

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	OTAGO REGIONAL COUNCIL (ENV-2018-CHC-290) Appellant
AND	DUNEDIN CITY COUNCIL Respondent

MINUTE OF THE ENVIRONMENT COURT

DCC Appeal Reference: 98
Natural Hazards Strategic

(19 May 2020)

Introduction

[1] This Minute is released for the purpose of case management and responds to the application for consent orders dated 15 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 not make consent orders unless it was appropriate to do so and secondly, where there is no relationship between the provision as proposed to be amended by consent orders and other appeals before the court. As recorded elsewhere, it is vitally important this is respected, lest the court spend time considering ad hoc amendments ahead of other appeals on related provisions. Parties are reminded

¹ Dunedin City Council memorandum dated 24 April 2020.



that on this application, as with the other applications for consent orders, a bench of three has considered the draft orders.

[4] The application for consent orders seeks to amend Strategic Objective 2.2.1 and to make consequential changes to Strategic Policies 2.6.5.c.ix, 2.6.2.1.d.viii and 2.6.2.3.c.vi and finally to Objective 11.2.1. In seeking consent orders the parties have not followed the guidance of the court insofar as there are linkages between this appeal and several other appeals listed in the affidavit of Ms S Hickey.² The court has read the affidavit of Dr Johnson³ and note that she restricts her comments to Objective 2.2.1 and does not provide an assurance that the changes proposed are in line with the 2GP drafting protocol set out in the *2GP Style Guide April 2019 – incorporating change made through 2GP decisions*.

[5] Ms Hickey has undertaken a thorough review of other appeals on related provisions and it is her opinion that the resolution of those appeals will have no bearing on the orders sought from the court. Even so, as matters presently stand, the court is unable to satisfy itself that the proposed amendments 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.

² Affidavit of Sarah Catherine Hickey affirmed 15 October 2019. At some point, Ms Hickey will need to clarify paragraph [13] of her affidavit. In the first sentence she says Objective 2.2.1, together with other policies, are subject to other appeals. But at [13(a)] she says Objective 2.2.1 is not subject to any other appeal.

³ Affidavit of Dr Anna Louise Johnson affirmed 15 October 2019.



Directions

[7] I direct by **Tuesday 2 June 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: 19 May 2020