

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 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	Barry Smaill Appellant
And	Dunedin City Council Respondent

Consent Memorandum

28 February 2020

Respondent's solicitors:

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May it please the Court

- 1 This consent memorandum relates to the appeal by Barry Smaill regarding changes to four performance standards that apply to residential development in the Inner City Residential Zone (ICR).
- 2 The appeal sought changes to Rule 15.5.2.1.e as follows (DCC appeal number 208):

Remove Rule 15.5.2.1.e (maximum development potential per site in ICR) or amend so that the density provision is equivalent to the density provided for in the Residential 4 Zone under the operative District Plan.
- 3 To amend Rule 15.5.11.1.a (DCC appeal number 209):

Amend Rule 15.5.11.1.a (minimum outdoor living space performance standard) to require 35m² of outdoor living space per residential unit in the Inner City Residential Zone.
- 4 The appeal also sought to remove Rule 15.6.10.1.c.ii, impermeable surface performance standard in the ICR, (DCC appeal number 210), and to amend Rule 15.6.6.1.a.ii as follows (DCC appeal number 211):

Amend Rule 15.6.6.1.a.ii (height in relation to boundary performance standard in ICR) to require a height in relation to boundary angle of 72 degrees or other such amendment to achieve the same outcome.
- 5 There are no section 274 parties to this appeal.

Agreement

- 6 The parties have agreed changes to Rules 15.5.2.4, 15.10.3 and 9.5.3 that are shown in **Appendix A**. This resolves the part of the appeal identified as DCC appeal point 208.
- 7 The rationale for the changes, and the assessment of the change in terms of section 32 of the RMA, is explained in an affidavit of Emma Christmas, a senior policy planner at Dunedin City Council. There is also a supporting affidavit of Dr Anna Louise Johnson the City Development Manager, Dunedin City Council that considers alignment with, and impact of, any changes on the strategic directions' objectives and policies (section 2 objective and policies); and the drafting of the proposed amendments to ensure alignment with the 2GP Style Guide.
- 8 Due to the minor nature of the amendments there is no impact on any higher order policies, objectives or strategic directions. No consequential amendments are required.

Partial withdrawal

- 9 The Appellant withdraws its appeal in part relation to DCC appeal points 209 and 210 on the ICR zone rules.
- 10 The part of the Smaill appeal identified as DCC appeal point 211 on the ICR zone rules remains alive and to be addressed by the parties.

Directions sought

- 11 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 resolving DCC appeal point 208;
 - (b) That the withdrawal of DCC appeal points 209 and 210 is noted; and
 - (c) That DCC appeal point 211 is adjourned for a further progress report by Tuesday 31 March 2020.
- 12 The parties agree that costs should lie where they fall and accordingly no order of costs is sought.

Dated this 28th day of February 2020



Phil Page / Derek McLachlan
Counsel for the Appellant



Michael Garbett
Counsel for the Respondent

Appendix A

Amend density performance standard Rule 15.5.2.4

Standard residential activity that contravenes the performance standard for density is a non-complying activity, except the following are restricted discretionary activities:

- a. papakāika that contravenes the performance standards for density;*
- b. standard residential in the General Residential 2 Zone (infrastructure constraint mapped area) that contravenes the performance standards for maximum development potential per site, provided the maximum development potential per site of the activity proposed does not exceed 1 habitable room per 45m²; ~~and~~*
- c. contravention of Rule 15.5.2.3 (bulk and location performance standards for multiple residential buildings on the same site); and*
- d. standard residential in the ICR Zone that contravenes the performance standard for maximum development potential per site (15.5.2.1.e.ii), provided the maximum development potential per site of the activity proposed does not exceed 1 habitable room per 30m².*

Amend the assessment rule for restricted discretionary performance standard contraventions Rule 15.10.3:

3.	Density - (Rule 15.5.2.4.b) <i>standard residential in General Residential 2 Zone infrastructure constraint mapped area (<u>Rule 15.5.2.4.b</u>).</i> <i><u>standard residential in ICR Zone (Rule 15.5.2.4.d)</u></i>	<i>a. Effects on efficiency and affordability of infrastructure</i>	<i>See Rule 9.5</i>
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Amend the assessment rule for restricted discretionary performance standard contraventions Rule 9.5.3 (add new row after 3 and make consequential changes to the numbering of remaining rows):

X.	<u>Density - standard residential in ICR Zone (Rule 15.5.2.4.d)</u>	<u>a. Effects on efficiency and affordability of infrastructure</u>	<u>Relevant objectives and policies:</u> 1. <u>Objective 9.2.1</u> 2. <u>Development in an area with public water supply and/or wastewater infrastructure will not exceed the current or planned capacity of that infrastructure or compromise its ability to service any activities permitted within the zone (Policy 9.2.1.1).</u> <u>General assessment guidance:</u> 3. <u>In determining whether Policy 9.2.1.1 is achieved, Council will consider the cumulative effects of the proposed development together with existing development and permitted development that is likely to arise in the future.</u>
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