

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti 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

Case management memorandum by Counsel for Dunedin City Council

25 October 2019

Respondent's solicitors:

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**anderson
lloyd.**

May it please the Court

- 1 This memorandum is in response to paragraph 12(b) of the Direction dated 22 October 2019, responding to paragraphs 8 - 11 of the Directions.
- 2 It is considered that paragraphs 8 and 9 of the Direction will be addressed by the Appellant identifying the issues to be determined by the Court, and also the Appellant deciding whether it will seek a waiver or amend its Notice of Appeal in relation to the DCC appeal point 71.

DCC Appeal point 70 – New building and structure standards (Group 3 topic Landscape Coastal provisions)

- 3 The parties do have a dispute about whether the scope of the relief sought in the Notice of Appeal is within the scope of the submission of its predecessor organisation. This relief is described in paragraph 15 of the List of Key Issues filed by the Appellant dated 16 April 2019 (copy attached). The Court suggests the issue of scope could usefully be determined as a preliminary matter on this topic. The Council considers this to be a desirable process and a proposed timetable to achieve this is as follows:
 - (a) The parties produce an agreed bundle of documents establishing the jurisdiction for the Appellant to pursue this appeal point by **15 November 2019**.
 - (b) Submissions for the Appellant in reliance on those documents are to be filed by **29 November 2019**.
 - (c) Submissions by Dunedin City Council and any 274 Party to be filed by **13 December 2019**.
 - (d) Any submissions in reply are to be filed by **20 December 2019**.
- 4 Dunedin City Council propose that this issue should be an interpretation based on the documents that are on the public record and proposes that the matter could be determined by the Court on the papers.

Paragraph 11 – Appeal points 75, 82, 96 and 93

- 5 It does remain important to the Council that these issues progress to a hearing. The Council does consider that these topics are interrelated and would usefully be subject to one hearing. To explain to the Court why Council has that view, it proposes to lodge an affidavit from the Senior Planner who has been working on these appeal points that explains the interrelationship of the issues. That affidavit is expected to be available by 4 November 2019.

- 6 It is also noted that the Appeal Management Topic Table 17 April 2019 provided as Annexure B to the Memo from DCC to the Environment Court sixth case management memorandum, which set out the Council's categorisation of appeal points, did not include the amendments to the Preservation Coalition Trust appeal set out in their 16 April 2019 List of Key Issues. Owing to this it may be difficult to correlate the DCC appeal points with the later version of relief sought under this appeal. It is proposed that the Senior Planner affidavit also includes an updated version of this appeal management topic table as it pertains to the Preservation Coalition Trust appeal.
- 7 The Council's position is that the appeal points 96, and 93 have an effect on a large number of widespread rural residential and rural zones and the relevant standards. These are identified as a strategic matter because of the number of persons, property owners and consents that these appeal points are currently affecting. These matters do not appear to be heading towards a resolution and are impacted in Council's assessment by the relief the Appellant seeks in appeal points 75 and 82 which relate to the identification of an extended outstanding natural landscape.
- 8 The Council is still proposing that these topics move to expert conferencing and a hearing.

Dated this 25th day of October 2019



Michael Garbett/Rachel Brooking
Counsel for the Respondent

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV 2018 CHC 285

**I MUA I TE KOOTI TAIAO O AOTEAROA
ŌTAUTAHU ROHE**

IN THE MATTER of the Resource Management Act 1991 (RMA)

AND

IN THE MATTER of an appeal under section 120 of the Act

BETWEEN THE PRESERVATION COALITION TRUST

Appellant (ENV 2018 CHC 285)

AND DUNEDIN CITY COUNCIL

Respondent

LIST OF KEY ISSUES FOR THE PRESERVATION COALITION TRUST

16 April 2019

Solicitor:
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MAY IT PLEASE THE COURT

- 1 By direction dated 18 March 2019, the Court gave leave for an amended appeal to be filed by the Trust by 12 April 2019; this was subsequently amended by Court direction to a statement of key issues (16 April 2019).
- 2 Both the appeal and original submission were prepared by a community trust, absent legal and expert input. Chancery drafting is not required; and a number of submission points are wide-ranging. To assist with scope, the Trust has identified (on a preliminary basis) relevant submission and appeal points.
- 3 Issues fall into four categories:
 - Strategic Directions (Chapter 2, 2GP);
 - Overlays;
 - Zoning;
 - Performance Standards
- 4 At present, Counsel and landscape expert Diane Lucas' involvement is limited to Issues one and two. The Trust has therefore identified issues and relief sought for Issues three and four below. The Trust expects to provide greater clarity on issues being pursued to hearing during or immediately following mediation.

ISSUE ONE: STRATEGIC DIRECTIONS (CHAPTER 2, 2GP)

- 5 Objective 2.4.4 Natural landscapes and natural features

Whether to amend “restrict” to more appropriate wording and insert “location”; or substitute alternative wording that gives effect to the NZCPS and imports an avoidance threshold for activities that result in more than minor or transitory adverse effects for:

- Policy 2.4.4.3(c)
- Policy 2.4.5.3

“**..restrict** the scale of development in ONFs, ONLs and SNLs and ensure the location and design of development is appropriate..”

“**..restrict** the scale of development in ONCC, HNCC and NCCs and ensure the location and design of development is appropriate..”

Scope:

- Submission, p7-8 (cf Objective 2.6.3, Policy 2.6.3.1)
- Submission, Addendum 1, p50ff
- Notice of Appeal at p1 “Relief Note” and p2 “Strategic Direction”

6 Objective 2.6.1 Housing Choices

Whether “generally” should be deleted from:

- Policy 2.6.1.5(c)(iii)
- Policy 2.6.1.5(c)(iv)

“Achieving this includes ~~generally~~ avoiding the application of new rural residential zoning in ONF, ONL and SNL overlay zones.”

“Achieving this includes ~~generally~~ avoiding the application of new rural residential zoning in ONCC, HNCC and NCC overlay zones.”

Scope:

- Submission, p7-8 (Objective 2.6.3, Policy 2.6.3.1)
- Submission, Addendum 1,
- Notice of Appeal at pp5-6

- 7 Vertical and horizontal integration. Changes identified above may require amendments to Objectives 2.4.4 and 2.6.1 to avoid more than minor or transitory adverse effects on outstanding and high natural values in the Otago Peninsula and Harbour Basin; and methods for vertical integration.

Scope:

- Submission, various places, Addendum 1, p50ff
- Notice of Appeal at p1 “Relief Note” and p2 “Strategic Direction”

ISSUE TWO: OVERLAYS

- 8 Whether rural parts of Otago Peninsula and Harbour Basin should be identified and protected as ONF, ONL, SNL, ONCC, HNCC, NCC under the 2GP. The indicative extent is identified on the attached plan.¹ The coastal waters associated with the peninsula and basin should also be identified, in a non-statutory map, as ONF, ONL (recognizing the relationship between land and water, but also that the district plan has no direct jurisdiction over the CMA). This issue relates to whether the Overlay gives effect to the NZCPS.

Scope:

- Submission in relation to ONFLs, pp45-46ff
- Notice of Appeal at Maps Section, Appendix, pp5ff; Attachment 2 to Notice of Appeal

- 9 The 2GP does not identify the coastal environment in the district, outside areas identified as Coastal Character. The Trust contests this approach, but geographically

¹ Produced as an attachment to the Notice of Appeal; subject to refinement through expert caucusing and evidence exchange.

limited to the Otago Peninsula and Harbour Basin. The relevant issue is whether the Otago Peninsula, and Harbour Basin, should be classified as coastal environment, in terms of the criteria in NZCPS Policy 1. The indicative extent will be identified on a plan to be produced.² This issue relates to whether the coastal environment overlay gives effect to the NZCPS.

Scope:

- Submission, Addendum 1, pp50-51,³ including reference to Boffa Miskell Report 2007, landscape and coastal areas
- Notice of Appeal at Maps Section, Appendix, pp5ff (includes reference to CMA); Attachment 2 to Notice of Appeal

10 Vertical and horizontal integration. Changes identified above may require:

- Amend Chapter A5 to include description of area, values and threats for Otago Peninsula and Harbour Basin;
- Rural Residential Zone (Chapter 17) activity status for subdivision and development refers to ONC but not ONL; query whether this is in error.
- reduced scope of Rural Residential zoning for Otago Peninsula and Harbour Basin, to reflect outstanding and high natural values in amended overlays requested by the Trust.

Scope:

- Submission (generally) including Addendum 1, p50ff
- Notice of Appeal at p1 “Relief Note” and p2 “Strategic Direction”

11 Issues 3 and 4, prepared by the Trust, are attached. These adopt, where relevant, Attachments to the original submission and Notice of Appeal.

² Subject to refinement through expert caucusing and evidence exchange.

³ Submission point 10.5.2.3 with linkage to Addendum #1:

- “..The Harbour ‘Watershed’ as a natural factor
- The extremely high legibility of not only prominent, individual volcanic landforms (which are mentioned) but more importantly of the entire remnant caldera of the extinct Dunedin volcano.
- The unifying present [*sic*] of the Harbour ‘commons’ which provide shared experiences of marine and bird life, weather patterns, water sport and boat traffic observation.
- The distinct traversable nature of nearly the entire Harbour foreshore which served the indigenous Maori [*sic*], the Dunedin early settlers and today it represents, too, the exceptional tourism route of significant numbers of international visitors.
- These four values above are holistic and that is what the Boffa Miskell report has completely overlooked. Instead, it focuses just on separate, discrete features such as forest remnants, a salt marsh, and Quarantine and Goat Islands...”

Dated this 16th April 2019

A handwritten signature in black ink, appearing to be 'Rob Enright', written in a cursive style.

Rob Enright
Counsel for The Preservation Coalition Trust

ISSUE THREE: ZONING (statement of issues prepared by the Trust)

11 The following relief is sought:

- Increase minimum site size density standard for Hill Slope Rural zone: 40ha for one, 80ha for two, and 120ha for three residential activities (dwellings).

Scope:

- Refer Submission and Notice of Appeal
- Appeal pg 5, Rural zone relief.
- Submission pg33, 16.7.4.1.d; with subsequent revision to reflect two and three residences allowed for in a separate unlinked section of the Plan.

12 The following relief is sought:

- RR zone expansion must be minimised (per RPS 4.3.1.d), and properly staged and sequenced. Zone capacity must address Council reports indicating the approximate 50% available capacity in the operational Plan and capacity calculation errors in the s42A report.

Scope:

- Refer Submission and Notice of Appeal
- Appeal pg 6, 2.6.1.4.a the creation of new RR zones if there is a shortage of sites.
- Appeal pg 8, Relief point #1.
- Submission pg 4, 2.2.4.3.b linked to Addendum #4.

13 The following relief is sought:

- Rural Res. 2, all DCC areas;
 - Delete from the zone all areas that either comply with the productive soil health standards as described in Appeal attachment 5, and/or the locations not fully adjacent to a boundary of an urban/township Residential zoned property.
- Rural Res. 2, ONF, ONL, SNL, ONCC, HNCC, NCC as described in Appeal map attachment 2
 - Delete from the zone areas visible from points as described in Appeal pg 9, first and second bullet points.
- Rural Res. 1, expansion of zone above St. Leonards.
 - For zone additions to the operative plan delete all areas as described above for RR2.

- Rural Res. 1, ONF, ONL, SNL, ONCC, HNCC, NCC as described in Appeal map attachment 2.
 - Deletion of Large Lot 1&2. And Low Density Res. Zones.
 - Allow only RTZ zoning for sites which have all boundaries shared with the urban Residential zoned sites of the operative Plan 2006.

Scope:

- Appeal pg 6, “The decision we are appealing is:”
- Appeal pg 8&9 “We seek the following relief:”
- Submission pg 54 “Addendum 4: 2GP’s New Rural Residential Zone Areas:” which is linked with the submissions on Plan points 17.1.1.1 and 17.1.1.2 on Submission pg 37.

ISSUE FOUR: PERFORMANCE STANDARDS (statement of issues prepared by the Trust)

14 The following relief is sought:

- A building and structure ‘screening’ standard for ONF, ONL, SNL, ONCC, HNCC, NCC and the Hill Slope Rural zone, drafted by reg. landscape architect and planner caucus, guided by the proposed standard in our original submission provision point 16.6.14, included in Appeal Attachment 3 as an example of the rule format and scope.

In line with the 2GP Hearings Panel (the ‘Panel’) assigning this submission issue to the Natural Environment section, it is re-numbered as Rule 10.3.7, Building and Structure Screening in Appeal Attachment 3.

Scope:

- Appeal pg 3, relief point #1.
- Submission pg 31, 16.6.14.

15 The following relief is sought:

- Building and structure standards in ONF, ONL, SNL, ONCC, HNCC, NCC
 1. We seek the inclusion of rules for the Plan’s Natural Environment and Rural sections for all activity status types in all landscape and coastal overlays and the Hill Slope Rural Zone such as the following or through other methods to avoid, remedy or mitigate adverse effects on landscape naturalness.
 - a. A land use maximum of one residential activity plus one family flat per site.
 - b. The single-family flat must be fully attached (not only a connecting corridor) or located in the same building.
 - c. A development maximum of one building greater than 60 sq.m. per site.

d. A development maximum of one building less than 60 sq.m. per site to serve non-residential, non-accommodation purposes.

e. A development maximum of five structures of less than 40 sq.m. to serve any and all activities permitted in the site's rural zone.

f. All buildings and structures shall be a single, enclosed footprint design. 'Compound' or pavilion structure designs shall be prohibited. Such designs typically feature small modules interlinked by courtyards, corridor passages, gardens, etc. and can potentially double the visual bulk of buildings and structures.)

g. Except for a platform specified on a site's title, prior to November 7, 2018, two permitted buildings, if over 10 sq. m., shall be located on a landscape building platform determined by a registered landscape architect. The platforms will then be registered on the site's title. The methods and criteria for location shall be drafted for the Plan through landscape architect and planners' caucus.

2. With the exception of a +10% size differential for the one under 60 sq.m. building, or the 40 sq.m. maximum structures, rule contravention shall be prohibited.

Scope:

- Appeal pgs 3 and 4, relief points 2, 3 and 4. Note that point 2 seeks new rules "such as the following or through other methods....."
- Submission pg 30, 16.6.13. and linked Addendum 1. Note that although these particular standards differ from those outlined in the appeal, the submission cites on pg 30, "Reason for this view:", line 8 that 16.6.13 is only a "recommended standard". Both DCC planner input and Hearing Panel and DCC witness concern that the proposal was "too prescriptive" lead to the subsequent modification presented in the Appeal.