

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

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	Robert Frances Wyber (ENV-2018-CHC-281) The Preservation Coalition Trust (ENV-2018-CHC-285) Appellant
And	Dunedin City Council Respondent

Memorandum of Counsel for Dunedin City Council

22 July 2020

Respondent's solicitors:

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**anderson
lloyd.**

May it please the Court

- 1 This Memorandum is in response to the Court's Minute dated 14 July 2020, and has been prepared following consultation on a draft with the parties.
- 2 The Dunedin City Council proposes the following timetable orders to resolve the question of the scope of the PCT appeal in light of its submissions:
 - (a) Dunedin City Council is to produce a common bundle of documents containing the documents referred to paragraph 5(a) of the Court's Minute dated 14 July 2020, and any other documents the parties request to be added. This is to be filed and served by **14 August 2020**.
 - (b) PCT is to prepare a track changed version of its second amended notice of appeal dated 18 May 2020, showing the changes where it agrees to amendments to keep the relief within jurisdiction as it has agreed in its memorandum dated 19 May 2020 and 6 July 2020. The tracked changed version of the appeal shall also append all documentation relied upon and referred (including otherwise privileged documentation). This is to be filed and served by **14 August 2020**.
- 3 PCT relies on the second affidavit of Craig Werner dated 11 May 2020 as relevant to the scope issues. The Council does not intend to call evidence (with the relevant documents being included in the agreed bundle).
- 4 The Notice of Opposition filed on behalf of Mr Wyber and Mr Duffy identifies that proposed Notice of Appeal relies on documents that are of privileged nature,¹ therefore Mr Wyber (and 274 parties to Wyber appeal) wish to reserve their position on filing of Evidence until they have had the opportunity to review those documents.
- 5 The issues as to scope to be determined by the Court are as follows:

Consequential relief – appeal 8.4(d)

 - (a) What consequential relief to amend the rural, RR1 and RR2 provisions to avoid adverse effects on values are sought by PCT on appeal? Are these changes once identified outside the scope of the submission?

¹ Notice of Opposition of Mr Wyber and Mr Duffy dated 25 May at [7]-[8]

RR1 and RR2 zone boundaries – appeal 9.4

- (b) Can changes to the rural residential zone now be sought on the additional ground of landscape effects (as raised by Wyber and Federated Farmers), or are landscape effects outside scope of the original submission?

Rural residential strategic – appeal 10.4 and Appendix A

- (c) Is the relief relating to policy 2.6.1.3 and 2.6.1.4, which focuses on landscape provisions and implementing restrictions on ONL, ONF and SNL overlay zones, within the scope of the original submission (as raised by Wyber and Federated Farmers)?

Reasonably difficult to see – appeal 11.1.4

- (d) What changes to the plan are sought in the appeal to introduce a "reasonable difficult to see" test in the landscape overlays and hillslopes rural zone, and are those changes within the scope of the submission?

Vertical and horizontal integration – appeal 12.1 and 12.4

- (e) These appeal points raise the following issues that are in dispute:
 - (i) What amendments are sought in the appeal to section 17 rural residential zones to "avoid adverse effects on values protected by ONL and ONF overlays and to manage (including avoid) adverse effects on values protected by SNL overlays"?
 - (ii) Once identified, are these changes to the plan within the scope of the submission?
- 6 Submissions are not needed to be pre-circulated and are to be presented on the day of the hearing.
- 7 The preferred hearing dates are 5-6 October 2020 (to avoid mediation planned for 24 September).

8 There are no other directions needed at this time.

Dated this 22nd day of July 2020

A handwritten signature in cursive script, appearing to read "M. Garbett", is written above a horizontal line.

Michael Garbett/Georgia Cassidy
Counsel for the Respondent