

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 Emily Kate McEwan for Dunedin City Council

28 November 2022

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**anderson
lloyd.**

Qualifications and experience

- 1 My name is **Emily Kate McEwan**. I am a Senior Planner at the Dunedin City Council (**Council** or **DCC**).
- 2 I have a Master of Planning from the University of Otago, a Bachelor of Science (Geography) from Massey University and a Diploma in Horticulture (Landscape) from Massey University. My Master of Planning thesis examined The National Policy Statement on Urban Development Capacity.
- 3 I have been employed by Council since May 2019 and primarily worked on Variation 2 (Additional Housing Capacity) to the Dunedin City Second Generation District Plan's (**2GP**) until May 2022. I am currently leading the development of Variation 3 (Minor Improvements) to the 2GP. I have approximately five years of planning experience primarily on urban development topics, including preparing district plan provisions and accompanying section 32 evaluation (**s32**) reports, preparing section 42A (**s42A**) reports, and giving evidence at hearings.

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 My evidence covers the Urban Form and Development (**UFD**) chapter and other parts of the Proposed Otago Regional Policy Statement 2021 (**pORPS**) where they may impact implementation of the UFD provisions.

Introduction

- 6 DCC submitted on most provisions in the UFD chapter (submission points 00139.249 to 00139.272 inclusive), including a broad submission on the overall approach.
- 7 I have reviewed the recommendations made by Mr Balderston at Chapter 15 of the pORPS s42A Report, and the subsequent recommendations made by Ms White in her two sets of supplementary evidence on the UFD topic.
- 8 I acknowledge that Ms White's supplementary evidence was limited to considering matters raised during prehearing discussions and responding to the issuing of the National Policy Statement on Highly Productive Land

(NPS-HPL), rather than revisiting all recommendations made by Mr Balderston. However, I consider that a broad review of the recommendations on DCC's UFD submissions is warranted because most of the relief sought was dismissed without sufficient consideration and analysis.

- 9 I do support some elements of the final recommendations, where specifically outlined in my evidence below, but only to the extent they are unaffected by my recommendations on other outstanding issues.
- 10 Of the issues addressed in my evidence, I consider the following to be the most critical to resolve in response to DCC's submissions:
 - (a) All 'avoid' provisions in the UFD chapter, and other pORPS provisions likely to impact urban development, should be appropriately qualified to state circumstances where avoidance is not required;
 - (b) The approach to including provisions in the UFD chapter that address topics dealt with elsewhere in the pORPS should be consistent. My preference is that all such provisions (e.g. highly productive land, infrastructure, climate change etc.) are removed from the UFD chapter to rely on the pORPS being read as a whole;
 - (c) All UFD objectives should be restructured to give clear end states, policies should give courses of action, excessive detail should be removed from objectives and policies, and 'enabling' and 'facilitating' language should be tempered;
 - (d) UFD provisions which duplicate or overlap with NPS-UD provisions should be removed where they do not add value;
 - (e) UFD-P6 or other provisions should not provide any pathway for the transition of industrial zoned areas to other purposes;
 - (f) UFD-P8 or other provisions should not require or encourage rural lifestyle zoning to be adjacent to urban areas; and
 - (g) UFD provisions on non-urban activities should be removed.
- 11 My evidence below explains why these and other issues are problematic and provides recommendations, starting with broad issues before addressing the UFD provisions by sub-topic.
- 12 To address the outstanding issues, Otago Regional Council should adopt substantially revised wording for the UFD chapter, an example of which is

provided in Annexure A for objectives and policies (both clean and tracked versions).

Broad issues

- 13 DCC's submission raised some broad issues regarding the approach taken across the pORPS² and broad issues with the approach taken in the UFD chapter itself¹. Outstanding broad issues of concern are addressed below.

Managing tensions with other parts of the pORPS due to the use of "avoid"

- 14 DCC's broad submission raised issues with the pORPS' "*strong emphasis on protection of the environment*" and requirements for total avoidance of certain adverse effects by use of the word "*avoid*" without a qualifier, or with unhelpful qualifiers in the context of the *King Salmon* decision².
- 15 The use of "avoid" wording, coupled with the direction in policy IM-P1 on how the pORPS should be applied to achieve integrated management, has significant implications for urban development and whether the National Policy Statement on Urban Development (**NPS-UD**) can be achieved, particularly in terms of ensuring sufficient housing and business land can be provided¹.
- 16 Mr Frentz has addressed this in section 5 of his evidence, concluding that the pORPS does not give effect to the NPS-UD because of the emphasis on avoiding adverse effects on the environment at the expense of providing for new housing or infrastructure. I agree with Mr Frentz's conclusion.
- 17 In addition, I note the use of policies which are worded "avoid as the first priority" or similar (e.g. UFD clauses on highly productive land, which I recommend for deletion below). In my view, the addition of 'as the first priority' is not helpful because it reads as though avoidance is optional. This is highly problematic when the acceptable circumstances for non-avoidance are not set out.
- 18 Provisions outside the UFD chapter of particular concern for the function of the UFD chapter in terms of ensuring the NPS-UD is given effect to include:
- (a) EIT-INF-M5(6) regarding when development must be avoided in relation to infrastructure provision. The broad definition of

¹ 00139.249

² See DCC's submission, pg. 4. This was not allocated a submission point.

infrastructure is particularly problematic, as is the reference to funding;

- (b) EIT-TRAN-P21 regarding avoiding development that forecloses an opportunity to develop the transport system, and avoiding impacts from incompatible activities on the transport system;
 - (c) HAZ-NH-P5 regarding adopting an avoidance or adaptive management response when natural hazard risk is uncertain or unknown; and
 - (d) HAZ-NH-P10 regarding avoiding increasing the risk of natural hazards on any land potentially affected by coastal hazards over at least the next 100 years.
- 19 Provisions in the UFD chapter of particular concern for ensuring the NPS-UD is given effect to are:
- (a) UFD-O4(2), UFD-P4(6) and UFD-P8(4) regarding avoiding, as the first priority, impacts on highly productive land. This wording does not give effect to the NPS-HPL, which includes exceptions for when rezoning or development of highly productive land is acceptable to assist in achieving the NPS-UD³. I note that I recommend removing highly productive land provisions from the UFD chapter later in my evidence;
 - (b) UFD-P6(3) regarding avoiding activities likely to result in reverse sensitivity effects on existing or potential industrial activities or likely to result in an inefficient use of industrial zoned land or infrastructure; and
 - (c) UFD-M2(3)(ea) regarding district plans avoiding the potential for reverse sensitivity effects on nationally and regionally significant infrastructure.
- 20 The drafting in Annexure A implements the following recommendation:
- (a) amend all remaining UFD clauses that use “avoid” without qualification, or that use “avoid as the first priority” or similar so that appropriate qualifiers are applied⁴.

³ For example, NPS-HPL clause 3.6 on rezoning

⁴ Only one such clause remains based on my recommendations overall; UFD-P6(3)

- 21 I also recommend amendments to the use of “avoid” in the provisions outlined above (EIT-INF-M5(6), EIT-TRAN-P21, HAZ-NH-P5 and HAZ-NH-P10) due to their potential impacts on the function of the UFD chapter and the ability to give effect to the NPS-UD. I note that Mr Frentz has recommended wording for EIT-TRANS-P21 in section 6 of his evidence.

References to other parts of the pORPS in UFD

- 22 Referencing of other parts of the pORPS in the UFD chapter is also relevant to DCC’s broad submission seeking clearer guidance on how to reconcile tensions between the UFD chapter and other provisions in the pORPS¹.
- 23 Ms White recommended amendments to remove references to other parts of the pORPS from the UFD chapter⁵. I agree that these deletions are appropriate given ORC’s intention that the pORPS be read as a whole, with IM-P1 relied on to codify the approach.
- 24 However, in my view there are still provisions remaining in the UFD chapter that are covered elsewhere in the pORPS, including those on highly productive land⁶, natural hazards, heritage, transport, energy, infrastructure, and integrated management (including mana whenua and climate change provisions).
- 25 If these provisions remain while other references are deleted, users might infer that the remaining provisions comprise a complete list of other considerations for urban development and that provisions elsewhere in the pORPS are less important. This would not support the approach of reading the pORPS as a whole.
- 26 The drafting in Annexure A implements the following recommendation:
- (a) remove all references to matters addressed in other parts of the pORPS from the UFD chapter, including those recommended for removal by Ms White, as well as other remaining provisions, such as those relating to natural hazards, highly productive land, infrastructure etc.

Duplication of NPS-UD strategic planning requirements

- 27 DCC’s broad UFD submission sought that duplication or paraphrasing of the NPS-UD provisions be removed where it does not add value¹.

⁵ See Ms White’s first supplementary evidence on UFD, paras. 8-14

⁶ See Ms White’s first supplementary evidence on UFD, para. 12

- 28 An instance of duplication or overlap with NPS-UD provisions is the strategic planning set of provisions at UFD-O3 and UFD-P1. These are similar to NPS-UD Subpart 4 provisions requiring Tier 1 and Tier 2 local authorities to develop future development strategies (**FDSs**).
- 29 The NPS-UD sets out the purpose and content of FDSs at Clause 3.13. Differences in the recommended pORPS provisions include:
- (a) The generic term ‘strategic planning’ is used, rather than referring to future development strategies;
 - (b) The provisions are not limited to Tier 1 and Tier 2 local authorities with the option of applying to Tier 3 local authorities as in the NPS-UD; and
 - (c) Some additional/different considerations are included in the UFD provisions, but not the key concept of achieving well-functioning urban environments as in the NPS-UD.
- 30 Mr Balderston noted in his evidence that the pORPS strategic planning provisions are intended to be scaled for the development or issue at hand⁷ and that this could include planning undertaken by local developers using structure or master planning, which he asserts are forms of strategic planning⁸.
- 31 I disagree that structure or master planning are forms of strategic planning. They are high-level plans for development in a specific location, but do not typically consider district-wide development and infrastructure provision and trade-offs between development in one area versus alternative areas (i.e. ‘strategic’ considerations).
- 32 I also consider that the direction on development of FDSs in the NPS-UD is muddled by the pORPS provisions as it is unclear what “strategic planning” is, especially when the provisions are inconsistent with the NPS-UD provisions on FDSs.
- 33 The drafting in Annexure A implements the following recommendation:
- (a) Delete UFD-O3 and UFD-P1 on strategic planning and rely on the NPS-UD provisions for FDSs.

⁷ See Chapter 15 of the pORPS Section 42A Report, para. 159

⁸ See Chapter 15 of the pORPS Section 42A Report, para. 243

Objective and policy structure and content

- 34 DCC's broad UFD submission¹ sought that "*objectives are written as end states...and do not stray into policy content*".
- 35 In my view, good objectives succinctly and clearly describe end states to achieve, rather than describing processes, activities or methods, which are more appropriate for policies. Many objectives in other chapters of the pORPS meet this test and are no more than two or three lines long⁹. However, most objectives in the UFD chapter do not meet this test, for example UFD-O2, which is almost a page long and describes processes.
- 36 When objectives do not meet the test outlined above, the following issues can arise:
- (a) It is difficult to assess if the objective is being achieved and whether the pORPS will be able to be given effect to;
 - (b) Associated policies are required to be even more detailed and specific to ensure they will achieve the objectives; and
 - (c) Overly specific provisions can result in unintended consequences, such as excluding consideration of other relevant matters and unnecessarily requiring lower order plans to be amended.
- 37 In response to DCC submissions on specific objectives (e.g. requesting that they be expressed as policies instead of objectives), Mr Balderston appears to have dismissed making changes simply on the basis that wording was not provided in the submission. For example, regarding the DCC submission on UFD-O5¹⁰ he stated that "*Given such a fundamental change without wording, I cannot recommend accepting this submission*". In my view, absence of wording in the submission is not a valid reason to reject the relief sought. However, to assist the Panel, I have provided wording.
- 38 The drafting in Annexure A implements the following recommendation:
- (a) Streamline all UFD objectives to give clear end states and remove unnecessary detail by deletion or by moving it to the relevant policies.

⁹ For example, AIR-O1, AIR-O2, CE-O2, CE-O3, CE-O4, LF-FW-O10, LF-LS-O11, LF-LS-O11A, LF-LS-O12, ECO-O1, ECO-O2, EIT-EN-O1, EIT-EN-O3, EIT-EN-O2A, EIT-EN-O2, EIT-INF-O6 etc.

¹⁰ 000139.254

39 This recommendation also addresses DCC's specific submissions on the following provisions, accounting for the reasons these submissions were rejected by Mr Balderston:

- (a) UFD-O1¹¹, by amending UFD-O1 to set a clear urban form and function outcome that is relevant to achieving a *well-functioning urban environment* (relying on EIT-INF provisions for infrastructure outcomes);
- (b) UFD-O2¹², by amending UFD-O2 to become a policy and including an urban quality objective as part of UFD-O1; and
- (c) UFD-O4¹³, by streamlining UFD-O4 to an outcome statement on development in rural areas and moving the detail into UFD-P7.

Urban form and development

Sufficiency of development capacity (UFD-P2)

40 DCC sought deletion of UFD-P2 because it did not consider it was necessary and did not agree with the content of some of the referenced policies¹⁴. Mr Balderston did not address this submission in his recommendations.

41 I note that clause (6) requiring Tier 2 urban environments to meet housing bottom lines has the potential to become inconsistent with the NPS-UD should the NPS-UD be amended so that Otago includes a Tier 1 urban environment in future.

42 I do not have an issue with UFD-P2 being retained with minor amendments for clarity and conciseness, as shown in Appendix A.

Urban intensification and expansion (UFD-P3 & UFD-P4)

43 DCC's submissions on UFD-P3¹⁵ and UFD-P4¹⁶ sought amendments due to concerns about the use of directive wording to 'enable intensification' or

¹¹ 00139.250

¹² 00139.251

¹³ 00139.253

¹⁴ 00139.256

¹⁵ 00139.257

¹⁶ 00139.258

'facilitate urban expansion' where the listed criteria are met. Regarding UFD-P4, DCC also sought removal of excessive detail and direction that is more appropriate for lower order plans.

- 44 Ms White has recommended changes to UFD-P3 and UFD-P4 to clarify that these policies set minimum requirements for urban intensification or urban expansion to occur, rather than listing all relevant considerations¹⁷.
- 45 I disagree with the recommended wording and consider that the following issues remain:
- (a) The "Provide for..." (UFD-P3) and "facilitate" (UFD-P4) wording is still directive and must be followed when all listed criteria are met. In the absence of any balancing wording about when other factors might detract from urban intensification or urban expansion, there is a high risk that territorial authorities could be made to allow inappropriate urban intensification or urban expansion. The addition of "as a minimum" may exacerbate the issue because it reads as 'So long as these minimum requirements are met, you must provide for urban intensification, or facilitate urban expansion';
 - (b) UFD-P3 is inconsistent with NPS-UD Policy 5 on intensification for Tier 2 and 3 urban environments. UFD-P3 introduces additional requirements which are not listed under NPS-UD Policy 5;
 - (c) UFD-P3 would conflict with NPS-UD policies 4 and 5 on intensification for Tier 1 urban environments, should the NPS-UD be amended so that Otago included a Tier 1 urban environment in future. Amendments to the pORPS to address this conflict would likely require a Schedule 1 process;
 - (d) UFD-P4(7) still includes a level of detail around urban boundaries that is unwarranted and that duplicates aspects of UFD-P7.
- 46 The drafting in Annexure A implements the following recommendations:
- (a) Delete UFD-P3 on intensification, as it conflicts with provisions in the NPS-UD in a way that is difficult to resolve and does not helpfully 'flesh them out'. There is scope to do this under DCC's broad UFD submission point¹⁸;

¹⁷ See Ms White's first supplementary evidence, para. 22

¹⁸ 00139.249

- (b) Delete UFD-P4 on urban expansion as the important elements of the policy are more appropriately covered by other UFD policies and the detail in clauses 7b-c is too detailed for a regional policy statement.

Commercial and industrial activities (UFD-P5 and UFD-P6)

- 47 DCC requested deletion of the policies on commercial¹⁹ and industrial²⁰ activities because of concerns the approach would undermine the 2GP's centres hierarchy and associated strategic directions.
- 48 The biggest unresolved issue is that UFD-P6 still provides a pathway for the transition of industrial areas to other purposes.
- 49 The evidence of both Ms White and Mr Balderstone has not resolved this issue and the recommended amendments only clarify how transition of industrial areas to other purposes can be done.
- 50 Reasons for these 'transition' provisions being of concern are:
 - (a) They defy one of the key functions of zoning, which is to manage the cumulative effects of activities that are not anticipated or provided for in a specific location while enabling activities that are;
 - (b) They would require significant amendment to the 2GP, which has strong policy direction on avoiding commercial land uses in industrial zones (e.g. Objective 19.2.1 and policies 19.2.1.3 and 19.2.1.9). This approach flows from strategic objectives 2.3.1, 2.3.2 and 2.4.3, which seek for industrial areas to be protected from less productive competing uses or incompatible uses and aim for Dunedin to have a hierarchy of vibrant commercial centres anchored around one strong and vibrant CBD (by keeping commercial activities in commercial zones). This approach was the result of robust community consultation and analysis as part of the 2GP Schedule 1 process. UFD-P6 as currently drafted would override this approach. Mr Balderston's response that "*the direction of the hierarchy is from the RPS to the District Plan, not the other way around*"²¹ ignores the weight of the work and consultation undertaken to arrive at the 2GP provisions.

¹⁹ 00139.260

²⁰ 00139.261

²¹ See Section 42A Report, Chapter 15, para. 47.

- (c) They are highly problematic in terms of other pORPS objectives because they would result in new industrial zoned land having to be identified. Typically, suitable flat land in Dunedin is located long distances from Port Otago, other key services, the bulk of the labour force, potentially on highly productive land, and subject to flood hazards. This presents the potential for conflict with pORPS AIR, LF-LS and HAZ-NH objectives.
- 51 Other concerns raised by DCC in its submission on UFD-P5 and UFD-P6 are of less concern and could be resolved by minor amendments, rather than deletion of the provisions, except:
- (a) For UFD-P5, clause (3) could be read as encouraging unlimited supply of commercial land, which would undermine the 2GP's centres hierarchy and associated strategic directions, as outlined above.
- 52 The drafting in Annexure A implements the following recommendations:
- (a) Retain the version of UFD-P5 as recommended by Ms White with minor amendments to recognise that sometimes it is appropriate to limit some types of commercial activities in some commercial zones, to delete clause (3) and rely on UFD-P2 to cover rezoning, and to "provide for" rather than "allow" small scale retail and service activities to ensure adverse effects can be managed; and
 - (b) Delete UFD-P6(4) and other aspects of UFD-P6 that provide for the transition of industrial areas to other uses.

Rural areas and highly productive land

Highly productive land

- 53 DCC's submission addressed highly productive land in some UFD provisions, although this was not a focus at the time due to the NPS-HPL not being finalised.
- 54 Regarding UFD-P4²², DCC did express concern about the relationship of the highly productive land clause with similar provisions elsewhere in the pORPS. DCC also disagreed with highly productive land being 'avoided as a first priority' because this might not always be the appropriate test.

²² 00139.258

55 Ms White has made recommendations regarding UFD provisions on highly productive land in her second supplementary evidence²³.

56 I disagree with Ms White's recommendations and consider that provisions for highly productive land should not be included in the UFD chapter at all, as these are more appropriately dealt with in LF-LS – Land and soil. This is consistent with my earlier evidence recommending not referencing other parts of the pORPS in the UFD chapter.

57 In addition, I note that the provisions for highly productive land in the UFD chapter duplicate and conflict with provisions in the LF-LS chapter. For example, LF-LS-P19(2-3) is recommended to read:

Maintain the availability and productive capacity of highly productive land by...

(2) prioritising the use of highly productive land for land-based primary production and

(3) managing urban development in rural areas, in accordance with UFD-P4, UFD-P7 and UFD-P8.

Whereas UFD-O4 is recommended to read:

Development occurs in Otago's rural areas in a way that: ...

(2) avoids as the first priority, highly productive land...

58 This conflict would be resolved by removing the highly productive land provisions from the UFD chapter. I note that Mr Frentz has recommended deletion of LF-LS-P19 entirely, because he considers that it conflicts with the NPS-HPL. In this case, the NPS-HPL itself would provide the guidance.

59 The drafting in Annexure A implements the following recommendation:

(a) Delete the UFD provisions that address highly productive land (as already recommended at paragraph 26).

60 A consequential change is also required to LF-LS-P19 to delete clause (3) if the provision is not deleted entirely in response to Mr Frentz's evidence.

²³ See Ms White's second supplementary evidence, paras. 7-11

Direction on non-urban activities in rural areas (UFD-O4 & UFD-P7)

- 61 DCC's submission on UFD-P7 highlighted concern about including direction on non-urban activities in a section about urban form and development²⁴.
- 62 This matter was addressed during the pre-hearing discussions. However, Ms White's response in her supplementary evidence focused on provisions for urban activities in rural areas, not non-urban activities in rural areas²⁵, leaving the above issue outstanding.
- 63 I have a neutral view on Ms White's recommendation to remove the requirement for non-rural activities in rural areas to have a functional or operational need to locate in a rural area. These requirements are consistent with similar strategic direction and rural zone provisions in the 2GP²⁶ but I am comfortable that the 2GP provisions can remain without the direction being set in the pORPS.
- 64 The drafting in Annexure A implements the following recommendation:
- (a) Delete aspects of the UFD rural area provisions that address non-urban activities, as management of these activities does not logically sit in a chapter on urban form and development and is more appropriately fleshed out at district plan level.

Maintaining amenity and character of rural areas (UFD-P7)

- 65 DCC sought amendments to UFD-P7(2) to remove the requirement to maintain the amenity and character of rural areas because any development in rural areas can mean these values are changed or lost, including to achieve other objectives²⁷.
- 66 Mr Balderston did not recommend changes to address this issue, based on an assessment that a close reading of clauses (1) and (2) together resolved the issue (which I cannot make out), and because DCC did not provide wording²⁸.

²⁴ 00139.262

²⁵ See Ms White's first supplementary evidence, paras. 15-21.

²⁶ For example, 2GP Objective 2.3.1, Policy 2.3.1.2; Objective 16.2.1

²⁷ 00139.262

²⁸ Chapter 15 pORPS Section 42A Report, para. 314

67 I note that UFD-P7(1) is recommended for deletion as part of Ms White's recommendation on removing references to other parts of the pORPS and I support that recommendation.

68 The drafting in Annexure A implements the following recommendation:

- (a) Amend UFD-P7 to remove the reference to maintaining rural amenity and character.

Facilitating rural industry (UFD-P7)

69 DCC sought amendments to UFD-P7(4) to remove the requirement to facilitate rural industry because it may be inappropriate in some locations, such as adjacent to residential areas and other incompatible land uses, or in areas with biodiversity or other significant values²⁷.

70 Mr Balderston considered that his recommended amendments to clauses (1) and (2), along with 'reading across' the pORPS provisions, resolved DCC's concerns²⁹.

71 I still consider it preferable to temper the wording regarding 'facilitating' rural industry, including because I recommend that the reference to maintaining rural amenity and character be removed.

72 The drafting in Annexure A implements the following recommendation:

- (a) Amend the reference to facilitating rural industry to add "in appropriate locations", as per the content previously in UFD-O4.

References to sensitive activities (UFD-O4 & UFD-P7)

73 Ms White recommends alternate wording to the use of the defined term 'sensitive activities' in UFD-O4, UFD-P7 and UFD-PR1.

74 I support this recommendation in principle, albeit that I would prefer that much of the detail contained in UFD-O4 is moved to UFD-P7.

Definition of productive capacity (UFD-O4 & UFD-P7)

75 Ms White has supported Ms Boyd's recommended definition for 'productive capacity', as appropriate for application in UFD-O4 and UFD-P7.

²⁹ Chapter 15 pORPS Section 42A Report, para. 316.b

76 I support this recommendation in principle, albeit that I would prefer that much of the detail contained in UFD-O4 is moved to UFD-P7.

Rural lifestyle

Rural lifestyle location (UFD-P8)

77 DCC sought the deletion of UFD-P8 due to strong opposition to the requirement for rural lifestyle zoning to be located adjacent to existing or planned urban areas in clause (1) and because it contains too much detail on suitability requirements in clause (5)³⁰.

78 Mr Balderston considered that the requirement for adjacency was appropriate because it would “*minimise travel distances and provide a potential buffer between urban and productive rural activity areas*”³¹. He acknowledged DCC’s concerns about complicating future urban development but considered that these are recognised and managed though clause (2)³².

79 In my view, this approach leaves open a potential debate on what land is “*reasonably likely to be required*” for future urban development (clause (2)), likely resulting in pressure for inappropriate rural lifestyle development adjacent to urban areas.

80 Mr Balderston considered that retaining clause (5) was important because the “*cumulative environment impacts of self-servicing (and future reticulation or other urban services demand, including transport) has been identified as a key issue in this RPS*”³³.

81 I consider that infrastructure and associated environmental effects are already adequately managed in other parts of the pORPS, such as EIT-INF-O5, EIT-INF-P12, EIT-INF-P13 and others.

82 The drafting in Annexure A implements the following recommendation:

- (a) Amend UFD-P8 to delete clause (1) on adjacency to urban areas, and to delete clause (5) on suitability requirements.

³⁰ 00139.263

³¹ Chapter 15 pORPS Section 42A Report, para. 378

³² Chapter 15 pORPS Section 42A Report, para. 379

³³ Chapter 15 pORPS Section 42A Report, para.388

Rural lifestyle/residential terminology

- 83 DCC did not specifically submit on the use of rural lifestyle and rural residential terminology.
- 84 Ms White has recommended that references to 'rural residential' zoning be removed from the UFD provisions³⁴.
- 85 I support this recommendation and consider that the 'rural residential' zones in the 2GP meet the description for 'rural lifestyle' in the National Planning Standards.

Other Matters

Criteria for significant development capacity (UFD-P10)

- 86 DCC's submission sought that UFD-P10 focus on criteria for when development capacity provided by a proposal is significant, rather than also address the merits of the proposal more broadly.
- 87 This submission is consistent with NPS-UD Clause 3.8(3) which only requires the pORPS to include criteria on when a proposal will add significantly to development capacity.
- 88 The drafting in Annexure A implements the following recommendation:
- (a) Remove clauses (1)-(3) from UFD-P10 so it only focuses on the scale of development capacity that must be considered significant.

Methods, Explanation, Principal Reasons, Anticipated Environmental Results

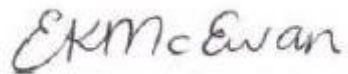
- 89 I have not specifically addressed these provisions in my drafting in Annexure A. However, consequential changes will be required to align these sections with the recommendations made above.

S32AA evaluation

- 90 The amendments recommended to the UFD objectives are a more appropriate way to achieve the purpose of the RMA because they set clear end states which can be more clearly implemented by appropriate policies and methods. Streamlining objectives in this way reduces the risk of misinterpretation and of overly specific application to the exclusion of other relevant matters.

³⁴ See Ms White's first supplementary evidence, para. 27

91 The amendments recommended to the UFD policies will enable the UFD objectives to be more effectively and efficiently achieved because unnecessary detail has been removed to allow clearer focus. Other objectives in the pORPS, including IM-O1 on integrated management will also be more effectively and efficiently achieved because users will be encouraged to read across the pORPS as a whole and consider all relevant matters, rather than focusing on incomplete lists of criteria in the UFD provisions, some of which currently conflict with other pORPS provisions and with national direction in the NPS-UD.

A handwritten signature in black ink that reads "EKMcEwan". The letters are cursive and somewhat slanted to the right.

Emily Kate McEwan
28 November 2022

ANNEXURE A

This drafting is based on the recommendations-version provided by ORC, dated 31 October 2022.

UFD – Urban form and development (*clean version*)

Objectives

UFD-O1 – Form and function of *urban areas*

Otago's *urban areas*:

- (1) accommodate the diverse and changing needs and preferences of Otago's people and communities,
- (X) are liveable, safe, and well-designed to support social, cultural, and economic wellbeing, and
- (Y) have a compact and efficient form.

UFD-O4 – Development in *rural areas*

Development in Otago's *rural areas* is primarily for rural activities and activities that support rural activities.

Policies

UFD-PX – Development of *urban areas*

Ensure that the development and change Otago's *urban areas* is well-designed and accommodates the changing needs and preferences of Otago's people and communities, including by making planning decisions that:

- (1) improve housing choice, quality, and affordability,
- (6) minimise conflict between incompatible activities,
- (10) achieve consolidated, well designed, and sustainable development in and around existing *urban areas* as the primary focus for accommodating the region's urban growth and change, and
- (X) contribute to establishing or maintaining the qualities of a *well-functioning urban environment*.

UFD-P2 – Sufficiency of *development capacity*

Ensure that at least sufficient¹ housing and business *development capacity* is provided in *urban areas* in the short, medium and long term including by:

¹ "At Least" See General Submissions of 00211.047 LAC Properties Trustees, 00210.046 Lane Hocking, 00118.066 Maryhill Ltd, 00014.066 Mt Cardrona Station, 00209.046 Universal Developments

- (5) responding to any demonstrated insufficiency in housing or business *development capacity* by increasing *development capacity* or providing more *development infrastructure* as required, as soon as practicable,
- (X) being responsive to plan changes that demonstrate compliance with UFD-P10,² and
- (6) requiring Tier 1 and Tier 2 *urban environments* to meet, at least, the relevant housing bottom lines in APP10.

UFD-P5 – Commercial activities

Provide for *commercial activities* in *urban areas* by:

- (1) enabling a wide variety and scale of *commercial activities*, social, recreational³ and cultural activities to concentrate in city, metropolitan,⁴ town centres and commercial zoned⁵ areas, where appropriate, especially if they are highly accessible by *public transport* or⁶ *active transport*,
- (2) enabling smaller local and neighbourhood centres, mixed use zones⁷ and rural settlements to accommodate a variety of *commercial activities*, social, recreational⁸ and cultural activities of a scale appropriate to service local community needs, and
- (4) outside the areas described in (1) and (2), provide for small scale retail and service activities, home occupations and *community services* to establish within or close to the communities they serve.

UFD-P6 – Industrial activities

Provide for *industrial activities* in *urban areas* by:

- (1) identifying specific locations and applying zoning suitable for accommodating *industrial activities* and their reasonable needs and *effects* including supporting or *ancillary activities*,
- (2) identifying a range of *land* sizes and locations suitable for different *industrial activities*, and their *operational needs* including land-extensive activities,
- (3) avoiding activities likely to result in *reverse sensitivity effects* on existing or potential⁹ *industrial activities* (particularly residential or retail activities except yard-based retail)¹⁰ unless the potential for reverse sensitivity is insignificant.

UFD-P7 – Rural areas

Ensure urban expansion and development do not inappropriately impact the use of *rural areas* for rural activities and activities that support rural activities by:

² 00204.005 Daisy Link

³ 00206.071 Trojan, 00411.086 Wayfare

⁴ 00139.260 DCC

⁵ 00139.260 DCC

⁶ 00401.013 Tussock Rise

⁷ 00206.071 Trojan, 00411.086 Wayfare

⁸ 00206.071 Trojan, 00411.086 Wayfare

⁹ 00213.043 Fonterra

¹⁰ 00139.261 DCC

- (X) only providing for urban expansion, rural lifestyle development and the establishment of activities that are sensitive to primary production and rural industry, in locations identified through strategic planning or zoned within *district plans* as suitable for such development, unless the criteria in UFD-P10 and Part 3.8(2) of the NPS-UD 2020 are met, and
- (Y) outside of areas identified in (X), providing for the ongoing use of *rural areas* for *primary production*, supported by *rural industry* in appropriate locations, and ensuring that other activities do not compromise the *natural and physical resources* that support the productive capacity, rural character, and long-term viability of the rural sector and rural communities.

UFD-P8 – Rural lifestyle zones

Ensure the establishment, development or expansion of rural lifestyle zones only occurs in appropriate locations by:

- (2) avoiding *land* identified for future urban development in a relevant plan or *land* reasonably likely to be required for its future urban development potential, where the rural lifestyle development would foreclose or reduce efficient realisation of that urban development potential, and
- (3) minimising impacts on existing *primary production* and *rural industry* and other rural activities,¹¹ rural production potential, *amenity values* and the potential for *reverse sensitivity effects* to arise in adjoining rural production zones.¹²

UFD-P9 – Iwi, hapū and whānau

Provide for the development, by mana whenua,¹³ of Native Reserves and *Te Ture Whenua Maori land*, for *papakāika*, *kāika*, *nohoaka*,¹⁴ *marae*, and *marae* related activities¹⁵.

UFD-P10 – Criteria for significant development capacity

Recognise that ‘significant development capacity’ is provided for where a proposed plan change affecting an *urban environment* meets all of the following criteria:

- (4) the proposal makes a significant contribution to meeting a need identified in a *Housing and Business Development Capacity Assessment*, or identified in quarterly monitoring required by Clause 3.9 of the NPS-UD 2020 for:
 - (a) housing of a particular price range or typology, particularly more affordable housing,
 - (b) business space or *land* of a particular size or locational type, or
 - (c) community or educational facilities, and
- (5) when considering the significance of the proposal’s contribution to a matter in (4), this means that the proposal’s contribution:
 - (a) is of high yield relative to either the forecast demand or the identified shortfall,

¹¹ 00236.103 Horticulture NZ, 00208.012 AgResearch, 00235.153 OWRUG, 00410.010 Rural Contractors NZ

¹² 00236.103 Horticulture NZ, 00208.012 AgResearch, 00235.153 OWRUG, 00410.010 Rural Contractors NZ

¹³ 0026.320 Kai Tahu ki Otago

¹⁴ 0026.320 Kai Tahu ki Otago

¹⁵ 0026.320 Kai Tahu ki Otago

- (b) will be realised in a timely (i.e. rapid) manner, including because infrastructure will be available,
- (c) is likely to be taken up, and
- (d) will facilitate a net increase in district-wide up-take in the short to medium term.

UFD – Urban form and development (*tracked version*)

Key

Appearance	Explanation
Any colour text with double strikethrough	Text recommended for deletion by Ms McEwan on behalf of Dunedin City Council
Black text with <u>double underline</u>	Text recommended for insertion by Ms McEwan on behalf of Dunedin City Council
Black text with no shading	Parts of the Proposed Otago Regional Policy Statement notified on 26 June 2021 that are not a freshwater planning instrument.
Black text with blue shading	Parts of the Proposed Otago Regional Policy Statement notified on 30 September 2022 that are a freshwater planning instrument and are shown here for information only.
<i>Black text with italicising</i>	Terms defined in the Proposed Otago Regional Policy Statement.
<u>Black text with underlining</u>	Additions recommended by Reporting Officers through the Section 42A Reports.
Black text with strikethrough	Deletions recommended by Reporting Officers through the Section 42A reports.
Red text with <u>underlining</u> or strikethrough	Additional amendments recommended in first statement of supplementary evidence where there has been no previous amendment to the 'as notified' provision text.
Brown text with <u>underlining</u> or strikethrough	Additional amendments recommended in second statement of supplementary evidence where there has been no previous amendment to the 'as notified' provision text.
Black text with <u>red underlining</u>	Text that was recommended to be deleted in s42A report but subsequently recommended to be retained ("un-deleted") by first statement of supplementary evidence.
Black text with <u>brown underlining</u>	Text that was recommended to be deleted in s42A report but subsequently recommended to be retained ("un-deleted") by second statement of supplementary evidence.
Red strikethrough with <u>black underlining</u> .	Text that was recommended to be inserted in s42A report (black underline) but subsequently recommended to be deleted by first statement of supplementary evidence (red strikethrough).
Brown strikethrough with <u>black underlining</u> .	Text that was recommended to be inserted in s42A report (black underline) but subsequently recommended to be deleted by first statement of supplementary evidence (brown strikethrough).
Brown strikethrough with <u>red underlining</u> .	Text that was recommended to be inserted in the first statement of supplementary evidence (red underline) but subsequently recommended to be deleted by second statement of supplementary evidence (brown strikethrough).

Objectives

UFD-O1 – Form and function of *urban areas*

~~The form and functioning of Otago's urban areas:~~

- ~~(1) reflects accommodate the diverse and changing needs and preferences of Otago's people and communities, now and in the future, and~~
- ~~(2) maintains or enhances the significant values and features identified in this RPS, and the character and resources of each urban area.~~
- (X) are liveable, safe, and well-designed to support social, cultural, and economic wellbeing, and
- (Y) have a compact and efficient form.

Explanation of changes

Changed UFD-O1 to:

- *make it more of an outcome statement*
- *remove clause 2, which is in conflict with clause 1 and NPS-UD Policy 6(b)*
- *include the high-level quality outcome from UFD-O2 (as clause X)*
- *add a clear urban form component (as clause Y)*

UFD-~~O2~~PX – Development of *urban areas*

Ensure that ~~the~~ development and change of Otago's urban areas is well-designed and accommodates the changing needs and preferences of Otago's people and communities, including by making planning decisions that:

- (1) improves housing choice, quality, and affordability,
- ~~(2) allows business and other non-residential activities to meet the needs of communities in appropriate locations,~~
- ~~(3) respects and wherever possible enhances the area's history, setting, and natural and built environment,~~
- ~~(4) delivers good urban design outcomes, and improves liveability,~~
- ~~(5) improves connectivity within urban areas, particularly by active transport and public transport,~~
- (6) minimises conflict between incompatible activities,
- ~~(7) manages the exposure of risk from natural hazards in accordance with the HAZ-NH Natural hazards section of this RPS,~~
- ~~(8) results in sustainable and efficient use of water, energy, land, and infrastructure,~~
- ~~(9) achieves integration of land use with existing and planned development infrastructure and additional infrastructure,~~
- (9A) and facilitates the safe and efficient ongoing use, maintenance, upgrade and development¹⁶ of

¹⁶ 00313.030 Queenstown Airport and 00314.050 Transpower (in part)

~~nationally significant infrastructure and¹⁷ regionally significant infrastructure,~~

(10) achieves consolidated, well designed and located, and sustainable development in and around existing urban areas as the primary focus for accommodating the region's urban growth and change, and

~~(11) is guided by the input and involvement of mana whenua, and provides for development opportunities which support the aspirations and values of mana whenua¹⁸.~~

(X) contribute to establishing or maintaining the qualities of a well-functioning urban environment.

Explanation of changes

Changed UFD-O2 to:

- Make it a policy to implement the new version of UFD-O1
- Remove clause 2 on non-residential activity as it is covered by UFD-P5, P6 & P7, as well as the defined term 'well-functioning urban environment' which is now included in new clause (X)
- Remove clause 4 on urban design, now covered by UFD-O1(X) and covered by clauses (10) and (X) of this new policy
- Remove clauses which address matters dealt with elsewhere in the pORPS, based on ORC's preferred approach of reading the pORPS as a whole and not cross-referencing (and that several of these matters are covered by the definition of 'well-functioning urban environment'):
 - Clause 3 (HCV chapter etc.)
 - Clause 5 (EIT-TRAN)
 - Clause 7 (HAZ-NH)
 - Clause 8 (LF-LS; EIT-EN; EIT-INF)
 - Clause 9 & 9A (EIT-INF)
 - Clause 10 (IM chapter)
- Remove reference to "well...located" in clause 10 because the location requirements are described later in the clause
- Add clause X to cover well-functioning urban environments (a defined term that contains additional details) rather than this being covered in intensification and urban expansion policies, which are recommended for deletion.

~~UFD-O3 Strategic planning~~

~~Strategic planning is undertaken in advance of significant development, expansion or redevelopment of urban areas to ensure that:¹⁹~~

~~(1) there is at least²⁰ sufficient development capacity supported by integrated infrastructure provision for Otago's housing and business needs in the short, medium and long term,~~

~~(2) development is located, designed and delivered in a way and at a rate that recognises and provides for locationally relevant²¹ regionally significant features and values identified by this RPS, and~~

¹⁷ Clause 16(2), Schedule 1, RMA

¹⁸ 00139.251 DCC

¹⁹ Clause 16(2), Schedule 1, RMA

²⁰ 00204.003 Daisy Link Garden Centres Limited, 00405.009 Glenpanel, 00402.012 Sipka Holdings, 00401.006 Tussock Rise

²¹ 00137.153 DOC

~~(3) the involvement of *mana whenua* is facilitated, and their values and aspirations are provided for.~~

Explanation of changes

Deleted UFD-O3 because:

- Requirements for strategic planning are set by the NPS-UD for Future Development Strategies and this does not need to be repeated (inconsistently) in the pORPS. Planning at a smaller scale than an FDS is unlikely to be strategic so does not need to be provided for under this objective.

UFD-O4 – Development in rural areas

Development in Otago's rural areas ~~occurs in a way that:~~ is primarily for rural activities and activities that support rural activities.

~~(1) avoids impacts on significant values and features identified in this RPS,~~

~~(2) avoids as the first priority, *highly productive land* and soils²² identified as highly productive by LF-LS-P19 unless there is an *operational need or functional need*²³ for the development to be located in rural areas,~~

~~(3) only provides for urban expansion, rural lifestyle and rural residential development and the establishment of *sensitive activities that are sensitive to primary production and rural industry*, in locations identified through strategic planning or zoned within *district plans* as suitable for such development, and~~

~~(4) outside of areas identified in (3), maintains and enhances *provides for the ongoing use of rural areas for primary production, supported by rural industry in appropriate locations,*²⁴ and *facilitates ensures that other activities that have an operational need or functional need to locate in rural areas, that will do not compromise*²⁵ the *natural and physical resources that support the productive capacity*, rural character, and long term viability of the rural sector and rural communities, and~~

~~(4A) provides for the use and development of land in rural areas by Kāi Tahu for *papakāika, kāika, nohoaka, marae, and marae related activities.*²⁶~~

²² 00322.0038 Fulton Hogan, 00236.099 Horticulture NZ

²³ 00414.003 Infinity, 00413.005 NZ Cherry Corp

²⁴ 00322.038 Fulton Hogan, 00410.007 Rural Contractors NZ (in part)

²⁵ 00236.099 Horticulture NZ

²⁶ 00226.310 Kāi Tahu ki Otago

Explanation of changes

Changed UFD-O4 to:

- Retain objective as a clearer outcome statement about development in rural areas (rather than move entirely to policy, as there would then be no objective for relevant policies)
- Remove clauses which address matters dealt with elsewhere in the pORPS, based on ORC's preferred approach of reading the pORPS as a whole and not cross-referencing:
 - Clause 2 (LF-LS)
- Moves clauses 3, 4, and 4A to Policy P7 on Rural areas as courses of action

~~UFD-O5 — Urban development and climate change~~

~~The impacts of climate change are responded to in the development and change of Otago's urban areas so that:~~

- ~~(1) the contributions of current communities and future generations to climate change impacts are reduced,~~
- ~~(2) community resilience increases,~~
- ~~(3) adaptation to the effects of climate change is facilitated,~~
- ~~(4) energy use is minimised, and energy efficiency improves, and~~
- ~~(5) establishment and use of small and community scale distributed electricity generation is enabled.~~

Explanation of changes

Deleted UFD-O5 because:

- Climate change is dealt with elsewhere in the pORPS (IM chapter; EIT-EN), based on ORC's preferred approach of reading the pORPS as a whole and not cross-referencing.

Policies

~~UFD-P1 — Strategic planning~~

~~Strategic planning processes, undertaken at an appropriate scale and detail, precede urban growth and development and:~~

- ~~(1) ensure integration of land use and infrastructure, including how, where and when necessary development infrastructure and additional infrastructure will be provided, and by whom,~~
- ~~(2) demonstrate at least sufficient development capacity supported by integrated infrastructure provision for Otago's housing and business needs in the short, medium and long term,~~
- ~~(3) maximise current and future opportunities for increasing resilience, adaptation to changing demand, needs, preferences and climate change,~~
- ~~(4) minimise risks from and improve resilience to natural hazards, including those exacerbated by climate change, while not increasing risk for other development,~~
- ~~(5) indicate how connectivity will be improved and connections will be provided within urban areas,~~
- ~~(6) provide opportunities for iwi, hapū and whānau involvement in planning processes, including~~

~~in decision making, to ensure provision is made for their needs and aspirations, and cultural practices and values,~~

~~(7) facilitate involvement of the current community and respond to the reasonably foreseeable needs of future communities, and~~

~~(8) identify, maintain and where possible, enhance important features and values identified by this RPS, and~~

~~(8A) identifies areas of potential conflict between incompatible activities and sets out the methods by which these are to be resolved.²⁷~~

Explanation of changes

Deleted UFD-P1 because:

- UFD-O3 on strategic planning has been deleted – see above for reasons.

UFD-P2 – Sufficiency of development capacity

Ensure that At least Sufficient²⁸ urban area housing and business development capacity is provided in urban areas, including any required competitiveness margin, is provided in the short, medium and long term including by:

~~(1) undertaking strategic planning in accordance with UFD P1~~

~~(2) identifying areas for urban intensification in accordance with UFD P3,~~

~~(3) identifying areas for urban expansion in accordance with UFD P4,~~

~~(4) providing for commercial and industrial activities in accordance with UFD P5 and UFD P6,~~

(5) responding to any demonstrated insufficiency in housing or business *development capacity* by increasing *development capacity* or providing more *development infrastructure* as required, as soon as practicable,

(X) including by being responsive to plan changes that demonstrate compliance with UFD-P10,²⁹ and

(6) requiring Tier 1 and Tier 2 urban environments to meet, at least, the relevant housing bottom lines in APP10.

Explanation of changes

Changed UFD-P2 to:

- Remove reference to competitiveness margin, as methodology for calculating capacity is set out in NPS-UD and partial replication is not helpful
- Remove references to other policies, as this adds no value
- Add reference to Tier 1 urban environments to future-proof the provisions in case the NPS-UD is amended so that Otago includes a Tier 1 urban environment in future.

²⁷ 00306.077 Meridian, 00322.039 Fulton Hogan, 00313.031 Queenstown Airport, 00235.150 OWRUG, 00236.100 Horticulture NZ, 00239.176 Federated Farmers, 00204.005 Daisy Link.

²⁸ “At Least” See General Submissions of 00211.047 LAC Properties Trustees, 00210.046 Lane Hocking, 00118.066 Maryhill Ltd, 00014.066 Mt Cardrona Station, 00209.046 Universal Developments

²⁹ 00204.005 Daisy Link

UFD-P3 – Urban intensification

~~Within Provide for intensification in urban areas intensification is enabled where, as a minimum, it:~~

- ~~(1) contributes to establishing or maintaining the qualities of a well functioning urban environment,~~
- ~~(2) is well served by existing or planned development infrastructure and additional infrastructure,~~
- ~~(2A) does not compromise the safe and efficient ongoing use of nationally significant infrastructure or regionally significant infrastructure,³⁰~~
- ~~(3) meets the greater of demonstrated demand for housing and/or business use or the level of accessibility provided for by existing or planned active transport or public transport,~~
- ~~(4) addresses an identified shortfall for housing or business space, in accordance with UFD-P2,~~
- ~~(5) addresses issues of concern to iwi and hapū, including those identified in any relevant iwi planning documents, and~~
- ~~(6) manages adverse effects on values or resources identified by this RPS that require specific management or protection.~~

Explanation of changes

Deleted UFD-P3 because:

- “Provide for” wording is highly problematic (refer to explanation in evidence)
- Clause 3 conflicts with NPS-UD policies on intensification (refer to explanation in evidence)
- The following clauses address matters dealt with elsewhere in the pORPS, based on ORC’s preferred approach of reading the pORPS as a whole and not cross-referencing:
 - Clause 2 & 2A (EIT-INF)
 - Clause 5 (IM chapter)
- The remaining clause (clause 1) is covered by UFD-PX (formerly UFD-O2 – see above)

~~UFD-P4 – Urban expansion~~

~~Expansion of existing urban areas is facilitated where, at minimum, the expansion:~~

- ~~(1) contributes to establishing or maintaining the qualities of a well functioning urban environment,~~
- ~~(1A) is identified by and undertaken consistent with strategic plans prepared in accordance with UFD-P1, or is required to address a shortfall identified in accordance with UFD-P2,³¹~~
- ~~(2) is logically and appropriately staged, and³² will not result in inefficient or sporadic patterns of settlement and residential growth,~~
- ~~(3) is integrated efficiently and effectively with development infrastructure and additional infrastructure in a strategic, timely and co-ordinated way,~~
- ~~(3A) does not compromise the safe and efficient ongoing use of nationally significant infrastructure and regionally significant infrastructure,³³~~
- ~~(4) addresses issues of concern to iwi and hapū, including those identified in any relevant iwi~~

³⁰ 00315.079 Aurora Energy, 00310.017 The Telecommunications Companies, 00313.032 Queenstown Airport (in part)

³¹ 00136.011 Minister for the Environment, 00413.006 NZ Cherry Corp, 00204.008 Daisy Link

³² 00139.258 DCC

³³ 00315.080 Aurora Energy, 00306.078 Meridian

~~planning documents,~~

~~(5) manages adverse effects on other values or resources identified by this RPS that require specific management or protection,~~

~~(6) avoids, as the first priority, highly productive land, identified in accordance with LF-LS P19,~~

~~(7) locates the new urban/rural zone boundary interface by considering:~~

~~(a) adverse effects, particularly reverse sensitivity, on existing activities in rural areas and existing or potential primary production³⁴ productive or rural industry³⁵ activities beyond the new boundary, and~~

~~(b) utilising³⁶ key natural or built barriers or physical features, significant values or features identified in this RPS, or cadastral boundaries that will result in a permanent, logical and defensible long term limit beyond which further urban expansion is demonstrably inappropriate and unlikely, such that provision for future development infrastructure expansion and connectivity beyond the new boundary does not need to be provided for, or~~

~~(c) reflects a short or medium term, intermediate or temporary utilising³⁷ zoning or infrastructure servicing boundary that reflects a short or medium term, intermediate or temporary limit,³⁸ where provision for future development infrastructure expansion and connectivity should not be foreclosed, even if further expansion is not currently anticipated.~~

Explanation of changes

Deleted UFD-P4 because:

- *Problematic 'facilitating' wording (refer to evidence for reasons)*
- *Clause 1 is now covered by UFD-PX (formerly UFD-O2 – see above)*
- *Clause 1A is better covered by UFD-P7*
- *Clause 2 is better covered in UFD-PX*
- *Clause 7 is better covered generally in UFD-P7 on rural areas*
- *Remaining clauses address matters dealt with elsewhere in the pORPS, based on ORC's preferred approach of reading the pORPS as a whole and not cross-referencing:*
 - *Clause 3 & 3A (EIT-INF)*
 - *Clause 4 (IM chapter)*
 - *Clause 6 (LF-LS)*

UFD-P5 – Commercial activities

Provide for commercial activities in urban areas by:

(1) enabling a wide variety and scale of commercial activities, social activities, recreational³⁹ and cultural activities to concentrate in central business districts city, metropolitan,⁴⁰ town centres

³⁴ 00208.010 AgResearch, 00213.040 Fonterra, 00322.040 Fulton Hogan,

³⁵ 00410.008 Rural Contractors NZ

³⁶ 00405.011 Glenpanel, 00402.014 Sipka Holdings

³⁷ 00405.011Glenpanel, 00402.014 Sipka Holdings

³⁸ 00221.014 Silver Fern Farms, 00405.011 Glenpanel, 00402.014 Sipka Holdings

³⁹ 00206.071 Trojan, 00411.086 Wayfare

⁴⁰ 00139.260 DCC

and commercial zoned⁴¹ areas, where appropriate, especially if they are highly accessible by public transport and or⁴² active transport,

- (2) enabling smaller local and neighbourhood centres, mixed use zones⁴³ and rural settlements to accommodate a variety of *commercial activities*, social, recreational activities⁴⁴ and cultural activities of a scale appropriate to service local community needs, and
- ~~(3) providing for the expansion of existing areas or establishment of new areas identified in (1) and (2) by first applying UFD-P1 and UFD-P2, and~~
- (4) outside the areas described in (1) and (2), ~~allow~~ provide for small scale retail and service activities, home occupations and *community services* to establish within or close to the communities they serve.

Explanation of changes

Change UFD-P5 to:

- *Moderate clause 1 so that a wide variety of commercial activities are provided for where appropriate, as some commercial and mixed use zones in the 2GP are bespoke zones that enable some commercial activities but not all, in response to the local context*
- *Delete clause 3 because it is covered by UFD-P2 and, as worded, could encourage an oversupply of commercial land which would detract from the 2GP centres hierarchy and maintaining vibrant centres and CBD*
- *Amend clause 4 to “provide for” rather than “allow for” because the latter implies permitted activities, whereas controlled or restricted discretionary activity status may be more appropriate to ensure adverse effects can be managed.*

UFD-P6 – Industrial activities

Provide for *industrial activities* in urban areas by:

- (1) identifying specific locations and applying zoning suitable for accommodating *industrial activities* and their reasonable needs and *effects* including supporting or *ancillary activities*,
- (2) identifying a range of *land* sizes and locations suitable for different *industrial activities*, and their *operational needs* including land-extensive activities,
- (3) ~~managing the establishment of non-industrial activities, in industrial zones, by~~⁴⁵ avoiding activities likely to result in *reverse sensitivity effects* on existing or potential⁴⁶ *industrial activities* (particularly residential or retail activities except yard-based retail);⁴⁷ unless the potential for reverse sensitivity is insignificant. or likely to result in an inefficient use of industrial zoned land or infrastructure, particularly where the area:⁴⁸
 - ~~(a) the area~~⁴⁹ ~~provides for a significant operational need for a particular industrial activity~~

⁴¹ 00139.260 DCC

⁴² 00401.013 Tussock Rise

⁴³ 00206.071 Trojan, 00411.086 Wayfare

⁴⁴ 00206.071 Trojan, 00411.086 Wayfare

⁴⁵ 00213.043 Fonterra

⁴⁶ 00213.043 Fonterra

⁴⁷ 00139.261 DCC

⁴⁸ 00510.064 The Fuel Companies

⁴⁹ 00510.064 The Fuel Companies

~~or grouping of industrial activities that are unlikely or are less efficiently able to be met in alternative locations, or~~

~~(b) the area⁵⁰ contains nationally significant infrastructure⁵¹ or regionally significant infrastructure and the requirements of EIT-INF-P15 apply, and~~

~~(4) in areas that are experiencing or expected to experience high demand from other urban activities, and the criteria in (3)(a) or (3)(b) do not apply, managing the establishment of non-industrial activities and only allowing for the transition of industrial zoned areas to other purposes, and the establishment of new areas⁵² by first applying (1) and (2).~~

Explanation of changes

Changed UFD-P6 to:

- Qualify the use of 'avoiding' in clause 3
- Remove clauses that address matters dealt with elsewhere in the pORPS, based on ORC's preferred approach of reading the pORPS as a whole and not cross-referencing:
 - Clause 3(b) as infrastructure is not an industrial activity and is covered by EIT-INF
- Delete clauses 3(a) and 4, and references to inefficient land use, so that transitioning of industrial areas to other uses is not provided for

UFD-P7 – Rural areas

~~Ensure urban expansion and development do not inappropriately impact the use of The management of rural areas~~ for rural activities and activities that support rural activities by:

~~(1) provides for the maintenance and, wherever possible, enhancement of important features and values identified by this RPS,~~

~~(X) only providing for urban expansion, rural lifestyle development and the establishment of activities that are sensitive to primary production and rural industry, in locations identified through strategic planning or zoned within district plans as suitable for such development, unless the criteria in UFD-P10 and Part 3.8(2) of the NPS-UD 2020 are met, and~~

~~(Y) outside of areas identified in (X), providing for the ongoing use of rural areas for primary production, supported by rural industry in appropriate locations, and ensuring that other activities do not compromise the natural and physical resources that support the productive capacity, rural character, and long-term viability of the rural sector and rural communities.~~

~~(2) outside areas identified in (1), maintains the productive capacity, amenity and character of rural areas, as places where people live, work and recreate and where a range of activities and services are required to support these rural functions, and provide for social and economic wellbeing within rural communities and the wider region.⁵³~~

~~(3) enables prioritises⁵⁴ land-based primary production food and fibre production primary~~

⁵⁰ 00510.064 The Fuel Companies

⁵¹ Clause 16(2), Schedule 1, RMA

⁵² 00226.317 Kai Tahu ki Otago

⁵³ 00235.152 OWRUG, 00015.032 Oceana Gold

⁵⁴ 00226.318 Horticulture NZ, Kai Tahu ki Otago, 00015.032 Oceana Gold, 00235.152 OWRUG, 00410.009 Rural Contractors NZ, 00016.024 Alluvium and Stoney Creek

production⁵⁵ particularly on land or soils within areas⁵⁶ identified as on highly productive land land⁵⁷ in accordance with LF-LS-P19,

~~(4) facilitates primary production,⁵⁸ rural industry and supporting activities and recognises:~~

~~(a) the importance of mineral and aggregate resources for the provision of infrastructure and the social and economic well-being of Otago's communities, and~~

~~(b) the requirement for mineral and aggregate activities to be located where those resources are present,~~

~~(5) directs rural residential and rural lifestyle development to areas zoned for that purpose in accordance with UFD-P8,~~

~~(5A) provides for the use by Kai Tahu of Native Reserves and Te Ture Whenua Maori land Māori Land, for papakāika, kāika, nohoaka, marae and marae related activities, and otherwise provides for Kai Tahu use of rural areas and the resources and values they contain,⁵⁹~~

~~(6) restricts the establishment of residential activities, sensitive activities, and non-rural businesses non-rural activities which could adversely affect, including by way of reverse sensitivity, or fragmentation, the productive capacity of highly productive land or existing or potential⁶⁰ primary production and rural industry activities, unless those sensitive activities are undertaken in accordance with UFD-P4, UFD-P8 or UFD-P9 as relevant,⁶¹ and~~

~~(7) otherwise limits the establishment of residential activities, sensitive activities, and non-rural businesses to those that can demonstrate:~~

~~(a) an functional need or⁶² operational need to be located in rural areas., and⁶³~~

~~(b) methods to avoid adverse effects, including by way of reverse sensitivity, on rural productive capacity and amenity values, or where avoidance is not practicable, remediation or mitigation, and⁶⁴~~

~~(7A) may place constraints on certain rural activities where necessary for the effective management of nationally significant infrastructure or regionally significant infrastructure.⁶⁵~~

Explanation of changes

Changed UFD-P7 to:

- Read as a course of action
- Include clauses 3-4 from UFD-O4 as general policy on urban development in rural areas (instead of clauses 2, 3 and 6) but include reference to UFD-P10 and Part 3.8(2) of the NPS-UD to give effect to NPS-UD Policy 8

⁵⁵ 00226.310 Kāi Tahu ki Otago and General Themes Section, in response to 00235.008 OWRUG

⁵⁶ 00236.102 Horticulture NZ, 00226.318 Kai Tahu ki Otago, 00015.032 Oceana Gold, 00235.152 OWRUG, 00410.009 Rural Contractors NZ, 00016.024 Alluvium and Stoney Creek

⁵⁷ 00236.102 Horticulture NZ, 00226.318 Kai Tahu ki Otago, 00015.032 Oceana Gold, 00235.152 OWRUG, 00410.009 Rural Contractors NZ, 00016.024 Alluvium and Stoney Creek

⁵⁸ 00226.310 Kāi Tahu ki Otago, and General Themes Section, in response to 00235.008 OWRUG and consequential to amendment to subclause 2

⁵⁹ 00226.310 Kāi Tahu ki Otago

⁶⁰ 0015.032 Oceana Gold

⁶¹ 00206.072 Trojan, 00411.135 Wayfare, 00402.016 & 00401.015 Sipka Holdings,

⁶² 00321.095 Te Waihangā

⁶³ 00231.091 Fish and Game, 00411.135 Wayfare, 00206.072 Trojan, 00321.095 Te Waihangā

⁶⁴ 00221.015 Silver Fern Farms

⁶⁵ 00321.095 Te Waihangā

- Remove clauses 3 -5 on non-urban activities in rural areas, as these are more appropriate for lower order plans
- Delete clause 5A as this is covered by UFD-P9 and the clause contains an unlimited reference to providing for Kai Tahu use of rural areas
- Remove clauses that address matters dealt with elsewhere in the pORPS, based on ORC's preferred approach of reading the pORPS as a whole and not cross-referencing:
 - Clause 7A (EIT-INF)

UFD-P8 – Rural lifestyle ~~and rural residential~~ zones

Ensure ~~the~~ establishment, development or expansion of rural lifestyle ~~and rural residential~~ zones only occurs in appropriate locations by ~~where~~:

- ~~(1) the land is adjacent to existing or planned urban areas and ready access to employment and services is available,~~
- (2) ~~despite the direction in (1), it~~⁶⁶ also avoids ing land identified for future urban development in a relevant plan or land reasonably likely to be required for its future urban development potential, where the rural lifestyle ~~or rural residential~~ development would foreclose or reduce efficient realisation of that urban development potential, and
- (3) minimises impacts on existing primary production and rural industry and other rural activities,⁶⁷ rural production potential, amenity values and the potential for reverse sensitivity effects to arise in adjoining rural production zones,⁶⁸
- ~~(4) avoids, as the first priority,~~⁶⁹ highly productive land, ~~identified in accordance with LF-LS-P169,~~⁷⁰
- ~~(5) the suitability of the area to accommodate the proposed development is demonstrated, including~~
 - ~~(a) capacity for servicing by existing or planned development infrastructure (including self-servicing requirements),~~
 - ~~(b) particular regard is given to the individual and cumulative impacts of domestic~~⁷¹ water supply, wastewater disposal, and stormwater management including self-servicing, on the receiving or supplying environment and impacts on capacity of development infrastructure, if provided, to meet other planned urban area demand, and
 - ~~(c) likely future demands or implications for publicly funded services including emergency services~~⁷² and additional infrastructure, and
 - ~~(d) does not compromise the safe and efficient ongoing use of nationally significant infrastructure or regionally significant infrastructure, and~~⁷³
- ~~(6) provides for the maintenance and wherever possible, enhancement, of important features and values identified by this RPS.~~

Explanation of changes

⁶⁶ Clause 16(2), Schedule 1, RMA

⁶⁷ 00236.103 Horticulture NZ, 00208.012 AgResearch, 00235.153 OWRUG, 00410.010 Rural Contractors NZ

⁶⁸ 00236.103 Horticulture NZ, 00208.012 AgResearch, 00235.153 OWRUG, 00410.010 Rural Contractors NZ

⁶⁹ 00121.102 Ravensdown, and 00413.008 NZ Cherry Corp, 00414.006 Infinity in part

⁷⁰ 00226.319 Kai Tahu ki Otago, 0235.153 QLDC, 00121.102 Ravensdown

⁷¹ 00219.019 FENZ

⁷² 00219.018 FENZ

⁷³ 00306.080 Meridian

Changed UFD-P8 to:

- Read as a course of action
- Remove remaining references to rural residential zones as recommended by Ms White
- Delete clause 1 requiring adjacency to urban areas
- Remove clauses that address matters dealt with elsewhere in the pORPS, based on ORC's preferred approach of reading the pORPS as a whole and not cross-referencing:
 - Clause 4 (LF/LS)
 - Clause 5 (EIT/INF)
- Delete Clause 5 also because requirements are too specific

UFD-P9 – Iwi, hapū and whānau

~~Provide for~~ Facilitate the development, by mana whenua,⁷⁴ of Native Reserves and *Te Ture Whenua* ~~Te Ture Whenua Māori~~ Māori land, for papakāika, kāika, nohoaka, and⁷⁵ marae, and marae related activities⁷⁶ ~~where existing or planned development infrastructure of sufficient capacity is or can be provided (including allowance for self-servicing systems).~~

Explanation of changes

Changed UFD-P9 to:

- Amend wording to 'Provide for'
- Remove the part about infrastructure, which is covered by provisions in EIT-INF
- Regarding the use of the newly defined term Māori land and other changes to related defined terms, I note that the implications of using broader terminology need to be carefully considered, given that it could broaden the extent and location of effects significantly. Implications include how to balance providing for development with managing environmental effects, and how Māori land can be identified so that people can understand what development/effects might arise on this land and how these might differ from other land. This matter will be addressed further in evidence from Mr Paul Freeland.

UFD-P10 – Criteria for significant development capacity

Recognise that 'significant development capacity' is provided for where a proposed plan change affecting an urban environment meets all of the following criteria:

- ~~(1) the location, design and layout of the proposal will positively contribute to achieving a well-functioning urban environment,~~
- ~~(2) the proposal is well connected to the existing or planned urban area, particularly if it is located along existing or planned transport corridors,~~
- ~~(3) required development infrastructure can be provided effectively and efficiently for the proposal, and without material impact on planned development infrastructure provision to, or reduction in development infrastructure capacity available for, other feasible, likely to be realised developments, in the short-medium term,~~
- (4) the proposal makes a significant contribution to meeting a need identified in a *Housing and Business Development Capacity Assessment*, or identified in quarterly monitoring required by

⁷⁴ 0026.320 Kai Tahu ki Otago

⁷⁵ 0026.320 Kai Tahu ki Otago

⁷⁶ 0026.320 Kai Tahu ki Otago

Clause 3.9 of the NPS-UD 2020 a shortage identified in monitoring for:

- (a) housing of a particular price range or typology, particularly more affordable housing,
 - (b) business space or *land* of a particular size or locational type, or
 - (c) community or educational facilities, and
- (5) when considering the significance of the proposal's contribution to a matter in (4), this means that the proposal's contribution:
- (a) is of high yield relative to either the forecast demand or the identified shortfall,
 - (b) will be realised in a timely (i.e. rapid) manner, including because infrastructure will be available,
 - (c) is likely to be taken up, and
 - (d) will facilitate a net increase in district-wide up-take in the short to medium term.

Explanation of changes

Changed UFD-P10 to:

- *Read as a course of action*
- *Remove merits-based clauses 1-3 to focus the provision squarely on significance of development capacity*
- *In clause 4, refer specifically to monitoring undertaken by local authorities in accordance with the NPS-UD to make it clear that monitoring by other parties is not a consideration*
- *In clause 5, add reference to infrastructure availability as this is critical to ensuring development capacity can be realised.*