

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-240

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	Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou
	Appellant
And	Dunedin City Council
	Respondent

Affidavit of Emma Christmas

Affirmed: 24 November 2020

Concerning: Appeals by Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou

Group: 2

Topic: Manawhenua

Appeal point DCC Reference number 54

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**anderson
lloyd.**

I, **Emma Christmas** of Dunedin, Policy Planner, hereby solemnly and sincerely affirm:

- 1 I am a senior 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 seven years. During this time, I have primarily worked on drafting the 2GP, assessing submissions, preparing and presenting s42A reports and working on the appeals. Prior to this, I was self-employed as a planner for 10 years, working primarily on consent applications. Prior to that I was Team Leader Consents at Environment Canterbury for five years. I am a certified independent hearings commissioner and a full member of the New Zealand Planning Institute.

Introduction

- 4 This affidavit provides the rationale, and an assessment in terms of section 32, of the changes agreed in the following consent memo:
 - (a) Manawhenua (Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou), dated 27 August 2020.
- 5 The appeal by Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou (**Rūanka**) sought the following changes to the Plan:
 - (a) For any restricted discretionary, discretionary, and non-complying activities within a wāhi tūpuna mapped area, where that activity has been identified as a threat in Appendix A4, and for all discretionary or non-complying activities, the necessary linkages, additional linkages, additional rules and other clauses be added to the 2GP to provide for the proper consideration and assessment of Manawhenua values; and
 - (b) Where written approval from Manawhenua has not been obtained for the above activities, provision is made for the applications for resource consent to be notified to Manawhenua.

- 6 The key issues of concern raised by the Rūnaka in relation to this topic were identified as:
- (a) The need to add missing linkages in the plan ('way-finding rules') that send plan users to the relevant rules in Section 14, in:
 - (i) Section 5 (for contraventions of setback from coast and water bodies performance standards).
 - (b) The need to correct two assessment rules to clarify that activities are only of concern where they are identified as a threat in a wāhi tūpuna (the standard approach used elsewhere). This involves changes to:
 - (i) Section 3 (public amenities);
 - (ii) Section 15 (including a correction from 'all subdivision' to 'general subdivision'); and
 - (iii) A consequential change to section 14.
 - (c) The need to add assessment guidance for performance standards contraventions that default to non-complying consents where these occur within wāhi tūpuna mapped area. This includes changes to:
 - (i) Section 16 and section 17 (for contraventions of density, minimum site size and tree species performance standards); and
 - (ii) New assessment guidance (based on existing objectives and policies) in section 14.6 for these situations.
 - (d) A clarification to Rule 5.8.3.4 to add more detail about the types of network utility activities that are managed in wāhi tūpuna.
- 7 Oceana Gold New Zealand Limited, Federated Farmers of New Zealand and Blackhead Quarries Limited are section 274 parties to this appeal.

Agreement reached

- 8 As outlined in the attached consent memorandum, agreement has been reached between parties to make amendments that rectify each of the issues identified in paragraph 6 above.

Assessment of other appeals

- 9 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.

- 10 There are no other appeals on the provisions being amended.

Planning background

- 11 Strategic direction 2.5 is:

Dunedin is a City that Gives Effect to the Principles of the Treaty of Waitangi, Protects Kāi Tahu Values, Culture and Traditions, and Enables Kāi Tahu to Express Kaitiakitaka.

- 12 Objective 2.5.1 is that Kāi Tahu can exercise kaitiakitaka over resources within their takiwā. Supporting Policies 2.5.1.1 and 2.5.1.2 (see later in this affidavit) focus on giving sufficient weight to Kāi Tahu values and providing for meaningful and effective engagement with Manawhenua in the Plan and resource consent processes.
- 13 The 2GP identifies landscapes and sites that embody the ancestral, spiritual and religious traditions of Manawhenua as 'wāhi tūpuna'. These are mapped, and Appendix A4 contains descriptions of the wāhi tūpuna mapped areas, including their values and potential threats.
- 14 Objective 2.5.3 is that wāhi tūpuna and their relationship with Kāi Tahu is acknowledged and protected.
- 15 The approach to managing activities in wāhi tūpuna is outlined in Objective 14.2.1 and its supporting policies.

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; ...

- 16 The approach for activities in wāhi tūpuna in the 2GP is that effects on Manawhenua are considered, and written approval from Manawhenua required, when activities that are listed as a threat in Appendix 4 for the specific wāhi tūpuna require resource consent.
- 17 Assessment rules for restricted discretionary (RD) activities in a wāhi tūpuna in the management and major facility sections list 'effects on cultural values of Manawhenua' as a matter of discretion, and refer the plan user to

Rules 14.3 (for RD performance standards) and 14.4 (for RD activities) for assessment guidance.

- 18 Assessment rules for discretionary activities refer the plan user to Rule 14.5 Assessment of Discretionary Activities for guidance on effects on cultural values of Manawhenua.
- 19 There is a standard notification rule in all relevant management and major facility zones (an example is Rule 15.4.3) which states that Manawhenua will be considered as an affected person for certain listed activities (e.g. cemeteries), restricted discretionary activities that list 'effect on cultural values of Manawhenua' as a matter for discretion, and discretionary and non-complying activities in a wāhi tūpuna mapped area where the activity is identified as a threat in Appendix 4.
- 20 The appeal seeks to ensure that these linkages between rules are correctly in place, such that the plan provides for appropriate input from Manawhenua to resource consent processes for activities of concern to it, so that kaitiakitaka can be exercised.

Decision background

- 21 The Manawhenua Hearings Panel (**Panel**) considered the submissions from Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou on assessment rule linkages in section 3.6.2 and notification of applications in section 3.8.1 of the Manawhenua decision¹.
- 22 Ngā Rūnaka requested that all appropriate assessment linkages between Section 14 and the rest of the Plan would be included where appropriate. The Reporting Officer identified that a number of assessment rules were omitted from the notified 2GP and recommended that these omissions be rectified.
- 23 The Panel accepted Ngā Rūnaka's submission and made changes to assessment guidance to add additional links back to Section 14, where these were identified as missing.
- 24 The Panel accepted Ngā Rūnaka's submission requesting the addition of Manawhenua notification provisions, as this would "*better promote the*

¹ Manawhenua Decision of the Hearings Panel. Proposed Second Generation Dunedin City District Plan (2GP) 7 November 2018. https://www.dunedin.govt.nz/__data/assets/pdf_file/0006/716388/Manawhenua-Decision-Report.pdf

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relevant objective and policies" (p.22). Additions were made to add the notification rule where relevant.

Consistency with higher order documents (s75)

Otago Regional Policy Statement (partially operative)

- 25 The Otago Regional Policy Statement (**OPRS**) includes the following relevant objectives and policies:

Objective 2.1

The principles of Te Tiriti o Waitangi are taken into account in resource management processes and decisions

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.

Objective 2.2

Kāi Tahu values, interests and customary resources are recognised and provided for.

Policy 2.2.2 Recognising sites of cultural significance

Recognise and provide for the protection of wāhi tūpuna, by all of the following:

- a) Avoiding significant adverse effects on those values that contribute to the identified wāhi tūpuna being significant;
 - b) Avoiding, remedying, or mitigating other adverse effects on the identified wāhi tūpuna;
 - c) Managing the identified wāhi tūpuna sites in a culturally appropriate manner.
- 26 Clauses b, c and f of Policy 2.1.2, and clause c of Policy 2.2.2 are particularly relevant with regard to ensuring Kai Tahu involvement in resource management decision making and the exercise of kaitiakitaka.
- 27 These provisions are given effect to in the 2GP through Objective 2.5.1 and Policies 2.5.1.1 and 2.5.1.2, Objective 2.5.3, Objective 14.2.1 and Policies 14.2.1.1 to 14.2.1.4. In my view, the amendments to the Plan to ensure effects on cultural values of Manawhenua are appropriately considered is consistent with the RPS provisions outlined above.

Section 32AA Assessment

- 28 The changes agreed under this appeal ensure that the plan provides for appropriate input from Manawhenua to resource consent processes for activities of concern to it, so that kaitiakitaka can be exercised. The amendments are relatively minor in nature and do not change the Plan's approach to managing these activities. The key strategic directions relevant to the amendments made are Objective 2.5.1 and Objective 14.2.1.

Objective 2.5.1 Kaitiakitaka

Kāi Tahu can exercise kaitiakitaka over resources within their takiwā.

29 Policies 2.5.1.1 and 2.5.1.2 under this objective are:

Policy 2.5.1.1

Give sufficient weight in decision making to Kai Tahu values and associations through identifying these values and issues of significance to Manawhenua in the Plan.

Policy 2.5.1.2

Provide for effective and meaningful engagement with Manawhenua at appropriate stages of the resource management process through:

- a. ...
- b. requiring that the effects on values of significance to Manawhenua are considered for culturally sensitive activities and activities that may adversely affect wāhi tūpuna and mahika kai;
- c. ...
- d. advising rūnaka of applications for activities affecting sites and values of significance to them.

30 Objective 2.5.3 is:

Wāhi tūpuna (including wāhi tapu and wāhi taoka) and their relationship with Kāi Tahu is acknowledged and protected.

31 Objective 14.2.1 is:

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

- a. wāhi tūpuna;

Assessment

32 The amendments correct errors in linkages between plan rules in order to ensure that Manawhenua has appropriate input to the resource consent process for activities of concern to it, and can therefore exercise kaitiakitaka. The amendments explicitly implement (b) and (d) of Policy 2.5.1.2 and therefore provide for effective and meaningful engagement with Manawhenua. They will ensure that the relationship between Manawhenua and the natural environment, including wāhi tūpuna, is maintained or

enhanced, including the cultural values and traditions associated with wāhi tūpuna.

- 33 In my view, these amendments will more appropriately achieve the Plan's objectives.

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 There are no appeals on Objective 2.5.1 or Policies 2.5.1.1 and 2.5.1.2.
- 36 Objective 2.5.3 and Policy 14.2.1.4 were appealed by Saddle Views Estate Limited (ENV-2018-CHC-283, DCC reference numbers 324 and 384) and Tussock Top Farms Limited (ENV-2018-CHC-282, DCC reference numbers 302 and 385). These appeals were mediated, and a consent memorandum signed by all parties. That consent memorandum has not yet been filed in the Court, nor orders made. No changes to these provisions are proposed in the consent memorandum.
- 37 An appeal by Anthony Parata (ENV-2018-CHC-214, DCC reference number 22) on papakāika provisions sought to amend Objective 14.2.1. This appeal has been mediated and a consent memorandum signed by all parties. This consent memorandum is filed jointly, resolving the Parata appeal. A minor amendment has been made to clause c of Objective 14.2.1 to remove the word 'original' from 'original native reserve'. The change has no impact on the s32AA assessment undertaken.
- 38 Overall, I support the Court approving the proposed changes to the 2GP to resolve this appeal.

Affirmed at Dunedin)
By **Emma Christmas**)
this 24th day of November 2020)
before me:)


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Lawson Raymond Davison
Solicitor
Dunedin

A Solicitor of the High Court of New Zealand