

# **Variation 1 – Minor Amendments to the Proposed Dunedin City Second Generation District Plan (2GP)**

## **Proposed Amendments and Section 32 Evaluation**

**November 2019**

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## Evaluation of preferred options for provisions

### Strategic Direction wording and alignment with methods/rules

The following section addresses two minor errors that were present in some strategic directions, which are proposed to be addressed.

#### **(1) Minor inconsistencies in drafting style**

The Plan Drafting protocol (Style Guide), while including a summary of the purpose of strategic directions, did not include detailed drafting guidance on the strategic directions provisions. As a result, there is more variation in policy drafting style than in the topic/zone section policies, which followed a strict drafting protocol. While there is a high degree of consistency in drafting, there are some examples of drafting variations that may not be as good at reinforcing the main purpose of the strategic directions which is to describe approaches used in the Plan (rather than being directive policies focused on directing consent applications).

As a result of requests for affidavits from the Environment Court related to appeals on the 2GP (see memorandum of 16 April 2019 and the responding affidavit explaining the purpose of the strategic directions <https://www.dunedin.govt.nz/council/district-plan/2nd-generation-district-plan/appeals-information>), a 'draft' drafting guide for strategic directions was provided to the introduction day for Group 1 mediations: [https://www.dunedin.govt.nz/\\_\\_data/assets/pdf\\_file/0017/730214/Drafting-Protocol-for-Strategic-Directions.pdf](https://www.dunedin.govt.nz/__data/assets/pdf_file/0017/730214/Drafting-Protocol-for-Strategic-Directions.pdf)

As part of preparing the explanatory material on strategic directions, a review of the strategic directions wording was undertaken, and some areas for improvement were identified. Some of these changes have been included in this variation. Others have been excluded because of more significant overlaps with matters subject to appeal or matters that are proposed to be addressed through Variation 2, which will deal with changes to address medium term housing needs for Dunedin.

Minor amendments are proposed to policies 2.2.3.3, 2.3.2.3, 2.3.3.1.e, 2.3.3.2, and 2.4.1.5 to better align with the proposed style guide and purpose of strategic directions.

#### **(2) Missing or poorly described methods**

Four strategic directions were found to have inadvertent gaps in that they do not list certain methods that are used in the Plan or do not describe them in such a way to indicate how the wording is paired with the method described.

The proposed amendments to address this issue are:

- Amendment to Policy 2.2.1.3 to include reference to swale mapped areas as areas at risk from terrestrial flooding
- Amendment to Policy 2.3.1.2 to include reference to rules which manage activities other than residential activities in the rural zones
- Amendment to Policy 2.3.3.1.c to include reference to rules for development as well as subdivision and to better describe methods for maintaining or enhancing public access and rewording clause e
- Amendment to 2.4.6.2 to include the full range of methods used in the Plan to achieve Objective 2.4.6

Both types of changes are considered minor changes of clarification rather than substantive changes and the scope of the variation is limited to that clarification.

### Policy 2.2.1.3 (change 1.9)

#### Problem

Strategic direction 2.2.1.3 describes the methods used in the Plan to identify and manage areas at risk from terrestrial flooding. The 2GP provisions related to swale mapped areas in Section 11 (Natural Hazards) were inadvertently omitted from this description of methods in this policy.

#### Scope of variation

Inclusion of swale mapped area provisions in the list of methods within Policy 2.2.1.3 to achieve Objective 2.2.1: Risk from natural hazards.

This is considered a minor change to clarify a policy to reflect existing provisions rather than a substantive change.

#### Preferred option

It is proposed to amend Policy 2.2.1.3 to include reference to swale mapped areas as areas at risk from terrestrial flooding. This is a minor non-substantive amendment as it is including a description of methods already included in the Plan in a descriptive policy.

#### Proposed amendment

##### Policy 2.2.1.3

Identify areas with risk from terrestrial flooding, and include these ~~in hazard overlay zones~~ as follows:

- a. in the Hazard 1A (flood) Overlay Zone, include areas that are part of a flood protection scheme which have a crucial role in the conveyance or storage of floodwater where there may be a high risk to people and property and of transference or exacerbation of risk elsewhere;
- b. in the Hazard 1 (flood) Overlay Zone, include areas that have a crucial role in the conveyance or storage of floodwater where there may be a high risk to people and property and of transference or exacerbation of risk elsewhere, but where prohibited activity status is not seen as appropriate;
- c. in the Hazard 2 (flood) Overlay Zone, include areas in a flood plain where there may be a moderate risk to people and property, and of transference or exacerbation of risk elsewhere;
- d. in the Hazard 3 (flood) Overlay Zone, include areas that are vulnerable to short term surface flooding but where there may be a low risk to people and property; ~~and~~
- e. in the Hazard 3 (alluvial fan) Overlay Zone, include areas that could be subject to flooding, including sediment-laden flows, but where there may be a low risk to people and property and of transference or exacerbation of risk elsewhere; and
- f. in the swale mapped area, include areas that are low tracts of land where water flows or ponds intermittently or that are necessary to ensure the efficient and effective operation of a flood protection or drainage scheme.

### Policy 2.2.3.3 (change 1.10)

#### Problem

Clause f of Policy 2.2.3.3 does not accurately describe the methods in the 2GP in that it says the Plan ‘require’ the assessment of effects on biodiversity values” where the activities are managed as discretionary and non-complying activities. As matters of assessment cannot be prescribed for discretionary or non-complying activities (required) this wording is not appropriate. Instead, a description of “encourages” is more appropriate.

#### Scope of Variation

Amending policy to more accurately describe the methods used in the Plan by replacing the description of ‘rules that require’ with ‘policies and assessment rules that encourage’ in clause f.

This is considered a minor change to clarify a policy to reflect existing provisions rather than a substantive change.

#### **Preferred option**

It is proposed to amend the start of clause f to read 'encourage' rather than 'require' and to refer to 'policies and assessment rules'. It is also proposed to add "rules that" at the start of other points as a consequential change.

#### **Proposed Amendment**

##### **Policy 2.2.3.3**

Maintain or enhance indigenous biodiversity in the rural environment through ~~rules that~~:

- a. ~~rules that~~ require indigenous vegetation clearance to be set back from the coast, wetlands and water bodies, and that restrict indigenous vegetation clearance in the coastal environment and in wetlands;
- b. ~~rules that~~ protect significant indigenous vegetation and/or significant habitats of indigenous fauna in Areas of Significant Biodiversity Value (ASBVs);
- c. ~~rules that~~ protect threatened species and mature examples of important native trees, and otherwise limit the clearance of indigenous vegetation;
- d. ~~rules that~~ manage the location and scale of development adjacent to the coast and water bodies;
- e. ~~rules that~~ require esplanade reserves or esplanade strips when land is subdivided adjacent to the coast and identified water bodies; and
- f. ~~require policies and assessment rules that encourage~~ the assessment of effects on biodiversity values for discretionary and non-complying land use, development and city-wide activities.

#### **Policy 2.3.1.2 (change 1.11)**

##### **Problem**

Policy 2.3.1.2 lists methods for maintaining or enhancing the productivity of farming and other activities that support the rural economy. There have been two issues identified with the policy. Firstly, the policy does not refer to managing activities other than subdivision and residential activity (in clause c), meaning the policy does not flow well through to Policy 16.2.4.2 and the assessment rules in the rural zones related to "highly productive land". Secondly, Clause e is not well aligned with Policy 16.2.2.1 in rural zones, which partly implements it. Policy 16.2.2.1, which sets up both the boundary setback and separation distance rules, includes 'cemeteries' as well as 'residential activities'.

##### **Scope of variation**

Amending clause (c) to include reference to rules for other land uses (other than residential) and amending clause (e) to describe both methods (boundary setback and separation distance rules) that are used to manage reverse sensitivity.

This is considered a minor change to clarify a policy to reflect existing provisions rather than a substantive change.

#### **Preferred option**

It is proposed to amend Policy 2.3.1.2 by referencing 'residential and other land use activities' in clause c to clarify that this clause is wider than just subdivision and residential activities and therefore make it more consistent with Policy 16.2.4.2.

It is also proposed to amend clause e of Policy 2.3.1.2 so that it is more consistent with Policy 16.2.2.1.

#### **Proposed amendment**

### Policy 2.3.1.2

Maintain or enhance the productivity of farming and other activities that support the rural economy through:

- a. rules that enable productive rural activities;
- b. rules that provide for rural industry and other activities that support the rural economy;
- c. zoning and rules that limit subdivision, ~~and residential activity~~ and other land use activities based on:
  - i. the nature and scale of productive rural activities in different parts of the rural environment;
  - ii. the location of highly productive land; and
  - iii. potential conflict with rural water resource requirements;
- d. rules that restrict residential activity within the rural environment to that which supports productive rural activities or that which is associated with papakāika;
- e. rules that require ~~residential buildings to be set back from boundaries~~ boundary setbacks and separation distances for residential buildings and cemeteries in order to minimise the potential for reverse sensitivity;
- f. rules that restrict subdivision that may lead to land fragmentation and create pressure for residential-oriented development;
- g. rules that prevent the loss of high class soils; and
- h. rules that restrict commercial and community activities in the rural zones to those activities that need a rural location or support rural activities.

### Policy 2.3.2.3 (change 1.12)

#### Problem

Policy 2.3.2.3 (see below) does not follow the strategic direction drafting protocol as it omits in the introduction to the policy only refers to zoning and omits the reference to 'rules'.

#### Scope of Variation

Amending Policy 2.3.2.3 to include reference to 'rules' as a method in the plan used as part of this policy.

This is a clarification rather than a substantive change.

#### Proposed amendment

##### Policy 2.3.2.3

Manage the mixed use areas around the edge of the CBD through zones and rules that provide for a compatible mix of activities that support rather than detract from the vibrancy and vitality of the CBD and centres (Warehouse Precinct Zone, Princes, Parry and Harrow Street Zone, Smith Street and York Place Zone and Harbourside Edge Zone), and that:

- a. for the Warehouse Precinct Zone, support the retention of scheduled heritage buildings and heritage precinct values; and
- b. for the Harbourside Edge Zone, allow for a transition toward a mixed use environment, with enhanced public connection to and along the coast, focused on residential, visitor accommodation, restaurant, and entertainment and exhibition and limited office activities alongside any existing port-related and industrial activities.

### Policy 2.3.3.1 (change 1.13)

### **Problem**

Policy 2.3.3.1 sets up provisions enabling or providing for community and leisure activity, sport and recreation, and essential community facilities. There are two issues with this policy. Firstly, the wording of clause e, which provides for cemeteries and crematoriums “while minimising, as far as practicable, any adverse cultural or amenity effects” is not consistent with the rest of the policy nor with the general 2GP drafting protocol for strategic directions policies that outline methods. The “minimising as far as practicable” policy test should not be included since the focus of this policy is on management approaches and methods used in the Plan. The policy tests for assessing these activities in terms of amenity are provided in the relevant zone sections.

Secondly, clause c currently refers to rules requiring that subdivision be designed to maintain public access to the coast and waterways, which sets up the subdivision esplanade reserves and strips performance standard (Rule 10.3.1). However, Natural Environment objective 10.2.4 requires that development activities as well as subdivision maintain and enhance public access, which is implemented by Rule 10.3.3 Setback from Coast and Water Bodies. It is appropriate that reference to development activities as well as subdivision be made to better describe the management approach to maintaining or enhancing public access to the coast and waterways.

### **Scope of variation**

Amending policy language in clause c and e to follow the drafting protocol for strategic directions policies that outline the methods used in the Plan

### **Proposed amendment**

#### **Policy 2.3.3.1**

Support community and leisure activity, sport and recreation, and essential community facilities in Dunedin through:

- a. rules that provide for community and leisure activity across all zones, subject to relevant performance standards;
- b. rules that enable restaurant and retail activities within sport and recreation facilities where they are designed and operated to be ancillary to that activity and will not conflict with Objective 2.3.2;
- c. rules that require subdivision and development to maintain or enhance public access to the coast and waterways and policies and assessment rules for subdivision that encourage connection and expansion of the recreational track networks where appropriate;
- d. applying a recreation zone to important recreational and open space areas, to enable the community activities that occur there and protect important reserve values;
- e. ~~providing for cemeteries and crematoriums in appropriate locations while minimising, as far as practicable, any adverse cultural or amenity effects on surrounding sensitive activities~~ rules that provide for cemeteries and crematoriums in appropriate zones, subject to relevant performance standards; and
- f. rules that enable temporary activities, subject to relevant performance standards.

#### **Policy 2.3.3.2 (change 1.14)**

### **Problem**

The current wording of clause a of Policy 2.3.3.2, which reads “enable them to continue to operate efficiently and effectively, while minimising as far as practicable any adverse effects” does not follow the strategic directions drafting protocol and does not fit with the purpose of strategic directions policies to describe the management approaches and methods used in the Plan to achieve the objectives. Policy tests including ‘minimising as far as practicable’ are included in major facility zone section policies.

### Scope of variation

Amending policy language in clause a to follow the drafting protocol for strategic directions policies that outline the methods used in the Plan.

### Proposed amendment

#### Policy 2.3.3.2

Identify important recreational and community facilities that are of a scale or type that is significantly different to activities provided for in the surrounding management zones, including the Forsyth Barr Stadium, Edgar Centre, Moana Pool, Dunedin Botanic Garden, Otago Museum and Taieri Aerodrome, and zone these as major facilities and use rules to:

- a. enable them to continue to operate efficiently and effectively, while managing ~~minimising as far as practicable~~ any adverse effects on surrounding areas; and
- b. protect them from activities that may lead to reverse sensitivity.

### Policy 2.4.1.5 (change 1.15)

#### Problem

The decision version of Policy 2.4.1.5 reads as follows:

*"In residential neighbourhoods, manage building bulk and location, site development (including site coverage), and overall development density to:*

- a. maintain or create attractive streetscapes; and*
- b. protect the amenity of residential activities and public open space."*

This policy is not consistent with the 2GP drafting protocol for strategic directions, which is discussed at the start of section 2.2. It differs from the standard wording style in that it discusses the methods used first and then the outcomes to be achieved. This could be problematic in that it might be misconstrued as a substantive policy to be used for the assessment of resource consents.

#### Preferred option

Reorder the words used in the policy to be consistent with the 2GP strategic directions drafting protocol. This involves substituting the word 'create' with 'enhance' which is used more commonly in policy language, and is used in Objective 15.2.4, which flows from this policy, and removing the use of the word 'protect' but rather only use the word 'maintain', which again is the wording used in Objective 15.2.3 and 15.2.4.

This is not considered to be a substantive change but rather a minor change or clarification.

### Proposed amendment

~~In residential neighbourhoods, manage building bulk and location, site development (including site coverage), and overall development density to:~~

- ~~a. maintain or create attractive streetscapes; and~~
- ~~b. protect the amenity of residential activities and public open space.~~



Maintain or enhance the attractiveness of streetscapes, public open spaces and residential amenity by using rules that manage building bulk and location, site development and overall development density.

### Policy 2.4.6.2 (change 1.16)

#### Problem

Objective 2.4.6 is “The character and visual amenity of Dunedin's rural environment is maintained or enhanced”.

Policy 2.4.6.2 describes methods used in the Plan to achieve this objective, including the mapping of different rural zones (the criteria that were used for these are discussed in Policy 2.4.1.6) and rules used to manage effects on rural character and amenity. This is implemented through Policy 16.2.3.5, which is concerned with large scale activities, and 16.2.3.6, which is concerned with a range of other discretionary activities, including visitor accommodation, service stations and community and leisure – large scale.

Clause c of Policy 2.4.6.2 refers to ‘rules ... that manage the form and design of development associated with large scale activities such as intensive farming and mining’. However, Policy 2.4.6.2 is missing a description of other discretionary activities that link to Policy 16.2.3.6.

#### Scope of Variation

Amending the wording of Policy 2.4.6.2 to more accurately cover the full range of methods used in the Plan to achieve Objective 2.4.6. (see introduction to section 2.2 of this report).

This is considered a clarification rather than a substantive change, as it is only amending the description of existing methods in the Plan.

#### Proposed amendment

Policy 2.4.6.2

Maintain the identified values within different rural environments through mapping rural zones and using ~~rules that~~:

- a. rules that limit the density of residential activities;
- b. rules that manage the bulk and location of buildings;
- c. policies and assessment rules that require or encourage the consideration of effects on rural character and visual amenity associated with land use and development activities; and manage the form and design of development associated with large scale activities such as intensive farming and mining;
- d. rules that manage the pattern, scale and design of subdivision.