

BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

ENV 2018 CHC 285

I MUA I TE KOOTI TAIAO O AOTEAROA
OTAUTAHĪ ROHE

IN THE MATTER of the Resource Management Act 1991 (RMA)

AND

IN THE MATTER of an appeal under section 120 of the Act

BETWEEN

THE PRESERVATION COALITION TRUST

Appellant (ENV 2018 CHC 285)

AND

DUNEDIN CITY COUNCIL

Respondent

AFFIDAVIT BY CRAIG WERNER ON BEHALF OF THE PRESERVATION COALITION TRUST INC.

03 December 2019

Filed by Craig Werner, authorized representative for Appellant

Email: craigwerner.ww@gmail.com

Phone: 03 476-1333

I, Craig Werner, Trustee, swear / affirm:

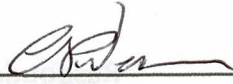
1. I am a Trustee of the Preservation Coalition Trust (Trust). The Trust is the appellant in **ENV 2018 CHC 285**. I am authorised to swear this affidavit on behalf of the Trust. *affirm CRW CRW*
2. I attach marked "A" my submission to the Court on scope relating to Rule 16.5..2.1.(c) (density rule for the Hill Slopes Rural zone) of the Proposed Dunedin City Council plan (the 2GP).
3. To the extent that there are factual assertions in my annexure "A", I confirm these as factually correct to the best of my knowledge.

Sworn/Affirmed

At Dunedin

This 3rd day of December 2019

Before me *LYN DOWSETT*


Craig Werner

 JP

Justice of the Peace

3. 12. 19

L.R. Dowsett, JP

#3228

DUNEDIN

Justice of the Peace for New Zealand

A Justice of the Peace

A This is the letter marked ^{referred to} A₁ in the affidavit of
Craig Werner declared at Dunedin on 3rd December
2019 before me
In the Environment Court of New Zealand
Christchurch Registry
I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

L.R. Dowsett
LYN DOWSETT JP 3228
Justice of the Peace
L.R. Dowsett, JP
#3228
DUNEDIN
Justice of the Peace for New Zealand

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

**Submission by The Preservation Coalition Trust on Scope and Relief Issues Relating to
Appeal Points 70b and 71.**

03 December 2019

Appellant's Representative:

Craig Werner, Trustee & Treasurer
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A

Submissions on Scope and Relief
filed by: The Preservation Coalition Trust

Introduction

- 1) This document by the Preservation Coalition Trust (PCT), is in response to the direction of Environment Judge J E Borthwick, as outlined in Record of Telephone Conference held 13 November 2019 in the matter of ENV-2018-CHC-285.

The following topics are included:

- Appeal Point 71. Scope issue/waiver application to amend appeal filed 29 Oct. 2019
- Appeal Point 70b. Relief clarification.
- Appeal Point 70b. Scope issue.

Appeal Point 71. Scope Issue

- 2) The PCT original submission on page 33 reads:
16.7.4.1.d Minimize Site Size: **CHANGE the minimum on the Hill Slopes Rural Zone from 25 ha. to 40 ha.**
Reason for this view: The Hill Slopes Rural zone is the most visually prominent of the seven rural zones because it combines the higher visibility of a slope compared to flatter areas, with this zone's proximity to sizeable resident populations who have those slopes in view.
- 3) The Trust recognizes that its submission did not include the point 16.5.2.1 that addresses the residential density minimum site size. The 2GP cites a minimum of 15 ha. for one residence. Our intent was to amend this allowed minimum site size to 40 ha. We note the significant natural justice question this raises regarding property owners in the Hill Slope Zone being unaware and denied an opportunity to perhaps participate in the 2GP process. The Trust does not know procedures in these matters, if this is resolvable or if it is practical to attempt resolution. However, the circumstances related to this submission error are outlined herein should the Court wish to engage in further consideration of the issue. This could, perhaps, be appropriate depending on the Court's view of the relative importance of the following district plan integrity matter.

Given the DCC's creation of this new Hill Slopes Zone, and describing it as having special characteristics, plan integrity has been seen by PCT as questionable. The 2GP leaves the residential density minimum site size for this new zone at the 15 ha. size of the operative plan. A tension and disregard are seemingly created between the 15 ha. MSS having been deemed suitable

in the past for even remote, nearly invisible, rural areas, and the fact that the 2GP's new Hill Slopes Zone's amenity is described in DCC's s32 report as having "landscape value as rural backdrop to urban areas". a 15 ha. MSS seems inadequate for the new Hill Slopes zone. This 'value' is magnified as any hill slope near populations is naturally very visible. The PCT position is that district zones should have rules that reflect their values and character. A minimum site size greater than 15 ha. for the Hill slope zones seems necessary. And, in fact, the DCC's Rural 42A report, page 20, allows that if the Hearing Panel was of a mind to have a simple single size rule to apply to both subdivision and rural density, then a residential site size of 25 ha. would be recommended.

- 4) The PCT's intention for the submission on the Hill Slopes zone was to address not only point 16.7.4.1.d, but also residential site density (16.5.2.1.d). Last year this omission was caught, discussed with DCC, and acknowledged by them in a meeting held on 30 April 2019 with DCC and their counsel, Rachel Brooking of Anderson Lloyd. PCT counsel R. Enright was unable to attend. The error was acknowledged as being understandable and forgivable, and a contingency requested for a written explanation by PCT of the reason for the error. This explanation was included in paragraphs 2 and 3 of the 09 May 2019 PCT memoranda to DCC counsel. Indications at the meeting by DCC's Ms. Johnson were interpreted by PCT as the DCC did *not* intend to challenge on this scope matter.
- 5) The PCT's original submission was to have included amendments to 16.5.2.1.d as well as 16.7.4.1.d, but as they were in different sections of the 2GP they were not recognized in submission drafting. With finalization of our amendment point, the 16.5.2.1.d rule was lost and a co-mingling with the subdivision standard occurred. This is manifested and indicated in paragraphs 6-8 below.
- 6) The nature of the appeal point drafting error.
The submission point described 16.7.4.1.d as *Minimum Site Size*, which is a reference to residential *site* density and not to subdivision allowances.

(Note: The PCT submission document and others referenced herein are part of the Anderson Lloyd scope assessment 'bundle'.)

- 7) The appeal point section "Reason for this view" is the 'reason' related to residential density not to *subdivision*. It discusses visible prominence and the views of residents in the locale. Of course, it is only actual residences and structures that have visibility. A site which is only surveyed and subdivided is an invisible element.
- 8) PCT Submission: "Introduction – Submission Structure" section, page 2.
The tenor of the PCT submission is expressed in the last sentences of the last paragraph of page 2 of the submission, as follows: "*However, this submission by a lay community group cannot achieve complete and comprehensive modification to all Plan provisions that relate to an issue raised with respect to a single Plan provision amendment. Attempts at modifying interlinked, related provision*

changes have been made herein but as this task is really for others, the comprehensiveness of our amendments to provisions may be incomplete."

- 9) The PCT's focus on landscapes and the visible dwelling and structure outcomes related to 16.5.2.1.d are further elucidated in the submission's "Addendum #1: Expand the Protection of Dunedin Landscapes", page 50 as follows: *"The importance of perception cannot be overstated as it will apply to the satisfaction of the majority of Dunedin people who will be living in our residential areas in the future. A key component of Dunedin's approach to addressing future housing demand is by increasing the density in our residential areas. This may translate into smaller gardens and more views blocked by medium density, multi-story dwellings. We feel that a significant enhancement to Dunedin's future quality of life will more and more depend on those living in denser enclaves being able to 'lift their eyes to the hills' where landscape values have been preserved on a larger scale than what we enjoy today. As Dunedin grows, landscape protection will become more necessary."*
- 10) The proper statement of the intended relief pertaining to 16.5.2.1.d is found in the 16 April 2019 "Issues" document provided to Court and DCC. Given that the 2GP sought provision for second and third residential activities to be established on a holding, the minimum standard for residential density is expressed in the "Issues" document as 40 ha. for one, 80 ha. for two ha. and 120 ha. for three dwellings. (Note that given the Di Lucas Hill Slopes report recommending 25 ha. subdivision minimum for the zone areas not surrounding the harbour, a coinciding modification of the PCT's Hill Slopes residential density MSS for those areas is supported by the Trust and it is anticipated to be an element confirmed in the planned expert caucusing.)
- 11) In light of the foregoing, we respectfully request that the Court please consider the PCT's scope intent to include both subdivision and residential density 2GP amendments for the Hill Slope Zone and approve our 29 October 2019 appeal waiver application.

Appeal Point 70b. Relief Clarification

- 12) As has been properly rationalized in memoranda by the Court, the DCC conjoining and numbering of two submission appeal points as number 70 is more properly identified as the two separate performance standards:
- 70a 16.6.14 Building and Structure Screening (No scope challenge. No relief changes.)
 - 70b 16.6.13 Building and Structure Performance Standard
- This document addresses relief and scope issues pertaining to 70b which will be assisted by a brief background review.
- 13) The PCT's submission recognized that, for landscape overlays, the 2GP included only the two performance standards of height and reflectivity. To only the very smallest extent, these address

the scale, size, bulk and perceived scale (brightness) of buildings and structures. These meagre rules stand in sharp contrast to the 2GP policies outlined below:

Policy 2.4.4.3 *Protect the values in identified Outstanding Natural Feature (ONF), Outstanding Natural Landscape (ONL) and Significant Natural Landscape (SNL) overlay zones by listing these values in Appendix A3 and using rules that:*

c. restrict the scale of development in ONFs, ONLs and SNLs and ensure the design of development is appropriate.

Policy 2.4.5.3 *Protect and enhance the natural character values in Outstanding Natural Coastal Character (ONCC), High Natural Coastal Character (HNCC) and Natural Coastal Character (NCC) overlay zones through listing natural character values in Appendix A5 and using rules that:*

c. restrict the scale of development in ONCCs, HNCCs and NCCs and ensure the design of development is appropriate;

Policy 2.4.6.2 *Maintain the identified values within different rural environments through mapping rural zones and using rules that:*

b. Manage the bulk the location of buildings

14) Last year there was clarification and modification of the PCT's submission appeal point 16.6.13 at the request of and discussion with DCC Planner Michael Bathgate. This modified version (also found in the Anderson Lloyd 'bundle') represents the first modification of 70b relief.

15) Testimony offered in the 2GP Hearings Panel submitter hearings by council landscape architects was in support of a rule that would address the scale and bulk of development in landscape overlays.

The DCC's full-time landscape architect, Mr. Barry Knox, considering a rural residential element of the PCT submission appeal point, proposed to the Panel a 600 sq. m. built structure maximum. More significantly, DCC's consulting landscape architect, Mr. Michael Moore, suggested a 2% maximum or 700 sq. m. structure coverage of sites in all Rural zones, whereas PCT seeks this protection only for overlay and Hill Slopes. (The bundle's Rural Decision Report, para. 958.) In addition, a Panel commissioner cited the Tasman District Plan provision that capped site coverage of buildings and structures at 2% of the land area.

16) These opinions regarding built coverage of sites, although rejected by DCC, are among the influences that encouraged PCT to revise its appeal point from our 2GP original submission to a restatement in the PCT appeal, and the yet another restatement in the 16 April 2019 Key Issues document. In addition, in the Relief section of the PCT appeal, page 3, item 2, the wording " rules such as the following or through other methods ... " was added. This wording was repeated in the "Key Issues" document

in hopes of soliciting a degree of consideration by DCC regarding the PCT's proposed rules. However, no sign of a desire for any collaboration was forthcoming and PCT's counsel's interpretation is that DCC prefers to litigate. We also prefer a hearing with part of this determination based on our experience in Group 1 Court mediation. Little flexibility in the DCC positions was evident. Also, the Court seemed disinclined to proactively propose/encourage party discussion or to progress actual mediation activity in lieu of more expeditiously driving toward each party's basic 'statements of position'. This standard Court Mediation dynamic was not anticipated by the inexperienced PCT.

- 17) PCT has failed to fully comprehend the District Plan submission and appeal process. In the past we were open to DCC input for precautionary rules regarding development scale and bulk in landscape overlays. Our relief wording included rule examples 'such as' and being open to 'other methods'. However, the parties appear to remain more interested in relief clarification in precise terms.

New rules are needed for DCC to fulfil its obligation to promulgate policies 2.4.4.3 (c), 2.4.5.3 (c), and 2.4.6.2.b. The rules that PCT now propose drop any reference to 'such as' and 'other methods' and specify the paragraph 18 rules as appeal point 70b relief.

- 18) The PCT's proposed performance standard rules have again been refocused and simplified. In this instance they are based on the DCC's landscape architect opinion.

In the Trust's view, what seems less important than some totally comprehensive suite of proposed rules is achieving some rudimentary start with the 2G Plan cycle to begin limiting built scale in landscape overlay areas. It is also speculated that these rules might apply to as few as 50 residential sites, over maybe 50 years, given the very small extent of the overlays. However, crucially, these sites are very visible to travellers and residents and those engaged in recreation pursuits, as they are drawn to those outstanding and significant places in Dunedin. Tourism business and the public's sightseeing encounters in the future might number in the millions, which seems in stark contrast to rather minor constraints on a few future homeowners.

Appeal Point 70b Relief Sought:

19) Building and Structure Standards:

- a) Performance standards for building and structure scale, size and bulk apply in ONF, ONL, SNL, ONCC, HNCC and NCC overlays and the Hill Slopes Rural Zone to preserve the naturalness of the area.¹

¹ These rules identify 'scale' in terms of maximum ground area. This footprint area, when combined with the 2GP's maximum height standard, would properly describe the full dimensional scale of buildings and structures.

- b) The total area of all buildings and structures larger than 4 sq. m. on a site does not exceed whichever is the greater of 2 percent of the site area, or 700 sq. m. ²
- c) The area of the residential building shall not exceed 350 sq. m. ³
- d) The calculation of residential building 'area' shall include all terraces, pavilions, covered and uncovered, walkways between residential 'compound' elements which link those components. ⁴
- e) The defined 'area' shall also include all *covered* or roofed outdoor surface areas on the outer perimeter of buildings.

20) The rewritten performance standard of paragraph 19 clarifies the relief that PCT would seek in a hearing on this appeal point 70b.

Appeal Point 70b. Scope Issue

21) Given that the PCT's original submission point 16.6.13 includes a standard for "maximum gross floor area", we submit that our newly clarified relief (paragraph 19) which centres on building and structure areas and is based on DCC consultant opinion, matches that scope intent. It is granted that relief details have changed from the original submission and improved in subsequent official documents as part of the appeal dynamic that was experienced as explained in paragraphs 13-17. Council input, outside opinion, and our counsel's advice coming later in the process have been key.

Please also note the issue that the DCC planner reported in the Hearing Panel Decision Report that because the PCT submission cited a total area *larger* than the expert opinion figure, that PCT aligning with the expert opinion would be inconsistent from a scope standpoint.

We disagree and believe that the weight of this argument is greatly offset by the need to support policies for Plan integrity. 2GP policies requiring rules should be supported by thorough Plan rules. Our hope is that the Court's scope decision reflects the importance of Plan integrity and that scale, the size and bulk of buildings and structures, cannot be defined by the DCC rule for height alone. Also, that building and structure area is a key feature of PCT's original submission.

Thank you for your consideration in this matter.

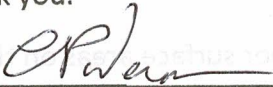
² This reflects DCC consulting landscape architect, Mr. Michael Moore, 2GP Decision Report, Rural, Paragraph 958.

³ 350 sq. m. is as cited in point 16.6.13 of the original submission. The purpose of this standard is to align with the DCC's aim of production oriented rural zones while giving allowance in newly dedicated Large Lot Residential Zone areas for extremely large dwellings. Note: 2GP Objective 16.2.3 (d), "a low density of residential activity, which is associated with rural activities."

⁴ Residential 'compound' architectural design with dispersed components of a residence and garages interlinked are anticipated in the future.

Finally, I apologize for poor drafting, imprecise language and poor proof-reading in important parts of the HPPC/PCT's 60-page submission document leading to lack of clarity and extra time required in resolving this matter.

Thank you.



Date: 3 December 2019

Craig Werner, Trustee & Treasurer

The Preservation Coalition Trust