

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-277

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	Aurora Energy Limited Appellant
And	Dunedin City Council Respondent

Consent Memorandum

2 October 2019

Respondent's solicitors:

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May it please the Court

- 1 This consent memorandum relates to the Aurora Energy Limited appeal regarding Rule 8A.5.1.1 Earthworks small scale thresholds - General.
- 2 The appeal sought 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.”
- 3 Federated Farmers of New Zealand Incorporated and Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou are s274 parties to this appeal. The University of Otago joined but then withdrew its interest in this appeal.
- 4 The parties have agreed changes to Rule 8A.5.1.1 that are shown in Appendix A.
- 5 The rationale for the changes, and the assessment of the change in terms of section 32, is explained in an affidavit of Sarah Catherine Hickey, a policy planner at Dunedin City Council, and supporting affidavit of Dr Anna Louise Johnson the City Development Manager, Dunedin City Council.
- 6 Rule 8A.5 includes the performance standards that apply to earthworks in order for it to be considered a permitted activity. The 2GP uses a performance standard to set a scale threshold to be permitted. In this case "small-scale earthworks" are permitted and those that are above this scale are managed as "earthworks – large scale", which is a restricted discretionary activity.
- 7 Rule 8A.5.1 is the performance standard that sets the parameters for being considered "earthworks - small scale". It includes (1) a list of types of earthworks that are always considered "small scale", and (2) 'scale' thresholds for earthworks that are not in that list based on:
 - (a) 8A.5.1.3 Maximum change in finished ground level;
 - (b) 8A.5.1.4 Maximum area; and
 - (c) 8A.5.1.5 Maximum volume of combined cut and fill.
- 8 The agreed changes to Rule 8A.5.1.1 shown in Appendix A have added 'earthworks ancillary to the operation, repair, minor upgrading and maintenance of existing network utilities' to the list of earthworks that are always considered "earthworks – small scale".

- 9 Due to the minor nature of the amendment there is no impact on any higher order policies, objectives or strategic directions. No consequential amendments are required.

Directions sought

- 10 The parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the RMA, including Part 2 and request:
- (a) That the amendments shown in strikethrough and underline in **Appendix A** are made; and
 - (b) That the appeal be otherwise dismissed.
- 11 The parties agree that costs should lie where they fall and accordingly no order of costs is sought.

Dated this 2nd day of October 2019



Aurora Energy Limited
Appellant



Michael Garbett/Rachel Brooking
Counsel for the Respondent

Federated Farmers of New Zealand Incorporated
Section 274 Party

Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou
Section 274 Party

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- (a) That the amendments shown in strikethrough and underline in **Appendix A** are made; and
- (b) That the appeal be otherwise dismissed.

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Dated this day of 2019

Aurora Energy Limited
Appellant

Michael Garbett/Rachel Brooking
Counsel for the Respondent



Federated Farmers of New Zealand Incorporated
Section 274 Party



Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou
Section 274 Party

Appendix A

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.