

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-220

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 **John Stewart Findlater**

Appellant

And **Dunedin City Council**

Respondent

Affidavit of Katie Emma Sunley James

Affirmed: *30 April* 2021

Concerning:
Group 4 Rural Residential Zoning
Topic: 81 Morris Road
DCC Reference number 16

Respondent's solicitors:

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**anderson
lloyd.**

I, **Katie Emma Sunley James** of Dunedin, Policy Planner, hereby solemnly and sincerely affirm:

- 1 I am a policy planner at Dunedin City Council (**DCC**).
- 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 as a policy planner for four years. During this time, I have primarily worked on assessing submissions, preparing and presenting s42A reports and appeals. I previously worked in central government for several years, in a range of resource management policy - related positions.
- 4 I hold a PhD and a Masters in Regional and Resource Planning (with Distinction) from the University of Otago.

Introduction

- 5 This affidavit provides the rationale, and an assessment in terms of section 32, of the changes agreed in the following consent memorandum:
 - (a) John Stewart Findlater ENV-2018-CHC-220 dated 21 April 2021 (Rezoning of 81 Morris Road).
- 6 John Findlater (**Findlater**) sought to rezone the land at 81 Morris Road from Rural Residential 2 (**RR2**) to Rural Residential 1 (**RR1**).
- 7 There are no section 274 parties to the appeal.

Agreement reached

- 8 As outlined in the attached consent memorandum, agreement has been reached between parties to:
 - (a) Rezone 81 Morris Road to RR1; and
 - (b) Schedule a new Area of Significant Biodiversity Value on the site to protect ecologically significant indigenous vegetation.
- 9 The changes made will provide for up to five additional sites/residential activities.

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Assessment of other appeals

- 10 As part of my assessment of the appropriateness of this change, I have considered whether there are other appeals on the provisions affected by these amendments, to understand whether there is overlap between different appeals on the same provisions in the plan.
- 11 There are no appeals that directly overlap with the provisions amended by the agreement (new rules and zoning of this site).

Planning background

- 12 81 Morris Road is 12.7 hectares in area and located at Saddle Hill. The site is surrounded by a mix of Rural Residential, Rural (Hill Slopes) and General Residential 1 zoned land. The site is zoned RR2 and contains an existing dwelling. The site is not subject to any overlay zones or mapped areas in the 2GP. A map showing the site is included in the consent memorandum, provided as Attachment A.
- 13 The site is bounded to the north and south by roads. To the north is Morris Road which is classified as an arterial road on the Road Classification Hierarchy Mapped Area (Appendix 6A of the 2GP). To the south is the Dunedin Southern motorway which is designated for motorway purposes for the New Zealand Transport Agency (D461 & D466, Appendix A1.4 of the Plan).
- 14 RR2 zoning only provides for one house per existing site over 1 hectare and makes further subdivision non-complying. It is a zoning type designed to recognise existing clusters of undersized rural sites (e.g. sites that were in a rural zone in the previous operative plan but through previous subdivisions had resulted in sites that were below the 15ha minimum of that operative plan) that are partly developed. The zoning was applied to ensure that all sites over 1 hectare had the right to have one residential activity as otherwise the establishment of a residential activity on the site was non-complying.
- 15 RR1 zoning, on the other hand, provides for subdivision as a restricted discretionary activity and the minimum site size for new resultant sites is 2ha.
- 16 The changes agreed will provide for up to five additional residential activities to be established while a new Area of Significant Biodiversity Value will protect identified areas of ecologically significant indigenous vegetation on site.

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- 17 The area of motorway and Morris Road bordering the site will also be rezoned, providing for contiguous RR1 zoning between the Chain Hills and Saddle Hill RR1 areas.
- 18 The key strategic objective and policies relevant to rezoning land to RR1 are Objective 2.6.1 and Policies 2.6.1.3, 2.6.1.4 and 2.6.1.5. The s32AA assessment beginning at paragraph 21 below summarises the assessment made against relevant higher order planning documents and the objectives and policies of the 2GP.

Decision Background

- 19 The 2GP Rural Residential Hearings Panel considered 105, 141 and 81 Morris Road along with 40 Saddlevue Place together in section 3.8.3.2 of the Rural Residential Zones Decision Report (p. 71). The Panel considered RR2 to be the appropriate zoning for the sites.

Assessment (s75 and s32)

Consistency with higher order documents (s.75)

- 20 There are no relevant higher order provisions.

Section 32AA Assessment

- 21 The key strategic direction objective relevant to the proposed rezoning is Objective 2.6.1.

- 22 This objective reads as follows:

Objective 2.6.1

There is a range of housing choices in Dunedin that provides for the community's needs and supports social well-being.

- 23 Policies 2.6.1.3, 2.6.1.4 and 2.6.1.5 of the decisions version of the Plan direct the application of rural residential zoning with respect to providing for it in the plan as part of achieving this objective.
- 24 These policies were appealed by Robert Wyber (ENV-2018-CHC-281, DCC reference 376) and The Preservation Coalition Trust (ENV-2018-CHC-285, DCC Reference number 90 and 91). Consent documentation to resolve these appeals will be filed with the Court at the same time as this affidavit and the consent memorandum for the Findlater appeal.

- 25 The consent memorandum for these appeals propose to revise the criteria included in Policies 2.6.1.3 and 2.6.1.4 and combine them into a new Policy 2.6.1.4.
- 26 The new Policy 2.6.1.4 deals broadly with the amount of rural residential land that may be appropriate and the difference between RR1 and RR2 zoning. Policy 2.6.1.5 provides the criteria for assessing the appropriateness of the zoning in any location. Policy 2.6.1.4 is most relevant for changing from a RR1 to a RR2 zoning, but I have also reassessed the proposal against Policy 2.6.1.5, particularly with regards to those criteria that should be reassessed due to the increased level of development provided for under the new zoning.
- 27 The request to rezone the site has been assessed against these policies as amended in response to the Wyber and PCT appeals.

Assessment against revised Policy 2.6.1.4

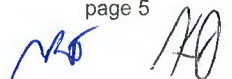
- 28 The decisions versions of Policies 2.6.1.3 and 2.6.1.4 have been revised and combined into a new Policy 2.6.1.4, which reads as follows:

Provide for lifestyle blocks or hobby farming through the application of rural residential zoning as follows:

- a. the proposed zoning meets the criteria outlined in Policy 2.6.1.5; and
- b. considering, based on the predicted market availability of rural residential zoned land for the next 5 years, whether the amount of land proposed to be rezoned rural residential appropriately balances providing some land for lifestyle or hobby farming with the overall strategic spatial planning objectives outlined in objectives 2.2.4, 2.7.1 and 2.7.2;
- c. in the first instance, only applying rural residential zoning to land in separate tenure as follows:
 - i. where the site or sites are part of a cluster of sites at an average site size of greater than 2ha and less than 4ha, Rural Residential 1 zoning is appropriate; and
 - ii. where the cluster comprises sites under 15ha with an average site size of between 4ha and 10ha, Rural Residential 2 zoning is generally appropriate, but Rural Residential 1 zoning may be appropriate if it can achieve a similar outcome in terms of the criteria in Policy 2.6.1.5 and

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- d. only after those options in c.i and c.ii are assessed as inappropriate, unfeasible or unavailable, considering the rezoning of other rural sites of low productive capacity to rural residential zoning.
- 29 Clause a. requires that the proposed zoning meets the criteria outlined in Policy 2.6.1.5. I assess the rezoning against these criteria beginning from para 37 below.
- 30 In relation to clause b. DCC staff have calculated the average sale price per hectare for land within the various rural residential zones around the city. This is based on data from 2010 to 2020. For the area that includes the land at Morris Road, the average sale price per hectare (based on the maximum sale price during this time) was just under \$255,000. This exceeds the average sale price in nine of the other 12 areas that were looked at, indicating that demand for rural residential living in this area is relatively strong and the proposed rezoning appropriately balances providing some land for lifestyle or hobby farming with overall strategic plan objectives 2.2.4, 2.7.1 and 2.7.2.
- 31 Objective 2.2.4 is that Dunedin stays a compact and accessible city, with urban expansion only occurring if required and in the most appropriate form and locations. The site at 81 Morris Road makes up the bulk of a long narrow strip of RR2-zoned land which lies directly to the north of Dunedin Southern Motorway. On its western half the site is adjoined on both sides by RR1 zoned land and on its eastern half it is adjoined on both sides by Hill Slopes Rural zoned land. The eastern end of the site borders the General Residential 1 zoned land at the western end of the suburb of Fairfield. The site also adjoins or envelopes five other small (under 2ha) RR2 zoned sites. The addition of up to 5 residential activities will not be contrary to Objective 2.2.4.
- 32 Objective 2.7.1 concerns the efficient and effective operation of public infrastructure. The addition of only five new residential activities which are expected to be self-sufficient is not contrary to the objective.
- 33 Objective 2.7.2 relates to the efficient and safe operation of the transport network. Morris Road is sealed and there have been no concerns raised by the Transportation Team on the potential future development of the site and effects on the transport network.
- 34 In relation to clause c. the site at 81 Morris Road is currently zoned RR2 and is the largest site, at 12.7 ha, in a cluster of RR2 zoned sites. There are five other sites in the cluster: 40 Saddlevue Place (c1.8ha), 105 Morris Road (c1ha) and 141 Morris Road (c1ha) and part lots 61 and 71 Main



Road Fairfield (less than 0.1 ha each). There are existing dwellings on 105 and 141 Morris Road.

- 35 While the site fits the criteria of RR2 zoning in terms of being a site between 4ha and 15ha, the revised policy states that RR1 zoning may be appropriate if a similar outcome can be achieved in terms of the criteria in Policy 2.6.1.5, discussed below.

Assessment against revised Policy 2.6.1.5

- 36 Revised Policy 2.6.1.5 reads as follows:

Use the following criteria to assess the appropriateness of rural residential zoning, when considering any proposal for rezoning under Policy 2.6.1.4:

- 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 rules and potential level of development provided for, the proposed rural residential zoning is the most appropriate to achieve the objectives of the Plan, in particular:
 - i. Objective 2.4.6;
 - ii. 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. Objective 2.4.4. Achieving this includes:
 1. avoiding the application of new rural residential zoning in the ONF Overlay Zone;
 2. in the ONL Overlay Zone; avoiding the application of Rural Residential 1 zoning; and avoiding the application of Rural Residential 2 zoning, unless rules (such as rules that restrict the scale and location of development activities) can ensure that Objective 2.4.4 will be achieved; and

3. avoiding the application of new rural residential zoning in the SNL Overlay Zone, unless rules (such as rules that restrict the scale and location of development activities) can ensure that Objective 2.4.4 will be achieved;

iv. Objective 2.4.5. Achieving this includes:

1. avoiding the application of new rural residential zoning in the ONCC and HNCC overlay zones; and
2. avoiding the application of new rural residential zoning in the NCC Overlay Zone, unless rules (such as rules that restrict the scale and location of development activities) can ensure that Objective 2.4.5 will be achieved.

- v. Objective 2.2.3. Achieving this includes avoiding the application of new rural residential zoning in ASBV and UBMA, unless rules (such as rules that restrict the scale and location of development activities) can ensure that Objective 2.2.3 will be achieved.

vi. Objective 10.2.2;

vii. Objective 10.2.4;

viii. Objective 14.2.1;

ix. Objective 2.4.1; and

x. Objective 11.2.1.

- 37 Policy 2.6.1.5 outlines a number of criteria to assess the appropriateness of rural residential zoning. I assess each in turn, with respect to the appropriateness of the change from RR2 zoning to RR1 zoning, below.
- 38 Clause a: the site is not suitable for future residential zoning for reasons relating to infrastructure and indigenous biodiversity, which are expanded on in paragraphs 39 and 47 below.
- 39 Clause b: the rezoning is unlikely to lead to pressure for infrastructure upgrades as there is no change to the policy of servicing RR2 vs RR1 sites. As per the status quo, all future sites would need to be self-serviced for water and wastewater onsite as there are no reticulated services available. Stormwater attenuation would also need to be provided for on site. DCC's Transport department has advised that any increase in traffic volume would

not have any noticeable effects on the safety and efficiency of the transport network.

- 40 Clause c: This clause identifies relevant objectives in the Plan against which the appropriateness of the rezoning must be considered. These are considered in turn.
- 41 Clauses c.i. and ix. require the maintenance of the character and visual amenity of Dunedin's rural environment (Objective 2.4.6) and the protection and enhancement of elements of the environment contributing to residents' and visitors' aesthetic appreciation for and enjoyment of the city (Objective 2.4.1). This includes the protection or enhancement of important green and other open spaces and important visual landscapes and vistas, and the amenity and aesthetic coherence of different environments.
- 42 The DCC Landscape Architect advises that there is an existing context of the proposed type and intensity of development in the surrounding areas of RR1. It is also noted that the site is largely set down below the level of nearby rural residential development in the Chain Hills area and development would not notably obstruct views toward the peaks of Saddle Hill (with the peak recognised as an outstanding natural feature and surrounding hillslopes as a significant natural landscape) from Chain Hills properties. The existing area of native vegetation is also identified as contributing positively to the visual amenity of the wider surroundings. Further, the scheduling of the areas of indigenous vegetation present on the site as a new ASBV at the same time as the rezoning will ensure that important green areas and trees are retained on site. Finally, the additional development potential provided by this zoning change does not pose a threat to the compact and accessible form objective in 2.4.1.
- 43 Clause c.ii. (Objective 2.3.1): The change in zoning will not lead to loss of sites that are important for economic productivity or wellbeing. The site does not have any overlying high class soils mapped area and contains no substantial area of LUC 1-3 land so would not be considered to be highly productive land. The change from RR2 to RR1 zoning is unlikely to give rise to reverse sensitivity issues as the site is bounded by roads and therefore does not directly adjoin rural land.
- 44 Clause c.iii. (Objective 2.4.4.) requires the protection of Dunedin's outstanding and significant natural landscapes and natural features. There are no relevant overlays on the site, although as noted in paragraph 42 above, the site is close to Saddle Hill and landscape advice is that the intensification of 81 Morris Road is unlikely to obstruct potentially valued views toward the peaks of Saddle Hill.

- 45 Clause c. viii. (Objective 14.2.1) requires the relationship between Manawhenua and the natural environment to be maintained or enhanced, including the cultural values and traditions associated with wāhi tūpuna, mahika kai and occupation of original native reserve land through papakāika. There are no wāhi tūpuna mapped areas on the site.
- 46 Clauses c.iv, vi, vi (Objectives 2.4.5, 10.2.2, 10.2.4, which relate to the natural character of the coastal environment, the biodiversity values and natural character of the coast and riparian margins and subdivision and development activities and access to parts of the natural environment including the coast and water bodies): There are no natural coastal character overlays and the site is not adjacent to the coast or waterways. The rezoning is therefore not contrary to these objectives.
- 47 Clause v. (Objective 2.2.3, which relates to protecting indigenous biodiversity): There are two areas of indigenous vegetation totalling approximately 5.2ha on site that have been identified as significant by DCC's Biodiversity Advisor. A change in zoning to RR1 without appropriate protections being put in place for the indigenous vegetation would have the potential to allow for substantially more clearance than that which would be allowed if the site was to remain as RR2. However, as the rezoning will be accompanied by the scheduling of these areas as a new Area of Significant Biodiversity Value, the rules associated with the scheduling will ensure that this vegetation is protected or enhanced and restored.
- 48 Clause x. (Objective 11.2.1, which requires that land use and development is located and designed to ensure the risk from natural hazards is no more than low in short to long term): The site does not have any hazard overlays or swale or dune system mapped areas. The site has been assessed as having a low to medium level hazard associated with site instability. I note that risk from natural hazards is a matter of discretion under restricted discretionary consent for subdivision and location of building platforms may be a condition that is imposed. I am satisfied that there are no issues on the site that make the new zoning inappropriate.

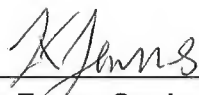
Conclusion

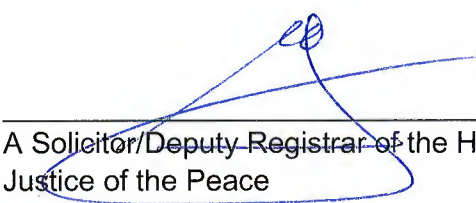
- 49 Overall, I am satisfied the proposal, which includes rezoning the site to RR1 and protecting significant indigenous vegetation on site as an Area of Significant Biodiversity Value is appropriate to achieve the objectives of the Plan. In particular, the proposal will add a small number of rural residential sites which will contribute to Objective 2.6.1, to provide for a range of housing choices in Dunedin, while at the same time being appropriate in terms of the Plan's other key objectives as outlined in Policy 2.6.1.5.

Effect of any appeals on relevant objectives and policies

- 50 For completeness, I have assessed the appeals on the related policies and objectives and strategic directions to determine whether any appeals are likely to change the policy framework in a way that would change the above assessment.
- 51 There are no appeals on Objective 2.6.1.
- 52 Policies 2.6.1.3 to 2.6.1.5 have been amended in response to appeals from Robert Wyber ENV-2018-CHC-281 and the Preservation Coalition Trust (PCT) ENV-2018-CHC-285 as shown in the s32AA assessment above. A consent memorandum, signed by the parties on 18 February 2021, and accompanying affidavit from Jane Macleod will be filed with the Court in relation to these appeals.
- 53 There are no other relevant appeals that are likely to change the policy framework and affect my assessment above.

Sworn/affirmed at Dunedin)
this 30 day April)
of April 2021,)
before me:


Katie Emma Sunley James


A Solicitor/Deputy Registrar of the High Court of New Zealand
Justice of the Peace

Maurice Raymond Turketo
Solicitor
Dunedin