

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-285

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	The Preservation Coalition Trust Appellant
And	Dunedin City Council Respondent

Joint Statement on Scope of Pleadings

2 September 2020

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May it please the Court:

- 1 This Joint Statement is in response to the Court's directions dated 24 July 2020 which requires a joint statement setting out those pleadings that are agreed to be within scope, and those pleadings where the of the scope of the appeal is disputed.

Paragraph 8.2(a) and 8.4(a) – Factors and criteria of ONL's

- 2 Paragraph 8.2(a) and 8.4(a) of the Third Amended Notice of Appeal purports to appeal:

(a) Factors and criteria for assessment of ONLs.

- 3 This appeal point does not identify which provision of the plan is challenged, but Dunedin City Council consider it is likely to be a challenge to policy 2.4.4.1 which sets out the criteria for assessment of landscape overlays. Assuming this is correct, policy 2.4.4.1 was never challenged by PCT in its submission and it is considered outside the scope of the Court's jurisdiction to now consider a challenge to this policy for the first time on appeal.

- 4 In its reply memorandum dated 6 July 2020 PCT seemed to accept in paragraph 7.1 that there was no scope to amend policy 2.4.4.1. PCT stated:

7.1... it is accepted that PCT does not have direct scope to amend 2GP policy 2.4.4.1; but the 2GP must give effect to the RPS. Because it depends on merits assessment ... this may be able to be parked as a jurisdictional or out of scope (s293 RMA) issue, pending resolution of the wider landscape issues.

- 5 Despite this acceptance there has been no change to the Third Amended Notice of Appeal on this issue.

- 6 Therefore the question for the Court is:

Does PCT have scope to amend policy 2.4.4.1 in its appeal?

Paragraph 12.1(a) and (b); B2 and B3 of Appendix B – Assessment of land use and subdivision on ONF, ONL and SNL overlay zones

- 7 Paragraph 12.1(a) and (b) of the appeal requests:

(a) Whether to amend relevant provisions in Chapter 17 (Rural Residential) to avoid adverse effects on values protected by ONL and ONF overlays; and to manage (including avoid) adverse effects on values protected by SNL overlays.

- (b) Whether to amend RD discretion for subdivision and buildings with RR zones outside landscape overlays to address effects on landscape values within the overlays.
- 8 Paragraphs B2 and B3 identify new matters of discretion including:
 - 17.10.2.1(b) Effects on landscape values of ONL or SNL overlay zones ...
 - 17.10.4.2 General subdivision contiguous to but not within ONF, ONL or SNL overlay zones...
- 9 These requested changes have the consequence of triggering the need for a landscape assessment for all Restricted Discretionary activities in the Rural Residential zone that also involve development activities. This is in addition to subdivision activity "contiguous" but not within any landscape overlay.
- 10 Dunedin City Council does not consider this issue was raised in the PCT submission and will apply restrictions to a number of Rural Residential properties that are not within an overlay. This is not considered truly consequential on landscape overlays being established because these matters of discretion are now proposed by PCT to apply to land outside such overlays. Therefore the question for the Court is:
 - (a) Were the changes that are proposed in paragraphs B2 and B3 relating to assessments on overlays for a Rural Residential property that is not within an overlay sought within the submission, or consequential on relief that was sought?

Paragraph 9.1 and 9.4 - RR1 and RR2 zone boundaries

- 11 Paragraph 9.4 of the Third Amended Notice of Appeal seeks to amend the zoning of areas presently zoned RR1 and RR2, to Rural, in areas identified as ONL and SNL overlays on map sheets 12 and 13 of the JWS landscape.
- 12 Sheets 12 and 13 show a wide range of Rural Residential 1 and 2 zones on the Otago Peninsula, the West Harbour area and also on other land stretching from Mount Cargill through to the North Western parts of the city. There are a range of Rural Residential 1 zones identified on these maps that are considered outside the scope of the zoning challenges in the original submission, because the submission only challenged additions to the Rural Residential zones that existed under the operative plan.
- 13 In contrast the JWS landscape identifies on sheet 15 and 16 the recommended rezoning of identified land from Rural Residential to Rural.

- 14 Dunedin City Council considers that if the relief sought is to rezone the Rural Residential zones shown on sheet 15 and 16 of the JWS landscape, this is within the scope of the appeal.
- 15 If the relief sought is to rezone the Rural Residential 1 zones on sheets 12 and 13, the challenge to the zoning of land which was formerly Rural Residential under the operative plan is considered beyond the scope of the PCT submission.
- 16 Dunedin City Council has sought clarification from PCT on this issue, and is at the time of writing this report awaiting a response to that. This issue would be resolved if the rezoning sought is limited to those areas of Rural Residential land shown by the landscape witnesses on sheets 14 and 15 of the JWS landscape.
- 17 Therefore the questions for the Court are:
 - (a) Is the requested rezoning from RR1 and RR2 to Rural as shown on sheets 15 and 16 of the landscape JWS, or on sheets 12 and 13?
 - (b) Is rezoning land from RR1 to Rural that is outside the areas shown on sheets 15 and 16 of the landscape JWS, beyond the scope of the submission?

Paragraph 9.4(e) - Zoning of RR2 land shown on PCT maps dated August 2020

- (i) This relief seeks:
 - Amend zoning to Rural for the following areas presently zoned RR1 and RR2:...
 - (b) areas identified in PCT maps (now dated August 2020), but outside the proposed ONL overlay
- 18 This relief refers to rezoning both RR1 and RR2 land as Rural on the areas identified in the PCT maps.
- 19 Dunedin City Council believes this is intended only to relate to the RR2 land shown on those maps. The Council has sought clarification from PCT on that and at the time of writing was awaiting that clarification.
- 20 The JWS Landscape identifies in the key to these August 2020 maps (tab 11 of the case book pages 1798-1823) that the RR2 zones on the maps are either not supported or supported in part.
- 21 Again it may be that this issue is resolved with PCT.
- 22 Mr Ponne, Mr Duffy and Mr Cunningham also submit that a site cannot be subject to PCT's appeal if a site has been zoned Rural through the Decisions version of

the Plan. If a site has been zoned Rural, then PCT are actually in support of Council's zoning decision. This issue arises where sites have been zoned rural in the Decisions Versions of the Plan but seek up-zoning to Rural-Residential. For example, the Blueskin (Map 5A) (at tab 11 of the case book page 1806) seeks 'not to support' RR2 within AAL, even though those sites are already zoned Rural. The only mechanism PCT can use to seek retention of a zoning decision, is to join as a 274 party to the appeal that seeks to amend that zoning.

- 23 If PCT can provide clarification that paragraph 9.1 and 9.4 only seeks rezoning of sites 'presently' zoned RR1 and RR2 land (within the Appeals Version of the District Plan), then this issue may be resolved.
- 24 Therefore the questions for the Court are:
 - (a) Whether appeal point 9.4(b) is only challenging the RR2 zoning of the properties identified on the PCT maps dated August 2020?
 - (b) If not, is challenging RR1 zoned land within the scope of the PCT submission?
 - (c) Can the paragraph 9.4(b) appeal a zoning Decision that supported Rural zoning?

Paragraph 10.4(b) – Policies 2.6.1.3, 2.6.1.4, 2.6.1.5

26. PCT seeks amendments to Policies 2.6.1.3, 2.6.1.4 and 2.6.1.5. The amendments sought to these policies now include additional grounds of landscape effects which Mr Duffy, Mr Ponne and Mr Cunningham submit are outside the scope of the original submission. PCT's landscape overlay relief is spatially limited to the Otago Peninsula and Harbour, whereas Policies 2.6.1.3 and 2.6.1.4 have no spatial limitation.
27. Mr Duffy, Mr Ponne and Mr Cunningham submit that the grounds of relief within the Original Submission are based on rural residential capacity and increased recognition of stakeholders in the rural environment (at Tab 1 of the case book pages 6-9 and 57-60). The suite of amendments sought within the submission do not identify policies 2.6.1.3, 2.6.1.4 or 2.6.1.5 as being subject to appeal.
28. Therefore the questions for the Court are:
 - (a) Is the introduction of landscape considerations within Policies 2.6.1.3, 2.6.1.4 and 2.6.1.5 within scope of the original submission?
 - (b) Can PCT pursue relief in relation to rural residential capacity through Policy 2.6.1.3, 2.6.1.4 and 2.6.1.5?

Paragraph 11.2.4.2 - Residential building area

25 This part of the appeal sought:

Additional controls for buildings and structures in the
landscape overlays and the Hill Slopes Rural zone;

...

The residential building area shall not exceed 350 sq.m.

26 The relief sought in paragraph 11.2.4 appears to link to Appendix B of the Third Amended Notice of Appeal where at clause C.2 it is sought:

1. the size of a single building must not result in a building footprint greater than 350sq.m.

27 It is assumed by Dunedin City Council that this 350sq.m restriction is intended to apply to "a single residential building". The relief sought in C.2 refers to "a single building". This potentially could restrict the size of all buildings relating to farming or other rural activities, and not just those for Residential use.

28 In its submission PCT sought (page 32 of the case book) a 350sq.m restriction on "standard residential plus garage". PCT sought a restriction of 750sq.m for farming, forestry or grazing buildings and structures, and 500sq.m for "other rural activities".

29 Assuming the restriction in paragraph C2 of Appendix B relates to a single residential dwelling and garage, this is accepted as being within scope of the submission.

30 If this relief is seeking to place a restriction on "all buildings" including for farming, forestry, grazing or other rural activities, this is considered beyond the scope of what was originally sought by PCT in its submission.

31 Therefore the questions for the Court are:

- (a) Is the restriction in clause C2 of Appendix B to apply to a single residential building plus garage? If so it is accepted by Dunedin City Council as within jurisdiction.
- (b) Is this restriction intended to apply to farming, forestry, grazing or other rural activity buildings and structures? If so is this within the scope of the PCT submission?

Those pleadings that agreed to be within scope

- 32 The balance of the relief sought in the notice of appeal is accepted by Dunedin City Council to be within the scope of the submission.

Dated this 2nd day of September 2020



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Counsel for the Mr Duffy, Mr Ponne and Mr Cunninghame (274 parties)



Michael Garbett
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