

**BEFORE THE HEARING COMMISSIONERS
DUNEDIN**

IN THE MATTER of the Resource Management Act 1991
(**RMA or the Act**)

AND

IN THE MATTER of Proposed Otago Regional Policy
Statement (Non-Freshwater parts)

**REBUTTAL STATEMENT OF EVIDENCE OF LYNETTE WHARFE (PLANNING)
ON BEHALF OF HORTICULTURE NEW ZEALAND**

14 December 2022



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EXECUTIVE SUMMARY

1. This statement of rebuttal evidence addresses statements of evidence on the following matters:
 - (a) Air;
 - (b) Highly productive land;
 - (c) Urban Form and Development;
 - (d) Rural provisions;
 - (e) National Grid;
 - (f) Energy and Infrastructure; and
 - (g) Electricity Distribution Networks.

Air

2. I support in part the evidence on the Air provisions of:
 - (a) James Taylor on behalf of Dunedin City Council;
 - (b) Susannah Tait on behalf of Fonterra Ltd;
 - (c) Steve Tuck on behalf of Silver Fern Farms; and
 - (d) Carmen Taylor on behalf of Ravensdown Ltd.

Highly productive land

3. I oppose the recommended deletion of LF-LS-P19 in the evidence of Keith Frenz on behalf of Dunedin City Council.

Urban Form and Development

4. I oppose the evidence of Emily McEwan on behalf of Dunedin City Council which seeks to rewrite the urban form and development chapter to significantly amend the provisions for the rural area, including the addition of undefined 'rural activities'.

Rural provisions

5. I support changes sought to rural provisions in the evidence of Susannah Tait on behalf of Fonterra.
6. I oppose changes sought to the rural provisions in the evidence of Chris Ferguson on behalf of Darby Planning LP

and Others. In particular I oppose the changes he seeks to rural lifestyle provisions.

National Grid

7. I oppose in part changes sought by Ainsley McLeod on behalf of Transpower to provisions for the National Grid, in particular relating to EIT-INF-P15 and EIT-INF-M2 5 C).

Energy and Infrastructure

8. I support in part changes sought by Craig Barr on behalf of Queenstown Lakes District Council in respect of EIT-INF-P15.

Electricity Distribution Networks

9. I oppose changes sought by Megan Justice on behalf of the electricity distribution networks in respect of inclusion as regionally significant infrastructure but support new policies sought to better provide a consenting pathway for the distribution networks.

INTRODUCTION

Qualifications and experience

1. My name is Lynette Pearl Wharfe.
2. I have the qualifications and experience set out in my Statement of Evidence dated 23 November 2022.

Code of Conduct

3. I have been provided with a copy of the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note dated 1 December 2014. I have read and agree to comply with that Code. This evidence is within my area of expertise, except where I state that I am relying upon the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of evidence

4. This rebuttal statement responds to matters arising from:
 - (a) Chris Ferguson on behalf of Darby Planning LP and others;
 - (b) Keith Frentz on behalf of Dunedin City Council;
 - (c) Emily McEwan on behalf of Dunedin City Council;
 - (d) James Taylor on behalf of Dunedin City Council;
 - (e) Susannah Tait on behalf of Fonterra Ltd;
 - (f) Steve Tuck on behalf of Silver Fern Farms;
 - (g) Carmen Taylor on behalf of Ravensdown Ltd;
 - (h) Ainsley McLeod on behalf of Transpower NZ Ltd;
 - (i) Megan Justice on behalf of Aurora Energy Ltd, Network Waitaki Ltd and PowerNet Ltd; and
 - (j) Craig Barr on behalf of Queenstown Lakes District Council.

PLAN CHANGE PROVISIONS RELATING TO HORTICULTURE NEW ZEALAND

Chris Ferguson – UFD and rural provisions

5. Chris Ferguson on behalf of Darby Planning LP and Others has filed a statement of evidence that seeks changes relating to rural land, including rural lifestyle and how it is provided for in UFD-O4 and UFD-P7.
6. Mr Ferguson seeks a change to UFD-O4 Development in rural areas to limit the consideration to just 'urban development in rural areas' and deletion of directions for rural lifestyle to be in zoned areas.¹
7. I do not support the changes sought as it is not only 'urban development' that can compromise primary production activities in rural areas. For instance rural lifestyle development or commercial or industrial development can adversely affect primary production activities.
8. Mr Ferguson states that there is an absence of related definitions for rural lifestyle. The National Planning Standard Zone Framework Standard has a description for the Rural Lifestyle Zone:

Areas used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the General Rural or Rural Production Zones, while still enabling primary production to occur.
9. The focus on the National Planning Standard is on rural lifestyle being in a distinct zone, rather than 'pepper-potting' rural lifestyle development throughout the rural zones.
10. SRMR-14 in the pORPS addresses poorly managed urban and residential growth which affects productive land. The issue includes the effects of rural lifestyle development and identifies that where development occurs in a place or manner that removes or reduces the potential to use productive land, including reverse sensitivity effects, then the productive capacity of land is compromised.
11. In addition, the NPS Highly Productive Land also recognises In Policy 9 that reverse sensitivity effects should be managed to not constrain use of such land and 3.13 requires the avoidance if possible, or otherwise mitigation of any potential

¹ Statement of Evidence of Chris Ferguson on behalf of Darby Planning LP and Others, paragraphs 30-38.

reverse sensitivity effects arising from rural lifestyle development that could affect use of highly productive land.

12. It is my understanding that such reverse sensitivity effects are not limited to just highly productive land.
13. These provisions clearly articulate the potential for reverse sensitivity arising from rural lifestyle development and the provisions in the pORPS for the rural area seek to ensure that these effects do not occur.
14. UFD -O4 3) and UFD-P7 5) directing rural lifestyle development to areas zoned for that purpose is consistent with the approach in the National Planning Standards, the SRMR-14 and the NPSHPL, therefore I do not support the deletion of such directions.

Keith Frentz – HPL

15. Mr Keith Frentz for Dunedin City Council considers the architecture of the pORPS and an approach of not repeating in detail higher order planning documents.
16. Due to that approach he seeks that LF-LS-P19 relating to highly productive land be deleted as the criteria may be different from section 3.4 of the NPS-HPL. He also notes that Dunedin City Council did not submit on LF-LS-P19.²
17. In my evidence I have addressed the framework for highly productive land and incorporating the NPS-HPL into the pORPS, including changes that I seek to LF-LS-P19 and an interim framework until the mapping required by the NPSHPL has been undertaken.
18. Therefore given that the NPSHPL cannot be fully implemented through the pORPS it is important that LF-LS-P19 is retained until such time as full implementation of the NPSHPL is able to be incorporated into the ORPS.

Emily McEwan – UFD and rural provisions

19. Emily McEwan has filed a statement of evidence for Dunedin City Council that addresses provisions in the Urban Form and Development (**UFD**) chapter.

² Statement of Evidence of Keith Frentz on behalf of Dunedin City Council, paragraph 5.11.

20. Ms McEwan's evidence includes Annexure A which is a complete redrafting of the UFD provisions because she considers that topics addressed elsewhere in the pORPS should not be included in the UFD chapter and that the UFD chapter should clearly be on urban form and development.
21. In my evidence I identify similar concerns regarding incorporation or rural matters into the UFD chapter so support the need to rework the provisions.
22. However, Ms McEwan's rework weakens the provisions for the rural area including UFD-O4 and UFD-P7 and the removal of highly productive land from the UFD chapter.
23. Ms McEwan also seeks the deletion of non-urban activities from the UFD rural area as she considers that the activities do not logically sit in a chapter on urban form and development and is more appropriately fleshed out at district plan level.³
24. While I agree that there are structural issues relating to rural and non-urban matters in an urban form chapter, deleting such provisions in their entirety and relying on the district plan does not provide strategic direction in the RPS as to how rural areas will be managed.
25. Given the descriptions in the National Planning Standards for rural zones and the NPS Highly Productive Land it is important that the pORPS provides direction for district plans, including how non-urban activities in rural areas will be managed.
26. In the reworked provisions Ms McEwan uses the term 'rural activities' (UFD-O4, UFD-P7). Rural activities are not defined and it is unclear what are anticipated to be included as 'rural activities'. Such a change introduces uncertainty in the provisions and does not provide a clear direction as to how the rural areas will be managed.
27. Part of the tension and uncertainty in the UFD chapter arises because the 'rural areas' include more than the 'rural zones' where primary production is provided for. However the provisions in Ms McEwan's Annexure A do not assist in providing greater clarity in respect of the rural areas, so are not supported.

³ Statement of Evidence of Emily McEwan on behalf of Dunedin City Council, paragraph 64.

28. I do not support deletion of the non-urban provisions from UFD-O4 and UFD-P7 nor lessening the focus and direction on primary production activities in the rural areas.
29. Ms McEwan also seeks the deletion in UFD-P8 for rural lifestyle to be established in zones adjacent to existing or planned urban areas and avoiding highly productive land.
30. It is appropriate that the pORPS provides direction as to suitable location of rural lifestyle development and the impacts that this may have on primary production activities.
31. Therefore I support retention of UFD-P8, subject to an amendment sought in my evidence to UFD-P8 (3).

Susannah Tait – UFD and Rural provisions

32. Susannah Tait on behalf of Fonterra seeks a number of changes to the UFD provisions to strengthen the policy framework relating to rural areas.⁴
33. I generally concur with the changes sought, particularly in relation to reverse sensitivity and sensitive activities (UFD-O2 6), UFD -O3 4), UFD-O4, UFD-P7 and UFD-P8) as they are similar to the changes that I have sought in my evidence to ensure that rural production activities are adequately and appropriately provided for in the pORPS.

Air provisions

34. A number of statements of evidence address the air provisions and recommend a number of changes, many of which are similar.
35. These statements include:
 - (a) Steve Tuck for Silver Fern Farms;
 - (b) Susannah Tait for Fonterra;
 - (c) Carmen Taylor for Ravensdown; and
 - (d) James Taylor for Dunedin City Council.
36. Collectively these statements raise similar matters to those that I raised in my evidence relating to the air provisions:

⁴ Statement of Evidence of Susannah Tait on behalf of Fonterra, paragraph 12.2.

- (a) Amendments to AIR-O2;
- (b) Deletion of AIR-P4; and
- (c) New policy for location and separation from discharges to air.

AIR-O2

37. Mr Tuck considers that an unqualified 'protection against all adverse effects' and references to uncertain 'limits' in AIR-O2 sets a very restrictive pathway for the consenting of air discharges, even where the effects may be negligible and can be appropriately managed. He seeks a focus on avoiding, remedying or mitigating the adverse effects of discharges to air.⁵
38. Ms Tait also seeks amendments to AIR-O2 as 'protection' is not an appropriate threshold for an objective on the basis that the policies will establish the level of adverse effects that is appropriate, as protect is akin to 'avoid' which would effectively prohibit discharges to air.⁶
39. Ms Taylor for Ravensdown seeks the addition of 'localised' effects in AIR-O2.⁷
40. I concur with the points raised above in relation to AIR-O2 that demonstrate that the objective does not appropriately provide for activities that discharges to air, while all seeking slightly different wording.
41. To assist the hearing panel I would support Ms Tait's recommended wording with the addition of 'localised':

The localised adverse effects of discharges on human health, amenity values and mana whenua values and the life supporting capacity of ecosystems are appropriately managed.

AIR-P4

42. James Taylor considers that AIR-P4 is too directive as 'avoid', as a well located and managed offensive or objectionable air discharge may be the most appropriate solution and so

⁵ Statement of Evidence of Steve Tuck on behalf of Silver Fern Farms, paragraph 6.4.

⁶ Statement of Evidence of Susannah Tait on behalf of Fonterra, paragraphs 9.2 -9.5.

⁷ Statement of Evidence of Carmen Taylor on behalf of Ravensdown Ltd, paragraph 5.23.

seeks that AIR-P4 Avoiding certain discharges be deleted.⁸ This is consistent with the changes I sought in my evidence, so is supported.

New policy - location and separation of activities

43. Mr Tuck supports the intent of the new policy sought by HortNZ and proposes alternative wording:

Manage the establishment of new non-rural activities near existing activities which are permitted or consented to discharge to air.⁹

44. Ms Tait supports the new policy proposed by HortNZ and notes that the policy is not limited to reverse sensitivity effects but also sensitive activities as receivers and that it is appropriate that the pORPS addresses this matter.¹⁰
45. These statements concur with my evidence seeking the new policy and so I support them.

Ainsley McLeod – National Grid

46. Ainsley McLeod on behalf of Transpower NZ Ltd has filed evidence regarding the National Grid.
47. Ms McLeod generally supports the replacement EIT-INF-P15 but seeks refinements to give effect to Policy 10 and Policy 11 of the NPSET. She then sets out the amendments sought, with clause 8.61 b) being of particular relevance:¹¹

*The replacement of 'seeking to avoid' direction with 'avoid'. The 'seek to avoid' language appears to be borrowed from Policy 8 of the NPSET, but is not used in Policy 10 and 11 of the NPSET that require the management of activities to **avoid** reverse sensitivity effects, **ensuring** that the operation, maintenance, upgrade and development of the electricity transmission network is not compromised and the identification of a buffer corridor within which it can be expected that **sensitive activities will generally not be provided for**. I consider that these are strong directives that should be given effect to with an 'avoid' policy.*

48. Policy 10 does not seek an absolute 'avoid':

⁸ Statement of Evidence of James Taylor on behalf of Dunedin City Council, paragraphs 13-18.

⁹ Statement of Evidence of Steve Tuck on behalf of Silver Fern Farms, paragraphs 6.9-6.12.

¹⁰ Statement of Evidence of Susannah Tait on behalf of Fonterra, paragraphs 9.28-9.31.

¹¹ Statement of Evidence of Ainsley McLeod on behalf of Transpower NZ Ltd, paragraph 8.61.

*In achieving the purpose of the Act, decision makers must **to the extent reasonably possible** manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading and development of the electricity transmission network is not compromised.*

49. Ms McLeod's summary of Policy 10 does not include the limitation on the use of 'avoid'.
50. In my opinion, it is important that the limitations are reflected in a policy framework to give effect to the NPSET, so I do not support the use of the word 'avoid' as sought by Ms McLeod.
51. In my evidence (at paragraphs 220 – 235) I have sought an alternative policy for EIT-INF-P15 that I consider better reflects the NPSET.
52. Ms McLeod also seeks changes to EIT-INF-M2, in particular deletion of references to NZECP34:2001 Electrical Code of Practice for Electrical Safe Distances and the Electricity (Hazards from Trees) Regulations 2003 (prepared under the Electricity Act 1992).¹²
53. It is my understanding that the method has been amended as part of the suite of changes recommended in the Supplementary Statement of Mr Langman to better provide for electricity distribution, consistent with provisions in the Partially Operative ORPS.¹³
54. Ms McLeod does not support the addition as she considers that 'reference to the regulations is misleading because the protections Transpower seeks are not only derived from these relatively confined regulations'.¹⁴
55. However, I consider that the reference to the regulations is relevant and appropriate for the electricity distribution networks and also as a basis for district plans provisions for the National Grid. The method is also prefaced with 'where necessary', so it is not limited.
56. The district plan provisions that Transpower seek for the National Grid Yard may be wider than those provided for in NZECP34:2001 but the earthworks provisions are generally

¹² Statement of Evidence of Ainsley McLeod on behalf of Transpower NZ Ltd, paragraphs 8.75-8.77.

¹³ Otago Regional Council s42A Report Marcus Langman Supplementary Evidence EIT dated 11 October 2022.

¹⁴ Statement of Evidence of Ainsley McLeod on behalf of Transpower NZ Ltd, paragraph 8.77.

consistent and reference to NZECP34:2001 is also made in respect of some structures. So NZECP34:2001 is not irrelevant to the provisions that Transpower seeks for the National Grid.

57. If Transpower is concerned about the reference to NZECP34:2001 then the method could apply to 'electricity distribution' rather than 'electricity infrastructure' so that the National Grid is not limited by the method.
58. I consider that the method is part of a 'package' that Mr Langman has recommended for the electricity distribution network and should be retained. The method is also supported in the evidence of Ms Justice for the electricity distribution companies.

Megan Justice – Electricity distribution networks

59. Megan Justice on behalf of Aurora Energy Ltd, Network Waitaki Ltd and PowerNet Ltd presents evidence seeking changes to better enable the operation of the electricity distribution networks, be appropriately recognised in the pORPS, and be protected from potential adverse effects of other activities.¹⁵
60. Of particular concern is the status of the Significant Electricity Distribution Infrastructure (**SEDI**).
61. Ms Justice acknowledges the recommended changes by Mr Langman to specifically include provisions for electricity distribution similar to those in the Partially Operative ORPS, particularly EIT-EN-P10 and EIT-EN-M2 5C) and a definition for SEDI. Small changes are sought to those recommended additions.
62. The suite of changes recommended by Mr Langman have been implemented through district plans since being agreed as part of the ORPS 2019 process. Of note is that SEDI is not included as regionally significant infrastructure in the Partially Operative ORPS.
63. However, Ms Justice is seeking additional changes which extend beyond the previous agreement and Partially

¹⁵ Statement of Evidence of Megan Justice on behalf of Aurora Energy Ltd, Network Waitaki Ltd and PowerNet Ltd, paragraph 5.12.

Operative RPS, in particular the inclusion of SEDI as Regionally significant infrastructure (**RSI**).¹⁶

64. The reason behind this position appears to be related to the consenting pathway that being RSI would provide:

*Not including SEDI in the definition of RSI results in a more challenging consenting pathway for this infrastructure as there is less objective and policy support recognising the importance of this infrastructure.*¹⁷

65. There are a number of other submitters who also seek recognition of infrastructure as RSI and the consenting pathway is also a factor in such submissions, including:

- (a) Trojan Holdings and Wayfare Group seek the inclusion of ski area infrastructure to provide a consenting pathway;¹⁸
- (b) Waitaki Irrigators Collective Ltd seek inclusion of irrigation infrastructure;¹⁹
- (c) Queenstown Lakes District Council seek inclusion of landfills;²⁰ and
- (d) Dunedin City Council seek inclusion of roads which provide a lifeline connection for a community OR all road categories of the One Network Framework except for the categories 'local urban' and 'rural'.²¹

66. These submissions raise a range of issues with the criteria and reasons for RSI.

67. Mr Barr summarises his understanding of the criteria for the RSI framework and notes that if many activities could claim to be RSI it would render the policy framework for the wider pORPS and the Council's justification for RSI meaningless.²²

¹⁶ Statement of Evidence of Megan Justice on behalf of Aurora Energy Ltd, Network Waitaki Ltd and PowerNet Ltd, paragraph 7.1.

¹⁷ Statement of Evidence of Megan Justice on behalf of Aurora Energy Ltd, Network Waitaki Ltd and PowerNet Ltd, paragraph 7.10.

¹⁸ Statement of Evidence of Paul Anderson on behalf of Trojan Holdings and Wayfare Group, paragraph 6.

¹⁹ Statement of Evidence of Elizabeth Soal on behalf of the Waitaki Irrigators Collective Ltd, paragraph 28.

²⁰ Statement of Evidence of Craig Barr on behalf of Queenstown Lakes District Council, paragraph 3.1.

²¹ Statement of Evidence of James Taylor on behalf of Dunedin City Council, paragraphs 65-75.

²² Statement of Evidence of Craig Barr on behalf of Queenstown Lakes District Council, paragraph 3.8.

68. While inclusion as RSI may provide for an easier consenting pathway for infrastructure there are also other impacts on other parties arising from such inclusion, such as application of EIT-INF-P15, which need to be considered if RSI status is to be applied to other infrastructure.
69. I have some sympathy for the distribution networks who are seeking to ensure the future expansion, upgrade and renewal of the networks are not unnecessarily impeded.
70. The question that arises is whether inclusion as RSI is the most appropriate pathway to achieve that outcome.
71. Ms Justice has also sought new policies EIT-EN -PXX and EIT-EN-PXXA to create new electricity distribution specific effects management policies which would provide for management of the effects of electricity distribution infrastructure.
72. In my opinion, inclusion of these policies would provide for a clearer consenting pathway for the distribution networks and would negate the need for inclusion as RSI to ensure that a consenting pathway exists.
73. Therefore, I do not support inclusion of SEDI as RSI but do support inclusion of specific policies to provide a consenting pathway for the electricity distribution networks.
74. Ms Justice also seeks the addition of significant electricity distribution infrastructure in EIT-INF-P15 which currently provides for nationally significant infrastructure and regionally significant infrastructure.
75. I consider that the inclusion of EIT-EN-P10 provides for reverse sensitivity effects on electricity distribution activities and so SEDI does not need to be included in EIT-INF-P15.

Craig Barr – EIT

76. Craig Barr on behalf of Queenstown Lakes District Council has provided evidence on the Energy and Infrastructure sections of the pORPS. I have referred to his evidence above in respect of the status of RSI.
77. Mr Barr seeks changes to EIT-INF-P15 protecting nationally significant infrastructure and regionally significant infrastructure and identifies that using the NPSET as the basis

of the policy means that many other activities are encompassed in the definition.²³

78. This is a similar conclusion that I came to in my evidence (at paragraphs 220-235).
79. Mr Barr seeks changes to the recommended policy which have a similar intent to the changes I have sought. However I consider that the changes I have sought are preferable as being a more proportionate response to the issues.

CONCLUSIONS AND RECOMENDATIONS

80. I have supported and opposed a number of changes sought to provisions in the pORPS in evidence for a range of submitters.
81. I consider that the changes supported will better promote the sustainable management of natural and physical resources and appropriately provides for the social and economic wellbeing of the community.
82. Changes that I have opposed are because I do not consider that they will contribute or promote the wellbeing of the community and are not an efficient or effective use of resources and not the most appropriate way to achieve the purpose of the Act.

Lynette Wharfe

14 December 2022

²³ Statement of Evidence of Craig Barr on behalf of Queenstown Lakes District Council, paragraph 5.42