In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao O Aotearoa
Ōtautahi Rohe

ENV-

Under	the Resource Management Act 1991
In the matter of	an appeal under clause 14 of the First Schedule to the Resource Management Act 1991
Between	**Dunedin City Council**
	Appellant
And	**Otago Regional Council**
	Respondent

Notice of Appeal against decision on the non-freshwater planning instrument parts of the Proposed Otago Regional Policy Statement 2021

14 May 2024

Appellant's solicitors:
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To: The Registrar of the Environment Court at Christchurch

1 Dunedin City Council (**Appellant**) appeals parts of the decision of the Otago Regional Council (**Respondent**) to accept the report and recommendations of the Hearings Panel (**Panel**) on the non-freshwater planning instrument parts of the Proposed Otago Regional Policy Statement 2021 (**PORPS**)(**Decision**).

2 This appeal is made under clause 14 of the First Schedule of the Resource Management Act 1991 (**RMA**)

3 The Appellant lodged a submission on the PORPS.

4 The Appellant is not a trade competitor for the purposes of section 308D of the Act.

5 The Appellant received notice of the decision on 28 March 2024.

6 The decision was made by the Otago Regional Council.

7 The Appellant now appeals the Respondent's decision in relation to:

(a) CE-M3(4);

(b) AIR-P4;

(c) Definition of 'Māori land';

(d) UFD-P4, P5 and P10.

Reasons for appeal

CE-M3(4)

8 In parts CE-M3(4) is too restrictive and unworkable for operators of large public wastewater and stormwater networks that are regionally significant infrastructure.

9 Provision CE-M3(4)(b) should have a qualification that potentially allows for new direct discharges of untreated wastewater containing human sewage direct to coastal water in circumstances where it is the best or only reasonably practicable option, and/or the adverse effects associated with a discharge to land would be greater than a discharge to coastal water.

10 Provision CE-M3(4) appears to also say that the methods required to be implemented to progressively reduce the frequency and volume of existing wastewater overflow discharges *must* include minimisation of stormwater

inflows and infiltration into wastewater systems and, by inference, *may* include other methods not named in the provision. Depending on the circumstances, there may be a range of methods to achieve the outcome of progressive reduction of frequency and volume of discharges. Minimisation of stormwater inflows and infiltration may or may not be one of those methods. This provision appears to prescribe an action that may not always be the appropriate action in all circumstances.

11 The provision CE-M3(4)(ba) should be amended to make it clear that the example given to minimise stormwater inflows is an example not a mandatory requirement.

12 CE-M3(4)(e) does not address the timeframe for implementation and could be interpreted in an unworkable manner. This method should be amended to include a timeframe for implementation similar to that in method (ba) above it, for example to progressively reduce the volume and frequency of cross contamination, where it is not designed to be a combined system.

AIR-P4(2)

13 This policy could be too restrictive and constrain the ability to carry out certain air discharge activities required by the Appellant as a territorial authority. It is unclear how “ensuring… do not cause…” will be interpreted in a manner materially different from the “Avoid" policy in AIR-P4(1). The Panel’s Report discusses this at section 5.2, paragraph 54. The Panel notes that there is not much difference between “avoiding” in (1) and “ensuring… do not cause…” in (2), but suggests it considers the wording in (2) to be softer than (1). This policy should be amended to include "unless these can be appropriately managed" at the end like in AIR-P4 (4), or something to like effect.

Definition of ‘Māori land’

14 The definition of ‘Māori land’ has been expanded to include land that is owned by Te Rūnanga o Ngāi Tahu and people who can whakapapa back to land. This means that the location of māori land can change through the sale and purchase of land, and therefore its location is uncertain. This would compromise natural justice for adjoining landowners who may want to be involved in changes of land use, and may also result in major development that may have inadequate services. The Panel discusses this at section 4, paragraphs 125 and 126. This definition should be amended by deleting clauses (1) and (8) of the definition of ‘Māori land’.

UFD–P4 - Urban expansion

15 “May occur” in the opening sentence of UFD-P4 sounds like it ‘may occur’ rather than a policy managing where urban expansion should occur. The policy should be amended by replacing ‘may with ‘should only’ in the opening sentence.

UFD–P5 – Commercial activities

16 Clause (4) provides for a range of commercial activities to establish outside centres and commercial zones. The range of activities may only be appropriate where there is insufficient capacity within the zones to accommodate them. The policy should be amended by adding to the last sentence ‘where there is insufficient capacity for these activities in the nearby centre or commercial zone.’

UFD–P10 – Criteria for significant development capacity

17 Clause (3) limits consideration of development infrastructure in the short-medium terms. There will be important infrastructure projects for long term capacity, and infrastructure projects may be necessary for environmental improvements or to meet Treaty obligations. The Policy should be amended by deleting “in the short-medium term” from the last sentence.’

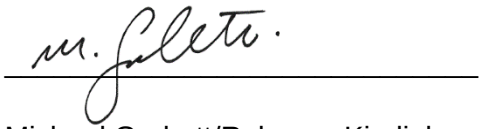
Relief sought

18 The Appellant seeks that CE-M3(4) AIR-P4(2), the definition of 'Māori land', UFD-P4, P5 and P10 are amended to address the issues identified in paragraphs 5-17 above.

19 Such other relief or rewording that is appropriate to address the matters raised, and/or consequential on the changes sought in this appeal.

20 Costs.

Dated this 14th day of May 2024



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Documents for service on the appellant may be:

- Left at the address for service
- Posted to the solicitor at Private Bag 1959, Dunedin 9016
- Emailed to the solicitor at michael.garbett@al.nz

I attach the following documents to this notice:

- a copy of my submission
- a copy of the relevant part of the decision
- a list of names and addresses of persons to be served with a copy of this notice (to be confirmed with the ORC).

How to become party to proceedings

1 You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

2 To become a party to the appeal, you must:

(a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings 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, serve copies of your notice on all other parties.

3 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 Act.

4 You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements.

How to obtain copies of documents relating to appeal

5 The copy of this notice served on you does not have attached a copy of the appellant's submission and (*or* or) the decision (*or* part of the decision) appealed. These documents may be obtained, on request, from the appellant.