

In the Environment Court of New Zealand  
Christchurch Registry

I Te Koti Taiao o Aotearoa  
Ōtautahi Rohe

ENV-2018-CHC-280

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| Under            | the Resource Management Act 1991 ( <b>RMA</b> )                                                                                                              |
| In the matter of | an appeals under clause 14(1) of the First Schedule of the RMA<br>in relation to the proposed Second Generation Dunedin City<br>District Plan ( <b>2GP</b> ) |
| Between          | <b>Barry Smaill</b><br><br>Appellant                                                                                                                         |
| And              | <b>Dunedin City Council</b><br><br>Respondent                                                                                                                |

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**Affidavit of Emma Christmas**

Affirmed

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**Respondent's solicitors:**

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**anderson  
lloyd.**

I, **Emma Christmas** of Dunedin, Policy Planner, hereby solemnly and sincerely affirm:

- 1 I am a Senior 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 as a policy planner for seven years. During this time I have primarily worked on drafting the 2GP, assessing submissions, preparing and presenting s42A reports and working on the appeals. Prior to this, I was self-employed as a planner for 10 years, working mainly on consent applications. Prior to that I was Team Leader Consents at Environment Canterbury for five years. I am a certified independent hearings commissioner and a full member of the New Zealand Planning Institute.

**Background and issues of concern**

- 4 Barry Smaill lodged appeal ENV-2018-CHC-280 seeking changes to four performance standards that apply to residential development in the Inner City Residential Zone (ICR), as outlined in the table below.

| DCC Appeal Provisions Appealed<br>number |                                                                                        | Relief Sought                                                                                                                                                                                                        |
|------------------------------------------|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 208                                      | Rule 15.5.2.1.e<br><br>Density performance standard in the Inner City Residential Zone | Remove Rule 15.5.2.1.e (maximum development potential per site in ICR) or amend so that the density provision is equivalent to the density provided for in the Residential 4 Zone under the operative District Plan. |
| 209                                      | Rule 15.5.11.1.a<br><br>Outdoor living space performance standard                      | Amend Rule 15.5.11.1.a (minimum outdoor living space performance standard) to require 35m <sup>2</sup> of outdoor living space per residential unit in the Inner City Residential Zone.                              |

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|     |                                                                                                                                             |                                                                                                                                                                                                            |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 210 | Rule 15.6.10.1.c.ii<br><br>Maximum Building Site Coverage and Impermeable Surfaces performance standard for the Inner City Residential Zone | Remove Rule 15.6.10.1.c.ii (impermeable surface performance standard in the ICR).                                                                                                                          |
| 211 | 15.6.6.1.a.ii<br><br>Height in relation to boundary performance standard                                                                    | Amend Rule 15.6.6.1.a.ii (height in relation to boundary performance standard in ICR) to require a height in relation to boundary angle of 72 degrees or other such amendment to achieve the same outcome. |

5 My understanding is that the primary concern for Mr Smaill is the changes he has sought for the density performance standard within the ICR Zone (DCC point 208). The attached consent memorandum resolves this point. Requests for partial withdrawal in relation to points 209 and 210 are also attached. Appeal point 211 remains unresolved and is not discussed in this affidavit.

6 There are no s274 parties to the appeal.

#### **Planning background**

7 As the agreement focusses on changes to the density performance standard, this section is limited to the background to that rule.

8 The 2GP manages density in the Inner City Residential Zone on a habitable room<sup>1</sup> basis. Rule 15.5.2.1.e states:

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<sup>1</sup> Habitable room is defined as: 'Any room in a residential unit, family flat, sleep out or visitor accommodation unit that is designed to be, or could be, used as a bedroom. The calculation of a habitable room will exclude only one principal living area per residential unit (including family flats). Any additional rooms in a residential unit, family flat or sleep out that could be used as a bedroom but are labelled for another use, such as a second living area, gym or study, will be counted as a habitable room. In the case of dormitory-style accommodation containing multiple beds, such as is used in some backpacker accommodation, every four beds or part thereof will be treated as one habitable room. For the sake of clarity, a standard 'bunk bed' is counted as 2 beds.'

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1. Standard residential activities and visitor accommodation (or any combination of the two on a single site) must not exceed the following density limits:

| Zone |                             | i. Minimum site area for a residential unit (excluding family flats) | ii. Maximum development potential per site |
|------|-----------------------------|----------------------------------------------------------------------|--------------------------------------------|
| e.   | Inner City Residential Zone | N/A                                                                  | 1 habitable room per 45m <sup>2</sup>      |

9 Contravention of this density limit is a non-complying activity. Guidance on the assessment of consents is included in assessment rule 15.13.5.1.

10 Density within the Residential 4 Zone of the Operative District Plan is controlled on a residential unit basis. Rule 8.10.1 permits the following:

*(i) Residential Activity at a density of not less than 200m<sup>2</sup> of site area per residential unit provided.*

11 This approach differs from the 2GP approach in that it allows one residential unit per 200m<sup>2</sup>, but there is no limit on the number of habitable rooms within each unit.

12 The result of the approach used in the operative plan was the creation of very large (8+ bedroom) 'flats' that primarily catered to the student population. This outcome was not necessarily driven by demand for this type of housing, but rather was an outcome created by developers seeking to avoid the need for resource consent. Feedback at the time of plan development was that developers would like to be able to provide for smaller units as there was strong demand for that type of housing. The change made to the density rule (the move to a habitable room per site area rather than unit per site area approach) was to enable this; the purpose of the change was not to reduce the overall density provided, but rather to better provide for smaller units. However, the rule change has had the consequence of making the plan less permissive in terms of the number of habitable rooms that can be developed on some sites, as is the case with the development aspirations of Mr Smaill.

13 The 2GP controls density primarily to manage impacts on infrastructure (objectives 2.7.1 and 9.2.1 and policies 2.7.1.1 and 9.2.1.1), and effects on streetscape and residential amenity (objectives 2.4.1 and 15.2.4, and policies 2.4.1.5 and 15.2.4.2). These objectives and policies are discussed below at paragraph 18 onwards as part of my assessment under s32AA.

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## Agreement reached

- 14 Agreement has been reached between the parties to amend the 2GP as outlined in the attached consent memorandum. In summary these changes include:
- (a) A change to the density standard that would introduce a restricted discretionary activity rule for densities of between the (permitted) density of one habitable room per 45m<sup>2</sup> of site area and one habitable room per 30m<sup>2</sup>. Densities greater than one habitable room per 30m<sup>2</sup> of site area would remain a non-complying activity.
  - (b) Consequential changes to assessment rules to guide assessment of restricted discretionary consent applications.
- 15 The one habitable room per 30m<sup>2</sup> reflects the density that could be obtained on a site owned by Mr Smaill in the Inner City Residential Zone (43 Cargill Street, a typical site in the zone), under the operative plan R4 rules. Mr Smaill seeks to build four 8-bedroom dwellings on the site, which meet the operative plan rules with minor performance standard breaches. This density (32 habitable rooms in total) is equivalent to 1 habitable room per 29m<sup>2</sup> of site area.

## Assessment of other appeals on amended provisions

- 16 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.
- 17 There are no appeals on any of the provisions proposed to be changed.

## Section 32AA Assessment

### *Relevant objectives and policies*

- 18 Density standards in the residential zones are used in the Plan in order to achieve strategic objectives around infrastructure management and (to a lesser extent) amenity. The relevant provisions are set out below:

#### **Objective 2.7.1**

*Public infrastructure networks operate efficiently and effectively and have the least possible long term cost burden on the public.*

#### **Policy 2.7.1.1**

*Manage the location of new housing to ensure efficient use and provision of public infrastructure through:*

- a. *rules that restrict development density in line with current or planned public infrastructure capacity; ...*

19 This objective and policy are reflected in the following objective and policy that sit in Section 9:

**Objective 9.2.1**

*Land use, development and subdivision activities maintain or enhance the efficiency and affordability of public water supply, wastewater and stormwater infrastructure.*

**Policy 9.2.1.1**

*Only allow land use or subdivision activities that may result in land use or development activities where:*

- a. *in an area with public water supply and/or wastewater infrastructure, it will not exceed the current or planned capacity of that infrastructure or compromise its ability to service any activities permitted within the zone; and*
- b. *in an area without public water supply and/or wastewater infrastructure, it will not lead to future pressure for unplanned expansion of that infrastructure.*

20 The amendments continue to ensure that development does not compromise the current or planned capacity of the public wastewater infrastructure or the ability of the public wastewater infrastructure to service any activities permitted within the zone, because they still allow the assessment of effects on infrastructure to be considered as part of a restricted discretionary consent. The amendments are therefore consistent with this policy.

**Objective 2.4.1**

*The elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected and enhanced. These include:*

- a. *important green and other open spaces, including green breaks between coastal settlements;*
- b. *trees that make a significant contribution to the visual landscape and history of neighbourhoods;*
- c. *built heritage, including nationally recognised built heritage;*
- d. *important visual landscapes and vistas;*

- e. *the amenity and aesthetic coherence of different environments; and*
- f. *the compact and accessible form of Dunedin*

**Policy 2.4.1.5**

*Maintain or enhance the attractiveness of streetscapes, public open spaces and residential amenity by using rules that manage building bulk and location, site development and overall development density.*

- 21 This objective and policy are reflected in the following objective and policy that sit in Section 15.

**Objective 15.2.4**

*Activities maintain or enhance the amenity of the streetscape, and reflect the current or intended future character of the neighbourhood.*

**Policy 15.2.4.2**

*Require residential activity to be at a density that reflects the existing residential character or intended future character of the zone.*

- 22 Notwithstanding the objectives and policies listed above, density is not the primary method used in the plan to manage effects on amenity and character. Rather, Policy 15.2.4.2 allows consideration of the effects on character of a density breach; in practice, primarily as a means to ensure larger multi-unit or supported living facilities/buildings are designed to 'blend-in' rather than stand out.
- 23 Effects on amenity and character are primarily managed through rules which govern the bulk and location of building (such as maximum height, height in relation to boundary, setbacks from boundaries, maximum building site coverage). The additional development enabled by these amendments must therefore be undertaken in building(s) of a similar scale to that required under the existing 2GP rule, or resource consent must be obtained. A further management tool is that resource consent is required for any development of three or more residential units and for buildings greater than 300m<sup>2</sup> footprint, for the purposes of managing effects on streetscape amenity and character. It is arguable, given these rules, whether density contraventions need to consider effects on amenity and character, given this broader rule framework, but this is beyond the scope of what was sought by Mr Smail.

- 24 The setting of appropriate density standards is also relevant in terms of achieving the plan's objective around ensuring sufficient development capacity. Objective 2.6.2 is relevant in this regard.

**Objective 2.6.2**

*Dunedin provides sufficient, feasible, development capacity (as intensification opportunities and zoned urban land) in the most appropriate locations to meet the demand over the medium term (up to 10 years), while sustainably managing urban expansion in a way that maintains a compact city with resilient townships as outlined in Objective 2.2.4 and policies 2.2.4.1 to 2.2.4.3.*

- 25 The agreed amendments better enable Objective 2.6.2 as they allow additional development capacity and so will assist in meeting the housing needs of the city (and the requirements under the NPS-UDC).
- 26 In summary, it is my assessment that the changes proposed in this agreement will better enable additional residential capacity, while ensuring that adverse effects on infrastructure and streetscape amenity and character continue to be managed effectively, and therefore those objectives are appropriately achieved.

**Consistency with higher order documents (section 75)**

*National Policy Statement on Urban Development Capacity*

- 27 The requirements of the National Policy Statement on Urban Development Capacity (NPS-UDC) in relation to providing sufficient housing development capacity over the medium term are reflected in Objective 2.6.2 of the 2GP. As discussed above, the changes will assist in achieving Objective 2.6.2. Consequently, I consider that the changes will assist in giving effect to the NPS-UDC.

*Otago Regional Policy Statement (partially operative)*

- 28 The Otago Regional Policy Statement (**OPRS**) includes the following relevant matters in policy 4.5.1:

**Policy 4.5.1 Providing for urban growth and development**

*Provide for urban growth and development in a strategic and co-ordinated way, including by: ...*

- c) *Ensuring that there is sufficient housing and business land development capacity available in Otago;*
- d) *...*

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e) *Coordinating the development and the extension of urban areas with infrastructure development programmes, to provide infrastructure in an efficient and effective way.*

f) ...

g) *Ensuring efficient use of land; ...*

- 29 These matters are implemented by the objectives and policies in the 2GP outlined above (objectives 2.6.2, 2.7.1 and 9.2.1 and policies 2.7.1.1 and 9.2.1.1. The assessment outlined in paragraph 18 onwards describes how these changes will give effect to these policy matters.

**Relationship to objectives and policies and appeals on those objectives and policies**

- 30 For completeness, I have assessed the appeals on the 2GP objectives and policies discussed above to ensure no appeals are likely to change the policy framework in a way that would change the above assessment.
- 31 Of the objectives and policies listed above, Objective 2.7.1 and Policy 2.7.1.1 are under appeal.
- 32 Objective 2.7.1 is appealed by BP Oil New Zealand Limited and Others (ENV-2018-CHC-291, appeal point 374). The appeal seeks to amend the Strategic Directions provisions to include recognition, provision and protection of strategic infrastructure, either through amendments to Objective 2.3.1 or Objective 2.7.1 or through a new objective. This appeal is in Group 2 and discussions are at an early stage.
- 33 The relief sought does not appear to seek an amendment to Objective 2.7.1 in a way that would change its focus of efficient and effective operation of infrastructure networks, and so the amendments proposed would not change the s32AA assessment provided above.
- 34 Policy 2.7.1.1 is appealed by Robert Wyber (ENV-2018-CHC-281, appeal point 212). The relief sought is to: "Amend Policy 2.7.1.1 to [ensure] infrastructure planning occurs to assist in providing adequate urban land." The appeal states: "it is inappropriate to utilise infrastructure constraints as a basis for refusing to rezone land when the council operates a policy of not planning infrastructure to supply land that is not yet zoned for residential purposes. The Council's approach in this regard is circular."

35 The appeal does not appear to seek a change to Policy 2.7.1.1 in a way that would change the s32AA assessment provided above. Rather, the amendments agreed seem to align in a general way with what is being sought by Mr Wyber (e.g. enabling more development capacity).

**Affirmed** at Dunedin )  
By **Emma Christmas** )  
this 28<sup>th</sup> day of February 2020 )  
before me: )

  
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A Solicitor of the High Court of New Zealand

**Ashleigh Nicole Mitchell-Craig**  
**Solicitor**  
**Dunedin**