

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

IN THE MATTER	of the Resource Management Act 1991
AND	of appeals under clause 14(1) of the First Schedule of the Act
BETWEEN	A H PARATA
	(ENV-2018-CHC-214)
	Appellant
AND	DUNEDIN CITY COUNCIL
	Respondent

MINUTE OF THE ENVIRONMENT COURT
(15 October 2019)

[1] On 10 September 2019 the Dunedin City Council filed an application to partially settle an appeal filed by Mr AH Parata against the proposed District Plan (2GP). The parties to the appeal support orders amending the District Plan being made by consent.

[2] The application was supported by two affidavits filed by Ms E Christmas and Dr A L Johnson.¹

[3] The court, consisting of myself, Commissioners A Gysberts and D Bunting have considered the notice of appeal and the application for orders.

[4] Relevantly, Mr Parata has appealed parts of the 2GP that allow for more intensive Residential and Rural Residential activity in areas where there is or may be inadequate infrastructure capacity. Subsequently, Mr Parata filed memoranda clarifying the scope of the appeal.²

[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

¹ Both affirmed 10 September 2019.

² See memoranda dated 4 April 2019 and 17 June 2019.



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 New Zealand 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.³

[6] While I accept this is the planners’ view, how can the court satisfy itself under s 32AA of the RMA that the changes sought are the most appropriate provision by which to achieve an objective (Wyber, BP Oil and Kiwirail appeals)?

[7] The City Council notes in a supporting memorandum⁴ the court’s preference that applications for consent orders remain on file until the appeal process has progressed to a stage that the court may be satisfied that the changes sought are not inconsistent with other provisions in the plan. I am not aware that the City Council has obtained the view of the parties to the other appeals. Counsel for the City Council has not addressed legal efficacy of the proposed course.

[8] Expediency aside, the court is unclear what is the imperative for consent orders being made at this juncture when, as Ms Christmas deposes, the amendments proposed are either not substantive (policy 9.2.1.6, assessment guidance 9.5.3.3) or are clarification (assessment guidance 9.6.2.4 and new note 17.3.5B). See also the 2GP Group 1 First Mediation Report dated 10 September 2019 at [9].

[9] Finally, the City Council will need to clarify whether there are any appeals on the “infrastructure constraint mapped areas” referred to in assessment guidance 9.5.3.3 and the implications of the changes sought to those appeals, if any.

[10] That said, and subject to the planning witnesses’ confirmation that the drafting of the proposed amendments is consistent with the Style Guide,⁵ the court is comfortable with the drafting of the proposed amendments.

³ Affidavit of E Christmas affirmed 10 September 2019.

⁴ Dated 10 September 2019.

⁵ See affidavit of Dr A L Johnson affirmed 16 April 2019.



Directions

[11] I make the following directions by **Friday 25 November 2019**:

- (a) the City Council is directed to serve a copy of this Minute on the appellants and parties to appeals referred to at paragraph [5] above;
- (b) the deponents are to file supplementary affidavits responding to paragraphs [9] and [10];
- (c) the City Council is to file legal submissions addressing the matters raised in this Minute or, having consulted with the parties, confirm that the application for consent orders may remain on file pending the resolution of those other appeals. Counsel will identify the grouping of those appeals; and
- (d) leave is reserved for any party to Mr Parata's appeal, or the parties to the appeals referred to at paragraph [5] above, to apply for other directions.



J E Borthwick
Environment Judge

Issued: **15 OCT 2019**

