

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-290

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	Otago Regional Council
	Appellant
And	Dunedin City Council
	Respondent

Consent Memorandum

15 October 2019

Respondent's solicitors:

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May it please the Court

- 1 This consent memorandum relates to the Otago Regional Council appeal regarding Rule 8A.5 (earthworks performance standards).
- 2 The appeal sought 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.”
- 3 Federated Farmers of New Zealand Incorporated and Oceana Gold are s274 parties to this appeal.
- 4 The parties have agreed to a new performance standard and consequential amendments that are shown in Appendix A.
- 5 The rationale for the changes, and assessment of the changes 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 Other than the consequential amendments shown in Appendix A, there is no impact on any higher order policies, objectives or strategic directions.

Directions sought

- 7 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.
- 8 The parties agree that costs should lie where they fall and accordingly no order of costs is sought.

Dated this 15th day of October 2019



Otago Regional Council
Appellant



Michael Garbett/Rachel Brooking
Counsel for the Respondent



Federated Farmers of New Zealand Incorporated
Section 274 Party

Oceana Gold
Section 274 Party

Michael Garbett/Rachel Brooking
Counsel for the Respondent

Federated Farmers of New Zealand Incorporated
Section 274 Party



Oceana Gold
Section 274 Party

Appendix A

1. 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.

2. 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.

3. Amend Rule 8A.6.3 (Assessment of performance standard contraventions) by amending the policy reference in 8A.6.3.3.a.ii and adding a dust control 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</u>

8A.6.3 Assessment of performance standard contraventions

Performance standard	Matters of discretion	Guidance on the assessment of resource consents
		<u>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>