

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

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 **Parata**

(ENV-2018-CHC-214)

... (continued at **Appendix 1**)

Appellants

And **Dunedin City Council**

Respondent

Memorandum of Counsel regarding Variation 1

17 December 2019

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May it please the Court

- 1 This memorandum is to inform the Environment Court and parties of the notification of Variation 1 that is intended to make minor changes to improve the proposed Dunedin City Second Generation District Plan's (**2GP**) usability and is intended to not be controversial.
- 2 No specific directions are sought. This is an update so that the Court and the parties are aware of the existence and intent of Variation 1 to the 2GP.

Variation 1

- 3 Variation 1 - Minor Amendments to the Proposed Dunedin City Second Generation District Plan (2GP) was notified on 20 November 2018. The submission period runs until Wednesday 18 December 2019, with further submissions, at this stage, closing in early 2020.
- 4 The purpose of Variation 1 is to make minor amendments to correct specific problems identified by plan users. The amendments proposed to resolve these problems generally focus on removing ambiguity and improving the clarity and workability of provisions.
- 5 The minor issues which are proposed to be corrected through Variation 1 were identified after 2GP decisions were released. This includes issues identified through feedback from Council's consents planners, as well as by people involved in appeals on the 2GP and other regular plan users. The amendments are generally minor in nature, with 50 of 73 amendments considered clarifications, rather than substantive changes, and 23 out of 73 being changes that are more than clarification.
- 6 The proposed changes, along with a section 32 analysis evaluation, are summarised in the Variation 1 Report available online at www.dunedin.govt.nz/2GP-variation-1-minor-amendments.

Proposed amendments

- 7 The proposed amendments are generally of three types:
 - (a) Minor clarifications to the wording of provisions to ensure that provisions function as intended. This includes some minor improvements to the wording of Strategic Direction policies to more clearly describe methods used in the plan and to better align with the 2GP drafting protocol;
 - (b) More substantive amendments to provisions to improve the workability and usability of the 2GP. These include filling gaps in standards (for example Change 1.21) and making minor changes to provisions to remove

unintended consent requirements (for example Change 1.34). These include changes to election signs rules (Change 1.17) based on feedback received over the recent local government election period; and

- (c) Mapping amendments to make minor adjustments to zone or mapped area boundaries where boundaries are in the wrong place, for example moving a zone boundary line to follow a property boundary (remove a split zoned property, Change 1.63), or aligning a zone boundary to an existing pattern of development in a block/area (or more logical transition point, Change 1.62), or to correct where a scheduled heritage building is located on the 2GP Planning Map (Change 1.61). It is also proposed to add two new scheduled heritage buildings (Changes 1.51 and 1.52) and one new Area of Significant Biodiversity Value (Change 1.58).

Scope

- 8 Potential submitters have been advised that their submissions should be limited to the scope of the variation as detailed in the Variation 1 Report. The report notes that many changes are changes of clarification and the variation is not proposing to revisit the substantive aspect of the provision. Where changes are substantive, the scope of the variation is limited to the scope of the problem the variation is seeking to address.

Status of rules

- 9 Under section 86B of the RMA, the following changes have been identified as having immediate legal effect:
 - (a) Heritage Rule 13.3.2 (Change 1.8);
 - (b) Heritage Rule 13.9 (Change 1.30);
 - (c) CMU Zone Rule 18.6.2 (links to heritage Rule 13.3.1, Change 1.39);
 - (d) Otago Museum Zone Rule 29.4 (notification requirements for scheduled heritage buildings, Change 1.45);
 - (e) A1.1 Schedule of Protected Heritage Items and Sites (addition of two new heritage buildings and amendments to heritage entries or mapping, Changes 1.48-1.57, 1.61);
 - (f) A1.2 Schedule of Areas of Significant Biodiversity Value (addition of new ASBV, Change 1.58); and
 - (g) High class soils mapped area (removal of small area, Change 1.67).

Variation 1 and appeals on the 2GP

- 10 Of the amendments made through Variation 1, five are to provisions that are directly or potentially indirectly subject to an appeal. These changes and their relationship to the relief sought in the appeal is discussed in the table attached at **Appendix 2**. In summary, the changes proposed in the variation are considered by the Council to neither achieve the relief sought in the relevant appeals, nor affect the ability of the Court to grant the relief requested, with one exception. The exception is for Change 1.47, which addresses an issue of clarification raised via an appeal that was considered by Council to be out of the scope of the original submission, but which Council agreed should be addressed.
- 11 Appellants who have appealed provisions that are being amended as part of Variation 1 have been advised of the variation and provided with information about making a submission by Wednesday 18 December 2019.

Dated this 17th day of December 2019



Michael Garbett
Counsel for the Respondent

Appendix 1 – List of Appellants

Court file number	Appellant(s)
ENV-2018-CHC-214	Parata
ENV-2018-CHC-215	Grace
ENV-2018-CHC-217	Nichols Property Group Limited & others
ENV-2018-CHC-218	Keep Halfway Bush Semi-Rural Incorporated
ENV-2018-CHC-219	Willowridge Developments Limited
ENV-2018-CHC-220	Findlater
ENV-2018-CHC-221	H C Trustees Limited & others
ENV-2018-CHC-222	Glass
ENV-2018-CHC-223	Careys Bay Association Incorporated
ENV-2018-CHC-225	Grandview 2011 Limited
ENV-2018-CHC-226	Allen & others
ENV-2018-CHC-227	Bennett – Chelivode Street
ENV-2018-CHC-228	Bennett – Doctors Point Road
ENV-2018-CHC-229	Liquigas Limited
ENV-2018-CHC-230	Chorus New Zealand Limited & others
ENV-2018-CHC-231	Cavendish Chambers Limited
ENV-2018-CHC-232	Hall
ENV-2018-CHC-233	Calvert & Craig Horne Surveyors Limited
ENV-2018-CHC-234	BJ and AJ Miller Family Trust
ENV-2018-CHC-235	Harvey Norman Properties (N.Z.) Limited
ENV-2018-CHC-236	Miller
ENV-2018-CHC-237	Ravensdown Limited
ENV-2018-CHC-238	Foodstuffs (South Island) Limited
ENV-2018-CHC-239	Heart of Dunedin Incorporated
ENV-2018-CHC-240	Kāti Huirapa Rūnaka Ki Puketeraki & others (Ngā Rūnanga)
ENV-2018-CHC-241	Savage
ENV-2018-CHC-242	McLeary
ENV-2018-CHC-243	Director-General of Conservation
ENV-2018-CHC-244	B W Taylor & the Estate of Lawrence Taylor
ENV-2018-CHC-245	Port Otago – Port Chalmers Principal Zone
ENV-2018-CHC-246	Port Otago – Harbourside Edge
ENV-2018-CHC-247	Port Otago – Port Activities
ENV-2018-CHC-248	Norrish
ENV-2018-CHC-249	Transpower New Zealand Limited
ENV-2018-CHC-250	Motion

Court file number	Appellant(s)
ENV-2018-CHC-251	Fonterra Limited
ENV-2018-CHC-252	KiwiRail Holdings Limited
ENV-2018-CHC-253	Duffy
ENV-2018-CHC-254	Federated Farmers of New Zealand Inc
ENV-2018-CHC-255	Woolworths New Zealand Limited
ENV-2018-CHC-256	Te Rūnanga o Ngāi Tahu (TRONT)
ENV-2018-CHC-257	Morrison
ENV-2018-CHC-258	Janefields Re-Zone Group
ENV-2018-CHC-259	BA Building Limited
ENV-2018-CHC-260	Ponne
ENV-2018-CHC-261	Evans & Reid
ENV-2018-CHC-262	Gladstone Family Trust
ENV-2018-CHC-263	James Lin Limited
ENV-2018-CHC-264	Cunningham
ENV-2018-CHC-265	Balmoral Developments (Outram) Limited
ENV-2018-CHC-266	Daisy Link Garden Centres Limited
ENV-2018-CHC-267	Egg Producers Federation of New Zealand
ENV-2018-CHC-268	Chin
ENV-2018-CHC-269	Mainland Poultry Limited
ENV-2018-CHC-270	University of Otago
ENV-2018-CHC-271	Cummings
ENV-2018-CHC-272	Silverpeaks Station Limited
ENV-2018-CHC-273	Southern District Health Board
ENV-2018-CHC-274	Dunedin International Airport Limited
ENV-2018-CHC-275	The Jensen Trust
ENV-2018-CHC-276	Blueskin Projects Limited & others
ENV-2018-CHC-277	Aurora Energy Limited
ENV-2018-CHC-279	Blueskin Bay Holdings Limited
ENV-2018-CHC-280	Smaill
ENV-2018-CHC-281	Wyber
ENV-2018-CHC-282	Tussock Top Farms Limited
ENV-2018-CHC-283	Saddle Views Estate Limited
ENV-2018-CHC-284	Ward
ENV-2018-CHC-285	The Preservation Coalition Trust
ENV-2018-CHC-286	Kaan's Properties 2017 Limited
ENV-2018-CHC-287	Forest and Bird
ENV-2018-CHC-288	Otago Land Group Limited

Court file number	Appellant(s)
ENV-2018-CHC-289	LPG Association of New Zealand
ENV-2018-CHC-290	Otago Regional Council
ENV-2018-CHC-291	Oil Companies
ENV-2018-CHC-292	Ovens
ENV-2018-CHC-293	Blue Grass Limited & others
ENV-2018-CHC-294	Johnston – Otakou/Harrington Point
ENV-2018-CHC-295	Johnston – 33 Otakou Golf Course Road
ENV-2018-CHC-296	Johnston – Karitane
ENV-2018-CHC-297	Johnston – Patmos Avenue

Appendix 2: Variation 1 and appeals on the 2GP

Appeal Management Topics	Environment Court Number	AP ID	Appellant	Relief Sought	S274 Parties (Position)	Variation 1	Affect on appeal
Group 1 - Strategic							
Rural residential strategic	ENV-2018-CHC-242	101	Ross Thomas McLeary	<p>Amend Rule 17.7.5.2 as follows:</p> <ol style="list-style-type: none"> 1. The minimum site size for new resultant sites in the Rural Residential 1 Zone is 2ha. 2. Subdivision activities that contravene this standard are non-complying, except in the following circumstances where the subdivision is discretionary: <ol style="list-style-type: none"> a. all resultant sites are at least 75% of the minimum site size; and b. a minimum of 50% of the resultant sites are not less than the minimum site size; and c. the average area of the resultant sites is not less than the minimum site size. d. <u>The average lot size shall not be less than 2ha when averaged across the certificate of title which is being subdivided with all lots being subject to a covenant that prohibits further division of the lots in the subdivision</u> 	0	<p>Change 1.36 amends Rule 17.7.5 Minimum site size as follows:</p> <ol style="list-style-type: none"> 1. The minimum site size for new resultant sites in the Rural Residential 1 Zone is 2ha. 2. <u>Resultant sites created and used solely for the following purposes are exempt from the minimum site size standard:</u> <ol style="list-style-type: none"> a. <u>reserve;</u> b. <u>access;</u> c. <u>network utilities; or</u> d. <u>road.</u> 3. Subdivision activities that contravene this standard are non-complying, except in the following circumstances where the subdivision is discretionary: <ol style="list-style-type: none"> a. all resultant sites are at least 75% of the minimum site size; and b. a minimum of 50% of the resultant sites are not less than the minimum site size; and c. the average area of the resultant sites is not less than the minimum site size. 	<p>The purpose of Change 1.36 is to provide exemptions to the minimum site size performance standard for sites for special purposes (reserve, access network utilities and road).</p> <p>The variation neither achieves the relief sought nor affects the capacity to grant the relief requested. Given the insertion of a new clause d, the appeal is now a request to add a new clause 17.7.5.3.d.</p>

Group 3							
CMU performance standards	ENV-2018-CHC-255	366	Woolworths New Zealand Limited	Amend Rule 18.6.8 (Location and screening of car parking) to exempt supermarkets Amend Rule 18.6.11 (Minimum glazing and building modulation) to exempt supermarkets Amend 18.6.16.1 (setbacks from road frontage) to exempt supermarkets	Construction Industry and Developers Association (Support); Gladstone Family Trust (Support); Otago Regional Council (Oppose); Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou (Oppose)	<p>Change 1.41 amends Rule 18.6.8 Location and screening of car parking as follows:</p> <p>18.6.8 Location and Screening of Car Parking</p> <p>1. Within a heritage precinct (except View Street Heritage Precinct) or on sites that adjoin a primary pedestrian street frontage mapped area, new extensions to parking areas must be located behind or within a building.</p> <p>2. In all other locations, any parking areas on a site must be either located behind or within a building, or separated from the street frontage by a minimum 1.5m wide landscaping strip that meets Rule 18.6.1. (Boundary treatments and other landscaping)</p> <p>2. 3. Parking areas that contravene this performance standard are a non-complying activity.</p> <p>Note 18.6.8A Other relevant District Plan provisions</p> <p>1. Car parking that is provided within a building is subject to the performance standards for new buildings. Within a primary pedestrian street frontage there are also restrictions on the activities that can occupy the ground floor facing the primary pedestrian street frontage (Rule 18.5.4.1)</p> <p>2. Parking areas on sites that do not have a building within 1.5m of the front boundary are subject to Rule 18.6.1 Boundary Treatments and other landscaping.</p> <p>Change 1.60 proposes to amend clause 4 of Rule 18.6.11 Minimum Glazing and Building Modulation and clause c of Rule 18.6.16.1 Setback from road boundaries as follows:</p> <p>Rule 18.6.11</p> <p>1. The minimum building modulation and minimum glazing requirements for any parts of a new building or additions and alterations to a building which face, and are visible from, the following street frontages, is as follows: ...</p> <p>2. ...</p> <p>3. ...</p> <p>4. Ground floor glazing within the primary pedestrian street frontage mapped area that is required by this rule must be clear (unobstructed from signage, glass frosting or other materials attached to the glazing that prevents glazing being visually permeable) for a minimum of 50% of the glazed area.</p> <p>5. This standard does not apply to scheduled heritage buildings or within the Trade Related Zone.</p> <p>6. Activities that contravene this performance standard are restricted discretionary activities.</p> <p>Rule 18.6.16.1</p> <p>a. New buildings and additions and alterations to buildings must be built within 400mm of any road boundary that is a primary pedestrian street frontage mapped area (i.e. they must occupy the full width of the site, parallel to the road boundary), for the entire length of the primary pedestrian street frontage mapped area, except: ...</p> <p>b. ...</p> <p>c. On a secondary pedestrian street frontage mapped area, any part of a building that is not built within 400mm of the street frontage mapped area, must be set back a minimum of 1.5m from the street frontage, in order to meet Rule 18.6.1.</p> <p>d. Activities that contravene this performance standard are restricted discretionary activities.</p>	<p>The purpose of Change 1.41 is to remove the confusion over the activity status where 18.6.8 is contravened.</p> <p>The purpose of Change 1.60 is to correct an error as the rule applies to all street frontages not just in pedestrian street frontages.</p> <p>The proposed changes neither achieve the relief sought nor affects the capacity to grant the relief requested, which relates to an exemption for supermarkets.</p>

Heritage policies	ENV-2018-CHC-270	215	University of Otago	Amend policies 13.2.3.1 and 13.2.3.2 by deleting the word "require" at the start of each paragraph and replacing with "encourage"	Construction Industry and Developers Association (Support); Gladstone Family Trust (Support); Otago Regional Council (Oppose); Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou (Oppose)	<p>Change 1.8 amends the wording of Policy 13.2.3.1, in assessment Rule 13.5.4.6.a.ii as follows: <i>Relevant objectives and policies:</i></p> <p>i. Objective 13.2.3 ii. Require that repairs and maintenance, restoration and earthquake strengthening of a character-contributing building, where the work is visible from an adjoining public place, are to be undertaken in a way that maintains or enhances the heritage streetscape character of the precinct by using appropriate materials and design (Policy 13.2.3.1).</p>	<p>Change 1.8 changes the way the requirements for materials and design for repairs and maintenance and restoration of heritage buildings are included in the Plan. This change include aspects of what was in a performance standard in the definition itself, which leads to a consequential change to Rule 13.5.4.6 (to remove the activities to which the performance standard of material and design no longer apply).</p> <p>If the Appellants relief is granted a consequential change to the same provision will be required.</p> <p>The appeal by University of Otago, if the relief was granted, would lead to a consequential change to Rule 13.5.4.6, which paraphrases Policy 13.2.3.1. However, the change to 13.5.4.6 included in the variation neither achieves the relief sought nor affects the capacity to grant the relief requested, because the changes are to different parts of the policy wording.</p>
Campus rules	ENV-2018-CHC-270	191	University of Otago	Delete all references to "road frontages" in Rule 34.6.6 (Height).	Construction Industry and Developers Association (Support); Gladstone Family Trust (Support); Otago Regional Council (Oppose); Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou (Oppose)	<p>Change 1.47 amends Rule 34.6.6.1.b Height in Relation to Boundary as follows:</p> <p>a. On a site used for a standard residential activity, new buildings and additions and alterations to buildings must not protrude through a plane (see Figure 15.6.6.1B) raising at an angle of 45 degrees measured from a point 3m above ground level at side and rear boundaries, except: ...</p> <p>b. At the boundary of the Campus Zone along road frontages, On a site where the Campus Zone boundary is within the adjoining road or on the road boundary of the site, all other buildings or structures <u>along road frontages</u> must not protrude through a plane rising at an angle of 30 degrees from a starting point 12m vertically above ground level measured at the <u>Zone</u> boundary of the Campus Zone, except:</p> <p>i. gable ends or dormers may protrude through the height in relation to boundary angle by a maximum of 1m (see Figure 15.6.6.1F); and</p> <p>ii. rooftop structures are exempt from the performance standard for height in relation to boundary.</p> <p>c. Activities that contravene this performance standard are restricted discretionary activities.</p>	<p>Change 1.47 changes the height in relation to road boundary rule to apply to Campus Zone road boundaries not only along road frontages.</p> <p>The appellant in their submission sought to retain Rule 34.6.7 Height (now 34.6.6) except for amending the maximum height limit from 25m to 40m in clause b of Rule 34.6.6.2 Maximum height. The request to delete references to "road frontages" was considered by DCC as likely out of scope but is implemented by this variation.</p>

Group 4						
Nested table introduction	ENV-2018-CHC-277	249	Aurora Energy Limited	Amend the introduction to 1.3 Activities managed by this Plan (Nested Tables), to clarify the relationship between city-wide activities and other activities, and to correct a typographical error in the text of the introduction <i>[this typographical error has now been corrected; a reference to 'Section 1.6' in the third paragraph has been replaced with the correct reference to 'Section 1.3']</i> .	Otago Regional Council (Support); Federated Farmers of New Zealand Incorporated (Oppose); Gary Pollock (Oppose)	<p>Change 1.1 adds a sentence to the end of 1.3 Activities managed by this Plan (Nested Tables) that reads: <u>Development activities that are lawfully present at the time any relevant rules in this Plan have legal effect are not managed by those rules (the rules do not apply to existing lawfully established development activities).</u></p> <p>The purpose of Change 1.1 is to add content to the Plan Introduction: 1.3 Activities managed by this Plan (Nested Tables), to clarify that existing lawfully present development activities are not subject to Plan rules.</p> <p>This change neither achieves the relief sought nor affects the capacity to grant the relief requested.</p>