

UNDER the Resource Management Act 1991

AND

IN THE MATTER of an appeal under Section 120 of the Act

BETWEEN **OTAGO REGIONAL COUNCIL**

Appellant

A N D **DUNEDIN CITY COUNCIL**

Respondent

A N D **LAURENCE AND RAEWYN PRATTLEY**

Applicants

NOTICE OF APPEAL TO ENVIRONMENT COURT

Dated 9 September 2016

ROSS DOWLING MARQUET GRIFFIN
SOLICITORS
DUNEDIN

Solicitor: A J Logan

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PO Box 1144
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NOTICE OF APPEAL TO ENVIRONMENT COURT

To the Registrar
Environment Court
Christchurch

1 **Otago Regional Council** appeals a decision on the following matter:

An application by Laurence and Raewyn Prattley for land use consent for two residential units at 38 Richmond Street, Dunedin.

2 Otago Regional Council made a submission on that application.

3 Otago Regional Council received notice of the decision on 29 August 2016.

4 The decision was made by Dunedin City Council.

5 Otago Regional Council is not a trade competitor for the purposes of Section 308D of the Resource Management Act 1991.

6 The decision Otago Regional Council is appealing is:

6.1 The decision of Dunedin City Council to grant land use consent LUC-2016-110 permitting the establishment of two residential units at 38 Richmond Street, Dunedin.

7 The land affected is 38 Richmond Street, Dunedin.

8 The reasons for the appeal are as follows:

8.1 The land at 38 Richmond Street, Dunedin is subject to natural hazards, in particular flooding, sea level rise and liquefaction.

8.2 The application is for consent to a non-complying activity.

8.3 The proposed activity is contrary to the objectives and policies of the operative District Plan and the proposed District Plan.

8.4 The effects of the proposed activity on the environment will be more than minor.

8.5 The application is contrary to the operative Regional Policy Statement and proposed Regional Policy Statement.

8.6 The application is contrary to Part 2 of the Resource Management Act.

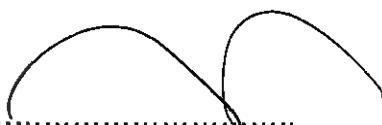
8.7 Neither the site nor the activity makes the proposal a true exception.

8.8 Nothing about the application sets it apart from other similar applications in the same zone.

8.9 The granting of the consent fails to recognise or provide for the natural hazards to which the site is subject.

- 8.10 The conditions of the land use consent granted are uncertain and are also inadequate to manage the natural hazards to which the site is subject.
- 9 Otago Regional Council seeks the following relief:
- 9.1 Consent be refused; or
- 9.2 If consent is granted, the conditions be certain, practical and enforceable and adequate to effectively manage the natural hazards to which the site is subject.
- 9.3 Costs.
- 10 Otago Regional Council attaches the following documents to this notice:
- 10.1 A copy of the application;
- 10.2 A copy of the decision;
- 10.3 A copy of the Otago Regional Council's submission; and
- 10.4 A list of names and addresses of persons to be served with a copy of this notice

A copy of L A and R J Prattley's application and a copy of the decision of the Dunedin City Council are not attached to the service copies of this notice of appeal but may be obtained, on request, from the appellant.


.....
A J Logan
(solicitor for Otago Regional Council)

9.9.2016
.....
Date

Address for service of person wishing to be a party:

Ross Dowling Marquet Griffin Solicitors 50 Princes Street (PO Box 1144 or DX YP80015) Dunedin	
Telephone	(03) 477 8046
Fax	(03) 477 6998
Contact person:	A J Logan

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing [or service] requirements (see form 38).

Advice

If you have any questions about this notice, contact the Environment Court in Christchurch.

Names and Addresses of Persons to be Served

Laurence and Raewyn Prattley
14 Churchill Street
St Kilda
Dunedin 9012

Dunedin City Council
PO Box 5045
Moray Place
Dunedin 9058

Heritage New Zealand Pouhere Taonga
PO Box 5467
Moray Place
Dunedin 9058

RMA Form 13
Submission on publicly notified application concerning resource consent
Sections 96 Resource Management Act 1991

To: Dunedin City Council
 PO Box 5045
 Dunedin 9058

Name of submitter: Otago Regional Council

This is a submission in opposition of resource consent applications: LUC-2016-110

Applicant: L A and R J Prattley

Brief Description of Application: Establish two non-complying residential units on a 438m² property at 38 Richmond Street, South Dunedin which will not comply with the minimum density requirement of 300m² of site per residential unit.

Submission overview

The specific parts of the application that this submission relates to are:

- natural hazards

This submission is:

The Otago Regional Council (ORC) opposes this application.

Decision requested

The Otago Regional Council seeks the decision that Dunedin City Council (DCC) decline consent.

The Otago Regional Council wishes to be heard in support of this submission.

1. South Dunedin setting

The wider South Dunedin area, shown in Figure 1, has been identified as being subject to a number of risks, due in part to the land being relatively low in relation to sea level. DCC has identified the shaded area in Figure 1 as being classified 'Hazard 3 – Coastal' in the review of its district plan (2GP). The applicants' property at 38 Richmond Street is within this area near Forbury Corner.

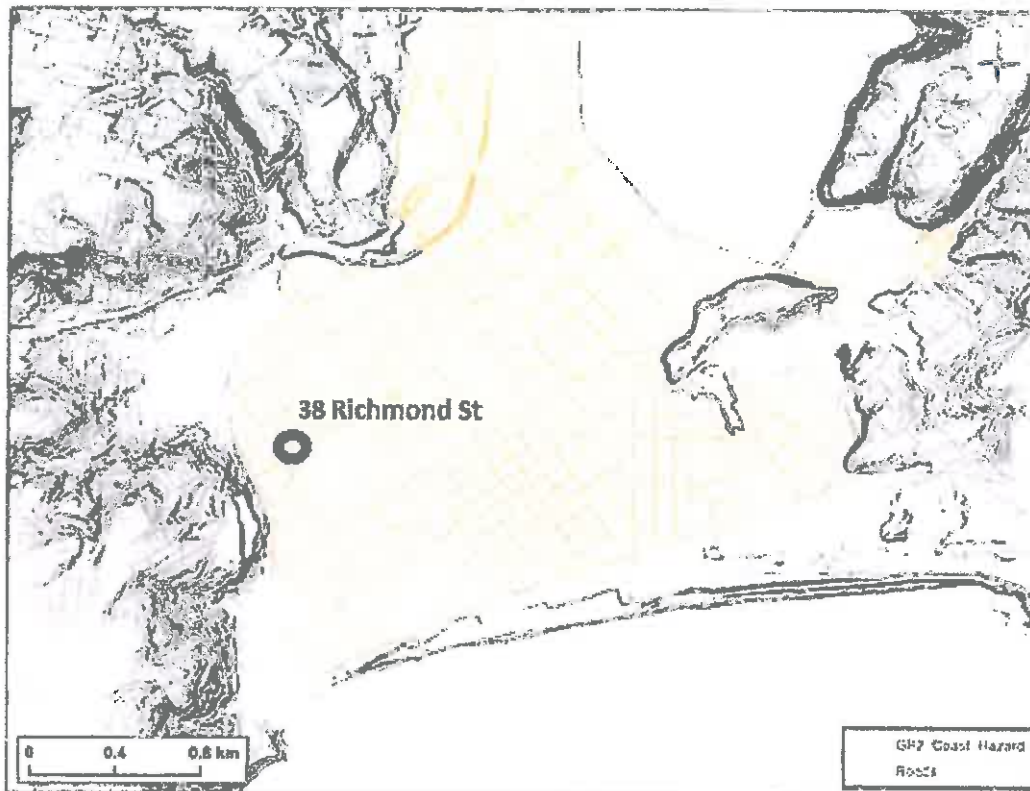


Figure 1: Extent of Hazard 3 Coastal layer for South Dunedin

2 Natural Hazards

2.1 Risk

The topography of the wider Forbury Corner area rises gradually towards the north-west. ORC has previously assessed this area is less likely to be directly affected by elevated sea level or tsunami events although surface ponding may occur in some places if an event coincided with heavy rainfall¹.

38 Richmond Street is in the south-west extent of Forbury Corner, and the topography here is relatively low lying and similar to the wider South Dunedin area that is within the Hazard 3 coastal layer.

The 2014 ORC report 'Coastal hazards of the Dunedin City District' discusses that communities in areas, such as South Dunedin with shallow groundwater tables, are vulnerable to inundation from a number of sources including the ponding of surface runoff. Modelled sea-level rise is expected, in general, to increase the likelihood and adverse effects (such as inundation) in South Dunedin.

With a large population (approximately 10,000 people), South Dunedin faces a number of risks (coastal erosion, tsunami, inundation). Inundation from ponding/flooding has been experienced and meets the threshold of 'risk likelihood' and 'moderate consequences' as classified in the 2GP notified plan. The classifications include:

¹ Page 58, ORC report *Community Vulnerability to elevated sea level and coastal tsunami events in Otago* (2012)

- The risk is 'very likely';
- May have moderate consequences, in particular
 - Serious structural damage to property which is costly but still repairable;
 - Physical isolation on site for more than two days;
 - Limited reliance on civil defence.

ORC notes that much of the South Dunedin area is also classified as being possibly susceptible to liquefaction risk due to in part to areas formed by reclamation as well as the high ground water table and make up of the soil substrate.

A flood event combined with another natural hazard event, such as an earthquake sufficient to cause liquefaction (such as has been experienced in Christchurch in 2010 and 2011) would further exacerbate the consequences in this area.

2.2 Coastal Otago flood event 3 June 2015

A significant area of South Dunedin, within the Hazard 3 – Coastal layer, was flooded on 3 June 2015.

A low-pressure system to the southeast of the South Island brought heavy rainfall to coastal Otago on 3 June 2015 (the 2015 flood event). A heavy, persistent rainfall resulted in significant flooding due to surface runoff and excess stormwater in many areas of Dunedin City, including South Dunedin.

The 2015 flood event resulted in surface ponding/flooding in Richmond Street. Evidence of this flooding is shown in Figures 2 to 4.



Figure 2: Annotated aerial photograph showing flooding in relation to 38 Richmond Street – photo may not reflect full extent of flooding. Photograph courtesy of Otago Daily Times



Figure 3: Flooding at 18 Richmond Street around 3 June 2015. 18 Richmond Street identified in Figure 2. Photo credit Hamish McNeilly/Fairfax NZ²



Figure 4: Flooding in Richmond Street around 3 June 2015, location shown is approximately around 18 Richmond Street. Photo credit Hamish McNeilly/Fairfax NZ³

² <http://www.stuff.co.nz/national/69268192/Dunedin-launches-nationwide-flood-appeal>

It is important to note Figure 2 may not show the point of time where the flooding reached its peak. However, Figure 2 does illustrate that flooding appeared more intense toward the south-west end where 38 Richmond Street is located. Figures 3 and 4 illustrate the level of flooding effect experienced in Richmond Street.

The effects of the 2015 flood event were compounded in South Dunedin by elevated ground water levels due to sea level, which peaked in the afternoon of the event.

Analysis of the Silver Stream and Water of Leith flow records following the event showed that the frequency and magnitude of flood peaks has been noticeably greater during the previous ten years (2006-2015) than during the preceding 40 years⁴.

The evidence shows the predicted consequences of a flood event were realised (arguably being more than 'moderate') in 2015 and it was a significant natural hazard event.

2.3 Exacerbation of Risk: Impervious Services

South Dunedin is a highly modified, urban environment, and impervious surfaces contributed to the volume of flooding. The application will result in a further increase in impervious surfaces (roof and sealed yard space) which will add incrementally to the volume of surface runoff in Richmond Street, as well increase the risk of the stormwater infrastructure being overwhelming, as occurred during the 2015 flood event.

ORC notes that DCC has confirmed that *"...given the volume of rainfall and the system at capacity during the June event, the water would have been unable to enter the network even if all mudtanks were clear"*³.

3 Assessment of Application

It is important to assess the application against the objectives and policies of the operative and proposed Regional Policy Statements as well as the 2GP.

3.1 Regional Policy Statement and Proposed Regional Policy Statement

Policy 11.53 of the operative Regional Policy Statement (RPS) for Otago requires development on sites or areas recognised as being prone to significant hazards to be restricted unless adequate mitigation can be provided.

ORC's position, in applying the operative RPS policy, is that the significant flood hazard risk faced by South Dunedin cannot be appropriately mitigated at a development by development level. Mitigation, if possible, will need to be at a suburban infrastructural level at the least.

³ <http://www.stuff.co.nz/national/69268192/Dunedin-launches-nationwide-flood-appeal>

⁴ ORC Report *Coastal Otago flood event: 3 June 2015*(2015)

⁵ <http://www.dunedin.govt.nz/your-council/latest-news/april-2016/report-on-south-dunedin-infrastructure-performance-during-june-2015-flood-released>

3.2 Proposed Regional RPS

The proposed RPS requires the following:

- Managing natural hazard risk (Policy 3.2.4) based on:
 - the risk posed, likelihood and consequences
 - implications of residual risk
 - community's tolerance of that risk
- Avoiding increased risk (Policy 3.2.6) including:
 - avoiding activities that significantly increase risk
- Reducing existing natural hazard risk (Policy 3.2.7) by:
 - discouraging activities that increase risk
 - considering the use of exit strategies for areas of significant risk
 - reassessing natural hazard risk, and community tolerance of that risk, following significant natural hazards events.

As notified, the application of 'Hazard 3 – coastal' in the 2GP to South Dunedin is inconsistent with the policies of the proposed Regional Policy Statement.

The seriousness and significance of the existing risk and consequences for South Dunedin has been investigated and documented by ORC, the key points of which are discussed above.

Accordingly, ORC requested areas, such as South Dunedin, are reclassified with a 'Hazard 2 – Coastal' layer in the 2GP. This would reflect the natural hazard risks to the community are well understood and provide appropriate policies and rules to control inappropriate increases in the density of residential occupation within the South Dunedin area at this time.

3.3 Proposed Dunedin District Plan: 2GP

The DCC states the proposed 2GP contains no rules relevant to this application. Natural hazards are not addressed in the application. From ORC staff's reading of the 2GP, the only rules the 'Hazard 3 - Coastal' classification controls are building height and buildings being relocatable (see proposed 2GP rules 11.3.3 and 11.3.4) and these rules have no legal effect yet (s86B of the Resource Management Act 1991 (RMA)). However, objectives, policies and other issues, reasons or methods still have some weight before the plan becomes operative (S86A(2) of the RMA)

While ORC recognises that the proposed rules of the 2GP are not applicable yet to this application, the proposed objectives and policies of the 2GP are relevant and must be given regard to.

Objective 2.2.1 of the 2GP is:

"The risk to people, communities, and property from natural hazards, and from the potential effects of climate change, is minimised so that the risk is no more than low."

Almost all the policies of this objective are relevant for giving regard to for this application:

- a) **Policy 2.2.1.1** - Land use and development is managed based on the sensitivity of activities (residential activity is classified in the 2GP as a sensitive activity)
- b) **Policy 2.2.1.2** - Likelihood and consequences of natural hazards is calculated risk is considered from a single or combination of natural hazards and their effects, the hazard's frequency, as well any change in the natural hazard's frequency and/or consequences due to climate change.
- c) **Policy 2.2.1.3** - Identify areas with risk of terrestrial flooding and include them in hazard 2 (flooding) zone where the risk to people property is at least moderate
- d) **Policy 2.2.1.4** - Identify areas at risk from coastal hazards in Hazard 3 (coastal) zone where there is a low risk to people and property and safe and efficient operation of on-site wastewater disposal.
- e) **Policy 2.2.1.6** - Managing natural hazard risk to it is no more than low with appropriate rules
- f) **Policy 2.2.1.7** - In hazard overlay zones provide for more lenient rules on the expansion of existing activities.
- g) **Policy 2.2.1.8** - Where natural hazard information is low, take a precautionary approach

The application is for a sensitive activity in an area ORC considers has a flooding hazard that meets the 2GP's Table 11.1 from Chapter 11 (Natural Hazards) as having risks which are 'very likely' and with, at least, moderate consequences.

The risks to South Dunedin are from flooding (either from the coast or land sources), the current sea level, and possible sea level rise, and the current performance of infrastructure.

A heavy, prolonged rainfall event similar to that during the 2015 flood event is now expected to occur again within the next 100 years⁶. DCC has acknowledged that the stormwater infrastructure functioning at 100% capacity would be overwhelmed again in such an event. Reports⁷ during the event also indicated wastewater infrastructure was compromised and led to contamination of flood waters. Predicted increases in groundwater in South Dunedin are expected to increase the frequency and duration of flooding during similar future heavy rainfall events⁸.

There is little uncertainty about the natural hazards risk and consequences (Policy 2.2.1.8) facing South Dunedin.

In managing these risks appropriately (2.2.1.1, 2.2.1.2, 2.2.1.3) policies 2.2.1.4 and 2.2.1.7 should not apply as the risk to property is greater than low, wastewater infrastructure may be compromised. More lenient provisions that increase residential density in South Dunedin will compound the problem the city needs to address.

⁶ Page 11, Coastal Otago flood event 3 June 2015 report

⁷ <http://www.odt.co.nz/news/dunedin/344568/dunedin-hit-flooding>

⁸ Page 33, Coastal Otago flood event 3 June 2015 report

The management of these risks is beyond individual development projects to mitigate at this time. Therefore this application does not meet policy 2.2.1.6 as the activity will be subject to risks greater than 'low'.

4. Conclusion

The applicants' proposal will result in two dwellings as opposed to the current one dwelling. The proposal allows for an increase in density at 38 Richmond Street, therefore increasing the risk of people and property exposed to these hazards.

The hazard profile for the low lying areas of South Dunedin is well understood, some of which were experienced during the significant flood event last year.

The proposed Regional Policy Statement gives a strong direction for an appropriate planning response to these hazards. ORC has submitted that the 2GP provisions need to provide for management of risk associated with coastal hazards by applying a 'Hazard 2 – Coastal' layer to reflect the need of further policies and rules to appropriately manage and direction decisions for activities such as this application proposes.

ORC requests this application is declined. Continuing to allow the development density in South Dunedin to increase will expose more people to risk, exacerbate the risk, be contrary to proposed regulations and send the wrong signal about Dunedin's willingness to begin an appropriate response to manage the relevant natural hazard risks in this vulnerable area.



.....
Fraser McRae
Director Policy, Planning and Resource Management

3 June 2016

.....
Date

Address for service of submitter:	Otago Regional Council Private Bag 1954 DUNEDIN
Telephone:	(03) 474 0827
Fax:	(03) 479 0015
Email:	warren.hanley@orc.govt.nz
Contact person:	Warren Hanley Resource Planner - Liaison

A copy of this submission has been sent to:

LA and RJ Prattley
14 Churchill Street
Dunedin 9012

From: Jane O'Dea <JODea@heritage.org.nz>
Sent: Friday, 13 May 2016 04:39 p.m.
To: planning@dcc.govt.nz
Cc: Amy Young
Subject: LUC-2016-110 - 38 Richmond St, Dunedin

Follow Up Flag: Follow up
Flag Status: Completed

Dear Amy

1. This is a submission by Heritage New Zealand in relation to LUC-2016-110.
2. Heritage New Zealand Pouhere Taonga is an autonomous Crown Entity with statutory responsibility under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA) for the identification, protection, preservation and conservation of New Zealand's historical and cultural heritage. Heritage New Zealand is New Zealand's lead historic heritage agency.
3. The application seeks to build two residential units on the subject site. As part of the redevelopment the existing dwelling would be demolished.
4. Heritage New Zealand's position on the applications is **neutral**.
5. The specific parts of the applications this submission relates to are as follows:
 - Demolition of the existing dwelling.
6. Heritage New Zealand's submission is as follows:
 - Historic records indicate that the house was built between 1891 and 1895 (rates records and Stone's Directories).
 - Based on this information, the site is an 'archaeological site' as defined in the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA).
 - Section 2 of the HNZPTA defines an archaeological site as:
 - any place in New Zealand, including any building or structure (or part of a building or structure), that—
 - (i) was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and
 - (ii) provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand;
 - The Heritage New Zealand Pouhere Taonga Act 2014 provides protection for all archaeological sites, whether recorded or not. It is unlawful to modify or destroy an archaeological site without the prior authority of Heritage New Zealand. Where avoidance of an archaeological site is not possible, an Archaeological Authority will be required. An Authority is also required if there is reasonable cause to suspect that an archaeological site may be modified or destroyed. All applications for Archaeological Authorities must be made to Heritage New Zealand.

- In relation to this development an archaeological authority is required from Heritage New Zealand in order to demolish the dwelling, as well as for any earthworks associated with the construction of the new units.
7. The decision Heritage New Zealand seeks from the consent authority is as follows:
- That an advice note worded as follows be included in the consent, if granted –

This proposal will affect an archaeological site(s). Work affecting archaeological sites is subject to a consent process under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA). An authority (consent) from Heritage New Zealand must be obtained for the work prior to commencement. It is an offence to damage or destroy a site for any purpose without an authority. The HNZPTA contains penalties for unauthorised site damage. The applicant is advised to contact Heritage New Zealand for further information.

8. Heritage New Zealand does not wish to be heard in support of this submission.
9. If there are any queries in relation to this submission please contact me using the details below.

Regards
Jane O'Dea

Jane O'Dea | Heritage Advisor (Planning) | Heritage New Zealand Pouhere Taonga | PO Box 5467, Dunedin 9058 | Ph: (64 3) 477 9871 | DDI: 470 2366 | Visit www.heritage.org.nz and learn more about New Zealand's heritage places

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