
SUBJECT: 2GP – Rules deemed Operative pursuant to Section 86F of the Resource Management Act 1991

1. INTRODUCTION

The Dunedin City Second Generation District Plan (2GP) was notified on 26th September 2015 with submissions closing on 24th November 2015. Most rules will only have "legal effect" once decisions are made by the Hearings Panel and they will become "operative" once they are beyond challenge (e.g. any appeals are resolved). However, if there are no submissions in opposition to a rule then pursuant to s86F RMA those rules must be treated as operative and any previous rule as inoperative.

There are further complexities around when some rules have "legal effect". Some rules have "legal effect" early because of the Environment Court Order (e.g. rural subdivision minimum size and indigenous vegetation clearance). Other specified rules (e.g. for heritage protection) can have early "legal effect" but Council has resolved that these specified rules will not. In our analysis none of the rules that have either early or delayed "legal effect" are affected by s86F because submissions have been made in opposition to them.

A review of submissions was undertaken to identify rules that did not receive submissions in opposition to them, and, therefore, must be treated as operative in accordance with s86F. This review considered submissions against rules in the context of how the plan provisions were related and reliant on each other (e.g. activity status rules that were linked to performance standards, and how the rules were linked to policies and objectives). In determining which rules should be considered operative, if a rule was not able to 'stand-alone' and be used without the need for related provisions that were not operative due to submissions in opposition, the rule was also considered to be not operative as a consequence.

In general, this meant:

- Where objectives and policies were opposed, the associated rules were considered as not operative, because a consequential change to amending the objective or policy (if the submission was accepted) would require the associated rule to be changed.
- Where rules relied on new definitions that had submissions in opposition, the rules were also considered as not operative. Where activity status rules were linked to new or revised performance standards that had submissions in opposition, those activity status rules were considered as not operative, unless it was considered that the rules could stand on their own alongside the still operative parts of the operative plan.
- Where submissions challenged the application of an entire zone or overlay zone (for example for Dunedin Hospital, Taieri Aerodrome, and Otago Museum, General Residential 2 zones, and some Hazard overlay zones) the whole section was considered as not operative.

2. RULES DEEMED OPERATIVE

As a result of the above analysis most rules of the plan were considered to be not operative. The exceptions are:

22. Section 22 – Dunedin Botanic Garden Zone

Deemed operative with the exception of the following:

- Rule 22.6.1 Performance Standard - Boundary Treatments and Other landscaping
- Rules related to building and structures activities that affect a protected part of a scheduled building or scheduled heritage structure
- All rules related to earthworks
- All rules related to hazards

25. Section 25 – Edgar Centre Zone

Deemed operative with the exception of the following:

- All rules related to earthworks
- All rules related to hazards
- Rule 25.6.2 Performance Standard - Boundary Treatments and Other Landscaping

26. Section 26 – Invermay and Hercus Zone

Deemed operative with the exception of the following

- Rule 26.3.3.3 Activity Status of other major facilities activities
- Rules related to building and structures activities that affect a protected part of a scheduled building or scheduled heritage structure
- All rules related to earthworks
- All rules related to hazards
- Rule 26.6.1.2 Performance Standard - Boundary Treatments and Other Landscaping

28. Section 28 – Moana Pool Zone

Deemed operative with the exception of the following:

- Rule 28.6.2.2 e & f and Rule 28.6.2.3 (Boundary Treatments and Other Landscaping)
- All rules related to earthworks
- All rules related to hazards

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Date report prepared: 19 January 2016