

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV-2018-CHC-277

IN THE MATTER	Of an appeal pursuant to clause 14 of the First Schedule of the Resource Management Act 1991 (RMA)
BETWEEN	AURORA ENERGY LIMITED Appellant
AND	DUNEDIN CITY COUNCIL Respondent

**MEMORANDUM OF COUNSEL TO WITHDRAW APPEAL POINT ON
BEHALF OF AURORA ENERGY LIMITED**

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

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MEMORANDUM OF COUNSEL

May it please the Court:

1. This Memorandum of Counsel is filed on behalf of Aurora Energy Limited (**Aurora**) in respect of its appeal on the Dunedin City Council Second Generation Plan (**2GP**) (ENV-2018CHC-277).
2. The purpose of this memorandum is to withdraw a point of appeal raised in Aurora's Notice of Appeal given a change of circumstances since the time the appeal was lodged which means that the relief sought is no longer required.
3. The specific relief this memorandum relates to is in notice of appeal ENV-2018-CHC-277 and sought that Rule 5.5.4 be amended as follows:¹
 - (a) *In primary and secondary pedestrian street frontage, mapped areas, heritage precincts and schedule heritage sites, the maximum volume of freestanding network utility structures – small scale that are visible from an adjoining public place is 0.5m³.*
 - (b) *Network utility structures –small scale that contravene this performance standard are a controlled activity.*
4. Aurora understands that its relief sought in paragraph 3(a) above has been resolved by the Council by way of an amendment pursuant to clause 16(2) of Schedule 1 of the RMA.
5. Counsel understand that the relief sought in relation to paragraph 3(b) above has been allocated into Group 2 (Network Utilities) and is currently on hold as per directions of the Court until Group 1 appeals have been resolved.
6. Aurora therefore seeks to withdraw the relief identified at paragraph 3 above. An amended Notice of Appeal is lodged with this Memorandum of Counsel as follows:

¹ Aurora Energy Limited v Dunedin City Council [ENV-2018-CHC-277] at Appendix 1 page 10.

- (a) Aurora Energy Limited Amended Appeal – with tracked changes identifying the relief sought to be withdrawn; and
 - (b) Aurora Energy Limited Amended Appeal – clean version with withdrawn relief removed.
7. Counsel for Aurora does not consider there will be any issues as to costs on the basis that Group 2 (Network Utilities) is still on hold and has not been directed to mediation.
8. Counsel for Aurora has discussed with Counsel for the Council its withdrawing this point of relief and whether it has any issues as to costs. Counsel for the Council advised it does not have an issue as to costs.

Dated this 16th day of January 2020

A handwritten signature in blue ink, appearing to be 'Bridget Irving' or 'Simon Peirce', written over a horizontal line.

Bridget Irving / Simon Peirce