

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

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	Robert Francis Wyber (ENV-2018-CHC-281) The Preservation Coalition Trust (ENV-2018-CHC-285) Appellants
And	Dunedin City Council Respondent

Consent memorandum

February 2021

Respondent's solicitors:

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May it please the Court

- 1 This consent memorandum relates to the appeal by R F Wyber (DCC Reference number 376) concerning the policies for Rural Residential zoning in the Strategic Directions section of the 2GP (Policies 2.6.1.3 and 2.6.1.4).
- 2 There is a related appeal by The Preservation Coalition Trust (**PCT**) (DCC Reference numbers 90 and 91) that also seeks changes to these policies, as outlined in a Memorandum of PCT's Counsel dated 3 February 2020.
- 3 The Wyber appeal sought to:
 - Amend Policy 2.6.1.3 to enable rural residential zoning where appropriate.
 - Amend Policy 2.6.1.4 to enable rezoning to ensure capacity is available before a shortfall occurs, allow rural residential zones that do not rely on provision of public infrastructure, and remove references to a compact city.
- 4 Robert Charles Duffy, PCT, Save the Otago Peninsula (**STOP**), Federated Farmers of New Zealand (**Federated Farmers**), Otago Regional Council (**ORC**), Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou (**Runaka**), Robert Duffy, Ben Ponne and Phil Cunningham are section 274 parties to some parts of these appeals.
- 5 The parties have agreed to the amendments to Policies 2.6.1.3, 2.6.1.4 and 2.6.1.5 and new consequential definitions of "unfunded public infrastructure upgrades" and "cluster". These amendments are shown in **Appendix A**.
- 6 The rationale for the changes, and assessment of the changes in terms of section 32 of the RMA, is explained in the affidavit of Jane Macleod, a senior policy planner at Dunedin City Council.
- 7 There is also a supporting affidavit of Dr Anna Louise Johnson, the City Development Manager at Dunedin City Council, that considers alignment with, and impact of, any changes on the objectives and policies and the drafting of the proposed amendments to ensure alignment with the 2GP Style Guide. Dr Johnson considers that the amendments have been drafted to be in keeping with the 2GP Style Guide.
- 8 This is a full resolution of the Wyber appeal (DCC Reference number 376).

- 9 This is a partial settlement of the PCT appeal (DCC Reference numbers 90 and 91). The appeal reference points, topics and status of proceedings for the unresolved appeal points are as follows:
- (a) Group 2a – Provisions applying within landscape overlays and the Hill Slopes Rural Zone to manage effects on landscape values (DCC Reference numbers 70 and 341) – Mediation undertaken 15-19 February 2021;
 - (b) Group 2a – Location and classification of landscape overlays (DCC Reference numbers 75 and 82) – Mediation undertaken 15-19 February 2021; and
 - (c) Group 2a – Request for rezoning of land from rural residential to rural (DCC Reference numbers 93 and 96) – Mediation undertaken 15-19 February 2021.
- 10 Other than the amendments shown in **Appendix A**, there is no impact on any higher order policies, objectives or strategic directions.

Orders sought

- 11 The parties 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 request:
- (a) That the amendments shown in underline and strikethrough in **Appendix A** are made; and
 - (b) That these changes resolve the Wyber appeal and resolves 10.2 and 10.4b in the Fourth Amended PCT Notice of Appeal; and
 - (c) That the remaining parts of PCT's appeal remain to be dealt with at a later date.
- 12 The parties agree that costs should lie where they fall and accordingly no order of costs is sought.

Dated this ^{18th} day of February 2020



Phil Page/Derek McLachlan
Counsel for R F Wyber
Appellant



Rob Enright
Counsel for The Preservation Coalition Trust
Appellant



Michael Garbett
Counsel for the Respondent



Phil Page/Derek McLachlan
Counsel for Robert Duffy
Section 274 Party



~~Kim Reilly~~

Eileen Linscott
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Michael Bathgate
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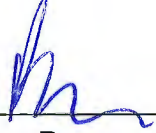
Lala Frazer
Representative for Save the Otago Peninsula Society Incorporated (STOP)
Section 274 Party



Phil Cunningham
Section 274 Party



Robert Duffy
Section 274 Party



Ben Ponne
Section 274 Party

Appendix A

It is proposed that Policy 2.6.1.3 be deleted, policies 2.6.1.4 and 2.6.1.5 be amended and renumbered, and a new definitions of “unfunded public infrastructure upgrades” and “cluster” be added to clarify Policy 2.6.1.4, as follows:

Policy 2.6.1.3

~~Apply rural residential zoning to clusters of sites in separate land tenure already developed or mostly developed for rural residential activity before 7 November 2018, and that meet the criteria in Policy 2.6.1.5, as follows:~~

- ~~a. —where the cluster comprises sites already subdivided, or which have consent to subdivide, to an average density of greater than 2ha and less than 4ha, and are either already being used for rural residential activity or there is a high degree of likelihood they will be developed for rural residential activity in the short term, Rural Residential 1 zoning is appropriate; and~~
- ~~b. —where the cluster comprises sites each under 15ha with an average site size of generally between 4ha and 10ha, Rural Residential 2 zoning is appropriate.~~

Policy 2.6.1.4

~~Apply new rural residential zoning only where~~ Provide for lifestyle blocks or hobby farming through the application of rural residential zoning as follows:

- ~~a. —there is a demonstrated shortage of rural residential land for lifestyle farming or hobby farming;~~
- a. the proposed zoning meets the criteria outlined in Policy 2.6.1.5; and
- b. considering, based on the predicted market availability of rural residential zoned land for the next 5 years, whether the amount of land proposed to be rezoned rural residential appropriately balances providing some land resource for lifestyle farming or hobby farming with the overall Plan strategic spatial planning objectives outlined in objectives 2.2.4, 2.7.1 and 2.7.2; that:
 - i. ~~Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations (Objective 2.2.4);~~

- ii. ~~public infrastructure networks operate efficiently and effectively and have the least possible long term cost burden to the public (Objective 2.7.1); and~~
- iii. ~~the multi-modal land transport network, including connections between land, air and sea transport networks, operates safely and efficiently for all road users (Objective 2.7.2); and~~
- e. ~~the proposed zoning meets the criteria contained in Policy 2.6.1.5; and~~
- d. ~~the plan change proposal, the following prioritisation will be applied:~~
 - i. ~~considers first rezoning of Rural Residential 2 to Rural Residential 1 land to increase capacity;~~
 - ii. ~~considers next rezoning of any remaining clusters of sites below the minimum site sizes in the rural zones; and~~
 - iii. ~~only after the options in clause i and ii are assessed as inappropriate and/or unfeasible, considers the conversion of other rural sites to rural residential land.~~
- c. in the first instance, only applying rural residential zoning to land in separate tenure as follows:
 - i. where the site or sites are part of a cluster of sites at an average site size of greater than 2ha and less than 4ha, Rural Residential 1 zoning is appropriate; and
 - ii. where the cluster comprises sites each under 15ha with an average site size of between 4ha and 10ha, Rural Residential 2 zoning is generally appropriate, but Rural Residential 1 zoning may be appropriate if it can achieve a similar outcome in terms of the criteria in Policy 2.6.1.5; and
- d. only after those options in c.i and c.ii are assessed as inappropriate, unfeasible or unavailable, considering the rezoning of other rural sites of low productive capacity to rural residential zoning.

Policy 2.6.1.5

~~Identify areas for new~~ Use the following criteria to assess the appropriateness of rural residential zoning, in accordance with Policy 2.6.1.4 based on the following criteria when considering any proposal for rezoning under Policy 2.6.1.4:

- a. the land is unlikely to be suitable for future residential zoning in line with Policy 2.6.2.1;

- b. rezoning is unlikely to lead to pressure for unfunded public infrastructure upgrades including road sealing, unless an agreement between the infrastructure provider and the developer on the method, timing, and funding of any necessary public infrastructure provision is in place; and
- c. considering the zoning, rules, and potential level of development provided for, the proposed rural residential zoning is the most appropriate in terms of to achieve the objectives of the Plan, in particular:

- i. ~~the character and visual amenity of Dunedin's rural environment is maintained or enhanced (Objective 2.4.6);~~
- ii. ~~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:~~

- ~~1. protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and~~
- ~~2. in the case of facilities, able to operate efficiently and effectively (Objective 2.3.1). Achieving this includes generally avoiding areas that are highly productive land or may create conflict with rural water resource requirements;~~

- iii. ~~Dunedin's outstanding and significant natural landscapes and natural features are protected (Objective 2.4.4). Achieving this includes; generally avoiding the application of new rural residential zoning in ONF, ONL and SNL overlay zones~~

- ~~1. avoiding the application of new rural residential zoning in the ONF Overlay Zone;~~
- ~~2. in the ONL Overlay Zone, avoiding the application of Rural Residential 1 zoning; and avoiding the application of Rural Residential 2 zoning, unless rules (such as rules that restrict the scale and location of development activities) can ensure that Objective 2.4.4 will be achieved; and~~
- ~~3. avoiding the application of new rural residential zoning in the SNL Overlay Zone, unless rules (such as rules that restrict the scale and location of development activities) can ensure that Objective 2.4.4 will be achieved;~~

- iv. ~~the natural character of the coastal environment is preserved or enhanced (Objective 2.4.5). Achieving this includes: generally avoiding the application of new rural residential zoning in ONCC, HNCC and NCC overlay zones~~
 - 1. avoiding the application of new rural residential zoning in the ONCC and HNCC overlay zones; and
 - 2. avoiding the application of new rural residential zoning in the NCC Overlay Zone, unless rules (such as rules that restrict the scale and location of development activities) can ensure that Objective 2.4.5 will be achieved.
- v. ~~Dunedin's significant indigenous biodiversity is protected or enhanced, and restored; and other indigenous biodiversity is maintained or enhanced, and restored; with all indigenous biodiversity having improved connections and improved resilience (Objective 2.2.3). Achieving this includes generally avoiding the application of new rural residential zoning in ASBV and UBMA, unless rules (such as rules that restrict the scale and location of development activities) can ensure that Objective 2.2.3 will be achieved.~~
- vi. ~~the biodiversity values and natural character of the coast and riparian margins are maintained and enhanced (Objective 10.2.2);~~
- vii. ~~subdivision and development activities maintain and enhance access to coastlines, water bodies and other parts of the natural environment, including for the purposes of gathering of food and mahika kai (Objective 10.2.4);~~
- viii. Objective 14.2.1;
- ix. ~~the elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected or enhanced. These include:~~
 - 1. ~~important green and other open spaces including green breaks between coastal settlements;~~
 - 2. ~~trees that make a significant contribution to the visual landscape and history of neighbourhoods;~~
 - 3. ~~built heritage, including nationally recognised built heritage;~~
 - 4. ~~important visual landscapes and vistas;~~
 - 5. ~~the amenity and aesthetic coherence of different environments; and~~

6. ~~the compact and accessible form of Dunedin~~
(Objective 2.4.1); and

x. ~~the potential risk from natural hazards, including climate~~
~~change, is no more than low, in the short to long term~~
(Objective 11.2.1).

**New definitions of “unfunded public infrastructure upgrades” and
“cluster”:**

Unfunded public infrastructure upgrades

Upgrades of public infrastructure involving capital spending that is not
included either in the DCC’s Long Term Plan or the NZTA’s Regional Land
Transport Strategy.

Cluster

A group of adjoining sites of a similar size.