

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under clause 14(1) of the First Schedule of the Act
BETWEEN	THE PRESERVATION COALITION TRUST (ENV-2018-CHC-285) Appellant
AND	DUNEDIN CITY COUNCIL Respondent

MINUTE OF THE ENVIRONMENT COURT
(22 October 2019)

Introduction

[1] This Minute is released for the purpose of case management, and in preparation of expert conferencing and a hearing.

[2] The court has received an application for directions dated 17 October 2019 in relation to the appeal by The Preservation Coalition Trust (against the Dunedin 2GP). A second memorandum dated 16 October 2019 with track changes was filed on 22 October 2019. The application sets out the matters that have been resolved, the outstanding topics that are still being worked on and five topics that have not been resolved and should be progressed towards a hearing.

[3] The court records the agreements (and/or withdrawals) for the following appeal points:

- (a) subject to other appeals on a related topic, agreement has been reached to resolve appeal point 90, policy 2.6.1.5 (group 1 topic – rural residential strategic);¹

¹ A copy of the agreement is attached and marked "Appendix A" to this Minute.



- (b) withdrawal of appeal point 342, mapping of large lot and low density residential zoning (group 1 topic, residential zoning – broad); and
- (c) withdrawal of appeal point 343, incentive scheme for amalgamation of rural sites (group 1 topic, rural strategic).

Matters about which there is to be further reporting

[4] The parties propose to report back to the court on DCC appeal points 86 and 91. It is unclear whether they intend points be subject to the proposed timetabling directions if matters are not settled by 29 November.

Matters to be set down for hearing

[5] Group 1 comprise appeals concerned with the residential, rural and rural-residential strategic topics and also a natural hazards strategic topic. By 'strategic' this does not mean that the points of appeal in group 1 are concerned solely with the strategic directions and related provisions, rather the grouping is of matters which the Council has prioritised.

[6] In its memorandum the Council appears to say the resolution of two group 3 points of appeal (DCC appeal point 75 and 82) impact group 1 points of appeal (specifically DCC appeal points 96, 73 or 93 (both are mentioned) and 71.² In addition, the appeal points 75 and 82 may also impact group 3 DCC appeal point 70. Given this, the Council proposes that these group 1 and 3 points of appeal be set down for a hearing. The appellant does not oppose setting the appeal points down for a hearing, but says the matters are not inter-related.

[7] The parties are to bear in mind there has been very little discussion with the bench of the Council's case management. The court does not understand the rationale for the grouping of the points of appeal and so is reliant on the Council to have identified the linkages between the DCC points for appeal and to sequence them appropriately to mediation or to a hearing. Given that both group 1 and 3 matters are now proposed to be set down for a hearing, the Council will be directed to review the latest Appeal

² The memorandum refers to both DCC appeal points 73 and 93 at 12(b) and 17(a)(iii). It is unclear whether this is an error.



Management Topic Table (16 April 2019) and confirm the grouping and sequencing of the points of appeal.

[8] The parties are to note that the court is unassisted by the parties simply stating their positions without having identified the issues to be determined at the hearing. For example, does the appellant agree with the values identified for the ONL(s) saying these values extend beyond the ONL overlays or does the appellant say the values are inadequately described? Issue identification may assist with the confirmation of grouping of points of appeal and may support expert conferencing of expert witnesses.

[9] The Council disputes that the appellant has scope to appeal the hill slopes standard (DCC appeal point 71). There is a suggestion in the memorandum that the appellant seeks a waiver to include specific relief in relation to the hill slopes standard.³ As I am having general difficulty correlating the DCC appeal point to the notice of appeal, the appellant will need to file a separate application for waiver – or perhaps an application to amend the notice of appeal – before the court can consider this matter further.

[10] Appeal point 70(b) addresses rules in the Natural Environment and Rural sections of the plan and applies to all activity status types for landscape and coastal overlays.⁴ The Council considers the appellant does not have scope to pursue this part of the relief sought but that the balance of the relief (appeal point 70(a)) may settle. Should not the issue of scope be determined as a preliminary matter while the parties explore the alternative relief in relation to appeal point 70(a) which may negate the need for a hearing on this issue?

[11] Related to the above, I would not set down for hearing the methods (rules or standards) unless I was satisfied that the provisions (objectives and policies) these methods implement are settled. To illustrate, appeal point 86, dealing with the mapping of the coastal environment/coastal overlays, has not been resolved and indeed the Council is seeking clarification from the appellant as to the extent of land affected. Planning maps excepted, is it not better practice to defer hearing the methods (including points 70 and 71) until the objectives and policies are settled?

³ Memorandum dated 17 October 2019 at [26].

⁴ Memorandum dated 17 October 2019 at [28].

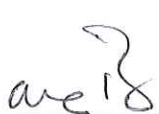


Directions

[12] I direct:

- (a) by **Tuesday 29 October 2019**:
 - (i) the respondent will confirm the grouping and sequencing of points of appeal set out in the Appeal Management Topic Table;
 - (ii) the appellant will file a list of issues to be determined by the court, including matters arising in relation to coastal environment/overlays (point 86);
- (b) having conferred with the other parties, by **Friday 25 October 2019** the respondent will file a memorandum addressing paragraphs [8]-[11] above; and
- (c) the appeal will be set down for a telephone conference on **Friday 29 October 2019 at 10 am**.

[13] Leave is reserved for any party to apply for further directions.



J E Borthwick

Environment Judge

Issued: **22 OCT 2019**



Appendix A

Policy 2.6.1.5.c

- iii. Dunedin's outstanding and significant natural landscapes and natural features are protected (Objective 2.4.4). Achieving this includes avoiding the application of new rural residential zoning in the ONF and ONL overlay zones and generally avoiding the application of new rural residential zoning in ONF, ONL and the SNL Overlay Zone overlay-zones;
- iv. the natural character of the coastal environment is preserved or enhanced (Objective 2.4.5). Achieving this includes avoiding the application of new rural residential zoning in the ONCC and HNCC overlay zones and generally avoiding the application of new rural residential zoning in ONCC, HNCC and the NCC Overlay Zone overlay-zones;

