

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-214

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	Parata
	Appellant
And	Dunedin City Council
	Respondent

Consultation memorandum

14 November 2019

Respondent's solicitors:

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May it please the Court

- 1 This memorandum is in response to the Court's minute of 15 October 2019 and the Court's concern at paragraph [5] of that Minute that other appeals could be impacted by the changes made via a consent order. Three appeals are noted by the Court and this memorandum addresses these appeals and their relationship to the amendments sought in the Parata consent memorandum.
- 2 All parties to these three appeals have been consulted and are of the view that the relevant provisions under appeal will not be impacted.
- 3 For completeness, the amendments proposed as a result of the Parata appeal are outlined below. Changes (a) and (b) clarify and strengthen the wording of Policy 9.2.1.6 and assessment guidance for contravention of the density performance standard in the General Residential 2 Zone infrastructure constraint mapped area. This reinforces the point that development above the permitted density will only be allowed when wastewater capacity is available, and the cumulative effects of other permitted development must be considered.
- 4 Changes (c) to (d) clarify that a requirement to connect to the wastewater network in the Rural Residential zones will only be made in areas serviced by such a network (that is, not rural residential zoned sites) and removes any suggestion that DCC does or will service all areas for water and wastewater.
- 5 Change (e) puts the onus on the developer to ensure that new rural residential sites will not increase demand in the future for DCC to seal roads (a cost to the ratepayer) due to nuisance dust.

(a) **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.

(b) **Assessment guidance 9.5.3.3 (assessment of contravention of density performance standard in the General Residential 2 Zone infrastructure constraint mapped area)**

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.

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

Conditions that may be imposed include:

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

(d) **Add new Note to Plan User after Rule 17.3.5 (subdivision activity status table, rural residential zones):**

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.

(e) **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)**

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:

- ~~vii.~~ 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.

BP Oil New Zealand Limited and Others ENV-2018-CHC-291

- 6 *BP Oil New Zealand Limited and Others (BP Oil)* has appealed Objective 2.7.1, which is implemented in part by provisions that are proposed to be changed as a result of the Parata appeal. The appeal is in the Network utility provisions topic (Group 2).
- 7 Objective 2.7.1 is:

Public infrastructure networks operate efficiently and effectively and have the least possible long term cost burden on the public.
- 8 Objective 2.7.1 is implemented by policies 2.7.1.1 to 2.7.1.3 and objectives and policies in both the Public Health and Safety section (Objective 9.2.1 and associated policies) and the Transport section (Objective 6.2.3 and associated policies). These provisions are concerned with managing land use, development and subdivision activities such that infrastructure is used and provided in an efficient way.
- 9 BP Oil's appeal requests greater recognition in the strategic directions of the 2GP of the role that the appellants' bulk fuel storage terminals and pipelines play in the fuel supply chain for the region, and of their associated economic and social significance. The appellants request either that Objective 2.3.1 or Objective 2.7.1 (together with associated policies) be amended, or that a new strategic objective be added to Section 2, to achieve this. In addition, a proposed new definition of Infrastructure, which includes bulk fuel storage and pipelines, is included.
- 10 If the amendments requested by BP Oil to include a new definition of strategic infrastructure and amend Objective 2.7.1 are ultimately made, the parties agree that there would be no impact on the amendments made as a result of the Parata appeal, because these are very focussed amendments to Policy 9.2.1.6 and related assessment guidance on development above the permitted density, and in relation to rural residential development adjoining unsealed roads.
- 11 The appeal on Objective 2.7.1 is limited and cannot change the focus that public infrastructure networks have the least possible long term cost burden on the public. For this reason, it is possible to conclude under s32AA that the changed provisions are the most appropriate.

Wyber ENV-2018-CHC-281

- 12 Robert Wyber appealed the wording of Policy 2.7.1.1, with the relief sought as follows: "Amend Policy 2.7.1.1 to infrastructure planning occurs to assist in providing adequate urban land supply [sic]". This appeal is in the Residential Strategic topic (Group 1) and is currently on hold pending Variation 2 to the 2GP.

- 13 Policy 2.7.1.1 implements Objective 2.7.1 (discussed above), and is to:

Manage the location of new housing to ensure efficient use and provision of public infrastructure through:

- a. *rules that restrict development density in line with current or planned public infrastructure capacity; ...*

- 14 The policy is therefore relevant to intensification in the General Residential 2 Zone in the infrastructure constraint mapped area, where infrastructure capacity is limited. It is implemented through Objective 9.2.1 and associated policies, including Policy 9.2.1.6, which is proposed to be amended as a result of the Parata appeal.
- 15 The Wyber appeal appears to seek that appropriate infrastructure planning occurs to ensure that adequate urban land supply can be provided. This outcome is consistent with the relief sought by Mr Parata. The amendments made to Policy 9.2.1.6 and assessment guidance 9.5.3.3 are not in conflict with this outcome as they both seek to achieve provision of housing is undertaken with appropriate consideration of infrastructure availability.
- 16 The parties to the Wyber appeal agree that the changes proposed to Policy 9.2.1.6 are not in conflict with what is sought in the Wyber appeal in relation to Policy 2.7.1.1.

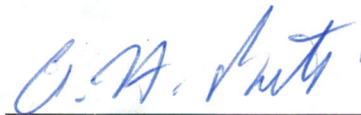
KiwiRail Holdings Limited ENV-2018-CHC-251

- 17 KiwiRail Holdings Limited's (KiwiRail) appeal sought various amendments to the 2GP to (among other things) recognise and provide for rail as a transportation activity. The appeal is in the Management of Rail topic (Group 4). A specific request was made in the appeal to amend Strategic Direction Policy 2.3.1.5 to identify rail as a key transportation route, and to protect it from inappropriate subdivision or development, including by consideration of reverse sensitivity effects.
- 18 Policy 6.2.3.9 in the Transportation Section gives effect to Policy 2.3.1.5. If the requested amendments to Policy 2.3.1.5 are made, a possible consequential amendment would be the inclusion of adverse effects on the safety and efficiency of the rail network in clause (a) of Policy 6.2.3.9. Policy 6.2.3.9 was therefore identified by DCC staff as potentially being subject to change as a result of KiwiRail's appeal.
- 19 Policy 6.2.3.9 is:
- Only allow land use and development activities or subdivision activities that may lead to land use or development activities, where:*

- a. *adverse effects on the safety and efficiency of the transport network will be avoided or, if avoidance is not practicable, adequately mitigated; and*
- b. *any associated changes to the transportation network will be affordable to the public in the long term.*

- 20 Subclause (b) of Policy 6.2.3.9 implements Policy 2.7.1.3 and Objective 2.7.1 (see above). Policy 6.2.3.9 was identified as relevant to the Parata appeal as it relates to the affordability of changes to roading infrastructure that result from land use, development and subdivision activities, a key point of Mr Parata's appeal. The amendments agreed provide guidance to consents planners and developers to consider measures to ensure that new rural residential sites will not increase demand in the future for DCC to seal roads (a cost to the ratepayer) due to nuisance dust.
- 21 The parties agree that any amendments to subclause (a) of Policy 6.2.3.9 (if required) to recognise and provide for rail will not change the focus of Policy 6.2.3.9 in a way that will impact on the changes agreed in relation to the Parata appeal. The parties also agree that the amendments proposed through the draft consent order will not affect the relief sought by KiwiRail in its appeal.

Dated this 14th day of November 2019



A Parata
Appellant

Michael Garbett/Rachel Brooking
Counsel for the Respondent

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- b. *any associated changes to the transportation network will be affordable to the public in the long term.*

- 20 Subclause (b) of Policy 6.2.3.9 implements Policy 2.7.1.3 and Objective 2.7.1 (see above). Policy 6.2.3.9 was identified as relevant to the Parata appeal as it relates to the affordability of changes to roading infrastructure that result from land use, development and subdivision activities, a key point of Mr Parata's appeal. The amendments agreed provide guidance to consents planners and developers to consider measures to ensure that new rural residential sites will not increase demand in the future for DCC to seal roads (a cost to the ratepayer) due to nuisance dust.
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Dated this 14th day of November 2019

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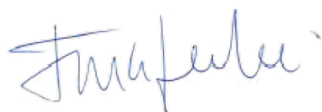
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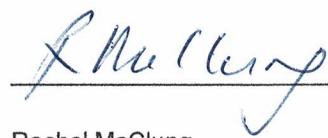
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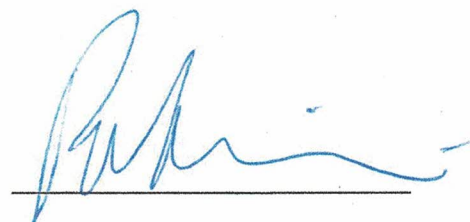
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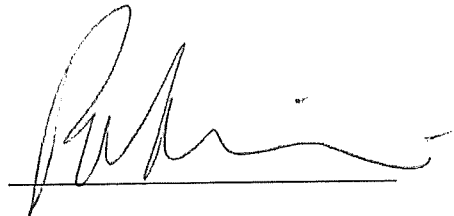
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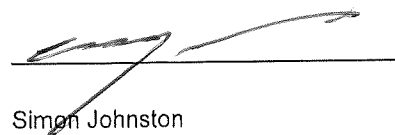
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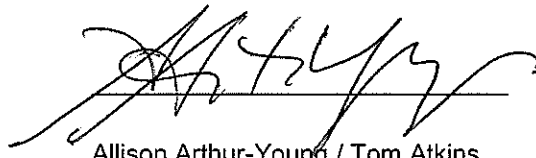
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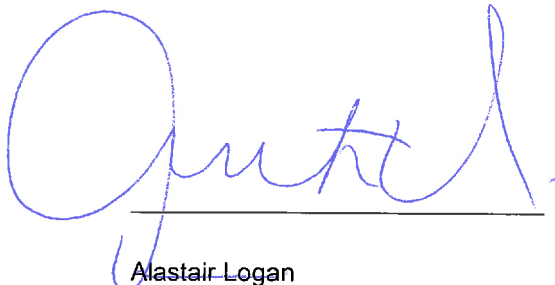


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