

In the Environment Court of New Zealand  
Christchurch Registry

I Te Koti Taiao o Aotearoa  
Ōtautahi Rohe

**ENV-2018-CHC-214**

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| Under            | the Resource Management Act 1991 ( <b>RMA</b> )                                                                                                       |
| 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 ( <b>2GP</b> ) |
| Between          | <b>Parata</b>                                                                                                                                         |
|                  | Appellant                                                                                                                                             |
| And              | <b>Dunedin City Council</b>                                                                                                                           |
|                  | Respondent                                                                                                                                            |

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**Memorandum of Counsel in response to Minute of 15 October 2019**

19 November 2019

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**Respondent's solicitors:**

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## May it please the Court

- 1 Parties to the appeal filed by AH Parata filed a Consent Memorandum and supporting documents on 10 September 2019. These documents requested that, rather than lying with the Environment Court, a consent order (**Order**) be made by the Court as soon as possible. The reason for this request is that the 2GP provisions that enable increased density over some parts of Dunedin cannot be deemed operative until this appeal is resolved. The Court has concerns that making the Order could impact on other appeals. The purpose of this memorandum and supporting documents is to establish that other appeals will not be affected by the requested Order and that it is appropriate for the Court to consider making the Order.

## Other appeals

- 2 Paragraphs [5] and [6] of the Minute of the Environment Court dated 15 October 2019 identify other appeals that may be relevant and the concern of the Court:

[5] Of the provisions proposed to be amended by court order one policy implements a strategic objective that is under appeal by another appellant and two other provisions are related to policies that are the subject matter of yet other appeals. I am referring specifically to strategic objective 2.7.1 (an appeal by BP Oil NewZealand Ltd and others); policy 2.7.1.1 (Wyber appeal) and policy 2.7.1.5 (Kiwirail appeal). It is the view of the planning witnesses, Ms Christmas and Dr Johnson, that the orders sought are "not contrary to" and are "consistent with" and "unlikely to change the focus of" the relevant provisions under appeal<sup>3</sup>.

[6] While I accept this is the planners' view, how can the court satisfy itself under s32AA of the RMA that the changes sought are the most appropriate provision by which to achieve an objective (Wyber, BP Oil and Kiwirail appeals)?

- 3 In response to this Minute Council planning staff have analysed the relevant appeal points identified above against the proposed changes in the **attached** Consultation Memorandum dated 14 November 2019. All parties to the relevant appeal points of the three appeals (Wyber, KiwiRail, and Oil Companies) have signed that Consultation Memorandum and agree that the making of the Order would not impact on the relief sought in those three appeals.
- 4 The Consultation Memorandum demonstrates that the relief sought in the three appeals is limited in scope and cannot amend objectives and policies in a way that would alter the aspects of that objective and policies relevant to changes

sought by the Parata Consent Memorandum. For this reason a section 32AA assessment can now be made; without waiting for resolution of the three appeals.

### Reasons for priority

- 5 The Parata appeal was originally very broad and resulted in all areas that were up-zoned (given a more intensive zone as compared with the Operative Plan) by the 2GP having 'legal effect' only, and not deemed operative. Because the Operative Plan generally makes intensification a non-complying activity many people are waiting for the 2GP rules to be deemed operative (via section 86F of the RMA) before applying for resource consent. For this reason, and because more housing is needed in Dunedin, Dunedin City Council (**Council**) made the Parata appeal a priority and it was included in Group 1 non-strategic. Council worked with Mr Parata in refining his appeal and it was narrowed in scope by withdrawals.
- 6 Despite the withdrawals the Parata appeal is still affecting approximately 2,600 sites that are up-zoned by the 2GP. These properties are described in the **attached** affidavit of Alan Worthington. It is impossible to know exactly how many property owners are waiting for the 2GP rules to be deemed operative before embarking on development and a resource consent application. However, Council consents staff have had a number of enquires as explained in the affidavit of Mr Worthington.
- 7 Dunedin City is now a "medium growth" area under the National Policy Statement on Urban Development Capacity and increased housing capacity is required in the medium and long term (see paragraph [27] of the affidavit of Dr Anna Johnson dated 16 April 2019). Enabling development in areas considered appropriate under the 2GP will be helpful in providing for this growth.
- 8 Making the changes sought by the Consent Memorandum and thereby resolving all of the Parata appeal would mean that property owners could develop land without the need for a non-complying resource consent under the Operative Plan. Because the 2GP has identified areas as suitable for this development the purpose of the Act will be best met by the Order being made in a timely way (section 18A of the RMA).

### Style guide

- 9 The **attached** affidavit of Dr Anna Johnson confirms that the changes sought in the Consent Memorandum are consistent with the Style Guide.

### Infrastructure constraint mapped areas

- 10 The **attached** affidavit of Emma Christmas confirms that there are no appeals on the infrastructure constraint mapped areas that impact on resolution of the Parata appeal (see paragraph [5] of the Minute of the Environment Court dated 15 October 2019).
- 11 It is therefore proposed that the proposed Order in the Consent Memorandum does best achieve the purpose of the Act, and Dunedin City Council respectfully requests for the Court to consider making it.

Dated this 19th day of November 2019



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Michael Garbett/Rachel Brooking  
Counsel for the Respondent