

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 natural hazards, specifically Objective 2.2.1: Risk from natural hazards.
- 2 The appeal sought to return to the notified version of Objective 2.2.1, which read:

"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."
- 3 BP Oil New Zealand Limited and Others are a party to this appeal.
- 4 The parties have agreed changes to Objective 2.2.1 and consequential amendments to policies 2.6.1.5, 2.6.2.1 and 2.6.2.3 and Objective 11.2.1 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 The changes agreed by the parties are centred on a relatively minor change to the wording of Objective 2.2.1 to improve the clarity of meaning (rather than change the meaning or function of the objective) and to ensure wording is better aligned with the Partially Operative Otago Regional Policy Statement 2019.
- 7 The consequential amendments are equally relatively minor and include amending:
 - (a) Policies 2.6.1.5.c.ix, 2.6.2.1.d.viii and 2.6.2.3.c.iv, which quote the objective so must be amended to reflect the change in wording; and
 - (b) Objective 11.2.1 in the natural hazards section, which contains similar wording that reflects the strategic objective, so should be amended to reflect the clarified wording.

Directions sought

- 8 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.

- 9 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

BP Oil New Zealand Limited and Others
Section 274 Party

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

Dated this day of 2019

Otago Regional Council
Appellant

Michael Garbett/Rachel Brooking
Counsel for the Respondent



BP Oil New Zealand Limited and Others
Section 274 Party

Appendix A

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.

Objective 11.2.1

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

Policy 2.6.1.5

Identify areas for new rural residential zoning in accordance with Policy 2.6.1.4 based on the following criteria:

- a. the land is unlikely to be suitable for future residential zoning in line with Policy 2.6.2.1;
- b. rezoning is unlikely to lead to pressure for unfunded public infrastructure upgrades including road sealing, unless an agreement between the infrastructure provider and the developer on the method, timing, and funding of any necessary public infrastructure provision is in place; and
- c. considering the zoning, rules, and potential level of development provided for, the zoning is the most appropriate in terms of the objectives of the Plan, in particular:
 - i. the character and visual amenity of Dunedin's rural environment is maintained or enhanced (Objective 2.4.6);
 - ii. land and facilities that are important for economic productivity and social well-being, which include industrial areas, major facilities, key transportation routes, network utilities and productive rural land are:
 1. protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and
 2. in the case of facilities, able to operate efficiently and effectively (Objective 2.3.1). Achieving this includes generally avoiding areas that are highly productive land or may create conflict with rural water resource requirements;
 - iii. Dunedin's outstanding and significant natural landscapes and natural features are protected (Objective 2.4.4). Achieving this includes generally avoiding the application of new rural residential zoning in ONF, ONL and SNL overlay zones;
 - iv. the natural character of the coastal environment is preserved or enhanced (Objective 2.4.5). Achieving this includes generally avoiding the application of new rural residential zoning in ONCC, HNCC and NCC overlay zones;
 - v. Dunedin's significant indigenous biodiversity is protected or enhanced, and restored; and other indigenous biodiversity is maintained or enhanced, and restored; with all indigenous biodiversity having improved connections and improved resilience (Objective 2.2.3). Achieving this includes generally avoiding the application of new rural residential zoning in ASBV and UBMA;
 - vi. the biodiversity values and natural character of the coast and riparian margins are maintained and enhanced (Objective 10.2.2);
 - vii. subdivision and development activities maintain and enhance access to coastlines, water bodies and other parts of the natural

- environment, including for the purposes of gathering of food and mahika kai (Objective 10.2.4);
- viii. the elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected or enhanced. These include:
 1. important green and other open spaces including green breaks between coastal settlements;
 2. trees that make a significant contribution to the visual landscape and history of neighbourhoods;
 3. built heritage, including nationally recognised built heritage;
 4. important visual landscapes and vistas;
 5. the amenity and aesthetic coherence of different environments; and
 6. the compact and accessible form of Dunedin (Objective 2.4.1); and
 - ix. the potential risk from natural hazards, ~~including and from the potential effects of climate change on natural hazards~~, is no more than low, in the short to long term (Objective 11.2.1).

Policy 2.6.2.1

Identify areas for new residential zoning based on the following criteria:

- a. rezoning is necessary to meet a shortage of residential capacity (including capacity available through releasing a Residential Transition overlay zone), either:
 - i. in the short term (up to 5 years); or
 - ii. in the medium term (up to 10 years), in which case a Residential Transition overlay zone is applied to the rezoned area; and
- b. rezoning is unlikely to lead to pressure for unfunded public infrastructure upgrades, unless either an agreement between the infrastructure provider and the developer on the method, timing, and funding of any necessary public infrastructure provision is in place, or a Residential Transition overlay zone is applied and a future agreement is considered feasible; and
- c. the area is suitable for residential development by having all or a majority of the following characteristics:
 - i. a topography that is not too steep;
 - ii. being close to the main urban area or townships that have a shortage of capacity;
 - iii. currently serviced, or likely to be easily serviced, by frequent public transport services;
 - iv. close to centres; and
 - v. close to other existing community facilities such as schools, public green space and recreational facilities, health services, and libraries or other community centres;
- d. considering the zoning, rules, and potential level of development provided for, the zoning is the most appropriate in terms of the objectives of the Plan, in particular:
 - i. the character and visual amenity of Dunedin's rural environment is maintained or enhanced (Objective 2.4.6);
 - ii. land and facilities that are important for economic productivity and social well-being, which include industrial areas, major facilities, key transportation routes, network utilities and productive rural land are:
 1. protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and

2. in the case of facilities, able to operate efficiently and effectively (Objective 2.3.1). Achieving this includes generally avoiding areas that are highly productive land or may create conflict with rural water resource requirements;
- iii. Dunedin's significant indigenous biodiversity is protected or enhanced, and restored; and other indigenous biodiversity is maintained or enhanced, and restored; with all indigenous biodiversity having improved connections and improved resilience (Objective 2.2.3). Achieving this includes generally avoiding the application of new residential zoning in ASBV and UBMA;
- iv. Dunedin's outstanding and significant natural landscapes and natural features are protected (Objective 2.4.4). Achieving this includes generally avoiding the application of new residential zoning in ONF, ONL and SNL overlay zones;
- v. the natural character of the coastal environment is, preserved or enhanced (Objective 2.4.5). Achieving this includes generally avoiding the application of new residential zoning in ONCC, HNCC and NCC overlay zones;
- vi. subdivision and development activities maintain and enhance access to coastlines, water bodies and other parts of the natural environment, including for the purposes of gathering of food and mahika kai (Objective 10.2.4);
- vii. the elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected or enhanced. These include:
 1. important green and other open spaces, including green breaks between coastal settlements;
 2. trees that make a significant contribution to the visual landscape and history of neighbourhoods;
 3. built heritage, including nationally recognised built heritage;
 4. important visual landscapes and vistas;
 5. the amenity and aesthetic coherence of different environments; and
 6. the compact and accessible form of Dunedin (Objective 2.4.1);
- viii. the potential risk from natural hazards, ~~including and from the potential effects of~~ climate change on natural hazards, is no more than low, in the short to long term (Objective 11.2.1);
- ix. public infrastructure networks operate efficiently and effectively and have the least possible long term cost burden on the public (Objective 2.7.1);
- x. the multi-modal land transport network, including connections between land air and sea transport networks, operates safely and efficiently for all road users (Objective 2.7.2); and
- xi. Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations (Objective 2.2.4).

Policy 2.6.2.3

Identify areas for new medium density zoning based on the following criteria:

- a. alignment with Policy 2.6.2.1; and
- b. rezoning is unlikely to lead to pressure for unfunded public infrastructure upgrades, unless either an agreement between the infrastructure provider and the developer on the method, timing, and funding of any necessary public infrastructure provision is in place, or an **infrastructure constraint mapped area** is applied; and

- c. considering the zoning, rules, and potential level of development provided for, the zoning is the most appropriate in terms of the objectives of the Plan, in particular:
 - i. there is a range of housing choices in Dunedin that provides for the community's needs and supports social well-being (Objective 2.6.1);
 - ii. Dunedin reduces its reliance on non-renewable energy sources and is well equipped to manage and adapt to changing or disrupted energy supply by having reduced reliance on private motor cars for transportation (Objective 2.2.2), including through one or more of the following:
 - 1. being currently serviced, or likely to be easily serviced, by frequent public transport services; and
 - 2. being close (good walking access) to existing centres, community facilities such as schools, public green spaces recreational facilities, health services, and libraries or other community centres; and
 - iii. the elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected or enhanced. These include:
 - 1. important green and other open spaces, including green breaks between coastal settlements;
 - 2. trees that make a significant contribution to the visual landscape and history of neighbourhoods;
 - 3. built heritage, including nationally recognised built heritage;
 - 4. important visual landscapes and vistas;
 - 5. the amenity and aesthetic coherence of different environments;
 - 6. the compact and accessible form of Dunedin (Objective 2.4.1); and
 - iv. the potential risk from natural hazards, ~~including and from the potential effects of climate change on natural hazards~~, is no more than low, in the short to long term (Objective 11.2.1); and
- d. the area is suitable for medium density housing by having all or a majority of the following characteristics:
 - i. lower quality housing stock more likely to be able to be redeveloped;
 - ii. locations with a topography that is not too steep;
 - iii. locations that will receive reasonable levels of sunlight; and
 - iv. market desirability, particularly for one and two person households.