

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-270

Under	the Resource Management Act 1991
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	University of Otago Appellant
And	Dunedin City Council Respondent

Affidavit of Sarah Catherine Hickey

Affirmed 12th April 2021

Concerning:

Group 3b

Topic: Campus Zone Provisions

Appeal point DCC References 190 & 196

Respondent's solicitors:

Michael Garbett | Georgia Cassidy
Anderson Lloyd
Level 10, Otago House, 477 Moray Place, Dunedin 9016
Private Bag 1959, Dunedin 9054
DX Box YX10107 Dunedin
p + 64 3 477 3973 | f + 64 3 477 3184
michael.garbett@al.nz | georgia.cassidy@al.nz

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lloyd.**

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I, **Sarah Catherine Hickey** of Dunedin, Policy Planner, hereby solemnly and sincerely affirm:

- 1 I am a policy planner at Dunedin City Council.
- 2 I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. This evidence has been prepared in accordance with it and I agree to comply with it. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
- 3 I have been employed by Dunedin City Council (DCC) as a policy planner for five years. During this time, I have primarily worked on the Natural Hazards provisions in the 2GP, including contributing to drafting the 2GP, assessing submissions, preparing and presenting s42A reports and working on the appeals. I have also assisted with Variation 2 (Additional Housing Capacity) to the 2GP. Prior to this I was employed by the Otago Regional Council as a policy analyst working on the Otago Regional Policy Statement Review for two years, and prior to that as the Resource Planner – Liaison Officer for eight years making submissions on consent applications and local/central government proposals as well as assisting with plan changes.
- 4 I have a Bachelor of Science (Majoring in Geography) and a Post Graduate Diploma (Credit in Environmental Science) from the University of Otago.

Introduction

- 5 This affidavit provides the rationale, and an assessment in terms of section 32, of the changes related to DCC references 190 and 196, agreed in the following consent memorandum:
 - (a) Campus Zone provisions, 12 August 2020.
- 6 This affidavit and the attached consent memorandum relate to the subdivision policy guidance and boundary treatment performance standard in the Campus Zone. The details of the appeals are included within the consent memorandum. In summary, the appeal by University of Otago sought to:
 - (a) Ensure the boundary treatments and landscaping standard did not apply to its activities;
 - (b) Ensure the subdivision policy appropriately provided for subdivision that was beneficial to the operation of the University.
- 7 There are no s274 parties on these appeal points.

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8 The parties have agreed to:

- (a) amend Policy 34.2.1.7 to provide for subdivision necessary for the effective and efficient operation of campus activities (and consequential amendment to assessment rule 34.10.5.1.a.ii.2).
- (b) make minor amendments to Rule 34.6.1 (Boundary treatments and other landscaping) to clarify and reinforce that the landscaping standards are not applicable to standard residential or campus activity.

Assessment of other appeals

- 9 As part of my assessment of the appropriateness of this change, I have considered whether there are other appeals on the provisions affected by these amendments, to understand whether there is overlap between different appeals on the same provisions in the plan.
- 10 There are no other appeals on the provisions proposed to be amended.

Scope

- 11 The scope for the proposed changes falls directly from the University's submission which, along with their appeal, sought the deletion of Policy 34.2.1.7 and Rule 34.6.1 (boundary treatments and other landscaping) and the proposed change to 34.10.5 is a consequential change to align with the changes to Policy 34.2.1.7.

Subdivision Policy

Planning background

- 12 The key strategic direction objective of relevance to the changes agreed with respect to the appeal is Objective 2.3.1.
- 13 Objective 2.3.1 is:

Objective 2.3.1: Land and facilities important for economic productivity and social well-being

Land and facilities that are important for economic productivity and social well-being, which include industrial areas, major facilities, key transportation routes, network utilities; and productive rural land are:

- a. protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and



- b. in the case of facilities, able to operate efficiently and effectively.

14 Policy 2.3.1.6 under this objective is:

Identify facilities that contribute significantly to the economic productivity and social wellbeing of the city, including the University of Otago and Otago Polytechnic campuses, hospitals, schools and Invermay, zone these as major facilities and use rules to:

- a. enable them to continue to operate efficiently and effectively, while minimising as far as practicable any adverse effects on surrounding areas; and
- b. protect them from activities that may lead to reverse sensitivity.

15 The key objective of relevance to the changes agreed with respect to the appeal is Objective 34.2.1.

16 Objective 34.2.1 is:

The Campus Zone enables the University of Otago and the Otago Polytechnic to operate efficiently and effectively as tertiary education and research facilities, while also providing for residential living and a limited range of specified activities that are closely associated to and compatible with these tertiary institutions.

17 Policy 34.2.1.7 under this objective is:

Only allow subdivision activities:

- a. if they are intended and/or capable of being used for standard residential activity, and they are in accordance with the objectives, policies and rules of the residential zones; or
- b. if they are necessary for the disposal of surplus land in accordance with Policy 2.3.1.6.

18 These objectives and policies are implemented through Rule 34.3.5.1 (subdivision activity status table) and Rule 34.7.5 (shape subdivision performance standard).

Decision Background

19 The University of Otago, supported by Otago Polytechnic, opposed Policy 34.2.1.7 as the University could have operational reasons for subdivision

other than the disposal of surplus land and should not be unreasonably restricted in doing so. They also opposed Rule 34.7.5 (shape subdivision performance standard) as it considered the rule was not meaningful when dealing with Campus activity.

- 20 The Reporting Officer noted that the 2GP anticipated that subdivision in the Campus Zone was likely to take place to enable disposal of land that was no longer needed for campus purposes, and if sold, would likely be put to residential use. The provisions were intended to prevent the land being subdivided into sites smaller than the minimum site size in the Inner City Residential Zone. She acknowledged that subdivision may be necessary for operational reasons, but to prevent very small sites being created she considered Policy 34.2.1.7 and Rule 34.7.5 were appropriate.
- 21 However, in her revised recommendation the Reporting Officer stated that she agreed in principle with amendments proposed at the hearing by the University and Polytechnic.
- 22 The Hearing Panel rejected the submissions and the Reporting Officers revised recommendation as they agreed with the original evidence of the Reporting Officer in her s42A report (summarised above in paragraph 20). The Hearing Panel stated that the provisions as notified appropriately focus on future development for the likely residential purposes, and as resource consent is required for subdivision in any event the merits of an application can be determined at the time.

Assessment (s75 and s32)

Consistency with higher order documents (s.75)

- 23 The Otago Regional Policy Statement (partially operative) Objective 4.5 is "Urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments".
- 24 The associated policies are concerned with strategic and co-ordinated urban growth and development, infrastructure integration and design.
- 25 I note that the Otago Regional Policy Statement (partially operative) provisions cited above are operative.
- 26 These provisions are given effect to through a number of objectives and policies in the 2GP, the most relevant being Objective 2.4.1 and associated policies.

- 27 The s32AA assessment below addresses how the changes proposed are appropriate in terms of these objectives and therefore give effect to the Otago Regional Policy Statement (partially operative).

Section 32AA Assessment

- 28 The 2GP objective most relevant to the changes proposed is Objective 34.2.1. This objective is concerned with the efficient and effective operation of the Campus Zone for tertiary education and research, while also providing for residential activities and a limited range of compatible activities.
- 29 I consider that the proposed amendment to Policy 34.2.1.7 to include consideration of whether subdivision activities are necessary for the effective and efficient operation of campus activity will better achieve Objective 34.2.1 and agree that the amendments are appropriate.
- 30 In my opinion, the proposed amendments also give effect to the Otago Regional Policy Statement (partially operative) and Part 2 of the RMA.

Effect of any appeals on relevant objectives and policies

- 31 For completeness, I have assessed the appeals on the related policies and objectives and strategic directions to ensure no appeals are likely to change the policy framework in a way that would change the above assessment.
- 32 None of the objectives and policies relevant to my s32AA assessment are under appeal by any other party.

Boundary Treatment performance standard

Decision Background

- 33 The University sought that Rule 34.6.1 be removed as it considered the University successfully manages landscaping across the campus in an integrated way and the proposed provisions would cut across existing work and lead to a reduction in amenity.
- 34 The Reporting Officer noted that the rule was intended to ensure a minimum standard of landscaping, the campus is a high amenity area and acknowledged the landscaping and other development work undertaken by the University of Otago to achieve and maintain this level of amenity. However, she noted that the University was not the only landowner in the Campus Zone so the rule should remain.

- 35 Mr Brass on behalf of the University of Otago suggested that rather than the deletion sought in the original submission it would be appropriate to remove the landscaping requirement from Campus activity only.
- 36 The Hearing Panel accepted the submission and amended the rule to exclude Campus activity stating that it would allow greater flexibility for the University in carrying out its landscaping regime and will ensure a good amenity outcome while retaining the rule for landscaping carried out by other activities in the zone.
- 37 The Hearing Panel made a consequential amendment to Policy 34.2.2.4 (under clause 16) to better reflect the rule.

Assessment

- 38 In my opinion the changes made to Rule 34.6.1 are changes of clarification rather than a substantive change to the rule and how it was intended to be applied based on the decision by the Hearings Panel described above. It is my understanding that the matters in clause 2 of the rule were only ever meant to be applied to landscaping required in clause 1 of the rule. The changes proposed through the attached consent memorandum only seek to clarify this rather than amend the rule in a substantive way. As there is no substantive change to the rule's effect, a Section 32AA assessment is not necessary.

Affirmed at Dunedin)
this day of 12th April 2021,)
before me:)



Sarah Catherine Hickey



A Solicitor of the High Court of New Zealand
Justice of the Peace

Ashleigh Nicole Mitchell-Craig
Solicitor
Dunedin