

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-290

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	Otago Regional Council
	Appellant
And	Dunedin City Council
	Respondent

Affidavit of Sarah Catherine Hickey

Affirmed **15.** October 2019

Respondent's solicitors:

Michael Garbett | Rachel Brooking
Anderson Lloyd
Level 10, Otago House, 477 Moray Place, Dunedin 9016
Private Bag 1959, Dunedin 9054
DX Box YX10107 Dunedin
p + 64 3 477 3973 | f + 64 3 477 3184
michael.garbett@al.nz | rachel.brooking@al.nz

**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 Otago Regional Council lodged appeal ENV-2018-CHC-290. Part of the relief sought included seeking to: "Add to Rule 8A.5 (Earthworks performance standards) a new performance standard to provide for dust control and require that earthworks must not cause nuisance effects beyond the boundary of the site."
- 6 Federated Farmers of New Zealand Incorporated and Oceana Gold are s274 parties to this part of the Otago Regional Council appeal.
- 7 Other aspects of the Otago Regional Council appeal are not addressed in my affidavit or the associated consent memorandum.

Issues of concern

Issues raised in appeals and s274 notices

- 8 The Otago Regional Council appeal states that "the emission of dust is a potentially adverse environment effect of earthworks and should be controlled by the District Plan."
- 9 The Federated Farmers of New Zealand Incorporated s274 notice states it opposes the relief sought as:

- (a) There is no need to unnecessarily duplicate matters addressed by the Regional Air Plan; and
 - (b) Its members need certainty as to plan compliance, and where matters are adequately addressed within an Air Plan these should not be addressed through an additional standard in a separate plan, regulated by another council.
- 10 The Oceana Gold s274 notice opposes in part the relief sought stating that they have an interest in formulating any performance standard and conditionally oppose any standard that might restrict its earthworks activities and mine development.

Mediation

- 11 Mediation for Group 1 – Non-Strategic (Earthworks Rules) took place on the 15th of August 2019. All parties relevant to the above-mentioned Otago Regional Council appeal point were in attendance.
- 12 It was agreed at mediation that this appeal point could be resolved with amended wording and that Council staff would draft this. The amended wording has been circulated and agreed to by the parties as follows:

Include the following performance standard below Rule 8A.5 Earthworks Performance Standards:

8A.5.12 Dust Control

1. Earthworks must be undertaken in a manner that avoids or minimises, as far as practicable, creating a dust nuisance beyond any property boundary, by using best practice dust control management. For the sake of clarity dust nuisance includes:
 - a. suspended solids in the air beyond the site boundary; or
 - b. suspended solids traceable from a dust source settling on the ground, building or structure on a neighbouring site, or water.
 2. Activities that contravene this performance standard are restricted discretionary activities.
- 13 Consequential amendments are required as shown below.

- (a) Amend Policy 8A.2.1.2 as follows:

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 from:

- a. sediment run-off onto any property, or into any stormwater pipes, drains, channels or soakage systems; and
b. dust nuisance on the amenity of surrounding sites.

- (b) Amend Rule 8A.6.3 (Assessment of performance standard contraventions) by adding the following assessment matter:

8A.6.3 Assessment of performance standard contraventions			
Performance standard		Matters of discretion	Guidance on the assessment of resource consents
3.	Sediment control	a. Effects on surrounding sites	<i>Relevant objectives and policies:</i> i. Objective 8A.2.1 ii. Earthworks and any associated retaining structures are designed, located and undertaken in a way that minimises, as far as practicable, adverse effects on surrounding sites and the wider area (Policy 8A.2.1.2.a).
		b. Effects on biodiversity values and natural character values of riparian margins and coast	See Rule 10.5
		c. Effects on the efficiency and affordability of infrastructure	See Rule 9.5
9.	<u>Dust control</u>	<u>a. Effects on amenity of surrounding sites</u>	<i>Relevant objectives and policies:</i> i. <u>Objective 8A.2.1</u> ii. <u>Earthworks and any associated retaining structures are designed, located and undertaken in a way that minimises, as far as practicable, adverse effects from dust nuisance on the amenity of surrounding sites (Policy 8A.2.1.2.b).</u>

- 14 As part of my assessment of the appropriateness of these changes, I considered if there were any other appeal points on the provisions affected by the changes to

understand the potential overlap of different appeals on the same provisions in the plan.

- 15 Policy 8A.2.1.2 and Rule 8A.6.3.3 are not subject to appeal.
- 16 As performance standard 8A.5.12 and Rule 8A.6.3.9 are new provisions there are no other relevant appeal points that require consideration.

Section 32AA Assessment

- 17 Based on the information provided by Otago Regional Council I have assessed the agreed new provision and amendments to existing provisions and considered them using s32 of the RMA as a guide.
- 18 The discharge of dust as a result of earthworks can create nuisance effects which affect amenity. Effects on amenity are appropriate to manage in the District Plan. The proposed performance standard seeks to ensure that measures are taken to ensure that this effect is avoided or minimised by using best practice methods in order that it does not create a nuisance/amenity effect beyond the boundary.
- 19 I consider that a performance standard is an efficient mechanism for managing the potential effects of dust from earthworks. A consenting pathway (restricted discretionary) is provided should the performance standard not be able to be met. The primary purpose of this status is to provide a framework for enforcement action to be taken when necessary.
- 20 The proposed performance standard does not duplicate any provisions in the Regional Plan: Air for Otago.
- 21 Amendments to Policy 8A.2.1.2 and Rule 8A.6.3 reflect the proposed performance standard, provide for assessment of its contravention and are minor in nature.
- 22 My conclusion is that the proposed amendment is appropriate in terms of the objectives and policies of the Plan and will contribute to the achievement of Objective 8A.2.1, which is:

Objective 8A.2.1

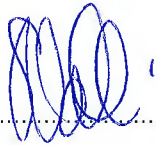
Earthworks necessary for permitted or approved land use and development are enabled, while avoiding, or adequately mitigating, any adverse effects on:

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

- 23 I note there are no appeals on the above objective.

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

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