

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

IN THE MATTER of the Resource Management Act 1991

AND of appeals under clause 14 of the First
Schedule to the Act

BETWEEN TRANSPOWER NEW ZEALAND LIMITED
(ENV-2018-CHC-000249)
KIWIRAIL HOLDINGS LIMITED
(ENV-2018-CHC-000252)
AURORA ENERGY LIMITED
(ENV-2018-CHC-000277)
OTAGO REGIONAL COUNCIL
(ENV-2018-CHC-000290)
Appellants

AND DUNEDIN CITY COUNCIL
Respondent

Environment Judge J E Borthwick – sitting alone under s 279 of the Act

In Chambers at Christchurch

Date of Consent Order: 18 December 2020

CONSENT ORDER

A: Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

(a) the changes shown in **Appendix 1** be made;



- (b) that the part of the appeal by Otago Regional Council (DCC Reference number 98) be resolved;
- (c) that the remaining parts of the appeal by Otago Regional Council be dealt with at a later date;
- (d) that the parts of the appeals by Transpower New Zealand Limited (DCC Reference number 107) and Aurora Energy Limited (DCC Reference number 219) be resolved;
- (e) that the remaining parts of the appeals by Transpower New Zealand Limited and Aurora Energy Limited be dealt with at a later date;
- (f) That the part of the appeal by KiwiRail Holdings Limited (DCC Reference number 229) be partially resolved;
- (g) That the remaining part of the appeal by KiwiRail Holdings Limited be dealt with at a later date.

B: Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] The court has read and considered the appeals, the memoranda of the parties (Transportation (Management of Rail) dated 22 September 2020 (KiwiRail Holdings Ltd appeal)), consent memorandum 15 October 2019 (Otago Regional Council appeal) and consent memorandum Objective 2.3.1 dated 24 November 2020 (Transpower New Zealand Ltd and Aurora Energy Ltd appeals)), and the memoranda of Counsel dated 4 December 2020, 14 December 2020 and the joint memorandum of Counsel dated 16 December 2020.

[2] The court has also read and considered affidavits affirmed by Dr A L Johnson, Ms E M Lightbourne, Ms E Christmas and Ms S C Hickey dated 4 December 2020, and one affirmed by Dr Johnson on 14 December 2020.



[3] This application for consent orders,¹ concerns only some of the changes proposed in earlier consent memoranda, with the remaining matters in the consent memoranda to be considered at a later date.

Otago Regional Council

[4] Agreement has been reached to make the following amendment to the 2GP:

Objective 2.2.1: Risk from natural hazards

The risk to people, communities, and property from natural hazards, ~~considering and from~~ the potential effects of climate change on natural hazards, is no more than low.

[5] Consequential amendments to Objective 11.2.1 and strategic direction policies 2.6.2.1.d.viii and 2.6.2.3.c.iv are required as a result of the above amendment and are included in this consent order.

[6] BP Oil New Zealand Ltd, Z Energy Ltd and Mobil Oil New Zealand Ltd gave notice that they wished to be s 274 parties to this appeal, and have signed the original consent memorandum dated 15 October 2019 and the joint consent memorandum dated 16 December 2020:

KiwiRail Holdings Ltd

[7] Agreement has been reached between the parties to amend the wording of Objective 2.7.2 by removing the reference to 'all road users'. There is also a consequential amendment to strategic direction Policy 2.6.2.1, which refers to Objective 2.7.2.

[8] The following s 274 parties to this appeal have signed the original consent memorandum dated 22 September 2020 and the joint consent memorandum dated 16 December 2020:

- Transpower New Zealand Ltd;
- Federated Farmers of New Zealand;
- Otago Regional Council; and
- Royal Forest and Bird Protection Society of New Zealand Inc.

¹ Dated 16 December 2020.



Transpower New Zealand Ltd/Aurora Energy Ltd

[9] The parties have agreed the following changes:

- (a) an amendment to the wording of Objective 2.3.1 as it applies to infrastructure; and
- (b) a consequential amendment to Policy 2.6.2.1.

[10] The following s 274 parties to these appeals have signed the original consent memorandum dated 24 November 2020 and the joint consent memorandum dated 16 December 2020:

- Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou;
- Te Rūnanga o Ngāi Tahu;
- University of Otago;
- Federated Farmers of New Zealand;
- Horticulture New Zealand;
- Chorus New Zealand Ltd, Spark New Zealand Trading Ltd, Vodafone New Zealand Ltd; and
- Radio New Zealand Ltd.

Other matters

[11] The court will only make orders if it is satisfied it is appropriate to do so and where there is no relationship between the provisions as proposed to be amended by consent orders and other appeals before the court. The various affidavits referred to above have satisfied me that that the orders are appropriate.

[12] Dr Johnson has also assured the court that the proposed amendments are drafted in line with the 2GP drafting protocol set out in the *2GP Style Guide April 2019 – incorporating change made through 2GP decisions*.²

[13] For completeness, I record the parties' attestation that they are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction and

² A L Johnson affidavit dated 4 December 2020 at [14].



conform to relevant requirements and objectives of the RMA, including Part 2 and on that basis request that the amendments shown in strikethrough and underline in Appendix 1 are made.

[14] The parties agree that costs should lie where they fall and accordingly no order for costs is sought.

Outcome

[15] All parties to the proceedings have executed the memorandum requesting the orders. Based on the information before me, I am satisfied pursuant to s 32AA of the Resource Management Act 1991, that the amendments proposed are the most appropriate way to achieve the relevant objectives. As the orders will promote the purpose of the Act, I will make the orders sought.

Jane 3

J E Borthwick
Environment Judge



APPENDIX 1

Objective 2.2.1: Risk from natural hazards {ORC}

The risk to people, communities, and property from natural hazards, ~~considering~~ and from the potential effects of climate change on natural hazards, is no more than low.

Objective 2.3.1 {Transpower, Aurora}

Land, ~~and~~ facilities and infrastructure 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~~:

- a. are protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and
- b. in the case of facilities and infrastructure, are able to be operated, maintained, upgraded and, where appropriate, developed efficiently and effectively.

Policy 2.6.2.1 {Aurora, KiwiRail, ORC, Transpower}

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

...

- 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 and infrastructure **{Transpower, Aurora}** 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. are 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 and infrastructure, are able to be operated, maintained, upgraded and, where appropriate, developed **{Transpower, Aurora}** efficiently and effectively (Objective 2.3.1).



...

3.

...

- 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 and from the potential effects of climate change on natural hazards, is no more than low, in the short to long term (Objective 11.2.1) **{ORC}**;
- 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~~ **{KiwiRail}** (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).



Policy 2.6.2.3 {ORC}

Identify areas for new medium density zoning based on the following criteria:

- a. alignment with Policy 2.6.2.1; 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 an **infrastructure constraint mapped area** is applied; and
- c. 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. there is a range of housing choices in Dunedin that provides for the community's needs and supports social well-being (Objective 2.6.1);
 - ii. Dunedin reduces its reliance on non-renewable energy sources and is well equipped to manage and adapt to changing or disrupted energy supply by having reduced reliance on private motor cars for transportation (Objective 2.2.2), including through one or more of the following:
 - being currently serviced, or likely to be easily serviced, by frequent public transport services; and
 - being close (good walking access) to existing centres, community facilities such as schools, public green spaces recreational facilities, health services, and libraries or other community centres; and
 - iii. 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:
 - important green and other open spaces, including green breaks between coastal settlements;
 - trees that make a significant contribution to the visual landscape and history of neighbourhoods;
 - built heritage, including nationally recognised built heritage;
 - important visual landscapes and vistas;
 - the amenity and aesthetic coherence of different environments;
 - the compact and accessible form of Dunedin (Objective 2.4.1); and
 - iv. the potential risk from natural hazards, including and from the potential effects of climate change on natural hazards, is no more than low, in the short to long term (Objective 11.2.1); and
- d. the area is suitable for medium density housing by having all or a majority of the following characteristics:
 - i. lower quality housing stock more likely to be able to be redeveloped;
 - ii. locations with a topography that is not too steep;
 - iii. locations that will receive reasonable levels of sunlight; and
 market desirability, particularly for one and two person households.

Objective 2.7.2: Efficient transportation {KiwiRail}

The multi-modal land transport network, including connections between land, air and sea transport networks operates safely and efficiently ~~for all road users~~.

Objective 11.2.1 {ORC}

Land use and development is located and designed in a way that ensures that the risk from natural hazards, including and from the potential effects of climate change on natural hazards, is no more than low, in the short to long term.

