

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-214

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

Affidavit of Emma Christmas

10 September 2019

Respondent's solicitors:

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**anderson
lloyd.**

I, **Emma Christmas** of Dunedin, Policy Planner, hereby solemnly and sincerely affirm:

- 1 I am Policy Planner at Dunedin City Council (DCC).
- 2 I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. This evidence 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 as a policy planner for six 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 self-employed as a planner for 10 years, working mainly on consent applications. Prior to that I was Team Leader Consents at Environment Canterbury for five years. I am a certified independent hearings commissioner and a full member of the New Zealand Planning Institute.

Background

- 4 I have been asked to outline the 2GP provisions related to the appeal by Anthony Parata and the changes agreed to in the consent memorandum.
- 5 Anthony Parata lodged appeal ENV-2018-CHC-226 seeking that: "All new zoning and intensification of residential development by zoning that is likely to impact on services should only proceed when supported by comprehensive engineering and funding studies so that infrastructure within and related to the new areas is not compromised."
- 6 A second aspect of this appeal in relation to papakāika housing is not addressed in my affidavit or the consent memorandum.
- 7 The appeal was refined through two memoranda withdrawing the relief sought as it related to specified sites. The appeal on intensification now relates only to:
 - (a) sites zoned Residential 1 in the operative plan that are zoned General Residential 2 in the 2GP and are subject to an Infrastructure Constraint Mapped Area;
 - (b) sites zoned Rural in the operative plan that are zoned Rural Residential 1 or 2 in the 2GP that:
 - (i) have additional development potential; and
 - (ii) are fronted by an unsealed road or are within 500m of a DCC water supply.

Issues of concern

- 8 I have met with Mr Parata on a number of occasions to discuss his appeal point on intensification. My understanding is that Mr Parata's concerns relate to General Residential 2 Zone (GR2 Zone) areas that are subject to an infrastructure constraint mapped area and areas of new rural residential zoning close to a DCC water supply or that adjoin an unsealed road. These are discussed below.

General Residential 2 Zone

- 9 The GR2 Zone is a new medium density zone. It has primarily been applied to areas zoned Residential 1 in the operative plan and allows intensification of these areas. Density is calculated on a habitable room basis. The operative Residential 1 Zone allows one residential unit per 500m² of site area (operative plan Rule 8.7.1). The GR2 Zone (outside the infrastructure constraint mapped area) allows one habitable room per 45m² of site area (2GP Rule 15.5.2).
- 10 The infrastructure constraint mapped area (ICMA) applies where there is insufficient capacity in the wastewater network to support the intensification of these areas. The provisions hold development density to a density more closely aligned to that of the operative plan Residential 1 Zone and the 2GP General Residential 1 Zone¹. That is, a maximum of one habitable room per 100m² of site area.
- 11 Contravention of the 2GP density performance standard is a restricted discretionary activity. Discretion includes effects on efficiency and affordability of infrastructure (assessment rule 15.10.3.3, which links to Rule 9.5.3.3). The assessment guidance refers to Policy 9.2.1.6, which reads:

"Require development and subdivision in an infrastructure constraint mapped area to be at a density which does not compromise the current or planned capacity of the public wastewater infrastructure, or compromise the ability of the public wastewater infrastructure to service any activities permitted within the zone."

- 12 I understand that Mr Parata is concerned that resource consents will be obtained to increase density in these areas despite Policy 9.2.1.6, on the grounds that the impact of each development is so small as to be inconsequential, and the cumulative effects of the new development along with existing and permitted development will be ignored.

¹ The General Residential 1 Zone allows a maximum of one residential unit per 500m² of site area (Rule 15.5.2). The minimum site size for subdivision is 500m² (Rule 15.7.4).

13 To address this, the following amendments have been agreed:

(a) **Policy 9.2.1.6**

~~Require~~ Only allow development and subdivision in an infrastructure constraint mapped area ~~to be at a~~ above the permitted density where it will ~~which does~~ not compromise the current or planned capacity of the public wastewater infrastructure or compromise the ability of the public wastewater infrastructure to service any activities permitted within the zone.

(b) **Assessment guidance 9.5.3.3 (assessment of contravention of density performance standard)**

Relevant objectives and policies:

- i. Objective 9.2.1
- ii. Development in an **infrastructure constraint mapped area** above the permitted density, ~~is at a density which does will~~ not compromise the current or planned capacity of the public wastewater infrastructure, or compromise the ability of the public wastewater infrastructure to service any activities permitted within the zone (Policy 9.2.1.6).

General assessment guidance:

- iii. In determining whether Policy 9.2.1.6 is achieved, Council will consider the cumulative effects of the proposed development together with existing development and permitted development that is likely to arise in the future.

14 In my opinion these changes are not substantive as they do not change the test for granting consent. Rather, they clarify and strengthen the policy wording and supporting guidance, reinforcing the point that development above the permitted density will only be allowed when wastewater capacity is available, and the cumulative effects of other permitted development must be considered.

Rural Residential development

15 A number of new areas of rural residential zoning have been included in the 2GP. I understand Mr Parata's concerns are that these new areas may result in increased pressure in the future to upgrade public infrastructure. In particular, where sites are located close to DCC reticulated water infrastructure there may be increased demand from residents to connect to the public water supply, and where sites adjoin unsealed roads there may be increased demand for DCC to seal the road (often due to nuisance dust). This may put extra pressure on the water network to the detriment of existing residential users and result in a cost to the ratepayer to upgrade water and roading infrastructure.

- 16 By way of background, connection to the reticulated water supply is governed by DCC's Water Bylaw and the practice that has developed in terms of implementing it. The bylaw identifies urban and rural water supply areas. Connections to rural and rural residential properties within water supply areas are made at the discretion of the Council. Relevant considerations include whether there is available capacity and the potential impacts on other users within the network. There are several Rural Residential zoned areas within water supply areas.
- 17 Rural residential sections are not serviced for wastewater (i.e. there is no connection to DCC's reticulated wastewater network). Subdivision in the rural residential zones is a restricted discretionary activity, subject to meeting performance standards. Discretion includes effects on efficiency and affordability of infrastructure (assessment rule 17.10.4.1, which links to Rule 9.6.2.4).
- 18 To address Mr Parata's concerns, the following amendments to the 2GP are proposed:
- (a) **Assessment guidance 9.6.2.4 (assessment of all subdivision activities in relation to effects on efficiency and affordability of infrastructure)**
- Conditions that may be imposed include:*
- (viii) Within an area serviced by DCC for wastewater, a A requirement for wastewater connections.
- (b) **Add new Note to Plan User after Rule 17.3.5 (subdivision activity status table, rural residential zones):**
- Note 17.3.5B – General advice
- DCC does not generally provide reticulated water supply to sites zoned rural residential and a connection should not be presumed.
- 19 These amendments clarify that that a requirement to connect to the wastewater network will only be made in areas serviced by such a network (that is, not rural residential zoned sites) and removes any suggestion that DCC does or will service all areas for water and wastewater. In my opinion, they will more effectively achieve **Objective 9.2.1 – Land use, development and subdivision activities maintain or enhance the efficiency and affordability of public water supply, wastewater and stormwater infrastructure** by providing clarity for plan users.

- (c) **Assessment guidance 6.11.2.1 (assessment of all restricted discretionary activities linked to section 6.11 and that have 'effects on the efficiency of the transport network' as a matter of discretion)**

General assessment guidance:

- vi. ...
- vii. For subdivision activities on sites adjoining unsealed rural roads, Council will consider the effectiveness of any proposed mitigation measures to reduce the risk of complaints of dust from the road.

Potential circumstances that may support a consent application include:

- ~~vii.~~ viii. ...
- ix. For subdivision activities adjoining roads that are unsealed, any necessary conditions to reduce the risk of complaints of dust from unsealed roads, for example conditions on the location of building platforms, screening of the road frontage or sealing of roads.

- 20 These amendments put the onus on the developer to ensure that new rural residential sites will not increase demand in the future for DCC to seal roads (a cost to the ratepayer) due to nuisance dust. In my opinion this more effectively achieves **Objective 6.2.3 – Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel modes and its affordability to the public.**
- 21 In my opinion, the amendments above are a more effective way of achieving the relevant objectives and addressing the concerns raised by Mr Parata's appeal. Better clarity within the plan will improve the efficiency of plan implementation.
- 22 There are no consequential changes to the 2GP as a result of the amendments proposed above.

Relationship to Strategic Directions objectives and policies and appeals on those objectives and policies

- 23 The amendments discussed above clarify and reinforce the approach taken in the 2GP to avoid intensification of residential areas where insufficient infrastructure capacity exists, and provision of infrastructure in the rural residential zones. The amendments are not strategic in nature, as they implement (or are not in conflict with) the Plan's existing strategic directions and will not affect or require any change to them.
- 24 The relevant strategic directions objective is **Objective 2.7.1: Public infrastructure networks operate efficiently and effectively and have the least possible long term cost burden on the public.**

- 25 Objective 2.7.1 is under appeal by BP Oil New Zealand Limited and Others to include appropriate recognition, provision and protection of strategic infrastructure. The relief sought does not appear to amend Objective 2.7.1 in a way that would change its focus of efficient and effective operation of infrastructure networks, and so the amendments proposed here are not contrary to the relief sought by this appellant.
- 26 The most relevant strategic directions policy in relation to intensification in the GR2 Zone in areas where infrastructure capacity is limited is Policy 2.7.1.1.

Policy 2.7.1.1

Manage the location of new housing to ensure efficient use and provision of public infrastructure through:

- a. *rules that restrict development density in line with current or planned public infrastructure capacity; ...*

- 27 The policy is reflected in Policy 9.2.1.1 in the public health and safety section.

Policy 9.2.1.1

Only allow land use or subdivision activities that may result in land use or development activities where:

- a. *in an area with public water supply and/or wastewater infrastructure, it will not exceed the current or planned capacity of that infrastructure or compromise its ability to service any activities permitted within the zone;*

- 28 Policy 2.7.1.1 has been appealed by Robert Wyber. The relief sought is "Amend Policy 2.7.1.1 to infrastructure planning occurs to assist in providing adequate urban land supply [sic]". Presuming that the appeal seeks to ensure that appropriate infrastructure planning occurs to ensure that adequate urban land supply can be provided, then in my opinion the amendments made in response to Mr Parata's appeal are consistent with the relief sought.
- 29 Policy 9.2.1.1 is not subject to appeal.
- 30 The most relevant strategic directions policies in relation to the provision of infrastructure services to rural residential zoned sites are Policy 2.7.1.1 (see above) and Policy 2.7.1.3:

Policy 2.7.1.3

Avoid future pressure for unplanned expansion of public infrastructure through rules that restrict the density of activity outside of areas reticulated for wastewater, water supply, or stormwater to ensure these are able to be self-sufficient where public infrastructure is not provided.

- 31 The policies are reflected in Policy 9.2.1.1 and Policy 6.2.3.9.

Policy 9.2.1.1

Only allow land use or subdivision activities that may result in land use or development activities where:

- a. ...*
- b. in an area without public water supply and/or wastewater infrastructure, it will not lead to future pressure for unplanned expansion of that infrastructure.*

Policy 6.2.3.9

Only allow land use and development activities or subdivision activities that may lead to land use or development activities, where:

- a. ...*
- b. any associated changes to the transportation network will be affordable to the public in the long term.*

- 32 Policy 6.2.3.9 may be impacted by Kiwirail Holdings Limited's appeal to amend Policy 2.3.1.5 to provide for rail as a transportation activity; however, in my view the relief sought appears unlikely to change the focus of this policy. Policies 2.7.1.3 and 9.2.1.1 are not under appeal.
- 33 Overall, in my view the amendments proposed in relation to Mr Parata's appeal will not impact on any of the strategic direction objectives or policies (including potential amendments as a result of other appeals) or the management approach to infrastructure outlined in the plan.

Consistency with higher order documents

National Policy Statement for Urban Development Capacity

- 34 The National Policy Statement for Urban Development Capacity 2016 (NPS-UDC) requires local authorities to provide sufficient urban development capacity to meet projected residential and business demand over the short, medium and long term. A key requirement is that land available for development is serviced or funding for future servicing identified in Council's Long Term Plan or Infrastructure Strategy.

- 35 Work is underway on a variation to the 2GP (Variation 2) to ensure this is achieved. The proposed amendments discussed above will not impact on Council's ability to meet its requirements under the NPS-UDC. Rather, they clarify that a (current) lack of infrastructure capacity in some areas must be taken into account when making decisions on residential zoning and intensification.
- 36 Land zoned rural residential does not meet the NPS-UDC definition of urban development capacity² as its zoning, the policies and rules in the plan, and the general lack of development infrastructure (as defined in the NPS-UDC)³ mean it is not intended for urban development. Consequently, it is not managed under the NPS-UDC.

Otago Regional Policy Statement

- 37 The Otago Regional Policy Statement (partially operative) Objective 4.3 is that infrastructure is managed in a sustainable way. The associated policies are concerned with providing for and managing infrastructure, and matters relating to regionally and nationally significant infrastructure, rather than efficient use and provision of local infrastructure.
- 38 Objective 4.5 is that urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments. Policy 4.5.1 gives further guidance on the implementation of the NPS-UDC and matters to consider when providing for urban growth. Clause (e) requires co-ordination with infrastructure development programmes, to provide infrastructure in an efficient and effective way.
- 39 In my opinion the proposed changes are not contrary to these provisions.

² Development capacity means in relation to housing and business land, the capacity of land intended for urban development based on:

- a) the zoning, objectives, policies, rules and overlays that apply to the land, in the relevant proposed and operative regional policy statements, regional plans and district plans; and
- b) the provision of adequate development infrastructure to support the development of the land. (NPS-UDC)

³ Development infrastructure means network infrastructure for water supply, wastewater, stormwater, and land transport as defined in the Land Transport Management Act 2003, to the extent that it is controlled by local authorities. (NPS-UDC)

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32AA assessment

- 40 The changes proposed provide more certainty for applicants and consent processing staff through more directive policy wording and additional assessment guidance. Consequently, they should more effectively achieve the plan's objectives and result in more efficient planning, design and consenting processes.

Affirmed at Dunedin)

By **Emma Christmas**)

this 10th day of September 2019)

before me:)

Emma Christmas
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H J P Wilson - Solicitor, Wellington
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A Solicitor of the High Court of New Zealand