

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-260

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 **Ben Ponne**

Appellant

And **Dunedin City Council**

Respondent

Affidavit of Katie Emma Sunley James

Affirmed *2 June 2021*

Concerning: Group 1, Rural Strategic Topic
DCC Reference number 151

Respondent's solicitors:

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**anderson
lloyd.**

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

- 1 I am a policy planner at Dunedin City Council.
- 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 (**DCC**) as a policy planner for over five 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, for the changes agreed in the following consent memorandum:
 - (a) Ben Ponne ENV-2018-CHC-260 dated 31 May 2021 (Rezoning of property at 73 and 58 Reservoir Road and inclusion of Porteous Road Landscape Building Platform Mapped Area performance standards).
- 6 Ben Ponne sought to rezone the land at 58 and 73 Reservoir Road from Coastal Rural to Rural Residential 2, or to alternatively add a new rule in the Coastal Rural Zone enabling a residential dwelling to be established on an existing undersized site.
- 7 Otago Regional Council is a section 274 party to this appeal.

Agreement reached

- 8 As outlined in the attached consent memorandum, agreement has been reached between the parties to:
 - (a) Rezone 58 and 73 Reservoir Road to Rural Residential 2, providing for a single standard residential activity to be established at 73 Reservoir Road; and
 - (b) Apply a site-specific overlay, named the "Porteous Road Landscape Building Platform Mapped Area", to 73 Reservoir Road, with



associated performance standards relating to the location of buildings and driveways within this area, to manage effects on landscape values. These standards will apply in addition to normal rural residential zone provisions and significant natural landscape overlay rules.

Assessment of other appeals

- 9 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.
- 10 There are no other appeals on the zoning of the appeal site.

Planning background

- 11 58 and 73 Reservoir Road are located on the mid slopes of the seaward-facing hills above Warrington, a settlement to the north of urban Dunedin, and are both zoned Coastal Rural. They lie directly to the north-west of an area of Rural Residential 2 zoning, which itself lies adjacent to the Warrington Township and Settlement Zone. 73 Reservoir Road is 9.1ha in area while 58 Reservoir Road is 16.6ha in area and has an existing dwelling.
- 12 Under Rule 16.5.2, the minimum density for standard residential activity in the Coastal Rural Zone is 15ha, meaning that residential activity on 73 Reservoir Road is currently a non-complying activity.
- 13 The Seacliff Significant Natural Landscape overlay zone (**Seacliff SNL**) covers both appeal sites, also extending down into the top of the adjacent rural residential zone. Additional development performance standards (such as a limit on the reflectivity of building exteriors) and assessment rules for land use, development and subdivision activities apply on sites within SNLs, in order to avoid adverse effects on identified landscape values.

Rural residential zones

- 14 The purpose of the 2GP's rural residential zones is to provide an appropriate location for lifestyle blocks or hobby farms. Rural residential zoning forms part of "*a range of housing choices in Dunedin that provides for the community's needs and supports social well-being*" (strategic objective 2.6.1). In the 2GP, there are two types of rural residential zone. The first is the Rural Residential 1 (**RR1**) Zone, which is based on the rural

residential zones in the Operative District Plan (**ODP**), and which has a minimum site size of 2ha for residential activity (density and subdivision). The second is the Rural Residential 2 (**RR2**) Zone, which was created in the 2GP as a means of managing development within the large numbers of existing 'undersized' rural sites (i.e. sites below the ODP's 15ha minimum site size for residential activity in the rural zone). RR2 zoning was applied to clusters of these undersized sites, some of which already contained dwellings. This zoning provides for one house per existing site over one hectare and makes further subdivision non-complying.

New method – landscape building platform mapped area

- 15 Structure plan mapped areas and associated performance standards are a method used in the 2GP to manage subdivision and coordinated development of both larger greenfield areas and some smaller areas with specific site-level issues within the residential zones. There is currently no equivalent method to manage site level issues in rural residential zones and this agreement introduces a new method - the 'landscape building platform mapped area' and associated performance standards – in order to manage effects on landscape values in rural residential sites where they are within significant natural landscape (**SNL**) overlays. By using the term 'landscape building platform' the new method 'piggybacks' on an existing method used to locate buildings appropriately during a subdivision process. See para 42 of the s32AA discussion below for further explanation of this new methodology.
- 16 The key strategic direction objective and policies relevant to rezoning land from rural to rural residential are Objective 2.6.1 and Policies 2.6.1.3, 2.6.1.4 and 2.6.1.5. These policies also require the assessment of rezoning proposals against other relevant 2GP objectives; where a rezoning is proposed within an SNL, these include Objective 2.4.4, concerning protection of natural landscapes and features. The s32AA assessment below summarises the assessment made against relevant higher order planning documents and the objectives and policies of the 2GP.

Decision background

- 17 The 2GP Rural Residential Zones Hearings Panel considered the submission to rezone the site to Rural Residential 2 Zone in Section 3.8.9.1.1 of their decision¹. The Panel rejected the submission, because it considered that the sites did not meet the criteria for Rural Residential 2

¹ Rural Residential Zones Decision of Hearings Panel Proposed Second Generation Dunedin City District Plan, 7 November 2018



zoning, including that they were not part of a mostly-developed cluster of undersized rural sites held in separate land tenure, and they were within an SNL.

Assessment (s75 and s32)

Consistency with higher order documents

- 18 Objective 5.3 of the partially operative Otago Regional Policy Statement 2019 is "Sufficient land is managed and protected for economic production". Policy 5.3.1, beneath this objective, reads as follows:

Policy 5.3.1 Rural activities

Manage activities in rural areas, to support the region's economy and communities, by:

- a. Enabling primary production and other rural activities that support that production;
 - b. Providing for mineral exploration, extraction and processing;
 - c. Minimising the loss of significant soils;
 - d. Restricting the establishment of incompatible activities in rural areas that are likely to lead to reverse sensitivity effects;
 - e. Minimising the subdivision of productive rural land into smaller lots that may result in a loss of its productive capacity or productive efficiency;
 - f. Providing for other activities that have a functional need to locate in rural areas.
- 19 Clauses d and e of Policy 5.3.1 are particularly relevant to considering whether and where new areas of rural residential zoning should be established in the rural environment.
- 20 These policies are given effect to in the 2GP via Objective 2.3.1 and associated provisions. The strategic policies for rural residential zoning (2.6.1.3 to 2.6.1.5), in particular Policy 2.6.1.5, have been designed with the achievement of Objective 2.3.1 in mind. Policy 2.6.1.5 indicates that, to achieve Objective 2.3.1, it will generally be necessary to avoid creating new rural residential zoning in "*areas that are highly productive land or may create conflict with rural water resource requirements*". The Section 32AA assessment below assesses whether the agreed rezoning is consistent with Policy 2.6.1.5.

Section 32AA Assessment

- 21 The key strategic objective relating to the rationale for the provision of rural residential land 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 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 numbers 90 and 91). Consent documentation to resolve these appeals, signed by all parties, was filed on 30 April 2021.
- 25 The consent memorandum for these appeals proposes 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. It also revises the content of both this new policy and Policy 2.6.1.5. 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. The request to rezone the site has been assessed against the revised policies as set out below.

Assessment against revised policy 2.6.1.4

- 26 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

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.

- 27 Clause a requires that the proposed zoning meets the criteria outlined in Policy 2.6.1.5. I assess the rezoning against these criteria below.
- 28 In relation to clause b, the rezoning will only create two additional rural residential-zoned sites, with 58 Reservoir Road being rezoned to provide a contiguous area of RR2 zoning, from the existing RR2 zone through to 73 Reservoir Road. The rezoning of 58 Reservoir Road will provide no additional development capacity as there is an existing residential activity on this site. Overall, the rezoning will only provide for one additional residential activity, at 73 Reservoir Road. Therefore, the change will not materially affect the balance between provision of lifestyle or hobby farming opportunities, and achievement of the objectives referred to.
- 29 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 addition of one additional residential activity in close proximity to the existing RR2 zone at Warrington will not be contrary to this objective.
- 30 Objective 2.7.1 concerns the efficient and effective operation of public infrastructure and the addition of one new residential activity which is required to be self-sufficient is not contrary to this objective.
- 31 Objective 2.7.2 relates to the efficient and safe operation of the transport network. The addition of one new residential activity in this area is not contrary to this objective.

- 32 In relation to clause c, 58 and 73 Reservoir Road are sites in separate land tenure (note that, since decisions were released, 58 Reservoir Road has had a change in ownership and is now in separate tenure from adjoining properties) that are part of a semi-developed cluster of sites with an average area of just over 7ha on Porteous, Reservoir and Coast Roads. The RR2 Zone neighbouring the appeal sites includes eight sites, at least four of which have dwellings.
- 33 73 Reservoir Road, at approximately 9ha, meets clause c.ii. of the policy which lays out the criteria for where RR2 zoning is generally appropriate: 'where the cluster comprises sites each under 15ha with an average site size of generally between 4ha and 10ha'. At 16.6ha, 58 Reservoir meets the minimum site size of 15ha per site for residential activity in the Coastal Rural Zone. However, given that is a relatively small site with an existing dwelling, in my view it makes a more logical zoning pattern to rezone it alongside 73 Reservoir, in order to create a contiguous area of RR2 zoning.

Assessment against revised Policy 2.6.1.5

- 34 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:

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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.

35 Policy 2.6.1.5 outlines a number of criteria to assess the appropriateness of rural residential zoning. I assess each in turn below.

- 36 Clause a: the sites are not suitable for future residential zoning in line with Policy 2.6.2.1 because they are in an SNL, and because they are quite remote from Dunedin.
- 37 Clause b: the rezoning is unlikely to lead to pressure for infrastructure upgrades as there will be only one additional residential activity. It is noted that the development of 73 Reservoir Road will require the development of the unformed section of Porteous Road, but this will be the responsibility of the landowner/appellant.
- 38 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.
- 39 Clauses c.i. and c.ix. require the maintenance of the character and visual amenity of Dunedin's rural environment (Objective 2.4.6) and the protection of important green and other open spaces, important visual landscapes and vistas, and the amenity and aesthetic coherence of different environments (Objective 2.4.1). The wider area in which the sites are located (within the Seacliff SNL) has high rural landscape values and aesthetic coherence with a mixture of pasture and pockets of native vegetation and exotic trees on the mid hill slopes overlooking Warrington. It is considered that rezoning to RR2, with associated performance standards to control the location of, and access to, the single dwelling that will be allowed on 73 Reservoir Rd (in the lower, flat-gently sloping part of the site), along with the existing rules for the rural residential zones and significant natural overlays (managing earthworks, vegetation clearance and height and reflectivity of buildings) will be effective in achieving this objective. The addition of a single additional residential activity does not pose a threat to the compact urban form objective in 2.4.1.
- 40 Clause c.ii. (Objective 2.3.1, relating to land and facilities important for economic productivity and social wellbeing): The sites are not within a high class soils mapped area and contain no LUC 1-3 land, so are not considered to be highly productive land. 73 Reservoir Road is small, is not part of a larger property, and is unlikely to support a productive rural use. The change in zoning and addition of a single rural residential activity is unlikely to give rise to reverse sensitivity issues for nearby permitted rural activities. The building platform identified in the new performance standard is in the lower part of the site and would therefore not be directly adjacent to rural zoned land. In addition, the setback from road (12m) requirements for the rural residential zone (see Rule 17.6.9.1) will provide further distance between the new dwelling and the edge of the rural zone.

- 41 Clause c.iii. (Objective 2.4.4. requires the protection of Dunedin's outstanding and significant natural landscapes and natural features): The sites are both within the Seacliff SNL; therefore, the values identified in A3.3.7 need to be protected. Clause c.iii.3 states that achieving the objective includes avoiding the application of new rural residential zoning in the SNL Overlay Zone unless rules, such as those restricting the scale and location of development activities can ensure that the objective will be achieved.
- 42 As described in the planning background in para 15 above, this agreement introduces a new method, the landscape building platform mapped area, in order to appropriately locate the dwelling. A change to the definition of landscape building platform is required so that the term applies to approved landscape building platforms identified in site specific performance standards in the Plan as well as those building sites that are registered on titles through subdivision consent processes. This allows the performance standards to be linked to an existing controlled activity rule that manages the size, design and appearance of buildings over 60m² in landscape building platforms within SNLs in the rural residential zones (see Policy 10.2.5.11 and Rule 17.3.4.3.c).
- 43 In addition to controlling the location of the dwelling, the Porteous Road Landscape Building Platform Mapped Area performance standard also requires that all other buildings are located on the landscape building platform and that the driveway access must be from Porteous Road. This will provide additional protection for landscape values by ensuring that buildings and driveways do not become visually dominant features. In addition, there are two development performance standards associated with the SNL overlay, relating to number and location of buildings on the site (less than three new small buildings located within 30m of the dwelling), and reflectivity of buildings, structures, and additions and alterations.
- 44 In my view, enabling one residential activity on 73 Reservoir Road, subject to resource consent with controls (including the landscape building platform mapped area performance standards) on location, size, design and appearance of buildings, and access to the site, as well as 'reflectivity' and 'location and number of buildings' development standards, will ensure that Objective 2.4.4 is achieved.
- 45 Clauses c.iv., c.vi, c.vii. (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.

- 46 Clause c.v. (Objective 2.2.3, which relates to protecting indigenous biodiversity): there are no scheduled Areas of Significant Biodiversity Value, or Urban Biodiversity Mapped Areas, that intersect with the site. The rezoning is therefore not contrary to these objectives.
- 47 Clause c.viii. (Objective 14.2.1) requires that the relationship between Manawhenua and the natural environment is maintained or enhanced, including the cultural values and traditions associated with wāhi tūpuna, mahika kai and occupation of original native reserve land through papakāika: The sites are within the Pūrākaunui to Hikaroroa to Huriawa wāhi tūpuna mapped area. The values to be protected within this wāhi tūpuna are listed in Appendix A4.14 along with identified principal threats to values, which include activities affecting the visual integrity of the peaks and ridgelines. Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou, although not a 274 party to this appeal, were consulted on the change of zoning and agreed in principle to the rezoning of the site to RR2 based on appropriately locating the landscape building platform on 73 Reservoir Road. I am satisfied that the measures to control the location, size, design and appearance of buildings and access to the site at 73 Reservoir Road will ensure the change in zoning in this location will not be contrary to Objective 14.2.1.
- 48 Clause c.x. (Objective 11.2.1) requires that land use and development is located and designed in such a way that ensures that the risk from natural hazards, and from the potential effects of climate changes on natural hazards, is no more than low, in the short to long term: The site at 73 Reservoir Road is not subject to natural hazard overlays or mapped areas but has previously been subject to geotechnical appraisal identifying the general location of the landscape building platform as suitable for a single dwelling. I am satisfied that the change in zoning to RR2 will not be contrary to Objective 11.2.1.

Conclusion

- 49 Overall, through rezoning an undersized and non-productive rural site in separate land tenure, allowing for a single dwelling to be built, with performance standards that will protect the values of the SNL, I consider that the agreed changes to the Plan are the most appropriate way to achieve the objectives of the Plan described above.

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 relating to these appeals, signed by the parties on 18 February 2021, and an accompanying affidavit from Jane Macleod, was filed with the Court on 30 April 2021.
- 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 2nd day June)
of 2021,)

before me:



Katie Emma Sunley James



Lawson Raymond Davison
Solicitor
Dunedin

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