and/or is toxic to live stock (examples being matagouri (rabbit habitat) and tutu (toxic)). Primary productivity may be lost if rabbits are not controlled, as well as having costs imposed on neighbouring property where an affected land owner's rabbit control is insufficient. The inability to clear vegetation as part of a rabbit control program may also cause the land owner to be in breach of the ORC's Pest Management Plan for Otago 2009.

4.9.2 ORC requests:

- that provision is made in the exemption section of Rule 10.3.2.2 b for:
 - unrestricted clearance of indigenous vegetation for pest control in accordance with the ORC Pest Management Plan for Otago 2009; and
 - unrestricted clearance of indigenous vegetation that poses a toxic threat to livestock

with appropriate controls, which would give effect to Proposed RPS Policies 2.2.2(e) 4.3.1 and 4.5.5.

4.10 Vegetation Clearance: Exemptions

4.10.1 Other exemptions to the vegetation clearance standards are not balanced with sufficient controls. For example track construction of up to two metres may still lead to the disturbance of endangered and critical plant species and/or coastal dune stability. Vegetation clearance may also affect land stability and exacerbate natural hazards.

4.10.2 The exemption of forestry activities is of particular concern as the scale and volume of such activities can have the potential for significant adverse effects through sediment run-off and erosion.

4.10.3 ORC considers some of the ‘matters of discretion through Rules 10.3A to 10.7 are not sufficient to ensure all potential effects can be considered and controlled via the consenting process. It is important that the effects of land based activities on water body values are considered when consent is sought.

4.10.4 ORC requests:

- The exemption provision for allowing vegetation to be felled up to five metres from a water body in 10.3.2.3(c)(ix), provide it is felled away from the water body, should be increased to at least ten metres. ORC considers a distance of five metres, when dealing with felling large trees, is insufficient a buffer to have confidence disturbed earth and debris will not have an adverse effect on a water body.
- Suitable controls are provided for the exemptions to Rules 10.3.2.3 a and b in the proposed district plan to ensure adverse effects are avoided.

4.10.5 ORC requests:

- The matters for discretion for Policy 10.2.2 and Rule 10.4.3 of the proposed district plan include being able to consider effects on water bodies, natural character and natural functioning (of water bodies).

4.11 Threatened Species Recognition

4.11.1 The protected indigenous species identified in Appendix 10A are taken from of the NZ Threat Classification System. This system is updated every five years, therefore in a short period of time appendix 10 A may not accurately reflect threat status’.

4.11.2 ORC requests:

- That the New Zealand Threat Classification System is referenced in policies and rules as being required to be given regard to. This is consistent with the approach of the 2010 New Zealand Coastal Policy Statement.

5 Proposed RPS Part B Chapter 3 - Resilient, Safe and Healthy Communities

5.1 Proposed RPS Requirement

5.1.1 The natural and physical environments that provide opportunities for Otago also set risks and constraints. Management of natural hazards is a critical aspect of achieving resilient, safe and healthy communities, as are good infrastructure, well designed urban areas and good management of waste materials.

- 5.1.2 Though ORC is seeking designations for its flood protection and drainage assets in the proposed district plan, Section 1.1.5 (requirements outside the district plan) of the proposed district plan should reference the ORC's Flood Protection Management Bylaw 2012 as it controls certain land use activities. Activities within a specified distance of a scheduled drain and/or flood protection scheme structure require approval under the bylaw from ORC.

5.2 Natural Hazards - Strategic Approach

- 5.2.1 The natural hazards experienced within the Dunedin district are determined by its physical characteristics, along with the social or 'built' environment that may be affected by a particular event (such as a severe storm). Residents of Dunedin have previously been exposed to a range of natural hazard events, including flooding (especially within the Water of Leith and Taieri River catchments), coastal inundation and erosion, and land instability (particularly at Abbotsford, and on the Otago Peninsula). Although the effects of seismic hazards have generally been minimal since the mid-19th century, there is potential for these to also have a significant impact in some areas.
- 5.2.2 Mitigation works can reduce the level of risk of a natural hazard, however a level of residual risk remains that must be understood and managed appropriately. An example of residual risk was evident during the flood event which affected coastal Otago, and particularly the Taieri Plain, in April 2006. Although the Lower Taieri Flood Protection Scheme offered a level of protection to the community, many homes were required to be evacuated, with ponding lasting several days, and inundation and damage to a number of residential dwellings and commercial / industrial premises.
- 5.2.3 As a result of this event, ORC and DCC made a joint and public commitment to strengthen planning provisions, in order to manage development on the Taieri floodplain. A combined ORC / DCC Committee Report in November 2006 identified that there was a need for a 'principles-based' approach to manage land use, building control and natural hazards to reduce risk to people and property.
- 5.2.4 More recently, the experience of the Canterbury earthquake sequence has increased public expectation that local authorities will manage these risks through sound planning provisions, and that in some areas risks are intolerable and must be avoided.
- 5.2.5 As a consequence of these and other events, the ORC and DCC have collaborated to identify the characteristics and likely geographical extent of natural hazards within the Dunedin City district, so that the effects of those hazards can be avoided or adequately mitigated.

5.2.6 ORC published the following reports to support this work¹:

- Review of the Dunedin City District Plan: Natural Hazards – Project Overview (2014)
- Flood hazard of Dunedin's urban streams (2014)
- Flood Hazard on the Taieri Plain and Strath Taieri (updated 2015)
- Flood Hazard on the Taieri Plain and Strath Taieri (2014)
- Coastal hazards of the Dunedin City District (2014)
- The hazard significance of landslides in and around Dunedin City (2014)
- Identification of areas possibly susceptible to landsliding in the coastal sector of the Dunedin City district (2015)
- Active landslides in the Dunedin area (2015)
- Assessment of liquefaction hazards in the Dunedin City District (2014)

5.2.7 The purpose of these reports is to raise awareness of the characteristics of natural hazards in the Dunedin City District and inform the management of land use to avoid or mitigate natural hazards.

5.2.8 The work undertaken by ORC is fit for this purpose. In some cases, areas with particular geomorphological characteristics (which are therefore likely to experience particular hazards) have been identified. These include the Water of Leith and Kaikorai Valley floodplains, alluvial fans, and hillslopes prone to land instability. These are intended to trigger site-specific investigation by the developer or land owner as part of any development proposal, to determine whether the hazard exists at a site specific scale, and if the hazard does exist, demonstrate whether the development can avoid or adequately mitigate the risks posed by the hazard. These areas have been verified through field observations and validated by experts (including ORC staff, GNS Science and NIWA).

5.2.9 In other cases, ORC has identified specific areas which have known hazard characteristics. Examples include ponding areas and floodways on the Taieri Plain which are critical to the functioning of the Lower Taieri Flood Protection Scheme, and where floodwater of significant depth, velocity and duration can occur relatively frequently. The extent of these areas has been verified by observations of previous events, accurate topographical data and modelling.

5.2.10 ORC defined a series of principles which are consistent with the approach to natural hazards identified in the RPS, and are based on the RMA and the functions of local government in relation to natural hazards. In summary, the principles are:

- Protection of people – prevent death or injury, ensure public health.
- Create liveable communities – where people can live, work and use the land without undue stress or fear.
- Create a resilient built environment – includes infrastructure and lifelines.
- Utilise an adaptive management approach.

¹ <http://www.orc.govt.nz/Publications-and-Reports/Natural-Hazards/Natural-Hazards/Dunedin-City-District/>

- Take residual risk into account.
- Some risks are intolerable.
- Avoid exacerbation of natural hazards.
- Increase understanding and community awareness.

5.2.11 In addition, ORC developed a series of planning considerations to inform the District Plan rules, in regards to avoiding or mitigating the potential effects of natural hazards. These are illustrated in the following series of diagrams.

1. Controls over the way land is used should depend on the characteristics of the hazard in that area, and its effects on people and assets. For example, this image shows land which can be exposed to regular, prolonged inundation over a wide area, and which is therefore suitable for farming, but not for more sensitive activities.



Figure 1

2. The consequences of the hazard are critical. The Abbotsford landslide (below) and the Canterbury earthquake sequence are examples of events which do not happen often, but can have disastrous consequences for the relevant community.



Figure 2

3. The disruption and economic impact at individual and community levels are important considerations. The utility and amenity value of land is no less important than public safety and damage to buildings.



Figure 3

4. The cumulative effects of hazards should be considered:

- i. Consider the likelihood of being affected *over the longer term*.
- ii. Consider the likelihood of being affected *by any hazard* (eg, coastal communities which can be affected by river flooding, coastal storm surge and seismic hazards).
- iii. Consider the cumulative effects of *repeat events* (as illustrated in the series of photos of Henley below)



Figure 4

5.2.12 ORC's work also focused on refining its mapping of high-risk areas, so that DCC can apply planning controls within these areas which are both pragmatic and appropriate. ORC's expectation is that DCC will send a clear signal in the second generation plan by prohibiting activities in areas where the risk associated with natural hazards is intolerable.

5.2.13 ORC supports the overall strategic direction of Objective 2.2.1 (Risk from Natural Hazards) as it is largely consistent with the Proposed RPS. However, some policies are of concern to ORC as they are not consistent with the principles-based approach that ORC and DCC have agreed is important in managing land use activities and natural hazard risk.

- 5.2.14 The policies of Objective 2.2.1 do not reference lifelines utilities and emergency services. The needs and functions of these agencies are identified as essential in the objectives and policies of Chapter 3 of the Proposed RPS. Therefore, ORC requests a policy is added which recognises and provides for the critical role lifelines utilities and emergency services provide for in preparing for, and during, natural hazard events.
- 5.2.15 The leniency promoted by Policy 2.2.1.7 for expanding existing activities in hazard overlay zones may result in increases of sensitivity and risk to natural hazards.
- 5.2.16 Policy 2.2.1.7 appears to provide for protecting a land holder where there is a financial investment or operational need. Essential operational need is provided for under the Proposed RPS and rules of the proposed district plan. These demonstrate when this policy might be appropriate. However, the provision for taking a more lenient view due to financial investment does so without any regard to the wider community's tolerance of risk.
- 5.2.17 **ORC requests**
- The importance of lifeline utilities and emergency services are recognised in the policies of Objective 2.2.1 of the district plan.
 - Policy 2.2.1.7 of the proposed district plan is amended to be consistent with the principle-based approach to managing land use activities and natural hazards risk DCC agreed to with ORC and as required under the Proposed RPS.

5.3 Natural Hazards - Flooding

5.3.1 ORC has considered the appropriateness of the DCC's proposed planning provisions for each of the mapped flood hazard areas. The DCC has assigned these areas into 3 flood hazard overlay categories. This includes areas mapped by ORC in the Water of Leith, Kaikorai Stream, and Taieri River catchments as well as on a number of smaller rivers and streams. An example is shown in Figure 65 for the Taieri Plain, which has been separated into various flood hazard areas, based on:

- topography,
- proximity to watercourses,
- the characteristics of those watercourses,
- the influence of the Lower Taieri Flood Protection Scheme, and the East and West Taieri Drainage Schemes.

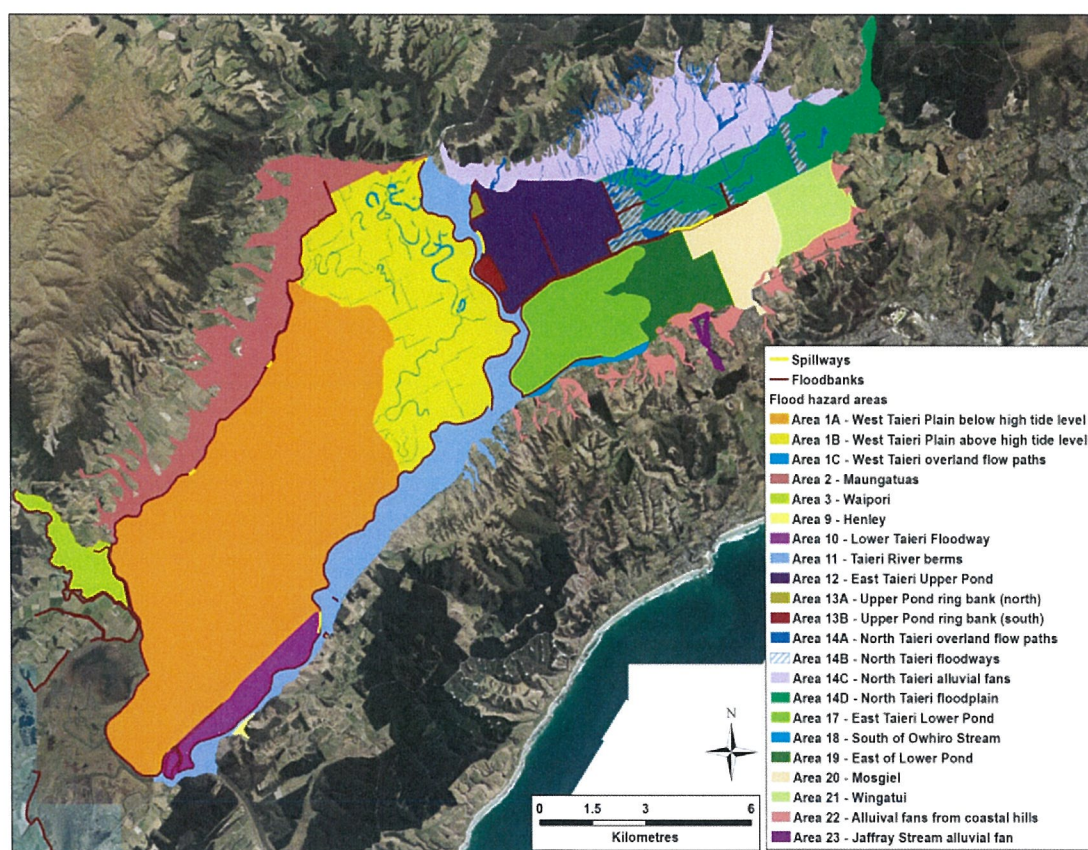


Figure 5

Figure 6: Revised flood-hazard areas of the Taieri Plain (source: ORC report 'Flood hazard on the Taieri Plain - updated 2015')

Figure 5 shows the Taieri Plain, which has been separated into 22 areas based on their relevant flood hazard characteristics.

5.3.2 Having viewed the DCC's online review mapping data, ORC supports where these hazard overlay areas have been applied to in these catchments, and the associated activity classifications, except for as follows:

Area descriptions	Area reference in ORC report ²	Current hazard overlay	ORC requested change	Reason
Lower Taieri Catchment				
Henley	9	Hazard 1	New sensitive activities ³ are prohibited	Characteristics of flood hazard (depth, duration, frequency, and isolation of community) mean that additional sensitive development is not appropriate.
Lower Taieri floodway and river berms	10 and 11	Hazard 1	New sensitive activities are prohibited	Characteristics of flood hazard (depth, velocity, duration, frequency) mean that sensitive development is not appropriate.
East Taieri Upper Pond	12	Hazard 1	New sensitive activities are prohibited.	Characteristics of flood hazard (depth, duration) mean that additional sensitive development is not appropriate.
Upper Pond ring bank (south)	13B	Hazard 1	New sensitive activities, or intensification of existing activities is prohibited.	Residual risk from flood velocities and depth intolerable
North Taieri overflow paths	14A	Hazard 3	More clarity to plan users what this means i.e. when viewing on-line maps	Better user experience
North Taieri floodway	14B	Hazard 1	Sensitive activities become prohibited	Characteristics of flood hazard (depth, velocity) mean that additional sensitive development is not appropriate.
East Taieri Lower Pond	17	Hazard 1	New sensitive activities are prohibited (acknowledging there are already existing sensitive activities in this area)	Characteristics of flood hazard (depth, duration) mean that additional sensitive development is not appropriate.
South of Owhiro Stream	18	Hazard 1	New sensitive activities are prohibited.	Characteristics of flood hazard (depth, duration) are similar to Area 17 and additional sensitive development is therefore not appropriate.
Leith Catchment				
Upstream of Woodhaugh Garden	-	Hazard 3	Change to Hazard 2 Overlay area upstream of Woodhaugh Garden	Characteristics of flood hazard upstream of Woodhaugh, Garden and potential for blockage of the

² Refer section 5.3.1

³ Sensitive Activities as defined in Table 11.2 (Hazard sensitivity) of the proposed district plan.

				main channel, overtopping, and associated flooding of adjacent floodplain areas. Comprehensive flood protection measures downstream of Woodhaugh garden.
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5.3.3 Proposed RPS Policy 3.7.1 requires reducing risk by means including avoiding areas of significant risk. ORC considers that the information it has provided to DCC in support of this review process clearly demonstrates there are a number of areas where flooding risk is intolerable.

5.3.4 Therefore, by the agreement of both ORC and DCC for a principles based approach to reducing risk to people and property, a strong signal must be given in the proposed district plan that sensitive activities in these areas should be prohibited.

5.3.5 ORC does not accept there are any circumstances to justify new sensitive activities being located in these areas. The effects of past flooding events on existing landowners in these areas verify the risk and consequences are significant and real. Any suggestion that a landowner may be prepared to accept such risk does not absolve that person from the consequences of such risk nor the wider community's intolerability to the risk and consequences.

5.3.6 In respect to the areas identified in section 5.3.2 of this submission, **ORC requests** that:

- a) Sensitive activities classified Hazard 1 overlay be made prohibited activities in the proposed district plan; and
- b) The mapping metadata that is shown for the North Taieri overland flow paths would benefit by having more clarity as to what these features mean for the general public; and
- c) The area above Woodhaugh Garden is changed to a Hazard 2 Overlay area due to potential for blockage of the main channel (either due to landslide or debris), overtopping, and associated flooding of adjacent floodplain areas.

5.3.7 **ORC supports** the assessment criteria for Rules 11.4, 11.5 and 11.6.

5.4 Natural Hazards - Coastal Hazards

5.4.1 The 2014 ORC report 'Coastal hazards of the Dunedin City District' describes coastal communities which are located on terraces formed by the accumulation of sand and other unconsolidated sediments, with a shallow groundwater table. These characteristics make the land vulnerable to inundation from a number of sources: directly from the sea, ponding of surface runoff, or flooding from larger streams and rivers, or a combination of these processes.

- 5.4.2 Sea-level rise and coastal erosion would, in general, increase the likelihood and adverse effects of inundation on these communities and these processes are discussed within the report.
- 5.4.3 South Dunedin and the upper harbour is the largest area which is potentially exposed to these hazards, and this area has a population of approximately 10,000 people.
- 5.4.4 It is noted that the likelihood of these areas being affected by seismic hazards (liquefaction, lateral spread, ground shaking) is also relatively high, as described in the 2014 GNS report ‘Assessment of liquefaction hazards in the Dunedin City District’.
- 5.4.5 ORC disagrees with section 11.1.4 of the proposed district plan Hazard Overlays statement that there are no areas identified as being exposed to high/moderate risk for coastal hazards based on the proposed district plan’s definitions of risk likelihood (Table 11.1) and ‘moderate consequences’ (‘definitions’).
- 5.4.6 A number of communities (including South Dunedin, Aramoana, Harwood and Long Beach) have, in recent years, experienced events, that according to Table 11.1 of the proposed district plan have high risk as they are:
- likely; and
 - may have moderate consequences as per the proposed district plan’s definition, in particular:
 - serious structural damage to property which is costly but still repairable;
 - physical isolation on site for more than two days; and
 - limited reliance on civil defence (or in their absence, emergency services, as illustrated in the photo in Figure 7).

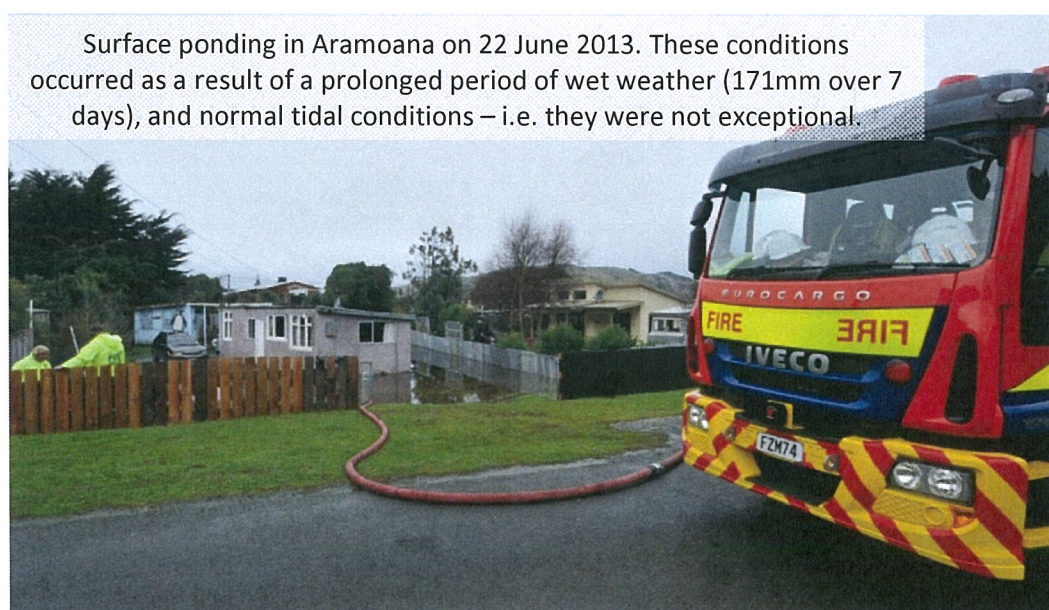


Figure 7

5.4.7 The method used to define particularly low-lying land ('Area A') which meets these criteria is explained in the 2014 ORC coastal hazards report, along with the likely effects of inundation in these areas. It is noted that this includes a large part of South Dunedin, as shown in the map in Figure 8.

5.4.8 ORC requests

- that areas subject to coastal hazards where significant storm surge events would have moderate to high consequences are reclassified in the district plan with a Hazard 2 (Coastal) Overlay.

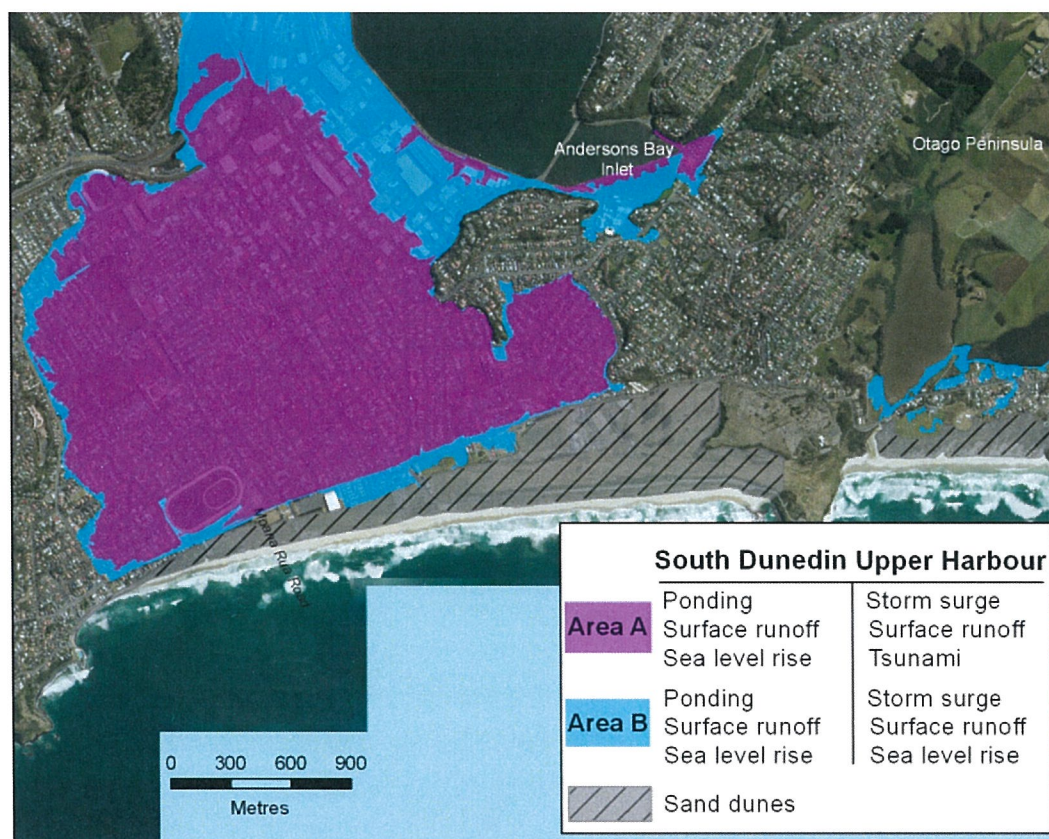


Figure 8

- 5.4.9 There are parts of the coastal margin which are not included within the Hazard 3 (Coastal) Overlay, or within the dune system mapped area, but which are still in close proximity to the coast, and are underlain by unconsolidated sediments. Although these areas are sufficiently elevated to not fall within the Hazard 3 (Coastal) Overlay, they may be affected by coastal erosion in the future. An example of this situation is at Harwood shown below in Figure 9.

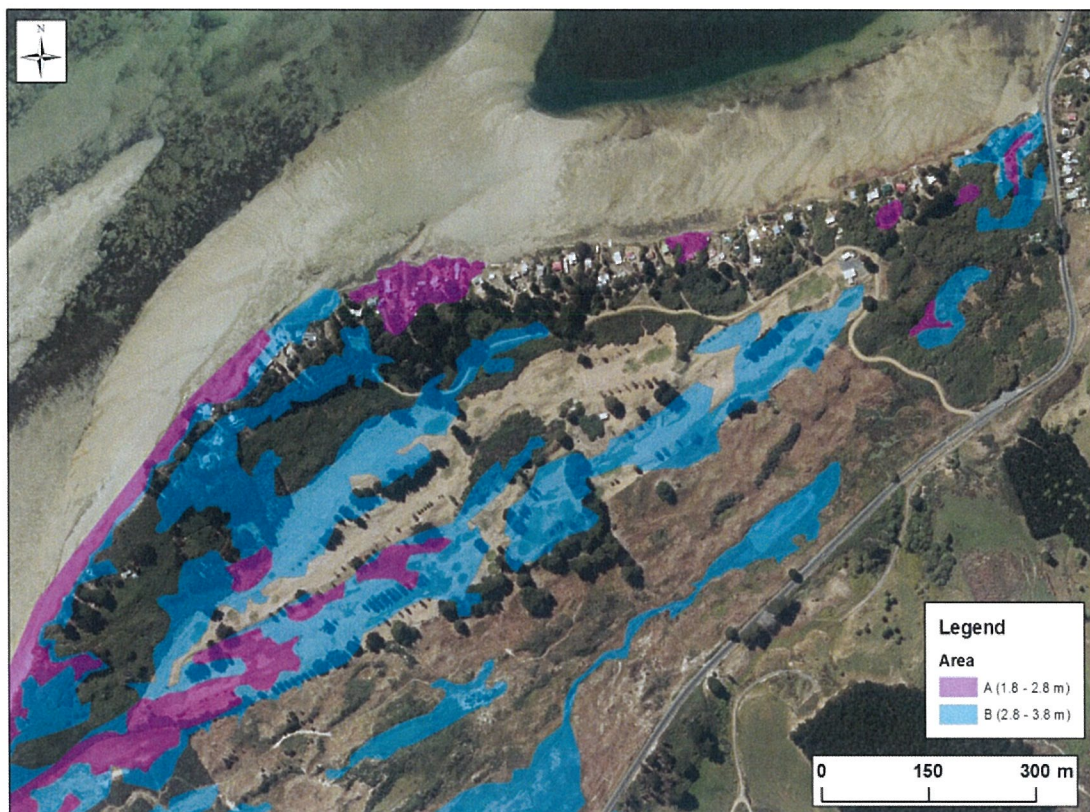


Figure 9 note: Non-shaded areas are > 3.8 m elevation.

5.4.10 **ORC requests:**

- that DCC ensure that these areas are also subject to controls for relocatable buildings. ORC recognises that some further technical work may be required to define these additional areas and it is willing to support the DCC with that work.
- This provision is not to be applied to the Harbourside Edge Zone as the relocatable component of buildings would not be practical for the activities anticipated in this area and provided for in the district plan.

- 5.4.11 Rule 11.3.2 (2)(a) exempts vegetation clearance in dune system mapped area where planting of indigenous species is part of conservation activity. ORC requests that conservation activity is defined (i.e. is it authorised, if so by who) and it is clarified if the area of replanting must be no less than the area cleared.

- 5.4.12 Rule 11.3.2 (2)(a) exempts vegetation clearance in dune system mapped area where planting of indigenous species is part of conservation activity.

5.4.13 **ORC requests**

- “conservation activity” is defined (i.e. is it authorised, if so by who) in the view and it is clarified in Rule 11.3.2 if the area of replanting must be no less than the area cleared.

5.5 **Natural Hazards – Land Instability**

5.5.1 Landslides are one of the potential natural hazards in the Dunedin City district, and previous occurrences such as the slip at Abbotsford have resulted in significant damage to property and other assets. The work provided by ORC shows that some existing landslide features are continuing to experience movement, that there is potential for some pre-existing landslides to reactivate, and that new landslides will continue to occur.

5.5.2 ORC considers that the consequences for stability due to new development require careful evaluation at the planning/design stage, and that the requirement in certain areas to undertake a geotechnical assessment to support proposed activities is consistent with the principles and planning considerations outlined above. Previous landslide events, such as at Abbotsford, and more recent widespread events, have resulted in effects which are accurately characterised by the proposed district plan’s definition of moderate or major consequences.

5.5.3 **Therefore, ORC supports**

- the manner in which DCC has identified areas of potential land instability and the associated provisions in the proposed district plan.

5.5.4 It is noted that there are a large number of mapped landslides which are currently not known to be vulnerable to further movement, and which the DCC have not included in the hazard overlay 1 and 2 system. ORC is supportive of this approach.

5.5.5 As outlined in the three ORC and GNS landslide summary reports provided to the DCC, the hazard associated with land instability may vary within these mapped landslide features, and the buffers which surround them. Concerns over the implications of these mapped areas on property values and insurance should be addressed as follows:

5.5.6 **ORC requests:**

- The re-labelling of the hazard 1 and 2 hazard overlay (land instability) areas to classify them as ‘landslide awareness areas’
- That a clear explanation is provided in the proposed district plan that this classification simply acts as a trigger to require site-specific geotechnical investigation; to determine whether a hazard exists and demonstrate whether the proposed development can avoid or mitigate the risks posed by the hazard.
- That the provisions are intended to avoid additional risk, and do not have significant implications for existing development.

5.5.7 ORC notes that there is a requirement for site specific geotechnical investigations already for many new development activities, through the subdivision regulatory process.

5.5.8 The buffer zones around mapped landslides should continue to be classified as a Hazard 2 overlay area with appropriate performance standards provided for controlling effects from vegetation clearance, storm water management and earthworks.

5.5.9 ORC requests

- the buffers are clearly differentiated from the mapped landslide features, and a clear explanation is provided that, as for other areas, there is a requirement to undertake a geotechnical assessment to support any proposed activities.

5.5.10 ORC provided DCC with maps of slope awareness and geologically sensitive areas. Slope angle and geology are factors which should be considered as part of any application to undertake new development in these areas, with site-specific investigations helping to inform decisions about the design of that development.

5.5.11 ORC requests

- that the slope awareness and geologically sensitive areas provided to DCC should be given greater prominence within the district plan through the associated mapping provisions.

5.5.12 ORC requests:

- The DCC should provide for easy access to the full range of source reports which underpin the mapped landslide areas, including making them accessible through its website.

5.5.13 ORC requests:

- The DCC should allow for:
 - future improvements in mapping, interpretation and characterisation of existing landslides to be regularly incorporated into the plan,
 - the addition of new landslide features into the plan, and
 - re-classification of landslides where mitigation works have been implemented, and these can be proven to significantly reduce the risk.

5.6 Natural Hazards – Alluvial Fans

5.6.1 The consequences of debris or floodwater dominated flows across alluvial fans may be greater than that associated with flood hazard, although the likelihood of those events occurring is lower. Performance standards for new development on alluvial fans should include the identification of an appropriate floor height by a suitably qualified person, the avoidance of likely overflow channels, and suitable construction methods.

5.6.2 **ORC requests:**

- that all mapped active alluvial fan areas should be treated consistently and be identified as Hazard 3 (Alluvial fan) Overlay areas, rather than ‘flood’ with appropriate performance standards applied.

5.7 **Cumulative Effects**

5.7.1 Some areas of Dunedin are subject to more than one natural hazard risk. It is important that the provisions of the proposed district plan provide for recognising this in determining an activity’s classification as well as any matters of discretion for assessment. In the event an area is mapped as being subject to more than one natural hazard or risk characteristic, it may be appropriate that an activity on that site is held to a higher regulatory test in respect to the effect of cumulative risk than those areas where the risk profile is less.

5.7.2 **ORC requests**

- that the provisions of the district plan allow for recognition of cumulative risk in areas which have more than one mapped natural hazard overlay area and/or other mapped risk characteristics.

5.8 **Climate Change**

5.8.1 ORC supports the recognition of risk and consequences given to climate change in chapter 2 (strategic directions) and 11 (Natural Hazards) of the proposed district plan. The recognition and related provisions largely, and understandably, relate to coastal risk and effects. ORC supports this focus, particularly in light of the Parliamentary Commissioner for the Environment’s recent report, *‘Preparing New Zealand for Rising Seas: Certainty and Uncertainty’* (2015).

5.8.2 However, there appears to be little specific recognition of other effects such as increased pressure on infrastructure such as storm water due to any increase in frequency or consequences of rain and storm events.

5.8.3 **ORC requests**

- that the proposed district plan’s policies and assessment criteria recognise the impact of climate change when consent for land use activities involving infrastructure is sought.

5.9 **Infrastructure and Services**

5.9.1 Objective 2.7’s title refers to ‘public infrastructure’ which has a very limited scope as defined under section 1.5.2 (other definitions). However, the policies of this objective refer to ‘infrastructure’, which is not defined in the plan. The RMA’s definition of infrastructure is much wider than that of ‘public infrastructure’

5.9.2 **ORC requests**

- this matter is clarified, suggesting the reference to ‘public infrastructure’ is simplified to ‘infrastructure’ as defined under the RMA.

5.9.3 Otherwise, **ORC supports** the intent of Objective 2.7.1 and its policies.

5.10 **Energy**

5.10.1 **ORC supports**

- Objective 2.2.2 (Energy Resilience) and its associated policies, subject to the request discussed in 5.8.2 of this submission, as it recognises the need to reduce long term demand for fossil fuels which gives effect to proposed RPS Policy 3.6.6.

5.10.2 **ORC requests**

- the following amendments to Objective 2.2.2:
 - The importance of the current fossil fuel supply chain also be recognised; and
 - As worded, Policy 2.2.2.3 may prove to be too enabling. While recognising the benefits of renewable energy activities, the policy must recognise it is important those activities’ adverse effects also can be managed.

5.10.3 In June 2013, ORC submitted on the DCC’s ‘An Energy Plan for Dunedin’ discussion document. Among the points ORC addressed was the DCC’s thinking on being able to ‘go it alone’ in the event of an oil shock. This might be realised by increasing capacity for local food production which is again raised in Objective 2.2.2(c).

5.10.4 ORC’s view remains that the city should consider opportunities for wider regional discussions to improve resilience. As previously submitted, if Dunedin is better at adding value by producing goods, ORC considers this makes better economic sense than only increasing its range and volume of local food produce. In short, trade will still be important.

5.10.5 **ORC requests**

- that the district plan provide for considering wider regional and inter-regional resilience planning.

5.11 **Urban/Rural Design and Growth**

5.11.1 **ORC supports**

- Strategic Direction Objectives 2.6.1 (Housing Choices) and 2.6.2 (Cost Efficient Housing) as they give effect to the Proposed RPS.

5.11.2 However, policy 3.7.1(c) of the proposed RPS recognises that appropriate insulation has a strong correlation to ensuring people's well-being with dry, warm homes. The provisions of the proposed district plan do not give effect to this.

5.11.3 ORC requests

- that the district plan provides for the importance of insulation standards. Homes which are efficient to heat will also contribute to meeting of air quality standards by reducing the amount of solid fuel demand for heating. It is important that the proposed district plan's provisions do not encourage, nor permit activities that will not be able to comply the ORC's air plan.

5.11.4 The Strategic Direction policies of the proposed district plan recognise it is important that increasing the range of activities in the rural areas of the district can put pressure on available resources, including water which has a critical role in primary base rural activities. Policy 2.6.3.1(b)(ii) of the proposed district plan seeks to limit urban expansion where it conflicts with rural activity water requirements.

5.11.5 ORC requests

- Policy 2.3.1.2 also recognise the importance of water supply reliability in rural zones to complement 2.6.3.1 (b)(ii). The outcome of such policy provision may be to better provide for water storage and increases resilience against climate change.
- The district plan having provision for managing land use in dry catchments where water yield may be impacted to give effect to the Proposed RPS Policy 4.3.2.

6 Proposed RPS Part B Chapter 4 - Use and Enjoyment of Otago's Natural and Built Environment

Proposed RPS Requirement

6.1.1 Chapter 4 of the Proposed RPS contains objectives and policies that recognise and provide for the use of natural and physical resources in economic and community activities in Otago. The Proposed RPS identifies that the physical and natural environment is highly interconnected and dynamic and must be carefully managed to ensure both the resources, and our ability to continue to use them, are not adversely impacted.

- 6.1.2 ORC considers that the objectives and policies of the proposed district plan's Strategic Direction Chapter provide a strong vision and planning platform for the district and are largely consistent with the Proposed RPS. Comments on the Strategic Direction objectives policies are provided below as well as elsewhere in the submission where relevant.

6.2 Heritage

6.2.1 ORC supports:

- The provisions of chapters 13 (Heritage) and 14 (Manawhenua) which give effect to the proposed RPS.

6.2.2 ORC requests

- DCC amend policy 13.2.2.2(c) so it clarifies the heritage values as defined in Appendices A1 and A2 of the proposed district plan. A number of rules in chapter 13 refer to the assessment considering these values as per this policy.

6.3 Transport

- 6.3.1 ORC is responsible for transport in two capacities: regional planning and public transport networks.

- 6.3.2 In respect to regional planning, the direction for land transport in Otago is set out in the joint '*Otago and Southland Regional Land Transport Plans 2015-2021*' (the RLTP document).

- 6.3.3 The combined Otago and Southland RLTP document is a good example of taking a wider, inter-regional approach and view to challenges and opportunities that simply do not end at mapped regional boundaries. The RLTP document contains common objectives and policies for Otago and Southland that are important in solving these short and long term challenges and making the most of the opportunities related to land transport.

- 6.3.4 Chapter 5 of the proposed district plan (Transportation) contains sound objectives policies but ORC is concerned it appears heavily road focused. The RLTP document also recognises the importance of the rail network as critical infrastructure in its own right as transport, as well as the synergy it can have in contributing to efficiencies on the road network.

6.3.5 ORC request:

- The district plan recognise and give effect to the *Otago and Southland Regional Land Transport Plans 2015-2021*, including the following policies:
 - a) Policy 2.29 (ensuring land for critical future projects)
 - b) Policy 3.11 (provision for ensuring KiwiRail to continue operations safely and efficiently)
 - c) Policy 4.7 (Protection of existing rail corridors and the open space of ex-rail corridors)

6.4 Public Transport

6.4.1 Public Transport is a key element in the functionality of Dunedin, Otago's largest urban area, and serves to move large numbers of people safely, economically and in an energy effective way as well as connect it to other areas of Otago and neighbouring regions. It is important that planning decisions recognise the importance and value of public transport to the city and, where possible, support the ability of these services to operate effectively. In turn, this will contribute to the public's willingness to view these as a viable alternative to private transport.

6.4.2 The ORC is generally supportive of the vision for transportation in Dunedin and the concept of an integrated transport network including public transport routes and stops. Council supports responsible land use planning for public transport, but request clarification on where matters of reducing private vehicle use and associated demand for car parking sit; the District Plan states that this sits outside the provisions of the District Plan.

6.4.3 ORC supports:

- the design and location of road and ancillary signage that avoids adverse impacts on the transport network.

and requests:

- that the location of signage should not impede the ability of buses to be able to pull into bus stops and park parallel. This includes provisions around the minimum height of signs and the avoidance of signs adjacent to bus stops (Policy 6.2.1.2, Objective 6.9.3, 6.9.4, 6.9.5 of the proposed district plan).

6.4.4 ORC supports:

- policies around the requirement for buildings and structures on or above the footpath to provide for the safe movement of vehicles (Objective 6.2.3, 6.9.6.3)

and requests:

- that verandas at intersections and adjacent to bus stops be a particular focus for controlling under the policies and rules of the district plan to ensure they provide for the safe movement of vehicles.

6.4.5 ORC supports

- policies only allowing new roads or alterations and additions to existing roads where the design provides for the needs of all users. This supports enabling connections to public transport services (Policies 6.2.1.3 and 6.2.2.1 of the proposed district plan).

6.4.6 The NZ Transport Agency draft Guidelines for Public Transport Infrastructure and Facilities indicate that the District Plan could provide for the installation of bus shelters as a permitted activity.

6.4.7 **ORC supports** this best practice approach.

6.4.8 The NZ Transport Agency draft Guidelines for Public Transport Infrastructure and Facilities outline key considerations for bus stops. These Guidelines, though still in draft form, seek to be the best practice standard for bus stop infrastructure and facilities. One of these considerations outlined for best practice is utilising the commercial opportunity that bus shelters provide. Commercial advertising in bus shelters:

- Enhances the customer experience
- Reduces the cost of providing facilities or services
- Improves safety and security by passive surveillance and lighting
- Promotes public transport as an enabler of economic and physical activity

6.4.9 Advertising in bus shelters about public transport services, products, and service changes provides a key channel for reaching affected public transport users. Advertising should meet the provisions of the Public Display Boards.

6.4.10 **ORC supports:**

- The installation of artwork on bus shelters as a permitted activity (Rules 3.3.1 and 3.3.2 of the proposed district plan)
- and requests:**
- that the District Plan supports and enables commercial advertising as a means to fund public transport services and infrastructure; and
 - that advertising in bus shelters in respect to public transport products, services and service changes should be permitted.

Environmental Consultants
PO Box 489, Dunedin 9054
New Zealand
Tel: +64 3 477 7884
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By Email

24 November 2015

Our Ref: 8936

Dunedin City Council,
PO Box 5045,
DUNEDIN

Attention: Planning Department (planning@dcc.govt.nz)

Dear Sir/Madam

**RE: SUBMISSION ON PROPOSED SECOND GENERATION DUNEDIN CITY
DISTRICT PLAN**

Please find attached a submission on the Proposed Second Generation Dunedin City District Plan, prepared on behalf of the Otago Regional Council.

We look forward to being kept informed of the process.

Yours sincerely,
MITCHELL PARTNERSHIPS LIMITED



MEGAN JUSTICE

Email: megan.justice@mitchellpartnerships.co.nz

Enc

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FORM 5
SUBMISSION ON PUBLICLY NOTIFIED SECOND GENERATION DUNEDIN CITY
DISTRICT PLAN
(26 SEPTEMBER 2015)

Clause 6 of Schedule 1, Resource Management Act 1991

To: Planning Department
Dunedin City Council
PO Box 5045,
DUNEDIN

Submission on: Proposed Second Generation Dunedin City District Plan
(“**Proposed 2GP**”)

Submitter name: Otago Regional Council (“**ORC**”)

Address: Private Bag 1954
DUNEDIN 9054

1. **This is a submission on the Proposed 2GP.**
2. **The Otago Regional Council (“ORC”) could not gain an advantage in trade competition through this submission.**
3. **The Otago Regional Council is making this submission in the capacity of landowner of the property located at 15 Birch, 39 Kitchener Street, and 49 Kitchener Street Dunedin.**

4. Submissions on the Proposed 2GP

- 4.1 On the 31st of July 2015, ORC Council filed a Notice of Requirement (“NOR”) with the Dunedin City Council regarding the designation of 39 Kitchener Street as a public work being the principal premises of the ORC. The Dunedin City Council has included the designation within the Proposed 2GP as Designation 214 – To Allow for Proposed Principal Premises with conditions. Otago Regional Council’s submission seeks the following amendment in regards to Designation 214:

- a) *The lapse date included for Designation D214 is amended:*

The lapse date sought for Designation 214 within Schedule A1.4 is 10 years from the date that Designation 214 is included within the District Plan.

The reasons for this submission is that as notified the lapse date included within the Proposed 2GP for Designation 214 is 16 October 2018, which

is different than what was included within the NOR filed on the 31st of July 2015. The lapse date included in the Proposed 2GP does not allow the ORC the time necessary to develop the site as designated. As such, ORC submit that this is amended to lapse 10 years from the date it is included within the District Plan.

b) The address included for Designation 214 is amended:

The specific amendment to the address the ORC seeks via the submission is shown in the table below:

Designation Number	D214
...	...
Location (address)	<u>15 Birch, 39 Kitchener Street, and 49 Kitchener Street</u> Dunedin

4.2 The ORC seeks amendments to the underlying zoning at the site, being the Harbourside Edge Zone and its surrounds, and other relevant city-wide provisions as they relate to this location, as set out below:

a) Re-instate the Harbourside Zone as provided in the operative District Plan

The ORC submits that the recently operative Harbourside Zone should be reinstated in full in the Proposed 2GP, including all provisions, district plan maps and structure plans.

b) Amendment of 'Harbourside Edge Public Access' plan included within Standard 18.6.18

As set out under submission point (a) above, the ORC seek that the Harbourside Zone be reinstated in full in the Proposed 2GP. The Harbourside Zone includes structure plans which enable the development of pedestrian access ways within the zone, including the requirement to provide public access ways/promenade areas. This is supported by the ORC.

However, should the Harbourside Zone not be re-instated in full, the ORC seek that the plan included within Standard 18.6.18 be amended so that the Harbourside Edge Public Access (shown coloured in green) be depicted as an "indicative" public access. The obligation for the developer of sites at 15 Birch Street and 39 Kitchener Streets should be to provide access through each site at a location to be determined.

It is also noted that the public access way depicted on the Standard 18.6.18 plan (refer below) passes immediately adjacent to the slipway site and across the Coastal Marine Area. This public access way is impractical while the slipway remains in use, and the rule should be amended to clarify that the access way "indicative".



c) *Provide for “office” activities within the Harbourside Edge Zone*

As set out above under submission point (a) outlined above, the ORC seeks the full reinstatement of the Harbourside Zone in the Proposed 2GP. This would include providing for office activities within the Steamer Basin South East Character Area.

d) *Rule 11.3.4*

The requirement for new buildings to be used for sensitive activities (including residential building) within the Hazard 3 (coastal) overlay zone to be “relocatable” is overly onerous and unrealistic in this location. The ORC seeks that Rule 11.3.4 is deleted insofar as it relates to the area contained within the Harbourside Zone under the Operative District Plan.

5. **The reasons for ORC’s submission on the Proposed 2GP:**

- a. Reasons for ORC’s opposition to the Proposed 2GP as notified and in the absence of the amendments in accordance with these submissions (or similar), include the following:

- i. As notified, the Proposed 2GP will not promote the sustainable management of natural and physical resources, will not achieve the purpose of the Resource Management Act 1991 (RMA), and is otherwise contrary to Part 2 and other relevant provisions of the Act.
- ii. The Proposed 2GP will not promote the efficient use and development of natural and physical resources.
- iii. The Proposed 2GP does not represent sound resource management practice.

6. The ORC seeks the following decision from the Dunedin City Council:

- a. That the amendments (or similar in order to address the ORC's submission points) outlined above are accepted;
- b. Such further, consequential or other relief as is appropriate or desirable in order to take account of the concerns expressed and relief sought in this submission.

7. The ORC wishes to be heard in support of this submission.

8. If others make a similar submission, the ORC would be prepared to consider presenting a joint case with them at any hearing.



Peter Bodeker
Chief Executive
Otago Regional Council

Dated at Dunedin this 24th day of November 2015

Address for Service:

Otago Regional Council
c/- Mitchell Partnerships Limited
PO Box 489
Dunedin 9054

Contact Details:

Attention: Megan Justice
Telephone: 03 477 7884
E-mail: megan.justice@mitchellpartnerships.co.nz

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHĪ ROHE**

ENV-2018-CHC-

UNDER the Resource Management Act 1991

IN THE MATTER of an appeal under Clause 14(1) of Schedule 1 of the Resource Management Act 1991

BETWEEN **OTAGO REGIONAL COUNCIL** a body corporate under the Local Government Act 2002

Appellant

AND **DUNEDIN CITY COUNCIL** a body corporate under the Local Government Act 2002

Respondent

NOTICE OF APPEAL OF THE OTAGO REGIONAL COUNCIL

ROSS DOWLING MARQUET GRIFFIN
SOLICITORS
DUNEDIN

Telephone: (03) 477 8046
Facsimile: (03) 477 6998
PO Box 1144, DX YP80015

Solicitor: A J Logan

NOTICE OF APPEAL OF THE OTAGO REGIONAL COUNCIL

To The Registrar
Environment Court
Christchurch

- 1 The Otago Regional Council appeals against decisions of the Dunedin City Council on its Proposed Second Generation District Plan ("2GP").
- 2 The Otago Regional Council made a submission and further submissions on the 2GP.
- 3 The Otago Regional Council is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ("the Act").
- 4 The Otago Regional Council received notice of the decisions on 7 November 2018.
- 5 The decisions were made by Dunedin City Council.
- 6 The parts of the decision that the Otago Regional Council is appealing are set out in the following sections of this notice of appeal.

Environmental Performance

Policy 2.2.5.2

- 7 The Otago Regional Council made a submission on the notified version of this policy.
- 8 In its decision 3.9.2.1, the Dunedin City Council accepted the Otago Regional Council's submission in part and amended Policy 2.2.5.2 to read:

"enable and encourage on-site stormwater and wastewater management, where this would not endanger groundwater and is not in conflict with the efficient use of existing public wastewater and stormwater infrastructure, through rules that provide for an alternative to connecting to public water supply, wastewater and stormwater infrastructure."
- 9 The words "endanger groundwater" are imprecise and uncertain. They can be read as permitting degradation of groundwater resources.

10 The policy can be better worded and should be amended to remove ambiguity, provide greater certainty and give clear protection of groundwater.

11 The Otago Regional Council seeks the following relief:

11.1 Policy 2.2.5.2 be amended to read as follows:

"enable and encourage on-site stormwater and wastewater management, where this would not cause adverse effects on groundwater quality ..."

11.2 In the alternative, amend Policy 2.2.5.2 in such a way as to adequately address the reasons for this appeal point.

Earthworks – Rule 8A.5

12 In its original submission, the Otago Regional Council requested that dust control be provided for in the earthwork performance standards.

13 In its decision 3.11.2 the Dunedin City Council rejected the Otago Regional Council's submission.

14 The emission of dust is a potentially adverse environmental effect of earthworks and should be controlled by the District Plan.

15 The Otago Regional Council seeks the following relief:

15.1 A performance standard that earthworks must not cause nuisance effects beyond the boundary of the site.

15.2 In the alternative, such other or further relief that gives effect to the appeal point.

Natural Hazards

Policy 2.2.1.7, Rule 15.3.X and Rule 16.3.X

16 The Otago Regional Council made extensive submissions on the natural hazard provisions of 2GP.

17 The Otago Regional Council made a specific submission on Policy 2.2.1.7 which reads:

"In the hazard overlay zones, provide for more lenient rules on the expansion of existing activities and acknowledgement of the pre-existing financial investment and other operational ties at a site."

- 18 In its submission the Otago Regional Council criticised the policy for increasing risk from hazards. The Dunedin City Council did not amend or delete the policy.
- 19 This policy appears to provide policy support for the less restrictive Rules in 15.3.X (15.3.6) and 16.3.X (16.3.6).
- 20 In the decisions version of the 2GP in the Hazard 1 (flood) overlay zone, Rule 15.3.X.5 enables buildings and additions and alternations to buildings of up to 36m² of new ground floor area in hazard (flood) overlay zones to be permitted activities (provided other relevant rules and standards are met) while new buildings and additions and alterations exceeding 36m² of new ground floor area are restricted discretionary activities.
- 21 Further, there is a note 15.3.6A that for the purposes of Section 10 of the Act (existing use rights) the following activities will not usually trigger the provisions for natural hazard sensitive activities and natural hazard potentially sensitive activities:
 - 1 for a residential activity, if there is less than 25m² increase in ground floor area of any residential building(s) in any consecutive 10-year period; or
 - 2 for residential activities, a new building to be used solely as a garage or shed; or
 - 3 for all other natural hazard sensitive activities and natural hazards potentially sensitive activities, the ground floor area increases by less than 100% in any consecutive 10-year period.
- 22 There are similar provisions for the rural zone in Chapter 16, in particular Rule 16.3.X.5 and note 16.3.6A.
- 23 The decisions did not expressly address the Otago Regional Council's submission or further submissions on these points.
- 24 Together the policy, rules and notes fail to recognise and provide for the management of significant risks from natural hazards which is a matter of national importance, and are therefore contrary to Section 6(h) of the Act. The Dunedin City Council also failed to have regard to the effects of climate change

as required by Section 7(i) of the Act. The provisions do not promote sustainable management.

- 25 The provisions fail to give effect to the now settled (and to be operative from 14 January 2019) natural hazard provisions of the Proposed Otago Regional Policy Statement, including in particular Objective 4.1 and Policies 4.1.5, 4.1.6, 4.1.7 and 4.1.8.
- 26 The effect of these provisions in 2GP is increased risk from natural hazards; they place people and property in danger.
- 27 The provisions do not promote social, economic and cultural wellbeing.
- 28 The policy and notes are uncertain and ambiguous.
- 29 The notes are unlawful in adding a gloss to Section 10 of the Act.
- 30 The Otago Regional Council seeks the following relief:
 - 30.1 Policy 2.2.1.7 be deleted.
 - 30.2 The activities described in 15.3.X.5 and 16.3.X.5 be full discretionary activities in the Hazard 1 (flood) overlay zone.
 - 30.3 Notes 15.3.6A and 16.3.6A be deleted.
 - 30.4 Such other, further and consequential changes to the 2GP as necessary to give effect to this appeal point.

Policy 2.2.1.3 and Hazard 1A (flood) overlay zone

- 31 In its submission, the Otago Regional Council sought the North Taieri (also known as Gordon Road) spillway be included in a zoning in which sensitive activities are prohibited.
- 32 In Decision 3.6.5.1, the Dunedin City Council declined to include this spillway in such a zone.
- 33 The spillway is a designed and engineered flow path for flood waters. The depth and velocity of flood flows mean that additional sensitive development is not appropriate within the spillway area.
- 34 The Otago Regional Council seeks the following relief:

- 34.1 Natural hazard sensitive activities are prohibited activities in area 14B, North Taieri (Gladstone Road) floodway.
- 34.2 The rules and planning maps are amended to give effect to this relief.
- 34.3 Such other, further and consequential changes to 2GP as are necessary to give effect to this appeal point.

Objective 2.2.1

- 35 In the notified version of 2GP, this objective read:

"The risk to people, communities, and property from natural hazards and from the potential effects of climate change is minimised so that the risk is no more than low."

- 36 The Otago Regional Council made a submission supporting this objective.

- 37 In the decisions version, the Objective is amended to read:

"The risk to people, communities, and properties from natural hazards, and from considering the potential effects of climate change, is minimised so that the risk is no more than low."

- 38 The amendment makes no sense.

- 39 The Otago Regional Council seeks the following relief:

- 39.1 The reinstatement of the notified Objective.

New Natural Hazards: Table 11.3

- 40 The Hazard 3 (coastal) overlay zone is rated as a low risk in Table 11.3, by reference to Table 11.1.
- 41 In its submission on the Otago Regional Council sought that some areas within the Hazard 3 (coastal) overlay zone be reclassified as Hazard 2 (coastal) overlay.
- 42 Applying Table 11.1, the risk of coastal hazards in those areas is high, because the hazard events are likely, and have moderate consequences.
- 43 Such events have been experienced in recent years in a number of Dunedin communities, including South Dunedin, Aramoana, Harwood and Long Beach.

44 The Otago Regional Council seeks the following relief:

44.1 Table 11.3 be amended to give effect to this appeal point.

44.2 Such other, further and consequential changes to the 2GP as necessary to give effect to this appeal point.

Overlay Zone for Coastal Hazards

45 The Otago Regional Council requested that areas shown in Figure 7 of its submission be reclassified as Hazard 2 (coastal) overlay.

46 The Dunedin City Council declined to make this change in decision 3.12.4.

47 The Otago Regional Council seeks the following relief:

47.1 The areas shown in purple and blue in Figure 7 of its submission be reclassified as Hazard 2 (coastal) overlay zone.

47.2 Such other, further and consequential changes to the 2GP as necessary to give effect to this appeal point.

Minimum Floor Levels

48 The notified 2GP contained Policies and Rules for minimum floor levels in the Hazard 2 (flood) and Hazard 3 (coastal) overlay zones.

49 In its original submission, the Otago Regional Council generally supported the notified natural hazard provisions for minimum floor levels.

50 In its further submission, the Otago Regional Council opposed the deletion of the provisions.

51 In its decision 3.12.4, the Dunedin City Council deleted these provisions.

52 In deleting these provisions, the Dunedin City Council failed to give effect to the New Zealand Coastal Policy Statement and to the Operative and Proposed Otago Regional Policy Statements (noting in particular the natural hazard provisions of the Proposed Otago Regional Policy Statement are now settled and will be operative from 14 January 2019).

53 In its decision the Dunedin City Council has failed to:

- 53.1 Recognise and provide for the management of significant risks from natural hazards; contrary to Section 6(h) of the Act;
 - 53.2 Have regard to the effects of climate change, contrary to Section 7(i) of the Act;
 - 53.3 Promote sustainable management of natural and physical resources;
 - 53.4 Achieve Objective 11.2.1 of the 2GP; and
 - 53.5 Provide a coherent, transparent and efficient means of managing risk.
- 54 The Otago Regional Council seeks the following relief:
- 54.1 The reinstatement of these provisions.
 - 54.2 Such other, further and consequential changes to the 2GP as necessary to give effect to these appeal points.

Heritage

Policies under Objective 13.2.1

- 55 Objective 13.2.1 is:
- "Scheduled heritage buildings and structures are protected".*
- 56 The Otago Regional Council made a submission supporting the notified heritage provisions of 2GP.
- 57 In decisions 3.2.5 and 3.2.8, the Dunedin City Council diluted the protections in policies under 13.2.1 by using the words "*minimise, as far as practicable*" in Policies 13.2.1.3, 13.2.1.4, 13.2.1.5 and 13.2.1.8.
- 58 These amendments fail to give effect to Policy 5.2.3 of the Proposed Otago Regional Policy Statement. That policy requires, among other things, avoiding adverse effects on those heritage values which contribute to the area or place being of regional or national significance.
- 59 The policy is now settled and becomes operative on 14 January 2019.
- 60 In addition, Policies 13.2.1.7 and 13.2.15 have been amended to allow the alterations of, additions to and demolition of a scheduled building if that

outweighs the loss of heritage values. These amendments are contrary to Policy 5.2.3 of the Proposed Otago Regional Policy Statement.

61 The amendments also fail to implement Objective 13.2.1 of the 2GP.

62 The Otago Regional Council seeks the following relief:

62.1 That Policies 13.2.1.3, 13.2.1.4, 13.2.1.5, 13.2.1.7, and 13.2.1.8 be restored to their notified form.

62.2 Such other, further and consequential changes to the 2GP as necessary to give effect to these appeal points.

Otago Regional Council attaches the following documents to this notice:

- (a) a copy of my submission or further submission (with a copy of the submissions opposed or supported by its further submission) to come – see application for waiver and directions.
- (b) a copy of the relevant decisions.
- (c) any other documents necessary for an adequate understanding of the appeal – not applicable.
- (d) a list of names and addresses of persons to be served with a copy of this notice – to come see application for waiver and directions.


(for Otago Regional Council)

Date: 18 December 2018

Address for service:

Ross Dowling Marquet Griffin Solicitors 50 Princes Street (PO Box 1144 or DX YP80015) Dunedin	
Telephone	(03) 477 8046
Fax	(03) 477 6998
Email	alastair.logan@rossdowling.co.nz
Contact person:	A J Logan

Note to appellant

You may appeal only if

- (a) you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and
- (b) in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55(2B), may consider only the question of law raised.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by reg 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must, —

- (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

[Optional (Delete if these documents are attached to copies of the notice of appeal served on other persons.): **How to obtain copies of documents relating to appeal**

The copy of this notice served on you does not attach a copy of the appellant's submission and (or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.]

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHU ROHE**

ENV-2018-CHC-

UNDER the Resource Management Act 1991

IN THE MATTER of an appeal under Clause 14(1) of Schedule 1 of the Resource Management Act 1991

BETWEEN **OTAGO REGIONAL COUNCIL** a body corporate under the Local Government Act 2002

Appellant

AND **DUNEDIN CITY COUNCIL** a body corporate under the Local Government Act 2002

Respondent

**APPLICATION FOR WAIVER OR DIRECTIONS BY THE OTAGO REGIONAL
COUNCIL**

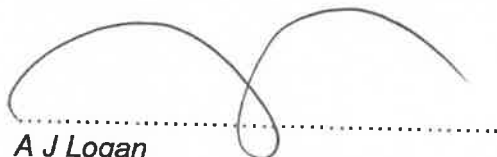
ROSS DOWLING MARQUET GRIFFIN
SOLICITORS
DUNEDIN

Telephone: (03) 477 8046
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PO Box 1144, DX YP80015

Solicitor: A J Logan

APPLICATION FOR WAIVER OR DIRECTIONS BY THE OTAGO REGIONAL COUNCIL

- To** The Registrar
 Environment Court
 Christchurch
- 1 Otago Regional Council applies for waivers and directions in the following proceedings:
- 1.1 The appeal by the Otago Regional Council from decisions on submissions on the Dunedin City Council's Proposed Second Generation District Plan ("2GP").
- 2 The Otago Regional Council is the following party to these proceedings:
 Appellant.
- 3 The Otago Regional Council seeks the following waivers and directions:
- 3.1 Waiving the requirement for the supply of copies of the submissions opposed or supported by the Otago Regional Council's further submission or, in the alternative, extending the time of supplying such copies to the Court to 10 working days after the lodging of the appeal; and
- 3.2 Extending the time for supplying a list of names and addresses of the persons to be served with the notice of appeal to 10 working days after the lodging of the appeal; and
- 3.3 Extending the time for serving this application for waiver and directions on all other parties to this proceeding for 10 working days after the lodging of the appeal; and
- 3.4 Extending the time for serving the notice of appeal to 10 working days after the lodging of the appeal;
- 3.5 Making such other or further directions as are necessary or appropriate in the circumstances.
- 4 This application is made in reliance upon Section 279 of the Act, Rule 1.23 of the District Court Rules 2014 and Section 281 of the Act.



A J Logan

Solicitor for the Applicant

Date: 18 December 2018

Address for service:

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Contact person:	A J Logan

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHU ROHE**

ENV-2018-CHC-

UNDER the Resource Management Act 1991

IN THE MATTER of an appeal under Clause 14(1) of Schedule 1 of the Resource Management Act 1991

BETWEEN **OTAGO REGIONAL COUNCIL** a body corporate under the Local Government Act 2002

Appellant

AND **DUNEDIN CITY COUNCIL** a body corporate under the Local Government Act 2002

Respondent

MEMORANDUM FOR THE OTAGO REGIONAL COUNCIL

ROSS DOWLING MARQUET GRIFFIN
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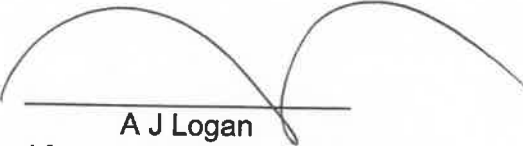
Solicitor: A J Logan

MEMORANDUM FOR THE OTAGO REGIONAL COUNCIL

May It Please the Court:

- 1 The Otago Regional Council made a submission and a further submission on the Dunedin City Council's Proposed Second Generation District Plan ("2GP").
- 2 The Dunedin City Council released its decisions on 2GP on 7 November 2018.
- 3 The time for filing appeals, without an enlargement of time expires on 19 December 2018.
- 4 The Otago Regional Council is filing an appeal concurrently with the lodgement of this application for waiver and directions.
- 5 The application for waiver and directions is brought because the Otago Regional Council is experiencing difficulty in complying fully with the requirements to attach relevant documents to the notice of appeal.
- 6 The difficulty arises in two respects:
 - 6.1 The requirement of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 and Form 7 is to attach a copy of the submissions opposed or supported by further submissions. There are numerous submissions that were opposed by the Otago Regional Council's further submission. On one topic, the deletion of minimum floor levels in hazard overlay zones, there are in excess of 120 original submissions which the Otago Regional Council opposed in its further submission. It has not been physically possible to produce copies of all the original submissions.
 - 6.2 The related issue is that it has not been possible to identify and list all the persons who are to be served with a copy of its notice of appeal. The appeal ranges over a number of topics, groundwater, earthworks, natural hazards and heritage. There are multiple parties involved. All persons interested in these subjects need to be ascertained, identified and listed. It has not been physically possible to do this in the time available.

- 7 In these circumstances, the Council seeks the waiver and directions identified in the application. The additional time required takes into account the holiday period.
- 8 It is respectfully submitted that at this time, no other party will be unduly prejudiced.



A J Logan
Counsel for the Otago Regional Council

Date: 18 December 2018

Annexure B – Order of the Environment Court dated 15 November 2018

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under clause 14 of the First Schedule of the Act and a direct referral under s87 of the Act.
BETWEEN	LINDIS CATCHMENT GROUP INCORPORATED (ENV-2016-CHC-61) Appellant
AND	LINDIS CATCHMENT GROUP INCORPORATED (ENV-2018-CHC-155) Applicant
AND	OTAGO REGIONAL COUNCIL Respondent

ORDER (15 November 2018)

[1] The court heard from the parties this week on directions required under section 293 of the Resource Management Act 1991.

[2] Accordingly, we directed (by consent):

(1) The council must:

- (a) consult with the parties and all persons who hold rights to take water from the Tarras, Ardgour, the Point and Begg-Stacpole races in the Lindis catchment over the recommended rules in the section 87F Report by Dr Cowie at p 104, by **30 November 2018**;
- (b) after consultation serve on the parties, and persons consulted, by **14 December 2018** a statement as to whether the council supports the addition of rules as proposed or some variant of them, such statement to include the proposed rules if any.

- (2) That any party, or affected landowner, may lodge a submission with the Court either opposing the Council's proposal, supporting it, or suggesting amendments to it, by **18 January 2019**;
- (3) Any party, or affected landowner, who wishes to be heard should lodge with the court and serve on the parties, their evidence in writing, by **Friday 25 January 2019**;
- (4) Leave is reserved for any party, or affected landowner, to apply for further (or other) directions by **18 December 2018**.

J R Jackson
Environment Judge

Issued: