

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

Under the Resource Management Act 1991 (**RMA**)

In the matter of appeals under clause 14(1) of the First Schedule of the RMA
in relation to the proposed Second Generation Dunedin City
District Plan (**2GP**)

Between **B W Taylor & the Estate of Lawrence Taylor**
ENV-2018-CHC-244
The Preservation Coalition Trust
ENV-2018-CHC-285
Appellants

And **Dunedin City Council**
Respondent

Memorandum of Counsel regarding the Landscape Bundle

17 November 2021

Respondent's solicitors:

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**anderson
lloyd.**

May it please the Court

- 1 This memorandum is filed on behalf of Dunedin City Council (**Council**) to explain this bundle of consent memoranda that are filed following Court-assisted mediation for Group 2a appeals.
- 2 In this instance Council submits two consent memoranda to the Court for consideration to resolve part of the Landscape Topic (**Landscape Bundle**).
- 3 Council requests that the Court consider and make determinations on the following attached consent memoranda in this order:
 - (a) Location of landscape overlays; Management of effects on landscape values; Management of effects on rural character and amenity (Hill Slopes Rural Zone); management of effects on rural residential character and amenity (The Preservation Coalition Trust ENV-2018-CHC-285) dated 12 October 2021 (DCC Reference numbers 75, 82, 70 (in part) and 341); and
 - (b) Farm buildings in landscape and coastal character overlays (B W Taylor & the Estate of Lawrence Taylor ENV-2018-CHC-244) dated 10 May 2021 (DCC Reference number 13).
- 4 The appeals by The Preservation Coalition Trust (**PCT**) and B W Taylor & the Estate of Lawrence Taylor (**Taylor**) relate to landscape, rural and rural residential provisions in the 2GP, namely broad changes to landscape overlays, and management of effects on landscape values, rural character and amenity values, and rural residential character and amenity values. Accordingly the consent memoranda set out in paragraph 3 above should be considered together as a related group of appeals, and best in the order listed above.

Affidavits and draft order

- 5 There is one affidavit from the Council Planning staff and one affidavit from Rhys Girvan, Landscape Planner at Boffa Miskell, filed with these consent memoranda, addressing the background on the relevant 2GP planning framework and any policy direction from higher order documents (RPS or NPS) where relevant, the decision of the Hearings Panel and reasons, the scope for the changes in some cases, and provide an evaluation as required under section 32AA of the RMA. These are:
 - (a) Affidavit of Jane MacLeod affirmed 15 November 2021 regarding the appeals by Taylor and PCT (DCC Reference numbers 13, 70 (in part), 75, 82 and 341); and

- (b) Affidavit of Rhys Girvan affirmed 26 July 2021 regarding the appeal by PCT (DCC Reference numbers 75 and 82). This is provided to address the agreed changes to the location of landscape overlays.
- 6 We note that the affidavit of Rhys Girvan incorrectly records on the signing page that the date that the affidavit was witnessed was 5 July 2021. The correct date that this affidavit was witnessed was 26 July 2021 as set out on the cover page and signed exhibit note of the affidavit.
- 7 Also filed is a single draft order dealing with all appeals together. This attaches a single Appendix 1 that contains the relief sought in these memoranda in one place. It is respectfully requested that these consent memoranda are considered, and the orders sought are made, to resolve these appeals on this topic.
- 8 There are several minor discrepancies to note between the text of the PCT and Taylor consent memoranda and the text of Appendix 1 for the draft consent order. These are at three assessment rules in Section 10 – i.e. Rule 10.5.3.6 (page 3), Rule 10.5.3.X (page 3), Rule 10.5.3.7 (page 5) – and at the notification rule (16.4.1) in Section 16 (page 15).
- 9 Firstly, in the PCT consent memorandum, assessment rules 10.5.3.6 and 10.5.3.7 incorrectly refer to the ‘area of buildings and structures’ performance standard, and this performance standard is incorrectly omitted from Rule 10.5.3.X. In addition, assessment rules 10.5.3.6 and 10.5.3.7 omit the word ‘permitted’ from the title of the ‘number and location of permitted buildings’ performance standard. It is clear from the content of each assessment rule that the intention is for rules 10.5.3.6 and 10.5.3.7 to be used to assess contraventions of the ‘number and location of permitted buildings’ performance standard (Rule 10.3.5.2), and for rules 10.5.3.X and 10.5.3.Y to be used to assess contraventions of the ‘area of buildings and structures’ performance standard (Rule 10.3.5.1). These errors are corrected in Appendix 1 to the draft consent order.
- 10 Secondly, in the Taylor consent memorandum, the change to the notification rule at 16.4.1 refers to a rule number that has now been amended, due to reformatting. The consent memorandum change refers to “Rule 16.3.4.5.b” as the rule that requires consent for buildings or structures that exceed 60m² footprint, within an SNL, ONL or NCC overlay zone. However, following a reformatting of rules via the PCT consent memorandum (for purposes explained in paragraph 5(f) of that memorandum), the correct rule number to refer to is now Rule 16.6.6.1. This number is used within Rule 16.4.1 in Appendix 1 to the draft consent order.

Remaining appeal point (DCC Reference number 70 (in part))

- 11 The affidavit of Jane Macleod assesses potential overlap with other appeals. In regards to PCT's appeal on DCC Reference number 70 (in part), which has been set down for Environment Court hearing on 12 to 13 May 2022 in the Court's Minute dated 16 November 2021, Ms Macleod confirms at paragraph 86 of her affidavit that while this outstanding appeal point (which relates to the 60m² threshold for permitted buildings in Rule 10.3.5 and associated content in Appendix A11 Design Guidelines) could affect Rule 10.3.5.2, it does not have the potential to alter the agreed change to that rule that is included in the PCT consent memorandum. The agreed change relates to the SNL at the Pukehiki Township and Settlement Zone, whereas the unresolved request relates to the operation of the rule within landscape and coastal character overlays in the rural and rural residential zones only.
- 12 On this basis, Council considers that the draft consent order for the Landscape Bundle can be made by the Court without waiting for the outcome of the Environment Court hearing on DCC Reference number 70 (in part) as it relates to the 60m² threshold for permitted buildings in Rule 10.3.5 and associated content in Appendix A11 Design Guidelines.

Dated this 17th of November 2021

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

Michael Garbett/Georgia Cassidy
Counsel for the Respondent