

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-281

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 **Robert Francis Wyber**

Appellant

And **Dunedin City Council**

Respondent

Affidavit of Emma Christmas

Affirmed *4 December 2020*

Concerning: Appeal by Robert Francis Wyber

Group: 1

Topic: Residential strategic

Appeal point DCC Reference 212

Respondent's solicitor:

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**anderson
lloyd.**

I, **Emma Christmas** of Dunedin, Senior 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 or senior policy planner for seven years. During this time I have primarily worked on drafting the proposed Second Generation Dunedin City District Plan (the 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 32AA of the Resource Management Act 1991 (the Act), of the changes agreed in the following consent memo.
 - (a) Residential strategic topic (Robert Francis Wyber), dated 16 September 2020.
- 5 The appeal by Mr Wyber sought the following changes to the Plan:
 - (a) Amend Policy 2.6.1.1 to delete reference to Objective 2.2.4 or amend so that supporting Objective 2.2.4 is achieved if possible, but not an absolute requirement;
 - (b) Amend Policy 2.6.2.1 to:
 - (i) Increase the timeline during which adequate supply must be available to 15 years;
 - (ii) Amend references to productive rural land to refer to highly productive land;
 - (iii) Provide for identification of new residential zoned land to enable infrastructure planning to take place; and

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- (iv) Recognise that new development will require extension of public transport.
 - (c) Reinstate Policy 2.6.3.2 and amend clause b.i to release land to provide for a 15 year period.
 - (d) Amend Policy 2.7.1.1 to ensure infrastructure planning occurs to assist in providing adequate urban land; and
 - (e) Delete Appendix 12B.
- 6 Through mediation, the key issues of concern were narrowed to:
- (a) Issue 1 – Ensure the requirements of the National Policy Statement on Urban Development 2020 (NPS-UD) are met, in relation to providing at least enough residential development capacity over the medium term;
 - (b) Issue 2 – That it is inappropriate to require the demonstration of a shortage of residential capacity over the next five years in order for residential transition overlay zones to be ‘released’ for residential development;
 - (c) Issue 3: Ensuring that infrastructure planning and urban planning work together, with clear guidelines about consideration of infrastructure capacity when making decisions about zoning land; and
 - (d) Issue 4: Other minor improvements and clarifications to the wording of policies related to zoning residential land, including in relation to the feasibility of servicing for public transportation and impacts on rural productivity.
- 7 Anthony Reid, BA Building Limited, Balmoral Developments (Outram) Limited, Ben Ponne, Blueskin Bay Holdings Limited, Daisy Link Garden Centres Limited, Gladstone Family Trust, Grant Motion, Hilary Evans, James Lin Limited, Janefields Re-zone Group, Phil Cunningham, RB and SO Chin, Robert Charles Duffy, Saddle Views Estate Limited, The Jensen Trust, William John Morrison, Yvonne Julie Cummings and The Preservation Coalition Trust are section 274 parties to this appeal.

Assessment of other appeals

- 8 As part of my assessment of the appropriateness of the changes sought, 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.



- 9 Resolution of the Wyber appeal includes amendments to Policy 2.6.2.1, which references and/or paraphrases a number of other 2GP objectives. Three of these objectives are sought to be amended through consent memorandum agreed on other appeals, as follows:
- (a) Objective 11.2.1, amended through the appeal by Otago Regional Council (ENV-2018-CHC-290, DCC Reference 98). The amendment is a minor wording clarification in relation to consideration of climate change effects. The changes include a consequential change to Policy 2.6.2.1.d.viii, which paraphrases Objective 11.2.1. A consent memorandum signed by all parties dated 15 October 2019 is jointly filed to resolve this part of ORC's appeal.
 - (b) Objective 2.7.2, amended through the appeal by KiwiRail Holdings Limited (ENV-2018-CHC-252, DCC Reference 229). The amendment broadens the consideration of who the transport network operates safely and efficiently for. This change results in a consequential change to Policy 2.6.2.1.d.x, which paraphrases Objective 2.7.2. A consent memorandum signed by all parties dated 22 September is jointly filed to resolve KiwiRail Holdings Limited's appeal with respect to Objective 2.7.2 and the consequential change to Policy 2.6.2.1.d.x.
 - (c) Objective 2.3.1, amended through the appeal by Transpower New Zealand Limited (ENV-2018-CHC-249, DCC References 107, 135), and Aurora (ENV-2018-CHC—277, DCC Reference 219). The amendment includes infrastructure in the objective, ensuring that it is able to be operated, maintained, upgraded and developed efficiently and effectively. The change includes a consequential change to Policy 2.6.2.1.d.ii. A consent memorandum signed by all parties dated 24 November 2020 is jointly filed to resolve these appeals.
 - (d) I note for completeness that Objective 2.3.1 was also appealed by BP Oil New Zealand and others (ENV-2018-CHC-291, DCC Reference 374). This appeal has been mediated and a consent memorandum signed by all parties dated 31 July 2020 to resolve the appeal. The consent memorandum does not change Objective 2.3.1 or Policy 2.6.2.1.
- 10 Saddle Views Estate Limited (ENV-2018-CHC-283, DCC Reference 323) and Tussock Top Farms Limited (ENV-2018-CHC-282, DCC Reference 301) sought to delete Objective 2.4.4 and policies 2.4.4.1, 2.4.4.2 and 2.4.4.3. The objective and policies are referred to in Objective 2.6.2, and Objective 2.4.4 is paraphrased in Policy 2.6.2.1.d.iv. This appeal has been

mediated and a consent memorandum signed by all parties dated 30 September 2020. The agreement does not change Policy 2.6.2.1.

- 11 These amendments are shown in the Court's marked up version of the 2GP, referenced to the relevant appeal point.
- 12 There are no other appeals on the provisions proposed to be changed.

Planning background

- 13 Planning provisions referred to below are attached in **Annexure A** for reference.

Housing Capacity Monitoring in Dunedin

- 14 Of relevance to the matters discussed below is the recent changes to the growth context in Dunedin, which has seen a significant unanticipated increase in growth rates.
- 15 Over the last five years, Dunedin's population is estimated to have grown by between 0.8% and 1.4% per year, compared to an average annual growth rate of 0.3% over the preceding 15 years (including the time that the 2GP was drafted). In the year to June 2020, Dunedin grew by 1,900 people. This exceeds all growth projections for Dunedin, with the Statistics NZ high growth scenario only projecting growth of 1,100 people (Subnational Population Projections: 2013(base)–2043 update, Statistics New Zealand).
- 16 The latest housing capacity assessment (January 2019) indicated that Dunedin had a significant shortfall in housing development capacity, with demand exceeding the feasible capacity by 1,000 homes over 2018-28. The update to this assessment (due early 2021) is expected to show that the shortfall has increased considerably due to updated population projections.
- 17 This was one of the factors in DCC initiating a variation to the 2GP in February 2019 (Variation 2), which is currently scheduled to go to Council for approval to notify in early 2021.

National Policy Statement on Urban Development

- 18 The NPS-UD came into effect on 20 August 2020, replacing the National Policy Statement on Urban Development Capacity (NPS-UDC). It recognises the national significance of having well-functioning urban environments and providing sufficient urban development capacity to meet the needs of the community. It requires that the DCC provide at least sufficient development capacity to meet expected demand for housing over

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the short, medium and long term¹. This includes providing for housing in a variety of locations and of a variety of types. It includes requirements to enable urban development and intensification in areas close to employment, well serviced by transport or where there is high demand².

- 19 Objective 6 requires that decisions on urban development are integrated with infrastructure planning. Development capacity must be 'infrastructure ready', which means having sufficient infrastructure in place or, for medium term development, having funding identified in the Long Term Plan (LTP), and for long term development having funded identified in the infrastructure strategy³.
- 20 The requirements of the NPS-UD relating to providing sufficient housing capacity over the medium term are primarily reflected in objectives 2.6.1 and 2.6.2 and policies 2.6.1.1 and 2.6.2.1 of the 2GP. Objective 2.7.1 is concerned with provision of efficient and effective infrastructure. These are discussed later in this affidavit.

Otago Regional Policy Statement (partially operative)

- 21 The partially operative Otago Regional Policy Statement (OPRS) includes Objective 4.5, which is that urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments.
- 22 This is implemented by Policy 4.5.1. Clauses b, c and e reflect the requirements of the NPS-UD in relation to monitoring supply and demand, ensuring there is sufficient housing capacity available, and co-ordinating the development of urban areas with infrastructure development programmes to provide infrastructure in an efficient and effective way.
- 23 As noted above, these are implemented through 2GP objectives 2.6.1, 2.6.2 and 2.7.1. Clauses f to j are reflected in other 2GP objectives⁴ that are referenced in Policy 2.6.2.1 (which outlines the criteria for residential zoning decisions).

¹ Policy 2 and implementation section 3.2. Housing capacity for the long term does not need to be included in the district plan.

² Objective 3, Policy 5

³ NPS-UD Implementation section 3.4

⁴ Including objectives 2.2.3, 2.3.1, 2.4.1, 2.4.4, 2.4.5 and 11.2.1 (which relate to biodiversity, productive rural land, amenity values, outstanding landscapes, coastal character and hazards)

2GP Provisions Relevant to Enabling Housing Capacity

- 24 The primary objectives relevant to identifying sufficient housing capacity and ensuring the NPS-UD objectives are met are 2.6.1, 2.6.2 and 2.7.1.

- 25 Objective 2.6.1 is concerned with providing housing choice, and reads:

There is a range of housing choices in Dunedin that provides for the community's needs and supports social well-being.

- 26 This is implemented in part by Policy 2.6.1.1, which is that the Plan's provisions provide for an appropriate mix of development opportunities, including infill development, redevelopment, and greenfield development, that supports maintaining a compact and accessible city (Objective 2.2.4).

- 27 Objective 2.6.2 ensures there is sufficient housing capacity. The agreement includes a change to Objective 2.6.2. The amended wording is:

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.

- 28 The policy that sits beneath Objective 2.6.2 most directly related to decisions on zoning land residential is Policy 2.6.2.1. This brings together a range of considerations and references the 2GP objectives that must be considered when making decisions on zoning residential land. These include objectives on such matters as maintaining a compact city, protecting significant landscapes, biodiversity and economically important productive land and facilities.

- 29 Objective 2.7.1 is also relevant. It is:

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

- 30 Policy 2.7.1.1 includes relevant considerations to ensure the efficient use and provision of public infrastructure. Some clauses apply to land already zoned residential (e.g. assessment rules for land use activities and performance standards for development), and some clauses include considerations for zoning decisions.

Residential Transition Overlay Zones

31 The plan uses Residential Transition Overlay Zones (RTZ), a type of deferred zoning, to provide for areas to transition to residential zoning. The RTZ are areas that have been assessed as appropriate for residential development, but where there is no infrastructure capacity to service them. The intent of the provisions was to 'hold' the new residential zoning until the areas were required and could be serviced. The RTZ is 'released' for residential development (i.e. the new residential zoning and related rule framework is activated) when specified criteria are met. These are that additional residential capacity is required (based on published DCC monitoring of certain indicators) and that infrastructure networks have sufficient capacity to support the new development (also based on DCC publishing a statement to this effect for 3 waters infrastructure), or for transportation infrastructure, that any necessary agreements are in place to provide this.

32 The provisions relating to RTZ are in Section 12. Objective 12.2.1 is:

Land within the Residential Transition Overlay Zone (RTZ) is able to be released and developed in a coordinated way as residential zoned land, in advance of the need for additional residential capacity to accommodate growth.

33 Policy 12.2.1.1 sets up the release framework, incorporating the tests outlined above. This is implemented through Rule 12.3.1.

Decision background

34 The Hearings Panel rejected Mr Wyber's submissions in the Urban Land Supply decision⁵ for the reasons given below:

- (a) Removal of the reference to compact city from Policy 2.6.1.1 (section 3.4.10.1 of the decision): The Panel considered the policy should be consistent with Objective 2.2.4 for plan clarity and legibility. The decision not to remove the reference to Objective 2.2.4 was consistent with their decision to retain references to compact city throughout the plan (section 3.4.1.1).
- (b) Increase the timeline in Policy 2.6.2.1 during which adequate supply must be available, to at least 15 years (section 3.4.12.6). The Panel

⁵ Urban Land Supply Decision of Hearings Panel. Proposed Second Generation Dunedin City District Plan (2GP) 7 November 2018. https://www.dunedin.govt.nz/__data/assets/pdf_file/0007/716407/Urban-Land-Supply-Decision-Report.pdf

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amended this clause as a result of another submission to identify that rezoning should provide capacity for the short term (5 years), and RTZ should provide capacity for the medium term (10 years). The duration of 5 years was chosen to provide at least that required by the NPS for Urban Development Capacity (NPS-UDC), which was in force at the time but has now been superseded by the NPS-UD.

- (c) Add a reference to 'highly' productive land in Policy 2.6.2.1 (where Objective 2.3.1 is paraphrased). The Panel appeared to accept this submission (section 3.4.12.6); however, the addition does not appear in the decisions version of the plan and no amendment along these lines were made to Objective 2.3.1.
- (d) Remove the consideration of servicing by frequent public transport when zoning land residential. The Panel amended the criterion, but declined to remove it, noting that it is a relevant matter when determining new residential zoning (section 3.4.12.6).
- (e) Amend Policy 2.7.1.1 so that infrastructure planning occurs to assist in providing adequate urban land supply (section 3.4.13.1). The Panel agreed that the policy needs to consider infrastructure capacity when considering rezoning or subdivision of new greenfield areas. They amended clause (c) to clarify this.
- (f) Reinstate Policy 2.6.3.2, which is concerned with the release of RTZ land for urban development (section 3.6.5.1). The Panel considered that this duplicates the matters in Section 12 and is unnecessary.
- (g) Delete Appendix 12B (section 3.6.5.1). The Panel agreed to delete this appendix and replace it with a method in Rule 12.3.1, which more closely aligned with the requirements of the NPS-UD.

Agreement reached and analysis in terms of s75 and s32AA

- 35 The following section discusses the agreement reached in relation to each issue identified in paragraph 6, and its appropriateness in terms of s32AA of the Act and giving effect to higher order documents, as required under s75(3) of the Act.
- 36 I note that the changes agreed do not represent a major shift in the approach taken in the 2GP and in my opinion many are relatively minor in nature. Primarily, the changes seek to achieve better alignment with the NPS-UD in accordance with s75 of the Act, to better align the plan rules with programming of infrastructure upgrades (in the Long Term Plan and

infrastructure strategy), and to reflect the changed rate of growth in Dunedin (and therefore key resource management issues of concern).

- 37 Due to the limited nature of the agreed changes, I have kept my s32AA assessment relatively brief.

Issue 1: Ensure the requirements of the NPS-UD are met in relation to providing at least enough capacity over the medium term through zoned land

- 38 Resolving this issue involves amendments to the following provisions:

- (a) Objective 2.6.2;
- (b) Removal of Policy 2.6.2.1.a;
- (c) Policy 2.6.2.1.c.i;
- (d) Addition of new Policy 2.6.2.X.a and b

- 39 While the Hearings Panel gave effect to the NPS-UDC to the extent it was able to within the scope of submissions, additional considerations since that time, including Dunedin's recent high growth rate and the new NPS-UD, mean that amendments are required to give effect to the national policy.

- 40 The change to Objective 2.6.2 ensures that capacity is provided to at least meet demand over the medium term. Removal of Policy 2.6.2.1.a removes the constraint that land can *only* be rezoned if there is a shortage of capacity, which is clearly contrary to the NPS. This reflects Policy 2 of the NPS-UD, which requires that local authorities provide at least sufficient development capacity to meet expected demand. The amendment to Policy 2.6.2.1.c.ii is similar. These changes therefore gives effect to the NPS-US, as required by s75(3) of the Act.

- 41 (For completeness, I note that the aspect of 2.6.2.1.a that deals with whether an RTZ should be applied is replaced by new Policy 2.7.1.X and is discussed in paragraph 52.)

- 42 New Policy 2.6.2.X clauses a and b outlines the NPS-UD requirement to monitor housing capacity and ensure that plan changes occur to provide for sufficient capacity. It also ties the assessment of housing capacity options to the relevant objectives of the plan (2.6.2.1, 2.6.2.3, 2.6.1.1 and new 2.7.1.X).

- 43 In terms of s32, the change to Objective 2.6.2 ensures consistency with the NPS-UD and ORPS requirement to provide sufficient development capacity

and therefore gives effect to these documents. In my opinion, it is the most appropriate way to meet the purpose of the Act.

- 44 The policy changes described above work collectively to ensure Objective 2.6.2 is met. In my opinion, they are the most appropriate way of achieving the objective, and in doing so, better give effect to the NPS-UD and ORPS.

Issue 2: That it is inappropriate to require the need to demonstrate a shortage of residential capacity in order for residential transition overlay zones to be 'released'

- 45 Resolving this issue involves changes to the following:

- (a) Policy 2.2.4.3;
- (b) New Policy 2.7.1.X
- (c) 12.1 introduction
- (d) Policy 12.2.1.1; and
- (e) Rule 12.3.1.

- 46 These changes remove the requirement for a shortage of capacity in the next five years before RTZ areas are released for residential development. The need to meet a capacity test was included in the 2GP at a time that Dunedin was a low growth city. The provisions were designed to prevent too much growth (and the associated potential financial effects on DCC of unnecessary or inefficient infrastructure expansion). This is no longer the case, based on Dunedin's current (and future expected) rate of growth, and the requirement is therefore no longer considered necessary. It would be more efficient if RTZ sites could be 'released' for development as soon as they could be serviced. In addition, the requirement in Rule 12.3.1 that RTZ can only be released for residential development when there is a shortage of capacity in the next five years is not consistent with the requirements of the NPS-UD, which requires there is at least sufficient development capacity to meet 10 years demand. In this respect, the change is similar to those discussed under Issue 1.

- 47 New Policy 2.6.2.X requires that all land assessed for zoning is consistent with 2.7.1.X. Under new Policy 2.7.1.X (see paragraph 52), new RTZ sites will only be identified where the land is intended to be serviced within the next 10 to 15 years, as identified in the DCC's infrastructure strategy. This requirement better ties this method with the DCC's infrastructure planning and is a more effective way of achieving the integrated land use and infrastructure planning that was the intent of the RTZ method.

48 This change more appropriately provides for growth and so reflects the NPS-UD and Objective 2.6.2. It is a more efficient way of enabling development of RTZ areas as it streamlines the release process. It also more appropriately achieves Objective 12.2.1, which requires that the land is released in advance of the need for additional residential capacity to accommodate growth.

49 Policy 2.2.4.3, which sets up the RTZ method, sits under Objective 2.2.4. This objective is:

Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations.

50 In my opinion, the changes are appropriate in terms of Objective 2.2.4 as removing the capacity trigger for RTZ release does not interfere with the promotion of a compact and accessible city. The determination under Policy 2.6.2.1 that an area is suitable for residential development, which takes place when an RTZ is initially identified, explicitly considers this objective. In addition, new policies 2.6.2.X and 2.7.1.X link the zoning of land to infrastructure provision, ensuring that an excess of land that cannot be serviced will not be rezoned.

Issue 3: Ensuring that infrastructure planning and urban planning work together, with clear guidelines about consideration of infrastructure capacity when making decisions about zoning land.

51 Resolving this issue involves changes as follows:

- (a) New Policy 2.7.1.X;
- (b) New Policy 2.6.2.X.c;
- (c) Consequential changes to Policy 2.7.1.1;
- (d) Removal of Policy 2.6.2.1.b;
- (e) A consequential change to the definition of public infrastructure.

52 These amendments provide a clear pathway for determining whether land assessed as suitable for rezoning should be zoned or identified as RTZ (or neither), depending on whether / when it can be serviced. Policy 2.7.1.X requires that residential zoning will only be applied when servicing is currently available or the land is intended to be serviced within the medium term (10 years, as programmed in the LTP). Land that is intended to be serviced over the long term (30 years, as identified in the Infrastructure

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Strategy) will be identified as RTZ. This linking of zoning to the timing of infrastructure provisions reflects the approach taken in the NPS-UD (Implementation section 3.4.3).

- 53 New Policy 2.6.2.1.c provides a link from this policy to the requirements under Policy 2.7.1.X
- 54 The changes to Policy 2.7.1.1 are to a large extent consequential, as they remove the references to zoning decisions and the application of RTZ (which are now incorporated into new Policy 2.7.1.X). This refocuses Policy 2.7.1.1 on land use and development activities, with some minor (non-substantive) wording changes.
- 55 Policy 2.6.2.1.b is removed as this duplicates 2.6.2.1.d.ix.
- 56 The changes to these policies work collectively to achieve Objective 2.7.1 and 2.6.2; that is, that infrastructure networks develop in an efficient manner, and provision for growth through rezoning residential land and the associated infrastructure upgrades are undertaken in a co-ordinated fashion. In my opinion, the changes outlined are appropriate to achieve these objectives, and in doing so, they give effect to the NPS-UD and ORPS.

Issue 4: Other minor improvements and clarifications to the wording of strategic policies related to zoning residential land.

- 57 The changes relevant to this issue are as follows:
 - (a) An amendment to Policy 2.6.2.1.d.ii to provide additional guidance on how Objective 2.3.1 (protecting productive rural land) will be achieved when assessing the suitability of land for residential zoning;
 - (b) A minor amendment to Policy 2.6.2.1.c.iii, so that the requirement that a potential new residential area is feasibly, rather than easily, able to be serviced by public transport;
 - (c) Removal of the reference to Objective 2.2.4 (compact city) from Policy 2.6.1.1, as this is (more appropriately) already included in Policy 2.6.2.1.d.xi.
- 58 These changes are relatively minor in nature. The guidance added in relation to assessments against Objective 2.3.1 incorporates a weighing up of the effects on rural productivity against the positive effects of meeting housing needs. This approach reflects the cost – benefit approach in proposed Policy 3 of the discussion document for the NPS on Highly Productive Land. While that document (and Policy 3) has no legal status, it

provides useful guidance. Should the requirements of the NPS (proposed to be released mid 2021) differ, a plan change may be required in the future to ensure the 2GP is consistent.

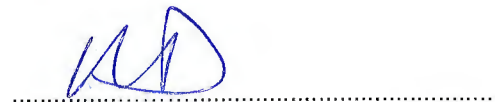
- 59 Policy 2.6.2.1.c.iii aims to assist in achieving a number of 2GP objectives, in particular Objective 2.2.4 - Compact and accessible city and Objective 2.2.2 - Energy resilience. The requirement for servicing by public transport is not a prerequisite to zoning – it is one of a suite of factors of which a majority must be met. The change continues to achieve these objectives.
- 60 The remaining change, to remove reference to Objective 2.2.4, is explained above and will not affect the requirement to achieve Objective 2.2.4.
- 61 Overall, the changes made through this appeal provide an appropriate framework to ensure there is sufficient development capacity, and that decisions on development capacity are integrated with infrastructure planning. They give effect to the NPS-UD and ORPS and are an appropriate way to achieve the objectives of the 2GP.

Effect of any appeals on relevant objectives and policies

- 62 For completeness, I have assessed the appeals on the 2GP objectives and policies to ensure no appeals are likely to change the policy framework in a way that would change the above s32AA assessment.
- 63 A number of overlapping appeals have been discussed in paragraphs 9 and 10 above. There are no other appeals that could change the 2GP provisions in a way that would affect my s32AA assessment.
- 64 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:)


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A Solicitor of the High Court of New Zealand

Natalia Panayota Zambazos Dowrick
Solicitor
Dunedin



Annexure 1 Relevant Planning Provisions

National Policy Statement on Urban Development 2020

Objective 3

Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:

- a) the area is in or near a centre zone or other area with many employment opportunities
- b) the area is well-serviced by existing or planned public transport
- c) there is high demand for housing or for business land in the area, relative to other areas within the urban environment.

Objective 6

Local authority decisions on urban development that affect urban environments are:

- a) integrated with infrastructure planning and funding decisions; and
- b) strategic over the medium term and long term; and
- c) responsive, particularly in relation to proposals that would supply significant development capacity.

Policy 2

Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.

Implementation section 3.2

3.2 Sufficient development capacity for housing

- 1) Every tier 1, 2, and 3 local authority must provide at least sufficient development capacity in its region or district to meet expected demand for housing:
 - a) in existing and new urban areas; and
 - b) for both standalone dwellings and attached dwellings; and
 - c) in the short term, medium term, and long term.
- 2) In order to be sufficient to meet expected demand for housing, the development capacity must be:
 - a) plan-enabled (see clause 3.4(1)); and
 - b) infrastructure-ready (see clause 3.4(3)); and

- c) feasible and reasonably expected to be realised (see clause 3.26);
and
- d) for tier 1 and 2 local authorities only, meet the expected demand plus the appropriate competitiveness margin (see clause 3.22).

Implementation section 3.4

3.4 Meaning of plan-enabled and infrastructure-ready

- 1) Development capacity is plan-enabled for housing or for business land if:
 - a) in relation to the short term, it is on land that is zoned for housing or for business use (as applicable) in an operative district plan
 - b) in relation to the medium term, either paragraph (a) applies, or it is on land that is zoned for housing or for business use (as applicable) in a proposed district plan
 - c) in relation to the long term, either paragraph (b) applies, or it is on land identified by the local authority for future urban use or urban intensification in an FDS or, if the local authority is not required to have an FDS, any other relevant plan or strategy.
- 2) For the purpose of subclause (1), land is **zoned** for housing or for business use (as applicable) only if the housing or business use is a permitted, controlled, or restricted discretionary activity on that land.
- 3) Development capacity is **infrastructure-ready** if:
 - a) in relation to the short term, there is adequate existing development infrastructure to support the development of the land
 - b) in relation to the medium term, either paragraph (a) applies, or funding for adequate infrastructure to support development of the land is identified in a long-term plan
 - c) in relation to the long term, either paragraph (b) applies, or the development infrastructure to support the development capacity is identified in the local authority's infrastructure strategy (as required as part of its long-term plan).

Otago Regional Policy Statement

Objective 4.5

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:

- a) Ensuring future urban growth areas are in accordance with any future development strategy for that district.
- b) Monitoring supply and demand of residential, commercial and industrial zoned land;
- 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) Having particular regard to:
 - i. Providing for rural production activities by minimising adverse effects on significant soils and activities which sustain food production;
 - ii. Minimising competing demands for natural resources;
 - iii. Maintaining high and outstanding natural character in the coastal environment; outstanding natural features, landscapes, and seascapes; and areas of significant indigenous vegetation and significant habitats of indigenous fauna;
 - iv. Maintaining important cultural or historic heritage values;
 - v. Avoiding land with significant risk from natural hazards;

- g) Ensuring efficient use of land;
- h) Restricting urban growth and development to areas that avoid reverse sensitivity effects unless those effects can be adequately managed;
- i) ...
- j) Consolidating existing coastal settlements and coastal urban areas where this will contribute to avoiding or mitigating sprawling or sporadic patterns of settlement and urban growth.

2GP Provisions

Objective 2.6.1

There is a range of housing choices in Dunedin that provides for the community's needs and supports social well-being.

Policy 2.6.1.1

Provide for housing development necessary to meet the future housing needs of Dunedin, through zones and rules that provide for an appropriate mix of development opportunities, including: infill development, redevelopment, and greenfield development; and that support Objective 2.2.4. Identify housing needs based on population projections and analysis of housing types required.

Objective 2.6.2

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.

Policy 2.6.2.1

Identify areas for new residential zoning based on the following criteria:

- a. rezoning is necessary to meet a shortage of residential capacity (including capacity available through releasing a Residential Transition overlay zone), either:
 - i. in the short term (up to 5 years); or
 - ii. in the medium term (up to 10 years), in which case a Residential

- Transition overlay zone is applied to the rezoned area; and
- b. rezoning is unlikely to lead to pressure for unfunded public infrastructure upgrades, unless either an agreement between the infrastructure provider and the developer on the method, timing, and funding of any necessary public infrastructure provision is in place, or a Residential Transition overlay zone is applied and a future agreement is considered feasible; and
 - c. the area is suitable for residential development by having all or a majority of the following characteristics:
 - i. a topography that is not too steep;
 - ii. being close to the main urban area or townships that have a shortage of capacity;
 - iii. currently serviced, or likely to be easily serviced, by frequent public transport services;
 - iv. close to centres; and
 - v. close to other existing community facilities such as schools, public green space and recreational facilities, health services, and libraries or other community centres;
 - d. considering the zoning, rules, and potential level of development provided for, the zoning is the most appropriate in terms of the objectives of the Plan, in particular:
 - i. the character and visual amenity of Dunedin's rural environment is maintained or enhanced (Objective 2.4.6);
 - ii. land and facilities that are important for economic productivity and social well-being, which include industrial areas, major facilities, key transportation routes, network utilities and productive rural land are:
 - 1. protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and
 - 2. in the case of facilities, able to operate efficiently and effectively (Objective 2.3.1).
Achieving this includes generally avoiding areas that are highly productive land or may create conflict with rural water resource requirements;
 - iii. Dunedin's significant indigenous biodiversity is protected or enhanced, and restored; and other indigenous biodiversity is maintained or enhanced, and restored; with all indigenous biodiversity having improved connections and improved resilience (Objective 2.2.3). Achieving this includes generally avoiding the application of new residential zoning in ASBV and UBMA;
 - iv. Dunedin's outstanding and significant natural landscapes and natural features are protected (Objective 2.4.4). Achieving this

- includes generally avoiding the application of new residential zoning in ONF, ONL and SNL overlay zones;
- v. the natural character of the coastal environment is, preserved or enhanced (Objective 2.4.5). Achieving this includes generally avoiding the application of new residential zoning in ONCC, HNCC and NCC overlay zones;
 - vi. subdivision and development activities maintain and enhance access to coastlines, water bodies and other parts of the natural environment, including for the purposes of gathering of food and mahika kai (Objective 10.2.4);
 - vii. the elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected or enhanced. These include:
 - 1. important green and other open spaces, including green breaks between coastal settlements;
 - 2. trees that make a significant contribution to the visual landscape and history of neighbourhoods;
 - 3. built heritage, including nationally recognised built heritage;
 - 4. important visual landscapes and vistas;
 - 5. the amenity and aesthetic coherence of different environments; and
 - 6. the compact and accessible form of Dunedin (Objective 2.4.1);
 - viii. the potential risk from natural hazards, including climate change, is no more than low, in the short to long term (Objective 11.2.1);
 - ix. public infrastructure networks operate efficiently and effectively and have the least possible long term cost burden on the public (Objective 2.7.1);
 - x. the multi-modal land transport network, including connections between land air and sea transport networks, operates safely and efficiently for all road users (Objective 2.7.2); and
 - xi. Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations (Objective 2.2.4).

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

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

- a. rules that restrict development density in line with current or planned public infrastructure capacity;
- b. consideration of public infrastructure capacity as part of zoning and rules that enable intensification of housing;
- c. consideration of public infrastructure capacity as part of the identification of transition overlay zones, assessment of changes to zoning, or assessment of any greenfield subdivision proposals;
- d. assessment rules that require consideration of whether any discretionary or non-complying activities would consume public infrastructure capacity provided for another activity intended in the zone and prevent it from occurring; and
- e. rules that control the area of impermeable surfaces in urban areas to enable stormwater to be absorbed on-site, and reduce the quantity of stormwater run-off.

Objective 12.2.1

Land within the Residential Transition Overlay Zone (RTZ) is able to be released and developed in a coordinated way as residential zoned land, in advance of the need for additional residential capacity to accommodate growth.

Policy 12.2.1.1

In the Residential Transition Overlay Zone (RTZ) provide for land to transition to residential zoned land through a certification process by the Chief Executive Officer or their delegate when:

- a. the estimated total residential capacity is less than 120% of the projected total residential demand in the RTZ residential capacity assessment mapped area over the next five years;

- b. water supply, wastewater and stormwater infrastructure capacity is sufficient to support the additional residential development; and
- c. an agreement between the DCC and the developer on the method, timing and funding of any necessary transportation infrastructure is in place.

Rule 12.3.1

1. In a Residential Transition Overlay Zone (RTZ), the provisions of the specified future residential zone will apply to any part of that zone that is "released" by the Chief Executive Officer or their delegate certifying that the requirements in Rule 12.3.1.2 (a), (b) and (c) are met.
2. The Chief Executive Officer or their delegate must certify to release land in a Residential Transition Overlay Zone (RTZ) following receipt of an application demonstrating that:
 - a. the estimated total residential capacity is less than 120% of the projected total residential demand in the RTZ residential capacity assessment mapped area over the next 5 years, as indicated by analysis undertaken by the DCC in accordance with the National Policy Statement for Urban Development Capacity and published on the DCC website; and
 - b. the DCC has published a statement on its website that:
 - i. further development within the Residential Transition Overlay Zone will meet the following criteria, demonstrated by modelling using accepted industry practice:
 1. fire flows within the piped treated water network servicing the Residential Transition Overlay Zone meet the New Zealand Fire Service Firefighting Water Supplies Code of Practice (SNZ 4509:2008);
 2. water pressure within the piped treated water network servicing the Residential Transition Overlay Zone is maintained between 300-900 kPa; and
 3. surcharge of pipes and flooding out of manholes will not occur during a design rainfall event (10% AEP) within the wastewater network necessary for the servicing of potential development that is being released; or

- ii. a contract has been awarded that will ensure any necessary infrastructure upgrades required to meet the tests in Rule 12.3.1.b.i are completed within three years; and
 - c. an agreement between the DCC and the developer on the method, timing and funding of any necessary transportation infrastructure is in place.
- 3. Areas that have a Residential Transition Overlay Zone may be released in whole or in part, and where more areas are requested to be released than can meet the criteria above, they will be released on a first come first served basis following an application to the Chief Executive Officer or their delegate that meets the criteria outlined in Rule 12.3.1.
- 4. The analysis required by clause 2(a) above will be completed and published on the DCC website as follows:
 - a. Residential capacity will be calculated at least annually.
 - b. Residential demand will be calculated at least every three years.
- 5. The statement on water supply and wastewater infrastructure capacity may specify the number of additional dwellings for which there is infrastructure capacity.