

Before the Freshwater Hearing Panel

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 James Taylor for Dunedin City Council

4 September 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

QUALIFICATIONS AND EXPERIENCE

- 1 My full name is James Taylor. My qualifications and experience are as set out in my primary brief of evidence dated 28 June 2023.

CODE OF CONDUCT

- 2 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.

SCOPE OF STATEMENT

- 3 In this Hearing Statement I address my primary evidence on:
 - (a) Appropriate Prioritisation of water allocation for Community Water Supply;
 - (b) The need for a coordinated three waters Regionally Significant Infrastructure strategy to enable the DCC three waters system to achieve the relevant objectives and policies of this regional policy statement; and
 - (c) Specific wording changes to make the pORPS workable for operators of existing three waters Regionally Significant Infrastructure.
- 4 For ease of reference, I have included my proposed amendments as an attachment to this statement.

Prioritisation of Water Allocation for Community Supply

- 5 My evidence outlines my opinion that Dunedin City's Community Water Supply treated to a drinking water standard is entirely for the purpose of supporting the health needs of residents, workers, institutions and visitors to Dunedin and is therefore a tier two priority under Te Mana o te Wai hierarchy of obligations.
- 6 However, should the hearing panel decide that the entirety of the Community Water Supply is not tier two priority, then the third tier uses under the NPS-FM should be further ordered to prioritise allocations necessary to underpin development anticipated by existing urban zoning and future growth planned under the NPS-UD.
- 7 Many of the water allocation related provisions do not appear take account of the NPS-UD when considering the management of fresh water as it bundles Community Water Supplies together with other categories of water take. In the context of NPS-UD obligations, my opinion is that particular

care needs to be taken on provisions that may affect water allocations for Community Water Supplies.

- 8 Ms Boyd in her opening hearing statement recommends rejecting this evidence, however, does not address the conflict between the NPS-UD and the NPS-FM and the need for Regional Policy Statements to address conflicts between National Policy, this includes policy on water allocations in the context of a significantly overallocated catchment, necessary to satisfy an NPS-UD outcome. My understanding of the recent Supreme Court Decision in relation to Port Otago Limited v EDS and ORC is that the Supreme Court held that conflict between the National Policy Framework should be dealt with at both the regional policy statement and plan level as far as possible.
- 9 Additionally, Ms Boyd notes that my recommendations relating to Community Water Supplies do not prioritise the health and wellbeing of the water bodies. As outlined in my evidence, in the context of the National Policy framework this should not be the only test. However, prioritising Community Water Supplies over other water take uses will not compromise the health and wellbeing of water bodies so long as overallocation is concurrently being addressed and the Community Water Supplies themselves improve in efficiency and demand management over time as the prioritisation objectives and policies of this policy statement would require. Ms Boyd concludes that it is not appropriate to “lock up” allocations within an RPS, however, I’m not sure how the directive NPS-UD requirements for infrastructure to serve urban growth can be addressed without “locking” the ability for appropriate allocations for this purpose. In the context of overallocated catchments surrounding Otago’s largest metropolitan area, and based on my experience in consent application processes, this could become very consequential if not adequately addressed at this stage.

Three Waters Regionally Significant Infrastructure

- 10 The NPS-FM and the priorities of the pORPS present a significant challenge for DCC’s existing, and often aged, three waters network. Based on my experience in working on the DCC three waters network and given the substantial volume of water takes from and discharges to freshwater from DCC’s three waters network, my experience would indicate that it will take considerable time to achieve the Objectives and Policies of the pORPS. The capital delivery plan for improvement to this asset is a driving force for improved water quality outcomes within the Dunedin urban area.

- 11 In order to avoid unanticipated outcomes that could present if addressing water allocation and quality issues only as the relevant discharge or water take consents expire, my opinion is that the development and improvement of the DCC three waters system should be completed in accordance with a broad and integrated strategy that aligns to this pORPS. This would likely result in priority given to projects that result in improved water quality outcomes that do not necessarily align with consent expiry dates. In my experience, policy that allows this flexibility can result in improved outcomes for the relevant FMU as a whole.
- 12 Following consideration of ORC legal submissions, I agree that the proposed wording should change so that the strategy “should” be prepared rather than be required to be prepared. Clarifying that it is not a mandatory, and therefore potentially unlawful, requirement. I have updated my suggested wording in my attached proposed amendments schedule accordingly. Additionally, I have identified an additional location where a consequential amendment is required to give effect to my recommendation to use a network wide strategy at LF-FM-P15(2)(e).

Use of the Term “Possible” and “Practicable”

- 13 I agree with Ms McLeod (for Transpower) in her evidence on use of the word possible at paragraph 6.3 of her evidence that the term possible is extremely stringent and a potentially unrealistic test to meet. I note that both Ms Hunters and Ms Craw provide alternative drafting to remove use of the word “possible” at LF-FW-O1A(3) and Ms Boyd has adopted Ms Craws wording. However, neither of these suggestions address the issues associated with urban watercourses in the hillslopes around Dunedin that have been raised in my evidence.
- 14 When it comes to DCC’s network, use of the word “practicable” in relation to the freshwater provisions is necessary. In many cases certain upgrades may not be practicable, particularly in a context when there are actions that could achieve much greater improvements toward the objectives of the pORPS elsewhere in the connected network at a much easier and faster rate. Or for example, due to the age of the infrastructure, it is not practicable to eliminate all leaks from the Dunedin City Council water supply network. I have suggested a number of amendments to include use of the word practicable. I have also identified that Policy LFFW-P15(2) also requires utilisation of this term and have updated this recommended adjustment in my attached proposed amendments schedule.

Stormwater inflow to the wastewater network

15 In her Hearing Statement Ms Boyd suggested an adjustment to LF-FW-P15(2)(c) that requires the implementation of methods that reduce stormwater inflows to and infiltration of wastewater networks. However, in my experience, while uncontrolled stormwater entry to a wastewater network can be problematic, controlled inflow of stormwater at certain places in the network where relatively flat gravity mains require flushing can be desirable and even necessary for the functioning of the system. Additionally, when working on wastewater system upgrades, identifying and reducing Inflow and Infiltration is usually a key exercise. However, infiltration refers to groundwater entry to the wastewater network through pipe joins, inflow is describing stormwater inflow. On this basis, and as this is a stormwater policy, I propose an adjustment to Ms Boyds updated wording in my attached proposed amendments schedule to limit the reduction to unintentional inflow of stormwater into the wastewater network.

Connection to the wastewater reticulated network

16 Ms Boyds hearing statement does not accept my evidence and recommendation on the above topic on the basis that the structure of Policy LF-FW-P16(2) is about existing reticulated systems and LF-FW-P16(3) is about new areas. My plain reading of this policy does not understand how this is the case.

Freshwater Management Units (FMUs) and rohe

17 In my opinion the Dunedin and Coast FMU should include the catchment under the management of the East Otago Taiāpure Committee. On this topic I agree with Ms McIntyre.

Dunedin and Coast Vision Timeframe

18 The 17 years provided for with the 2040 vision for the Dunedin & Coast FMU is not a very long time when considering the scale of the challenge. I suggest this be extended to at least 20 years.

Animal Effluent

19 I agree with Ms Boyds updating wording in relation to discharges of animal effluent in her hearing statement and note this in my attached proposed amendments schedule.

Other Matters

20 My evidence also suggests a number of other consequential amendments consistent with my opinion as summarised in this statement including the retention of certain provisions recommended by the s42A report.



James Douglas Taylor

4 August 2023

PORPS provision	Recommendation	Reference in evidence
Definition	Add new definition: <u>Community Water Supply means:</u> <u>Regionally Significant Infrastructure that incorporates a reticulated water supply scheme that provides water treated to a potable standard that meets the health needs of the population being served and provides for their social, economic and cultural well-being, now and in the future including future urban growth provided for in accordance with the NPS-UD. For clarity this excludes a supply that provides for the commercial scale irrigation of rural land.</u>	Paragraph 39
LF-WAI-P1(3)	Amend as follows: <i>third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future <u>including enabling urban settlements to grow and develop as required by the NPS-UD.</u></i>	Paragraph 25
LF-FW-01A(3)	Amend as follows: <i>indigenous species migrate easily and as naturally as possible, <u>practicable.</u></i>	Paragraph 28
LF-FW-01A(4)	Retain use of the wording “to the greatest extent practicable”	Paragraph 27
LF-FW-01A(8)	Retain use of the wording “to the greatest extent practicable”	Paragraph 27
LFVM-O4(1A)	Amend as follows to add the following additional subsection: <u>three waters Regionally Significant Infrastructure within Dunedin City has been—should be¹ progressively upgraded as part of a coordinated strategy to align with the Objectives of the Taiari FMU.</u>	Paragraph 37 and hearing statement
LF-VM-O4(5A)	Preferably replace with the following: <u>5A) the allocation of fresh water maintains the hierarchy of obligations in Te Mana o te Wai by prioritising:</u> (a) <u>The health and wellbeing of water bodies and freshwater ecosystems</u> (b) <u>The health needs of people including the provision of drinking water including, but not necessarily limited to, through the establishment and operation of Community Water Supply Schemes that provide for current and future populations, and</u>	Paragraph 39

¹ Red text denotes an update or correction from Evidence in Chief

PORPS provision	Recommendation	Reference in evidence
	(c) <u>The ability of people and communities to provide for their social, economic and cultural well-being, now and in the future.</u>	
LF-VM-O4(5A)	<p>Or where Community Water Supply is primarily a Tier two priority amend as follows:</p> <p>5A) <i>within limits, the allocation of fresh water <u>maintains existing allocations that are in use for Community Water Supply including for future growth as required by the NPS-UD, unless efficiencies in existing networks can be identified to enable practical reductions. After these essential allocation requirements are satisfied, the allocation of fresh water also</u> provides for land-based primary production that supports the social, economic, and cultural well-being of communities in this FMU.</i></p>	Paragraph 39
LF-VM-O5(1A)	Amend as follows: By 2040 <u>2043</u> in the Dunedin & Coast FMU:	Paragraph 45
LF-VM-O5(1A)	Amend as follows to add the following additional subsection: <u>three waters Regionally Significant Infrastructure within Dunedin City has been should be been progressively upgraded as part of a coordinated strategy to align with the Objectives of the Dunedin and Coast FMU.</u>	Paragraph 44 and hearing statement
LF-FW-P7A(1)	<p>Amend as follows:</p> <p><i>Within limits, and in accordance with any relevant environmental flows and levels, the benefits of using fresh water are recognised and over-allocation is either phased out or avoided by:</i></p> <p><i>(1) allocating fresh water efficiently to <u>first provide for Community Water Supply, including capacity for growth as provided for in the relevant District Plans and secondly to</u> support the social, economic, and cultural well-being of people and communities to the extent possible within limits, including for:</i></p> <ol style="list-style-type: none"> a. <u>community drinking water supplies,</u> b. <i>renewable electricity generation, and</i> c. <i>land-based primary production,</i> 	Paragraph 53
LF-FW-P7A(2)	Amend as follows: <i>“ensuring that, <u>as far as is practicable,</u> no more fresh water is abstracted than is necessary for its intended use...”</i>	Paragraph 54
LF-FW-P15(2)	Amend as follows: <i>(2) <u>requiring to the greatest extent practicable...</u></i>	Hearing Statement and paragraph 73.

PORPS provision	Recommendation	Reference in evidence
LF-FW-P15(2)(ab)	Amend as follows: (2) requiring: (ab) <i>integrated catchment management plans for management of stormwater in urban areas <u>and within Dunedin City the integrated catchment management plans</u> are should be supported by a coordinated strategy for three waters Regionally Significant Infrastructure.</i>	Paragraph 61 and hearing statement
LF-FW-P15(2)(b)	Retain provision as recommended in s42A report.	Paragraph 64
LF-FW-P15(2)(c)	Amend the wording proposed by MS Boyd in the hearing statement as follows: <i>implementation of methods to progressively reduce <u>unintentional</u> stormwater inflows to and infiltration of wastewater systems.</i>	Paragraph 63 and hearing statement
LF-FW-P15(2)(e)	Amend as follows: <i>That any stormwater <u>discharges from existing Regionally Significant Infrastructure within Dunedin City should be progressively improved through the implementation of a coordinated strategy for three waters Regionally Significant Infrastructure and any other stormwater</u> discharges do not prevent water bodies from meeting any applicable water quality standards set for FMUs and/or rohe,</i>	Hearing statement and paragraph 84
LF-FW-P15(3)	Delete and retain LF-FM-P15(2)(b).	Paragraph 64
LF-FW-P15(4)	Retain provision as recommended in s42A report.	Paragraph 65
LF-FW-P16(2)(d)	Amend as follows: <i>implementation of methods to progressively reduce the frequency and volume of wet weather overflows and minimise the likelihood of dry weather overflows occurring into <u>from</u> reticulated wastewater systems,</i>	Paragraph 69
LF-FW-P16(1)	Amend as follows: <i>Minimise the adverse effects of direct and indirect discharges containing animal effluent, sewage, and industrial and trade waste to fresh water by: (1) phasing out existing discharges containing sewage or industrial and trade waste directly to water to the greatest extent possible <u>practicable, and for the Dunedin City three waters Regionally Significant Infrastructure, requiring this should be supported by a coordinated strategy to align with the Objectives of the relevant FMU.</u></i>	Paragraph 72 and hearing statement
LF-FW-P16(2)	Amend as follows: (2) _____ requiring <u>to the greatest extent practicable...</u>	Paragraph 73

PORPS provision	Recommendation	Reference in evidence
LF-FW-P16(2)(a):	Amend as follows: (a) <u>With the exception of existing three waters Regionally Significant Infrastructure, new discharges containing sewage or industrial and trade waste to be to land, unless adverse effects associated with a discharge to land are demonstrably greater than a discharge to fresh water,</u>	Paragraph 78
LF-FW-P16(2)(b)	Amend as suggested by Ms Boyd in her hearing statement. discharges containing <u>of animal effluent from land-based primary production to be to land,</u>	Paragraph 81
LF-FW-P16(2)(f)	Amend as follows: that <u>discharges from existing Regionally Significant Infrastructure within Dunedin City are should be progressively improved through the implementation of a coordinated strategy for three waters Regionally Significant Infrastructure and any other discharges do not prevent water bodies from meeting any applicable water quality standards set for FMUs and/or rohe,</u>	Paragraph 84 and hearing statement
LF-FW-P16(3)	Delete and retain LF-FM-P16(2)(c).	Paragraph 85
LF-FW-P16(4)	Retain provision as recommended in s42A report.	Paragraph 86
LF-FW-M11	Introduce new method as follows: <u>The owner of the Dunedin City three waters Regionally Significant Infrastructure should prepare prepares a coordinated strategy that outlines progressive improvements necessary to achieve the objectives of this regional policy statement. If such a strategy is adopted, then it is to be considered as a relevant matter when processing any relevant consent applications made.</u>	Paragraph 89 and hearing statement