

In the Environment Court of New Zealand  
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa  
Ōtautahi Rohe

**ENV-2018-CHC-252**

Under the Resource Management Act 1991

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 **KiwiRail Holdings Limited**

Appellant

And **Dunedin City Council**

Respondent

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**Affidavit of Elizabeth Moya Lightbourne**

Affirmed 4 December 2020

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Concerning:

**Group 2**

**Topic Management of Rail**

**Appeal points DCC Reference KiwiRail 229**

**Respondent's solicitors:**

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**anderson  
lloyd.**

I, **Elizabeth Moya Lightbourne** 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 affidavit 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 (**DCC**) as a policy planner since July 2019. During this time, I have primarily worked on appeals and Variation 1 to the Second Generation District Plan (**2GP or Plan**). Prior to this I was employed by Tasman District Council as a Resource Consent Planner for five years processing resource consents, presenting at public hearings and providing resource management guidance to the general public. Prior to this I worked overseas for six years as a planner for local and national government organisations which involved planning application and policy assessments. Prior to this I was employed by Christchurch City Council as a Resource Consent Planner for three years.
- 4 I hold the qualification of Bachelor of Resource and Environmental Planning with Honours from Massey University, New Zealand.

### Introduction

- 5 This affidavit provides the rationale, and an assessment in terms of section 32, for the change to Objective 2.7.2 that is agreed in the following consent memo:
  - (a) KiwiRail Holdings Limited (**KiwiRail**) ENV-2018-CHC-252 dated 22 September 2020 (Transportation – Management of Rail).
- 6 As explained in the Memorandum of Counsel, the reason that this affidavit focuses on Objective 2.7.2 only, rather than the full contents of the Management of Rail consent memorandum, is due to the overlap with the matters in the residential strategic consent memoranda bundle that is ready for the Court. I will be providing a more comprehensive affidavit to support the remaining changes in the Management of Rail consent memorandum at a later date. However, due to the overlap and the relatively discrete and minor nature of the change to Objective 2.7.2, this aspect of the Kiwirail consent memorandum is assessed separately so it can form part of the residential strategic bundle and allow that bundle to proceed.



- 7 Through mediation, the following key issues of concern were identified:
- (a) KiwiRail sought that the Plan provide for rail activity as a land use activity managed through plan rules, rather than relying only on the use of designations. More enabling provisions were also sought for earthworks associated with rail activities, and for rail infrastructure near the coast and water bodies.
  - (b) KiwiRail sought improvements to the way the Plan manages activities near the rail corridor that may impede the safe and efficient operation of the railway, including new buildings, additions and alterations and structures.
  - (c) KiwiRail sought improvements to the way the Plan manages safety issues associated with level crossings, particularly:
    - (i) clarification of provisions that require clear sightlines at level crossings; and
    - (ii) management of temporary events that rely on access across uncontrolled level crossings.
- 8 Objective 2.7.2 links to all these issues in so far as it sits above the policies that relate to these matters. However in my view, as discussed below, the wording change agreed to Objective 2.7.2 is minor, and reflects the Transportation Hearing Panel's (**Panel**) overall decision on this objective. Following the change, the objective aligns better with provisions in the decisions version of the Plan, even before any agreed modification is made, because existing methods manage the effects of activities on rail.
- 9 Federated Farmers of New Zealand and Otago Regional Council are section 274 parties to the KiwiRail appeal on Objective 2.7.2.

*Agreement reached*

- 10 As outlined in the attached consent memorandum, agreement has been reached between the parties to amend the wording of Objective 2.7.2 by removing the reference to 'all road users':
- 11 There is also a consequential amendment to strategic direction policy 2.6.2.1, which refers to and paraphrases Objective 2.7.2.

*Assessment of other appeals*

- 12 As part of my assessment of the appropriateness of this change, I have considered whether there are other appeals on the provisions affected by



this amendment, to understand whether there is overlap between different appeals on the same provisions in the Plan.

- 13 There are no other appeals seeking changes (either directly or indirectly) to Objective 2.7.2; therefore, no appeals overlap with the agreed change to the objective. Amending Objective 2.7.2 will require a consequential change to policies 2.6.1.4 and 2.6.2.1 as it is paraphrased in those policies.
- 14 Policies 2.6.1.4 and 2.6.2.1 are subject to other appeals but not with respect to the parts of the policy that paraphrase Objective 2.7.2. The appeal on Policy 2.6.2.1 is resolved via the Consent Memorandum – Residential Strategic, dated 16 September 2020, to be filed with the Court alongside this affidavit as part of the Residential Priority bundle. The consequential amendment to Policy 2.6.2.1 is shown in the draft consent order for the Residential Priority bundle.
- 15 However, the appeals on Policy 2.6.1.4 are not yet resolved and, therefore, the consequential change to this policy cannot be included in the attached draft consent order. To resolve this issue, the Council intends, under clause 16 of the first schedule to the RMA, to remove the paraphrasing of Objective 2.7.2 from Policy 2.6.1.4 but still retain the reference to Objective 2.7.2. This will remove the overlap between the appeal on Objective 2.7.2 and the appeals on Policy 2.6.1.4. Removing the paraphrasing of the objective will not change the meaning of the policy. It is not within the scope of the appeals on Policy 2.6.1.4 to revisit the wording of Objective 2.7.2.
- 16 Therefore, I consider that approving the change to Objective 2.7.2 will not cut across, or affect, the changes that have been sought to be made to these policies in other appeals.

### **Planning background**

- 17 Objective 2.7.2 of the 2GP is concerned with the safe and efficient operation of the multi-modal land transport network. It reads:

*The multi-modal land transport network, including connections between land, air and sea transport networks operates safely and efficiently for all road users.*

- 18 The key methods to achieve Objective 2.7.2 include both rules that manage the effects of other activities on the network, and rules that apply to the transport network itself; these are described in Policy 2.7.2.1. These methods include a rule that requires vehicle crossings to be located a minimum distance from level crossings (Rule 6.6.3.4.g, referred to in clause 'g' of Policy 2.7.2.1).



19 Some of the methods set out in Policy 2.7.2.1 are implemented via rules in the management zone sections (e.g. minimum parking and loading requirements), while others are implemented via rules in Section 6 Transportation (e.g. rules to manage the location, number and design of vehicle accesses).

20 Policy 2.7.2.1 reads as follows:

*Support the safe and efficient operation of the multi-modal land transport network through rules that:*

- a. provide for transportation activities;*
- b. manage the location, scale and design of high trip generators;*
- c. manage the location, number and design of vehicle accesses;*
- d. require on-site vehicle loading where vehicle loading on-street could compromise the safety and efficiency of the transport network;*
- e. require on-site car parking where necessary to enable adequate accessibility and to avoid or adequately mitigate adverse effects on the safety and efficiency of the transport network;*
- f. manage the design of parking, loading and access areas; and*
- g. **require minimum separation distance of vehicle crossings from level crossings.** (emphasis added)*

21 Policy 2.7.2.1 is implemented primarily through the objectives set out in Chapter 6. To achieve this, the Plan rules provide for transportation activities, and manage land use, development and subdivision activities to maintain the safety and efficiency of the transport network.

22 In relation to rail, Objective 6.2.3 and Objective 6.2.4 are relevant. These read:

**Objective 6.2.3**

*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.*

**Objective 6.2.4**

*Parking areas, loading areas and vehicle accesses are designed and located to:*



*a. provide for the safe and efficient operation of both the parking or loading area and the transport network; and*

*b. facilitate the safe and efficient functioning of the transport network and connectivity for all travel modes.*

- 23 The Plan's strategic policies for the identification of areas for new residential and rural residential zoning (Policies 2.6.1.4 and 2.6.2.1) ensure that the effects on the transportation network (including reverse sensitivity) are taken into account by requiring that areas being considered for new zoning be assessed against Objective 2.7.2. Therefore, Objective 2.7.2 is paraphrased at clause b.iii of Policy 2.6.1.4, and at clause d.x of Policy 2.6.2.1.
- 24 Given this context, there is an obvious disconnect between the narrow reference to "road users" in Objective 2.7.2 and the wider meaning of the transportation network in Policy 2.7.1.2 and in the provisions that flow from it in Section 6.

### **Decision Background**

- 25 In its decision, the Panel considered submissions from KiwiRail and the New Zealand Transport Agency (**NZTA**). Kiwirail sought amendments to provisions to manage land uses near railway corridors, and the NZTA sought an amendment to Objective 2.7.2 so that it referred to a broader range of travel modes. In response to the submission from NZTA, the Panel accepted the submission and made changes to the notified wording of Objective 2.7.2 as follows:

The multi-modal land transport network, including connections between land, air and sea transport networks, operates safely and efficiently for all road users, ~~including freight and passenger vehicles, public transport, motorcycles, cycles, walking, horse riding.~~

- 26 The Panel also accepted in part the submission from KiwiRail and added a new standard (Rule 6.6.3.4.g) requiring a minimum distance between new vehicle crossings and level crossings. This resulted in a consequential amendment to Policy 2.7.2.1 (the addition of clause 'g', shown above) to include the reference to the rule.

### **Section 75 and Section 32AA Assessment**

#### *Partially Operative Otago Regional Policy Statement (PORPS)*

- 27 Objective 4.3 of the Partially Operative Otago Regional Policy Statement (**PORPS**) is "Infrastructure is managed and developed in a sustainable



way” and the associated policies (4.3.1 to 4.3.6) are concerned with recognising and providing for infrastructure including rail, protecting infrastructure from the potential adverse effects of other activities, and managing the adverse effects of infrastructure.

28 I note that the PORPS infrastructure provisions cited above are operative.

*Otago Regional Land Transport Plan 2015 – 2021*

- 29 Objective 3.1 of the Otago Regional Land Transport Plan requires that the network supports efficient freight movement and that there are appropriate links to the rail network. Supporting policy 3.11 seeks to protect KiwiRail’s ability to continue operations (including maintenance) safely and efficiently.
- 30 Objective 4.1 of the Otago Regional Land Transport Plan states that the transport system supports a choice of safe modes, and the integration between these modes. Supporting policy 4.7 encourages territorial local authorities to protect existing rail corridors through district planning.
- 31 In my view, the amendment to Objective 2.7.2, to remove the phrase “for all road users” is consistent with the objectives and policies of these higher order documents; with these words removed, the objective is concerned with the safe and efficient operation of the transport network in general – including rail.
- 32 This change is also consistent with the Panel’s decisions both to broaden the objective to include reference to other travel modes, and to incorporate a new method into the Plan (Rule 6.6.3.4.g, described above) to improve safety and efficiency for rail as well as road users.
- 33 I consider that the change to Objective 2.7.2 set out in the consent memorandum is the most appropriate way to achieve the purpose of the RMA.

Affirmed at Dunedin )  
this 4th day of December 2020, )  
before me: )

  
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**Elizabeth Moya Lightbourne**

  
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A Solicitor of the High Court of New Zealand

**Natalia Panayota Zambazos Dowrick**  
Solicitor  
Dunedin