

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

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

In the matter of 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

ENV-2018-CHC-280

Robert Francis Wyber

ENV-2018-CHC-281

Otago Regional Council

ENV-2018-CHC-290

KiwiRail

ENV-2018-CHC-252

Transpower New Zealand Limited

ENV-2018-CHC-249

Aurora Energy Limited

ENV-2018-CHC-277

Anthony Parata

ENV-2018-CHC-214

Appellants

And

Dunedin City Council

Respondent

Memorandum of Counsel regarding Residential Priority Bundle

4 December 2020

Respondent's solicitor:

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**anderson
lloyd.**

May it please the Court

- 1 This memorandum is filed on behalf of Dunedin City Council (**Council**) to explain the "Residential Priority bundle" of consent memoranda and supporting affidavits that are filed following Court-assisted mediation on the Second Generation District Plan (**2GP or Plan**).
- 2 Relevant Minutes from the Environment Court that have guided the Council are:
 - (a) 29 May 2020 – Mediation and filing of applications for consent orders; and
 - (b) 9 June 2020 – Case management expectations.
- 3 The Residential Priority bundle centres on two consent memoranda to resolve appeals on residential issues. These are: the appeal from Robert Wyber on the Residential Strategic topic; and the appeal from Barry Small on the Inner City Residential Zone Rules topic. The bundle also includes three further consent memoranda on topics that are related to the Residential Strategic topic because they affect objectives that are paraphrased in the strategic policy for residential zoning (Policy 2.6.2.1). These are: the appeal from the Otago Regional Council on Objective 2.2.1 (Natural Hazards Strategic topic); the appeal from KiwiRail Holdings Limited on Objective 2.7.2 (Management of Rail topic); and the appeals from Transpower NZ Ltd and Aurora Energy Ltd on Objective 2.3.1 (Network Utilities Strategic topic).
- 4 In total, therefore, Council submits five consent memoranda to the Court for consideration to resolve the appeals in the Residential Strategic and Inner City Residential Zone Rules topics.
- 5 Council requests that the Court consider and make determinations on the relevant parts of the following attached consent memoranda, each of which is signed by all parties:

- (a) Consent Memorandum - Residential Strategic dated 16 September 2020, in relation to Wyber (ENV-2018-CHC-281)
- (b) Consent Memorandum dated 28 February 2020, in relation to Barry Smaill (ENV-2018-CHC-280)
- (c) Consent Memorandum - Transportation (Management of Rail), 22 September 2020, in relation to KiwiRail Holdings Ltd (ENV-2018-CHC-252)
- (d) Consent Memorandum – Objective 2.3.1 dated 24 November 2020, in relation to Transpower NZ Ltd (ENV-2018-CHC-249) and Aurora Energy Ltd (ENV-2018-CHC-277)
- (e) Consent Memorandum dated 15 October 2019, in relation to Otago Regional Council (ENV-2018-CHC-290).

Request for Priority Consideration of These Consent Memoranda

- 6 The Respondent respectfully requests that the Court consider these consent memoranda as a priority, as well as the Parata appeal in the Manawhenua bundle that was filed with the Court on 25 November 2020. This is due to the relationship between amendments agreed in the Smaill, Wyber and Parata appeals and changes being proposed through Variation 2. This relationship is explained in detail in the affidavit A of Dr Anna Louise Johnson dated 4 December 2020. In summary, Council wishes to avoid the situation of the provisions agreed through these appeals becoming in any way "tangled up" with Variation 2.
- 7 Council sees Variation 2 as critical to address constraints on housing availability in Dunedin. This is supported by the letter from Ms Sandy Graham, Chief Executive Officer of the Dunedin City Council (attached as Annexure A).
- 8 Work on Variation 2 has been ongoing since early 2019 and it is expected to be notified on 3 February 2021, provided that the content of the variation is approved by the Council at a meeting scheduled for 29 January 2021. To meet these dates the Council staff are working to finalise the content of Variation 2 no later than 15 January 2021.
- 9 Therefore, if at all possible, the Respondent requests that these consent memoranda are considered by the Court so a decision on the application for orders is made by 23 December.
- 10 Such an outcome would be very much appreciated if it can be accommodated by the Court.

- 11 Due to the overlap with other appeals, the Wyber consent memorandum could not be filed with the Court at an earlier date. As discussed above, resolution of the Wyber appeal includes amendments to Policy 2.6.2.1, which references and/or paraphrases a number of other 2GP objectives. One of these is Objective 2.3.1, amended through the appeal by Transpower New Zealand Limited (ENV-2018-CHC-249, DCC References 107, 135), and Aurora Energy Limited (ENV-2018-CHC—277, DCC reference 219). Agreement on the resolution of Objective 2.3.1 was finalised after the resumed network utilities mediation on 24 November.
- 12 For the Court's information, the Council is working on signing consent memoranda in respect of site-specific residential zoning appeals (see paragraphs 15 - 16 of Dr Anna Johnson's affidavit A). The Council is planning to file these with the Court prior to notification of Variation 2.

Affidavits and Draft Orders

- 13 There are seven affidavits from the Council Planning staff filed with these consent memoranda, addressing the content of the proposed changes, the planning framework, section 32AA RMA, and the 2GP style guide. These are:
 - (a) Affidavit A of Dr Anna Johnson regarding the relationship of the appeals and Variation 2;
 - (b) Affidavit B of Dr Anna Johnson regarding Wyber, Smaill and other appeals;
 - (c) Affidavit of Emma Christmas concerning the appeal by Robert Francis Wyber;
 - (d) Affidavit of Emma Christmas concerning the appeal by Barry Smaill;
 - (e) Affidavit of Sarah Hickey concerning the appeal by Otago Regional Council;
 - (f) Affidavit of Elizabeth Lightbourne concerning the appeal by KiwiRail Holdings Ltd; and
 - (g) Affidavit of Elizabeth Lightbourne concerning the appeals by Transpower New Zealand Limited and Aurora Energy Limited.
- 14 Also filed is a single draft consent order dealing with all appeals together. This contains the relevant amendments agreed to in the five memoranda in one place, in Plan order. This should assist the Court to view these proposed changes.

- 15 Please note that the affidavit of Emma Christmas concerning the appeal by Barry Small and the affidavit of Sarah Hickey concerning the appeal by Otago Regional Council supersede, respectively, the previous affidavit of Emma Christmas dated 28 February 2020 filed with the Court in relation to the Smaill appeal, and the previous affidavit of Sarah Hickey dated 15 October 2019, filed with the Court in relation to the Otago Regional Council appeal. The current affidavits reflect the direction provided by the Court in the minute of 29 May 2020 regarding filing consent orders and provides updated information on the overlaps remaining between appeals following the completion of Group 2 mediation.

Objective 2.7.2

- 16 We would like to draw to the Court's attention the agreed change to Objective 2.7.2, which is contained in the Management of Rail consent memorandum. This change responds to the appeal by KiwiRail (ENV-2018-CHC-252, DCC Reference 229). As discussed above, this change results in a consequential change to residential strategic Policy 2.6.2.1, which paraphrases Objective 2.7.2 and, as a result, the change is related to the Wyber appeal in the Residential Strategic topic.
- 17 The purpose of filing the Management of Rail consent memorandum is to resolve KiwiRail's appeal with respect to Objective 2.7.2 and the consequential change to Policy 2.6.2.1 only. At this stage, the other changes agreed with KiwiRail and the 274 parties are not the subject of the consent order, and will not be submitted to the Court until a later date. This is because certain other changes agreed in the Management of Rail consent memorandum overlap with appeals that are not yet resolved.

Track change version

- 18 It is also pointed out that there is a track change version of the 2GP in PDF showing those changes in context available for the Court on the DCC's 2GP Appeals Information webpage¹ at this link https://www.dunedin.govt.nz/data/assets/pdf_file/0009/773469/Full-Plan.pdf.

Dated this 4th day of December 2020



Michael Garbett/Pip Walker
Counsel for the Respondent

¹ <https://www.dunedin.govt.nz/council/district-plan/2nd-generation-district-plan/appeals-information>

Annexure A – letter from Ms Sandy Graham, CEO Dunedin City Council

3 December 2020

Michael Garbett and Pip Walker
Anderson Lloyd
Private Bag 1959
Dunedin

Dear Michael and Pip

Variation 2 to proposed Second Generation Dunedin City District Plan

- 1 The purpose of this letter is to highlight the urgent need for new greenfield's housing development in Dunedin. The Dunedin City Council (DCC) proposes to use Variation 2 to the proposed Second Generation Dunedin City District Plan (2GP) to achieve this.
- 2 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. 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 over that same period (Subnational Population Projections: 2013(base)–2043 update, Statistics New Zealand).
- 3 Dunedin's house prices have also seen significant growth over the same period, with the average house price increasing by 80.9% over the last five years and 15.6% over the last 12 months (Q3 Property Market and Economic Update, CoreLogic). This increase has flowed into rental costs, which have risen by 10% over the last year (Rental bond data, Ministry of Business Innovation and Employment) and this has exacerbated affordability issues for households that already spend a greater proportion of their income on housing costs (Household income and housing-cost statistics: Year ended June 2019, Statistics New Zealand).
- 4 According to four key housing affordability indicators, Dunedin has been becoming significantly less affordable in recent years to the point where over the last year Dunedin has become less affordable than Wellington and Hamilton, despite being a smaller city with a lower growth rate (Housing Affordability Report, CoreLogic; Subnational population estimates, Statistics New Zealand).
- 5 Consents for new homes in Dunedin remain at historically high levels, with 423 new homes receiving building consent in the year to June 2020. However this is failing to keep up with demand, and the Council has projected that 663 new homes are required to meet population growth over the same period.
- 6 Discussions with real estate agents, developers, and land development professionals indicate that a lack of available land is constraining development and the development that is

occurring is on land that was previously considered marginal due to slope and other constraints. This drives up the development costs and consequently sale prices. Due to the timeframes associated with converting greenfield land to housing (roughly three-four years), there is a need to rezone land and enable development opportunities as soon as possible in order to positively impact on housing supply in a reasonable timeframe.

- 7 Accordingly as Chief Executive of the DCC I consider that urgent notification of Variation 2 to the 2GP is required as it will provide land for much needed residential development in Dunedin. This will help address the housing shortage facing Dunedin, as well as addressing housing affordability issues.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Sandy Graham', written over the printed name and title.

Sandy Graham
Chief Executive Officer/Kaiwhakahaere Matua