

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti 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 Frances Wyber**

Appellant

And **Dunedin City Council**

Respondent

Consent memorandum – Residential strategic

16 September 2020

Respondent's solicitors:

Michael Garbett | Georgia Cassidy

Anderson Lloyd

Level 10, Otago House, 477 Moray Place, Dunedin 9016

Private Bag 1959, Dunedin 9054

DX Box YX10107 Dunedin

p + 64 3 477 3973 | f + 64 3 477 3184

michael.garbett@al.nz | georgia.cassidy@al.nz

**anderson
lloyd.**

May it please the Court

- 1 This consent memorandum relates to Robert Wyber's (**Wyber**) appeal regarding the Residential Strategic provisions of the proposed Dunedin City Second Generation District Plan (**2GP**).
- 2 The Wyber appeal sought to amend the Strategic directions as follows (DCC Reference number 212):
 - (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
 - (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.
- 3 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 Hill Group, The Jensen Trust, William John Morrison, Yvonne Julie Cummings and The Preservation Coalition Trust are section 274 parties to this appeal.
- 4 The parties have agreed to the changes to the Plan set out in **Appendix A**.
- 5 The rationale for these changes, and the assessments in terms of section 32 of the RMA, is explained in an affidavit of Emma Christmas, a policy planner at Dunedin City Council.

- 6 This is a partial settlement of the appeal (DCC Reference number 212). The appeal reference points, topics and status of proceedings for the unresolved appeal points are as follows:
- (a) Appeal point 376, which relates to Rural Residential Strategic provisions is grouped with the PCT appeal, which is progressing to a jurisdictional hearing.
- 7 The agreed changes shown in **Appendix A**:
- (a) Amend strategic objectives and policies concerned with zoning land for residential use and provision of infrastructure: Objective 2.6.2, policies 2.6.1.1, 2.6.1.2 and 2.7.1.1;
 - (b) Add two new strategic directions policies: 2.6.2.X and 2.7.1.X;
 - (c) Amend the provisions relating to the release of residential transition overlay land: Objective 2.2.4.3, Policy 12.2.1.1, Rule 12.3.1 and consequential changes to the definition of public infrastructure and the Section 12 introduction.
- 8 There is also a supporting affidavit of Dr Anna Louise Johnson, the City Development Manager at Dunedin City Council, that considers alignment with, and impact of, any changes on the strategic directions objectives and policies and the drafting of the proposed amendments to ensure alignment with the 2GP Style Guide. Dr Johnson considers that the amendments have been drafted to be in keeping with the 2GP Style Guide.

Orders sought

- 9 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; and
 - (b) That the remaining parts of this appeal remain to be dealt with at a later date.
- 10 The parties agree that costs should lie where they fall and accordingly no order of costs is sought.

Dated this 16th day of September 2020



Phil Page/Derek McLachlan
R F Wyber
Counsel for the Appellant



Michael Garbett
Counsel for the Respondent



Derek McLachlan
for BA Building Limited
Section 274 Party



Derek McLachlan
Counsel for Balmoral Developments (Outram) Limited
Section 274 Party



Derek McLachlan
Counsel for Blueskin Bay Holdings Limited
Section 274 Party



Derek McLachlan
Counsel for R Chin
Section 274 Party



Derek McLachlan
Counsel for S Chin
Section 274 Party



Derek McLachlan
Counsel for Yvonne Cummings
Section 274 Party



Derek McLachlan
Counsel for Phil Cunningham
Section 274 Party



Derek McLachlan
Counsel for Daisy Link Garden Centres Limited
Section 274 Party



Derek McLachlan
Counsel for Gladstone Family Trust
Section 274 Party



Derek McLachlan
Counsel for James Lin Limited
Section 274 Party



Derek McLachlan
Counsel Janefields Re-zone Group
Section 274 Party



Derek McLachlan
Counsel for William Morrison
Section 274 Party



Derek McLachlan
Counsel for Grant Motion
Section 274 Party



Phil Page/Derek McLachlan/Simon Peirce
Counsel for Ben Ponne
Section 274 Party



Derek McLachlan
Counsel for Anthony Reid
Section 274 Party



Derek McLachlan
Counsel for Hilary Evans
Section 274 Party



Derek McLachlan
Counsel for The Jensen Trust
Section 274 Party

Craig Werner
for The Preservation Coalition Trust
Section 274 Party



Derek McLachlan
Counsel for Robert Charles Duffy
Section 274 Party

Derek McLachlan
Counsel for The Jensen Trust
Section 274 Party



Craig Werner
for The Preservation Coalition Trust
Section 274 Party

Derek McLachlan
Counsel for Robert Charles Duffy
Section 274 Party



Derek McLachlan
Counsel for Saddle Hill Group
Section 274 Party

Appendix A

Definition of public infrastructure

Public infrastructure consists of:

- 3-waters public infrastructure, which is the public reticulated systems of pipes and associated accessory structures that enables the management and distribution of stormwater, wastewater or water supply. This excludes any private stormwater, wastewater or water supply systems or structures; and
- transport public infrastructure, which is the public roading networks (including DCC and NZTA managed roads).

Policy 2.2.4.3:

Ensure expansion of urban areas occurs in the most appropriate locations and only when required by:

- a. use of transition overlay zones to identify areas to provide for future residential, commercial and industrial needs; and appropriate criteria for the release of land based on:
 - i. public infrastructure provision; and
 - ii. for residential and commercial and mixed use zoned land, a shortage of capacity.
- b. ...

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 2.6.1.1:

~~Provide for housing development necessary to meet the future housing needs of Dunedin, through zones and rules that p~~
Provide for an appropriate mix of development opportunities, through zones and rules that deliver opportunities for 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.

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~~ feasible to be 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; and
- 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~~ Objective 2.3.1 includes generally avoiding areas that:

- a. are highly productive land where this may have significant adverse effects on rural productivity or adverse effects on rural productivity that outweigh any positive effects related to achieving Objective 2.6.2, considering both loss of current and potential future rural productivity and reverse sensitivity effects;
- b. contain high value productive rural activities, or activities critical for the rural productive sector, such as rural industry processing activities, or areas that may result in reverse sensitivity effects on those activities; or
- c. may create conflict with rural water resource requirements;

iii. ...

Add new Policy 2.6.2.X:

Ensure sufficient housing development capacity is provided by:

- a. regularly monitoring housing development capacity and demand; and
- b. initiating or supporting a change to the plan to add housing development capacity when the additional housing development capacity provided for:
 - i. will ensure that the minimum requirements of the NPS on Urban Development are met; and
 - ii. is appropriate to achieve the objectives of the plan, particularly because:
 - 1. for all greenfield rezoning, it is consistent with Policy 2.6.2.1;
 - 2. for medium density rezoning, it is consistent with Policy 2.6.2.3;
 - 3. for all rezoning, it is consistent with Policy 2.6.1.1; and
 - 4. for all rezoning, it is consistent with Policy 2.7.1.X; and
- c. ensuring any public infrastructure upgrades necessary to service the housing capacity provided through the change to the plan are, or are anticipated by the DCC to be, programmed in the DCC's Long Term Plan

or Infrastructure Strategy, unless a private development agreement is in place that meets Policy 2.7.1.X.

Policy 2.7.1.1

~~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; and
- 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. policies and 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 onsite, and reduce the quantity of stormwater runoff.

Add new Policy 2.7.1.X

Ensure any new or amended residential zoning and associated provisions, including provisions applied within any associated overlay zones or mapped areas, support the efficient and effective delivery of public infrastructure by:

- a. only applying a new, alternative or amended residential zone where, for 3-waters public infrastructure:
 - i. existing 3-waters public infrastructure is available and has sufficient capacity to service the development provided for; or
 - ii. any necessary 3-waters public infrastructure upgrades are, or are anticipated by the DCC to be, programmed in the DCC's Long Term Plan for completion in the next 10 years; and
- b. only applying a new, alternative or amended residential zone where, for transport public infrastructure, rezoning is unlikely to lead to pressure for transport public infrastructure upgrades that are not programmed in the DCC's Long Term Plan for completion in the next 10 years; unless
- c. for either or both of clauses (a) and (b) above, a private development agreement has been reached with the DCC to ensure any necessary public infrastructure will be provided or funded by the developer or private infrastructure is agreed as being acceptable; and
- d. only applying a Residential Transition Overlay Zone when:

- i. any necessary public infrastructure upgrades are, or are anticipated by the DCC to be, programmed in the DCC's Infrastructure Strategy for completion in the next 15 years; or
- ii. DCC confirms that a private development agreement could be used to ensure any required public infrastructure that is not programmed in the DCC's Infrastructure Strategy can be provided by the developer through the development process.

12.1 Introduction

...

A number of preferred areas for transition to, or between, urban uses are identified in this Plan, and rules included which provide for their transition to a different zoning ~~if and when they are required due to a shortage of land available in existing zoned areas~~. Such areas include:

1. areas for future residential zoning, which have been identified in a Residential Transition Overlay Zone (RTZ);
2. ...

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.

Amend 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), ~~and (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.~~ a. 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.~~a.i. are completed within three years; and
- ~~c.~~ b. 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.