

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-277

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 (2GP)
Between	Aurora Energy Limited Appellant
And	Dunedin City Council Respondent

Affidavit of Sarah Catherine Hickey

Affirmed **15** October 2019

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 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 (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.

Summary of appeal points

- 5 Aurora Energy Limited lodged appeal ENV-2018-CHC-277. Part of the relief sought included seeking to: "Amend Rule 8A.5.1.1 to add 'earthworks ancillary to the operation, repair, minor upgrading and maintenance of existing network utilities' as a type of earthworks that is always considered earthworks - small scale."
- 6 Federated Farmers of New Zealand Incorporated and Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou are s274 parties to this part of the Aurora Energy Limited appeal. The University of Otago was a party but it has withdrawn its interest.
- 7 Other aspects of the Aurora Energy Limited appeal are not addressed in my affidavit or the associated consent memorandum.

Issues of concern

Issues raised in appeals and s274 notices

- 8 The Aurora Energy Limited appeal states that the decision to reject its submission (seeking the same outcome as detailed above) creates potential for significant inefficiency for Aurora to carry out the operation, maintenance and minor upgrading of its network if earthworks – small scale standards apply. There also

appears to be an inconsistency in the treatment of infrastructure, with earthworks associated with the roading network being exempt.

- 9 The Federated Farmers of New Zealand Incorporated s274 notice states it is neutral on the relief sought and interested in the consequences of the Aurora appeal on its members, as many electricity transmission assets are situated on farming land and the location, maintenance, development and (particularly) upgrading of electricity assets can significantly impact a farming operation (where these assets are located on that farming operation).
- 10 The Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou s274 notice opposes the relief sought stating that network utility activities can have adverse effects on Manawhenua values, and have been identified as a threat to many wāhi tūpuna across the district.

Meeting with Aurora Energy Limited

- 11 Members of the City Development team met with representatives for Aurora Energy Limited. I was not present at the meeting but I understand that Aurora representatives explained that the replacement of electricity distribution cabinets will often result in a breach of the change in finished ground level standard (Rule 8A.5.1.3), because these tend to be cut into banks at the side of roads, and due to the hilly landscapes of Dunedin, the vertical cut behind the cabinet (retained by a retaining wall) would often exceed 1.5m in the zones where that is the limit.
- 12 I also understand that many of these replacement cabinets are currently being installed (approximately up to 20 per month) because older infrastructure is being replaced.

Mediation

- 13 Mediation for Group 1 – Non-Strategic (Earthworks Rules) took place on the 15th of August 2019. All parties relevant to the above-mentioned Aurora Energy Limited appeal point were in attendance.
- 14 The following amendment to the 2GP was agreed by parties in response to the appeal point by Aurora Energy Limited:

Rule 8A.5.1.1 General

The following earthworks are always considered earthworks - small scale:

- a. *post holes for the erection of fences;*
- b. *post holes for permitted or approved buildings or signs;*
- c. *driving of piles for building foundations;*
- d. *earthworks in the Port Zone;*
- e. *earthworks in the rural or rural residential zones, outside flood hazard overlay zones, associated with burying material infected by unwanted organisms as declared by the Ministry for Primary Industries' Chief Technical*

Officer or an emergency declared by the Minister for Primary Industries under the Biosecurity Act 1993;

- f. earthworks subject to an approved building consent, except in the rural or rural residential zones or where they are located more than 1.8m from the building;*
- g. earthworks for the erection of new fences or the construction of walking tracks or vehicle tracks, where the fence or track is associated with a permitted land use or city-wide activity, provided that the earthworks:*
 - i. do not result in a change in finished ground level that exceeds 1m; and*
 - ii. do not exceed 2m in width if located in an ASBV or ONF, ONCC, HNCC or NCC overlay zone, or 3m in width outside these areas.*
- h. earthworks ancillary to the operation, repair and maintenance of the roading network; and*
- i. earthworks ancillary to forestry; and*
- j. earthworks ancillary to the operation, repair, minor upgrading and maintenance of existing network utilities.*

- 15 No consequential changes to the 2GP are necessary as a result of this amendment, in my assessment.
- 16 As part of my assessment of the appropriateness of this change, I first considered other appeal points on the provisions affected by this change to understand the potential overlap of different appeals on the same provisions in the plan.
- 17 Rule 8A.5.1.1 is also under appeal as follows:
 - (a) Rule 8A.5.1.1 is subject to appeal by Port Otago Limited – Port Activities. Changes have also been agreed in response to that appeal point, which are the subject of a separate consent memorandum. The changes agreed for that appeal point do not overlap with or affect the changes agreed for this point.
- 18 Within the broader rule, there are also the following appeals, however, in my opinion, given the layout of the rule, any changes that are or may be agreed in these parts of the rule will not affect the change agreed nor will this change limit the options for addressing those concerns.
 - (a) Rule 8A.5.1.3 is not subject to appeal.
 - (b) Rule 8A.5.1.4 is subject to an appeal by BP Oil New Zealand Limited and Others.
 - (c) Rule 8A.5.1.5 is subject to appeal as follows:
 - (i) an appeal by BP Oil New Zealand Limited and Others; and
 - (ii) an appeal by Blueskin Projects and Others Limited on Rule 8A.5.1.5.a.vii (cut and fill thresholds in a Hazard 2 (flood) Overlay Zone).

Section 32AA Assessment

- 19 Based on the information provided by Aurora at the informal meeting I have assessed the agreed change to Rule 8A.5.1.1 and considered it using s32 of the RMA as a guide.
- 20 Earthworks ancillary to the operation, repair, minor upgrading and maintenance of existing network utilities are already exempt¹ from the maximum area and maximum volume thresholds (rules 8A.5.1.4 and 8A.5.1.5 respectively). Therefore, it is only treated as "earthworks – large scale" if there is a breach of the maximum change in finished ground level threshold (Rule 8A.5.1.3).
- 21 Earthworks large scale are a restricted discretionary activity where the matters of discretion are limited to 1. Effects on visual amenity, 2. Effects on surrounding properties, 3. Effects on the stability of land, buildings, and structures, 4. Effects on biodiversity values (rural zones only), 5. Effects on biodiversity values and natural character of riparian margins and the coast (within 20m of a water body or MHWS in rural zones or the Invermay and Hercus Zone, and 5m of a water body or MHWS in all other zones), and 6. Effects on public access (within 20m of a water body or MHWS in rural zones or the Invermay and Hercus Zone, and 5m of a water body or MHWS in all other zones).
- 22 The effects from earthworks which breach the change in finished ground level threshold to enable minor upgrading of network utility structures (cabinets) cited by Aurora are likely to be insignificant in terms of the matters of discretion, and any instability effects would be addressed through the use of retaining walls. Therefore, I consider it is inefficient to require a resource consent for earthworks in these instances.
- 23 My conclusion is that the proposed amendment is appropriate in terms of the objectives and policies of the Plan, would contribute to the achievement of Objective 8A.2.1, and would create improved efficiency (and reduced costs) by reducing resource consent requirements.
- 24 I note that a Clause 16 amendment has also been made to rules 8A.5.1.2 – 8A.5.1.5 (adding the wording "for earthworks not listed in Rule 8A.5.1.1" to the performance standard titles) to clarify that the standards do not apply to the activities listed in Rule 8A.5.1.1, which are always considered "earthworks – small scale".

¹ The exemption is for 'earthworks ancillary to network utility activities' which is wider than the amendment requested in the relief sought.

- 25 I support the amendment agreed by the parties recorded in the associated consent memorandum.

Relationship to relevant objectives and policies, and appeals on those objectives and policies

- 26 For thoroughness, I have also assessed the appeals on the related policies and objectives and strategic directions to ensure no appeals could change the content of the policy framework in a way that would change the above assessment.
- 27 The most relevant strategic direction policy is Policy 2.3.1.7 as follows:

Policy 2.3.1.7

Enable network utilities through:

- a. *identifying National Grid infrastructure on planning maps and protecting the safe and efficient establishment, operation and upgrading of this infrastructure from inappropriate development;*
 - b. *rules that enable network utilities to be established, operated and upgraded efficiently and effectively, while managing any adverse effects on the environment; and*
 - c. *rules that require activities that may damage or impede access to network utilities, and activities that may be sensitive to their effects, to be set back an adequate distance from network utilities.*
- 28 Policy 2.3.1.7 is under appeal by Aurora Energy Ltd (ENV-2018-CHC-277), Transpower NZ Ltd (ENV-2018-CHC-249), Federated Farmers of NZ Inc (ENV-2018-CHC-254) and BP Oil NZ Ltd and others (ENV-2018-CHC-291). These parties seek a range of amendments to the policy, as follows.
- (a) Aurora seeks that Policy 2.3.1.7 be amended to reflect a new method requested in its appeal, which would identify certain key electricity distribution infrastructure for protection via Plan rules. The appellant also requests a change to the policy to give greater recognition to the functional needs of network utilities.
 - (b) Transpower seeks that the policy be amended to refer to the maintenance of network utilities, as well as their establishment, operation and upgrading. The appellant also requests that the term "rules" in clauses 'b' and 'c' be replaced with "provisions".
 - (c) Federated Farmers seeks that the policy be amended to remove the reference to "protecting" National Grid infrastructure from clause 'a', and to remove from clause 'c' the reference to "rules that require activities that may damage or impede access to network utilities... to be set back an adequate distance from network utilities".
 - (d) BP Oil NZ Ltd and others seek that the Plan's strategic directions be amended to give greater recognition to "strategic infrastructure" (with this

term defined to include bulk fuel storage, among other types of infrastructure). Specifically, the appellants request that strategic directions (either Policy 2.3.1.7 or other provisions) be amended to: recognise the importance of strategic infrastructure to the functioning of the regional and district economy; provide for new strategic infrastructure and the operation, maintenance and upgrade of existing strategic infrastructure; and protect strategic infrastructure from encroachment by activities that may result in reverse sensitivity effects or other constraints on the operation of such infrastructure.

- 29 All these appeals are in the Network Utilities and Reverse Sensitivity appeals management topic. The relief sought by appellants would not change the overall focus of Policy 2.3.1.7, which is to enable network utilities via a range of methods.
- 30 The most relevant objective and policies are in the Earthworks section (8A) of the 2GP.

Objective 8A.2.1

Earthworks necessary for permitted or approved land use and development are enabled, while avoiding, or adequately mitigating, any adverse effects on:

- a. *visual amenity and character;*
- b. *the stability of land, buildings, and structures; and*
- c. *surrounding properties.*

Policy 8A.2.1.1

Require earthworks, and associated retaining structures, to be designed and located to avoid or minimise, as far as practicable, adverse effects on the stability of land, buildings, and structures by:

- a. *being set back an adequate distance from property boundaries, buildings, structures and cliffs; and*
- b. *using a batter gradient that will be stable over time.*

Policy 8A.2.1.2

Require earthworks and any associated retaining structures, to be designed, located and undertaken in a way that minimises, as far as practicable, adverse effects on surrounding sites and the wider area, including sediment run-off onto any property, or into any stormwater pipes, drains, channels or soakage systems.

Policy 8A.2.1.3

Only allow earthworks that exceed the scale thresholds (earthworks - large scale) and any associated retaining structures, where the following effects will be avoided or, if avoidance is not practicable, adequately mitigated:

- a. *adverse effects on visual amenity and character;*
- b. *adverse effects on the amenity of surrounding properties, including from changes to drainage patterns; and*
- c. *adverse effects on the stability of land, buildings, and structures.*

31 The management approach to earthworks in the Plan is not affected as there are no appeals on the above objective and policies.

Affirmed at Dunedin)
By **Sarah Catherine Hickey**)
this **15** day of October 2019)
before me:)


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A Solicitor of the High Court of New Zealand

Ashleigh Nicole Mitchell-Craig
Solicitor
Dunedin