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## **OPENING STATEMENT OF ELIZABETH JANE WHITE**

### **CHAPTER 15 – URBAN FORM AND DEVELOPMENT**

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1. This statement provides an update on my understanding of the key issues remaining in contention within Chapter 15 - Urban Form and Development (UFD) of the proposed Otago Regional Policy Statement 2021 (pORPS) since Mr Balderston prepared the section 42A report<sup>1</sup> and I prepared supplementary evidence<sup>2</sup> on this topic.
2. In my view, the outstanding issues, based on review of evidence presented by submitters to the hearings, can be grouped into several main themes:
  - 2.1 The relationship between the UFD chapter and other chapters;
  - 2.2 The approach taken to managing rural areas;
  - 2.3 The provisions relating to urban intensification and expansion;
  - 2.4 Some specific activity related issues; and
  - 2.5 Matters relating to the drafting approach across the chapter.
3. If I have not discussed an issue considered in the section 42A report or supplementary evidence, then I consider that either the issues have been resolved, or the remaining issues are not significant.

#### **Relationship between the UFD chapter and other chapters**

##### References to other parts, feature or values in the pORPS

4. Various provisions within the UFD Chapter refer to values and features identified in the pORPS.<sup>3</sup> There are also other provisions which refer to other specific provisions within other chapters.<sup>4</sup> The supplementary evidence<sup>5</sup> recommended

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<sup>1</sup> Chapter 15: UFD - Urban Form and Development (27 April 2022).

<sup>2</sup> Brief of Supplementary Evidence of Elizabeth Jane White, Urban Form and Development Chapter (11 October 2022); and Brief of Second Supplementary Evidence of Elizabeth Jane White, UFD - Urban Form and Development (Highly Productive Land) (21 October 2022).

<sup>3</sup> Including UFD-O1(2), UFD-O3(2), UFD-O4(1), UFD-P1(8), UFD-P3(6), UFD-P4(5), UFD-P7(1), UFD-P8(6), UFD-M1, UFD-M2 and UFD-E1.

<sup>4</sup> For example, UFD-O2(7) with respect to natural hazards.

<sup>5</sup> Brief of Supplementary Evidence of Elizabeth Jane White, Urban Form and Development Chapter (11 October 2022), para 10.

that the generic clauses referring to values and features be deleted to reflect the intent for the pORPS to be read as a whole and to avoid potential conflict between the more generic, and differing, references in the UFD chapter with the more specific direction across various other provisions. However, I did not recommend deletion of other specific provision references.

5. Mr Brass does not support the recommended deletions, as he considers that making links explicit assists with the usability and effectiveness of the pORPS.<sup>6</sup> Ms McEwan supports the deletions, but seeks that various provisions in the UFD chapter are further refined to remove all clauses that relate to matters addressed elsewhere in the pORPS, including the HCV, EIT-TRAN, EIT-EN, EIT-INF, HAZ-NH, LF-LS and IM chapters, so that it does not infer that the UFD provisions comprise a complete list of other considerations for urban development and that provisions elsewhere in the pORPS are less important.<sup>7</sup>

#### Effect of the NPS - HPL

6. Ms Boyd provided supplementary evidence updating recommendations made in section 42A reports impacted by the recent introduction of the National Policy Statement for Highly Productive Land 2022 (NPSHPL).<sup>8</sup> Various parties have commented on the revised provisions in the UFD chapter, either:
  - 6.1 Supporting the rewording proposed.<sup>9</sup>
  - 6.2 Seeking amendments to explicitly refer to the NPSHPL.<sup>10</sup>
  - 6.3 Seeking additions to direct avoidance of urban rezoning of highly productive land at the objective level in UFD-O3<sup>11</sup>, and in UFD-P1<sup>12</sup>; and avoidance of rural lifestyle zones on highly productive land.<sup>13</sup>
  - 6.4 Seeking deletion of provisions relating to highly productive land, relying instead directly on the NPSHPL.<sup>14</sup>

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<sup>6</sup> Murray Brass (Director-General of Conservation/ Tumuaki Ahurei) paras 238-252.

<sup>7</sup> Emily McEwan (Dunedin City Council) paras 22-26.

<sup>8</sup> Brief of Second Supplementary Evidence of Felicity Ann Boyd, LF – Land and Freshwater (Highly Productive Land) (21 October 2022).

<sup>9</sup> Susannah Tait (Fonterra) in relation to UFD-O4(2), para 12.14(b). Lynette Wharfe (Horticulture New Zealand), in relation to UFD-P4, paras 387-393, noting this is conditional on other amendments sought.

<sup>10</sup> Tim Ensor (Fulton Hogan) in relation to UFD-O4, paras 14-24.

<sup>11</sup> Lynette Wharfe (Horticulture New Zealand), paras 350-361.

<sup>12</sup> Lynette Wharfe (Horticulture New Zealand), paras 378-386.

<sup>13</sup> Susannah Tait (Fonterra) paras 12.34-12.35.

<sup>14</sup> Emily McEwan (Dunedin City Council) paras 17, 19(a) and 55-59.

6.5 Seeking further amendments on the basis that avoidance as a ‘first priority’ is considered to be more stringent than the NPSHPL.<sup>15</sup>

6.6 Exempting development of Māori land on highly productive land where provided for under MW-P4.<sup>16</sup>

### The enabling approach to the use of Māori land

7. I understand the definition of *Māori land* and the framework applying to it has been discussed in other hearings. I note the definition is relevant to the UFD Chapter because the following provisions rely on it:

7.1 UFD-P7(5A)<sup>17</sup>, which directs that rural areas are managed to provide for the use by Kai Tahu of Native Reserves and Māori Land, for papakāika, kāika, nohoaka, marae and marae related activities.

7.2 UFD-P9 which directs the facilitation of the development, by mana whenua, of Native Reserves and Māori land, for papakāika, kāika, nohoaka, marae, and marae related activities where existing or planned development infrastructure of sufficient capacity is or can be provided.

8 I note that Ms McIntyre seeks minor changes to UFD-O4(4A)<sup>18</sup> and the above policies so that the direction is to ‘enable’ such development;<sup>19</sup> while Ms McEwan prefers the term ‘provide for’.<sup>20</sup>

### **Management of rural areas**

#### Where rural provisions sit in the pORPS

9 The section 42A report identified that a number of submitters on the UFD chapter raised a general concern that ‘rural’ issues should not be in an ‘urban’ chapter and outlined why that approach has been taken.<sup>21</sup> Ms Wharfe continues to consider that rural matters should be contained in a separate chapter specific to the rural area, which in her view, is required by the National Planning Standards.<sup>22</sup>

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<sup>15</sup> Ainsley McLeod (Transpower) in relation to UFD-O4 and UFD-P4, paras 8.99-8.100 and 8.108.

<sup>16</sup> Sandra McIntyre (Kāi Tahu ki Otago) in relation to UFD-O4(2), UFD-P4(6) and UFD-P7(3), paras 34-36 and 157.

<sup>17</sup> Noting this clause is recommended to be added in the section 42A report, and is not from the notified pORPS.

<sup>18</sup> Noting this clause is recommended to be added in the section 42A report, and is not from the notified pORPS.

<sup>19</sup> Sandra McIntyre (Kāi Tahu ki Otago) paras 23-30, 163 and Appendix 1.

<sup>20</sup> Emily McEwan (Dunedin City Council) page 35.

<sup>21</sup> Chapter 15: UFD - Urban Form and Development (27 April 2022), section 15.8.

<sup>22</sup> Lynette Wharfe (Horticulture New Zealand) paras 323-333.

Ms McEwan prefers that aspects of the rural-based provisions which address non-urban activities be deleted, as in her view they do not logically sit in the chapter and should be left to the district plan level to manage.<sup>23</sup> Ms Wharfe disagrees with Ms McEwan, as she considers the deletions would not provide necessary strategic direction in the pORPS on how rural areas are to be managed.<sup>24</sup>

- 10 In my view, a key question for the Panel is whether there is anything to be gained by shifting the rural-focussed provisions, given the need to give effect to the pORPS as a whole, regardless of where provisions are located.

#### The management of reverse sensitivity between rural activities and other activities

- 11 Several changes were recommended in the section 42A report to address concerns in submissions about how reverse sensitivity is managed. While this seems to have gone some way to addressing submitters' concerns, Ms Wharfe, Mr Ensor and Ms Tait support further changes to a number of provisions,<sup>25</sup> which generally seek to strengthen the direction by requiring avoidance of/protection from reverse sensitivity impacts.<sup>26</sup> Related to this, Ms Wharfe also continues to consider that activities in rural areas should be required to have an operational or functional need to locate there.<sup>27</sup>

#### The approach to rural lifestyle development

- 12 Mr Brown and Mr Ferguson have concerns that the direction in the pORPS is too restrictive, in terms of directing rural lifestyle development to areas identified through strategic planning or zoned for that purpose (UFD-O4(3) and UFD-P7(5)); and (for Mr Brown) requiring such zones to be located adjacent to existing or planned urban areas (UFD-P8(1)). They are ultimately concerned that such direction would prevent the ability for rural lifestyle development in areas where they consider it may be appropriate (including outside of specific Rural Lifestyle zones), and does not sufficiently take into account other constraints which may preclude such development, or the drivers for demand for such living opportunities.<sup>28</sup> Mr Brown and Ms McEwan also raise concerns that there is a

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<sup>23</sup> Emily McEwan (Dunedin City Council) paras 61-64.

<sup>24</sup> Lynette Wharfe – Rebuttal (Horticulture New Zealand) paras 19-28.

<sup>25</sup> Including UFD-O2, UFD-O3, UFD-O4, UFD-P1, UFD-P4, UFD-P7, UFD-P8 and UFD-M2.

<sup>26</sup> Lynette Wharfe (Horticulture New Zealand), paras 343-426 and 403-412; Susannah Tait (Fonterra) paras 12.3-12.7, 12.16-12.19, 12.34 and 12.37; Tim Ensor (Fonterra) paras 25-35.

<sup>27</sup> Lynette Wharfe (Horticulture New Zealand), paras 362-377.

<sup>28</sup> Jeff Brown (Waterfall Park Developments/Boxer Hill Trust), paras 2.2 – 2.14, 3.1-3.6 and 4.1-4.2. Chris Ferguson (Darby Planning LP & Others), paras 30-38.

conflict between the requirement to locate close to existing or planned urban areas (UFD-P8(1)) and the requirement to also avoid locations that are or likely to be used for urban expansion (UFD-P8(2)).<sup>29</sup>

- 13 Ms Tait seeks changes to UFD-O4(3) and (4) to direct avoidance of rural lifestyle development where it does not compromise those matters currently set out in clause (4), rather than requiring it to be directed to strategically identified areas or specific zones.<sup>30</sup>
- 14 Ms McEwan supports deletion of UFD-P7(5) so that pressure for inappropriate rural lifestyle development adjacent to urban areas is avoided.<sup>31</sup>
- 15 Ms Simpson agrees with allowing for consideration of non-adjacent areas, but considers that rather than deleting UFD-P8(1), additional direction should be included in relation to where non-adjacent development may be appropriate.<sup>32</sup> She is also concerned that the specific changes sought by Mr Ferguson to UFD-O4(3) would reframe the objective to essentially allow for urban development in rural areas.<sup>33</sup>
- 16 Conversely, Ms Wharfe supports the current direction in relation to rural lifestyle development, on the basis that it better manages the potential for such development to adversely affect primary production activities in rural areas and therefore opposes the deletion of the rural lifestyle provisions.<sup>34</sup>

### **Urban intensification and expansion**

- 17 Ms Tait seeks changes to UFD-O4(3) and (4) so that the objective does not relate to urban expansion, which she considers is addressed elsewhere.<sup>35</sup> Ms Simpson does not agree with Ms Tait's reframing of the objective, as in her view this would result in no clear objectives or policies for urban expansion into rural areas.<sup>36</sup>
- 18 Ms McEwan considers that UFD-P3 and UFD-P4 should be deleted.<sup>37</sup> My understanding is that her main concern is that these policies are worded in such

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<sup>29</sup> Jeff Brown (Waterfall Park Developments/Boxer Hill Trust), para 2.9; Emily McEwan (Dunedin City Council) para 79.

<sup>30</sup> Susannah Tait (Fonterra) para 12.14(e).

<sup>31</sup> Emily McEwan (Dunedin City Council) paras 77-82.

<sup>32</sup> Elizabeth Simpson – Rebuttal (Queenstown Lakes District Council), paras 3.1-3.7.

<sup>33</sup> Elizabeth Simpson – Rebuttal (Queenstown Lakes District Council), paras 4.1-4.6.

<sup>34</sup> Lynette Wharfe – Rebuttal (Horticulture New Zealand) paras 5-14 and 29-31.

<sup>35</sup> Susannah Tait (Fonterra) para 12.14(e).

<sup>36</sup> Elizabeth Simpson – Rebuttal (Queenstown Lakes District Council), paras 6.7-6.12.

<sup>37</sup> Emily McEwan (Dunedin City Council) paras 43-46.

a way that they could be interpreted as meaning urban intensification and expansion must be provided for/facilitated if the criteria in the policies are met. She also considers that UFD-P6 should not provide any pathway for the transition of industrial areas to other uses.<sup>38</sup>

- 19 Ms McIntyre recommends an amendment to UFD-P4 to require consideration of effects relating to water supply, wastewater and stormwater provision when planning urban expansion. She considers this is necessary to ensure that planning for urban development takes into account the pressures on water bodies and the potential effects of discharges.<sup>39</sup>

### Activity specific matters

- 20 Ms Tait seeks that a number of provisions within the UFD Chapter<sup>40</sup> are extended to include reference to *regionally significant industry*, with a definition of this term being added to the pORPS. She considers it appropriate for the pORPS to provide for such industry, particularly in terms of protecting it from inappropriate urban encroachment.<sup>41</sup> Ms Simpson is concerned that Ms Tait's approach is a blunt way to manage reverse sensitivity effects and considers that justification for including direction on regionally significant industry is not the same as that for infrastructure.<sup>42</sup> In particular, she does not consider it to be something that should be required to be adopted for all local authorities through direction in the pORPS.
- 21 More broadly, Ms Tait also seeks additions to UFD-O3 to ensure that strategic planning decisions also consider "*Effects on rural activities and communities are managed, having particular regard to the level of investment already in place on rural land.*"<sup>43</sup> Ms Simpson opposes this, citing concerns over how councils can understand investment levels and that the amendment would prioritise investments over other matters specific in UFD-P7 and larger trade competitors over smaller ones.<sup>44</sup>
- 22 Ms McLeod requests that the clause relating to nationally and regionally significant infrastructure recommended in relation to urban areas (UFD-O2(9A))

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<sup>38</sup> Emily McEwan (Dunedin City Council) paras 47-52.

<sup>39</sup> Sandra McIntyre (Kāi Tahu ki Otago) para 159.

<sup>40</sup> Including UFD-O2, UFD-P3, UFD-P4, UFD-P7, UFD-P8 and UFD-M2(3).

<sup>41</sup> Susannah Tait (Fonterra) para 3.1, Section 4, paras 12.6-12.7, 12.23-12.26, 12.30-12.32, 12.34 and 12.37(b).

<sup>42</sup> Elizabeth Simpson – Rebuttal (Queenstown Lakes District Council), paras 6.1-6.3.

<sup>43</sup> Susannah Tait (Fonterra) paras 12.8 – 12.11.

<sup>44</sup> Elizabeth Simpson – Rebuttal (Queenstown Lakes District Council), paras 6.4-6.6.

is replicated in the objective relating to rural areas (UFD-O4) so that it is clear that important infrastructure is anticipated in rural areas.<sup>45</sup>

- 23 Mr Farrell seeks changes to enable outdoor recreation (including commercial recreation), and to facilitate the growth and expansion of existing visitor destinations and activities in rural areas.<sup>46</sup> Ms Simpson opposes this as she considers that UFD-P7 does not preclude these activities, and instead appropriately directs that they are managed in a way that does not adversely affect primary production or rural industry activities.<sup>47</sup>

### **Drafting approach across the UFD chapter**

- 24 Ms McEwan's evidence includes a substantial redraft of the UFD chapter.<sup>48</sup> Without traversing the detail for all the changes, and in addition to the matters discussed above, two other key themes in her evidence relate to:

24.1 rationalising the provisions so that the objectives are shorter and more focussed on the outcome sought, with aspects of the current drafting moved to the policy level, and excessive detail being removed;<sup>49</sup> and

24.2 deleting provisions, which relate to or overlap with matters addressed in the NPSUD, where they do not 'add value', including deletion of the strategic planning requirements (UFD-O3 and UFD-P1) in their entirety.<sup>50</sup>

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Liz Jane White

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14 February 2023

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<sup>45</sup> Ainsley McLeod (Transpower) para 8.101.

<sup>46</sup> Ben Farrell (Fish & Game, Wayfare/NZSki, Trojan/Realnz) paras 120-122.

<sup>47</sup> Elizabeth Simpson – Rebuttal (Queenstown Lakes District Council), paras 7.1-7.4.

<sup>48</sup> Emily McEwan (Dunedin City Council) Annexure A.

<sup>49</sup> Emily McEwan (Dunedin City Council) para 10(c) and 34-39.

<sup>50</sup> Emily McEwan (Dunedin City Council) paras 27-33.

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