

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-215

Under	the Resource Management Act 1991
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	Jean Grace Appellant
And	Dunedin City Council Respondent

Affidavit of Katie Emma Sunley James

Affirmed *7 October* **2021**

Concerning: Group 4

Topic: Residential zoning site-specific

Appeal point: DCC Reference number 9

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** or **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 six 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 have 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) Residential zoning – site specific (25A Irvine Road) - Jean Grace, dated 25 August 2021 (DCC Reference number 9).
- 6 The appeal sought to amend the zoning of part of 25A Irvine Road from Rural Hill Slopes to a residential zoning (DCC Reference number 9).
- 7 There are no section 274 parties to this appeal.

Background

- 8 The site is located at The Cove, on the harbour-facing lower slopes of Otago Peninsula. At approximately 12,000m² in area, the site has a northerly aspect and is relatively steep, with most of the site lying between the 36m and 78m contour lines. There is an existing dwelling in the lower part of the site and on the upper slopes there is an area of approximately 4500m² of regenerating and planted native coastal podocarp-broadleaved forest.
- 9 The site adjoins an existing area of Township and Settlement zoning to the north and west, and an existing area of Large Lot Residential 1 zoning to the south. Most of the site is zoned Rural Hill Slopes, with two small areas

that link to Portobello Road and Irvine Road zoned Township and Settlement.

- 10 The site is subject to an archaeological alert layer (which is common on the Otago Peninsula). This does not impose any additional planning requirements, but advises of possible archaeological remains in the area. If remains are discovered, the Heritage New Zealand Pouhere Accidental Discovery Protocol should be followed.
- 11 The Rural-zoned part of the site is subject to a Residential Transition Overlay Zone (**RTZ**). The RTZ provisions allow sites that are suitable for future residential development to be identified and protected from use that is incompatible with future residential development. The provisions, which are included within Section 12 of the Plan, allow transition to residential use once certain criteria are met (the land is 'released' for residential use). These criteria are (Rule 12.3.1):
 - (a) There is a need for additional residential capacity;
 - (b) There is sufficient 3 waters network capacity to service the development (or this will be achieved within three years); and
 - (c) There is an agreement with the DCC in relation to the provision of any necessary transport infrastructure.
- 12 Once released, the General Residential 1 Zone provisions apply to sites with a RTZ overlay.
- 13 Release of this RTZ site to General Residential 1 Zone is not possible at this time due to capacity issues in the water and wastewater networks. However, as discussed later in this affidavit, a very limited number of dwellings, as provided for through resolution of this appeal, can be serviced for wastewater and water supply.
- 14 The zone-type agreed in the consent memorandum, Large Lot Residential 1 Zone, provides for low density residential development, and has a minimum site size of 2,000m². A maximum of six dwellings could be developed under this zoning. There is one existing dwelling.

Decision on submission

- 15 The 2GP Urban Land Supply Hearing Panel (**Panel**) considered Ms Grace's submission relating to 25A Irvine Road, at section 3.8.15.10.11 of

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its decision¹. The submission had been summarised as supporting the existing RTZ provisions in the area, rather than requesting a residential zoning for the site. The Panel accepted the submission on this basis, retaining the RTZ over the site. However, the wording of the submission² could also have been interpreted as requesting residential zoning for this site, therefore I am comfortable that the appeal is within scope of the submission.

Agreement reached

- 16 As outlined in the consent memorandum for this appeal, agreement has been reached between the parties to make the following changes to the 2GP:
- (a) Rezone 25A Irvine Road from Rural Hill Slopes to Large Lot Residential 1;
 - (b) Remove the Residential Transition Overlay Zone (RTZ) from 25A Irvine Road;
 - (c) Apply an Urban Biodiversity Mapped Area (UBMA) over part of 25A Irvine Road (meaning that Rule 10.3.2.4 "Maximum area of vegetation clearance (UBMA)" will apply within this area); and
 - (d) Amend Appendix A10 Urban Biodiversity Mapped Area Values to add a description of the new UBMA and its values, the principal threats to those values, and the key management actions to be required or encouraged.

Section 32AA Assessment

- 17 The site has already been determined to be appropriate for residential use, as demonstrated through application of the RTZ overlay, subject to a need for additional housing capacity and provision of infrastructure. The relevant objectives are therefore Objectives 2.6.2 (adequate urban land supply), 2.7.1 (efficient public infrastructure) and 2.7.2 (efficient transportation).
- 18 However, through more detailed consideration of the site as a result of the appeal process, it has become apparent that further consideration is required in relation to natural hazards issues and protection of indigenous

¹ Urban Land Supply Decision of Hearings Panel Proposed Second Generation Dunedin city District Plan, 7 November 2010.

² "Allow the area around The Cove to be zoned residential if there is seen to be a need for subdivision" (Jean Grace, submission on the 2GP, DCC reference number 811).

biodiversity values on the site. The relevant objective for biodiversity is Objective 2.2.3 and for natural hazards is Objective 11.2.1.

- 19 I am satisfied that all other relevant criteria that are normally considered in rezoning decisions (outlined in Policy 2.6.2.1) are met, and rezoning the site is otherwise consistent with that policy.
- 20 Rezoning the site is assessed against each of the objectives identified above in turn.

Objective 2.6.2

- 21 Objective 2.6.2 relates to providing sufficient housing capacity. It is proposed to be amended through Variation 2 to reflect the requirements of the National Policy Statement on Urban Development 2020 (NPS-UD). Variation 2 was notified on 3 February 2021 and submissions closed on 4 March. The amended wording is:

Dunedin provides sufficient, feasible, development capacity (as intensification opportunities and zoned urban land) in the most appropriate locations to at least 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.

- 22 A housing capacity assessment for Dunedin City published in July 2021³ (see Table 18, page 41) shows that there is a shortfall in capacity of approximately 480 dwellings over the short term and 2,160 over the medium term. As shown in Table 18, this situation would change if amendments currently proposed to 2GP provisions via Variation 2 were made. Variation 2 would rezone additional land to Residential, and provide for intensification of development on existing Residential-zoned land. If all proposed changes were carried out, the housing capacity assessment indicates that there would be sufficient housing capacity in the short and medium term, although still a shortfall of an estimated 100 dwellings in the long term, across the city as a whole. However, it should be noted that the Variation 2 process is at a fairly early stage; submissions have begun to be heard but several further hearings are scheduled and decisions on submissions will not be fully released until 2022. Many submissions have opposed or sought amendments to the various changes proposed, so there

³ Dunedin City Council: Housing Capacity Assessment for Dunedin City 2021: https://www.dunedin.govt.nz/data/assets/pdf_file/0009/831744/Housing-capacity-assessment-for-Dunedin-City-2021.pdf

is still considerable uncertainty over whether all changes proposed in Variation 2 will be made.

- 23 While rezoning this site to Large Lot Residential 1 will provide capacity for only a small number of sites, it will contribute to meeting Objective 2.6.2. The existing RTZ provisions provides, in theory, for a significantly larger number of dwellings. However, as discussed below, due to the need to protect biodiversity values and appropriately manage risks from natural hazards, the current planning framework is not the most appropriate for the site, and even without these issues the scale of development provided for under the RTZ provisions (e.g. transition to General Residential 1 zone) would likely be unfeasible due to site constraints.

Objective 2.7.1

- 24 Objective 2.7.1 is that:

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

- 25 At the time of the 2GP hearings, DCC's 3 Waters department advised that it was unable to service sites in this area due to a lack of capacity in the wastewater and water networks. Since then, additional modelling has been undertaken, and the current advice is the six sites provided for by Large Lot Residential 1 zoning can be serviced for both water and wastewater. There are existing constraints around water supply on the Peninsula, particularly during peak demand periods (e.g. hot, dry summers). This is an intermittent (seasonal) issue and is managed through water restrictions. Funding to resolve this issue is budgeted in the draft 10 year plan. The impact of the additional development potential through this appeal, other appeals on the Peninsula, and sites proposed to be rezoned through Variation 2, is assessed as being minimal.
- 26 Downstream upgrades are also planned for the wastewater network and are budgeted in the draft 10 year plan. Any effects from development of this site prior to completing these upgrades will be minor.
- 27 There is no stormwater network at the site. Attenuation of flows is required to control erosion and avoid impacts on downstream sites. Given the discharge will ultimately be into Otago Harbour, stormwater quality may also be an issue. A private development agreement has been entered into between DCC and the Appellant to ensure stormwater will be appropriately managed through controls that will be put in place at the time of subdivision.

Objective 2.7.2

28 Objective 2.7.2 is:

The multi-modal land transport network, including connections between land, air and sea transport networks operates safely and efficiently.

29 The road network adjacent to the harbour, from the intersection of Marne Street / Portobello Road towards the city to approximately Strathallan Street, is under-performing during the morning and afternoon peak hours. Additional development in the Waverley and Otago Peninsula areas will exacerbate the current situation, although the contribution made from this site will be small and have no noticeable effect on the transport network. The impacts on the traffic network are less than might occur under the current plan provisions, which provides for release of the site for General Residential 1 scale development, therefore are considered an improvement over the status quo, and overall acceptable.

Objective 2.2.3

30 Objective 2.2.3 is that:

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.

31 The site was inspected by DCC's Biodiversity Officer in March 2020. An approximately 4,500 m² area on the southern (uphill) part of the site supports regenerating and planted native coastal podocarp-broadleaved forest. This area is valuable for biodiversity as it is dominated by ngaio (listed in Appendix 10A.3 of the 2GP as an important native tree species). It is proposed to protect biodiversity values in this area through application of an urban biodiversity mapped area. Under an existing rule in the Plan (Rule 10.3.2.4), vegetation clearance is limited within UBMA's in order to maintain biodiversity values.

Objective 11.2.1

32 Objective 11.2.1 is that:

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

- 33 The site has been assessed by Stantec as having a high level hazard associated with site instability. The assessment⁴ notes that this potential hazard does not exclude this site from development. It states:

It is possible that the site is developable, however careful geotechnical assessment of the site is required to quantify or at least identify the possibility of instability on the site. Assessments would include geotechnical investigations and recommendations or design of possible earthworks to limit instability or confirm that the site is stable and will not cause instability on the site or affect adjacent lots.

- 34 This assessment indicates that it is unlikely that development to General Residential 1 density, as anticipated by the existing RTZ overlay, would be possible or appropriate. However, Large Lot Residential 1 zoning allows only a maximum of six sites.

- 35 I note that, under existing 2GP provisions (Rules 15.11.4.1.b, 11.5.2.1 and 11.5.2.5), risk from natural hazards is assessed as part of the subdivision consent process. Assessment guidance at Rule 11.5.2.1 includes the following:

- i. In assessing the risks from natural hazards, Council will consider:
 1. existing hazards assessment reports on the DCC's Hazard Information Management System;
 2. the Otago Regional Council's Otago Natural Hazards Database;
 3. any new hazard assessment or engineers' reports provided as part of an application;
 4. site or area specific factors, including the elevation of the site or topography and geology of the area;
 5. risk to activities proposed on a site, as well as risk that is created, transferred, or exacerbated on other sites;
 6. cumulative effects of natural hazards, including from multiple hazards with different risks; and
 7. how the risk from natural hazards may worsen over time due to climate change.

⁴ Stantec, 2020. Memo to DCC entitled: Re-zoning – Group 3 Hazards

- 36 The hazards assessment of the site by Stantec is based upon existing hazard information held in the DCC's Hazard Information Management System.
- 37 Therefore, I consider that natural hazards will be appropriately managed in accordance with Objective 11.2.1 through the subdivision process. I note that, under section 106 of the RMA, the DCC as the consent authority may refuse to grant a subdivision consent if there is a significant risk from natural hazards.

Conclusion

- 38 The existing plan provisions anticipate General Residential 1-scale development for this area (subject to an assessment of residential capacity and infrastructure availability), with no specific protection of biodiversity values or management of hazards issues. In my view, the agreed changes – i.e. Large Lot Residential 1 zoning with specific protection of biodiversity values – will better achieve the plan objectives than the status quo.

Consistency with higher order documents (sections 74 and 75)

National Policy Statement for Urban Development 2020

- 39 The National Policy Statement for Urban Development 2020 (**NPS-UD**) came into effect on 20 August 2020. It recognises the national significance of having well-functioning urban environments and providing sufficient urban development capacity to meet the needs of the community. It requires that the DCC provides at least sufficient development capacity to meet expected demand for housing over the short, medium and long term⁵.
- 40 The requirements of the NPS-UD relating to providing sufficient development capacity are reflected in Objective 2.6.2. This is discussed above.

Otago Regional Policy Statement

- 41 The partially operative Otago Regional Policy Statement (**ORPS**) 2019 includes the following objective and policies in relation to urban growth.

⁵ Policy 2 and implementation section 3.2. Housing land capacity for the long term does not need to be included in the district plan.

42 Objective 4.5 is that:

Urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments.

43 Policy 4.5.1 is:

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

- a) Ensuring future urban growth areas are in accordance with any future development strategy for that district.
- b) ...;
- c) Ensuring that there is sufficient housing and business land development capacity available in Otago;
- d) ...
- e) Coordinating the development and the extension of urban areas with infrastructure development programmes, to provide infrastructure in an efficient and effective way.
- f) Having particular regard to:
 - i. Providing for rural production activities by minimising adverse effects on significant soils and activities which sustain food production;
 - ii. Minimising competing demands for natural resources;
 - iii. Maintaining high and outstanding natural character in the coastal environment; outstanding natural features, landscapes, and seascapes; and areas of significant indigenous vegetation and significant habitats of indigenous fauna;
 - iv. Maintaining important cultural or historic heritage values;
 - v. Avoiding land with significant risk from natural hazards;
- g) Ensuring efficient use of land;
- h) Restricting urban growth and development to areas that avoid reverse sensitivity effects unless those effects can be adequately managed; ...
- i) ...
- j) Consolidating existing coastal settlements and coastal urban areas where this will contribute to avoiding or mitigating sprawling or sporadic patterns of settlement and urban growth.

44 This policy is implemented through a number of objectives and policies in the 2GP⁶. The appropriateness of the changes in terms of those 2GP

⁶ Including objectives 2.2.3, 2.2.4, 2.3.1, 2.4.2, 2.4.4, 2.4.5, 2.5.3, 2.6.2, 2.7.1, 11.2.1 and associated policies.

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provisions is discussed above. In my view, the rezoning is consistent with this policy.

45 The proposed Otago Regional Policy Statement 2021 (**proposed ORPS**) includes the following objectives and policies that are relevant to the agreement.

46 UFD - O2 – Development of urban area requires that:

The development and change of Otago's *urban areas*:

- 1) improves housing choice, quality and affordability,
- 2) allows business and other non-residential activities to meet the needs of communities in appropriate locations,
- 3) respects and wherever possible enhances the area's history, setting and natural and built environment,
- 4) delivers good urban design outcomes, and improves liveability,
- 5) improves connectivity within urban areas, particularly by *active transport* and *public transport*,
- 6) minimises conflict between incompatible activities,
- 7) manages the exposure of *risk* from *natural hazards* in accordance with the HAZ-NH – Natural hazards section of this RPS,
- 8) results in sustainable and efficient use of *water*, energy, *land*, and *infrastructure*,
- 9) achieves integration of *land* use with existing and planned *development infrastructure* and *additional infrastructure* and facilitates the safe and efficient ongoing use of *regionally significant infrastructure*,
- 10) achieves consolidated, well designed and located, and sustainable development in and around existing *urban areas* as the primary focus for accommodating the region's urban growth and change, and
- 11) is guided by the input and involvement of *mana whenua*.

47 UFD – P4 – Urban expansion requires that:

Expansion of existing urban areas is facilitated where the expansion:

- 1) contributes to establishing or maintaining the qualities of a *well-functioning urban environment*,
- 2) will not result in inefficient or sporadic patterns of settlement and residential growth,
- 3) is integrated efficiently and effectively with *development infrastructure* and *additional infrastructure* in a strategic, timely and co-ordinated way,
- 4) addresses issues of concern to iwi and hapū, including those identified in any relevant iwi planning documents,
- 5) manages adverse *effects* on other values or resources identified by this RPS that require specific management or protection,
- 6) avoids, as the first priority, highly productive land identified in accordance with LF-LS-P19,
- 7) locates the new urban/rural zone boundary interface by considering:
 - (a) adverse *effects*, particularly reverse sensitivity, on *rural areas* and existing or potential productive rural activities beyond the new boundary, and
 - (b) key natural or built barriers or physical features, significant values or features identified in this RPS, or cadastral boundaries that will result in a permanent, logical and defensible long-term limit beyond which further urban expansion is demonstrably inappropriate and unlikely, such that provision for future development infrastructure expansion and connectivity beyond the new boundary does not need to be provided for, or
 - (c) reflects a short or medium term, intermediate or temporary zoning or infrastructure servicing boundary where provision for future *development infrastructure* expansion and connectivity should not be foreclosed, even if further expansion is not currently anticipated.

48 I note that the focus of Policy UFD – P4 is to facilitate the expansion of existing urban areas where it contributes to a well-functioning urban environment, including encouraging an efficient pattern of residential growth that includes efficient and effective integration with development infrastructure, while addressing and managing adverse effects on other

important values and resources as outlined. In my view the amendments have regard to the proposed ORPS policy outlined above.

Assessment of other appeals

Other appeals on the zoning of the site

49 As part of my assessment of the appropriateness of this change, I have considered whether there are other appeals on the zoning of the site, to understand whether there is overlap between different appeals on the same site.

50 There are no other appeals on the zoning of the appeal site.

Appeals on relevant objectives and policies

51 For completeness, I have assessed the appeals on the objectives and policies outlined above to ensure no appeals are likely to change the policy framework in a way that would change the above assessment.

52 There are no appeals on the objectives or policies outlined above.

Affirmed at Dunedin)
this 7th day of October 2021,)
before me:)


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Katie Emma Sunley James


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

Joshua Keith Smith
Solicitor
Dunedin