

BEFORE THE ENVIRONMENT COURT

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under section 120 of the Act
BETWEEN	PORT OTAGO LIMITED
	(ENV-2016-CHC-62)
	Appellant
AND	DUNEDIN CITY COUNCIL
	Respondent

Environment Judge J R Jackson – sitting alone pursuant to section 279 of the Act

In Chambers at Christchurch

CONSENT ORDER

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

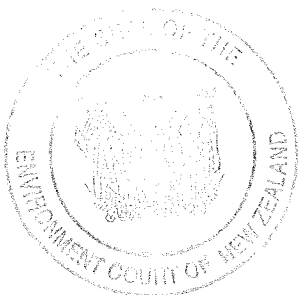
- (1) the appeal is allowed subject to the amended conditions 24 and 27 (in red) set out in Annexure 1, attached to and forming part of this order;
- (2) the appeal is otherwise dismissed.

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

REASONS

Introduction

[1] This is an appeal by Port Otago Limited against part of a decision of the Dunedin City Council granting consent to carry out remedial earthworks on Flagstaff Hill, Dunedin.



[2] The appeal relates to conditions 24 and 27 of the consent to the extent that they require Port Otago to carry out work on that part of the land that is not affected by the proposed earthworks.

[3] The court has now read and considered the consent memorandum of the parties dated 10 November 2016 which proposes to resolve the appeal.

Other relevant matters

[4] No person has given notice of an intention to become a party under section 274 of the Resource Management Act ("the RMA" or "the Act").

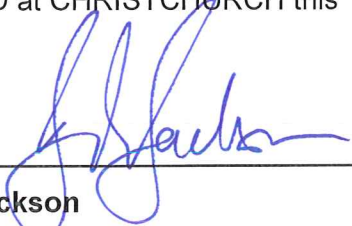
[5] Conditions 24 and 27 contained the words "...Appendix 1 attached to this certificate." These words have been replaced with the more appropriate "Appendix 1 attached to these conditions."

Orders

[6] The court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum (unless stated otherwise for specific reasons) requesting this order;
- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and the proposal achieves the objectives and policies of the relevant district plans better than the status quo or the consent originally granted by the Respondent.

DATED at CHRISTCHURCH this 23rd November 2016


J R Jackson
Environment Judge



Annexure 1

Consent Type: Land Use Consent

Consent Number: LUC-2016-189

Pursuant to sections 34A(1) and 104C and after having regard to Part 2 matters and section 104 of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **restricted discretionary** activity being to undertake earthworks that will breach the maximum change in ground level and volume of excavation thresholds and boundary and water and waste infrastructure proximity provisions at 40 Beach Street, Port Chalmers, legally described as Lot 1 DP 26574 (CFR-OT18D/5), Sec 466 and 467 SO 21294 Town of Port Chalmers (CFRs OT10C/180 and OT10C/181), along with portions of Aurora and Island Terrace road reserve, subject to conditions imposed under section 108 of the Act.

Location of Activity: 40 Beach Street, Port Chalmers

Legal Description: Lot 1 DP 26574 (CFR-OT18D/5), Sec 466 and 467 SO 21294 Town of Port Chalmers (CFRs OT10C/180 and OT10C/181)

Lapse Date: 13 September 2021

Conditions

1. *The proposed activity must be undertaken in general accordance with the site plan, elevations and relevant information, including the Project Specification contained in the report by the report by Opus International Consultants Limited, entitled "Flagstaff Hill Proposed Cut Design North East Slope" dated 1 January 2010, provided with resource consent application LUC-2016-189, received by the Council on 4 May 2016.*

NOTIFICATION

2. *The consent holder must provide notice to the Resource Consent Monitoring team by email to rcmonitoring@dcc.govt.nz of the start date of the works. This notice must be provided at least five (5) working days before the works are to commence.*
3. *The consent holder must provide written notice to the neighbouring properties of the start date of the works. This notice must be provided at least five (5) working days before the works are to commence.*
4. *The consent holder must send by email to rcmonitoring@dcc.govt.nz a progress update at the end of each two month period following commencement of the works. The update must detail the extent of the work already undertaken and give a projection on the earthworks will be complete. The same details must be provided in writing to neighbouring properties, within the same time period.*
5. *The Consent holder must serve 48-hours' notice of any blasting to the neighbours and the Council. The notice must give the time that blasting is to occur and the duration of the blasting. No blasting must occur if notice has not been served. Notice to the neighbours must be in a written form and to Council via email to rcmonitoring@dcc.govt.nz.*



ENGINEERING AND CONSTRUCTION WORKS

6. *The consent holder must:*
 - a. *be responsible for all contracted operations relating to the exercise of this consent; and*
 - b. *ensure that all personnel (contractors) working on the site are made aware of the conditions of this consent, have access to the contents of consent documents and to all associated erosion and sediment control plans and methodology; and*
 - c. *ensure compliance with land use consent conditions.*
7. *The consent holder must complete all earthworks within 18 months from when they commence.*
8. *The proposed earthworks must be designed, specified and have its construction supervised by a suitably qualified person.*
9. *The consent holder must prepare a Construction Management Plan, which details the construction methodology. Construction Management Plan must include a Construction Programme which must confirm construction timing and details of storage and disposal of excavated material. A copy of the Construction Management Plan must be provided to Resource Consent Monitoring team by email to rcmonitoring@dcc.govt.nz, one month prior to works commencing.*
10. *A suitably qualified person must be engaged to determine any temporary shoring requirements at the site during earthworks construction and the consent holder must install any temporary shoring recommended.*
11. *Following completion of the works, certification by a suitably qualified engineer that the worked areas are suitably stable and that additional instability has not been created that could affect the subject site or any adjacent land. The certification must be submitted to Resource Consents Manager within one month of the works being completed.*

SEDIMENT AND EROSION CONTROL

12. *The earthworks must be undertaken with the principles of industry best practice applied at all stages of site development including site stability, stormwater management, traffic management, along with dust and noise controls at the sites.*
13. *At least one month prior to the works commencing, an Erosion and Sediment Control Plan and Stormwater Management Plan to manage storm water run-off, sedimentation and erosion effects before, during and upon completion of the earthworks, must be submitted to the Resource Consents Manager for approval. These plans may be incorporated into the Construction Management Plan required by Condition 9 above.*
14. *All measures (including dampening of loose soil where possible) must be maintained to ensure that dust, resulting from the earthworks, does not cause a nuisance.*
15. *All on-site stockpiling must be undertaken in a manner to ensure that visual impact and sediment generation effects are minimised.*



NOISE AND VIBRATION

16. Works must not occur outside of the hours of 7.30am - 6.00pm, Monday to Saturday. Works must not occur on public holidays.
17. All construction noise must comply with the following noise limits as per New Zealand Standard NZS 6803:1999:

<i>Time of Week</i>	<i>Time Period</i>	<i>Leq (dBA)</i>	<i>L max (dBA)</i>
<i>Weekdays</i>	<i>0730-1800</i>	<i>70</i>	<i>85</i>
<i>Saturdays</i>	<i>0730-1800</i>	<i>70</i>	<i>85</i>

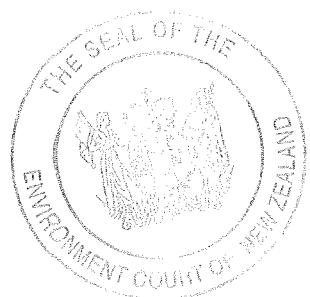
18. All blasting must occur at least 100m away from any residential dwelling and must be undertaken in accordance with German Standard DIN 4150-3:1999-02. Blasting must only occur between the hours of 9am and 4pm, Monday to Friday with blasting only authorised in one hour blocks for no more than two hours on any given day.

TRAFFIC MANAGEMENT

19. The consent holder must prepare a Traffic Management Plan (TMP), which must be submitted to, and approved by, the Transport department, prior to works commencing. The TMP must include, but not be limited to, the following:
- Confirmation that TMP must comply with the requirements of the NZTA Code of Practice for Temporary Traffic Management.
 - All rock/earthworks material taken away from the site by truck must be taken away via Beach St direct to George Street/State Highway 88.
 - Road closures are at the discretion of the DCC Traffic Management Coordinator, and may require further public notification.
 - Details of any catch fences that may be required to ensure the operational safety of the transport network.
 - Confirm that any excavation work proposed within legal road must be undertaken in accordance with the National Code of Practice for Utility Operators' Access to Transport Corridors, and will require an authorised corridor access request prior to these works commencing.
 - Provide details of the full extent of proposed works, especially those within legal road.

NETWORK INFRASTRUCTURE

20. The foul sewer pipe which traverses Lot 1 DP 26574 may be decommissioned if required. All decommissioning works are the sole responsibility of the consent holder. Notice of the decommissioning works must be given to Water and Waste Services at least 14 days prior to these works commencing.
21. Should Water and Waste Services determine that the final design and methodology of the works threaten the integrity of the man hole located at the eastern termination of Island Terrace, then the man hole must be relocated at the cost of



the consent holder. Relocation of the man hole must be undertaken in consultation with Water and Waste Services.

22. Prior to the works commencing, the consent holder must arrange for Water and Waste Services (or their agent) to film the stormwater and foul sewer pipes and pressure test the water pipe in Island Terrace. Water and Waste Services require at least 14-days' notice to arrange this testing.
23. At the completion of the works, the consent holder must arrange for Water and Waste Services (or their agent) to film the stormwater and foul sewer pipes and test the water pipe for leakage in Island Terrace. Any damage (and subsequent repairs) to the infrastructure network caused by the works authorised by this consent must be the responsibility of the consent holder.

LANDSCAPE PLAN

24. A Landscape Development and Management Plan must be submitted to Council for approval of the Resource Consents Manager. The plan must be submitted at least one month before the works commence. The Landscape Development and Management Plan must provide for the ongoing management of manage the entire area of land identified as a planting zone contained within Lot 1 DP 26574 (CFR OT18D/5) as shown in Appendix 1 attached to these conditions. At a minimum the plan must include species to be planted, spacing of planting, care and maintenance programme and weed control. The approved plan is to be complied with.
25. All post-care landscaping works must be completed within 12 months from when the earthworks are completed.
26. For five years following the completion of the landscaping works, all plants which become moribund must be replaced.
27. Active weed management and control must be undertaken for the area of land identified as a planting zone in Lot 1 DP 26574 (CFR OT18D/5) as shown in Appendix 1 attached to these conditions.

CULTURAL VALUES

28. If the consent holder:
 - (a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder must without delay:
 - (i) notify the Consent Authority, Tangata whenua and Heritage New Zealand Pouhere Taonga and in the case of skeletal remains, the New Zealand Police.
 - (ii) stop work within the immediate vicinity of the discovery to allow a site inspection by Heritage New Zealand and the appropriate runanga and their advisors, who must determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Any koiwi tangata discovered must be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation.



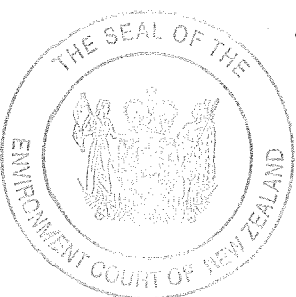
Site work must recommence following consultation with the Consent Authority, Heritage New Zealand Pouhere Taonga, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.

- (b) *discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder must without delay:*
- (i) *stop work within the immediate vicinity of the discovery or disturbance; and*
 - (ii) *advise the Consent Authority, Heritage New Zealand Pouhere Taonga, and in the case of Maori features or materials, the Tangata whenua, and if required, must make an application for an Archaeological Authority pursuant to the Historic Places Act 1993; and*
 - (iii) *arrange for a suitably qualified archaeologist to undertake a survey of the site.*

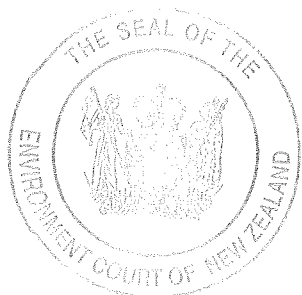
Site work must recommence following consultation with the Consent Authority.

Advice Notes:

1. The consent holder is strongly encouraged to assess the pre and post work state of neighbouring properties to ensure the extent of any damage which may occur as a result of actions undertaken on its site.
2. The consent holder is reminded that any works occurring within Road Reserve or within 2 Island Terrace may only occur at the pleasure of the Dunedin City Council. The consent holder is advised to get permission from the Council's Property and Transport department who administer these pieces of land.
3. The consent holder is encouraged to actively investigate all economic and environmentally sustainable reuse options for the spoil won from site.
4. The consent holder is encouraged to consider the suitability of alternative transport options such as rail or barge to transport the spoil from the site.
5. The Transport department that recommends a TMP pre-application meeting be undertaken between the Site Traffic Management Supervisor (STMS) for the works, and Council's Traffic Management Coordinator, in order to determine appropriate methodology for the TMP and extent of the site working space. It should be noted that Transport would reserve the right to require additional traffic management in the future based on actual effects once work has commenced.
6. Post-works, the consent holder is encouraged the applicant to revisit the current legal road corridor within Beach Street and apply for appropriate amendments to the location of the legal road to ensure that legal public access is secured.
7. Should the man hole in Island Terrace be relocated, the new location and methodology of the works is required to be undertaken in consultation with Water and Waste Services.

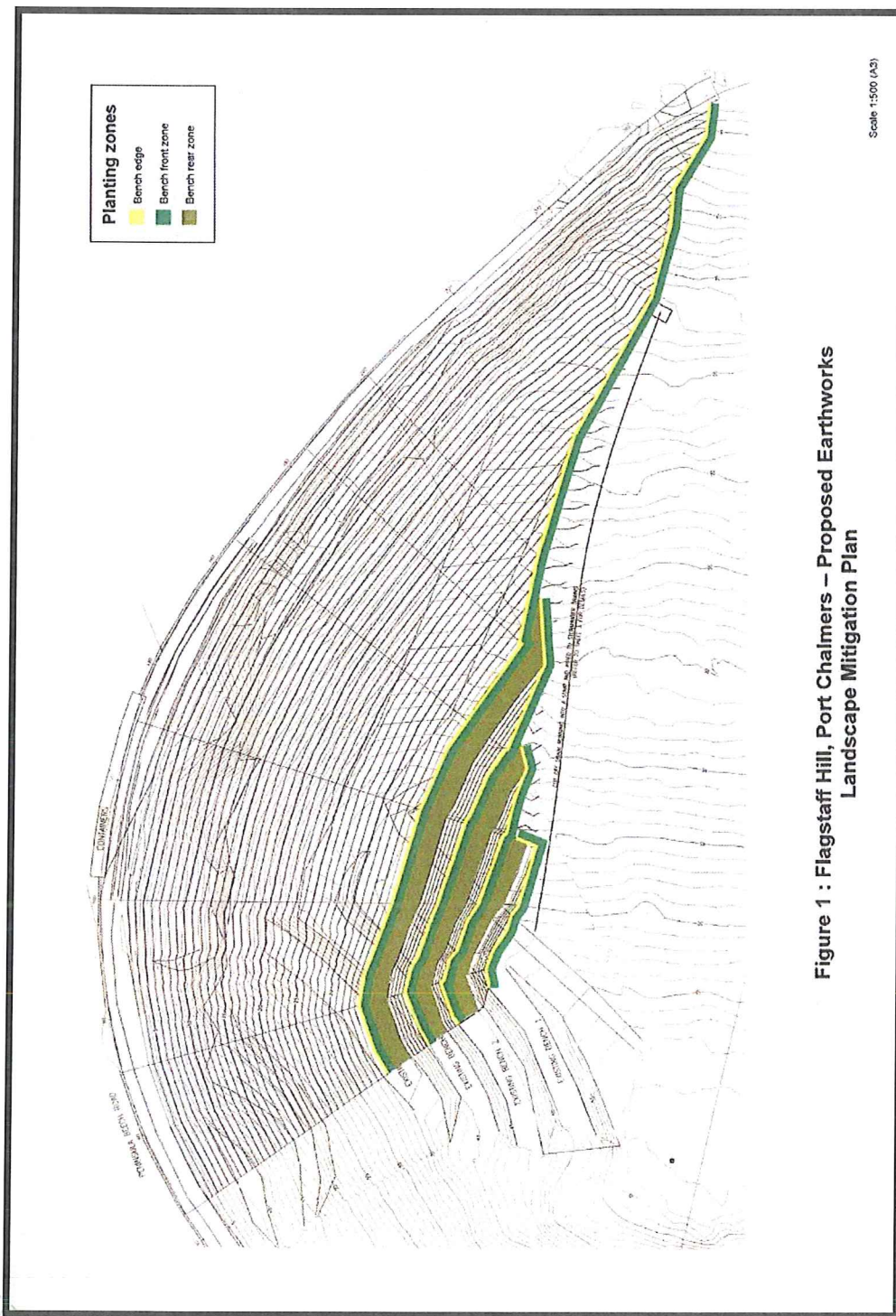


8. Any altered stormwater or captured groundwater must not cause a nuisance, in general must drain to an approved outlet, which may require building consent. Openings to allow drainage to kerb and channel within road will require a Corridor Access Request as detailed above.
9. The following documentation is recommended as best practice guidelines for managing erosion and sediment –laden run-off and for the design and construction of erosion and sediment control measures for small sites:
 - ARC Technical Publication No. 90 Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region, March 1999.
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guide for Small Sites."
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guideline 2007" Report No. R06/23.
 - Dunedin City Council "Silt and Sediment Control for Smaller Sites" (information brochure).
10. Any disposal of excavated material that is not to a facility approved to receive such material may require additional land use consent.
11. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
12. Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
13. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
14. It is the responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
15. This consent allows noise effects to uniquely impinge on the only close private property at 2 Aurora Terrace such that double glazing costs would have been a condition of consent had the owner not already paid for this noise insulation in response to other Port Otago noise. This advice note suggests but cannot require that it would be in the interests of fairness for the consent holder to retrospectively pay for this sound-proofing recognising that the current earthworks proposal would necessitate such noise insulation.





Appendix 1 : Area to be managed by the Landscape and Development Plan required by Conditions 24 and 27



**Figure 1 : Flagstaff Hill, Port Chalmers – Proposed Earthworks
Landscape Mitigation Plan**