

In the Environment Court of New Zealand

Christchurch Registry

I Mua I Te Kōti 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

Consent memorandum – Manawhenua

11 November 2020

May it please the Court

- 1 This consent memorandum relates to the appeal from Anthony Parata regarding the Manawhenua provisions in the proposed Dunedin City Second Generation District Plan (**2GP** or **Plan**), in particular provisions for papakāika.
- 2 The appeal sought the following changes to the Plan (DCC Reference number 22):
 - (a) Amend 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 Maori 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 Maori Land held in Maori ownership under the jurisdiction of the Maori Land Court.
- 3 Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou (**Rūnaka**) are a section 274 party to this appeal.
- 4 The parties have agreed the following changes to the Plan, which are shown in **Appendix A**:
 - (a) An amendment to the papakāika provisions that limit papakāika if it is not on Māori Land to only one dwelling per descendant of an original grantee or their trustee. This restriction does not apply to papakaika constructed for Te Rūnanga o Ōtākou or Kāti Huirapa Rūnaka ki Puketeraki. This is to reduce the risk that papakāika provisions could be mis-used and to avoid the proliferation of residential units outside Māori Land. This requires:
 - (i) An amendment to the density performance standard (Rule 16.5.2.1) in relation to the special papakāika provisions to reflect this.
 - (b) Additional clarification and reinforcement around the assessment of potential effects on the safety and efficiency of the transport network associated with matter of control for papakāika. This requires:
 - (i) Amending Rule 16.8.2.1 to add a new Matter of Control - Safety and efficiency of the transport network; and additional assessment guidance (conditions that may be imposed) in relation to this matter of control.
 - (c) Adding to the matters of control for papakāika to allow for consideration of effects on the productive potential of high class soils. This requires:

- (i) A new policy ensuring that the productive potential of high class soils is maintained as far as practicable.
 - (ii) Amending Rule 16.8.2.1 to add a matter of control for “maintenance of highly productive land” and reference to the new policy in the assessment guidance.
 - (d) Providing additional explanation around the native reserves. This requires:
 - (i) A new section added to section 14.1.
 - (e) Renaming ‘original native reserves’ to ‘native reserves’.
- 5 The rationale for the changes, and the assessment of the changes in terms of section 32 of the RMA, is explained in an affidavit of Katie James, a policy planner at Dunedin City Council.
- 6 This is a full settlement of the appeal.
- 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.

Orders sought

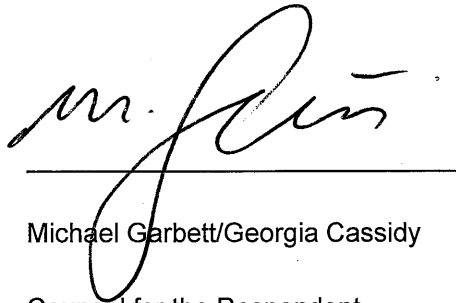
- 8 The parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the RMA, including Part 2 and request:
- (a) That the amendments shown in strikethrough and underline in **Appendix A** are made; and
 - (b) That the appeal is otherwise dismissed.
- 9 The parties agree that costs should lie where they fall and accordingly no order of costs is sought.

Dated this 11th day of November 2020



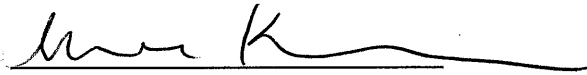
Anthony Parata

Appellant



Michael Garbett/Georgia Cassidy

Counsel for the Respondent



Maree Kleinlangevelsloo

Kati Huirapa Rūnaka ki Puketeraki and Te Rūnanga o Ōtākou

Section 274 Party

Appendix 1

Amend Definition of Original Native Reserve

Original Native Reserve

A property or site that was originally called a native reserve ~~was granted as a reserve and set aside for~~ Māori occupation or use. These areas are, ~~and is~~ shown as an original native reserves on the planning maps. An explanation of their history is given in section 14.1.X

Definition of Papakāika

Residential activity within the boundaries of an **original native reserve mapped area** where:

1. the land is fully or partly owned by one or more of the following:
 - a. a descendant of an original grantee of an original native reserve, or their trustee
 - b. a management structure governed by the Te Ture Whenua Māori Act 1993 or subsequent legislation over the land concerned, for the benefit of such persons in (a)
 - c. a Rūnaka with authority/mana over the area in which the original native reserve is located
 - d. a spouse/civil union/de facto partner of a descendant of an original grantee who has inherited the land from the descendant; and ...

1.2.2.4 Outcomes sought by Kai Tahu

i. Land use

• Papakāika housing planning provisions have been restrictive. • The utilisation of Māori land is constrained by policy that does not take into account the multi-ownership nature of the land. • Sea level rise and coastal erosion could affect the marae communities at Ōtākou and Karitāne.	• The use of Māori land by beneficial owners according to cultural preferences is supported and the maintenance of relationships with the land facilitated. • The relationship of Kāi Tahu with their ancestral land is recognised through the provision for Papakāika housing on general title land within the original native reserves. • The constraints on Māori land held under Te Ture Whenua Māori Act 1993 are recognised.
---	--

Amend Objective 2.5.2

Objective 2.5.2: Occupation of original native reserve land	
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.	
Policy 2.5.2.1	Enable occupation of original native reserve land, through rules that provide for papakāika in these locations.

Add new section 14.1.X

Native Reserves are land set aside from the land purchases in the 1800s, or subsequently allocated by the Crown, including:

- Native Reserve excluded from the Ōtākou Land Purchases (1844)
- Native Reserve excluded from the Kemps Land Purchases (1848)
- Reserve granted by the Native Land Court (1868)
- Half Caste Reserve (1881)
- Landless Native Reserve (1896)
- Other reserves (1890 and 1900)

Many of the sections within these native reserves now have the status of general land. While some of this land is still in Māori ownership, many of the general titled sections have been sold to non-Māori, taken under various pieces of legislation such as the Public Works Act or were forcibly converted to general title under the Maori Affairs Amendment

Act 1967. Although many of these sections are no longer in whānau ownership, descendants of the original grantees retain an ancestral relationship with these lands. These reserves are named on the planning map.

Manawhenua wish to retain the use of these terms because they are the original names of the reserves. The names used are those assigned in the 19th Century. The use of the term 'half-caste' was imposed and reflects the historical context and was not chosen by Manawhenua.

Kā Rūnaka wish to be able to retain, recall, and share with the general public, this part of their history and the great sense of mamae (pain) that is associated with the loss of land during this period. Further information on the history of these reserves is available on the Te Rūnanga o Ngāi Tahu website.

Amend Objective 14.2.1

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.

Amend Policy 14.2.1.6

Policy 14.2.1.6	Enable Manawhenua to live in original native reserve areas where any adverse effects will be adequately managed in line with the objectives and policies of the relevant zone.
--------------------	---

Amend 14.3.2.2 Assessment of performance standard contraventions

2.	Density (papakāika - residential zones)	a. Effects on cultural values of Manawhenua	<i>Relevant objectives and policies:</i> i. Objective 14.2.1 ii. Manawhenua are able to live in original native reserve areas where any adverse effects will be adequately managed in line with the objectives
----	--	---	--

			and policies of the relevant zone (Policy 14.2.1.6). ...
--	--	--	--

Amend 14.5.3 Assessment of discretionary performance standard contraventions

14.5.3 Assessment of discretionary performance standard contraventions		
Activity		Guidance on the assessment of resource consents
1.	Density (papakāika - rural zones)	<i>Relevant objectives and policies (priority considerations):</i> a. Objectives 2.5.2, 14.2.1 b. Manawhenua are able to live in original native reserve areas where any adverse effects will be adequately managed in line with the policies of the relevant zone (Policy 14.2.1.6). c. Residential buildings used for papakāika are removed from the site when they are no longer used for that purpose (Policy 14.2.1.7).

Amend Note 15.3.3.A

Note 15.3.3A - General advice

1. Papakāika activity (a sub-activity of standard residential activity) is intended to allow descendants of the original native reserve grantees to live on this land. ...

Add new Policy 16.2.4.X

Require papakāika dwellings to be located so that the productive potential of high class soils is maintained as far as practicable.

Amend Density Performance Standard (Rule 16.5.2.1.h)

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

h. Except,

i. papakāika may be developed provided:

1. it does not exceed at a total density of 6 residential units, or 15 habitable rooms per site, whichever is the lesser; and
2. 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 Kāti Huirapa Rūnaka ki Puketeraki.

2. ...

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.

Amend Rule 16.8.2 Assessment of controlled land use activities

16.8.2. Assessment of controlled land use activities		
Activity	Matters of control	Guidance on the assessment of resource consents
1. Papakāika	- Design, scale, location and number of dwellings - Design, scale and location of other buildings, structures and site development activities - Disposal of stormwater and wastewater - Vehicle access and parking <u>Safety and efficiency of the transport network</u> <u>Maintenance of high class soils resource</u>	Relevant objectives and policies: i. Objectives 16.2.3, <u>16.2.4</u>, 14.2.1, 9.2.2, 6.2.3. ii. Manawhenua are able to live in original native reserve areas where any adverse effects will be adequately managed in line with the objectives and policies of the rural zones (Policy 14.2.1.6). iii. Wastewater and stormwater can be disposed of in such a way that adverse effects on the health of people on the site or on surrounding sites will be avoided or, if avoidance is not practicable, will be insignificant (Policy 9.2.2.7). iv. Adverse effects on the safety and efficiency of the transport network are avoided or, if avoidance is not practicable, adequately mitigated (6.2.3.9.a).

		v. Any associated changes to the transportation network will be affordable to the public in the long term (Policy 6.2.3.9.b). vi. Papakāika maintains, as far as practicable, the rural character values and amenity of the rural zones in terms of the design, scale and location of the development (Policy 16.2.3.11). <u>XX. Papakāika dwellings are located so that the productive potential of high class soils is maintained as far as practicable (Policy 16.2.4.X).</u> Conditions that may be imposed include: <u>AA. A requirement for dwellings to be located on a part of the site that is not within a high class soils mapped area or, if that is not practicable, in a location that minimises the loss of productive potential of the high class soils on site;</u> vii. requirements for wastewater disposal systems and wastewater disposal areas; viii. requirements for stormwater disposal; ix. water supply; x. driveways and vehicle tracks; and xi. number, design and location of residential units; <u>YY. requirements on the location of any new vehicle accesses and/or requirements to use other safety measures to ensure safe access and egress to the site; and</u> <u>ZZ. requirements to make road improvements to maintain road safety on unsealed or under-dimension rural roads.</u> General assessment guidance:
--	--	---

		xii. Council will consider the information required by Rule 16.13.1 provided with any resource consent application (see Special Information Requirements - Rule 16.13.1).
--	--	---

Amend Note 16.3.3A

Note 16.3.3A - General advice

1. Papakāika activity is intended to allow descendants of the original native reserve grantees to live on this land. ...

A3.2.3.1 Pensinsula Coast Outstanding Natural Landscape – Description of area

b. Cultural/historic values

- i. Values of significance to Manawhenua. See Appendices A4.34, A4.37, A4.70, A4.36, A4.29, A4.69, A4.38, and A4.41.
- ii. Original ~~N~~native reserve lands which created long narrow properties from strip farming.