

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

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 **Aurora Energy Limited**
ENV-2018-CHC-277
Transpower New Zealand Limited
ENV-2018-CHC-249
Appellants

And **Dunedin City Council**
Respondent

Affidavit of Elizabeth Moya Lightbourne

Affirmed: 4 December 2020

Concerning:

Group 2

Topic Network Utilities Strategic

Appeal points DCC Reference Transpower 107 and Aurora Energy Limited 219

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, of the changes agreed in the following consent memo:
 - (a) Transpower New Zealand Limited (**Transpower**) ENV-2018-CHC-249 and Aurora Energy Limited (**Aurora**) ENV-2018-CHC-277 dated 24 November 2020 (Objective 2.3.1).
- 6 As explained in the Memorandum of Counsel, the reason that this affidavit focuses on Objective 2.3.1 only is due to the overlap with the matters in the residential strategic consent memoranda bundle that is ready for the Court. A more comprehensive affidavit in relation to the Network Utilities consent memorandum will be prepared at a later date when the remainder of the Network Utilities appeal points are resolved. However, due to the overlap and the relatively discrete and minor nature of the change to Objective 2.3.1, this aspect of the Transpower and Aurora 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 key issues of concern in relation to this topic (within the scope of appeals) were identified as being:
- (a) Concerns raised by Transpower and Aurora regarding the policy framework as it relates to the development of network utilities infrastructure, particularly whether it gives effect to the National Policy Statement on Electricity Transmission and partially operative Otago Regional Policy Statement, and whether it works effectively for designations, and consents under National Environmental Standards for Electricity Transmission Activities.
 - (b) Concerns raised by Transpower that, in referring to the operation of network utilities, Objective 2.3.1 does not also recognise the need to maintain, upgrade and develop this infrastructure.
- 8 Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou, Te Rūnanga o Ngāi Tahu, Aurora, University of Otago, Federated Farmers of New Zealand and Horticulture New Zealand are section 274 parties to Transpower's appeal as it relates to Objective 2.3.1.
- 9 Horticulture New Zealand, Spark New Zealand Trading Limited, Chorus New Zealand Limited and Vodafone New Zealand Limited, Federated Farmers of New Zealand, Radio New Zealand, Transpower, Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou and Te Rūnanga o Ngāi Tahu are section 274 parties to Aurora's appeal as it relates to Objective 2.3.1.

Agreement reached

- 10 Agreement has been reached between the parties to address the concerns identified in paragraph 6 above, as they relate to Objective 2.3.1, by amending the wording of the objective as shown in the attached consent memorandum.
- 11 There is also a consequential amendment to strategic direction policy 2.6.2.1 which refers to and paraphrases Objective 2.3.1.

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 these amendments, to understand whether there is overlap between different appeals on the same provisions in the plan.
- 13 There is one other appeal on Objective 2.3.1. The appeal by Robert Wyber (ENV-2018-CHC-281) sought a change to Policy 2.6.2.1 that would result

in a consequential amendment to the wording of Objective 2.3.1 as it applies to productive rural land (DCC reference number 212). However, parties have agreed to resolve Mr Wyber's appeal in a way that does not affect the wording of Objective 2.3.1. This agreement is set out in other consent documentation to be filed with the Court at the same time as the consent memorandum for Objective 2.3.1.

- 14 Amending Objective 2.3.1 will require a consequential change to policies 2.6.1.5 and 2.6.2.1, and Rule 19.12.2.1, as it is paraphrased in those provisions.
- 15 Policy 2.6.1.5, Policy 2.6.2.1 and Rule 19.12.2.1 are subject to other appeals but not with respect to the parts of the policy and rule that paraphrases Objective 2.3.1. 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.
- 16 However, the appeals on Policy 2.6.1.5 and Rule 19.12.2.1 are not yet resolved, and therefore, the consequential changes to these provisions 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 2.3.1 from Policy 2.6.1.5 and Rule 19.12.2.1 but still retain the reference to Objective 2.3.1. This will remove the overlap between the appeal on Objective 2.3.1 and the appeals on Policy 2.6.1.5 and Rule 19.12.2.1. Removing the paraphrasing of the objective will not change the meaning of the policy and rule. It is not within the scope of the appeals on Policy 2.6.1.5 or Rule 19.12.2.1 to revisit the wording of Objective 2.3.1.
- 17 Therefore, I consider that approving the changes to Objective 2.3.1 will not cut across, or affect, the changes that have been sought to be made to these policies and rules in other appeals.

Planning background

- 18 Objective 2.3.1 of the Dunedin 2GP concerns land and facilities that are important for economic productivity and social well-being. Two outcomes are sought for these: firstly, that they be protected from less productive competing uses or incompatible uses; and secondly, that facilities be able to operate efficiently and effectively. The key methods used to achieve Objective 2.3.1 include activity status rules and performance standards that (1) manage other activities that adversely affect land and facilities (for

example by discouraging residential development of rural land, or by requiring sensitive activities to be located outside industrial zones or away from the National Grid), and (2) provide for facilities to be established and operated efficiently and effectively.

- 19 The agreed amendment to the objective would primarily affect clause b of Objective 2.3.1, relating to facilities. Methods that implement Objective 2.3.1 in relation to facilities are described in Policy 2.3.1.5 (transportation routes), Policy 2.3.1.6 (major facilities) and Policy 2.3.1.7 (network utilities).

These policies read as follows:

Policy 2.3.1.5

Identify key transportation routes, and protect the safety and efficiency of these roads from inappropriate subdivision or development through:

- a. rules that control the location and design of access points; and*
- b. rules that require minimum on site car parking and loading requirements*

Policy 2.3.1.6

Identify facilities that contribute significantly to the economic productivity and social wellbeing of the city, including the University of Otago and Otago Polytechnic campuses, hospitals, schools and Invermay, zone these as major facilities and use rules to:

- a. enable them to continue to operate efficiently and effectively, while minimising as far as practicable any adverse effects on surrounding areas; and*
- b. protect them from activities that may lead to reverse sensitivity.*

Policy 2.3.1.7

Enable network utilities through:

- a. identifying National Grid infrastructure on planning maps and protecting the safe and efficient establishment, operation and upgrading of this infrastructure from inappropriate development;*
- b. rules that enable network utilities to be established, operated and upgraded efficiently and effectively, while managing any adverse effects on the environment; and*

- c. *rules that require activities that may damage or impede access to network utilities, and activities that may be sensitive to their effects, to be set back an adequate distance from network utilities.*
- 20 For transportation, Policy 2.3.1.5 is implemented primarily through the methods contained in Section 6. In this chapter, Plan rules provide for transportation activities, such as roading, and manage land use, development and subdivision activities to maintain the safety and efficiency of the transport network.
- 21 For facilities, Policy 2.3.1.6 is implemented primarily through the Major Facility Zones (Sections 21 to 35 of the Plan). The major facilities identified are key facilities throughout the city which contribute to the economic, social and cultural well-being of the community. These facilities are in separate zones with provisions tailored specifically to them. The rules provide for the operation of the major facility and control any activities that are not part of, or ancillary to, the major facility.
- 22 For network utilities, Policy 2.3.1.7 is implemented primarily through the methods contained in Section 5. In this section, Plan rules enable network utility activities where effects can be adequately managed. Rules in the section also manage certain activities near National Grid and near Radio New Zealand's radio transmitters and require earthworks to be setback from all network utilities.

Decision Background

- 23 The Hearings Panel (**Panel**) accepted in part submissions from Vodafone NZ Ltd, Spark New Zealand Trading Ltd, Chorus New Zealand Ltd, Aurora, PowerNet Ltd, Radio New Zealand Ltd and Transpower that requested amendments to the Strategic Directions section of the Plan to give more recognition to the importance of network utilities, and changes to the wording used in the objective to give effect to the National Policy Statement for Electricity Transmission (**NPSET**) 2008. In response to these submissions, the Hearings Panel made changes to the notified wording of Objective 2.3.1 as follows:

Objective 2.3.1: ~~Protection of land~~ Land and facilities important for economic productivity and social well-being

Land and facilities that is are important for economic productivity and social ~~prosperity~~ well-being, ~~including~~ which include industrial areas, major facilities, key transportation routes, network utilities and productive rural land are:

- a. is protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and
 - b. in the case of facilities, able to operate efficiently and effectively.
- 24 The key changes made by the Panel were: to include network utilities in the objective, in recognition of their economic and social benefits; to add a reference to the 'facilities' covered by the objective (i.e. major facilities, transport routes and network utilities) in order to distinguish these from the types of land covered by the objective; and to add clause b in relation to the ability to operate facilities efficiently and effectively. The Panel considered that the amendments made would achieve the outcomes sought by submitters.

Section 75 and Section 32AA Assessment

National Policy Statement on Electricity Transmission 2008 (NPSET)

- 25 The objective of NPSET is: "To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of the new transmission resources to meet the needs of present and future generations..." The associated policies seek to recognise the national benefits of transmission, manage the environmental effects of transmission and manage the adverse effects of third parties on the transmission network.

Partially Operative Regional Policy Statement for Otago 2019 (PORPS)

- 26 Objective 4.3 of the partially Operative Regional Policy Statement for Otago (**PORPS**) is "Infrastructure is managed and developed in a sustainable way". The associated policies (4.3.1 to 4.3.6) are concerned with recognising and providing for infrastructure, protecting infrastructure from the potential adverse effects of other activities, and managing the adverse effects of infrastructure. The policies make specific provision for regionally and nationally significant infrastructure in general, and for the National Grid in particular. Objective 4.3 and policies 4.3.1 to 4.3.6 all fall within the operative part of the PORPS.
- 27 In my view, the amendments agreed to Objective 2.3.1 are consistent with the objectives and policies of these higher order documents.
- 28 The key issues raised in the appeal points addressed in this consent memorandum, as well as in other appeal points from Transpower and Aurora, are whether the 2GP provisions, in accordance with sections 75(3) 'give effect to' relevant national and regional policy statements.

- 29 Having explored this issue thoroughly in discussions held at mediations with a range of stakeholders, in my opinion the proposed amendments better meet the requirements of section 75(3) with respect to giving effect to the NPSET and PORPS.
- 30 I consider that the changes to Objective 2.3.1 set out in the consent memorandum do not significantly alter the effect of the objective. In my opinion, it is likely that the Hearings Panel, in its original decision, intended "operate" (in clause b of the decisions version of Objective 2.3.1) to cover the upgrade, maintenance and development of facilities (including infrastructure), as well as the operation of existing facilities. I consider that, in this context, it is reasonable to interpret "operate" as having this broader meaning. This interpretation reflects how infrastructure, including network utilities, are provided for in the Plan. Therefore, in my view, the amendment to the wording of clause 'b', to replace "are able to operate" with "are able to be operated, maintained, upgraded and, where appropriate, developed" clarifies rather than changes the meaning of the objective.
- 31 In relation to the other change to the objective, to add reference to "infrastructure" in the first line of the provision and in clause 'b', I consider that it is appropriate to include the term "infrastructure" as it is a more accurate and more easily understood descriptor for network utilities and transportation routes than "facilities". Again, in my view, this is a minor change of clarification that does not create a substantive change in how the plan is implemented. This change also aligns with the intent of the decision.
- 32 It is my opinion that the objective as expressed is the most appropriate way to achieve the purpose of the RMA.

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


Elizabeth Moya Lightbourne


A Solicitor of the High Court of New Zealand

Stalle Panayota Zambazos Dowrick
Solicitor
Dunedin