

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-280

Under the Resource Management Act 1991 (**RMA**)

In the matter of an appeals under clause 14(1) of the First Schedule of the RMA
in relation to the proposed Second Generation Dunedin City
District Plan (**2GP**)

Between **Barry Smaill**

Appellant

And **Dunedin City Council**

Respondent

Affidavit of Emma Christmas

Affirmed: 4 December 2020

Concerning: Appeal by Barry Smaill

Group: 1 Non-Strategic

Topic: ICR Zone rules

Appeal point DCC Reference 208

Respondent's solicitors:

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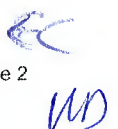
I, **Emma Christmas** of Dunedin, Policy Planner, hereby solemnly and sincerely affirm:

- 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 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 as a policy planner for seven years. During this time I have primarily worked on drafting the proposed Second Generation Dunedin City District Plan (2GP or the Plan), 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 mainly 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 Resource Management Act 1991 (the Act), of the changes agreed in the following consent memo:
 - (a) Inner City Residential Zone rules (Barry Smaill), dated 28 February 2020.
- 5 The appeal by Mr Smaill sought the following changes to the Plan:
 - (a) Removal of Rule 15.5.2.1.e (maximum development potential per site in the Inner City Residential Zone) or amending it so that the density provision is equivalent to the density provided for in the Residential 4 Zone under the operative District Plan (DCC Reference 208).
- 6 There are no s274 parties to the appeal.
- 7 Please note that this affidavit supersedes my previous affidavit dated 28 February 2020, filed with the Court in relation to the Smaill appeal. This current affidavit reflects the direction provided by the Court in the minute of 29 May regarding filing consent orders, and provides updated information on the overlaps remaining between appeals following the completion of Group 2 mediation.

Agreement reached

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8 As outlined in the attached consent memorandum, agreement has been reached between parties to make amendments that rectify the issue identified in paragraph 5(a) above (DCC Reference 208). In summary these changes include:

- (a) A change to the density standard that would introduce a restricted discretionary activity rule for densities of between the (permitted) density of one habitable room per 45m² of site area and one habitable room per 30m². Densities greater than one habitable room per 30m² of site area would remain a non-complying activity.
- (b) Consequential changes to assessment rules to guide assessment of restricted discretionary consent applications.

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 appeals on any of the provisions proposed to be changed.

Planning background

11 The 2GP manages density in the Inner City Residential Zone on a habitable room¹ basis. Rule 15.5.2.1.e states:

- 1. Standard residential activities and visitor accommodation (or any combination of the two on a single site) must not exceed the following density limits:

¹ Habitable room is defined as: 'Any room in a residential unit, family flat, sleep out or visitor accommodation unit that is designed to be, or could be, used as a bedroom. The calculation of a habitable room will exclude only one principal living area per residential unit (including family flats). Any additional rooms in a residential unit, family flat or sleep out that could be used as a bedroom but are labelled for another use, such as a second living area, gym or study, will be counted as a habitable room. In the case of dormitory-style accommodation containing multiple beds, such as is used in some backpacker accommodation, every four beds or part thereof will be treated as one habitable room. For the sake of clarity, a standard 'bunk bed' is counted as 2 beds.'



Zone		i. Minimum site area for a residential unit (excluding family flats)	ii. Maximum development potential per site
e.	Inner City Residential Zone	N/A	1 habitable room per 45m ²

- 12 Contravention of this density limit is a non-complying activity. Guidance on the assessment of consents is included in assessment rule 15.13.5.1.
- 13 Density within the Residential 4 Zone of the Operative District Plan is controlled on a residential unit basis. Rule 8.10.1 permits the following:
- (i) Residential Activity at a density of not less than 200m² of site area per residential unit provided.
- 14 This approach differs from the approach in the 2GP in that it allows one residential unit per 200m² but there is no limit on the number of habitable rooms within each unit.
- 15 The result of the approach used in the operative plan was the creation of very large (8+ bedroom) 'flats' that primarily catered to the student population. This outcome was not necessarily driven by demand for this type of housing, but rather was an outcome created by developers seeking to avoid the need for resource consent. Feedback at the time of plan development was that developers would like to be able to provide for smaller units as there was strong demand for that type of housing. The change made to the density rule (the move to a habitable room per site area rather than unit per site area approach) was to enable this; the purpose of the change was not to reduce the overall density provided, but rather to better provide for smaller units. However, the rule change has had the consequence of making the Plan less permissive in terms of the number of habitable rooms that can be developed on some sites.
- 16 For example, on a 450m² site, under the 2GP ten 1 bedroom dwellings or two 5 bedroom dwellings (or another combination totalling ten rooms) could be constructed; however, under the operative plan, a maximum of two dwellings could be constructed but with an unlimited number of bedrooms.
- 17 The 2GP controls density primarily to manage impacts on infrastructure (objectives 2.7.1 and 9.2.1 and policies 2.7.1.1 and 9.2.1.1), and to maintain the character (aesthetic coherence) of different residential

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environments (objectives 2.4.1 and 15.2.4, and policies 2.4.1.5 and 15.2.4.2). These objectives and policies are discussed below at paragraph 23 onwards as part of my assessment under s32AA.

Decision background

- 18 The Residential Zones Hearings Panel considered the submission from Mr Smaill on maximum development potential per site (1 habitable room per 45m²) in section 3.3.1.1 of the Residential Zones decision².
- 19 Mr Smaill requested that the ICR density provisions be amended to remove the rule relating to maximum development potential per site (1 habitable room per 45m²) as he considered that this rule would decrease permitted density by half. In Mr Smaill's view, this would have been counterproductive and contradictory to the objectives of increasing density in this zone.
- 20 The Panel rejected Mr Smaill's submission. They noted that the process of review results in some new rules being more lenient and others being more restrictive on development than the operative plan. They considered that it was neither appropriate nor possible to have developers choosing which set of rules they wish to follow for each development. Overall, they considered that the proposed rules would provide a balanced approach to density of residential development in the future.

Assessment against higher order provisions (section 75)

National Policy Statement on Urban Development

- 21 The requirements of the National Policy Statement on Urban Development 2020 (NPS-UD) in relation to providing sufficient housing development capacity over the medium term are reflected in Objective 2.6.2 of the 2GP. As discussed below, the changes will assist in achieving Objective 2.6.2. Consequently, I consider that the changes will assist in giving effect to the NPS-UD.

Otago Regional Policy Statement (partially operative)

- 22 The partially operative Otago Regional Policy Statement (**OPRS**) includes the following relevant provisions:

Objective 4.5

² Residential Zones 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/0018/716400/Residential-Zones-Decision-Report.pdf

Urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments.

Policy 4.5.1 Providing for urban growth and development

Provide for urban growth and development in a strategic and co-ordinated way, including by: ...

- c) *Ensuring that there is sufficient housing and business land development capacity available in Otago;*
 - d) *...*
 - e) *Coordinating the development and the extension of urban areas with infrastructure development programmes, to provide infrastructure in an efficient and effective way.*
 - f) *...*
 - g) *Ensuring efficient use of land; ...*
- 23 These matters are implemented through the 2GP objectives and policies, in particular objectives 2.6.2, 2.7.1 and 9.2.1 and policies 2.7.1.1 and 9.2.1.1. The assessment below assesses how these changes will give effect to these provisions.

Section 32AA Assessment

- 24 Density standards in the residential zones are used in the Plan in order to achieve strategic objectives around infrastructure management and (to a lesser extent) maintenance of residential character. The relevant provisions are set out below. Note that Policy 2.7.1.1 and Objective 2.6.2 have been amended through a mediated agreement to the appeal by Robert Wyber (ENV-2018-CHC-281, DCC Reference 212), which is jointly filed to resolve that appeal. The amended versions are shown below.

Relevant objectives and policies - infrastructure

Objective 2.7.1

Public infrastructure networks operate efficiently and effectively and have the least possible long term cost burden on the public.

Policy 2.7.1.1 (as amended through Wyber appeal)

Manage the location of new housing to ensure efficient use and provision of public infrastructure through:

~~Ensure that land use and development does not exceed current or planned public infrastructure capacity through:~~

- a. ~~rules that restrict development limit the density of residential activity to ensure it stays within in-line with current or planned public infrastructure capacity; ...~~

- 25 This objective and policy are reflected in the following objective and policy that sit in Section 9:

Objective 9.2.1

Land use, development and subdivision activities maintain or enhance the efficiency and affordability of public water supply, wastewater and stormwater infrastructure.

Policy 9.2.1.1

Only allow land use or subdivision activities that may result in land use or development activities where:

- a. *in an area with public water supply and/or wastewater infrastructure, it will not exceed the current or planned capacity of that infrastructure or compromise its ability to service any activities permitted within the zone; and*
 - b. *in an area without public water supply and/or wastewater infrastructure, it will not lead to future pressure for unplanned expansion of that infrastructure.*
- 26 The amendments agreed through the Smaill appeal continue to ensure that development does not compromise the current or planned capacity of the public wastewater infrastructure or the ability of the public wastewater infrastructure to service any activities permitted within the zone, because they do not change the permitted threshold for density and the assessment of effects on infrastructure will still be considered as part of a restricted discretionary consent. The amendments are therefore consistent with these objectives and policies.

Relevant objectives and policies – residential character and amenity

Objective 2.4.1

The elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected and enhanced. These include:

- a. important green and other open spaces, including green breaks between coastal settlements;*
- b. trees that make a significant contribution to the visual landscape and history of neighbourhoods;*
- c. built heritage, including nationally recognised built heritage;*
- d. important visual landscapes and vistas;*
- e. the amenity and aesthetic coherence of different environments; and*
- f. the compact and accessible form of Dunedin.*

Policy 2.4.1.5

Maintain or enhance the attractiveness of streetscapes, public open spaces and residential amenity by using rules that manage building bulk and location, site development and overall development density.

- 27 This objective and policy are reflected in the following objective and policy that sit in Section 15.

Objective 15.2.4

Activities maintain or enhance the amenity of the streetscape, and reflect the current or intended future character of the neighbourhood.

Policy 15.2.4.2

Require residential activity to be at a density that reflects the existing residential character or intended future character of the zone.

- 28 Policy 15.2.4.2 describes the way that the density limits have been set in the current plan, which is generally to provide for the density that reflects the existing built form of that area (i.e. enabling a continuation of the same form of development).
- 29 However, density is not the primary method used in the plan to manage effects on amenity and character. These are managed through rules which govern the bulk and location of buildings (such as maximum height, height in relation to boundary, setbacks from boundaries, and maximum building

site coverage³). In addition, resource consent is required for multi-unit development⁴, buildings with a footprint greater than 300m² (Rule 15.3.4.5), and buildings where any wall visible from an adjoining public place has a continuous length of more than 20m (Rule 15.6.1). This is for the purpose of managing effects on neighbourhood character and amenity and ensures that the effects of buildings that are significantly larger than buildings typical of an area can be appropriately managed.

- 30 I note also that changes in density sometimes have no effect on streetscape character, for example the conversion of a single dwelling into two residential units.
- 31 Given the controls outlined above, which remain in place, providing for an increase in density as a restricted discretionary activity as proposed will have minimal or no effect on the ability to manage effects on residential amenity and character and achieve the relevant objectives.

Relevant objectives and policies – residential capacity

- 32 The setting of appropriate density standards is also relevant in terms of achieving the plan's objective around ensuring sufficient development capacity. Objective 2.6.2 is relevant in this regard.

Objective 2.6.2 (as amended through Wyber appeal)

Dunedin provides sufficient, feasible, development capacity (as intensification opportunities and zoned urban land) in the most appropriate locations to at least meet the demand over the medium term (up to 10 years), while sustainably managing urban expansion in a way that maintains a compact city with resilient townships as outlined in Objective 2.2.4 and policies 2.2.4.1 to 2.2.4.3.

- 33 The agreed amendments better enable Objective 2.6.2 as they allow additional development capacity and so will assist in meeting the housing needs of the city (and the requirements under the NPS-UD).

Summary

- 34 In summary, it is my assessment that the changes proposed in this agreement will better enable additional residential capacity, while ensuring that adverse effects on infrastructure and streetscape amenity and

³ Rules 15.6.6, 15.6.13.1, 15.6.10

⁴ Multi-unit development is defined as: The construction of a single or multiple buildings that contain three or more residential units on a site within a two year period

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character continue to be managed effectively. In my opinion, they are a more appropriate way to achieve the plan's objectives.

Effect of any appeals on relevant objectives and policies

- 35 For completeness, I have assessed the appeals on the 2GP objectives and policies discussed above to ensure no appeals are likely to change the policy framework in a way that would change the above s32AA assessment. As noted above, amendments have been agreed to Objective 2.6.2 and Policy 2.7.1.1 through the appeal by Robert Wyber. The change to Objective 2.6.2 is minor in nature. The change to Policy 2.7.1.1 focuses the policy on managing the effects of land use and development activities, rather than rezoning. The amended provisions have been considered above. The Wyber consent memorandum is filed jointly, resolving the DCC reference appeal point.
- 36 Overall, I support the Court approving the proposed changes to the 2GP to resolve this appeal.

Affirmed at Dunedin)
By Emma Christmas)
this 4 day of December 2020)
before me:)

Emma Christmas

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A Solicitor of the High Court of New Zealand

Natalia Panayota Zambazos Downick
Solicitor
Dunedin

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