

12 February 2009

Mr Jim Harland
Chief Executive Officer
Dunedin City Council
PO Box 5045
Dunedin 9058

Dear Mr Harland

NOTICE OF REQUIREMENT

**DIS-2007-4: DUNEDIN CITY COUNCIL
FAIRLEY STREET WALKWAY – SOUTHERN
SECTION, 25 WILLIS STREET & 51 FRYATT
STREET, DUNEDIN**

The above Notice of Requirement for the Fairley Street Walkway – Southern Section issued by the Dunedin City Council ('the Requiring Authority') was processed on a notified basis in accordance with Sections 168A and 169 of the Resource Management Act 1991 ('the Act').

We were appointed as Independent Commissioners to the Hearings Committee to hear and decide on the application. We heard the Notice of Requirement in public between 21-31 July 2008 jointly with Proposed Plan Change 7: Dunedin Harbourside and Proposed Plan Change 1 to the Regional Plan: Coast for Otago. Separate decisions have been issued for the plan changes.

At the end of the public part of the hearing, in accordance with Section 48(1) of the Local Government Official Information and Meetings Act 1987, we resolved to exclude the public. We undertook site visits of the harbourside area on 21 July 2008 and 4 August 2008.

It is our decision that the Notice of Requirement be **confirmed, subject to the modification** shown on the plan attached to this decision, and subject to conditions set out on pages 3-4 of this decision. The full text of the decision commences below.

The Hearing and Appearances

The Requiring Authority was represented at the hearing by:

- Mr Michael Garbett – Counsel
- Mr Jim Harland – Chief Executive, Dunedin City Council
- Ms Janet Reeves – Urban Design Consultant
- Mr Dave Pearson – Consultant Heritage Architect

Submitters attending to speak to their submissions were:

- The Pines Otago Ltd represented by Mr David Ehlers
- BOTRY-Zen Limited represented by Mr John Scandrett (CEO)
- New Zealand Historic Places Trust represented by Mr Owen Graham (Otago/Southland Area Manager), Ms Heather Bauchop (Heritage Advisor – Registration), Mr Jonathon Howard (Heritage Advisor – Conservation), Dr Matthew Schmidt (Regional Archaeologist), Mr Doug Bray (Heritage Advisor - Planning)

- Chalmers Properties Ltd represented by Mr Robert Makgill (Counsel), Mr Andrew Duncan (CEO), Mr Antony Penny (Traffic Engineer), Mr Dave Pearson (Heritage Architect), and Ms Christine Ralph (Planner)
- Southern Branch New Zealand Institute of Architects represented by Mr Nick Baker and Mr Michael Ovens.

Dunedin City Council (DCC) staff in attendance were:

- Ms Debbie Hogan - Handling Officer
- Mr Paul Freeland – Acting Planning Policy Manager
- Ms Jennifer Lapham - Governance Support Officer

Summary of Evidence Heard

Officer's Report

Ms Debbie Hogan presented her report, prepared pursuant to Section 42A of the Act, and provided a summary of her assessment. Following an assessment of the Notice of Requirement, Ms Hogan considered that the establishment of the walkway would give rise to adverse effects, which could be avoided, remedied or mitigated through conditions on a modified designation. Ms Hogan considered that the Requiring Authority had considered a range of alternative sites and routes to achieve the objective of the designation but had not fully investigated alternative methods for undertaking the proposed works. Overall, Ms Hogan recommended confirmation of the Notice of Requirement with modification of its extent to reduce the effects upon ventilation equipment associated with the adjoining factory operation at 21-23 Willis Street.

The Applicant's Case

Mr Garbett managed and presented the case on behalf of Dunedin City Council. Mr Garbett outlined the relevant statutory provisions to assess the designation and that the Notice of Requirement met these provisions. Mr Garbett stated that the Requiring Authority accepted the conditions recommended in the Officer's Report.

Mr Dave Pearson presented his assessment of the building at 51 Fryatt Street against the criteria contained in Method 13.4.3 of the Plan, which determines whether an item can be included on Schedule 25.1: Townscape and Heritage Buildings and Structures.

Ms Janet Reeve's evidence outlined the benefits of the walkway in relation to the New Zealand Urban Design Protocol.

Evidence from Submitters

The Pines (Otago) Limited

Mr David Ehlers spoke on behalf of The Pines (Otago) Limited, who own the sites at 21-23 and 27 Willis Street. Mr Ehlers outlined how the objectives for the proposed walkway related to the land owned by The Pines. The preferred option is for the Notice of Requirement to be withdrawn or be modified to exclude the bottom part of the "L" shape comprising the area occupied by the ventilation equipment and roller door access to the building on 21-23 Willis Street.

BOTRY-Zen Limited

Mr John Scandrett spoke on behalf of BOTRY-Zen Limited, who operate a biological product manufacturing plant and laboratory in leased premises located at 21-27 Willis Street. Mr Scandrett said that the company has lease arrangements until at least October 2019 and that the designation would result in the company being unable to operate at the present location if a 9 metre wide pathway was cut through the site. Mr Scandrett explained that the area at 25

Willis Street provides for inwards and outwards goods movement, access to the boiler room and specialist air dryer units, and general maintenance and daily wash-down of internally sited plant and equipment.

New Zealand Historic Places Trust (NZHPT)

Mr Jonathan Howard outlined NZHPT's concerns relating to the demolition of the building at 51 Fryatt Street (former Iron and Steel Co of NZ Iron Store) that will result from the construction of the walkway. Mr Howard considered that options must be investigated to protect and incorporate the building into the Fairley Street Walkway.

Dr Matthew Schmidt outlined the benefits of undertaking an archaeological assessment prior to development.

Chalmers Properties Limited (CPL)

Ms Christine Ralph confirmed CPL's support of the designation and considered that the Fairley Street walkway was crucial to achieve the objectives and policies of the Harbourside Zone.

Southern Branch of New Zealand Institute of Architects (NZIA)

Mr Nick Baker provided an overview of the NZIA submission which focused upon Plan Change 7 and the use of an urban design panel.

Reporting Officer's Additional Comments

In closing Ms Hogan confirmed her report recommendation.

Applicant's Right of Reply

No additional comments were provided by the Requiring Authority.

Statutory and Other Provisions

In accordance with Section 168A(3) of the Act, the Officer's Report detailed in full the relevant statutory provisions and other provisions we considered. These statutory provisions included the relevant matters in Sections 5, 6 and 7 of Part II of the Act. Regard was given to the New Zealand Coastal Policy Statement, the Regional Policy Statement for Otago, and the Regional Plan: Coast for Otago. Regard was also given to the relevant provisions of the following sections of the Dunedin City District Plan: 4 Sustainability, 10 Industry, 11 Ports, 20 Transportation, and proposed Section 26: Harbourside.

The Officer's Report also considered the requirements of Sections 168A(b), (c) and (d).

Main Findings of Fact

We considered the evidence heard, the relevant statutory and plan provisions, the principal issues in contention and the main findings of fact. The main findings of fact have been incorporated within the reasons discussed below.

Decision

The final consideration of the application, which took into account all information presented at the hearing, was held during the public excluded portion of the hearing.

We reached the following decision after considering the application and the submitters' concerns under the statutory framework of the Act:

*That, pursuant to sections 34A and 168A(4) and after having regard to Part 2 matters of the Resource Management Act 1991, the Notice of Requirement issued by the Dunedin City Council for a designation for "Fairley Street Walkway – Southern Section" with the purpose of "Fairley Street Walkway – Southern Section" on parts of the sites at 51 Fryatt Street (Lot 2 DP26397) and 25 Willis Street (Lot 1 DP7989) is **confirmed, subject to the modification***

shown on the plan attached to this decision. The following conditions shall apply to the designation:

- 1. That prior to commencement of any work on the site, a construction management plan shall be submitted to the Dunedin City Council. That plan shall include, as a minimum:*
 - i. mitigation measures to reduce adverse effects on traffic management in relation to any nearby intersections or arterial roads;*
 - ii. mitigation measures to reduce adverse effects on the operation of adjoining businesses, including access, dust, noise and safety of people visiting the sites; and*
 - iii. outline the process to occur should condition (2) below be invoked.*
- 2. That if koiwi tangata (human skeletal remains), taonga or archaeological artefacts are discovered during site construction, the Requiring Authority shall, without delay:*
 - i. Cease all work within a 50m radius of the discovery and secure the area.*
 - ii. Notify their nominated archaeologist, the consent authority, Kai Tahu ki Otago, the New Zealand Historic Places Trust, and in the case of koiwi tangata (human skeletal remains), the New Zealand Police.*
 - iii. Enable a site inspection by the New Zealand Historic Places Trust and the appropriate runanga, and their advisors, who shall determine the nature of the discovery and the further action required, including whether an Archaeological Authority is required under the Historic Places Act 1993.*
 - iv. Any koiwi tangata or taonga shall be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal and preservation.*
 - v. Ensure that the further action identified in accordance in part (iii) of this condition is undertaken.*
 - vi. Upon completions of tasks (i) to (v) above, and provided all statutory permissions have been obtained, the Requiring Authority may recommence site construction following consultation with the consent authority, Kai Tahu ki Otago, the New Zealand Places Trust, and in the case of koiwi tangata (human skeletal remains), the New Zealand Police.*

Reasons for this Decision

- 1. In reaching a decision, we were mindful of the assessment required by Section 168A(3) of the Act, which is set out below for convenience:*
 - (1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to –*
 - (a) any relevant provisions of –*
 - (i) a national policy statement;*
 - (ii) a New Zealand coastal policy statement;*
 - (iii) a regional policy statement or proposed regional policy statement;*
 - (iv) a plan or proposed plan; and*
 - (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if –*
 - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or*
 - (ii) it is likely that the work will have a significant adverse effect on the environment; and*

- (c) *whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*
- (d) *any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.*

Assessment of Effects

- 2. In assessing the effects of the activity, we relied upon the assessment in the Officer's Report. We have considered the effects based upon the headings used in that report.

Physical Effects

- 3. The Fairley Street Walkway – southern section is located through the sites at 25 Willis Street (Lot 1 DP7989) and 51 Fryatt Street (Lot 2 DP26371). The walkway, as notified, forms a 9 metre wide strip along the eastern boundary of the sites, giving frontage to both Willis Street and Fryatt Street. To give effect to the designation it will be necessary for the Requiring Authority to demolish part or all of the existing building at 51 Fryatt Street. The site at 25 Willis Street contains a sealed open yard for ventilation equipment and outdoor storage associated with the BOTRY- Zen Ltd factory on the adjoining site.
- 4. *Mr John Scandrett* outlined how BOTRY-Zen Ltd utilise the area at 25 Willis Street in its daily operations for inwards outwards goods movements, access to the boiler room and air dryer units, general maintenance and daily wash down of internally-sited plant and equipment in the factory buildings at 21 and 23 Willis Street.
- 5. The Officer's Report considered that the physical effects of removing the ventilation equipment would be moderate to significant and recommended that a condition be imposed on the designation to mitigate the potential effects by allowing for the continuing operation of the ventilation equipment. The Requiring Authority accepted these conditions.
- 6. *Mr David Ehlers* did not consider that the recommended condition went far enough and expressed that he did not have confidence that the Requiring Authority would 'negotiate' to ensure that this occurred. While *Mr Ehlers* preference was to withdraw the designation he did suggest that that part of the 'L' which extended over the ventilation equipment be withdrawn.
- 7. We acknowledge that the walkway was originally notified alongside the Fish Street Square, which would adjoin the walkway to the west. However, the Notice of Requirement for the square was withdrawn by the Requiring Authority prior to the hearing. As a result of this the physical extent of the Fairley Street Walkway takes on an 'L' shape in plan view, a portion of which extends over the ventilation equipment referred to by *Mr Ehlers*. We accept *Mr Ehlers* concern that the condition recommended by the Officer's Report does not guarantee the on-going operation of the equipment. We consider that reducing the width of the designated walkway to 7m by excluding the portion that extends over the ventilation equipment (as shown on the plan attached to this decision) would not adversely affect the design and operation of the walkway. Such a width matches the width of the walkway designation as it continues through to 51 Fryatt Street. As noted above, the Requiring Authority accepted that provision would be made for the ventilation equipment. We consider that modifying the designation extent provides a greater degree of certainty to the operator of the factory, while still achieving an effective walkway.

Traffic and Safety Effects

- 8. The Officer's Report outlined that the walkways have been designed in the context of the harbourside vision and in accordance with the principles of Crime Prevention through Environmental Design (CPTED), and good urban design. This includes good sight lines and safety for pedestrians. *Public Health South* submitted their concerns in relation to public safety in the design of public spaces and that the walkway is smoke-

free. We agree with the assessment contained in the Officer's Report and are satisfied that the principles of good urban design and CPTED will be applied to the final design of the walkway to ensure public safety. The submitters request relating to a smoke-free walkway is a matter of management, and is outside the purpose of the designation and our powers.

Noise Effects

9. We agree with the assessment of noise effects in the Officer's Report which considers that any noise effects during construction will be temporary, and noise generated by the use of the walkway is not considered significant.

Hazardous Substances, Discharge of Contaminants and Site Contamination

10. We are satisfied that the designation will not result in hazardous substances or discharge of contaminants. Construction of the walkway will, however, require ground disturbance and there is a possibility of site contamination given the historical use of the harbourside for industrial activities. The Requiring Authority will need to test for contamination prior to construction. Where contamination exists, remediation will be necessary along with discussion with, and possible consents from, Otago Regional Council. We consider that any potential effects can be managed through an appropriate condition.

Amenity and Visual Effects

11. The Notice of Requirement documentation states that the Fairley Street Walkway has been designed to have both access and amenity functions including:
 - providing the most direct possible pedestrian link from the centre of Dunedin to the harbour edge, with a visual connection between the railway overbridge and the waterfront;
 - providing direct links within the Harbourside area to the harbour edge;
 - improving pedestrian connectivity within Harbourside by breaking up the long east-west blocks;
 - providing small sheltered public spaces, by means of variations in width;
 - providing vehicular access to mid-block residential / commercial car parking; and
 - to interconnect public space within harbourside.These functions also provide for positive amenity and visual effects within the harbourside.
12. The evidence of Ms Janet Reeves discussed the urban design benefits of the walkway in terms of the objectives that the Requiring Authority wants to achieve, including providing shorter and more direct routes to the waterfront, increase pedestrian permeability and open up axial views from the north to the water. Ms Reeves was of the opinion that it will be necessary to take steps to encourage people into the Harbourside area and that while walkways are an important step they are not an automatic recipe for success. Ms Reeves considered the walkway had benefits but had reservations as to whether the axial views to the water would be achieved. Ms Reeves stated that "*Once reaching ground level there will be the opportunity to look along the view shaft while walking towards the water. Again the view will only be possible if the pedestrian(s) align themselves correctly. Because the terrain is flat it will not be possible to see the water from eye level, except at close quarters. However, a vertical feature could be positioned on the wharf side as a focal point. Moored or passing boats may also be sighted.*" The concerns of Ms Reeves with regard to the axial views were also shared by Mr David Ehlers.
13. While we heard no urban design evidence against the establishment of the walkway, we acknowledge the concerns raised by Ms Reeves and Mr Ehlers. However we do not consider these to result in a significant adverse effect upon the operation of the walkway or its objectives. We note that the provisions of the Harbourside Zone

encourage the development of a rebuilt or refurbished Fryatt Street wharf with a height lower than the existing wharf and buildings designed to enhance the views to the water.

Social and Cultural Effects

Potential disturbance of archaeological sites

12. Both *NZHPT* and *Elizabeth Kerr* sought that an archaeological assessment be undertaken for the whole harbourside area. We do not consider that such an assessment is necessary. The construction of the walkway will require ground disturbance, with the removal of buildings. Such ground disturbance will be subject to the requirement for an archaeological authority under Section 12 of the Historic Places Act 1993, where it is associated with activities pre-dating 1900. We consider it appropriate to impose a condition on the designation for accidental discovery protocol.

Heritage Values

14. The Officer's Report confirmed that none of the sites or buildings subject to the Notice of Requirement are identified on Schedule 25.1: Townscape and Heritage Buildings and Structures of the Plan.
15. Both the *NZHPT* and *Elizabeth Kerr* were concerned that the designation would result in the loss of heritage values with the demolition of buildings on 51 Fryatt Street, being the former Iron and Steel Co of NZ Iron Store. Part or all of this building is to be demolished as part of the Fairley Street Walkway – southern portion. We note that the building is referred to as 55 Fryatt Street in the submission of *NZHPT*, but Council records refer to it as 51 Fryatt Street. For consistency, we refer to the site as 51 Fryatt Street. We note that the owner and occupier of 51 Fryatt Street did not submit on the Notice of Requirement.
16. In his evidence, Mr Jonathon Howard, on behalf of *NZHPT*, was of the view that there is an opportunity for the building at 51 Fryatt Street to be retained and incorporated into the harbourside redevelopment. Mr Howard was of the opinion that the building can and should be retained and modified to utilise one or two of the three existing arches in the façade which would be suitable as an entrance to the walkway. Mr Howard suggested that the remainder of the building could continue in use with windows looking onto the walkway. As the final design of this walkway is yet to be determined we consider that there is a possibility that the Requiring Authority could incorporate such a feature, as suggested by Mr Howard. However, we do not consider it necessary to require this as a condition.
17. The evidence of Mr Dave Pearson assessed the building at 51 Fryatt Street against the criteria contained in Method 13.4.3 of the Plan. Method 13.4.3 determines the heritage and townscape significance of an item in terms of its ability to be included in Schedule 25.1 and protected under the Plan. Mr Pearson was of the opinion that the building at 51 Fryatt Street should not be included in Schedule 25.1. While the *NZHPT* Registration Report for Dunedin Harbourside Historic Area provides a brief assessment of the building as a component in the historic area, it does not provide a robust assessment against the District Plan criteria. We accept the evidence of Mr Pearson and do not consider that confirmation of the Notice of Requirement will result in adverse effects upon heritage values.

Construction Effects

18. We note that during the course of construction of the walkway, effects may arise including dust, noise, inconvenience to operators and effects on adjoining sites. We are satisfied that these effects will be temporary in nature and can be remedied, mitigated or avoided by contractors adopting best practice.

Iwi Effects

19. We do not consider that confirmation of the Notice of Requirement will result in adverse effects upon Kai Tahu.

Economic Effects

20. As we have discussed above, giving effect to the designation will result in physical impacts upon existing buildings and activities on the sites subject to the Notice of Requirement. In the case of 51 Fryatt Street, demolition of the existing building will be required along with the relocation of the existing business. While there may need to be some adjustment to the operations of the business at 25 Willis Street. The costs of moving operations and business disruption, is an effect that can be mitigated through the acquisition and compensation process that the Requiring Authority will have to undertake under the Public Works Act 1981 upon confirmation of the designation.
21. We note the Requiring Authority stated in the Notice of Requirement documentation that it will work with owners and occupiers to find alternative locations, which we expect would form part of the necessary purchase and compensation negotiations to enable the designation to be given effect to.
22. The confirmation of the designation and its eventual construction will result in positive effects, establishing the public walkway that includes obtaining direct connection between the railway over-bridge and the harbour edge, permeability and other urban design benefits for the long term development of the harbourside under the provisions of Proposed Plan Change 7.

Consideration of Relevant Statutory Documents (s 171(1)(a))

23. We considered the provisions of the relevant statutory documents. In doing so we had particular regard to the assessment contained in the Officer's Report.

New Zealand Coastal Policy Statement (NZCPS)

24. We were mindful that the walkway does not directly affect any part of the coastal marine area but acknowledged that the walkway will enhance public access to the coastal marine area.

Regional Policy Statement for Otago (RPS)

25. The relevant policies contained in the RPS include recognising and providing for the Manawhenua perspective; land, coast, built environment, natural hazards and energy. We noted that the site, being reclaimed land, was not likely to hold any significant cultural values. We considered that it is appropriate to impose a condition to require construction works to cease should any items of potential cultural/archaeological significance be discovered and the runanga/NZHPT be contacted.
26. We considered that the proposal was not inconsistent with the objectives and policies of the RPS.

Regional Plan: Coast for Otago

27. We were mindful that the proposal is not within the coastal marine area, but noted that Objective 7.3.1 seeks to maintain and enhance public access to Otago's coastal marine area. We considered that the proposal will achieve this objective with the walkway facilitating direct access to the waterfront on this site.

Dunedin City District Plan

28. We considered the proposal in accordance with the provisions of the significant resource management Issues, Objectives and Policies, contained in Section 4: Sustainability of the Dunedin City District Plan (the Plan).
29. Objective 4.2.1 seeks to enhance the amenity values of Dunedin City, while ensuring that significant natural and physical resources are appropriately protected (Objective 4.2.4). Policy 4.3.1 seeks to maintain and enhance amenity values, while Policy 4.3.6 seeks to provide access to natural and physical resources.
30. We determined that the proposed designation is not contrary to the above objectives and policies. The designation is consistent with Objective 4.2.1 and Policy 4.3.1, resulting in an improvement to the amenity values of the affected sites, and the waterfront area more generally. Policy 4.3.6 is achieved through the improvement of public access to the coast and the harbourside as a natural resource.
31. We noted that the site is zoned Port 2 in the Plan, which is subject to rezoning under Proposed Plan Change 7: Dunedin Harbourside. Objectives and policies contained in the Plan for the Port Zones relevant to the subject site seek to manage the port resources to sustain their future potential use (Objective 11.2.1). Policy 11.3.7 seeks to provide public access to and along the coastal marine area margin except where it is inappropriate for public health and safety reasons.
32. We considered that the proposed designation is not contrary to the need to manage port resources to sustain their future potential use (Objective 11.2.1), particularly as the proposed site is not used for port-related activities. We considered that the walkway will achieve Policy 11.3.7 providing access to the coastal marine area.
33. We considered that the designation is not contrary to the objectives and policies of Section 20: Transportation, particularly Policy 20.3.8, which seeks to provide for the safe interaction of pedestrians and vehicles.
34. We note that the site is subject to rezoning as Harbourside under Proposed Plan Change 7. The walkway designation is consistent with the objectives and policies of the proposed Section 26: Harbourside. Objective 26.2.1 seeks to attain a Dunedin harbourside that is easily accessible with strong visual and safe physical connections to the city centre, harbour and surrounding areas. Objective 26.2.2 seeks to achieve a Dunedin harbourside area that is a vibrant and attractive place to visit, work and live, with public open spaces along the harbour edge creating a high quality waterfront environment. Policy 26.3.3 identifies the location of areas to be provided and maintained for public open space, pedestrian connections and view shafts to vistas of the water.

Consideration of alternative sites, routes or methods (s 168A(3)(b))

35. Section 168A of the Act only requires an assessment of alternative sites, routes or methods in the event that it is determined that the requiring authority has an insufficient interest in the land, or, if it is likely that there would be significant adverse effects arising from the proposed activity. We are satisfied that Requiring Authority did not have sufficient interest in the land and had not commenced negotiations. We considered that assessment of alternatives is necessary.
36. We acknowledged that a number of alternative options to achieve the walkway were included in the Notice of Requirement. The alternatives included various alignments and utilisation of existing footpath routes to achieve pedestrian access and connections to achieve the harbourside vision. Given the developed nature of the harbourside and the desire to achieve direct connections and views to the harbour edge, it would be difficult to achieve these without demolition of existing structures. We heard the urban design evidence of Ms Janet Reeves discuss the benefits of a walkway and other means available to achieve the objectives, including use of the existing footpath and road network. We were satisfied that the Notice of Requirement demonstrated that the proposed works would be the most efficient and logical option to achieve the objective

for the harbourside to: *reconnect the heart of the City to the harbour and to rejuvenate the Harbourside with a mix of land uses, public spaces and amenity areas.*

Necessity of the work and designation for achieving the requiring authority's objectives (s 168A(3)(c))

37. We considered the Notice of Requirement demonstrated the need for the walkway in relation to fulfilling the vision for the harbourside. We considered that the designation process is appropriate as it would ensure that Requiring Authority could undertake establishment of the walkway without the need for further consent.
38. The Officer's Report did not consider that the Notice of Requirement sufficiently considered alternative methods for undertaking the proposed works. The Officer's Report considered such methods included imposing relevant rules within the Harbourside Zone to obtain the areas for the walkways upon redevelopment. The Officer's Report recognised that this method relies upon the owners and developers providing such areas, along with the availability of the site, and may not achieve the desired objectives sought by the Requiring Authority.
39. The Officer's Report also considered that the other option is to apply for resource consent over land the Requiring Authority does not own. The construction of a walkway would require consent as a non-complying activity and, as such, we do not consider provides certainty for the Requiring Authority or the ability to use the Public Works Act 1981 if necessary.

Any other Matters (s 168(3)(d))

40. Proposed Plan Change 7: Dunedin Harbourside
We have referred to Proposed Plan Change 7 throughout this decision. We heard submissions on the plan change alongside the Notice of Requirement. We have issued a separate decision on the Proposed Plan Change 7. We are satisfied that the designation for the walkway is integral to the plan change and vision. A significant amount of time and consultation had gone into the development of the vision. The plan change seeks to create a mixed use environment in which to live, work and visit. This involves the provision of a network of public open spaces connecting the city centre and the harbour to support and encourage the mixed use environment. We consider that the designation will achieve this.

Part 2 Matters

41. We were satisfied, having heard and considered the evidence from the Requiring Authority, that the establishment of the walkway is an efficient use of the land and that it would not adversely affect the life-supporting capacity of air, water, soil and ecosystems.
42. We also considered that the proposal will not have a significant adverse effect on the social well-being, nor the health and safety of the community, and it is not in conflict with any of the matters specified in Sections 5(2)(a) to (c) of the Act.
43. With regard to Sections 6(e) and 6(f), provided that the contractors comply with an appropriate discovery protocol in the event that archaeological material is unearthed during excavation, we consider that the proposed works would respect the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, and would also be consistent with the protection of historic heritage in general. In addition, an archaeological approval will be necessary to meet the requirements of the Historic Places Act 1993. No relevant buildings or structures on the subject sites have been identified as having heritage significance within the Plan.
44. We consider that the proposed walkway would enhance the amenity values of the site and the quality of the environment, and therefore considered that the application was consistent with Sections 7(c) and (f) of the Act.

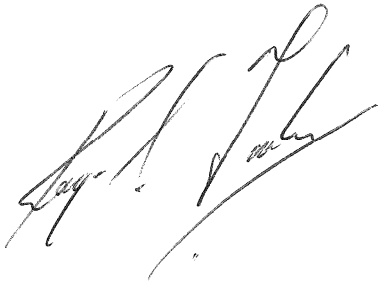
45. Overall, we are satisfied that the proposed Fairley Street walkway – southern section would not adversely affect amenity values or the maintenance and enhancement of the quality of the environment.
46. We conclude that confirming the Notice of Requirement, subject to the modification as shown on the map attached to this decision along with the conditions, would be consistent with the purpose of the Act to promote the sustainable management of natural and physical resources.

Lapsing of Designation

47. This designation shall lapse after a period of five years from the date on which it is included in the Dunedin City District Plan. This period may be extended on application to the Dunedin City Council pursuant to Section 184 of the Act.

Please direct any enquiries you may have regarding this decision to Debbie Hogan at 474-3331 or by e-mail to dhogan@dcc.govt.nz.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Roger Tasker', written over a horizontal line.

Roger Tasker
CHAIR of the HEARINGS COMMITTEE

John Lumsden
HEARINGS COMMISSIONER

Encl