

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under section 120 of the Act
BETWEEN	BALMORAL DEVELOPMENTS (OUTRAM) LIMITED
	(ENV-2017-CHC-94)
	Appellant
AND	DUNEDIN CITY COUNCIL
	Respondent

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

In Chambers at Christchurch

Date of Consent Order: 15 March 2019

CONSENT ORDER

- A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that the appeal is allowed subject to conditions as set out in Annexure A attached to and forming part of this order.
- B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] Balmoral Developments (Outram) Limited lodged an appeal under section 120 of the Resource Management Act 1991 (“the RMA” or “the Act”) against a decision of



Dunedin City Council declining resource consent for a 15 lot subdivision at 94 Holyhead Street, Outram.

[2] The court has now read and considered the consent memorandum of the parties dated 24 January 2019 which propose to resolve the appeal.

Other relevant matters

[3] The following parties gave notice of an interest in this appeal under section 274 of the Act and have signed the memorandum setting out the relief sought:

- (a) Patricia Scott;
- (b) Otago Regional Council; and
- (c) New Zealand Transport Agency.

[4] No other person has given notice of intention to become a party under section 274.

Orders

[5] 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 requesting this order;
- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to the purpose and principles of the Act including, in particular, Part 2.



J R Jackson
Environment Judge



Annexure A

**DRAFT CONSENT CONDITIONS FOR ALTERNATIVE SUBDIVISION AND
ASSOCIATED LAND USE AGREED BY MEDIATION**

SUB-2017-49 (Subdivision of Lot 27 of SUB-2017-32 into two lots)

1. The proposal shall be given effect to generally in accordance with the scheme plan prepared by Paterson Pitts Group entitled: 'Proposed Alternative Subdivision of Lot 27 SUB-2017-32' dated 12 March 2018 (Job Refer 15829 Revision No Alt.A), and the relevant information submitted as part of application SUB-2017-49 received at the Council on 31 May 2017, and subsequent evidence submitted by the Applicant for the hearing on 15 November 2017, except where modified by the following:
 - 1A. That pursuant to section 116 of the Resource Management Act 1991, this consent must not commence until the subdivision consent SUB-2017-32/B has been varied so as to exclude all vehicle access onto State Highway 87 (or to the access leg within the legal extent of State Highway 87) from the lots of that subdivision (i.e. all access is to be to Holyhead Street via the new cul-de-sac).
2. That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:
 - a) That if a requirement for any easement for services is incurred during the survey, then those easements shall be granted or reserved and included in a Memorandum of Easements.
 - b) That easements in gross in favour of the Dunedin City Council shall be created as required over any foul sewer, stormwater sewer or water main which is to be vested with the Council. The easements in gross shall be made in accordance with Sections 4.3.9, 5.3.4, or 6.3.10.3, as appropriate, of the Dunedin Code of Subdivision and Development 2010. The easement documentation shall be prepared in consultation with the Asset Manager, Three Waters Group, to ensure an appropriate maintenance agreement is obtained for services.
 - c) That the following amalgamation conditions shall be endorsed on the survey plan:

'That Lot 2 hereon and Lot 26 DP ... (CFR ...) shall be held in the same computer freehold register (see CSN Request 1518070).'
3. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:



Services:

- a) An "application for Water Supply - New Service" shall be submitted to the Three Waters Group for approval to establish a new water connection to new Lot 1. Details of how the lot is to be serviced for water shall accompany the application.
- b) Upon approval by Three Waters Group, water service connections shall be installed in accordance with the requirements of Section 6.6.2 of the Dunedin Code of Subdivision and Development 2010.
- c) That electricity and telecommunications shall be supplied to the net area of Lot 1. These shall be installed underground from any existing reticulation.

Consent Notices

- d) That the consent notice of condition 8(t) of SUB-2017-32 registered on the titles of the subject site regarding the Taieri River floodbank shall be cancelled in respect of the subject site only (Lot 27 of SUB-2017-32).
- e) That a plan shall be prepared showing the location of the 20m building restriction area in relation to the boundaries of Lots 1 and 2. The plan shall be clearly labelled, and shall be attached to the consent notice of conditions 3(g) and 3(i) below:
- f) That a plan must be prepared showing the location and dimensions in relation to the surveyed boundaries of the Building Platform and associated access on Lot 1 as depicted on the subdivision scheme plan. The plan shall be attached to the consent notice of condition 3(g) below. The Building Platform shall be clearly labelled as such.
- g) That a consent notice shall be prepared for registration on the title of Lot 1 for the following on-going conditions:

'Any dwelling and accessory buildings ancillary to residential activity shall be located within the Building Platform shown on the attached plan, and the vehicle access restricted to the location shown on the plan, in order to maintain the rural amenity values of the land existing at the time of the subdivision (N.B. should the zoning change this condition may need to be reviewed).'

'A portion of this site is situated within 20m of the toe of the Taieri River floodbank as shown on the attached plan. There shall be no buildings constructed or any excavations occurring within 20m of the toe of the floodbank in any location without the prior written approval of the Otago Regional Council.'

- h) That a plan must be prepared showing the location and dimensions in relation to the surveyed boundaries of the Visual Amenity



Viewshaft across Lot 2 depicted on the subdivision scheme plan. The plan shall be attached to the consent notice of condition 3(i) below. The view shaft shall be clearly labelled as such.

- i) *That a consent notice shall be prepared for registration on the title of Lot 2 and Lot 26 SUB-2017-32 for the following on-going conditions:*

'The view shaft as shown on the attached plan shall remain clear of all structures at all times in order to secure the view of Balmoral Farmhouse from State Highway 87. Vegetation within the view shaft shall have a maximum height of 2.0m, or must be removed.'

'A portion of this site is situated within 20m of the toe of the Taieri River floodbank as shown on the attached plan. There shall be no buildings constructed or any excavations occurring within 20m of the toe of the floodbank in any location without the prior written approval of the Otago Regional Council.'

'There shall be no vehicle access to this site from State Highway 87 or the access leg situated within the legal extent of the State highway (i.e. all vehicle access is to be to Holyhead Street).'

Land Use LUC-2017-255 (authorising Residential Activity on the new sites created by SUB-2017-49 breaching zone density rules)

1. *The proposal shall be given effect to generally in accordance with the scheme plan prepared by Paterson Pitts Group entitled: 'Proposed Alternative Subdivision of Lot 27 SUB-2017-32' dated 12 March 2018 (Job Refer 15829 Revision No Alt.A), and the relevant information submitted as part of application Luc-2017-255 received at the Council on 31 May 2017, and subsequent evidence submitted by the Applicant for the hearing on 15 November 2017, except where modified by the following:*
 - 1A. *That pursuant to section 116 of the Resource Management Act 1991, this consent must not commence until the subdivision consent SUB-2017-32/B has been varied so as to exclude all vehicle access onto State Highway 87 (or to the access leg within the legal extent of State Highway 87) from the lots of that subdivision (i.e. all access is to be to Holyhead Street via the new cul-de-sac).*
2. *That only one residential unit shall be established on Lot 1 and no residential unit shall be erected on Lot 2 (residential buildings on the amalgamated site created by this subdivision shall be limited to existing buildings on the land within Lot 26 SUB-2017-32).*
3. *That the residential unit and accessory buildings on Lot 1 shall be limited to single storey structures, not exceeding 6m in height.*
4. *That, if any earthworks or other subdivision construction occurring on-site require heavy vehicles to use the State Highway for access to and/or from the subject site, the consent holder shall consult with the NZ*



Transport Agency. A Construction Traffic Management Plan shall be completed and submitted to the NZ Transport Agency's network management consultant (Stantec, Dunedin) at least seven working days prior to truck movements commencing.

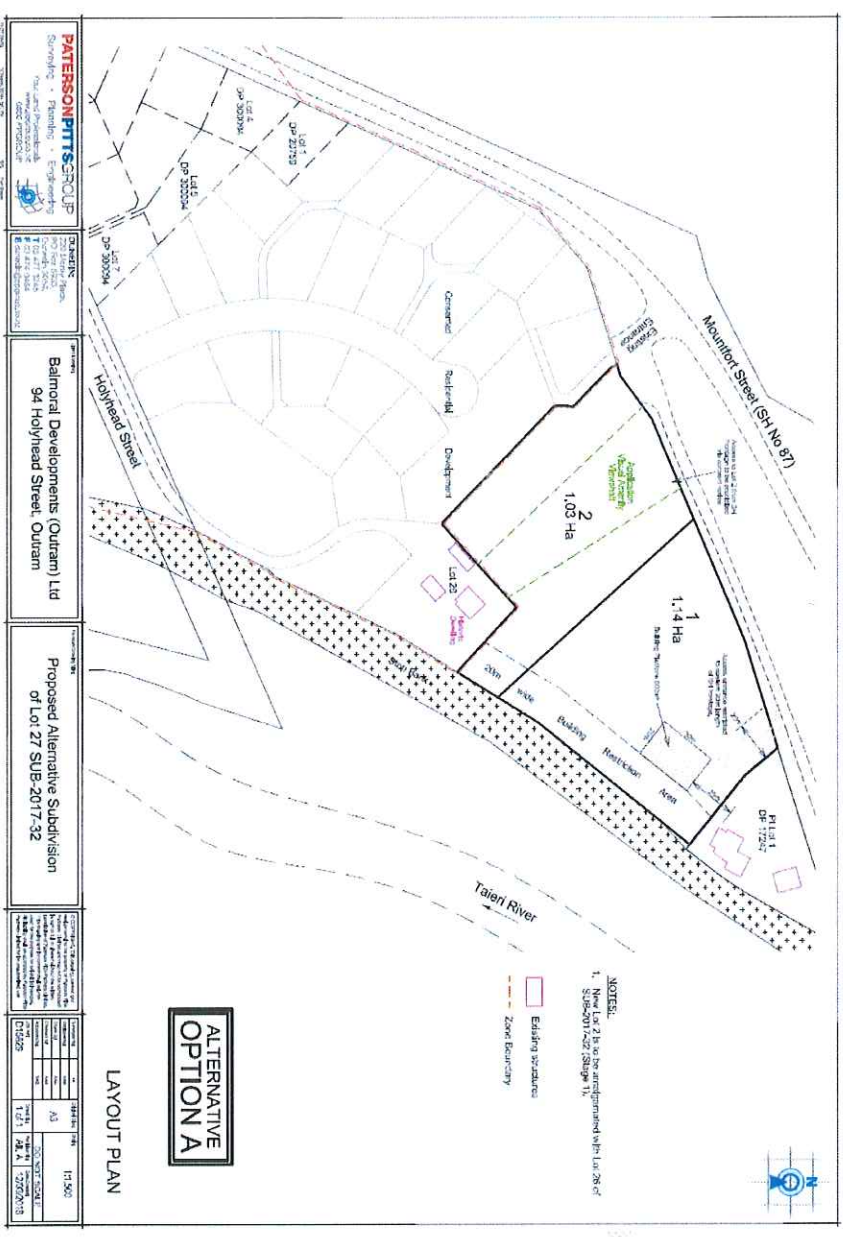
5. *No works shall be undertaken within State Highway 87 without the prior approval of the NZ Transport Agency pursuant to Section 51 of the Government Rounding Powers Act 1989. A Traffic Management Plan and Consent to Work on the Highway shall be submitted to and approved by the NZ Transport Agency through the NZ Transport Agency's State Highway network management consultants (Stantec, Dunedin) at least seven working days prior to the commencement of any works on the State Highway.*

Advice Notes:

1. In addition to the conditions of 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.
2. 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.
3. The lapse period specified above may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
4. It is the responsibility of any party exercising this consent to comply with any conditions imposed on their 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.
5. This is resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for the work.



COPY OF PLAN: Not to Scale.



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Consent order – draft [ENV-2017-CHC-94]