

Under the Resource Management Act 1991 (**RMA**)
In the matter of The Otago Regional Council Proposed Otago Regional Policy
Statement 2021

Submission by Dunedin City Council

Hearing Statement of Keith Frenz for Dunedin City Council
25 January 2023

Dunedin City Council solicitors:

Michael Garbett

Anderson Lloyd

Level 12, Otago House, 477 Moray Place, Dunedin 9016

Private Bag 1959, Dunedin 9054

DX Box YX10107 Dunedin

p + 64 3 477 3973

michael.garbett@al.nz

**anderson
lloyd.**

PEPEHA

Tēnā koutou whanau

Nga mihi ki te iwi o Kai Tahu

I a koutou, tēnei te mihi maioha i a koutou

E hore ahau i te Māori

Engari

No Tenemāka te Tipuna

Ko Whakamārama o Toi Moana te Kāinga

Ko Te Rangituanehu te Maunga

Ko Te Puna te awa

Kei te mahurangi te Maunga mē te Awa hoki ahau

Ko European tōku iwi

Ko Frentz tōku whanau

Ko Keith tōku ignoa

No reira

Tēnā koutou Tēnā koutou Tēnā koutou katoa

1. QUALIFICATIONS AND EXPERIENCE

- 1.1 My full name is Keith Frentz. My qualifications and experience are as set out in my primary brief of evidence dated 23 November 2022.

2. CODE OF CONDUCT

- 2.1 I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses (2023), and I agree to comply with it. I confirm that the issues addressed in this summary statement are within my areas of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

3. SCOPE OF STATEMENT

- 3.1 In my "General" section of evidence I addressed:
- (a) The useability of the pORPS (section 5 of my evidence)
 - (b) The use of the term avoid and the language used in the pORPS (section 6), and
 - (c) Cross-boundary and interpretation matters (section 7)

4. THE USEABILITY OF THE PORPS

- 4.1 I touched upon this matter in my Hearing Statement of 24 January and would reiterate that it is important that the pORPS is made as useable as possible. I have provided one possible solution to this but there may be others that suit Otago Region better.
- 4.2 The aim should, in my opinion, be to cross-reference the issues, objectives and policies so that there is a clear thread that the user can follow when they are working with a specific issue.

5. LANGUAGE AND THE USE OF THE TERM "AVOID"

- 5.1 As I state in my primary evidence language in a policy statement or plan is important and where practical the plain English version of a word or phrase is preferred.
- 5.2 As Mr Garbett has submitted in his opening the word "avoid", since the Supreme Court's King Salmon decision, has taken on a very directive meaning to the effect that unless there is a qualifier, for example, "except" or "unless", then the effect referenced must be avoided. This places some significant constraints on the "lower order" planning documents where there may be unintended consequences resulting from the need to avoid an outcome or effect.

- 5.3 The language used of “avoid as a first priority” or to “generally avoid” is unhelpful in enabling alternative (potentially better) approaches to be made in undertaking an activity.
- 5.4 I have addressed three policies in particular in my primary evidence, AIR-P4 – Avoiding certain discharges, EIT-EN-P5 – Non-renewable energy generation and EIT-TRAN-P21 – Operation of the transport system, and suggested alternative wording that would enable the lower order documents flexibility in addressing the issues identified in the policies.
- 5.5 The S42A Report has addressed a number of areas where directive language is used but there may be other policies that should also be addressed. I would suggest that a review of the use of directive language through the whole of the document is undertaken Based on the DCC general submission), so that a more considered and enabling approach can be implemented through the other Regional and District Plans.
- 5.6 In my opinion policy AIR-P4 may be deleted as it is in itself subject to the “higher order” NES on Air Quality as I addressed in my Hearing Statement dated 24 January 2023.
- 5.7 For completeness I provide my suggested wording to policies EIT-EN-P5 and EIT-TRAN-P21 below:

EIT-EN-P5 – Non-renewable energy generation

Avoid the development of Only allow non-renewable energy generation activities in Otago where:

- (a) the function of the proposed non-renewable energy activity is to provide back-up energy generation to support the resilience of land use activities*
- (b) it is not practicable to use renewable energy generation activities that provide the same function*
- (c) the system is designed to minimise the discharge of greenhouse gases and other contaminants or odour to the air.*

EIT-TRAN-P21 – Operation of the transport system

The efficient and effective operation of the transport system is maintained by:

- (1) avoiding or mitigating adverse effects of activities on the functioning of the transport system,*

- (2) ~~avoiding~~ or mitigating the ~~effects~~~~impacts~~ of ~~incompatible~~ activities on the operation of the transport system, including those that may result in reverse sensitivity effects,
- (3) ~~avoiding~~ managing the potential adverse effects of development that may forecloses ~~an~~ opportunities to adapt, upgrade or develop the transport system to meet future transport demand to enable that demand to be met,
- (4) ~~promoting~~ providing for the development and use of transport hubs that enable an efficient transfer of goods for transport and distribution across different freight and people transport modes by enabling the establishment of land use activities that support the establishment of such hubs,
- (5) ~~promoting~~ providing for methods that ~~provide~~ achieve more efficient and effective use of, or reduce reliance on, ~~private~~ motor vehicles, including ridesharing, car-sharing, park and ride facilities, bus hubs, bicycle facilities, demand management and alternative transport modes, and
- (6) ~~encouraging~~ enabling a shift to using renewable energy sources by facilitating the establishment of services and activities that enhance access to these energy sources.

6. PART 1 CROSS-BOUNDARY AND INTERPRETATION MATTERS

- 6.1 The main points I make in this section of my primary evidence are the use of language that is consistent with the “higher order” documents, in the specific case of the National Policy Statement for Freshwater and the inclusion of Regional landfills as Regionally Significant Infrastructure.
- 6.2 In particular I request that “waterway(s)” is replaced throughout the pORPS by the defined term “water body(ies)” to maintain consistency with the National Policy Statement.
- 6.3 With regard to regional landfills they remain the most effective and efficient means of managing MSW for the foreseeable future. A well-managed landfill is subject to consent conditions that control its operation and provide for the collection and treatment of leachate and air discharges. The alternative, potentially, is fly-tipping and illegal dumping.
- 6.4 In my opinion regional landfills are regionally significant infrastructure and they should be included in the definition in the pORPS as follows:

(14) lawfully established landfills for the disposal of Municipal Solid Waste

6.5 A consequential change may be that MSW should be defined. Therefore, I suggest the following definition:

Municipal Solid Waste (MSW) is waste collected by a Territorial Authority or disposed of at a Waste Transfer Centre or Resource Recovery Centre authorised by a Territorial Authority.



Keith Frenz

25 January 2023