

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-285

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 **The Preservation Coalition Trust**

Appellant

And **Dunedin City Council**

Respondent

**Position Statement for the Dunedin City Council in response to Joint Witness
Statement by landscape experts**

5 June 2020

Respondent's solicitors:

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**anderson
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May it please the Court

- 1 This memorandum is filed in response to the Court's direction, dated 6 May 2020, that the Dunedin City Council file a position paper identifying the areas where it agrees, and where it disagrees, with the landscape experts in their Joint Witness Statement (JWS) of 31 March 2020.
- 2 An update to the JWS was filed on 3 June 2020. This position paper is based on the updated JWS, which contains a number of minor adjustments to mapping.

Council's position on the JWS

- 3 The Council's position on the JWS is as follows.
 - (a) Changes to Policy 2.4.4.1 and the proposed ONF at Portobello Peninsula are considered beyond the scope of the Preservation Coalition Trust (PCT)'s submission.
 - (b) The recommendations not to rezone RR1 land at Cleghorn St and parts of the RR2 land at Portobello, The Cove and Osborne to rural are supported.
 - (c) All recommended changes to zoning (rural residential to rural) are opposed.
 - (d) Application of Outstanding Natural Landscape (ONL) Overlay Zone to land in the Rural Residential 2 Zone, Township and Settlement Zone (Pukehiki) and Pūrākaunui School Zone is opposed.
 - (e) Application of Significant Natural Landscape (SNL) Overlay Zone to land within the Residential Transition Overlay Zone is opposed, and
 - (f) The balance of JWS-recommended changes to ONL and SNL overlays are opposed based on the current information, but if they are to proceed should be considered via a future plan review.

Changes considered to be beyond scope of PCT's submission

- 4 The Council notes that the following changes proposed in the JWS were not sought in the submission on the Second Generation District Plan from PCT (then the Harbourside and Peninsula Preservation Coalition, or HPPC):
 - (a) changes to Policy 2.4.4.1, which is the 2GP strategic policy describing the factors to be considered when identifying and assessing areas to be protected as Outstanding Natural Landscape, Significant Natural Landscape and Outstanding Natural Feature overlay zones (discussed at section 1.1 of the JWS, pp4-5), and

- (b) the application of ONF overlay zone to the Portobello Peninsula (section 2.3 of the JWS, pp20-24).

Changes to zoning – PCT appeal points 93a and 96

- 5 The Council agrees with the landscape witnesses that the Rural Residential 1 (RR1) area at Cleghorn Street, above St Leonards, marked as 3.3.2 on the map at JWS sheet 13 (p70 of JWS) should not be rezoned to a rural zoning¹ (see discussion at paragraph 3.3.2 of JWS, p51). The JWS recommends that parts of the areas of Rural Residential 2 (RR2) land at Portobello, The Cove and Osborne should keep their RR zoning, and parts should be rezoned Rural (see sheet 14, p71, and discussion at paragraphs 3.2.1, 3.2.4 and 3.4.4 of JWS, pages 50 and 52). The Council agrees with the retention of RR2 land in these areas where this is recommended in the JWS.
- 6 The Council does not agree with any of the JWS recommendations to rezone RR1 or RR2 land to a rural zoning (section 3 of JWS, pp50-52, and paragraphs 2-5 of JWS update, pp1-2), on the basis that the costs of this rezoning are high, and its benefits uncertain. The recommended rezoning affects 81 sites with dwellings already on them, and 39 vacant sites, which are grouped in 15 clusters in different areas. All affected sites are in partly or fully developed clusters of sites, and all except one (which is already developed) are undersized in terms of rural zone rules, often significantly. Rural zoning would not reflect the existing rural residential use and character of these clusters; rules in rural zones have been designed to maintain rural, rather than rural residential, character and amenity, therefore rural zoning would result in unnecessary and inefficient consent triggers for activities with no more than minor effects, e.g. family flats, house extensions, and boundary setback contraventions.
- 7 There is also a risk that not encouraging rural residential living into areas with existing rural residential character will result in greater pressure for rural residential subdivision and development in other parts of the rural environment, where potential adverse effects (e.g. on productivity) could be greater. Reduction in pressure for the creation of new lifestyle blocks, and thus further fragmentation of land, in the rural environment was a key driver behind the rezoning of some existing clusters of partly developed small rural sites to rural residential, in the 2GP.
- 8 The benefits of the rezoning, from a landscape perspective, are that, under rural zone rules, dwellings would not be permitted on the 39 vacant sites, and stricter rules would apply to activities such as family flats, and accessory buildings close

¹ It is noted that the plan contains several different rural zones, the rural zones that would apply to the areas covered by the JWS (based on surrounding rural zones) are the Hill Slopes Rural Zone and the Coastal Rural Zone.

to boundaries, on both the vacant sites and the 81 sites with dwellings. “Low impact of built elements” is listed as a value to be protected for all overlays discussed in the JWS.

- 9 There is a risk that the rezoning recommended in the JWS is not actually necessary to manage potential adverse effects on landscape values; the JWS (pp50-52) does not indicate that witnesses have considered and rejected other possible methods, such as stricter rules for buildings and structures within landscape overlays. Therefore, it is not clear that the costs of rezoning are necessary to protect landscape values. Given the relative amount of discussion in the JWS of overlay recommendations (pp7-49) and zoning recommendations (pp50-52), it seems possible that available planning alternatives were not considered. Further, the existing context of the landscape provisions in the decisions version of the Plan is not discussed in the JWS. These existing provisions, applying in ONLs and SNLs, require consent for any dwelling-sized building and for many smaller buildings, depending on their location and design, with the Council able to withhold consent or impose conditions in order to protect landscape values. These provisions are also under appeal by a number of parties, including PCT. Thus it is possible that these rules could be made stricter in response to appeals, if considered necessary to further protect landscape values from new built elements. In the Council's view, this would be a more effective and efficient method than rezoning.

Application of ONL to rural-residential zoned sites or parts of sites (75, 82)

- 10 The Council does not agree with those parts of recommended ONLs that would overlay rural-residential zoned land. Parts of the Otago Peninsula ONL (discussed in section 2.1 of the JWS, pp7-13), the Mount Cargill ONL (section 2.6, pp36-40) and the Heyward Coast ONL (section 2.4, pp25-30) would apply to 22 sites or parts of sites in the Rural Residential 2 Zone, which are located across six different areas of the city. These areas can be identified on the maps included as sheets 15 and 16 of the JWS update; they are located where the pink and yellow areas (which indicate, respectively, recommended new ONL on land that is currently SNL, and new ONL on land with no existing landscape overlay zone) intersect with the red outlined areas showing RR land that the JWS proposes to be rezoned rural. The Council estimates that the total area of the intersect between the JWS-recommended ONL and the RR2 Zone is 87.5ha.
- 11 Of the 22 affected RR2 sites, 15 contain dwellings and seven are vacant. Of the seven vacant sites, only two are fully covered by JWS-recommended ONLs. All sites are covered by SNL in the Plan. Under RR2 rules, no subdivision and seven additional dwellings would be provided for on the vacant sites. Under SNL rules, resource consent would be required for any new dwelling on these sites, and conditions could be imposed to require dwellings to be located in the most appropriate location to minimise any potential landscape effects.

- 12 The application of ONL to these sites would be inconsistent with the change agreed to by the Council in the consent memorandum filed on 13/3/20 to resolve appeals from Wyber and PCT on the rural residential strategic policies. The Council agreed that Policy 2.6.1.5 should be amended to indicate that new RR zoning should be “avoided” rather than “generally avoided” in ONLs, based on the current application of ONL overlays which do not intersect with RR zoning. This amendment provides stronger policy direction to avoid the creation of new RR zones in areas covered by ONLs, which the Council considers appropriate.

Application of ONL to the Pūrākaunui School Zone, and Pukehiki Township and Settlement Zone (75, 82)

- 13 The Council does not agree with those parts of recommended ONLs that would overlay either the Pukehiki Township and Settlement Zone or the Pūrākaunui School Zone. The recommended Otago Peninsula ONL (section 2.1 of the JWS, pp7-13) covers the Township and Settlement Zone, and the recommended Heyward Coast ONL (section 2.4, pp25-30) covers the School Zone. In the Council’s view, ONL overlay is incompatible with both school and residential zoning, given that 2GP objectives for these zones are, respectively, to enable schools to operate efficiently and effectively (31.2.1), and to reserve land for residential activities (15.2.1).

Application of SNL to sites in the Residential Transition Overlay Zone (75, 82)

- 14 The Council does not agree with those parts of recommended SNLs that would overlay sites within the Residential Transition Overlay Zone. The recommended West Harbour SNL (section 2.7, pp41-45) and the recommended Peninsula/Harbourside SNL (section 2.2, pp14-19) would apply to two small areas located at 1 and 1A Burkes Drive, Ravensbourne and 25A Irvine Road, The Cove that are overlain by the 2GP’s Residential Transition Overlay Zone. This overlay zone consists of land considered appropriate for residential development within the lifetime of the Plan, if demand and infrastructure criteria are met (Objective 12.2.1). The justification, from a landscape point of view, for applying SNL to these two sites is unclear to the Council, given that each site is surrounded on three sides by residential, school or RR1 zoning that is not subject to appeal.

Balance of ONL and SNL recommended areas (75, 82)

- 15 With respect to the balance of the recommended new ONLs and SNLs, the Council is unable to take a position supporting these changes at this point, due to a lack of evidence on the potential costs of applying the new overlays. The Council estimate that these changes would: apply new SNL to approximately 746ha of land not currently covered by any landscape overlay zone; apply new ONL to approximately 235ha of land not currently covered by any landscape overlay zone; and apply new

ONL to approximately 3133ha of land currently covered by an SNL. The costs of these changes these include:

- (a) the social and economic impacts of additional regulation on affected landowners
- (b) the potential for wider social and economic impacts due to the limits placed on certain rural activities such as forestry, and
- (c) the potential need for urban growth to address housing capacity shortages, and how these objectives should be weighed against the maintenance of landscape values in rural areas on the urban fringe.

16 Because of these factors DCC presently opposes these new overlays.

17 Normally these matters may have been traversed at the time of the hearing by the submitter or further submitters but this was not the case for the submission that led to this appeal. Only three further submitters opposed the part of the submission that requested a new ONL in the area in question, and these submitters did not present evidence at the hearing. In response to the submission, based on the landscape advice provided to the Council by Mike Moore, the reporting officer's section 42A report recommended:

- (a) no change to landscape overlays on the Peninsula, and
- (b) the upgrade of roughly 730ha at Heyward Coast from SNL to ONL, but no further changes to landscape overlays to the north of the Harbour.

18 The submitter (HPPC now PCT) tabled a statement at the hearing but did not present any landscape expert evidence to counter that of Mr Moore. The reporting officer's recommendations were accepted by the Hearing Panel, thus creating the Plan's current ONL and SNL boundaries in the area. It is possible that, had the changes set out in the JWS been either recommended at the time of the hearing and discussed in the officer's report, or traversed more fully at the hearing by the submitter, further submitters may have chosen to present evidence and may have followed the matter more closely through to appeal.

19 There is a significant number of land owners (over 650 according to Council data) who would be affected by these changes to the landscape overlays but it seems likely that the majority of these landowners are not aware of the proposal, given that no landowners have joined this part of the PCT appeal as section 274 parties. In the Council's view, there may be an issue of process arising if affected land owners have no knowledge of the proposal to add such overlays to their properties.

- 20 The Council considers that an appropriate course of action to examine the issues raised by the PCT through its appeal would be a future plan review, which would allow for open consultation with landowners and the wider community to explore the issues fully. This would enable a good plan development process involving public participation. In the Council's view, the breadth of the changes envisioned in the JWS make this a matter of public interest and input should be sought widely, not just from those landowners who may be in a position to now join an appeal as a section 274 party.
- 21 Therefore, the Council's position is that, if the balance of recommended new ONLs and SNLs are to proceed, this should be via a publicly notified variation or change to the Plan, following a review that would take into account the landscape evidence provided in the JWS, as well as evidence on social and economic impacts (including on landowners) and evidence on the potential need for urban growth in the affected areas, to address housing capacity shortages.

Dated this 5th day of June 2020

A handwritten signature in black ink, appearing to read 'Mr. Garbett', is written over a horizontal line.

Michael Garbett
Counsel for the Respondent