

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-285

Under	the Resource Management Act 1991 (RMA)
In the matter of	an appeal under clause 14(1) of the First Schedule of the RMA in relation to the proposed Second Generation Dunedin City District Plan (2GP)
Between	The Preservation Coalition Trust Appellant
And	Dunedin City Council Respondent

Memorandum of Counsel for Dunedin City Council regarding appeal point 71

3 April 2020

Respondent's solicitors:

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May it please the Court:

- 1 This is a chronology of relevant documents considered necessary to determine the jurisdiction of whether the Court is able to grant the relief set out in Mr Werner's memorandum for PCT dated 20 March 2020.

Original submission

- 2 The original submission which is **document 1** in the bundle. In particular the relief sought was outlined on page 33 under the heading "*Rule 16.7 Subdivision Performance Standard*", in relation to the rural subdivision rule, Rule 16.7.4.1.d, where it was sought:

16.7.4.1.d Minimum Site Size: CHANGE the minimum on the Hill Slopes Rural Zone from 25ha. to 40ha.

- 3 Also on page 29 of this submission in relation to Rule 16.5.2.1.f dealing with the residential activity rule the submission focused on the geographic area of the Peninsula Coast, and not the Hill Slopes, where it was sought:

16.5.2.1.f: CHANGE the following maximum density for standard residential activities on the Peninsula Coast from 20 ha. back to the original Plan figure of 15 ha.

- 4 PCT wish to have the following recorded and added to this chronology:

Note that PCT considers the above information regarding the geographically separate Peninsula Coast Rural zone in this Hill Slopes Rural zone chronology document to be off topic, not relevant and should not be considered by the Court.

Decision

- 5 Dunedin City Council's (**Council** or **DCC**) Decision addressing the minimum site sizes for subdivision is **document 2** in the bundle. The relevant parts of the Decision are pages 31-35, addressing the PCT's predecessor's submission (Harbourside and Peninsula Preservation Coalition) on Rule 16.7.4.1.d, in relation to the Subdivision Performance Standard applying to the Hill Slopes.
- 6 The Decision also addresses this submitter's submission on Rule 16.5.2.1.f at pages 59-70, and summarised the submission at paragraph 231 on page 61. This was to reduce the minimum site size for residential activity in the Peninsula Coast Rural zone to 15 ha (but not in the Hill Slopes).

Original Notice of Appeal

- 7 The original Notice of Appeal dated 19 December 2019 (copy attached at **Appendix 1**). The relevant part of that was on page 3 where it stated:

The Decision we are appealing is:

Rule 16.7.4.1.d. The Hill Slopes Rural Zone minimum site size density standard 15 ha development, 25 ha subdivision.

.....

- 8 On page 4 the original Notice of Appeal also stated:

We seek the following relief:

We seek a 40ha MSS for the Hill Slope Rural Zone.

...

Amended Notice of Appeal

- 9 The amended Notice of Appeal amended on 12 January 2019. This is **document 3** in the bundle. This proposed to amend this appeal point by stating on page 4:

The Decision we are appealing is:

Rule 16.7.4.1.d. The Hill Slope Rural Zone minimum site size density standard 15 ha for one residential activity; 50 ha for two residential activities; 75 ha for three residential activities, 25 ha subdivision.

...

- 10 On page 5 the amended Notice of Appeal also stated:

We seek the following relief:

For the Hill Slope Rural Zone, we seek a 40ha MSS for one residential activity, 80ha for two residential activities and 120ha for three residential activities.

...

Minute dated 16 April 2019

- 11 PCT requested leave to amend its Notice of Appeal further. By Minute dated 16 April 2019 (copy attached at **Appendix 2**) the Court granted leave for PCT to, rather than amending the Notice of Appeal further, to prepare a list of issues.

List of key issues for PCT

- 12 The list of key issues for The Preservation Conservation Trust dated 16 April 2019 was filed. This is **document 4** in the bundle. The relevant part of this is paragraph 11. This stated:

11. The following relief is sought:

Increase minimum site size density standard for Hill Slope
Rural zone: 40ha for one, 80ha for two, and 120ha for
three residential activities (dwellings).

...

Waiver application

- 13 PCT sought a waiver dated 29 October 2019 (copy attached at **Appendix 3**). This sought to both waive the time limit to file a new appeal on Rule 16.5.2.1(c) and to amend the notice of appeal (again) to refer to Rule 16.5.2.1(c).
- 14 It is noted that this reference to Rule 16.5.2.1.c is incorrect and should be to Rule 16.5.2.1.d.

Notice in response to Waiver application

- 15 Council filed a notice in response to this application dated 6 November 2019, not consenting to these waivers and pointing out this likely error in the rule reference, in paragraph 1 of this DCC Notice (copy attached at **Appendix 4**).

PCT submissions

- 16 PCT filed its submissions by way of affidavit dated 3 December 2019 (copy attached at **Appendix 5**).

Council submissions

- 17 Council filed its legal submissions dated 18 December 2019 (copy attached at **Appendix 6**).

Minute dated 11 March 2020

- 18 By Minute dated 11 March 2020 the Court required PCT to set out again the relief it seeks in relation to the relevant rules (copy attached at **Appendix 7**).

PCT further memorandum

- 19 PCT filed a further memorandum in response dated 20 March 2020, referring to changes sought to Rule 16.5.2.d. (this should have correctly referred to Rule 16.5.2.1.d). This has sought for the first time a number of new sub-zones within the Hill Slopes Zone (copy attached at **Appendix 8**).

Dated this 3rd day of April 2020



Michael Garbett
Counsel for the Respondent