

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 **Anthony Parata**

Appellant

And **Dunedin City Council**

Respondent

^{Emma}
Affidavit of Katie Sunley James

Affirmed: 24 November 2020

Concerning: Appeals by Anthony Parata

Group: 2

Topic: Manawhenua

Appeal points DCC Reference number 22

Respondent's solicitors:

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**anderson
lloyd.**

KJ
UP
Emma

I, **Katie Sunley James** 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 as a policy planner for five years. During this time, I have primarily worked on assessing submissions, preparing and presenting s42A reports and working on the appeals. I also have more than ten years' experience in a range of other policy, planning and research positions in the central government, academic and private sectors.
- 4 I hold a PhD, Master of Regional and Resource Planning (with Distinction) and a BSc (Hons) from the University of Otago.

Introduction

- 5 This affidavit provides the rationale, and an assessment in terms of section 32, of the changes agreed in the following consent memorandum:
 - (a) Manawhenua (Anthony Parata), dated 11 November 2020.
- 6 Through mediation, the key issues of concern raised by Anthony Parata (**Mr Parata**) in relation to this topic were identified as being:
 - (a) The potential for papakāika provisions to be exploited as there is no limit on qualifying persons developing papakāika;
 - (b) The need for a stronger management approach to manage the potential effects of papakāika on the loss of rural productivity and effects on safety of rural roads; and
 - (c) Potential sensitivities around the use of 'native reserve' terminology.
- 7 The appeal by Mr Parata sought the following changes to the Plan:
 - (a) Amend the papakāika provisions so they do not provide for residential activity (up to six residential units) on any existing rural sites in the rural areas that were originally Māori reserves;
 - (b) Delete the terms 'native' and 'half caste; as they appear in the plan in relation to papakāika; and

- (c) Define papakāika housing as meaning residential units on Māori land held in Māori ownership under the jurisdiction of the Māori Land Court.

8 Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou (**Ngā Rūnaka**) are a section 274 party to this appeal.

Agreement reached

9 As outlined in the attached consent memorandum, agreement has been reached between parties to:

- (a) Make amendments to the papakāika provisions to limit papakāika, if it is not on Māori Land, to only one dwelling per descendant of an original grantee or their trustee, and add additional matters of control (safety and efficiency of the transport network and maintenance of the high class soils resource) and a new policy for high class soils, to be referenced in the assessment guidance; and
- (b) Provide additional explanation around native reserves and rename 'original native reserves' to 'native reserves'.

Assessment of other appeals

10 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.

Rule 16.5.2

- 11 Rule 16.5.2 (the density performance standard for residential activity in the rural zones) is amended through this appeal. This rule has a number of subparts and is shown in Annexure A. In Rule 16.5.2.1 Subparts a – g each address the density in different zones. Subparts h - j provide exceptions and additional clarification of how the rules apply. Rule 16.5.2.2 provides for family flats in association with a standard residential activity, and Rule 16.5.2.3 sets out the activity status for contraventions of the performance standard, including for papakāika.
- 12 Resolution of the Parata appeal has involved an agreed change to Rule 16.5.2.1.h, which relates to the density of papakāika housing.
- 13 There are two separate appeals on other parts of Rule 16.5.2 by Blueskin Projects Limited and others (ENV-2018-CHC-276, DCC Reference number 168) and BW Taylor and the Estate of Lawrence Taylor (ENV-2018-CHC-

244, DCC Reference number 10). These appeals have been resolved as part of the Rural Strategic topic. A consent memorandum has been signed resolving these appeals and this has been lodged with the Court, but no consent order has been issued. The resolution of the Blueskin Projects and Taylor appeals has agreed to changes to Rule 16.5.2.1.h for exceptions to the density rules for Middlemarch Basin, Hill Country and High Country rural zones and for the Peninsula Coast Rural Zone. The resolution to the Blueskin Projects' appeal also involves agreed changes to Rule 16.5.2.2 and 16.5.2.3 relating to family flats. The combined changes to Rule 16.5.2 that have been agreed to from these three appeals are shown in **Annexure A** to this affidavit to show how the agreed changes relate to each other.

- 14 I consider that the changes to this rule are addressing quite separate and unrelated topics. I support the Court approving the changes agreed in relation to the Parata appeal as shown in this consent memorandum. I consider that approving the Parata changes to the papakāika provisions will not cut across, or affect, the changes that have been sought to be made to this rule to resolve the Blueskin Projects and Taylor appeals.

Planning background

- 15 Papakāika is provided for as a controlled activity on land originally set aside as Māori reserve ('original native reserves' in the 2GP) (Rule 16.3.3.24). Density is restricted to six residential units per site (Rule 16.5.2.1.h.i). Matters of control include the design, scale and location of dwellings, other buildings and site development activities, disposal of stormwater and wastewater and vehicle access and parking (Rule 16.8.2).
- 16 The key strategic directions objective of relevance to the changes agreed with respect to the appeal is Objective 2.5.2.
- 17 Objective 2.5.2 is:
- Kāi Tahu can occupy, develop and use land in areas originally set aside for that purpose, in accordance with their culture and traditions and economic, social and cultural aspirations.
- 18 Policy 2.5.2.1 under this objective is:
- Enable occupation of original native reserve land, through rules that provide for papakāika in these locations.
- 19 This objective and policy are reflected in Objective 14.2.1 which sits in Section 14:

Objective 14.2.1

40
KJ

The relationship between Manawhenua and the natural environment is maintained or enhanced, including the cultural values and traditions associated with:

- a. wāhi tūpuna;
- b. mahika kai; and
- c. occupation of original native reserve land through papakāika.

- 20 In relation to maintaining rural productivity Objective 16.2.4 is relevant. This reads:

The productivity of rural activities in the rural zones is maintained or enhanced.

- 21 In relation to effects on the road network, Objective 6.2.3 is relevant. This reads:

Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel modes and its affordability to the public.

Decision background

- 22 In its decision, the Manawhenua Hearings Panel (**Panel**) considered the submissions from Mr Parata in section 3.10.1 and 3.11.1¹. These submissions were to remove or amend the papakāika provisions and to remove the terms 'native reserve' and 'half-caste reserve'.
- 23 The Panel rejected Mr Parata's submission to remove the papakāika provisions or to limit them to Māori land because in its assessment the provisions recognise a long standing cultural connection to the areas originally set aside as Māori reserves. The Panel considered that, with respect to allowing for greater density of development associated with papakāika in the rural environment, the associated rules would "at least partly address" any issues with development through the consent process.
- 24 With regard to the 'native' and 'half caste' terminology, the Panel accepted the further submission of Ngā Rūnaka, that these terms were the correct historical names of the reserves. While the Reporting Officer discussed the potential use of an alternative term 'Māori Reserve' with Ngā Rūnaka, it was noted this may have other legal meanings, so to avoid confusion, 'original native reserve' could be used. The Panel considered the latter term to be

¹ Manawhenua Decision of Hearings Panel, proposed Second Generation Dunedin City District Plan (2GP), 7 November 2018.

appropriate to be used in the plan text and map legend, with actual historical names to be used in the mapping information.

Assessment (section 75 and s32)

Consistency with higher order documents (s75)

Otago Regional Policy Statement (partially operative)

25 The Otago Regional Policy Statement (**RPS**) includes the following relevant policies relating to papakāika and Māori land:

Policy 2.1.2 Treaty principles

Ensure that local authorities exercise their functions and powers, by:

- a) Recognising Kāi Tahu's status as a Treaty partner; and
- b) Involving Kāi Tahu in resource management processes implementation;
- c) Taking into account Kāi Tahu values in resource management decision-making processes and implementation;
- d) Recognising and providing for the relationship of Kāi Tahu's culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taoka;
- e) Ensuring Kāi Tahu have the ability to:
 - i. Identify their relationship with their ancestral lands, water, sites, wāhi tapu, and other taoka;
 - ii. Determine how best to express that relationship;
- f) Having particular regard to the exercise of kaitiakitaka;
- g) Ensuring that district and regional plans:
 - i. Give effect to the Ngāi Tahu Claims Settlement Act 1998;
 - ii. Recognise and provide for statutory acknowledgement areas in Schedule 2;
 - iii. Provide for other areas in Otago that are recognised as significant to Kāi Tahu;

- h) Taking into account iwi management plans.

Policy 2.2.4 Sustainable use of Māori land

Enable Kai Tahu to protect, develop and use land and resources within native reserves in a way consistent with their culture and traditions and economic, cultural and social aspirations, including for papakāika, marae and marae related activities, while:

- a) Avoiding adverse effects on the health and safety of people; and
 - b) Avoiding significant adverse effects on matters of national importance; and
 - c) Avoiding, remedying or mitigating other adverse effects.
- 26 The focus of these policies is that the principles of the Treaty of Waitangi are taken into account and that Kai Tahu values, interests and customary resources are recognised and provided for, including for papakāika.
- 27 In my view, the amendments to the papakāika provisions and the native reserve terminology is consistent with the RPS policies outlined above. These policies are given effect to in the 2GP via Objective 2.5.2 and Policy 2.5.2.1 under this objective, as discussed below.

Section 32AA Assessment

- 28 There is one minor amendment to Objective 2.5.2 that is consequential to the renaming of 'native reserve'. This does not change the focus of the objective therefore I have not re-assessed this in terms of the purpose of the RMA.
- 29 With respect to the agreed changes to the provisions, in accordance with s32AA, I have examined whether these are the most appropriate way to achieve the relevant objectives of the plan (as outlined) in paragraphs 15-21 (planning background), and also considered the effectiveness and efficiency of any changes in terms of achieving the objectives. Given the relatively limited nature of the changes agreed, this section 32 analysis is also relatively limited in focus.
- 30 The amendments agreed are a relatively minor adjustment to the existing approach to papakāika. Firstly, the amendments are intended to close a potential 'loophole' that Mr Parata was concerned may exist if people that were eligible to utilise the papakāika provisions (which are intended to

achieve a particular objective, which he supported in principle) had no limit on their ability to exercise that right. His view was that it could be difficult to restrict the on-selling of residential development, developed as papakāika, because the effects of the development would not change with ownership, and I agree that this risk exists.

- 31 Secondly, the amendments seek to add more consideration around managing the potential adverse effects of new residential activity developed as papakāika, particularly in terms of the potential loss of the productive potential of high class soils and transport effects in terms of road safety, particularly on unsealed or under-dimension rural roads.
- 32 I consider that the amendments proposed for the papakāika provisions mean that papakāika will continue to be enabled under the 2GP while enabling more effective management of the potential effects of this new residential (papakāika) activity in the rural environment.
- 33 Thirdly, the amendments seek to address some potential sensitivities around the use of historically accurate, though anachronistic, terminology for today. This is addressed through the addition of a new section providing information on native reserves that provide useful background context to the papakāika provisions, as well as some amendments to the 'native reserve' terminology.

Effect of any appeals on relevant objectives and policies

- 34 For completeness, I have assessed the appeals on the related objectives, policies and strategic directions to ensure no appeals are likely to change the policy framework in a way that would change the above s32AA assessment.
- 35 I consider that no amendments to the 2GP strategic directions are required as a result of the agreed changes to resolve this appeal and the changes do not impact on the current horizontal or vertical alignment of the provisions.

36 Overall, I support the changes being made to the Plan that have been agreed to resolve this appeal.

Affirmed at Dunedin)
By ^{Emm + Leo KS} Katie Sunley James)
this 24th day of November 2020)
before me:)

K James


Lawson Raymond Davison
Solicitor
Dunedin

A Solicitor of the High Court of New Zealand

Annexure A

Amend Rule 16.5.2 Density as follows:

Rule 16.5.2 Density

1. The maximum density of standard residential activity is as follows:

...

h. Except,

i. papakāika ~~may be developed~~ provided:

X. it does not exceed at a total density of 6 residential units, or 15 habitable rooms per site, whichever is the lesser; and

Y. if it is not on Māori Land, only one dwelling per descendant of an original grantee or their trustee may be built (in perpetuity); however, this restriction does not apply to papakāika constructed for Te Rūnanga o Ōtākou or Kati Huirapa Rūnaka ki Puketeraki. {Parata, 22}

ii. in the Middlemarch Basin, Hill Country and High Country rural zones, a single residential activity is permitted on any site that existed before 26 September 2015, and that is 15ha or larger, provided the residential activity is established prior to 7 November ~~2023~~ 2025. **{Blueskin Projects, 168}**

X. in the Peninsula Coast Rural Zone, a single residential activity is permitted on any site that existed before 26 September 2015, and that is 15ha or larger. {Taylor, 10}

i. ...

j...

2. One family flat is allowed ~~per site~~ in association with a each standard residential activity that meets this performance standard for density. **{Blueskin Projects, 168}**

3. Standard residential activity that contravenes the performance standard for density is a non-complying activity, except:

a. papakāika that contravenes the performance standard for density is a discretionary activity; and

X. a family flat that contravenes Rule 16.5.2.2 is:

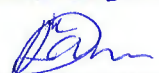
i. a restricted discretionary activity where the area of the site is 15ha or more;

ii. a discretionary activity where the area of the site is less than 15ha. {**Blueskin Projects, 168**}

EXHIBIT NOTE

This is the annexure marked "A" referred to in the within affidavit of **Katie Sunley James** and sworn affirmed at **Dunedin** this **24th** day of November 2020 before me:

Lawson Raymond Davison

Signature:  **Solicitor**
A Solicitor of The High Court of **Dunedin**.....
(Solicitor to sign part on Exhibit) New Zealand