

In the Environment Court of New Zealand  
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa  
Ōtautahi Rohe

**ENV-2018-CHC-290**

Under	the Resource Management Act 1991
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 ( <b>2GP</b> )
Between	<b>Otago Regional Council</b>  Appellant
And	<b>Dunedin City Council</b>  Respondent

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**Affidavit of Sarah Catherine Hickey**

Affirmed: 4 December 2020

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Concerning:

**Group 1 – Strategic (Natural Hazards)**  
**Topic: Objective 2.2.1 Risk from natural hazards**  
**Appeal point DCC Reference 98**

**Respondent's solicitors:**

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**anderson  
lloyd.**

I, **Sarah Catherine Hickey** of Dunedin, Policy Planner, hereby solemnly and sincerely affirm:

- 1 I am a policy planner at Dunedin City Council.
- 2 I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. This affidavit has been prepared in accordance with it and I agree to comply with it. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
- 3 I have been employed by Dunedin City Council (DCC) as a policy planner for four years. During this time, I have primarily worked on drafting the 2GP, assessing submissions, preparing and presenting s42A reports and working on the appeals. Prior to this I was employed by the Otago Regional Council as a policy analyst working on the Otago Regional Policy Statement Review for two years, and prior to that as the Resource Planner – Liaison Officer for eight years making submissions on consent applications and local/central government proposals as well as assisting with plan changes.
- 4 I have a Bachelor of Science (Majoring in Geography) and a Post Graduate Diploma (Credit in Environmental Science) from the University of Otago.

### **Introduction**

- 5 This affidavit provides the rationale, and an assessment in terms of section 32, of the changes agreed in the following consent memo:
  - (a) Otago Regional Council ENV-2018-CHC-290, dated 15 October 2019 (Objective 2.2.1 Risk from natural hazards).
- 6 My understanding of the key issue of concern for the Otago Regional Council was the clarity of the wording of Objective 2.2.1.
- 7 BP Oil New Zealand Limited and Others are a s274 party to this appeal (oppose).
- 8 Please note that this affidavit supersedes my previous affidavit dated 15 October 2019, filed with the Court in relation to the Otago Regional Council appeal. The current affidavit reflects the direction provided by the Court in the minute of 29 May regarding filing consent orders and provides updated information on the overlaps remaining between appeals following the completion of Group 2 mediation.



*Agreement reached*

- 9 As outlined in the attached consent memorandum, agreement has been reached to address the concerns identified in paragraph 6 above (DCC reference number 98). The following amendment to the 2GP was agreed by parties in response to the appeal point by ORC:

***Objective 2.2.1: Risk from natural hazards***

*The risk to people, communities, and property from natural hazards, considering and from the potential effects of climate change on natural hazards, is no more than low.*

- 10 Consequential amendments to Objective 11.2.1 and strategic direction policies 2.6.1.5.c.ix, 2.6.2.1.d.viii and 2.6.2.3.c.iv are required as a result of the above amendment because these policies paraphrase the objective wording.

*Assessment of other appeals*

- 11 As part of my assessment of the appropriateness of this change, I have considered whether there are other appeals on the provisions affected by these amendments, to understand whether there is overlap between different appeals on the same provisions in the plan.
- 12 There are no appeals that directly overlap with Objective 2.2.1.
- 13 Consequential amendments due to this amendment are required to Objective 11.2.1. Objective 11.2.1 is not subject to appeal.
- 14 Objective 11.2.1 is paraphrased in policies 2.6.1.5, 2.6.2.1 and 2.6.2.3. These policies therefore also require consequential amendment.
- 15 Policies 2.6.1.5, 2.6.2.1 and 2.6.2.3 are subject to other appeals but not with respect to the aspect of the policy that paraphrases Objective 11.2.1. The appeal on Policy 2.6.2.1 is resolved via the Consent Memorandum – Residential Strategic, dated 16 September 2020, to be filed with the Court alongside this affidavit as part of the Residential Priority bundle. The consequential amendment to Policy 2.6.2.1 is shown in the draft consent order for the Residential Priority bundle.
- 16 However, the appeals on Policy 2.6.1.5 are not yet resolved and, therefore, the consequential change to this policy cannot be included in the attached draft consent order. To resolve this issue, the Council intends, under clause 16 of the first schedule to the RMA, to remove the paraphrasing of Objective 11.2.1 from Policy 2.6.1.5 but still retain the reference to Objective 11.2.1. This will remove the overlap between the appeal on Objective 2.2.1 (and

consequential amendment to Objective 11.2.1) and the appeals on Policy 2.6.1.5. Removing the paraphrasing of the objective will not change the meaning of the policy. It is not within the scope of the appeals on Policy 2.6.1.5 to revisit the wording of Objective 11.2.1.

- 17 Therefore, I consider that approving the Otago Regional Council changes to Objective 2.2.1, and the resulting consequential change to Objective 11.2.1 will not cut across, or affect, the other changes that have been sought to be made to these policies in other appeals.

### **Planning background**

- 18 Objective 2.2.1 of the 2GP concerns risk to people, communities and property from natural hazards including the impacts that climate change will have on those natural hazards.
- 19 Implementation of Objective 2.2.1 in relation to effects of climate change on natural hazards is prescribed in Policy 2.2.1.2 which reads:

#### **Policy 2.2.1.2**

*In calculating the likelihood and consequences of natural hazards consider:*

- a. risks from a single natural hazard event or from repetitive natural hazard events;*
  - b. risks from a combination of different natural hazards, including any potential interplay between natural hazards;*
  - c. risks that may arise in the next 100 years; and*
  - d. risks that may increase in frequency or consequence as a result of climate change.*
- 20 Policy 2.2.1.2 is not subject to appeal.
- 21 Objective 2.2.1 and Policy 2.2.1.2 are implemented in section 11 Natural Hazards of the 2GP. The most relevant provision is Objective 11.2.1 which reads as follows:

#### **Objective 11.2.1**

*Land use and development is located and designed in a way that ensures that the risk from natural hazards, including climate change, is no more than low, in the short to long term.*

## Decision Background

- 22 In its original submission Otago Regional Council supported Objective 2.2.1 (and associated policies) and sought that the recognition of risk and consequences given to climate change be retained.
- 23 In its decision, the Hearings Panel also considered other submissions in relation to Objective 2.2.1 regarding the clarity of wording. As such, the Hearings Panel amended the objective to provide consistency with the policies in Section 11 of the 2GP in regard to the policy test of 'no more than low'.<sup>1</sup>

## Assessment (s75 and s32)

### *Consistency with higher order documents (s.75)*

- 24 The Otago Regional Policy Statement (partially operative) (RPS) Objective 4.1 is "Risk that natural hazards pose to Otago's communities are minimised". The associated policies are concerned with minimising natural hazard risk.
- 25 Objective 4.2 is "Otago's communities are prepared for and able to adapt to the effects of climate change". The associated policies are concerned with mitigation of, and adaptation to, the effects of climate change.
- 26 I note that the RPS natural hazard and climate change provisions cited above are operative.
- 27 The proposed amendment will give effect to the RPS. In particular, it responds to objectives 4.1 and 4.2 and policies 4.1.1 (Identifying natural hazards) and 4.2.2 (Climate Change).

### *Section 32AA Assessment*

- 28 Although the amendment proposed is to a strategic direction objective, it is a minor change to wording to clarify, rather than change, the meaning. The amendment appropriately expresses how natural hazards are considered in the 2GP, provides clarity and improves consistency with the RPS.
- 29 Therefore, in my opinion a re-assessment under s32AA is not required given the relatively insignificant nature of the change (s32AA(c)). Nevertheless, it is my opinion that the objective as expressed is the most

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<sup>1</sup> Natural Hazards Decision, section 3.4.1 (p29)

appropriate way to achieve the purpose of the RMA, particularly with respect to Section 6(h) and 7(i).

### Conclusion

- 30 Overall, I support changes being made to the Plan that have been agreed to resolve this part of the Otago Regional Council's appeal.

Affirmed at Dunedin )  
this 4<sup>th</sup> day of December 2020, )  
before me: )



A Solicitor of the High Court of New Zealand

Natalia Panayota Zambazos Dowrick  
Solicitor  
Dunedin

  
**Sarah Catherine Hickey**