

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

**Submission by Dunedin City Council**

---

**Memorandum of Emily Kate McEwan for Dunedin City Council**  
21 April 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.**

## **1. Introduction**

- 1.1 This memorandum responds to Ms White's rewrite of pORPS Chapter 15 – Urban Form and Development dated 30 March 2023 (as directed by the Panel in Minute 7).
- 1.2 Overall, Ms White's rewrite has made substantial improvements to Chapter 15 including in response to Dunedin City Council's (**DCC's**) submission and my earlier evidence. The deletion of UFD-P8(1) requiring rural lifestyle zones to be adjacent to urban areas and the streamlining of the objectives are particularly appreciated.
- 1.3 However, I consider there are still two outstanding issues that must be addressed due to their implications for the management regime in the Dunedin City Second Generation District Plan (2GP). These issues are:
- (a) Providing a pathway for the transition of industrial land to other uses in UFD-P6
  - (b) Use of unqualified 'avoid' provisions in UFD-P6(3) and UFD-P8(3).
- 1.4 While other outstanding issues have also been identified (i.e., duplication of and conflict with the NPS-UD, duplication of content found elsewhere in the pORPS, and remaining excessive detail), these issues are less critical to the implementation of the 2GP. Therefore, I have not provided additional commentary on these matters but note they were addressed in my earlier evidence.

## **2. Outstanding Issue 1: Transition of industrial land to other uses (UFD-P6)**

- 2.1 Clauses (3) and (4) of UFD-P6 still enable the vibrancy of commercial centres to be undermined by enabling commercial activity to move into industrial zoned areas. Therefore, clause (4) should be deleted, and clause (3) amended.
- 2.2 Other details of concern are the reference in clause (4) to the criteria in (3)(a), which is not clear 'who' decides whether those criteria apply (e.g., a proponent of a non-industrial activity?). The reference also no longer makes sense with the proposed reworking of clause (3) into a single statement.
- 2.3 In clause (3), the retention of the reference to activities "likely to result in an inefficient use of industrial zoned land or infrastructure" is problematic given the opening words of clause (3). If the reference is kept, the opening words should specify "non-industrial" activities. Otherwise, arguments could be made that a non-industrial activity is a more efficient use of land than an industrial activity.

### 3. Outstanding Issue 2: Unqualified 'avoid' provisions

- 3.1 UFD-P6(3) and UFD-P8(3) use 'avoid' clauses that should be qualified or removed.
- 3.2 The first instance in UFD-P6 (3) regards activities in industrial zones: "avoiding activities likely to result in reverse sensitivity effects...". My primary evidence sought qualification of this clause by addition of "unless the potential for reverse sensitivity is insignificant". I still request this change; otherwise even insignificant reverse sensitivity effects would effectively prohibit an activity. This request is consistent with 2GP Objective 19.2.1<sup>1</sup>.
- 3.3 The second instance is in UFD-P8 (3) on rural lifestyle where a new 'avoid' has been added in response to evidence from Ms Wharfe: "and avoids the potential for reverse sensitivity effects to arise in adjoining rural production zones". This test is very strict as it would effectively prohibit any activity that has *any potential* for reverse sensitivity effects. It also does not make sense when read together with the first part of the clause which uses much less strict wording: "it minimises impacts on existing...activities...". In this instance I do not support the use of "avoid", especially unqualified. This request is consistent with 2GP Objective 16.2.2<sup>2</sup>.

**Emily Kate McEwan**

Senior Planner

Dunedin City Council

21 April 2023

---

<sup>1</sup> 2GP Objective 19.2.1:

*The industrial zones enable and protect industrial and port activities by:*

- a. *only providing for a very limited range of specified non-industrial or non-port activities; and*
- b. *ensuring the potential for reverse sensitivity is insignificant.*

<sup>2</sup> 2GP Objective 16.2.2:

*The potential for conflict between activities within the rural zones, and between activities within the rural zones and adjoining residential zones, is minimised through measures that ensure:*

- a. *the potential for reverse sensitivity in the rural zones is minimised;*
- b. *the residential character and amenity of adjoining residential zones is maintained; and*
- c. *a reasonable level of amenity for residential activities in the rural zones.*