

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 of the First
 Schedule to the Act
BETWEEN A H PARATA
 (ENV-2018-CHC-214)
 Appellant
AND DUNEDIN CITY COUNCIL
 Respondent

Environment Judge J E Borthwick – sitting alone pursuant to section 279 of the Act

In Chambers at Christchurch

Date of Consent Order: 12 December 2019

CONSENT ORDER

A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

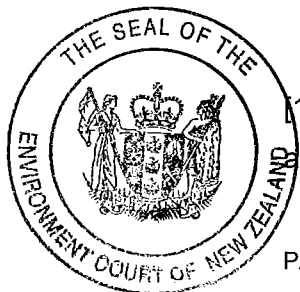
- (1) the appeal is allowed subject to the amended provisions marked Annexure 1, attached to and forming part of this order; and
- (2) the parts of the appeal concerning the intensification of residential use and associated planning for infrastructure are otherwise dismissed

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

[1] Mr A H Parata filed an appeal against the decision of the Dunedin City Council approving a proposed plan. The wide-ranging appeal has now narrowed and the parties,

PARATA v DCC – CONSENT ORDER



having settled their differences, seek that the court give orders amending the proposed plan.

[2] The orders sought are for a partial determination of Mr Parata's appeal; the relief he is seeking in relation to the proposed plan's Manawhenua provisions remains extant. The application for consent orders concerns his appeal on the intensification of residential use and associated planning for infrastructure.¹

[3] At the pre-hearing conference held in March 2019 the court indicated that it was unlikely that a final determination would be made on any matter until the conclusion of the proceedings. Applications for consent orders would remain on the court file, but that the court would endeavour to give detailed directions on any proposed resolution.²

[4] That said, a partial determination of Mr Parata's appeal is sought because the appeal affects around 2,600 "up-zoned" properties;³ in particular properties zoned General Residential 2, Rural Residential 1 and Rural Residential 2 in the Dunedin proposed District Plan ("2GP"). The City Council is anxious for a resolution as uncertainty around the relevant plan provisions is impacting the development of these properties. Under the operative District Plan, residential intensification is a non-complying activity and, I am told, people are waiting for the more favourable 2GP rules to become operative before applying for resource consent.⁴ Four resource consent applications for residential development are on hold pending the court's decision and in excess of 30 enquiries have been received by the City Council's planning department for properties affected by this appeal.⁵

[5] Counsel for the City Council and City Council policy planner, Ms E Christmas, and Resource Consents Manager, Mr A Worthington, have now satisfied me that notwithstanding appeals on related provisions, the relief sought will not impact the resolution of those appeals. The related appeals seek relief in relation to strategic objective 2.7.1 (BP Oil New Zealand and others),⁶ policy 2.7.1.1 (Wyber)⁷ and policy 2.7.1.5 (Kiwirail).⁸

¹ Consent memorandum dated 8 August 2019 at [2].

² Record of Pre-Hearing Conference held 18 March 2019.

³ Dunedin City Council memorandum dated 19 November 2019 at [6].

⁴ Dunedin City Council memorandum dated 19 November 2019 at [5].

⁵ Affidavit of Alan Worthington affirmed 19 November 2019.

⁶ ENV-2018-CHC-291.

⁷ ENV-2018-CHC-281.

⁸ ENV-2018-CHC-252.



[6] The parties to the three related appeals have been consulted and agree the proposed amendments to related provisions do not impact their appeals.⁹

[7] Finally, Dr A Johnson, City Development Manager, assured the court that the proposed amendments are drafted in line with the 2GP drafting protocol set out in the 2GP Style Guide April 2019 – incorporating changes made through 2GP decisions [https://www.dunedin.govt.nz/ data/assets/pdf file/0007/7 1 5867/2G P-Style-Guide.pdf](https://www.dunedin.govt.nz/data/assets/pdf file/0007/7 1 5867/2G P-Style-Guide.pdf).¹⁰

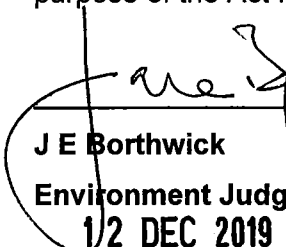
[8] For completeness, I record the parties' attestation that they are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the RMA, including Part 2 and on that basis request:

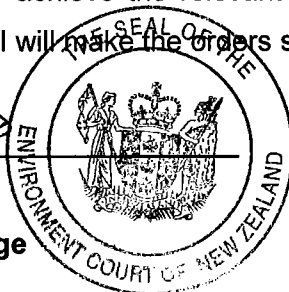
- (a) that the amendments shown in strikethrough and underline in Annexure 1 are made; and
- (b) that the parts of the appeal concerning the intensification of residential use and associated planning for infrastructure are otherwise dismissed.

[9] They agree that costs should lie where they fall and accordingly no order of costs is sought.¹¹

Outcome

[10] Based on the information before me, I am satisfied pursuant to s 32AA of the Resource Management Act 1991, that the amendments proposed are the most appropriate way to achieve the relevant objectives.¹² As the orders will promote the purpose of the Act I will make the orders sought.


J E Borthwick
 Environment Judge
 1/2 DEC 2019



⁹ Consultation memorandum dated 14 November 2019 at [2].

¹⁰ Affidavit of A L Johnson affirmed 22 November 2019.

¹¹ Consent memorandum dated 8 August 2019 at [5].

¹² Affidavit of E Christmas affirmed 10 September 2019 notes objective 9.2.1 at [19] and objective 6.2.3 at [20]. Strategic objective 2.7.1 is noted at [24] with Ms Christmas deposing that Mr Parata's appeal will not impact on any of the strategic direction objectives or policies or the management approach to infrastructure.

Annexure 1

Policy 9.2.1.6

Require ~~Only~~ allow development and subdivision in an infrastructure constraint mapped area ~~to be at a~~ above the permitted density where it will ~~which does~~ not compromise the current or planned capacity of the public wastewater infrastructure or compromise the ability of the public wastewater infrastructure to service any activities permitted within the zone.

Assessment guidance 9.5.3.3 (assessment of contravention of density performance standard)

Relevant objectives and policies:

- i. Objective 9.2.1
- ii. Development in an **infrastructure constraint mapped area** above the permitted density, ~~is at a density which does~~ will not compromise the current or planned capacity of the public wastewater infrastructure, or compromise the ability of the public wastewater infrastructure to service any activities permitted within the zone (Policy 9.2.1.6).

General assessment guidance:

- iii. In determining whether Policy 9.2.1.6 is achieved, Council will consider the cumulative effects of the proposed development together with existing development and permitted development that is likely to arise in the future.

Assessment guidance 9.6.2.4 (assessment of all subdivision activities in relation to effects on efficiency and affordability of infrastructure)

Amend assessment guidance:

Conditions that may be imposed include:

- viii. Within an area serviced by DCC for wastewater, a ~~A~~ requirement for wastewater connections.

Note to Plan User after Rule 17.3.5:

Add new Note to Plan User:

Note 17.3.5B – General advice

DCC does not generally provide reticulated water supply to sites zoned rural residential and a connection should not be presumed.



Assessment guidance 6.11.2.1 (assessment of all restricted discretionary activities linked to section 6.11 and that have 'effects on the efficiency of the transport network' as a matter of discretion)

Add new assessment guidance:

General assessment guidance:

vi. ...

- vii. For subdivision activities on sites adjoining unsealed rural roads, Council will consider the effectiveness of any proposed mitigation measures to reduce the risk of complaints of dust from the road.

Potential circumstances that may support a consent application include:

~~viii.~~ viii. ...

- ix. For subdivision activities adjoining roads that are unsealed, any necessary conditions to reduce the risk of complaints of dust from unsealed roads, for example conditions on the location of building platforms, screening of the road frontage or sealing of roads.

