

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao O Aotearoa
Ōtautahi Rohe

ENV-2022-CHC-035

Under	the Resource Management Act 1991 (RMA)
In the matter of	an appeal pursuant to clause 14, Schedule 1 of the RMA
Between	Paterson Pitts Limited Partnership
	Appellant
And	Dunedin City Council
	Respondent

Joint Memorandum of Counsel

5 August 2022

Respondent's solicitors:

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**anderson
lloyd.**

May it please the Court

- 1 This memorandum of counsel is filed on behalf of Paterson Pitts Limited Partnership (**Appellant**) and Dunedin City Council (**Council**) in response to the direction of the Environment Court dated 20 July 2022. The Court directed that counsel for the Appellant must confer with the other parties at the end of the section 274 party period (Wednesday 3 August 2022) and file a memorandum by Friday 5 August 2022 setting out:
 - (a) A list of the issues;
 - (b) Whether the parties seek mediation (and if so, setting out their reasons/positions, timetabling arrangements and a time estimate); and
 - (c) If mediation is not sought then propose an evidence timetable (and set out the potential witnesses to be called by each party and an estimate of the hearing time required).

Erratum issued by the Hearing Panel

- 2 Council can report that on 12 July 2022 the Hearing Panel issued an erratum correcting errors in the Hearing Panel's decision on Change A2 Alt3/IN-HER-S153.001. This decision had the consequence of extending the appeal period for the decision on Change A2 Alt3/IN-HER-S153.001 (only) to Tuesday 23 August 2022. On this basis, the section 274 party period has also been extended to Tuesday 13 September 2022. This erratum is **attached** out of courtesy for the Court.

List of issues

- 3 The Appellant and Respondent have conferred and agree that the issues are those set out in para 7 to the Notice of Appeal dated 12 July 2022¹, refined in the below list of issues as follows:
 - (a) Whether the decision is beyond the scope of Variation 2 on the basis that persons whose pre-1940 houses are subject to the new rule (protecting them from demolition) would not have identified this when reading the notified variation.
 - (b) Whether Rules 15.3.4.X and 13.6.X achieve a relevant objective or policy.

¹ The Notice of Appeal is dated 12 July 2021, this date is incorrect and should read 12 July 2022.

- (c) Whether there is jurisdiction to make consequential changes to higher order objectives and policies in chapter 2 and 13.
- (d) The level of certainty in the rule regarding what significant heritage values mean in relation to non-scheduled buildings.
- (e) Whether the rule requiring a resource consent to be obtained for demolition of all pre-1940s buildings is inefficient because it applies regardless of whether a building has significant heritage values.
- (f) Whether Southern Heritage Trust should be identified as an affected person.
- (g) The adequacy of the section 32AA assessment as to whether the benefits outweighed the costs of the rule.
- (h) Whether the rule is contrary to the objectives and policies of the National Policy Statement on Urban Development 2020.
- (i) The level of certainty in the definition of full demolition regarding what “near complete demolition” means.

Mediation

- 4 The parties seek Environment Court assisted mediation for this appeal and respectfully suggested that it is set down after the close of the revised section 274 party period of Tuesday 13 September 2022.

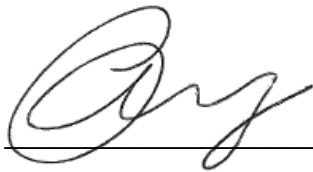
Directions sought

- 5 It is respectfully proposed that:
 - (a) The Appellant and Respondent are to confer with any other parties at the end of the section 274 period for Change A2 Alt3/IN-HER-S153.001 (Tuesday 13 September 2022) and file further joint memorandum by Friday 16 September 2022 amending the initial list of issues if necessary; and
 - (b) The Paterson Pitts Limited Partnership appeal on Variation 2 to the proposed Second Generation Dunedin City District Plan is set down for Environment Court assisted mediation on a date after Friday 16 September 2022, subject to the availability of the parties and an Environment Court Commissioner.

Dated this 5th day of August 2022

A handwritten signature in blue ink, appearing to be 'P. Page' or 'R. Crawford', written above a horizontal line.

Phil Page/Rebecca Crawford
Counsel for the Appellant

A handwritten signature in black ink, appearing to be 'M. Garbett' or 'G. Cassidy', written above a horizontal line.

Michael Garbett/Georgia Cassidy
Counsel for the Respondent



THE PROPOSED
**SECOND
GENERATION
DISTRICT PLAN**

Dunedin City Council, 50 The Octagon, Dunedin 9016

PO Box 5045, Moray Place, Dunedin 9058

Website: www.dunedin.govt.nz/2gp

ERRATUM

Decision on Variation 2 (Additional Housing Capacity) to the Dunedin City Second Generation District Plan (2GP): Provisions and Intensification Rezoning

Demolition of pre-1940s buildings (Rule 15.3.4.X), Pages 28-31 and Appendix 1

From: The Chairperson, Variation 2 (Additional Housing Capacity) Hearing Panel

To: Variation 2 submitters

Date: 12 July 2022

This erratum is to advise that the decision on Variation 2 (Additional Housing Capacity) to the Dunedin City Second Generation District Plan (2GP): Provisions and Intensification Rezoning contains an error in the drafting of new provisions for the demolition of pre-1940s buildings.

It has come to our attention that the drafting for the new provisions (Rule 15.3.4.X and associated provisions) has been linked to the existing definition of 'demolition' in the 2GP when it was entered into the e-plan. The 2GP definition of 'demolition' is:

Demolition

The complete or partial destruction of a building or structure.

Demolition is an activity in the building and structures sub-category, which is in the development activities category.

It was the intention of the Hearing Panel that the new heritage provisions would only apply to full demolition of pre-1940s buildings in the listed areas. However the use of the 2GP definition of demolition creates the potential for the new provisions to be applied in circumstances where the Hearing Panel did not intend them to be applied i.e. partial destruction.

This issue is to be resolved by updating the drafting of Rule 15.3.4.X and associated provisions to refer to:

Full demolition of a building built on or before 1st January 1940 in the General Residential 1 Zone or Township and Settlement Zone (except within a no DCC reticulated wastewater mapped area) or in the Variation 2 mapped area

And by adding a new definition for 'full demolition' as follows:

Full Demolition

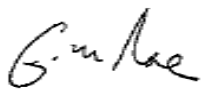
Demolition that involves the complete or near complete destruction of a building or structure.

The provisions affected by these changes (as referenced in Appendix 1 of our decision) are:

- Rule 13.6.X.X (Rule 13.6.X.1 in e-plan)
- Rule 13.9.1.X
- Rule 15.3.4.X
- Rule 15.4.X.1 (Rule 15.4.Y.1 in e-plan)
- Rule 15.11.3.Y
- Rule 15.11.5.Y (Rule 15.11.5.AC in e-plan)

As a result of this clarification, the deadline for lodging a notice of appeal on the decision on Change A2 Alt3/IN-HER/S153.001 (the new heritage provisions relating to demolition of pre-1940s buildings) only has been extended to **Tuesday 23 August 2022**.

If you have any questions regarding this erratum please contact Jenny Lapham or Wendy Collard on 477-4000 or by email gso@dcc.govt.nz.



Gary Rae, **Chairperson**
On behalf of the Variation 2 Hearing Panel

12 July 2022