

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-285

Under	the Resource Management Act 1991 (RMA)
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	The Preservation Coalition Trust Appellant
And	Dunedin City Council Respondent

**Memorandum of Counsel for Dunedin City Council relating to the JWS on the
location of landscape overlays and rural residential zoning**

3 July 2020

Respondent's solicitor:

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**anderson
lloyd.**

May it please the Court

- 1 This memorandum relates to the landscape experts' Joint Witness Statement dated 31 March 2020, concerning the appeal from The Preservation Coalition Trust (**PCT**) on landscape overlays and rural residential zoning on the Otago Peninsula and on the northern side of Dunedin Harbour (DCC reference numbers 75, 82, 96, 93a).
- 2 The memorandum is filed in response to the Court's direction, dated 6 May 2020, that the Dunedin City Council (**Council**) identify where there is dispute among the parties regarding the City Council's identified position on the JWS and, where dispute has arisen, seek referral to mediation or propose a timetable for the exchange of evidence. Four parties – the Preservation Coalition Trust (**PCT**), Federated Farmers of New Zealand (**Federated Farmers**), the Otago Regional Council (**ORC**) and Kāti Huirapa Rūnaka ki Puketeraki and Te Rūnanga o Ōtākou (**kā rūnaka**) – have advised the Council of their views on its position.
- 3 There is a wide difference in the parties' positions identified. The parties request referral of this topic to Court assisted mediation.

Views of other parties regarding the Council's position on the JWS

- 4 The Council generally opposes the recommendations of the JWS for the reasons set out in a memorandum filed with the Court on 5 June 2020.
- 5 Federated Farmers fully supports the Council's position on the JWS.
- 6 PCT disagrees with the Council's position and supports Di Lucas's position as stated in the JWS.
- 7 The ORC has advised the Council of its position as follows:
 - (a) The ORC retains an interest, which is that the 2GP gives effect to the Regional Policy Statement;
 - (b) The ORC supports the protection of landscape identified in the JWS as being significant or outstanding, in order to give effect to the RPS; and
 - (c) On matters of scope, natural justice and procedure, the ORC does not take a position and will abide the decision of the Court.
- 8 Kā rūnaka have advised the Council of their position as follows:
 - (a) With respect to the changes to Policy 2.4.4.1 (which sets out factors to use in assessing landscapes), kā rūnaka do not contest the Council's position that the JWS-recommended changes to the policy appear to be out of scope,

but are highly supportive of the changes in principle; therefore, kā rūnaka reserve their position on this matter;

- (b) With respect to the application of Outstanding Natural Feature overlay zone (**ONF**) to Portobello Peninsula, although kā rūnaka agree with the JWS intent to give greater protection to Portobello Peninsula as an ONF, they do not contest the Council's position that this appears to be out of scope; therefore, kā rūnaka agree with the Council's position on this matter;
- (c) Kā rūnaka do not hold a position on the rural residential zoning aspects of PCT's appeal and, therefore, are neutral in relation to the Council's position on the zoning recommendations in the JWS;
- (d) With respect to the application of Outstanding Natural Landscape (**ONL**) overlay zone to Pukehiki Township & Settlement Zone and Pūrākaunui School Zone, kā rūnaka reserve their position on this matter. They note that the Pukehiki Township & Settlement Zone is unusual as a residential zone in its elevated and highly visible position, being both within a wāhi tūpuna and surrounded by landscape overlay zones. If it is not to be identified as within a landscape overlay zone, kā rūnaka consider the Pukehiki Township & Settlement Zone could have a greater level of development controls than other residential zones (e.g. for standards such as height, building size, reflectivity and contraventions of same);
- (e) Kā rūnaka do not hold a position on the aspect of PCT's appeal that concerns the application of Significant Natural Landscape (**SNL**) overlay zone to land in the Residential Transition Overlay Zone and, therefore, are neutral in relation to the Council's position on this matter; and
- (f) With respect to the balance of changes to ONL and SNL overlay zones, kā rūnaka reserve their position on these matters. While they support new ONL in some areas, on the basis that it would provide greater protection to certain highly visible wāhi tūpuna and to highly valued ridgelines, in other areas greater landscape protection may conflict with manawhenua aspirations for papakaika housing. In relation to the Council's position, kā rūnaka consider that the relief sought in the original submission on this matter was clear and, therefore, that it is arguable whether this part of the appeal needs to be deferred to a future plan change. However, kā rūnaka observe that the landscape assessment techniques used in the JWS seem inconsistent with those used more broadly in the plan (although, as stated above, kā rūnaka support in principle the approach used by the experts).

Areas of dispute

- 9 Overall, therefore, there are multiple areas of dispute regarding the Council's position on the JWS. The only area where all parties who have stated their positions either agree or are neutral is in relation to the JWS recommendation not to rezone certain land from rural residential to rural: this is the Rural Residential 1 land at Cleghorn Street; and specified parts of the Rural Residential 2 land at Portobello, The Cove and Osborne (see details on map sheets 13 and 14 filed with the updated JWS on 3 June 2020).
- 10 Parties hold differing views in relation to all other recommendations of the JWS, i.e. changes to Policy 2.4.4.1, all recommended changes to the zoning of land, and all recommended changes to landscape overlay zones (ONF, ONL and SNL).

Directions sought

- 11 It is noted that the areas of dispute include disagreement over whether certain changes recommended in the JWS – specifically, the changes to Policy 2.4.4.1 and to the ONF overlay zone – are within scope of the original submission from HPPC (PCT's predecessor). There are also other scope questions to be resolved in relation to parts of the PCT appeal that are either directly or closely related to the matters addressed in the JWS. These are:
 - (a) Whether PCT's challenge to rural residential zoning on landscape grounds is within scope of its submission (questioned by Robert Wyber, Robert Duffy and Federated Farmers in their notices of opposition to PCT's amended appeal);
 - (b) Whether the relief sought to strategic direction policies for rural residential zoning in PCT's amended appeal is within scope of its submission (also questioned by Robert Wyber, Robert Duffy and Federated Farmers in their notices of opposition); and
 - (c) Whether the relief sought to policies and rules for the management of landscape values in PCT's amended appeal is within scope of the original submission – and related to this, there is also some uncertainty as to the nature of the changes being sought to these provisions (questioned by the Council, Robert Wyber, Robert Duffy and Federated Farmers in their notices of opposition to PCT's amended appeal).

12 Therefore, to progress these issues the Council proposes the following steps leading to mediation:

- (a) The scope of the PCT appeal is first determined, following the process already set out in paragraphs 13 and 14 of the Court's minute of 30 June 2020; then
- (b) The issues of location of landscape overlays and rural residential zoning raised by the PCT appeal is referred to mediation; and
- (c) This mediation should be combined with mediation on related appeals in the Topic "Landscape and Rural Residential" as set out in Annexure B to the Council's mediation process and case management report (originally filed on 12 June 2020, revised version filed on 24 June 2020).

Dated this 3rd day of July 2020

A handwritten signature in black ink, appearing to read "M. Garbett", is written above a horizontal line.

Michael Garbett
Counsel for the Respondent