

Appendix 4 - Notice in response to Waiver application

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

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

Notice from Dunedin City Council in response to application for waiver

6 November 2019

Respondent's solicitors:

Michael Garbett
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

**anderson
lloyd.**

To: The Registrar
Environment Court
Christchurch

And to: The Preservation Coalition Trust

Take notice that:

Dunedin City Council does not oppose the application for waiver dated 29 October 2019, but nor does the Dunedin City Council consent to this application. This is because if it is granted the Dunedin City Council is not prejudiced and can manage responding to this appeal point, because it is already having to address the related subdivision rule that is clearly in scope and appealed (Rule 16.7.4.1(d)). It does though point out to the Court in the public interest that this waiver application may raise issues of potential prejudice for some known, and some unknown persons who are not currently party to this appeal.

- 1 The waiver seeks to extend the time limit for filing an appeal and also to amend the Notice of Appeal to identify "rule 16.5.2.1(c) (density rule for the Hill Slopes Rural Zone)". It is assumed this is a typographical error and the Appellant seeks to identify rule 16.5.2.1(d) relating to the Hill Slopes minimum site size required for standard residential activity.
- 2 The waiver does not set out specifically what relief the Appellant would seek, and in particular the site sizes that it is wishing to promote in the Hill Slopes Rural Zone. The Council does not know from this application what minimum site sizes the Appellant is intending to promote for residential activity in the Hill Slopes Rural Zone.
- 3 The time for filing appeals expired in late December 2018 and this waiver is therefore extremely late in the process, with other parties having joined appeals (or not) and the first round of mediation completed.
- 4 In terms of potential prejudice to others the Council notes:
 - (a) The Preservation Coalition Trust (and its predecessor) did not submit on the Hill Slopes Rural Zone residential density rule, (only the subdivision rule) and therefore the hearing panel made no decision in relation to this point relating to this appellant.
 - (b) The Preservation Coalition Trust (via its predecessor) did submit on the residential density rule for the Peninsula Coast, and therefore does appear to have made submissions that involved the distinction between land use rules, and subdivision rules (this submission was in relation to Rule

16.5.2.1(f), on page 29 of the submission by Harbourside and Peninsula Preservation Coalition).

- (c) There were no other submitters seeking to increase the minimum site size required for residential activity in the Hill Slopes Rural Zone (or in any other rural zone). If this proposed appeal does seek to increase the minimum site size in the Hill Slopes Rural Zone, it will be the first time this increase has been raised through the whole public process of the 2GP.
 - (d) There were a number of submitters who sought to reduce the minimum site size required for residential activity in the rural zones. The hearing panel rejected these submissions made by submitters, and retained the density rules that are currently set out in rule 16.5.2.1(d). These submitters have not appealed the minimum site size decision in relation to this rule. Potentially should an appeal now be allowed by waiver to this rule these submitters may have an interest in the outcome. These parties and the minimum site size they sought in submissions at the Council level are:
 - (i) Construction Industry and Developers Association – 6 hectares in all rural zones;
 - (ii) Chris Stewart – 10 hectares in all zones.
- 5 This rule 16.5.2.1(d) is identified in the 2GP as being subject to appeal. That appeal is by Blueskin Projects Limited (in DCC appeal point 168) which sought to amend the activity status of residential activity provided for in light of the policy change it seeks to policy 16.2.1.7 (existing undersized sites in certain circumstances). This appeal does not directly challenge the minimum site sizes required for residential activity in the Hill Slopes Rural Zone.
- 6 There will also be a large number of unidentified property owners who might have made further submissions if they knew this Appellant sought to increase the minimum lot size for residential activity in the Hill Slopes Rural Zone.
- 7 Dunedin City Council therefore considers that any waiver might have implications for two submitters who did not appeal, who may wish to join a late appeal on this topic, possibly for Blueskin Projects who have an indirectly related appeal on these rules currently, and an unknown number of property owners who might have made further submissions if this land use rule 16.5.2.1(d) was directly challenged an original submission.

Dated this 6th day of November 2019



Michael Garbett
Counsel for the Respondent