

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under clause 14(1) of the First Schedule of the Act
BETWEEN	AURORA ENERGY LIMITED
	(ENV-2018-CHC-277)
	Appellant
AND	DUNEDIN CITY COUNCIL
	Respondent

MINUTE OF THE ENVIRONMENT COURT

DCC Appeal Reference: 245
Earthwork Rules
(14 May 2020)

Introduction

[1] This Minute is released for the purpose of case management and responds to the application for consent orders dated 2 October 2019.

[2] At the pre-hearing conference held on 18 March 2019 the court emphasised the importance of taking a top down structured approach when scheduling appeals for mediation. The City Council has now taken this direction on board, reprioritising the appeals for resolution to ensure that points of appeal that are 'strategic' are dealt with ahead of lower order provisions such as rules, site specific zoning etc.¹

[3] I also said that the court would make consent orders when it was satisfied that it is appropriate to do so where there is no relationship between the provision under appeal and the balance of the plan.²



¹ Dunedin City Council memorandum dated 24 April 2020.

² Minute dated 1 March 2019.

[4] The application for consent orders seeks to amend Rule 8A.5.1.1 and introduce a new permitted activity.³ The application does not follow the court's guidance insofar as a rule is not a higher order provision and secondly, there are linkages between this appeal and several other appeals listed in the affidavit of Ms S C Hickey.⁴ It is Ms Hickey's opinion that the resolution of those other appeals has no bearing on the orders sought from the court. While Ms Hickey gives reasons for her view, she has not canvassed the parties to those appeals.

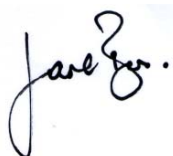
[5] As matters presently stand, the court is unable to satisfy itself that the rule will not be impacted in some way by those other proceedings. The parties have a choice – either:

- (a) the consent memorandum remains on the court file pending the resolution of those other proceedings; or
- (b) satisfy the court that the other appeals notwithstanding, the proposed amendments are the most appropriate provision by which to achieve the plan's objectives. To do this, the views of the parties to those other appeals will need to be canvassed.

[6] If it is proposed that the consent memorandum is to remain on the court file, this will be subject to a direction the draft consent orders are brought-up for further consideration when related appeals are scheduled for mediation or a hearing.

Directions

[7] I direct by **Friday 22 May 2020** the City Council, having conferred with the other parties, is to file and serve a memorandum explaining how it wishes to proceed and seeking directions as appropriate.



J E Borthwick
Environment Judge
Issued: 14 May 2020



³ The amendment being to introduce sub-clause "j" to the rule which reads: "earthworks ancillary to the operation, repair, minor upgrading and maintenance of existing network utilities".

⁴ Affidavit of Sarah Catherine Hickey affirmed 15 October 2019.