

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

IN THE MATTER of the Resource Management Act 1991

AND of an appeal under clause 14 of the First
Schedule of the Act

BETWEEN KĀTI HUIRAPA RŪNAKA KI
PUKETERAKI AND TE
RŪNANGA O ŌTĀKOU

(ENV-2018-CHC-240)

Appellant

AND DUNEDIN CITY COUNCIL

Respondent

Environment Judge P A Steven – sitting alone under section 279 of the Act
In Chambers at Christchurch

Date of Consent Order: 16 March 2021

CONSENT ORDER

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

- (1) the appeal is allowed subject to the amended provisions marked in
Appendix 1, attached to and forming part of this consent order; and
- (2) the appeal by Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o
Ōtākou (ENV-2018-CHC-240) remains extant.

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



REASONS

Introduction

[1] This consent order relates to an appeal by Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou¹ (Ngā Rūnanga) regarding the Manawhenua provisions in the proposed Dunedin City Second Generation District Plan (2GP) and responds to the consent memorandum dated 27 August 2020. The memorandum was bundled with another dated 11 November 2020 in relation to the appeal by Mr A H Parata.² Together, the memoranda proposed amendments to resolve the Manawhenua Topic in its entirety. Mr Parata's appeal was later withdrawn on 18 December 2020.

[2] Responding to the court's Minute dated 25 February 2021,³ the parties filed a further updated memorandum dated 2 March 2021. The court has considered that memorandum and is satisfied that its concerns have been adequately addressed by the further amendments proffered.

[3] The parties have settled an agreement which resolves the appeal in part. The agreement reached involves relatively minor amendments that clarify that resource consent processes for activities located within a wāhi tūpuna mapped area, that are identified as a threat, will require input from Manawhenua to ensure that its kaitiakitaka can be exercised. The remaining parts of the appeal will be dealt with at a later date.⁴

[4] The court will only make orders if it is satisfied it is appropriate to do so and where there is no relationship between the provision as proposed to be

1 ENV-2018-CHC-240.

2 ENV-2018-CHC-214.

3 The Minute raised concern that rules 3.7.3.4 and 15.11.5.7 should include references to Appendix 4.

4 These involve amendments to Policy 16.2.3.4 and Rule 16.11.2.4 to require that all mines and landfill sites be restored to a high standard; and to ensure important ridgelines are correctly mapped and/or identified in the 2GP.



amended by consent order and other appeals before the court. Dr Johnson and Ms Christmas has satisfied me that the orders sought to resolve the Manawhenua provisions appealed are appropriate. Moreover, granting the relief sought by this order will not impact on the resolution of any other proceeding.⁵

Other matters

[5] The s 274 parties to each appeal have all signed the relevant memoranda seeking these orders.⁶

[6] Dr Johnson has 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*.⁷

[7] 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 conform to the relevant requirements and objectives of the Resource Management Act 1991 (RMA), including Part 2 and on that basis request that the amendments shown in strikethrough and underline in Annexure 1 are made.

[8] The parties to the appeal agree that costs should lie where they fall and accordingly no order for costs is sought.⁸

Outcome

[9] All parties to the proceeding have executed the memorandum requesting the orders. Based on the information before me, I am satisfied pursuant to s 32AA of the RMA, that the amendments proposed are the most appropriate way to

⁵ Affidavit of E Christmas, at [34].

⁶ Pursuant to s 274 of the RMA Blackhead Quarries Limited, Federated Farmers of New Zealand and Oceana Gold New Zealand Limited all joined the Ngā Rūnanga appeal. https://www.dunedin.govt.nz/data/assets/pdf_file/0007/715867/2GP-Style-Guide.pdf, affidavit of Dr A L Johnson, at [9].

Ngā Rūnanga consent memorandum dated 27 August 2020, at [10].



achieve the relevant objectives. As the orders will promote the purpose of the Act,
I will make the orders sought.



P A Steven
Environment Judge



Appendix 1

Amend Rule 3.7.3.4:

4.	<p>In a wāhi tūpuna mapped area <u>where the activity is identified as a threat in Appendix A4:</u></p> <ul style="list-style-type: none"> • Public artworks - large scale • Public display boards • Public toilets 	a. Effects on cultural values of Manawhenua	See Rule 14.4
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Amend Rule 5.7.5:

<p>5.7.5 Assessment of restricted discretionary performance standard contraventions located in an overlay zone or mapped area, or affecting a scheduled item</p>		
Activity	Matters of discretion	Guidance on the assessment of resource consents
X	<p><u>In a wāhi tūpuna mapped area:</u></p> <ul style="list-style-type: none"> • <u>Setback from coast and water bodies</u> 	<p>a. <u>Effects on cultural values of Manawhenua</u></p> <p><u>See Rule 14.3</u></p>



Amend Rule 5.8.3:

5.8.3 Assessment of restricted discretionary network utility activities in an overlay zone, mapped area, heritage precinct, or scheduled item		
Activity	Matters of discretion	Guidance on the assessment of resource consents
4. In a wāhi tūpuna mapped area where network utility activities are identified as a threat in Appendix A4: <ul style="list-style-type: none"> • <u>Network utility structures – large scale (amateur radio configurations only)</u> • <u>Network utility poles and masts – small scale</u> • <u>Wind generators – small scale</u> • <u>Hydro generators - small scale</u> • <u>Solar panels – small scale</u> • <u>All other network utility structures – small scale</u> 	a. Effects on cultural values of Manawhenua	See Rule 14.4

Amend Rule 14.4.2.4:

4	All <u>General</u> subdivision activities <u>where effects on cultural values of Manawhenua is a matter of discretion</u>	a. Where in a wāhi tūpuna mapped area , effects on cultural values of Manawhenua	<p><i>Relevant objectives and policies:</i></p> <ul style="list-style-type: none"> i. Objective 14.2.1 i. In a wāhi tūpuna mapped area where subdivision is identified as a threat in Appendix A4 (Policy 14.2.1.4). i. In a wāhi tūpuna mapped area identified as having mahika kai values (Policy 14.2.1.3). <p><i>Potential circumstances that may support a consent application include:</i></p> <p>...</p>
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Amend 14.6 to add new section 14.6.X:

14.6.X Assessment of non-complying performance standard contraventions	
<u>Activity</u>	<u>Guidance on the assessment of resource consents</u>
1. <u>All non-complying performance contraventions that are linked to section 14.6</u>	<p><i>Relevant objectives and policies (priority considerations):</i></p> <p>a. <u>Objectives 14.2.1</u></p> <p>b. <u>In a wāhi tūpuna mapped area where the activity is identified as a threat in Appendix A4, adverse effects on the relationship between Manawhenua and wāhi tūpuna are avoided or if avoidance is not practicable, are no more than minor (Policy 14.2.1.4).</u></p> <p><i>Related strategic directions</i></p> <p>a. <u>Objectives 2.5.1, 2.5.3, 2.5.4, policies 2.5.1.2, 2.5.3.1 and 2.5.4.1.</u></p> <p><i>General assessment guidance:</i></p> <p>b. <u>Council will consider the findings of a cultural impact assessment provided with the application for resource consent, where required (see Special Information Requirements - Rule 14.7.1).</u></p>

Amend Rule 15.11.5.7:

7.	<p><u>In a wāhi tūpuna mapped area where the activity is identified as a threat in Appendix A4:</u></p> <ul style="list-style-type: none"> All subdivision activities <u>General subdivision</u> 	a. Effects on cultural values of Manawhenua	See Rule 14.4
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Amend 16.12.5:

16.12.5 Assessment of non-complying performance standard contravention	
Performance standard	Guidance on the assessment of resource consents
X	<p><u>In a wāhi tūpuna mapped area:</u></p> <ul style="list-style-type: none"> • <u>Density</u> • <u>Minimum site size</u> • <u>Tree species</u>

Relevant guidance from other sections (priority considerations):

See Section 14.6 for guidance on the assessment of resource consents in relation to Objective 14.2.1 and effects on the cultural values of Manawhenua

Amend 17.12.6:

17.12.6 Assessment of non-complying performance standard contraventions	
Performance standard	Guidance on the assessment of resource consents
X.	<p><u>In a wāhi tūpuna mapped area:</u></p> <ul style="list-style-type: none"> • <u>Density</u> • <u>Minimum site size</u> • <u>Tree species</u>

Relevant guidance from other sections (priority considerations):

See Section 14.6 for guidance on the assessment of resource consents in relation to Objective 14.2.1 and effects on the cultural values of Manawhenua

