

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 retain Objective 2.2.1 as notified as follows: "The risk to people, communities, and property from natural hazards, and from considering the potential effects of climate change, is minimised so that the risk is no more than low."
- 6 BP Oil New Zealand Limited and Others are a s274 party 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 (ORC) appeal sought a return to the notified wording which it preferred.
- 9 The BP Oil New Zealand Limited and Others s274 notice states it opposes the relief sought stating that through submissions it sought changes to the objective to focus on managing risk to acceptable levels taking into account the nature of

the hazards and the proposed activities. BP Oil New Zealand Limited and Others prefer the wording in the decision version of the 2GP as it removes the potential confusion between the directives to minimise risk and achieve low risk.

Mediation

- 10 Mediation for Group 1 – Strategic (Natural Hazards Strategic) took place on the 14th of August 2019. All parties relevant to the above-mentioned ORC appeal point were in attendance.
- 11 The following amendment to the 2GP was agreed by parties in response to the appeal point by ORC:

Objective 2.2.1: Risk from natural hazards

The risk to people, communities, and property from natural hazards, considering and from the potential effects of climate change on natural hazards, is no more than low.

- 12 Consequential amendments to Objective 11.2.1 and strategic direction policies 2.6.1.5.c.ix, 2.6.2.1.d.viii and 2.6.2.3.c.iv are required as a result of the above amendment because these policies quote the objective wording.
- 13 Objective 2.2.1 and policies 2.6.1.5, 2.6.2.1 and 2.6.2.3 and Objective 11.2.1 are subject to other appeals (noted below). These appeals have been analysed to ensure that no changes requested in these appeals, or that may be made as alternative relief to or as a consequence of requested changes, would affect the parts of the provisions being proposed to be amended through this consent memorandum.
 - (a) Objective 2.2.1 is not subject to any other appeal.
 - (b) Policy 2.6.1.5 is subject to appeal as follows:
 - (i) The Preservation Coalition Trust (ENV-2018-CHC-285) appeal requests amendments to clauses 2.6.1.5.c.iii and iv by removing the word 'generally'. As these are amendments to different and unrelated clauses (relating to clauses about outstanding and significant natural landscapes and natural features, and the natural character of the coastal environment), there is no overlap with changes proposed to address the Otago Regional Council appeal point.
 - (ii) Royal Forest and Bird (ENV-2018-CHC-287) has an appeal point on Objective 10.2.2 and Policy 10.2.2.2 regarding referring to protection of biodiversity values and preservation of natural character, and on policies 10.2.2.4, 10.2.2.6 and 10.2.2.8 regarding consistency with

the New Zealand Coastal Policy Statement. These may affect Policy 2.6.1.5.c.vi as it references Objective 10.2.2. As these are requests for amendments to different and unrelated clauses, there is no overlap with the changes proposed to address the Otago Regional Council appeal point.

- (iii) Saddle Views Estate Limited (ENV-2018-CHC-283) and Tussock Top Farms Ltd (ENV-2018-CHC-282) have sought amendments to Objective 2.4.4 and associated policies 2.4.4.1, 2.4.4.2 and 2.4.4.3. Clause 2.6.1.5.c.iii is linked to these appeals as it references Objective 2.4.4. As these are requests for amendments to different and unrelated clauses of 2.6.1.5, there is no overlap with the changes proposed to address the Otago Regional Council appeal point.

(c) Policy 2.6.2.1 is subject to appeal as follows:

- (i) Robert Francis Wyber (ENV-2018-CHC-281) has sought to increase the timeline during which adequate supply must be available to 15 years, amend references to productive rural land, provide for identification of new residential zoned land to enable infrastructure planning to take place, and recognise that new development will require extension of public transport. This appeal is unrelated to the clause in the policy (2.6.2.1.viii) that is proposed to be amended to address the Otago Regional Council appeal point.
- (ii) Saddle Views Estate Limited (ENV-2018-CHC-283) and Tussock Top Farms Ltd (ENV-2018-CHC-282) appeals relate to the deletion of Objective 2.4.4 and associated policies 2.4.4.1, 2.4.4.2 and 2.4.4.3. If accepted these changes would require an amendment to 2.6.2.1.d.iv as it references Objective 2.4.4. As these are requests for amendments to an unrelated clause, there is no overlap with the change proposed to address the Otago Regional Council appeal point.

(d) Policy 2.6.2.3 is not subject to appeal.

(e) Objective 11.2.1 is not subject to appeal.

Assessment

Consistency with higher order documents (s.75)

- 14 The Otago Regional Policy Statement (partially operative) Objective 4.1 is "Risk that natural hazards pose to Otago's communities are minimised". The associated policies are concerned with minimising natural hazard risk.
- 15 Objective 4.2 is "Otago's communities are prepared for and able to adapt to the effects of climate change". The associated policies are concerned with mitigation of, and adaptation to, the effects of climate change.
- 16 The proposed amendment will give effect to the Otago Regional Policy Statement (partially operative), in particular it responds to objectives 4.1 and 4.2 and policies 4.1.1 (Identifying natural hazards) and 4.2.2 (Climate Change).
- 17 I note that the Otago Regional Policy Statement (partially operative) natural hazard and climate change provisions cited above are operative.

Section 32AA Assessment

- 18 I have assessed the agreed change to Objective 2.2.1 and considered it using s32 of the RMA as a guide.
- 19 Although the amendment proposed is to a strategic direction objective, it is a minor change to wording to improve, rather than change, the meaning. The amendment appropriately expresses how natural hazards are considered in the 2GP, provides clarity, and improves consistency with the Partially Operative Otago Regional Policy Statement 2019.
- 20 In my opinion, the amendment proposed is appropriate to give effect to Part 2 of the Act.
- 21 I support the amendment agreed by parties recorded in the associated consent memorandum.

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

- 22 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.
- 23 The most relevant strategic direction policies are as follows:

Policy 2.2.1.2

In calculating the likelihood and consequences of natural hazards consider:

- a. risks from a single natural hazard event or from repetitive natural hazard events;
- b. risks from a combination of different natural hazards, including any potential interplay between natural hazards;
- c. risks that may arise in the next 100 years; and
- d. risks that may increase in frequency or consequence as a result of climate change.

Policy 2.2.1.4

Identify areas at risk from coastal hazards, and include these as follows:

- a. in the **dune system mapped area**, include undeveloped dune systems that may be vulnerable to, or buffer adjacent areas from, coastal processes including erosion, inundation from the sea and sea level rise.
- b. in the Hazard 3 (coastal) Overlay Zone, include areas where there may be ponding of water, including where it is from poor drainage caused by connectivity of groundwater with the sea and inundation from the sea. In these areas there is a low risk to property and to the safe and efficient operation of on-site wastewater disposal. This includes areas where the risk from these hazards will worsen over time due to the effects of climate change, taking into account a 1.05m sea level rise.

- 24 Policies 2.2.1.2 and 2.2.1.4 are not subject to appeal.
- 25 Objective 2.2.1 and policies 2.2.1.2 and 2.2.1.4 are implemented in section 11 Natural Hazards of the 2GP. The most relevant provisions are as follows:

Objective 11.2.1

Land use and development is located and designed in a way that ensures that the risk from natural hazards, including climate change, is no more than low, in the short to long term.

Policy 11.2.1.8

In the Hazard 3 (coastal) Overlay Zone, require new buildings containing residential activity on the ground floor to be relocatable, unless site constraints mean this is not practicable.

Policy 11.2.1.10

*Avoid buildings and structures within the **dune system mapped area** unless:*

- a. they have an operational need to locate there;
- b. there is no risk that development will cause, exacerbate, or be at risk from coastal erosion; and
- c. the risk from natural hazards is no more than low.

Policy 11.2.1.11

*In all hazard overlay zones, the **swale mapped area**, and the **dune system mapped area**, only allow earthworks - large scale where:*

- a. the risk from natural hazards will be avoided, or is no more than low;*
- b. they will not have adverse effects on land instability nor create, exacerbate, or transfer risk from natural hazards;*
- c. they will not have adverse effects on the stability or buffering capacity of dune systems; and*
- d. they will not obstruct or impede flood water, unless part of approved natural hazard mitigation activities.*

Policy 11.2.1.12

*In all hazard overlay zones, the **swale mapped area**, the **dune system mapped area**, or in any other area that the DCC has information to suspect there may be risk from a natural hazard, only allow subdivision activities where there is a reasonable level of certainty that any future land use or development will meet policies 11.2.1.1 - 11.2.1.11.*

Policy 11.2.1.13

*Limit vegetation clearance in hazard (land instability) overlay zones, the **dune system mapped area**, and along the banks of water bodies, to a scale and type that ensures any resultant risk from erosion or land instability is avoided, or is no more than low.*

Policy 11.2.1.14

Require buildings, structures, storage and use of hazardous substances, network utility activities, and earthworks - large scale to be set back an adequate distance from water bodies to ensure that the risk from natural hazards, including from erosion and flooding, is avoided, or is no more than low.

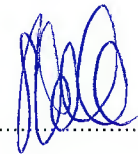
26 The above objective and policies are subject to appeal as follows:

- (a) Objective 11.2.1 is not subject to appeal.
- (b) Policy 11.2.1.8 is under appeal by:
 - i. Nichols Property Group Ltd, Home Centre Properties Limited and London Realty Limited (ENV-2018-CHC-217). This appeal seeks the deletion of the requirement for all houses in the Hazard 3 (Coastal) Overlay Zone in South Dunedin to be relocatable.
 - ii. Blueskin Projects Limited and Others (ENV-2018-CHC-276). This appeal seeks to exclude 'garages associated with residential activity' from the requirement to be relocatable.

iii. The relief sought by appellants does not seek to change the overall focus of Objective 2.2.1, therefore resolution of these appeals would be unlikely to require any consequential amendment to it, in my opinion.

(c) Policies 11.2.1.10, 11.2.1.11, 11.2.1.12, 11.2.1.13 and 11.2.1.14 are not subject to appeal.

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


.....
.....
A Solicitor of the High Court of New Zealand

Ashleigh Nicole Mitchell-Craig
Solicitor
Dunedin