

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2013-CHC-107

UNDER

the Resource Management Act
1991

IN THE MATTER

of an application for two
designations under section 168A
of the Resource Management Act
1991

BETWEEN

DUNEDIN CITY COUNCIL

Applicant

CONSENT MEMORANDUM

**ANDERSON LLOYD
LAWYERS
DUNEDIN**

Solicitor: M R Garbett
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MAY IT PLEASE THE COURT:

1. Counsel has received the report from Counsel for Anzide Properties Limited, Hall Brothers Transport Limited and Dunedin Crane Hire (2005) Limited ("Anzide Companies") dated 24 October 2014. In that memorandum it is indicated the Anzide Companies will withdraw their submission (or steps taken to otherwise consent to the application). The only issue to be dealt with is costs. The Dunedin City Council does not agree that awaiting a further report by 17 December is the best way to manage this proceeding. The Dunedin City Council considers that the issue of costs should be reserved, and the substantive proceeding dealt with by the Court with the remaining parties.
2. This designation is retrospective and the Dunedin City Council wants to have the substantive proceeding resolved as soon as possible. The substantive proceeding does not need to await the proposed resolution of the issue of costs, and can proceed now.
3. This memorandum sets out an agreement by the remaining parties on how the proceeding can be resolved by consent, on the assumption that the Anzide Companies withdraw their submission.

Sale of land

4. Dunedin City Council is the Applicant for two designations being:
 - a. Designation 1 – Dunedin Harbourside Arterial
 - b. Designation 2 – Dunedin Arterial – Access Road
5. Anzide Companies are the only submitters that have filed a submission in opposition to these designations. Since the direct referral was made the Anzide Companies have sold their land that is adjacent to Designation 1 and 2.
6. The contract for sale and purchase of the land owned by the Anzide Companies has now become unconditional with settlement due on 15 December 2014. Dunedin Holdings 2014 Limited has purchased this property on instructions from Lion – Beer, Spirits & Wine (NZ) Limited ("Lion"). Lion are intending to redevelop the site.
7. The parties to this consent memorandum now all agree on how the application can be resolved by the Environment Court.

Agreement

8. All parties agree, and consent to the Environment Court confirming Designation 1 without conditions, consistent with the recommendation of Mr Cubitt in his report dated 3 October 2013. This provides the lawful authority for the ongoing use of the section of road that has already been constructed on this land. The parties agree that if Designation 1 is approved the current temporary traffic arrangement can remain in place until 15 December 2014. This is the date when the Anzide Companies are to settle the sale of the property.
9. Dunedin City Council hereby gives notice as requiring authority that it withdraws the Notice of Requirement for Designation 2. The reason for this withdrawal is that Designation 2 was intended as an access road principally to provide access to the Anzide Companies' properties. The successor to these properties, Lion does not need nor want this legal road to access the properties it has purchased from the Anzide Companies. Designation 2 would interfere with Lion's intended redevelopment of the site. Therefore Dunedin City Council withdraws the Notice of Requirement for Designation 2.
10. The parties consider that this agreement achieves the purpose and principles of the Resource Management Act 1991 and is within the jurisdiction of the Environment Court.

Costs

11. This memorandum resolves the substantive proceedings. The parties request that the issue of costs between them be reserved at this time to be dealt with at the conclusion of this proceeding.

Procedure

12. Counsel for the Applicant consents to the Court making the draft orders sought on the papers.
13. Counsel notes that this is a first instance decision and should the Court wish to conduct a formal proof hearing Counsel for the Applicant requests that the matter be given an urgent fixture. The reason for this is that the designation is retrospective and the Dunedin City Council wants to have the road approved to regularise the current status. The Dunedin City Council consider it is in the public interest to

remove the temporary traffic control measures as soon as practicable to allow the road to function as designed.

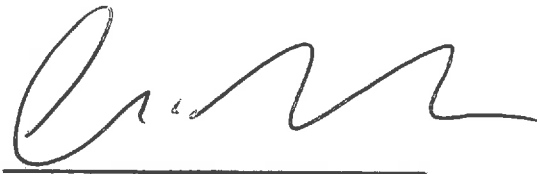
14. Counsel await the Court's direction on how it considers this proceeding can most efficiently now be disposed of.

DATED this 31st day of October 2014



M R Garbett

Counsel for Dunedin City Council



C P Thomsen

Counsel for Anzide Properties Limited, Hall Brothers Transport Limited and
Dunedin Crane Hire (2005) Limited



L Andersen

Counsel for Port Otago

J Knight

Counsel for NZ Transport Agency

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14. Counsel await the Court's direction on how it considers this proceeding can most efficiently now be disposed of.

DATED this day of October 2014

M R Garbett

Counsel for Dunedin City Council

C P Thomsen

**Counsel for Anzide Properties Limited, Hall Brothers Transport Limited and
Dunedin Crane Hire (2005) Limited**

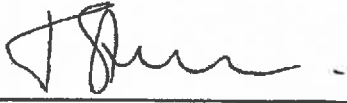
L Andersen

Counsel for Port Otago



J Knight

Counsel for NZ Transport Agency



T Stevens

Counsel for Dunedin Holdings 2014 Limited and Lion – Beer, Spirits & Wine (NZ) Limited as Successor in Title to the Anzide Companies' Properties. Although these companies are not parties to this application their Counsel's signature has been requested to indicate to the Court that these companies consent to this memorandum as future owner and occupier of the Anzide Companies' land.