

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

Before: Environment Judge J E Borthwick

Held: in Christchurch on 13 November 2019 at 10am

In Attendance: R Enright and C Werner for The Preservation Coalition Trust
M Garbett for the Dunedin City Council (M Bathgate and Dr Johnson
 were also in attendance)
J St John for Oceana Gold NZ Ltd
S Anderson for Otago Regional Council
P Pannett for Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o
 Otākou
D Sycamore for Federated Farmers of NZ
P Page & D McLachlan for the University of Otago

RECORD OF TELEPHONE CONFERENCE

Introduction

[1] A telephone conference was convened for the purpose of case management, to hear from the parties on the court's concerns and to respond to the following:

- (a) application for directions for the Dunedin City Council ("the DCC") dated 17 October 2019 which reported on the topics to The Preservation Coalition Trust's ("PCT") appeal and proposed a timetable for the exchange of evidence;



- (b) application by PCT to amend its notice of appeal to identify rule 16.5.2.1.c – density rule for the Hill Slopes Rural zone;
- (c) memorandum for the DCC dated 6 November 2019 confirming it does not oppose the application sought but raises some issues around public interest; and
- (d) affidavit of M J Bathgate dated 11 November 2019 which helpfully addresses some of the court's concerns and sets out the DCC's understanding of the relief sought.

Expert conferencing

[2] The parties agreed that conferencing would enable the experts to refine the key issues around the ONL and coastal overlay issues and, while the court is not minded (at this stage) to make the directions sought in relation to the proposed evidence timetable, it will refer the proceedings to conferencing as sought.

Scope issue/application to amend appeal

[3] I record two discrete issues have arisen in relation to whether PCT has scope to pursue an appeal on two standards in the proposed plan. The court is required to determine the standing of PCT to pursue an appeal in relation to rule 16.5.2.1.d (appeal point 71) and rule 16.5.2.1.c which is the subject matter of the application for leave to amend the notice of appeal. The application seeking leave to amend the appeal will be placed on hold pending the scope issues.

[4] The parties sought an extension to the scope timetable as originally directed in the Minute dated 5 November 2019 at [7(c-f)]. This was enlarged, by consent of the parties, to accommodate the challenge to rule 16.2.5.1.c. The parties also agreed that the court should determine the two scope matters on the papers.

Other parties' position

[5] Counsel for the Otago Regional Council and the University of Otago (s 274 parties) advised that they may wish to participate in conferencing but will confirm their position after receiving further information from the appellant around the relief sought.

[6] The other remaining s 274 parties confirmed they would not seek to have an expert attend conferencing.



Directions

[7] I direct:

Expert conferencing

- (a) the parties' experts are directed to attend court-facilitated conferencing in Dunedin;
- (b) by **Monday 25 November 2019** the appellant must:
 - (i) serve on all parties a draft agenda (in the form of a list of questions) for the experts to consider at conferencing. The agenda is to be (at least) reviewed but preferably prepared by the relevant expert e.g. Ms Lucas to ensure it captures the issues adequately;
 - (ii) confirm whether they have appealed the decision of the Council in relation to the application of ONF, ONL, SNL, ONCC, HNCC, and NCC overlays to parts of the rural zone located in Otago Peninsula and Harbour Basis (as per the PCT memorandum dated 16 April 2019 at [8]);
 - (iii) serve a copy of a plan showing the extent of the coastal overlay they are seeking by way of relief;
 - (iv) set out the relief sought in relation to rules 16.2.5.2.d and 16.2.5.1.c; and
 - (v) respond to the DCC's affidavit from M Bathgate if any matter he records is in dispute;
- (c) by **Monday 2 December 2019** the DCC will file and serve the final (preferably agreed) conference agenda together with:
 - (i) the **name** of each witness attending;
 - (ii) the **estimated time** required for conferencing;
 - (iii) a proposed set of **dates** that the experts are available; and
 - (iv) any **facilities** required.
- (d) where conferencing is scheduled to take place prior to evidence exchange, will say statements are to be prepared by the relevant witnesses. These statements should, as a minimum, set out the key facts and assumptions relevant to the experts' field of expertise, identify the methodology and standards used in arriving at options and clearly explain the opinions arrived at. Each will say statement must be filed within **seven working days** of the conferencing commencing;



- (e) counsel are to liaise on the provision of a suitable recorder to attend the conference and prepare the Joint Witness Statement under the direction of the experts. For small conferences (two or three experts) this may be one of the experts but it is preferable that a non-participant is made available for all conferences. Recorders are to be supplied with the necessary technical equipment, including a laptop computer;
- (f) within **seven working days** of the conferencing concluding, the parties will file the Joint Witness Statement identifying the issues, both agreed and not agreed, accompanied by the experts' reasoning set out as succinctly as the circumstances allow.

Scope issue/application to amend appeal

- (g) the application to amend the notice of appeal dated 29 October 2019 is placed on hold pending the determination of the scope issue relating to appeal points 70 and 71;
- (h) the timetable for the filing and service of an agreed bundle and legal submissions is extended as follows:
 - (i) by **Wednesday 20 November 2019** the parties must file an agreed bundle of documents establishing jurisdiction for the appellant to pursue this appeal point;
 - (ii) by **Wednesday 4 December 2019** submissions for the appellant in reliance on those documents must be filed and served;
 - (iii) by **Wednesday 18 December 2019** submissions for the Dunedin City Council and any s 274 party must to be filed and served;
 - (iv) by **Wednesday 15 January 2020** any submissions in reply must be filed and served.
- (i) the court will then consider the agreed bundle, together with the legal submissions, and issue its decision in due course.

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


J E Borthwick
Environment Judge

Issued: 14 November 2019

