

23 June 2010

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

Dear Mr Harland

NOTICE OF REQUIREMENT

**DIS-2007-9: DUNEDIN CITY COUNCIL
41 WHARF STREET, DUNEDIN**

The above Notice of Requirement for the Jetty Street/Wharf Street road realignment 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 were issued for the plan changes in February 2009.

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 and adjourn the hearing. We undertook site visits of the harbourside area on 21 July 2008 and 4 August 2008.

There has been a substantial adjournment in the hearing and a delay in releasing our decision on this Notice of Requirement. The delay is due to our request for further information and our desire to provide some flexibility for discussions to occur between the Requiring Authority and the owner of the site, Arthur Barnett Properties Limited, so that it may assist land purchase processes and resolve differences. After a lengthy period we were advised that these discussions had failed to reach agreement and the hearing was reconvened on 10 May 2010. We also undertook a further site visit.

It is our decision that the Notice of Requirement be **withdrawn**. The full text of the decision commences below.

The Hearing and Appearances - 21-31 July 2008

The Requiring Authority was represented at the hearing by:

- Mr Michael Garbett – Counsel
- Mr Jim Harland – Chief Executive Officer, Dunedin City Council

- Ms Janet Reeves – Urban Design Consultant
- Mr Don Hill – Transportation Planning Manager, Dunedin City Council

Submitters attending to speak to their submissions were:

- Transit New Zealand represented by Mr Bruce Richards (Acting Regional Manager)
- Arthur Barnett Properties Limited represented by Mr Neville Marquet (Counsel), Mr Tim Barnett, Mr Don Anderson (Planner), Mr Dave Gamble (Traffic Engineer), Mr Barry Chamberlain (Civil Engineer)
- 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 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 proposed road realignment would not result in adverse effects. Ms Hogan considered that the Requiring Authority had considered a range of alternative sites and routes to achieve the objective of the designation, although had not fully investigated alternative methods for undertaking the proposed works. Overall, Ms Hogan recommended confirmation of the Notice of Requirement as notified.

The Applicant's Case

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

Ms Janet Reeves' evidence described the urban design benefits of realigning the road through the site at 41 Wharf Street, bringing the road closer to the railway line. Ms Reeves considered this to be a key location at the entrance to the harbourside area, with the realignment providing the opportunity to complement the adjacent public amenity area with a softer, greener space.

Mr Don Hill outlined Council's strategy to establish a Strategic Arterial Route and the aspirations for the Harbourside, which are set out in the City's Transportation Strategy adopted by Council in July 2006. Mr Hill discussed the recognition in the Strategy of the need for a good connection from the central city to the Harbourside and the proposal for an at-grade connection across the rail corridor on the line of Rattray Street.

Evidence from Submitters

Arthur Barnett Properties Limited

Mr Neville Marquet submitted that the Notice of Requirement was merely a guise for the acquisition of additional open space. Mr Marquet said that the designation was unnecessary and there is no planning management or traffic engineering reason justifying shifting the present arterial route on to 41 Wharf Street (owned by Arthur Barnett Properties Limited). Mr Marquet further said there had been no proper analysis of the advantages, disadvantages, benefits or costs associated with the designation.

Mr Tim Barnett outlined his development plans for the 41 Wharf Street site and explained the series of meetings with Dunedin City Council over potential purchase of the land required.

Mr David Gamble gave evidence on the traffic and transportation issues relating to the Notice of Requirement. Mr Gamble provided details of the Notice of Requirement and reviewed the preferred Option 5 (which is the subject to the Notice of Requirement). Based on his review, Mr Gamble was of the opinion that the preferred option is significantly flawed, unsafe and can not be built.

Mr Barry Chamberlain gave evidence as to whether the technical aspects of the proposed Notice of Requirement would comply with the requirements of the Public Works Act so that the designation could be given effect to. Mr Chamberlain cited relevant clauses of the Public Works Act 1981 concerning compulsory acquisition of land and various matters to be considered by the Environment Court in the event that a landowner appeals a council resolution. Mr Chamberlain considered that the intended function of the proposed new bridge ramp and road realignment is no different to the present ramp and roadway, and the traffic issues appear to be similar. In his opinion the information on which Council made the decision to designate was flawed. Mr Chamberlain considered that if the reason for the designation is to prevent the owner of the land from utilizing the site for the purpose for which resource consent has been obtained from the council, then that is not a legitimate use of the Public Works Act.

Mr Don Anderson gave planning evidence and described his experience in dealing with Notices of Requirement. Mr Anderson said that the present use of the land at the head of the harbour basin was low and the compulsory taking of private land in order to increase the area available was not justified.

Chalmers Properties Limited (CPL)

Ms Christine Ralph confirmed CPL's support of the designation and considered that the road realignment is crucial in order to achieve the objectives and policies of the Harbourside Zone.

Mr Tony Penny gave evidence on the transportation environment surrounding the harbourside area, in light of the Council's Transportation Strategy. Mr Penny's preferred option for Wharf Street was for the demolition of the flyover ramp and a realignment of Wharf Street to produce a better alignment of the harbour arterial at the proposed Fryatt Street/Rattray Street intersection.

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.

New Zealand Historic Places Trust (NZHPT)

Expert witnesses for NZHPT spoke to their submissions, which related to Proposed Plan Change 7 and the Notice of Requirement, with no specific comments in relation to this Notice of Requirement. Dr Matthew Schmidt outlined the benefits of undertaking an archaeological assessment prior to development.

Reporting Officer's Additional Comments

Ms Hogan confirmed her report recommendation in closing submissions at the hearing.

Applicant's Right of Reply

In closing, Mr Garbett restated that the purpose of the designation was for roading and that this primary purpose has an incidental benefit of creating open space where the current road exists. Mr Garbett also stated that the site, or part of the site, is required whichever of the roading realignment options is selected.

Mr Don Hill provided rebuttal evidence and stated his preference to improve the roading was to recreate an at-grade route from Cumberland Street to Fryatt Street along Rattray Street. Such an option would also involve shifting the arterial closer to the rail corridor, taking in part of the site at 41 Wharf Street at its northern end.

Request for Further Information

Upon consideration of the evidence presented at the hearing (21-31 July 2008) we were not fully satisfied that the Notice of Requirement was required for roading purposes and we sought further explanation of a number of matters to assist in our decision making. We outlined our concerns in a Memorandum to the parties dated 3 October 2008, requesting that the Requiring Authority respond to the following questions to assist in our decision:

- (i) What roading improvements are expected by realigning Wharf Street? We do not expect these to include reference to the prospect of improving the intersection with a crossing at Rattray Street since this is uncertain and, in any case, can be achieved by taking just a small portion of the 41 Wharf Street property.
- (ii) What is the Council's response to Mr Marquet's contention that proposed Rule 26.7.3 is unlawful in that it denies the landowner the legitimate use of their land and, if the designation is confirmed, it effectively prevents Arthur Barnett Properties Ltd's consent from being exercised.
- (iii) According to Section 168A(3) of the Act, we need to be satisfied that there has been adequate consideration given to alternative sites, routes or methods of undertaking the work. Was the status quo examined and, if so, what specific advantages does the realignment of Wharf Street (Preferred Option 5) have, in terms of traffic flow and/or safety, that would justify the designation?

The memorandum was circulated to all parties.

Response to Further Information and Modification of Notice of Requirement

We received a response to our memorandum from the Requiring Authority on 11 December 2008, consisting of a memorandum from Mr Garbett and a supplementary statement of evidence from Mr Hill.

In summary, the Requiring Authority had reviewed its position in relation to the extent of the designation. The supplementary statement of evidence of Mr Hill explained that the major traffic safety issue in the Wharf Street/Fryatt Street area relates to traffic emerging from Fryatt Street, which has limited sight distance. To deal with this safety issue, it was proposed to move the over-bridge and off-ramp onto 41 Wharf Street as per the preferred Option 5 in the Notice of Requirement. An alternative option to achieve a similar outcome was shown as Option 5b in the Notice of Requirement involving a strip of 41 Wharf Street to realign the road and avoiding the need to reconstruct the over-bridge.

On the basis of the supplementary evidence, the Requiring Authority advised that they no longer wished to pursue a designation extending over the whole of 41 Wharf Street. Rather, the Requiring Authority only wished to designate a portion of 615m² at the north-eastern end of 41 Wharf Street for the construction, operation and maintenance of a public road. This was shown as Option 5b in the Notice of Requirement, effectively showing a sliver of land to be designated.

All submitters were sent a copy of our further information request and copies of the Requiring Authority response. We gave submitters the opportunity to provide any comments on the Requiring Authority's response to us by 23 January 2009, upon which we would then either reconvene the hearing or issue a decision. We received supplementary evidence from Mr David Gamble on behalf of Arthur Barnett Properties Limited. The supplementary evidence

concluded that the revised design did not achieve any significant improvement in sight distance for traffic emerging from Fryatt Street.

Upon consideration of the further information and supplementary evidence we were still unable to come to a decision based upon the information before us. On 19 February 2009, we advised that unless the relevant parties were able to resolve the disputed issues, we were of a mind to reconvene the hearing to enable the matters to be explored further. A deadline of 6 March 2009 was provided to conclude discussions and provide further evidence.

We understand that representatives for the Requiring Authority and Arthur Barnett Properties Limited met on 27 February 2009 to discuss the reduced area to be designated. A positive response was communicated to us after the meeting that there was willingness by both parties to continue to resolve the disputed issues and an opportunity to initiate negotiations in relation to the compensation process. On this basis we provided flexibility to continue with negotiations with a view that it would result firstly in resolving the area to be designated and secondly agreement of the landowner to purchase the required area. In turn this would enable us to issue a decision that parties were comfortable with.

On 22 December 2009 we received a memorandum from Counsel for the Requiring Authority informing us that negotiations had not been able to result in an agreement on all matters. Counsel requested that we issue a final decision on the Notice of Requirement based upon a reduced area of 561m².

In response to the Requiring Authority's memorandum, we received a memorandum from Counsel for Arthur Barnett Properties Limited on 23 December 2009. Arthur Barnett Properties Limited submitted that our only option is that the site not be designated, given that we had indicated there was insufficient information to make a decision and that no further evidence has been received otherwise. In addition, Arthur Barnett Properties Limited contended that the designation is different from that originally proposed.

A further memorandum was filed by the Requiring Authority on 15 March 2010 reducing the land required to 347m² with further evidence provided by Mr Tony Sizemore. This was followed by a memorandum from Arthur Barnett Properties Limited on 19 March 2010 stating that there is no new evidence on the merits of the proposed designation.

We note that we did not receive correspondence from any other parties during the exchange of memoranda.

Taking note of the concerns expressed by Arthur Barnett Properties Limited, we reconvened the hearing to enable the parties to fully explain their concerns in relation to the reduced designation extent of 347m².

The Reconvened Hearing and Appearances - 10 May 2010

The Requiring Authority was represented at the reconvened hearing by:

- Mr Michael Garbett – Counsel
- Mr Jim Harland – Chief Executive Officer, Dunedin City Council
- Mr Tony Sizemore – Civil Engineer Consultant, MWH

Submitters attending to speak to their submissions were:

- Arthur Barnett Properties Limited represented by Mr Simon Anderson (Counsel), Mr Don Anderson (Planner) and Mr Dave Gamble (Traffic Engineer)

A memorandum was tabled from Chalmers Properties Limited stating they would not be in attendance at the hearing and that they supported Council's revised position on the designation.

An email from New Zealand Historic Places Trust was tabled advising that they would not be appearing at the hearing and that their concerns related to archaeology had been adequately dealt with in the Planner's Report.

Dunedin City Council (DCC) staff in attendance were:

- Ms Debbie Hogan - Handling Officer
- Mr Paul Freeland – Senior Planner (Policy)
- Mr Doug Jackson - Governance Support Officer

Summary of Evidence Heard

The Applicant's Case

Mr Garbett outlined the background and timeline of events that had brought us to the reconvened hearing and confirmed that the reduced extent of the area to be designated by the Requiring Authority was 347m². This is shown as Option 5b in the Notice of Requirement. The reduced designation allows for four lanes of traffic on Wharf Street, a footpath and improvements at the Fryatt Street intersection. This would resolve the current traffic safety issue in the Fryatt Street/Wharf Street area relating to traffic emerging from Fryatt Street, which has limited sight distances, and provide a safer connection to the Harbour Arterial network.

Mr Garbett reiterated that the purpose of the Notice of Requirement has not changed and is for *'a designation for a public work being the construction, operation and maintenance of a public road'*. The background and nature of the proposed work, as described in the notified Notice of Requirement, involves realignment of both the over-bridge and the arterial. The realignment of the arterial was described as *'a minor realignment of the arterial roadway (Wharf Street/Thomas Burns Street) opposite the Fryatt Street intersection'*. As the over-bridge is no longer being realigned, the land required has been reduced to provide for the arterial realignment only. Mr Garbett said that the reduction in the size of the designation is legal and within jurisdiction as the purpose has not changed.

Mr Harland presented an overview of the roading network and how the Notice of Requirement was an essential part of the Harbour Arterial, a Strategic Arterial Route as set out in the City's Transportation Strategy "Your City – Your Future" adopted by Council in 2006.

Mr Sizemore described the Harbour Arterial and how the proposed Wharf Street/Fryatt Street intersection improvement is part of the overall project to improve alignment and capacity along this section of the Harbour Arterial, which includes four-laning. Mr Sizemore explained the main design features of the proposed intersection improvement. In response to a question, Mr Sizemore confirmed that the design had moved from conceptual to preliminary design, despite wording on the plans presented at the hearing. Mr Sizemore confirmed that the design had been surveyed to confirm the extent of the land required from 41 Wharf Street to accommodate the proposed design.

Evidence from Submitters

Arthur Barnett Properties Limited

Mr Simon Anderson submitted that the proposed work and designation will not achieve Council's objectives as originally notified because there is no longer any link to a future Rattray Street rail crossing; open space at the head of the harbour basin will not be created; and subsequently traffic safety will not be improved. Mr Anderson said that, as the requirement has reduced in extent, although the purpose has remained the same its objectives have changed and therefore a new Notice of Requirement is required. Mr Anderson considered that the objectives have changed to now address a traffic safety issue and that the provisions of section 168A(3)(c) of the Act have not been considered.

Mr Gamble gave evidence on the design and safety aspects of the revised proposed realignment (347m²). Mr Gamble was of the view that the proposed realignment will make

the intersection more dangerous for drivers exiting Fryatt Street because the critical high use lane (south to Portsmouth Drive) had a decreased sight distance with an increased speed of entry on to Wharf Street and reduced distance within which to change lanes and access the ramp to Jetty Street. Mr Gamble noted that there were improvements that could be made for traffic safety without the need to realign the road, including preventing a right turn out of Fryatt Street.

Mr Don Anderson described his concerns with the revised designation in relation to the ability to give effect to the resource consent on 41 Wharf Street for an office building. Mr Anderson was of the view that the revised design would result in a reduction in car parking and landscaping area that would require a variation to the conditions of the consent. Mr Anderson also told us that the extent of the area to be designated appeared to show additional land beyond that which was needed for the realignment, consisting of a combined cycle/pedestrian way on 41 Wharf Street. Mr Anderson was also concerned with the proposed right turn lane into Fryatt Street and potential conflicts with permitted activities in Fryatt Street. Mr Anderson was of the opinion that removing the right turn lane reduces the need for land on 41 Wharf Street.

Reporting Officer's Additional Comments

Ms Hogan had considered the evidence presented and was of the opinion that part of 41 Wharf Street was necessary to achieve the objectives stated in the notified Notice of Requirement provided those objectives still remained applicable. Ms Hogan did however consider that Mr Simon Anderson had raised some important points as to the changes in the extent of the requirement and its justification, changing from improved access to road safety to four-laning. Ms Hogan was of the view that if the Commissioners considered the main objective of the requirement was for improvements to the Harbour Arterial, including four-laning, then it is not consistent with the notified objectives and should follow its own separate process. Ms Hogan acknowledged the conflicting traffic evidence and the difficulties and concerns it raises. Ms Hogan also concurred with the point raised by Mr Don Anderson in relation to clarification over the need to take more land than what appeared necessary based upon the preliminary design for the realignment provided by the Requiring Authority.

Applicant's Right of Reply

In closing, Mr Garbett restated that the purpose of the designation was for roading, that a number of alternatives were considered in the Notice of Requirement and that a reduction in extent is in response to issues raised by Arthur Barnett Properties Limited. Mr Garbett confirmed that the additional area in the revised designation that was shown on the plans as being part of the constructed road was necessary to provide for construction. Mr Garbett highlighted that the issue relating to four-laning was not of concern as all the option plans show four lanes.

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 2 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 ('the 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 submissions, evidence heard, further information, 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 Section 168A(4)(d) 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 "Wharf Street North realignment" with the purpose of "Wharf Street North realignment" on 41 Wharf Street (Lot 3 DP 25158) is **withdrawn**.*

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:

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 and the expert evidence provided by Mr Dave Gamble, Mr Barry Chamberlain and Mr Tony Penny and Mr Tony Sizemore. We have considered the effects based upon the headings used in the Planner's Report. Our assessment refers to the designation as notified and the designation as reduced through the further information request. For clarity we refer to these as the *notified designation* (being the whole of the site) and the *modified designation* (being 347m²) respectively.

Physical Effects

3. The nature of the proposed works as notified is to construct, operate and maintain a roadway. The notified designation consisted of a realignment of the existing arterial roadway at Wharf Street North, south of Fryatt Street, including repositioning of one of the off-ramps from the Jetty Street over-bridge. The works were designed to provide improved connections for pedestrians and vehicles to the Harbourside and a positive benefit of creating public open space at the head of the harbour basin. This would be achieved with the relocation of the existing Wharf Street roadway, which could then be incorporated into the existing public space along the Cross Wharf.

4. The area originally to be designated for the Jetty Street/Wharf Street road realignment involved all of 41 Wharf Street, which is currently a greenfield site. As a result of being a greenfield site, we do not consider there to be any physical effects that relate to existing buildings or site conditions. Likewise we do not consider there to be any physical effects with respect to the modified designation with the minor realignment along the north-eastern edge of the site taking a sliver of 347m².
5. Resource consent was granted in June 2007 to Arthur Barnett Properties Limited for construction of an office development on the site. The ability to implement this consent is restricted by the designation, both as notified and modified. We consider that the designation of the whole of 41 Wharf Street, as notified, negates the ability of the owner to give effect to this consent. In our view this is a significant effect that has been reduced with the modification to the designated area enabling the consent to now be exercised with minor changes.
6. In their evidence at the reconvened hearing, Arthur Barnett Properties Limited considered that the modified designation still inhibits their ability to exercise their consent. The extent of the modified designation involves an area of 347m² at the northern end of the site adjoining the existing road. Mr Don Anderson provided evidence that the modified designation impacts up to seven car parks, landscaping and the turning area for the loading bay within the consented development. While it is recognised that this is an effect, we do not consider it to be insurmountable or significant enough to prevent the development from being undertaken. We agree with Mr Anderson that the designation of part of the site will necessitate a variation to the consent as the changes result in the consent holder being unable to meet the conditions of their consent, namely that the development be undertaken in accordance with the original plans. The Council has indicated that they would accommodate the necessary process to vary the consent in light of the required designated area. We also note that 41 Wharf Street is part of the Harbourside Zone and that it provides for a wider range of activities and performance standards that may lead to reconsideration of the development of the site as consented under the resource consent.

Traffic and Safety Effects

7. There was some disagreement among witnesses as to the benefits of the various roading improvements, alternatives and modifications presented by the Requiring Authority. In making our decision, overall we preferred the evidence of Mr Gamble who provided a thorough assessment of the potential impacts of the various options presented by the Requiring Authority.
8. The purpose of the notified designation is the construction, operation and maintenance of a public road involving realignment of the arterial route and the over-bridge off ramp into the land at 41 Wharf Street. The realignment provided for the creation of additional public open space at the head of the harbour basin, envisaged as part of the long term vision for the Harbourside. A minor realignment of the arterial roadway opposite the Fryatt Street intersection and the construction of an 'at grade' connection across the rail corridor to Rattray Street were signalled in the Council's Transportation Strategy. Such changes were to encourage more efficient traffic flows along the existing arterial road, and improvements to the Rattray Street/Fryatt Street junction to provide greater vehicular access to the harbourside area.
9. Mr Hill confirmed that it was his preference to establish an at-grade crossing at Rattray Street to achieve the overall objective of the Notice of Requirement, rather than adjust the ramp alignment as shown in Option 5 in the Notice of Requirement. Mr Hill acknowledged that an adjustment to Wharf Street, requiring a portion of 41 Wharf Street, would still be necessary to develop the Rattray Street intersection. Based upon his preference Mr Hill indicated that it would not necessitate realignment of the off-ramp, and could possibly lead to the complete removal of the off-ramp eventually. Mr Hill said the problem with establishing the crossing is the need to relocate the shunting yards, which is a long and difficult process requiring on-going discussions with ONTRACK. Mr Hill was of the opinion that the option of altering the over-bridge, as contained in the Notice of Requirement, is technically feasible.

10. On behalf of CPL, Mr Tony Penny agreed with Mr Hill in regard to the Rattray Street crossing. Mr Penny was of the opinion that the north-facing ramp from the Jetty Street flyover should be demolished and not reconstructed if the Rattray Street crossing proceeds.
11. We note that, in his evidence, Mr Barnett stated that he would agree to provide some land for improved connection when Rattray Street is reconnected.
12. A thorough assessment of the need for the road realignment was presented by Mr Gamble, on behalf of Arthur Barnett Properties Ltd, who outlined his concerns with the preferred Option 5 (notified designation) in respect to safety. Mr Gamble was of the opinion that individual components of the road realignment were significantly flawed. Likewise Mr Gamble did not consider Option 5a or 5b an improvement or enhancement to the existing roading network, except for minor corner rounding to the south-west Wharf Street/Rattray Street intersection.
13. Based upon the evidence presented at the hearing we had concerns with the proposed realignment as notified. In particular, we were not convinced that there were sound traffic-related reasons for the realignment option that was notified as the preferred option (Option 5). Based upon the evidence, we considered that the primary objective of the Notice of Requirement, as notified, was the creation of open space rather than traffic-related reasons, which happens to be a beneficial result of the realignment. We note that the preferred option was not fully supported by experts. The response to our request for further information did not allay our concerns as discussed below.
14. In response to our further information request the Requiring Authority submitted a modified designation that did not require realignment of the over-bridge but rather a minor realignment requiring a reduced area of 41 Wharf Street, involving a 615m² sliver of land at the northern end of the site. The supplementary evidence of Mr Hill outlined the roading improvements expected from realigning Wharf Street with a give way at Fryatt Street and easing of the road, shifting the centre line towards the railway. Mr Hill explained that the traffic safety benefits would be an improvement to the limited sight distance northwards around the former Loan and Mercantile Building for traffic emerging from Fryatt Street into Wharf Street. The area of land required from 41 Wharf Street would also provide for the shared cycleway/footpath in the roadway.
15. Mr Gamble, in his supplementary evidence in response to the request for further information from the Requiring Authority, disagreed that the modified designation would improve road safety. Mr Gamble analysed the modified designation and considered that the proposed intersection changes, with a give way from Fryatt Street, would make the intersection more dangerous and in fact reduce the sight distance in the critical high use lane (south to Portsmouth Drive).
16. The designation extent was further reduced to 347m² and was the subject of the reconvened hearing. Mr Sizemore explained that the changes to the designation included a right turn bay into Fryatt Street; banning of the right turn from Fryatt Street and increasing the radius for the left turn lane from Fryatt Street to improve sight distance to the north. Mr Sizemore's evidence said that the main issue with the intersection is the right turn out of Fryatt Street, which has deficient sight distance and poor alignment. Mr Sizemore considered that the improvements to the intersection were an important part of the Harbour Arterial route and the desire to maintain four lanes to provide for adequate capacity.
17. At the reconvened hearing, Mr Gamble acknowledged that some changes diminished previous concerns, such as preventing a right turn from Fryatt Street, which improves the line of sight issue, but noted that this did not require any realignment of the road. Mr Gamble still had concerns with the overall need for the modified designation and its design, particularly in relation to the left turn lane from Fryatt Street, which he considered would lead to higher entry speeds onto Wharf Street and insufficient distance to change lanes onto the ramp of the over-bridge. Mr Gamble also questioned whether there was a need for a right turn lane into Fryatt Street.

18. In relation to the modified designation, we concur with the concerns raised by Mr Gamble and prefer his evidence. Since the original notification of the Notice of Requirement the extent of the designation has been reduced, which we acknowledge is in part the Requiring Authority responding to our concerns and we appreciate the response. The modified designation continues to leave outstanding issues unresolved in relation to traffic safety improvements and the overall objectives of the designation. As Mr Gamble pointed out there are simple changes that can be made to the Fryatt Street intersection within the current road boundaries and would not require any additional land. Such changes include banning the right turn into and out of Fryatt Street and potentially improving the left turning into Fryatt Street from Wharf Street if there is a demonstrated need.
19. We agree with the Requiring Authority that the priority is the Harbour Arterial and efficiencies that arise from traffic improvements to it. However, we are not convinced by the Requiring Authority's evidence in support of the designation and indeed consider it raises more safety issues than it improves. While the reasons provided by the Requiring Authority are adequate justification for a roading realignment, we do not consider they are sufficient in this instance in relation to the Notice of Requirement that was placed before us to consider and decide upon.

Alternative Site Assessment (s 168A(3)(b))

20. 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 the Requiring Authority does not have sufficient interest in the land and that an assessment of alternatives is necessary.
21. We acknowledged that a number of alternative options to achieve the road realignment were included in the Notice of Requirement. The alternatives included various alignments to achieve the objective 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*. We were not satisfied that the Notice of Requirement demonstrated that the proposed works would be the most efficient and logical option to achieve the objective.
22. As the designation has gone through its various iterations we note that the Requiring Authority has not given consideration to an assessment of how improvements could be made within the current roadway as an alternative. We consider that there are options within the existing roadway to seek improvements to road safety at the Fryatt Street/Wharf Street intersection.

Whether the Designation is Reasonably Necessary (s 171(1)(c))

23. The reasons as to whether the proposed work is reasonably necessary for achieving the objectives of the Requiring Authority were notified as providing the ability to obtain the dual purpose of road realignment and open space at the head of the Steamer Basin. It was also designed to connect with a future Rattray Street crossing and the wider objectives for the transportation network. The Notice of Requirement stated that the designation was considered necessary to achieve the objective of the designation being 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.'*
24. At the original hearing, witnesses for Arthur Barnett Properties Limited debated the purpose of the notified designation, which they considered was not for roading but for the creation of a public open space. Mr Marquet stated that there is no planning management or traffic engineering reason justifying the realignment of the road. It was because of these concerns that we requested further information. We do not question the overall purpose of the designation.

25. In response to our concerns the Requiring Authority reconsidered its designation and subsequently reduced its extent. With each iteration of the modified designation we heard and received evidence from the various witnesses for the Requiring Authority on the need for the designation, which included the overall vision for the Harbourside, line of sight improvements, and efficiency of the harbour arterial including four-laning. Mr Simon Anderson was of the view that the objectives of the designated area had changed such that there is no longer any link to a future Rattray Street crossing and open space at the head of the harbour basin will not be created. We are mindful that the notified objective involves reconnection and rejuvenation of the Harbourside.
26. We consider that, while the Requiring Authority's justifications are all valid reasons for a designation, they have changed as the designation area has changed to the point that the modified designation now only has a tenuous connection with the notified objective and is not reasonably necessary to achieve the objective.
27. As discussed above there are a number of actions that the Requiring Authority could undertake to improve the intersection within the current road extent. We agree with the concerns raised by Mr Simon Anderson on behalf of Arthur Barnett Properties Limited. We do not consider that the modified designation relates to the notified objectives and while its purpose remains unchanged the objectives have been changed with the reduced extent of the designation such that it is no longer reasonably necessary under the provisions of the Act. Based upon these concerns, we consider it is necessary to withdraw the Notice of Requirement.

Any other Matters (s 171(1)(d))

Plan Change 7: Dunedin Harbourside

29. We have referred to Plan Change 7 throughout this decision. We heard submissions on the plan change alongside the Notice of Requirement at the original hearing. We issued a separate decision on Proposed Plan Change 7 in February 2009 and this is currently under appeal. The plan change seeks to create a mixed use environment 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 notified designation, which was designed to achieve this, has however has been adjusted to reflect a minor roading improvement and no longer achieves the objective of the Notice of Requirement.

Transportation Strategy

30. The Dunedin Transportation Strategy "Your City – Your Future" was adopted by Council in July 2006 and outlines the vision of how the city should function in the face of growth, and to determine the policies and actions necessary to meet the challenges to be faced. The Strategy recognises the need for a good connection from the central city to the Harbourside and proposes an at-grade connection across the rail corridor on the line of Rattray Street. There would be traffic signals at the intersection of this connection with the arterial corridor and Fryatt Street. We note that the notified realignment, which is the subject of this Notice of Requirement is not referred to within the Transportation Strategy.

Part 2 Matters

32. We were not satisfied, having heard and considered the evidence from the Requiring Authority, that the modified designation is an efficient use of the land, however we do not consider that it would adversely affect the life-supporting capacity of air, water, soil and ecosystems.
33. We also considered that the proposal would not have a significant adverse effect on social wellbeing, although we do consider that the modified designation has potential traffic safety effects that need to be resolved. Overall it is not in conflict with any of the matters specified in Sections 5(2)(a) to (c) of the Act.
34. With regard to Sections 6(e) and 6(f) the site does not contain any structures identified as having heritage significance within the Plan.

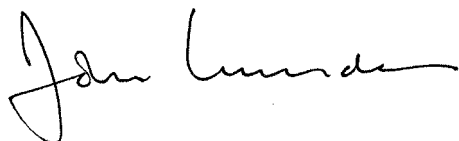
35. With regard to Section 7(c), the proposed works would not detract from the visual amenity of the area. The modified designation provides for the minor realignment of an existing road, consisting of extension of the existing road formation and will not detract from the visual amenity of the area.
36. With regard to Section 7(f), the realignment of Wharf Street would enable provision of improved connections for pedestrians, cycles and vehicles into and around the harbour.
37. Overall we consider that confirming the modified Notice of Requirement would not result in any significant effects in terms of Part 2 of the Act. As previously discussed, however, it is our decision that the Notice of Requirement is withdrawn as we do not consider that it is reasonably necessary for achieving the notified objectives of the Requiring Authority for which the designation is sought in terms of the requirements of Section 168A(3)(c) 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



Roger Tasker
CHAIR of the HEARINGS COMMITTEE



John Lumsden
HEARINGS COMMISSIONER