
Under	the Resource Management Act 1991 (RMA)
In the matter of	an appeal under Clause 14(1), First Schedule of the RMA in relation to the proposed Otago Regional Policy Statement
Between	Dunedin City Council Appellant
And	Otago Regional Council Respondent

Notice of Appeal

7 December 2016

Appellant's solicitors:

Michael Garbett
Anderson Lloyd
Level 10, Otago House, 477 Moray Place, Dunedin
Private Bag 1959, Dunedin 9054
DX YX 10107, Dunedin
p + 64 3 467 7173 | f + 64 3 477 3184
michael.garbett@al.nz

**anderson
lloyd.**

To: The Registrar
Environment Court
Christchurch

- 1 Dunedin City Council (**DCC**) appeals against parts of the decisions of the Otago Regional Council (**ORC**) on the proposed Otago Regional Policy Statement (**pORPS**).
- 2 DCC made a submission¹ and further submissions on the pORPS².
- 3 DCC is not a trade competitor for the purpose of section 308D of the RMA.
- 4 DCC received notice of the decision on or about 1 October 2016.
- 5 The references to provisions in the pORPS are references to the ORC decisions version³.

Decisions appealed

- 6 The parts of the decision that DCC is appealing relate to:
 - (a) General Matters⁴;
 - (b) Part C Implementation – Integrated Management⁵;
 - (c) Section 3 – Land and Soil⁶, Landscapes Seascapes and Natural Features⁷, and Coastal Environment⁸;
 - (d) Section 4 – Climate Change⁹, Natural Hazards¹⁰, Development¹¹, and Infrastructure and Lifelines¹²;
 - (e) Section 5 – Public Access¹³, and Historic Heritage¹⁴; and

¹ Dated 28 July 2015 (Submission 156)

² Dated 25 September 2015 (Further Submission 1035)

³ Proposed Regional Policy Statement for Otago, Incorporating Council Decisions (Clean Version) 1 October 2016

⁴ See the **Attached Table** at appeal points 1 to 7

⁵ See the **Attached Table** at appeal point 8

⁶ See the **Attached Table** at appeal points 9 to 11

⁷ See the **Attached Table** at appeal points 12 to 14

⁸ See the **Attached Table** at appeal points 18 to 21

⁹ See the **Attached Table** at appeal point 15

¹⁰ See the **Attached Table** at appeal points 16 to 17

¹¹ See the **Attached Table** at appeal points 22 to 25

¹² See the **Attached Table** at appeal points 27 to 29

- (f) Sections 3, 4, 5, 6 and 9 – Waste Contamination and Hazardous Substances¹⁵.

Reasons for appeal

- 7 DCC's reasons for each appeal point are set out in the **Attached Table**¹⁶.

Relief sought

- 8 DCC seeks the relief that is set out in the **Attached Table** in relation to each appeal point,¹⁷ or such other relief as may be appropriate to give effect to DCC's appeal; and
- 9 Costs.

Attachments

- 10 The following documents are **attached** to this notice:
- (a) The **Attached Table** setting out the appeal points, the reasons for the appeal, and the relief sought by DCC;
 - (b) A copy of DCC's submission and further submissions on the pORPS;
 - (c) A copy of the decision of the ORC on the pORPS; and
 - (d) A list of names and addresses of persons to be served with a copy of this notice.

Dated this 7th day of December 2016



Michael Garbett
Counsel for the Appellant

¹³ See the **Attached Table** at appeal point 26

¹⁴ See the **Attached Table** at appeal point 30

¹⁵ See the **Attached Table** at appeal points 31 to 40

¹⁶ Under the heading "Reason for the decision DCC seeks"

¹⁷ Under the heading "What decision the DCC wants"

Address for service of the Appellant

Anderson Lloyd
Level 10, Otago House, 477 Moray Place, Dunedin 9016
Private Bag 1959, Dunedin 9054
DX YX10107, Dunedin
p + 64 3 467 7173 | f + 64 3 477 3184
michael.garbett@al.nz

Contact person: Michael Garbett

Advice to recipients of copy of notice*How to become party to proceedings*

You may be a party to the appeal if,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the Appellant's submission and further submission or the decisions appealed. These documents may be obtained, on request, from the Appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Christchurch.

Attached Table

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
General matters			
1	Use of the term Avoid which appears in the following policies:	For all the policies mentioned below amend "avoid" as follows:	<p>DCC has submitted on the use of the term "avoid". Firstly, DCC oppose this style of directive policy in an RPS. Policies of the RPS should be directed to set up methods not setting benchmark outcomes in terms of acceptable levels of effects, especially in terms of the need to "avoid" all effects, which in most cases can only be achieved by having no activity whatsoever for example: even a walking track or pest control activities could be argued to have some (albeit likely minor) adverse effect on the values of an outstanding landscape. The DCC considers that the RPS should set out the areas where rules or other methods are required and the objectives that those rules must achieve in terms of regionally significant issues.</p> <p>The DCC highlights that in light of the King Salmon decision it may be difficult to give full effect to the RPS if</p>
	Policy 3.2.4 ¹⁸ at para a)	<p>Policy 3.2.4 Managing outstanding natural features, landscapes and seascapes</p> <p>Protect, enhance and restore outstanding natural features, landscapes and seascapes, by all of the following:</p> <p>a) <u>Appropriately managing activities that may have Avoiding</u> adverse effects on those values which contribute to the significance of the natural feature, landscape or seascape;</p>	
	Policy 3.2.9 ¹⁹ at para a)	Policy 3.2.9 Managing the outstanding	

¹⁸ Also see Appeal points 13 and 14

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>natural character of the coastal environment</p> <p>Preserve or enhance the outstanding natural character of the coastal environment, by all of the following:</p> <p>a) <u>Appropriately managing activities that may have</u> Avoiding adverse effects on those values which contribute to the outstanding natural character of an area;</p>	<p>the term "avoid" is used in the context of policies. The DCC acknowledges that the term "avoid" may be effective where it relates to a policy supporting the prohibition of a specific type of activity in a specific situation where it is known that effects (individually or cumulatively) can never be managed in way that achieves the objectives, such as 'Avoid the discharge from untreated effluent into waterways'. While our preference is for the policies to direct the establishment of methods rather than setting benchmarks for acceptable levels of effects, if the latter approach is to be used it should be only used in the context of "significant" effects in areas of identified special value as in Policy 3.2.16</p> <p>The DCC considers that for Policies 3.2.4.and 3.2.9 that use of the word "avoiding" elevates protection of important section 6 and 7 values at the expense of enablement of community economic and social wellbeing, by precluding consideration of activities that might have minor effects</p>
	Policy 4.1.6 ²⁰	<p>Policy 4.1.6 Avoiding increased natural hazard risk</p> <p>Manage natural hazard risk to people and communities by both:</p> <p>a) Avoiding <u>Appropriately managing</u> activities that significantly increase risk including</p>	

¹⁹ Also see Appeal point 20

²⁰ See also Appeal point 16

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>displacement of risk off-site; and</p> <p>b) Avoiding <u>Appropriately managing</u> activities that increase risk in areas potentially affected by coastal hazards over at least the next 100 years.</p>	<p>and/or would provide significant offsetting positive effects. This in itself does not promote sustainable management in terms of the purpose of the Act.</p> <p>Similarly, in terms of Policy 4.1.6, while the NZCPS uses the word "avoid" this is in the context of "the risk of social, environmental and economic harm from coastal hazards". The RPS as worded does not give effect to the NPS as it ignores and does not give effect to Policy 25 as a whole which also says "encourage redevelopment, or change in land use, where that would reduce the risks of adverse effects... and designing for relocatability...".</p> <p>It is overly onerous to avoid activities that increase risk in areas potentially affected by coastal hazards over at least the next 100 years. This could be interpreted to mean that the DCC would be required to prohibit any new development or infrastructure in large parts of Dunedin including South Dunedin and many coastal communities. Whereas under the NZCPS a redevelopment that results in replacement housing that is more resilient to coastal hazards might be encouraged, under the RPS if that</p>

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
			housing had even a minor increase in occupancy it could be argued as needing to be prohibited.
2	Policy 3.1.7 ²¹ at para h)	<p>Amend as follows:</p> <p>Policy 3.1.7 Soil values</p> <p>Manage soils to achieve all of the following:</p> <p>...</p> <p>h) Avoid the creation of contaminated land <u>Appropriately managing activities that may result in soil contamination;</u> (preferred)</p> <p>Or, if a directive policy must be included</p> <p><u>Minimise the adverse effects of existing contamination of soil; and</u></p> <p><u>Avoid, where practicable, significant new soil contamination occurring.</u></p>	It is impossible to avoid the creation of contaminated land e.g. landfills or wastewater oxidation ponds and land disposal areas, are by their very nature, "contaminated land". The policy wording needs to recognise this.
	Policy 4.6.9 ²²	Delete policy.	

²¹ See also Appeal point 9

²² See also Appeal point 31

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>If not deleted amend as follows:</p> <p>Policy 4.6.9 Contaminated land</p> <p>Avoid, <u>where practicable</u>, the creation of contaminated land.</p>	
3	<p>Objective 3.2 Otago's significant and highly-valued natural resources are identified, and protected or enhanced</p>	<p>The DCC seeks amendment to the following policies to qualify the use of the word "avoid":</p>	<p>The DCC consider these policies need to be re-worded, as use of the word "avoid" is too restrictive. These policies could impact on the delivery of new or realigned roading or other infrastructure, or maintenance works. For example, roading infrastructure may need to be aligned in a particular location or vegetation trimmed, earthworks undertaken, for road safety, and adverse effects may not be able to be entirely avoided.</p>
	<p>Policy 3.2.2 at paras a) and b)</p>	<p>Policy 3.2.2 Managing significant vegetation and habitats</p> <p>Protect and enhance areas of significant indigenous vegetation and significant habitats of indigenous fauna, by all of the following:</p> <p>a) <u>Appropriately managing activities that may have</u> Avoiding adverse effects on those values which contribute to the area or habitat being significant;</p>	

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		b) <u>Appropriately managing activities that may have</u> Avoiding significant adverse effects on other values of the area or habitat;	
	Policy 3.2.6 ²³ at para a)	Policy 3.2.6 Managing highly values natural features, landscapes and seascapes Protect or enhance highly valued natural features, landscapes and seascapes by all of the following: a) <u>Appropriately managing activities that may have</u> Avoiding significant adverse effects on those values which contribute to the high value of the natural feature, landscape or seascape;	
	Policy 3.2.10 ²⁴ at para a)	Policy 3.2.10 Managing the high natural character of the coastal environment Preserve or enhance the high natural character	

²³ See also Appeal point 14

²⁴ See also Appeal point 21

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>of the coastal environment, by all of the following:</p> <p>a) <u>Appropriately managing activities that may have</u> Avoiding significant adverse effects on those values which contribute to the high natural character of an area;</p>	
	Policy 3.2.14 at para a)	<p>Policy 3.2.14 Managing outstanding freshwater bodies</p> <p>Protect outstanding freshwater bodies by all of the following:</p> <p>a) <u>Appropriately managing activities that may have</u> Avoiding significant adverse effects on those values which contribute to the water body being outstanding;</p>	
	Policy 3.2.16 at para a)	<p>Policy 3.2.16 Managing the values of wetlands</p> <p>Protect the values of wetlands by all of the following:</p>	

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		a) <u>Appropriately managing activities that may have Avoiding</u> significant adverse effects on the significant values of the wetlands;	
	Policy 5.2.3 ²⁵ at para c)	<p>Policy 5.2.3 Managing historic heritage</p> <p>Protect and enhance places and areas of historic heritage, by all of the following:</p> <p>...</p> <p>c) <u>Appropriately managing activities that may have Avoiding</u> adverse effects on those values which contribute to the area or place being of regional or national significance;</p>	
4	Policy 4.6.2 ²⁶	<p>Amend as follows:</p> <p>Policy 4.6.2 Use, storage and disposal of hazardous substances</p> <p>Manage the use, storage and disposal of</p>	At waste sites, the effect of the word “avoid” (i.e. prohibit) would be more stringent than the requirements of the Health and Safety Act which allows "eliminate, isolate, minimise". The DCC therefore considers that the policy

²⁵ See also Appeal point 30

²⁶ See also Appeal point 34

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>hazardous substances to:</p> <p>i) <u>avoid accidental spillage or release of those substances; and</u></p> <p>ii) <u>to ensure the health and safety of people and avoid remedy or mitigate adverse effects on the environment and other values,</u> by all of the following:</p> <p>And</p> <p>Delete para c):</p> <p>c) Avoiding adverse effects of these substances on the health and safety of people, and avoiding, remedying or mitigating adverse effects on the environment and other values;</p>	<p>wording is too stringent. Furthermore para c) should be deleted as it is not a method but an outcome, and so should be part of the statement of what the policy seeks to achieve.</p>
5	Policy 4.6.8 ²⁷	<p>Amend as follows:</p> <p>Policy 4.6.8 Waste storage, recycling, recovery, treatment and disposal</p>	<p>Para b) should be deleted as it is not a method but an outcome, and so should be part of the statement of what the policy seeks to achieve.</p>

²⁷ See also Appeal point 36

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>Manage the storage, recycling, recovery, treatment and disposal of waste materials <u>to ensure the health and safety of people and avoid remedy or mitigate adverse effects on the environment and other values</u> by undertaking all of the following:</p> <p>And delete para b):</p> <p>b) Avoiding adverse effects on the health and safety of people, and avoiding, remedying and mitigating adverse effects on the environment and other values;</p>	
6	Policy 5.4.8	<p>Clarify how Policy 5.4.8 para a) "give preference to avoiding" will be given effect to.</p> <p>Amend as follows:</p> <p>Policy 5.4.8 Adverse effects from mineral and petroleum exploration, extraction and processing</p> <p>Minimise adverse effects from the exploration,</p>	<p>There appears to be a conflict between the Policy 5.3.5 itself (recognise the needs of the mineral industry to locate where the resource exists) and Policy 5.4.8 a) which gives preference to avoiding activities locating in some areas.</p> <p>It is unclear how this policy "give preference to avoiding" will be given effect to, and whether some limited activities may still be provided for. It is requested that new methods under Method 6, Non-RMA Strategies and Plans, as</p>

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>extraction and processing of minerals and petroleum, by all of the following:</p> <p>...</p> <p>b) Where it is not possible to avoid locating in the areas listed in a) above, <u>appropriately managing activities that may have avoiding</u> significant adverse effects on those values that contribute to the significant or outstanding nature of those areas;</p> <p>Provide for District Plans to determine appropriate levels of activities in these areas, if necessary</p>	<p>referenced are introduced to provide guidance on how this policy is to be implemented.</p>
7	Objective 3.1	<p>Amend as follows:</p> <p>Objective 3.1 The values of Otago's natural resources are recognised, maintained and or enhanced</p>	<p>It may not be either possible or appropriate to enhance all values.</p>

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
Integrated Management			
8	Part C Implementation (pages 84-85) Roles and Responsibilities	<p>Delete para c):</p> <p>Regional Council will:</p> <p>Specify objectives, policies and methods for the control of the use of land for:</p> <p>...</p> <p>e) The maintenance of indigenous biological diversity in the coastal marine area, in beds of rivers and lakes, and wetlands.</p> <p>Or</p> <p>Amend as follows:</p> <p>Regional, city and district councils will:</p> <p>Share responsibility for specifying objectives, policies and methods for the purpose of the maintenance of indigenous biological diversity through the management of the margins of the coastal marine area, beds of rivers and lakes,</p>	The amendments are proposed to clarify that joint responsibility pertains to margins of rivers and lakes rather than beds (which are not the responsibility of DCC).

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		and wetlands.	
Land and soil			
9	Policy 3.1.7 ²⁸ at para h)	<p>Amend as follows:</p> <p>Policy 3.1.7 Soil values</p> <p>Manage soils to achieve all of the following:</p> <p>h) Avoid the creation of contaminated land; <u>Minimise the adverse effects of existing contamination of soil;</u></p> <p>i) <u>Avoid, where practicable, significant new soil contamination occurring; and</u></p> <p>j) Control the adverse effects of pest species, prevent their introduction and reduce their spread.</p> <p>Also:</p> <p>Clearly identify in the methods how each of the</p>	<p>Existing contaminated soils are required to be managed in accordance with the NES for Assessing and Managing Contaminants in Soil to Protect Human Health. Creation of new contaminated soils cannot always be avoided e.g. the creation of landfill sites, or other waste management sites such as tailings dams, silt ponds and silage pits. These activities require acknowledgement and appropriate management.</p> <p>Soil conservation is a function of Regional Councils under section 30(1)(c)(i) of the RMA. The methods to give effect to this policy do not include Regional Plans.</p>

²⁸ See also Appeal point 2

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		provisions in this policy will be given effect to, including through Regional Plans.	
10	Policy 3.2.8	<p>Amend as follows:</p> <p>Policy 3.2.8 Identifying high and outstanding natural character in the coastal environment</p> <p>Identify areas and values of high and outstanding natural character in the coastal environment, where one or more of the following attributes are met: <u>using the following attributes:</u></p>	The phrase "where one or more of the following attributes are met" means if there is only one attribute then the area has high natural character, and the list includes some fairly common characteristics, eg "e) the darkness of the night sky."
11	Policy 3.2.18	<p>Delete para c):</p> <p>Policy 3.2.18 Managing significant soil</p> <p>Protect areas of significant soil, by all of the following:</p>	This policy is about protecting areas of significant soil. Para c) specifies that urban expansion on significant soils may be appropriate. This para is at odds with, and does not give effect to, the policy nor objective as it does not protect such soils. The matters raised by this para are better dealt with in Policy 4.5.1 ²⁹ .

²⁹ See also appeal points 23 and 27

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>...</p> <p>c) Recognising that urban expansion on significant soils may be appropriate due to location and proximity to existing urban development and infrastructure;</p>	
Landscapes, seascapes and natural features			
12	Schedule 3	<p>Amend Schedule 3, Criteria 2. b. (Sensory attributes) as follows:</p> <p>b.-Amenity <u>Aesthetic</u> values including memorability and naturalness</p>	This returns Schedule 3 to reflect the Pigeon Bay criteria .
13	Policy 3.2.4 ³⁰	<p>Delete paras c) and d):</p> <p>Policy 3.2.4 Managing outstanding natural features, landscapes and seascapes</p> <p>Protect, enhance and restore outstanding natural features, landscapes and seascapes,</p>	<p>It is unclear why c) "recognising and providing for positive contributions of existing introduced species" is relevant, and why it needs to be specified further to the assessment criteria set out in Schedule 4.</p> <p>It is also unclear why d) "controlling the adverse effects of pest species..." is specified in these areas, and not areas</p>

³⁰ See also Appeal point 1

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>by all of the following:</p> <p>...</p> <p>c) Recognising and providing for the positive contributions of existing introduced species to those values;</p> <p>d) Controlling the adverse effects of pest species, preventing their introduction and reducing their spread;</p> <p>Alternatively, make this policy consistent with related policies and clearly identify in the methods how each of the provisions in this policy will be given effect to</p>	<p>of significant indigenous vegetation and habitat as covered by Policy 3.2.2, or other areas in general. The delivery of d) in the methods is unclear.</p>
14	Policy 3.2.6 ³¹	<p>Delete paras c) and d):</p> <p>Policy 3.2.6 Managing highly values natural features, landscapes and seascapes</p> <p>Protect or enhance highly valued natural</p>	<p>It is unclear why c) "recognising and providing for positive contributions of existing introduced species" is relevant, and why it needs to be specified further to the assessment criteria set out in Schedule 4.</p> <p>It is also unclear why d) "controlling the adverse effects of</p>

³¹ See also Appeal point 3

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>features, landscapes and seascapes by all of the following:</p> <p>...</p> <p>c) Recognising and providing for positive contributions of existing introduced species to these values;</p> <p>d) Controlling the adverse effects of pest species, preventing their introduction and reducing their spread;</p> <p>Alternatively, make this policy consistent with related policies and clearly identify in the methods how each of the provisions in this policy will be given effect to.</p> <p>Consider combining policies 3.2.6 and 3.2.4.</p>	<p>pest species..." is specified in these areas, and not areas of significant indigenous vegetation and habitat as covered by Policy 3.2.2, or other areas in general. The delivery of d) in the methods is unclear.</p> <p>Policies 3.2.6 and 3.2.4 (a) – (f) are identical, and could be simplified and streamlined by combining into a single policy.</p>
Climate change			
15	Policy 4.2.1 at para b)	<p>Amend as follows:</p> <p>Policy 4.2.1 Sea level rise</p>	The DCC considers that should new data or guidance become available use should be made of it.

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>Ensure Otago's people and communities are able to adapt to, or mitigate the effects of sea level rise, over no less than 100 years, by using:</p> <p>...</p> <p>b) Adding an additional 10mm per year beyond 2115 <u>or, if available and appropriate, the most recent national or regional guidance on likely sea level rise.</u></p>	
Natural hazards			
16	Policy 4.1.6 ³²	<p>Amend as follows:</p> <p>Policy 4.1.6 Avoiding <u>Managing</u> increased natural hazard risk</p> <p>Manage natural hazard risk to people and communities by both:</p> <p>a) Avoiding <u>Appropriately managing</u> activities</p>	<p>It is not achievable or realistic to avoid (prohibit) all new development or intensification in any area with any level of risk from natural hazards.</p> <p>Ideally in risk areas, designs that mitigate the vulnerability of activities from natural hazard risk e.g. minimum floor levels and flood-aware designs, and relocatable buildings</p>

³² See also Appeal point 1

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>that significantly increase risk including displacement of risk off-site; and</p> <p>b) Avoiding activities that increase risk in areas potentially affected by coastal hazards over at least the next 100 years.</p> <p>Reinstate para b) as notified:</p> <p><u>b) Encouraging design that facilitates:</u></p> <p><u>i. Recovery from natural hazard events; or</u></p> <p><u>ii. Relocation to areas of lower risk.</u></p> <p>And add iii. as follows:</p> <p><u>iii. Mitigation of risk.</u></p> <p>If b) retained, object to land "potentially affected"</p>	<p>should be enabled, even if this means slightly higher occupancy in a new housing that is more risk resilient replacing less resilient housing.</p> <p>However Policy 4.1.6 b) requires avoiding activities in areas that are potentially affected, whereas the draft NZCPS guidance merely requires identification of land potentially affected by coastal hazards, and managing that which is likely to be affected.</p>
17	Policy 4.1.7	<p>Amend as follows:</p> <p>Policy 4.1.7 Reducing existing natural hazard risk</p>	<p>In existing risk areas, designs that mitigate the vulnerability of activities from natural hazard risk (e.g. minimum floor levels and flood-aware designs), should be enabled.</p>

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>Reduce existing natural hazard risk to people and communities, including by all of the following:</p> <p>...</p> <p>d) Encouraging design that facilitates:</p> <p>i. Recovery from natural hazard events; or</p> <p>ii. Relocation to areas of lower risk; <u>or</u></p> <p><u>iii. Mitigation of risk;</u></p>	
Coastal environment			
18	Policy 3.1.5	<p>Amend as follows:</p> <p>Policy 3.1.5 Coastal water</p> <p>Manage coastal water to achieve all of the following:</p> <p>...</p> <p><u>h) Mitigate the adverse effects of natural hazards, including flooding and erosion.</u></p>	<p>The provision is necessary to recognise:</p> <ul style="list-style-type: none"> • that natural hazards are a relevant management concern for coastal water; • provide a clearer link with Policy 3.1.12; and • to be consistent with the equivalent freshwater Policy 3.1.1.

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
19	Policy 3.2.7	<p>Amend as follows:</p> <p>Policy 3.2.7 Landward extent of the coastal environment</p> <p>Identify the landward extent of the coastal environment, recognising that the coastal environment <u>may include</u> consists of one or more of the following:</p>	For clarity and consistency with NZCPS. The decision wording is not appropriate ("consists of one or more of the following:") as it implies a check list and if one or more items is checked this is a coastal environment.
20	Policy 3.2.9 ³³	<p>Delete para c):</p> <p>Policy 3.2.9 Managing the outstanding natural character of the coastal environment</p> <p>Preserve or enhance the outstanding natural character of the coastal environment, by all of the following:</p> <p>...</p> <p>c) Recognising and providing for the</p>	It is unclear why c) "recognising and providing for the contribution of existing introduced species..." is relevant, and why it needs to be specified further to the attributes set out in Policy 3.1.11. Furthermore para c) does not fit well with Principal Reasons and Explanation (page 39) for the policy in that "landscapes, natural features and areas of indigenous biological diversity", are the target of these policies, with no mention of introduced species.

³³ See also Appeal point 1

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		contribution of existing introduced species to the natural character of the coastal environment;	
21	Policy 3.2.10 ³⁴	<p>Delete para c):</p> <p>Policy 3.2.10 Managing the high natural character of the coastal environment</p> <p>Preserve or enhance the high natural character of the coastal environment, by all of the following:</p> <p>...</p> <p>c) Recognising and providing for the contribution of existing introduced species to the natural character of the coastal environment;</p>	<p>It is unclear why c) "recognising and providing for the contribution of existing introduced species..." is relevant, and why it needs to be specified further to the attributes set out in Policy 3.1.11. Furthermore para c) does not fit well with Principal Reasons and Explanation (page 39) for the policy in that "landscapes, natural features and areas of indigenous biological diversity", are the target of these policies, with no mention of introduced species.</p>

³⁴ See also Appeal point 3

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
Development			
22	Objective 4.5	Review objective and policies to ensure they align with the National Policy Statement on Urban Development Capacity 2016 (which was issued by notice in the NZ Gazette on 3rd November 2016), noting that the DCC is not a high or medium growth urban area and instead is "rest of New Zealand" area under the NPS, where objectives and policies PA1 – PA 4 of the NPS apply	Alignment of the RPS with the National Policy Statement on Urban Development Capacity 2016.
23	Policy 4.5.1 ³⁵	<p>Amend the policy to include a focus on the development of compact and well-integrated urban areas, in line with Policy 4.4.6 para a).</p> <p>Amend as follows:</p> <p>Policy 4.5.1 Managing for urban growth and development</p>	Policy 4.5.1.a) has increased the growth assessment to 20 years from 10 years with no reasons given. The National Policy Statement on Urban Development Capacity 2016 requires local authorities to have sufficient long term development capacity identified in relevant plans and strategies. 'Long term' is defined as meaning 'between ten and thirty years'. Ten years would therefore be more

³⁵ See also Appeal points 11 and 27

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>Manage urban growth and development in a strategic and co-ordinated way, by all of the following:</p> <p>...</p> <p>c) Identifying future growth areas and managing the subdivision, use and development of rural land outside these areas to achieve all of the following:</p> <p>i. Minimise adverse effects on rural activities and significant <u>versatile</u> soils;</p>	<p>appropriate.</p> <p>For (c)(i), 'significant soils' has not been defined in the glossary, but appears to be derived from the proposed RPS definition of "highly valued soils" and qualified by Policy 3.2.17 (Identifying significant soil). This arguably encompasses all soils. 'Versatile soils' is a more limited term and was defined as 'Highly versatile soils' in the proposed RPS. This terminology and definition are preferred as they more closely align with High Class Soils mapped in the proposed Dunedin City Second Generation District Plan, and are an important resource that should be managed appropriately.</p>
24	Method 4.1.12	<p>Amend as follows:</p> <p>Method 4: City and District Plans</p> <p>...</p> <p>4.1.12 Policy 4.5.1 and 4.5.2 by:</p> <p>a) Establishing urban growth boundaries <u>or identifying future urban development areas</u></p>	<p>To align with the wording used in the National Policy Statement on Urban Development Capacity (2016) which requires local authorities to identify sufficient development capacity in relevant plans and strategies..</p>

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>where required to manage pressure for urban development;</p> <p>b) Ensuring urban growth boundaries <u>or urban development areas</u> contain sufficient long term <u>development</u> capacity, when measured district wide, 20 years urban growth based on demographic growth projections as required by the National Policy Statement for Urban Development Capacity (2016)..</p>	
25	Method 4.2.4	<p>Amend as follows:</p> <p>Method 4: City and District Plans</p> <p>...</p> <p>4.2.4 Policies 4.5.1, 4.5.2, and 5.3.1 : by preparing or requiring structure plans for large scale land use changes <u>subdivisions</u>;</p>	Reference to subdivision is considered more appropriate than to large scale land use changes.

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
Public access			
26	Policy 5.1.1	<p>Clarify what a "sensitive natural area" is, and how it will be defined or identified.</p> <p>Clarify what an "identified site is".</p> <p>Amend as follows:</p> <p>Policy 5.1.1 Public access</p> <p>Maintain <u>or</u> and enhance public access to the natural environment, including to the coast, lakes, rivers and their margins and where possible areas of cultural or historic significance, unless restricting access is necessary for one or more of the following:</p>	<p>It is unclear from the policy and methods what a "sensitive natural area" and "identified site" is, or how they are determined.</p> <p>Also "Maintain and enhance public access to the natural environment", enhancement may not be possible or appropriate.</p>
Infrastructure and lifelines			
27	Policy 4.5.7	<p>Clarify what "functional needs" are.</p> <p>Amend as follows:</p> <p>Policy 4.5.7 Integrating infrastructure with</p>	<p>It is unclear what "functional needs" are, and why they are not recognised for all public infrastructure, to achieve strategic integration.</p>

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>land use</p> <p>Achieve the strategic integration of infrastructure with land use, by undertaking all of the following:</p> <p>a) Recognising the functional needs of infrastructure; of regional or national importance;</p> <p>Merge (c) into 4.5.1³⁶ para b) and change wording to:</p> <p><u>b) Prioritise areas that have sufficient infrastructure capacity or where infrastructure can be upgraded or extended with the least possible long term cost burden to ratepayers.</u></p> <p>Provide a clear description in the methods of how each of the provisions in this policy will be given effect to.</p>	<p>The policy should also recognise the requirement under the LGA for public infrastructure to be cost-effective, efficient, effective and appropriate.</p> <p>It is important that "efficiently" is clarified to mean in a way that presents the least possible long term cost burden to ratepayers.</p> <p>It is unclear who will give effect to, and how, for each of the matters listed – policies under 4.5 are not listed under Regional or City/District Plans, nor is there any specific mention in other methods.</p>

³⁶ See also appeal points 11 and 23

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
28	Policy 4.1.13 at para a)	<p>Amend as follows:</p> <p>Policy 4.1.13 Hazard mitigation measures, lifeline utilities, and essential and emergency services</p> <p>Protect the functional and operational requirements of hazard mitigation measures, lifeline utilities, and essential or emergency services, including by all of the following:</p> <p>a) Restricting the establishment of these <u>other</u> activities that may result in reverse sensitivity effects <u>on those measures, utilities or services</u>;</p>	The intent of Policy 4.1.13 restricts other activities that may result in reverse sensitivity effects on hazard mitigation measures, lifeline utilities and essential or emergency services but this is unclear.
29	Policy 4.3.3	<p>Amend as follows:</p> <p>Policy 4.3.3 Adverse effects of nationally and regionally significant infrastructure</p> <p>Minimise adverse effects from infrastructure that has national or regional significance, by all of the following:</p>	<p>Policies 4.3.2 to 4.3.4 relate to nationally and regionally significant infrastructure which are defined in Policy 4.3.2. The definition does not include assets such as Dunedin's roading network (other than roads classified as being of national or regional importance) or the 3 Waters infrastructure.</p> <p>Policy 4.3.3 (relating to nationally and regionally significant</p>

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>...</p> <p>b) Where it is not possible to avoid locating in the areas listed in a) above, appropriately <u>managing activities that may have</u> avoiding significant adverse effects on those values that contribute to the significant or outstanding nature of those areas;</p>	<p>infrastructure) gives preference to avoiding locations that conflict with other significant or outstanding values the RPS seeks to protect. Where locational conflict is not able to be avoided the policy enables infrastructure but requires significant adverse effects that contribute to the significant or outstanding values to be avoided.</p> <p>Policy 4.3.4 provides protection for nationally and regionally significant infrastructure from reverse sensitivity. The implication of all this is that where infrastructure is not defined as regionally or nationally significant, regional and district plans are likely to be required to implement methods / rules that avoid adverse effects on recognised significant or outstanding values. While on most occasions this is likely to be possible, it is unclear whether this will always be the case. Therefore there is a risk that in the future Council will find itself in the position where the optimum development of its infrastructure is prevented because that infrastructure is not considered regionally or nationally significant (by definition) and cannot entirely avoid effects on other significant or outstanding values.</p>

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
			The DCC requires enabling policy for all infrastructure, whilst accepting that national and regionally significant infrastructure require additional protection as recognised in Policies 4.3.2 and 4.3.4.
Historic heritage			
30	Policy 5.2.3 ³⁷	<p>Amend as follows:</p> <p>Policy 5.2.3 Managing historic heritage</p> <p>Protect and enhance places and areas of historic heritage, by all of the following:</p> <p>Or alternatively:</p> <p>Protect and enhance <u>if appropriate</u> places and areas of historic heritage, by all of the following:</p> <p>Either delete para b) in its entirety or amend b) to clarify what "these provisions" are.</p>	<p>Protect and enhance means the area has to be enhanced and this may not be possible or desirable. Maintaining the status quo is sufficient.</p> <p>It is unclear in b) what 'these provisions' refers to. Provisions managing archaeological sites are included within the DCC's District Plan. However it is not possible to immediately determine a new site is a scheduled archaeological site within the plan such that the provisions would apply.</p>

³⁷ See also Appeal point 3

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
Waste, contamination and hazardous substances			
31	Policy 4.6.9 ³⁸	<p>Delete policy.</p> <p>If not deleted amend as follows:</p> <p>Policy 4.6.9 Contaminated land</p> <p>Avoid, <u>where practicable</u>, the creation of contaminated land.</p>	<p>It is impossible to avoid the creation of contaminated land e.g. landfills or wastewater oxidation ponds and land disposal areas, are by their very nature, "contaminated land". So policy needs to recognise this.</p> <p>If the creation of contaminated land is not deliberate (as described above), it is accidental and relates to the handling, storage, use and inappropriate disposal of hazardous substances. Good practice to minimise the accidental spillage of hazardous substances is already addressed in Policy 4.6.2.</p>
32	Disposal facility	<p>Include definition:</p> <p>"Disposal facility: as defined by the Waste Minimisation Act 2008, section 7"</p> <p>Or</p>	DCC continues to request the definition of "disposal facility" in the glossary, consistent with the Waste Minimisation Act 2008.

³⁸ See also Appeal point 2

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>Meaning of disposal facility:</p> <p>In this Act, unless the context requires another meaning, disposal facility means—</p> <p>(a) a facility, including a landfill,—</p> <p>(i) at which waste is disposed of; and</p> <p>(ii) at which the waste disposed of includes household waste; and</p> <p>(iii) that operates, at least in part, as a business to dispose of waste; and</p> <p>(b) any other facility or class of facility at which waste is disposed of that is prescribed as a disposal facility.</p>	
<p>The following points relate to all matters relating to solid waste which are spread across new section 4.6, methods and glossary would greatly improve the clarity and consistency of the RPS</p>			
33	Objective 4.6	Amend the terminology in Policies 4.6.2 (e) and 4.6.7(e), 4.6.8(d) and Methods 3.1.11, 5.2.1(f) and 9.1.5(d) as described below.	The terminology in Policies 4.6.2 (e) and 4.6.7(e), 4.6.8(d) and Methods 3.1.11, 5.2.1(f) and 9.1.5(d) is inconsistent with the following terms all used : "authorised facilities",

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
			<p>"authorised landfill" vs "waste management facilities and services" vs "waste disposal facilities" vs "landfill" vs "solid waste management and disposal facilities". See below for examples. Clarity and consistency is requested as these potential inconsistencies could cause future problems in interpretation and implementation.</p> <p>The DCC considers that Policy 4.6.8(d): "waste management facilities and services" is the correct terminology.</p>
34	Policy 4.6.2 ³⁹	<p>Policy 4.6.2.c) The amendments requested regarding effects on public health and safety have been discussed earlier in the section on use of the word "Avoid".</p> <p>Clarify what Policy 4.6.2 c) "other values" are.</p> <p>Amend para e) as follows:</p> <p>e) Ensuring hazardous substances are treated or disposed at authorised facilities, in</p>	<p>For Policy 4.6.2 (c) there is no clarity as to what those "other values" might be.</p> <p>Amend para e) for consistency and clarity.</p> <p>Method 4.1.8 details managing effects of the contaminated land on nearby activities, whereas Policy 4.6.2 f) restricts the location of activities that may result in reverse sensitivity effects on the authorised facilities. Thus the method does not enable the policy and so should be</p>

³⁹ See also Appeal point 4

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>accordance with the relevant disposal instructions of appropriately;</p> <p>Policy 4.6.2.f) Restricting the location of activities that may result in reverse sensitivity effects near authorised facilities for hazardous substance treatment disposal;</p> <p>Delete Method 4.1.8.</p>	deleted.
35	Policy 4.6.7	<p>Amend as follows:</p> <p>Policy 4.6.7 Waste minimisation responses</p> <p>Encourage activities to give effect to the waste minimisation hierarchy of responses, by:</p> <ul style="list-style-type: none"> a) Giving preference to reducing waste generated; then b) Reusing waste; then c) Recycling waste; then d) Recovering resources from waste; then 	<p>The additional step requested, "treatment" is part of the waste hierarchy described in the Waste Minimisation Act 2008, and is missing from this policy. Treatment is a particularly important step for hazardous waste. Note that this request is consistent with Policy 4.6.8(a) where treatment is provided for. The deletion of "disposal facility" requested and its replacement by "authorised landfill" is in accordance with the earlier point regarding clarity and consistency.</p>

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>e) <u>Treatment</u>; then</p> <p>f-e) Disposing residual waste to a <u>disposal facility</u> authorised landfill.</p>	
36	Method 3.1.11 (applies to Policy 4.6.8 ⁴⁰)	<p>Amend as follows:</p> <p>Method 3: Regional Plans</p> <p>...</p> <p>3.1.11 Policy 4.6.8: by requiring waste-disposal facilities to monitor, record and report on the quantity and composition of waste being deposited to landfill;</p>	To be consistent with the Waste Minimisation Act 2008.
37	Method 5.2.1 at para f.	<p>Amend as follows:</p> <p>Method 5 Research, Monitoring and Reporting</p> <p>5.2 Research</p> <p>5.2.1 The regional council will:</p>	The reason for this request is to gain consistency and clarity in terminology, and reflects recent issues experienced where what one agency considered a "landfill" another considered a "stockpile".

⁴⁰ See also Appeal point 5

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>...</p> <p>f. Provide city and district councils with regional data on the quantity and composition of waste being deposited to landfill <u>disposal facilities</u> for waste assessments;</p>	
38	Method 6.9.1	<p>Amend as follows:</p> <p>Method 6 Non RMA Strategies and Plans</p> <p>6.9 Waste and hazardous substances:</p> <p>6.9.1 Regional, city and district councils <u>will</u> may develop strategies or similar documents to:</p>	DCC consider the commitment of regional, district and city councils to develop strategies should be increased from "may" to "will" in order to effect efficient waste management across the region.
39	Method 9.1.5 at para d.	<p>Amend as follows:</p> <p>Method 9: Advocacy and Facilitation</p> <p>9.1 Promotion</p> <p>9.1.5 City and district councils will:</p> <p>...</p>	This method would then be consistent with Policy 4.6.8 para d).

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		d. Advocate for the establishment of solid waste management and disposal facilities <u>waste management facilities and services.</u>	
40	Policy 4.6.5	<p>Delete this policy.</p> <p>If the policy is considered necessary, amend the policy to separate the purposes of addressing effects on human health and the environment, and recognise the NES e.g.:</p> <p>Policy 4.6.5 Managing contaminated land</p> <p>a) Manage the use of contaminated land, to protect <u>human health</u> people and the environment from adverse effects, by all of the following: <u>through the application of the NES for Assessing and Managing Contaminants in Soil to Protect Human Health.</u></p> <p>a) Prior to subdivision or development of potentially contaminated land, requiring a site investigation is undertaken to determine the</p>	<p>There is an NES for Assessing and Managing Contaminants in Soil to Protect Human Health. Its purpose was to ensure a nationally consistent approach to contaminated land management upon subdivision, and to provide for activities with minor effect. Therefore a RPS policy may not be necessary.</p> <p>It is noted that the policy as drafted does not encompass all aspects of the NES, such as fuel tank removal. These disturbances, subdivision and changes in land use are local site-specific issues rather than regional issues.</p> <p>The DCC notes that not all contaminated land requires remediation - it depends on what resultant sites are being used for.</p> <p>It is the on-going discharges to the environment from those sites which may have environmental effects, rather than the use of those sites. The DCC would like clarification that</p>

Appeal point	Provision of RPS the Appeal relates to	What decision the DCC wants	Reason for the decision DCC seeks
		<p>nature or extent of any contamination; and</p> <p>b) Where there is contamination:</p> <p>i. Requiring an assessment of associated environmental risks; and</p> <p>ii. Remediating land; and</p> <p>e-b) Manage the ongoing effects of <u>contaminant discharges to water or air from</u> <u>contaminated land, by</u> Cconsidering the need for ongoing monitoring of contaminant levels and associated <u>environmental</u> risks.</p>	<p>capping is considered remediation as it can be all that is needed for certain land uses.</p>