

Under the Resource Management Act 1991 (**RMA**)
In the matter of The Otago Regional Council Proposed Otago Regional Policy Statement 2021 (excluding parts determined to be a freshwater planning instrument).

Submission by Dunedin City Council

Evidence of Paul James Freeland for Dunedin City Council

28 November 2022

Dunedin City Council solicitors:

Michael Garbett
Anderson Lloyd
Level 12, Otago House, 477 Moray Place, Dunedin 9016
Private Bag 1959, Dunedin 9054
DX Box YX10107 Dunedin
p + 64 3 477 3973
michael.garbett@al.nz

**anderson
lloyd.**

Qualifications and experience

- 1 My name is **Paul James Freeland**. I am Principal Policy Advisor, City Development, Dunedin City Council (**Council** or **DCC**).
- 2 I have been employed by DCC for over 20 years in a range of planning positions ranging from Consents Planner to acting Policy Manager. I have primarily worked as a Senior Planner through the 2GP process and undertaken public consultation, section 32 (**s32**) assessment, drafting, section 42A (**s42A**) report preparation and presentation, and appeal resolution.
- 3 I have a Masters in Regional and Resource Planning (with Distinction) from the University of Otago.

Code of conduct

- 4 I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. This evidence has been prepared in accordance with it and I agree to comply with it. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

Scope of evidence

- 5 In this evidence I cover the following topics:
 - (a) Mana whenua;
 - (b) Air;
 - (c) Land and Freshwater;
 - (d) Ecosystems and Indigenous Biodiversity;
 - (e) Energy, infrastructure and transport; and
 - (f) Historical and Cultural Values.

Mana whenua

- 6 DCC (139.009) submitted on this topic and supported Objective MW-O1 – Principles of Te Tiriti o Waitangi, MW-P1 – Treaty obligations, MW-P2 – Treaty principles and MW-P3 – Supporting Kai Tahu well-being being retained as notified.
- 7 The MW – Mana whenua s42A report addresses this in Sections 4.5 – 4.8 (Pages 36 – 50) and does not recommend any substantive changes. This is supported.

- 8 DCC (139.013) submitted on MW-P4 - Sustainable use of Māori land and questioned the use of an unqualified use of 'avoid' in subsection (1) of Policy MW-P4 Sustainable use of Māori Land.

MW-P4 – Sustainable use of Māori land

Kāi Tahu are able to protect, develop and use land and resources within native reserves and land held under Te Ture Whenua Māori Act 1993 in accordance with matauraka and tikaka a way consistent with their culture and traditions and to provide for their economic, cultural and social aspirations, including for papakāika, marae and marae related activities, while:

- (1) avoiding adverse effects on the health and safety of people,*
- (2) avoiding significant adverse effects on matters of national importance, and*
- (3) avoiding, remedying, or mitigating other adverse effects.*

- 9 The MW – Mana whenua s42A report addresses this in Section 4.9 (Pages 50-53). No amendment in response to the DCC submission is recommended and this is not supported. The following changes to MW-P4 are now recommended by the s42A report writer:

MW-P4 – Sustainable use of ~~Māori land~~ Native Reserves and Māori land

Kāi Tahu are able to ~~protect,~~ develop and use land and resources within native reserves and ~~land held under Te Ture Whenua Māori Act 1993~~ Māori land in accordance with mātauraka and tikaka, ~~a way consistent with their culture and traditions and~~ to provide for their economic, cultural and social aspirations, including for papakāika, marae and marae related activities. ~~while:~~

- ~~*(1) avoiding adverse effects on the health and safety of people,*~~
- ~~*(2) avoiding significant adverse effects on matters of national importance, and*~~
- ~~*(3) avoiding, remedying, or mitigating other adverse effects*~~

- 10 The reason why this was raised as a concern is because an unqualified 'avoid' may equate to a prohibition of the activity if there are any effects. Refer to the Council evidence by Keith Frenz on the use of 'avoid'. Depending on any final decisions on the content of the IM section and whether the clear guidance is provided that the RPS must be read a whole. the changes above could suggest that no adverse effects are considered when Kāi Tahu are using or developing native reserves and Māori land. This approach is not supported.

- 11 The proposed solution to address these issues and address the DCC submission (if there are changes to the IM section to not direct all relevant policies and objectives to be considered) is to retain the consideration of adverse effects within the policy but qualify the adverse effects on the health and safety of people by only requiring the avoidance of significant adverse effects. The following proposed changes to Policy MW-P4 are suggested:
- (1) *avoiding significant adverse effects on the health and safety of people,*
 - (2) *avoiding significant adverse effects on matters of national importance, and*
 - (3) *avoiding, remedying, or mitigating other adverse effects*
- 12 The DCC's submissions on the mana whenua topic were predicated on support of the definition of 'Te Ture Whenua Māori land' and other terms used in these provisions. I note that Kāi Tahu ki Otago (226.048) and Te Rununga o Ngāi Tahu (234.009) seek a change to the land and resources managed by Policy MW-P4 – Sustainable use of Māori land to additionally include 'land with a particular ancestral connection'.
- 13 The s42A report addresses this at Section 4.9 (Pages 50-53) of Report 4: MW – Mana whenua. No amendment in response to the Kāi Tahu ki Otago (226.048) and Te Rūnanga o Ngāi Tahu (234.009) submissions is recommended. DCC support this recommendation.
- 14 The expansion of land defined and managed as Māori land based on 'land with a particular ancestral connection' is of concern as this does not have a spatial extent and therefore there is uncertainty about where this land is. District plans typically take a zoning approach where land uses are managed because of the effects they may have on the environment and/or adjoining or nearby land uses. Any consideration for this type of expansion should be supported with mapping and supporting evidence as to the ancestral connection. Any expansion of lands affected by this policy should be clear enough for submitters to fairly participate in the RPS and any district plan process through understanding the implications of any proposed changes to give effect to this concept.

AIR – Air

- 15 DCC (139.054) submitted on AIR-M3 – Territorial authorities, requesting a focus on the Future Development Strategy (**FDS**) under the NPS-UD rather than the district plan.

- 16 The AIR s42A report addresses this at pages 30 and 31, paragraphs 142, 143, 148 and 149 but did not recommend any changes. This is not supported.
- 17 The reason why this is raised as a concern is that the regional council determines public transport routes and therefore transport planning should be considered in an integrated way. By focussing on preparation of the FDS this will ensure that both land use planning and public transportation planning elements will be considered at the same time. It is also appropriate as it is the FDS that should set the strategic framework on the desired overall urban form that the district plan should implement.
- 18 The proposed solution to address this issue and address the DCC submission is the following amendments to AIR-M3.

AIR-M3 – Territorial authorities

No later than 31 December 2029, territorial authorities must prepare or amend and maintain their district plans to include provisions a Future Development Strategy under the NPS-UD that direct results in an urban form that assists in achieving good air quality by:

- (1) *~~encouraging or facilitating a~~ reducing reliance on private ~~non-electric~~ motor vehicles (except electric vehicles and other ultra-low emissions motor vehicles) and enabling the adoption of active transport, shared transport and public transport options to assist in achieving good air quality, and*
- (2) *managing the spatial distribution of activities.*

- 19 DCC submitted on AIR-M5 – Incentives and other mechanisms, requesting amendments to encourage the take up of electric and other ultra-low emissions motor vehicles, and encourage public transportation uptake (pricing, convenience incentives, installation of appropriate infrastructure to support).
- 20 This submission appoint does not appear to have been summarised or addressed in any s42A report.
- 21 The reason why this is raised as a concern is that these types of incentives may be effective in meeting the objectives of the Air section of the pORPS.
- 22 The proposed solution to address this issue and address the DCC submission is to amend AIR-M5(5) as follows. It is also noted that 'private motor vehicles' may be electric or ultra-low emissions and therefore that terminology is inappropriate in this provision.

AIR-M5 – Incentives and other mechanisms

In partnership with Kāi Tahu ki Otago and in collaboration with territorial authorities, key stakeholders and industry, Otago Regional Council must, on an on-going basis, use other mechanisms or incentives to assist with achieving the air quality objectives, including:

- (1) improving community awareness of air quality issues in Otago associated with home heating,*
- (2) educating communities and promoting the use of alternative methods for home heating including the use of new technology (including low emission or ultra-low emission home heating appliances) and cleaner fuels or energy sources,*
- (3) advocating, promoting and supporting upgrading Otago’s housing stock and changes to the Building Act 2004 and Building Code to require houses to create and maintain warmth more efficiently and reduce reliance on non-compliant domestic solid fuel burning appliances as described in AIR-P2,*
- (4) advocating to energy providers to improve the resilience and reliability of electricity infrastructure so alternative sources of heating are available and reliable,*
- (5) measures including financial incentives to encourage the use of electric and ultra-low emissions motor vehicles, active transport, shared transport and public transport ~~over the use of private motor vehicles~~, and*
- (6) providing financial incentives (such as funding schemes, subsidies or rates relief) and support to improve home heating efficiency and assist with the transition towards cleaner heating, improved energy efficiency and home insulation, including the replacement of solid fuel burners that do not comply with the NESAQ standards.*

LF – Land and Freshwater

- 23 DCC (139.083) submitted on LF-WAI-P3 – Integrated management/ki uta ki tai, requesting clarification on situations where it may be acceptable for the health and well-being of fresh water or coastal water may not be maintained.
- 24 The Land and Freshwater s42A report addresses this at pages 40 and 46, paragraphs 168 and 203, but did not recommend any changes as the s42A report writer considered that “*the wording regarding maintaining or*

improving water quality in this policy is general in nature....The more specific activity-level management referred to by DCC is more appropriately managed through the regional plan". This is not supported.

- 25 The reason why this is raised as a concern is there may be necessary development e.g. for housing, that makes it difficult to maintain the health and well-being of fresh water and coastal water.
- 26 The proposed solution to address this issue and address the DCC submission is to acknowledge that there is necessary development that may not be able to maintain or improve the health and well-being of fresh water and coastal water.

LF-WAI-P3 – Integrated management/ki uta ki tai

Manage the use of freshwater and land, in accordance with tikanga and kawa, using an integrated approach that:

- (1) recognises, sustains and, where degraded or lost, restores the natural connections and interactions between water bodies (large and small, surface and ground, fresh and coastal, permanently flowing, intermittent and ephemeral),*
- (2) sustains and, where degraded or lost, restores the natural connections and interactions between land and water, from the mountains to the sea,*
- (3) sustains and, wherever possible, restores the habitats of ahika kai and indigenous species, including taoka species associated with the water bodies,*
- (4) manages the effects of the use and development of land to maintain or enhance the health and well-being of freshwater, coastal water and associated ecosystems, while acknowledging that there may be some development e.g. regionally significant infrastructure associated with housing, that may not be able to maintain the health and well-being of fresh water and coastal water,*
- (5) encourages the coordination and sequencing of regional or urban growth to ensure it is sustainable,*
- (6) has regard to foreseeable climate change risks and the potential effects of climate change on water bodies, including on their natural functioning,*
- (7) has regard to cumulative effects, and*

- (8) *the need to apply applies a precautionary approach where there is limited available information or uncertainty about potential adverse effects.*

ECO – Ecosystems and indigenous biodiversity

- 27 DCC submitted on this topic to amend provisions as necessary so that they are in accordance with the NPS Indigenous Biodiversity (**NPS-IB**) when it is released. To date the NPS-IB has not been released, but if it is released before the decisions on the pORPS are notified, then it would be helpful to all pORPS users if any changes as a result of the NPS-IB were incorporated in the decision version of the pORPS.
- 28 DCC (139.142) submitted that objectives ECO-O1, ECO-O2 and ECO-O3 be retained with any amendments required to implement the NPS-IB. A number of minor changes to ECO-O1 and ECO-O3 for clarity have been recommended by the s42A Report writer and I support these.
- 29 With regard to ECO-O2, I support the amended objective but consider that the definition of ‘occupancy’ needs greater clarity, as it is unclear what a site is or what it is to be occupied by. An amended definition is suggested below.

ECO-O2 – Restoring and enhancing

Restoration and enhancement activities result in a net increase in the extent and occupancy of Otago’s indigenous biodiversity.

Occupancy

~~— means the number of sites occupied in Otago.~~

means, in relation to measuring indigenous biodiversity, the number of units per area across a species range that is occupied by the species.

- 30 DCC (139.143) submitted on Policy ECO-P3 Protecting significant natural areas and taoka. The principal concerns were that the policy in tandem with ECO-M3 suggests that adverse effects on taoka values that are not identified must be avoided. The other concern was the lack of clarity of the term ‘kāi tahu values’
- 31 The ECO s42A report addresses this at pages 33-35. The concerns raised about the lawfulness of a policy that requires avoidance of effects on values that are not identified was not supported, however changes to Eco-P2 and ECO-P3 which now require taoka values to be identified and mapped

resolves our concerns on this matter and the changes recommended by the s42A report writer are supported. The concern over the term 'kāi tahu values' has been resolved by the s42A recommendation to refer to 'taoka' values and this is supported.

- 32 No additional changes are sought to address this issue.
- 33 DCC (139.040) submitted that policy ECO-P4 – Provisions for new activities, clause (5) be amended from “severe and immediate risk...” to “severe or immediate risk...”
- 34 The ECO s42A report addresses this on page 43, paragraph 199, and recommends the change. This is supported.
- 35 DCC submitted to amend policy ECO-P6 to make any amendments required to implement NPS-IB, to clarify that only activities that have the potential to have effects on biodiversity values be required to be assessed against the policy, to clarify how the policy will be implemented and to improve cross-referencing with policy ECO-P3.
- 36 This is addressed at page 59, paragraph 271, of the ECO s42A report where it is explained that the provision applies to any activity requiring a resource consent that could cause adverse effects and residual effects on indigenous biodiversity. DCC’s submission was not supported, however, I note that the report writer has recommended amending the policy from “applying the following biodiversity effects management hierarchy” to “applying the following effects management hierarchy (in relation to indigenous biodiversity)”. I consider that the change in phrasing better indicates that the effects management hierarchy should be applied in relation to effects on indigenous biodiversity and this is supported.
- 37 DCC (139.134) submitted to amend policy ECO-P9 to manage wilding conifers within areas of indigenous vegetation/habitat that are not identified as Significant Natural Areas (**SNAs**). The reason for this was because the threat of wilding conifers should be avoided next to potential SNAs, not just scheduled SNAs because the schedules are very incomplete and unlikely to be complete for a decade or longer.
- 38 The ECO s42A report addresses this at pages 72 and 73, paragraphs 346 and 351, but the report writer does not support this amendment because in her view it would not be consistent with regulation 6 of the NES- Plantation Forestry (**NES-PF**). Under NES-PF regulation 6(2)(b), a rule in a plan may be more stringent if the rule recognises and provides for the protection of SNAs. In the NES-PF, an SNA means: an area of significant indigenous vegetation or significant habitat of indigenous fauna that (a) is identified in

a regional policy statement or a regional or district plan as significant, however described; and (b) is identified in the policy statement or plan, including by a map, a schedule, or a description of the area or *by using significance criteria*.

- 39 DCC recently received legal advice on the question of whether, under the NES-PF, an area is “considered to be ‘identified’ as long as it meets the criteria for an SNA listed in the relevant plan?” The legal advice concluded that any areas that were identified using the significance criteria in Policy 2.2.3.2 of the 2GP would also meet the definition of an SNA in the NES-PF. Under the 2GP, when making consenting decisions, DCC must assess areas against the criteria. DCC’s concern expressed in its submission was that only applying policy ECO-P9 to scheduled SNAs will lead to adverse effects on unscheduled significant indigenous biodiversity, and this would not be consistent with regulation 6 of the NES-PF or section 6c of the RMA. However, I note that SNAs are defined in the RPS as meaning “areas of significant indigenous vegetation and significant habitats of indigenous fauna that are located outside the coastal environment”. On the bases that this definition is sufficiently broad to provide for a framework for lower order plans to provide for the identification of SNAs using significance criteria, I support the recommended version of ECO-P9 below.

ECO-P9 – Wilding conifers

Reduce the impact of wilding conifers on indigenous biodiversity by:

- (1) *avoiding the planting and replanting of plantation forests and permanent forests with wilding conifer species listed in APP5 within:*
 - (a) *areas identified as significant natural areas, and*
 - (b) *buffer zones adjacent to significant natural areas where it is necessary to protect the significant natural area, and*
- (2) *supporting initiatives to control existing wilding conifers and limit their further spread.*

- 40 DCC submitted on ECO-P10 – Integrated management, requesting that the policy be retained as notified.
- 41 A number of changes to ECO-P10 have been recommended by the s42A report writer and I support these proposed changes.
- 42 DCC (139.036) submitted on ECO-M2 – Identification of significant natural areas, to include a date to complete the identification of SNAs.

- 43 The ECO s42A report addresses this at page 82, paragraphs 389 and 394, and recommends inclusion of 31 December 2030 as a deadline for completion of mapping, verification and inclusion of SNAs in the relevant regional and district plans. I note that the draft NPS-IB requires notification to give effect to the SNA part within 5 years after the commencement of the NPS. So, if commencement date is January 2023, SNAs would need to be identified and mapped by January 2028. In the interim this recommended amendment is supported but depending on timing of the release and the final form of the NPS-IB an earlier date may be more appropriate.
- 44 DCC submitted on APP2 – Significance criteria for indigenous biodiversity, for it to be retained as notified.
- 45 The ECO s42A report has recommended a number of changes to APP2 as a result of other submissions. These recommended amendments are supported.
- 46 DCC (139.139) submitted on APP3 – Criteria for biodiversity offsetting, seeking a definition of ‘reasonably measurable loss’ and amending clause (2)(f) by replacing “beyond results” with “that are demonstrably additional to those”.
- 47 The ECO s42A report at pages 118 and 122, paragraphs 562 and 576, recommends amendments to clauses (1)(b) and (2)(f) of APP3 which are supported.
- 48 DCC (139.140) submitted on APP4 – Criteria for biodiversity compensation, seeking an amendment to clause (2)(d) by replacing “enduring” with “maintained in perpetuity”.
- 49 The ECO s42A report at pages 128 and 131, paragraphs 592 and 604, recommends an amendment to clauses (2)(d) which is supported. This recommendation is not reflected in the annotated version of the RPS incorporated s42A recommendations.
- 50 This appears to be an oversight, and the proposed solution to address this issue and address the DCC submission is as follows:
- (d) *the positive biodiversity outcomes of the compensation are ~~enduring~~ maintained in perpetuity and are commensurate with the biodiversity values lost,*
- 51 DCC submitted on APP5 – Species prone to wilding conifer spread, requesting a review of the species listed in APP5 based on ecological evidence specific to Otago, and reconsideration of whether it is necessary

for regional and district plans to control species that are managed under the Biosecurity Act 1993 e.g. Pinus Contorta.

- 52 I have been unable to locate where this submission has been considered in any s42A reports.
- 53 The reason why this is raised as a concern is that the list of species prone to wilding does not include several species which are prone to wilding and managed through the 2GP e.g. sycamore, hawthorn, boxthorn and rowan. APP5 also includes Pinus Contorta which is already managed under the Biosecurity Act 1993.
- 54 The proposed solution to address this issue and address the DCC submission is to amend APP5 – Species prone to wilding conifer spread as follows:

APP5 – Species prone to wilding ~~conifer~~ tree spread

Table 1 – Species prone to wilding ~~conifer~~ tree spread

Common name	Botanical name
Big cone pine	<i>Pinus coulteri</i>
Bishops pine	<i>Pinus muricata</i>
<u>Boxthorn</u>	<u><i>Lycium ferocissimum</i></u>
Contorta (lodgepole) pine	<i>Pinus contorta</i>
Corsican pine, Black pine	<i>Pinus nigra</i>
Douglas fir	<i>Pseudotsuga menziesii</i>
Dwarf mountain pine	<i>P. uncinata</i>
<u>Hawthorn</u>	<u><i>Crataegus mongyna</i></u>
Japanese cedar	<i>Cryptomeria japonica</i>
Japanese larch	<i>Larix kaempferi</i>
Larch	<i>Larix decidua</i>
Lawson’s cypress	<i>Chamaecyparis lawsoniana</i>
Macrocarpa	<i>Cupressus macrocarpa</i>
Maritime pine	<i>Pinus pinaster</i>
Mountain pine	<i>Pinus mugo</i>
Norfolk Island pine	<i>Araucaria heterophylla</i>
Norway spruce	<i>Picea abies</i>

<i>Patula pine</i>	<i>Pinus patula</i>
<i>Pine</i>	<i>Pinus sp./Pine</i>
<i>Ponderosa pine</i>	<i>Pinus ponderosa</i>
<i>Radiata pine</i>	<i>Pinus radiata</i>
<u>Rowan</u>	<u><i>Sorbus aucuparia</i></u>
<i>Scots pine</i>	<i>Pinus sylvestris</i>
<i>Sitka spruce</i>	<i>Picea sylvestris</i>
<i>Slash pine</i>	<i>Pinus elliottii</i>
<i>Spruce</i>	<i>Picea sp.</i>
<i>Strobus pine</i>	<i>Pinus strobus</i>
<u>Sycamore</u>	<u><i>Acer pseudplatanus</i></u>
<i>Western red cedar</i>	<i>Thuja plicata</i>
<i>Western white pine</i>	<i>Pinus monticola</i>

Note to Plan Users - Other requirements outside of the District Plan

A range of species including, for example, Lodgepole/contorta pine (*Pinus contorta*), Grey willow (*Salix cinerea*), Crack willow (*Salix fragilis*) and *Cotoneaster simonsii*, are classified as “unwanted organisms” under the Biosecurity Act 1993. As a result, these species are subject to strict controls under sections 52 and 53 of that Act. Under section 52, no person may communicate, release or otherwise spread any unwanted organism (except: as part of a pest management plan; in an emergency, as provided for in section 150 of the Act; for a scientific purpose authorised by the Minister for Primary Industries; or if an exception is made by a chief technical officer appointed under the Act). Under section 53, owners of unwanted organisms must not cause or permit the sale, propagation, breeding, or multiplication of that organism, except where an exception is made by a chief technical officer appointed under the Act.

And consequential changes to other provisions that currently refer to ‘wilding conifers’ e.g. ECO-P9.

ECO-P9 – Wilding trees ~~conifers~~

Reduce the impact of wilding trees ~~conifers~~ on indigenous biodiversity by:

(1) avoiding ~~afforestation~~ the planting and replanting of plantation forests and

permanent forests or small woodlots with wilding trees ~~conifer~~-species listed in APP5 within:

(a) areas identified as significant natural areas, and

(b) buffer zones adjacent to significant natural areas where it is necessary to protect the significant natural area, and

(2) supporting initiatives to control existing wilding trees ~~conifers~~ and limit their further spread

EIT – Energy, infrastructure, and transport

55 DCC (139.144) submitted on EIT-EN-O3 – Energy use, seeking inclusion of ‘subdivision; and the removal of the latter part of the objective as it is unclear what ‘minimising the contribution’ would mean in this context.

56 The EIT-EN s42A report addresses this at pages 25 and 26, paragraphs 126 and 129, and recommends that no change is made. This is not supported.

57 The reason why this is raised as a concern is that the term ‘development’ is somewhat unclear. In the 2GP land use, development and subdivision activities are managed separately, with development activities being activities being the physical construction of buildings or structures on land, or the physical change to the character of the land e.g. through vegetation clearance, earthworks or the planting of shelterbelts. The consideration of where new activities are located and how they are serviced for energy is normally considered at the time of subdivision. If the term ‘development’ is intended to be inclusive of the subdivision activity normally associated with larger projects then it would be helpful to either define ‘development’ or include ‘subdivision’ in EIT-EN-O3 as requested. The ‘minimising the contribution that Otago makes to total greenhouse gas emissions’ is confusing when the first part of the objective only required development to be located and designed to ‘reduce demand if possible’. How can these two competing measurements in the same Objective be met at the same time?

58 The proposed solution to address this issue and address the DCC submission is to amend EIT-EN-O3 as follows:

EIT-EN-O3 – Energy use

~~Subdivision and dDevelopment is located and designed to facilitate the efficient use of energy and to reduce demand if possible, minimising the contribution that Otago makes to total greenhouse gas emissions.~~

- 59 DCC (139.175) submitted on EIT-TRAN-O8, to expand the detail with relation to a low carbon transportation system.
- 60 The Energy, Infrastructure and Transportation s42A report addresses this at pages 169 and 170, paragraphs 956 and 963, but the s42A writer does not recommend any changes as he considers that the matters are already addressed by EIT-TRAN-O9 and EIT-TRAN-P22. This is not supported.
- 61 The reason why this is raised as a concern is that the transport modes do not necessarily align with a low carbon transportation system.
- 62 The proposed solution to address this issue and address the DCC submission is to amend EIT-TRAN-O8 as follows

EIT-TRAN-O8 – Transport system

The transport system within Otago supports the movement of people, goods and services, is integrated with land use, provides a choice of low-carbon transport modes powered by renewable energy and is adaptable to changes in demand.

- 63 DCC (139.179) made a general submission on drafting of the policies, requesting that they be amended to read less like objectives and more like policies with active verb tenses, and a specific submission (139.181) on EIT-TRAN-P19 requesting redrafting as a policy.
- 64 The Energy, Infrastructure and Transportation s42A report addresses these submission points at page 164, 176 and 177, paragraphs 923, 1008 and 1013, but does not recommend any changes. This is not supported.
- 65 Policies should be drafted in a way that are actions to achieve objectives. They should also inform lower order plans on what matters should be managed in them.
- 66 Other issues with the wording of this policy are that land use and transportation infrastructure must be integrated in both directions, meaning transportation infrastructure needs to be integrated with land use activities (not just the other way). The aspect of urban form is suggested to be removed as this is adequately dealt with through content (as proposed to being amended) in the Urban Form section and in line with the general view that the RPS should be designed to be read as a whole.

- 67 The proposed solution to address this issue and address the DCC submission is to redraft EIT-TRAN-P19 as follows:

EIT-TRAN-P19 – Transport system design

~~*Require upgrades and additions to Resilience and adaptability of the transport system to be designed to promote improved sustainability, resilience and adaptability in the transport system by: supports efficient networks for the transport of people and goods that are sustained, improved, and responsive to growth by:*~~

~~*(1) Designing the transport system to support active transportation;*~~

~~*(1) promoting a consolidated urban form that integrates land use activities with the transport system,*~~

~~*(2) placing a high priority on active transport and public transport and their integration into the design of development and transport networks, and*~~

~~*(3) encouraging regional connectivity, including to key visitor destinations, and improved access to public spaces, including the coastal marine area, lakes and rivers.*~~

HCV – Historical and cultural values

- 68 DCC (139.226, 139.227, 139.228, 139.229) submitted on HCV-WT-O1 Kai Tahu cultural landscapes, HCV-WT-O2 Rakatirataka, HCV-WT-P1 Recognises and identifies wahi tupuna, and HCV-WT-P2 Management of wahi tupuna, to retain as notified.
- 69 I note that a number of changes to these provisions have been recommended by the s42A writer in response to other submission points. I support the recommended changes shown in the annotated version of pORPS.
- 70 DCC (139.220) submitted on HCT-WT-M2 – Regional and district plans, seeking: clarity that all responses might apply in all cases; clarification on which methods are in accordance with tikaka; and a reduction in the requirement for cultural impact assessments to being required on a case-by-case basis.
- 71 The HCV s42A report addresses this at pages 27 and 28, paragraph 130 and recommends no changes, although it notes that request by Kai Tahu ki Otago may address the request to reduce the requirement for cultural impact assessments to a case-by-case basis. This is not supported.
- 72 A number of amendments to HCV-WT-M2 are recommended by the s42A report writer. The changes are generally supported, and the proposed change to additionally indicate that cultural impact assessments will only be

required where Kai Tahu have identified the need for an assessment is supported.

- 73 DCC (139.231) submitted on HCV-HH-O3 Historic heritage resources, requesting revised drafting to make it clear that not every item of historic heritage must be preserved.
- 74 The HCV s42A report addresses this at pages 46 and 47, paragraph 215 and does not recommend any changes. This is not supported.
- 75 I note that other changes to HCV-HH-O3 have been recommended in response to DCC submission point 139. These changes replace 'preserved' with 'protected' and add some additional wording but do not differentiate between protecting places and areas with outstanding or special heritage values, and retaining other places or areas with less heritage values if not in conflict with other pORPS objectives.
- 76 The reason why this is raised as a concern is that it still suggests protection of every item of historic heritage regardless of competing objectives in the pORPS.
- 77 The proposed solution to address this issue and address the DCC submission is to amend HCV-HH-O3 to only retain historic places and areas with special or outstanding values.

HCV-HH-O3 – Historic heritage resources

Otago's unique historic heritage contributes to the region's character, sense of identity, and social, cultural and economic well-being. ~~is protected~~ Places and areas with special or outstanding heritage values or qualities are retained for future generations and people's understanding and appreciation of these is enhanced.

- 78 DCC (139.233) submitted on HCV-HH-P4 – Identifying historic heritage, querying whether an amendment is necessary to include a mechanism for district plans to bridge the gap between their current identification approaches and nomenclature, and the RPS requirement.
- 79 The HCV s42A report addresses this at page 52, paragraph 238, and does not recommend any changes as the report writer considers that Policy HCV-HH-P4's two-tiered classification system is not a new requirement, and that resourcing concerns for plans that had already undertaken a plan review would not be an issue as the s42A report writer anticipated that a plan review would not take place ahead of the 10-year planning cycle.
- 80 The reason why this is raised as a concern is that the costs associated with assessing historic heritage into two categories (areas or places with special

or outstanding historic heritage values or qualities, all other areas or places with historic heritage values or qualities) is unnecessary when the District Plan approach manages all historic heritage in the same way, regardless of perceived historic importance. Known heritage values are managed by a site-specific protection rather than two separate sets of policies, objectives, and rules.

- 81 There is little demonstrable advantage protect historic places by way of a two-tier classification as this will generally mean that the protection measures for some places are either generalised or reduced in comparison to others. The practice of managing heritage values requires an understanding of what makes the place significant and site-specific protection measures are considered to be the most effective way of identifying and protecting parts of the place that demonstrate these values. A single classification tier with site-specific protection measures is the DCC's preferred approach to managing historic heritage.
- 82 I do acknowledge that in some instances the 2GP manages historic heritage that has been classified by Heritage New Zealand as Category 1 differently, but this assessment and associated costs are carried by that organisation and do not place any extra costs burden on the Dunedin ratepayer.
- 83 The reassessment of approximately 760 existing heritage schedule items, to confirm the categorisation, will reduce DCC's resource to identify and assess new heritage items. Considering heritage more broadly across the city, it is preferable to that the work to identify and protect new historic heritage is prioritised.
- 84 The proposed solution to address this issue and address the DCC submission is to only require two categories of historic heritage to be identified if the District Plan management approach is to treat them differently. An amendment to APP8 as follows would achieve this:

APP8 – Identification criteria for places and areas of historic heritage

For District Plans that do not manage historic heritage of local, regional or national significance differently, or relies on the Heritage New Zealand's New Zealand Heritage List and associated categorisation of historic places, assessment is only required in accordance with Step 1 below.

Step 1

A place or area is considered to have historic heritage if it meets any one or more of the criteria below:

...

- 85 DCC (139.234) submitted on HCV-HH-P5 – Managing historic heritage, seeking amendment to include some consideration of significant positive effects and include a caveat to balance ‘avoid’. The DCC also sought clarity on how clauses 4 and 5 operate, and replacing ‘demonstrably’ with ‘practicable’.
- 86 The HV s42A report addresses these issues at pages 59 and 60, paragraphs 265-267, and recommends amendments to make it clear that clause (5) only applies to clause (4) but does not recommend any other changes. The recommended change to clause (5) is supported, but the lack of other requested changes is not supported.
- 87 The reason why this is raised as a concern is that the policy does not provide for the loss of some historic heritage where there are other significant effects e.g. the new Dunedin hospital being built on a site that contained historic heritage.
- 88 The proposed solution to address this issue and address the DCC submission is to amend HCV-HH-P5 as follows:

HCV-HH-P5 – Managing historic heritage

Protect historic heritage by:

- (1) *requiring the use of accidental discovery protocols in accordance with APP11,*
- (2) *avoiding adverse effects on areas or places with special or outstanding historic heritage values or qualities, except*
 - (a) *in the circumstances where HCV-HH-P7 applies, or*
 - (b) *where necessary to enable projects of national or regional significance where the avoidance of adverse effects is not practicable, and the public benefit outweighs the loss of historic heritage values*
- (3) *avoiding significant adverse effects on areas or places with historic heritage values or qualities,*
- (4) *avoiding, as the first priority, other adverse effects on areas or places with historic heritage values or qualities, and where it is demonstrated that avoidance of some adverse effects ~~cannot be completely avoided~~ is not practicable, they are remedied or mitigated, and*
- (6) *recognising that for infrastructure, EIT-INF-P13 applies instead of HCV-HH-P5(1) to (5).*

- 89 DCC (139.1235) submitted on HCV-HH-P6 – Enhancing historic heritage, requesting replacement of ‘enhance’ with clearer wording.
- 90 The HCV s42A report addresses this at pages 64 and 65, paragraph 290, but does not recommend any change as the s42A report wittier considers that ‘enhance’ is appropriate as it focuses on improving the existing values, sites and areas within the region. This is not supported.
- 91 The reason why this is raised as a concern is that the current wording still makes it uncertain how HCV-HH-P6 would be implemented in District Plan provisions.
- 92 The proposed solution to address this issue and address the DCC submission is to amend HCV-HH-P6 as follows:
- HCV-HH-P6 – Enhancing historic heritage*
- ~~*Enhance places and areas of historic heritage wherever possible through the implementation of plan provisions, decisions on applications for resource consent and notices of requirement and non-regulatory methods.*~~
- Encourage the maintenance, ongoing use and adaptive re-use of historic heritage through plan provisions which enables these activities in a way that also minimises as far as practicable adverse effects on identified heritage values.*
- 93 DCC (139.236) submitted on HCV-HH-P7 – Integration of historical heritage, suggesting it be deleted in favour of the reworded HCV-HHP6 above.
- 94 The HVC s42A report addresses this at pages 64 and 66, paragraphs 289 and 298, and does not recommend any change in line with the recommendation not to change HCV-HH-P6. This is not supported.
- 95 The reason why this is raised as a concern is it is not clear what integration of historic heritage into new activities means, whether it makes sense for all activities or how it would be implemented in plan provisions e.g. would land uses that could not integrate the heritage values into the activity be restricted?
- 96 The proposed solution to address this issue and address the DCC submission is to delete HCV-HH-P7 and make the changes to HCV-HH-P6 as shown above.
- 97 DCC (139.237) submitted on HCV-HH-M5 – District Plans, requesting an amendment to acknowledge that the location or presence of historic

heritage is not always known and an approach for where the location is suspected but not known.

- 98 The HCV s42A report addresses this at Page 71, paragraph 318, but does not recommend any changes as the s42A report writer considers that district plans should automatically consider known and unknown historic heritage, and specific direction in the pORPS is therefore unnecessary.
- 99 The reason why this is raised as a concern is that alert layers of where there may be historic heritage, and associated accidental discovery protocols and guidance on archaeological authorities under the Heritage New Zealand Pouhere Taonga Act 2014 are useful methods for managing unknown historic heritage.
- 100 The proposed solution to address this issue and address the DCC submission is to amend HCV-HH-M5 as follows:

HCV-HH-M5 – District Plans

Territorial authorities must prepare or amend and maintain their district plans to the extent necessary to:

- (1) identify places and areas with historic heritage in accordance with HCV-HH-P4 that are located outside the beds of lakes and rivers, wetlands and the coastal marine area,*
- (2) where the location and values of historic heritage is known, control the following where they may adversely affect historic heritage:*
 - (a) the location, intensity and form of subdivision,*
 - (b) the character, location, scale and form of activities (including structures) outside the beds of lakes and rivers and the coastal marine area,*
 - (c) the location and scale of earthworks and indigenous vegetation removal outside the beds of lakes and rivers and the coastal marine area,*
 - (d) the disturbance, demolition or alteration of physical elements or structures with special or outstanding historic heritage value or qualities outside the coastal marine area, beds of lakes and rivers,*
- (2a) where the location of historic values is suspected but not known, include provisions that: alert plan users to the need to follow accidental discovery protocol, or enable protection of significant historic heritage where its significance is identified through the development process*
- (2A) enable Kāi Tahu to identify places and areas with historic heritage values for mana whenua in accordance with HCV-HH-P4 that are located outside the beds of lakes and rivers, wetlands and the coastal marine area.*

Conclusion

- 101 My evidence has addressed specific s42A report responses to the DCC submissions that relate to a wide range of topics.
- 102 I have relied on ORC's intention that the pORPS be read as a whole when responding to recommendations on the DCC's submission points, as set out in the recommended IM-P1 below:

IM-P1 – Integrated approach to decision-making

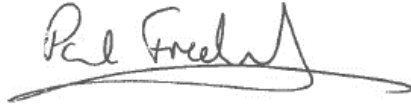
Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, prioritise:

- (1) the life-supporting capacity and mauri of the natural environment and the health needs of people, and then*
- (2) the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

- 103 I note that the Natural and Built Environment Bill, which is now at select committee stage, at section 71 requires regional planning committees to amend plans if a plan rule duplicates or conflicts with a framework rule and section 72 to enable 'reference to a provision of the national planning framework'. A framework rule is a rule that is in the national planning framework. As the national planning framework is intended to contain all existing NES and NPS it may be efficient for the Panel to take this into consideration when deciding on submissions seeking removal of duplicated content from the pORPS. DCC has submitted on this with regard to the NZCPS, but the approach would also be applicable to the NPS-UD, NES-PF and NPS-HPL etc. Referencing national direction rather than duplicating it will allow future changes without a Schedule 1 (now Schedule 7) process.
- 104 I also note that sections 61 and 62 of the Natural and Built Environment Bill provide for an effects management framework to apply to significant biodiversity areas and specified cultural heritage e.g. significant historical heritage and wāhi tupuna. As an alternative to the relief sought in my evidence, I recommend that the pORPS incorporate and refers to the NBA's effects management framework.
- 105 I consider that by incorporating these two Natural and Built Environment matters with the pORPS would enable a smooth transition of the pORPS

into the new resource management system and I recommend it for that reason.

106 I would be available to discuss these changes further in expert conferencing if that was directed.

A handwritten signature in black ink, appearing to read "Paul Freeland", with a long horizontal flourish underneath.

Paul James Freeland
28 November 2022