

BEFORE THE DUNEDIN CITY COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a Notice of Requirement by the Otago Regional Council for a Designation pursuant to Section 168 of the Act for a Central City Bus Hub (DCC Notice of Requirement DIS-2017-1)

CLOSING SUBMISSIONS FOR OTAGO REGIONAL COUNCIL
Dated: 31 October 2017

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CLOSING SUBMISSIONS FOR OTAGO REGIONAL COUNCIL

May it Please the Commissioners:

Introduction

- 1 These submissions are filed in response to matters raised by submitters and the Commissioners during the hearing on 24 and 25 October 2017.
- 2 These submissions should be read alongside the further evidence from Gerard Collings, Emily Cambridge, Andy Lightowler and Megan Justice.
- 3 Mr Collings deals with the following:
 - 3.1 Generation Zero's advocacy for a central platform in the Hub;
 - 3.2 Toilet hours;
 - 3.3 Community House issues: car parks, privacy, dust/fumes and noise;
 - 3.4 Off-street parking: Wilsons and Victoria Hotel;
 - 3.5 Current standards of shelter: to, from, and at Central City bus stops, and elsewhere in the network;
 - 3.6 Issues raised by Mr Day: patronage, bus size, the need for a Hub (both now and in the future);
 - 3.7 Heritage New Zealand and the Community House façade;
 - 3.8 Blackett Lane as a means to access the Hub;
 - 3.9 Future proofing.
- 4 Ms Cambridge deals with the Hub as a pedestrian/people space, an outcome promoted by Generation Zero.
- 5 Mr Lightowler deals with the following traffic matters:
 - 5.1 Flush median;
 - 5.2 Footpath width;

- 5.3 Angled bus bays;
 - 5.4 Pedestrian access and crossings;
 - 5.5 The possibility of a raised courtesy crossing;
 - 5.6 The possibility of a dedicated pedestrian path through the Community House car park;
 - 5.7 The Hub as a pedestrian space.
- 6 Ms Justice responds to the planning evidence of Mr Smith, and gives further evidence on conditions.

Necessity for Hub

- 7 Some submitters, most notably Mr Day and Mr Smith, question the need for a Bus Hub at all.
- 8 That is not a matter for this hearing.
- 9 The Otago Regional Council (“ORC”) has already determined that a Bus Hub is necessary for the efficient functioning of the public transport network in Dunedin. The Notice of Requirement for a designation is a step towards giving effect to that objective. That objective has been arrived at through other processes, including public consultation, under other legislation.
- 10 The question for the Commissioners is not whether the Hub is necessary, but whether the Hub in this location is an appropriate use of land having regard to its effects on the environment if the designation is implemented.

Alternatives

- 11 Some submitters promoted alternative sites.
- 12 That is beside the point. The issue under Section 171(1)(6) is ORC’s site selection. No one challenged the ORC’s process.

Assessment of Effects

- 13 The principal effects are traffic effects, and the implications for the Hub on the transport network.

- 14 The ORC called expert evidence on these matters. A number of submitters, notably Mr Smith, made assertions of adverse effects. Those assertions are contradicted by the expert evidence. On such matters, the expert evidence must be preferred. The City's expert advisers did not take issue with the requiring authority's experts.

Scope of the Notice of Requirement

- 15 An issue during the hearing was the absence of continuous shelter from George Street to the Hub.
- 16 The factual situation is discussed in Mr Collings' reply.
- 17 The Notice of Requirement does not extend to pedestrian linkages from George Street to the Great King Street site. Provision of shelter on those routes is not part of the proposal. Further, ORC does not own the land or buildings so that compliance with any condition about providing continuous shelter along pedestrian routes would depend on the approval and cooperation of third parties. It is axiomatic that such a condition is unlawful.

The Proposed Designation

- 18 The Commissions raised two issues:
- 18.1 What directions could be given on design matters such as shelter and paving?
- 18.2 What links could be included in the designation to the concept plans presented by the requiring authority in either the designation or in the outline plan process?
- 19 The sole consideration of a Notice of Requirement for a designation is whether the public work is an appropriate use of land having regard to its effects on the environment when evaluated in accordance with Section 171(1).
- 20 The ORC has not incorporated the details of the proposed Bus Hub into the Notice of Requirement. The plans presented are conceptual only. This approach is consistent with the RMA provisions for Notices of Requirement.
- 21 With respect to shelter for Bus Hub users, two options are presently under consideration.

- 22 Design has not been finalised. Funding is in place, but will require adjustment (as Mr Collings explained at the hearing) if the ORC decides that extended shelter is warranted.
- 23 The ORC does not seek an exemption from the outline plan process.
- 24 It accepts that if the designation is confirmed, it must prepare and submit to the DCC an outline plan in accordance with Section 176A RMA.
- 25 Section 176A(3) prescribes what an outline plan must include:
- (a) the height, shape, and bulk of the public work, project, or work; and
 - (b) the location on the site of the public work, project, or work; and
 - (c) the likely finished contour of the site; and
 - (d) the vehicular access, circulation, and the provision for parking; and
 - (e) the landscaping proposed; and
 - (f) any other matters to avoid, remedy, or mitigate any adverse effects on the environment.
- 26 The City Council may request changes. If the ORC decides not to make any requested changes, the DCC has a right of appeal to the Environment Court.
- 27 The nature of the matters in subsection (3) indicates two things.
- 28 First, the outline plan must include a level of detail of the works which is not necessary for confirmation of a designation.
- 29 Secondly, like the designation, the outline plan focuses on effects of the work on the environment.
- 30 It is important to keep in mind that when considering effects, the focus is on the “receiving environment”. The point can be put another way. This hearing is concerned with “externalities”, not “internalities”. The level and quality of service offered by the Hub is a matter for the requiring authority.
- 31 It is not an RMA matter to consider the standard of rooms in a hotel or the internal layout of a supermarket, when an application is needed for a resource consent for those activities.

- 32 Likewise, by analogy, it is not a relevant resource management consideration to consider and give direction by way of condition on the standard of facilities which the requiring authority must provide for Bus Hub users.
- 33 The ability to recommend conditions is circumscribed. It is limited to the interface between the activity for which the designation is sought and the receiving environment.
- 34 This case is slightly unusual in that the designation sought will, if implemented, result in shared use of public space. The interface between Bus Hub activities and other users (motorists and pedestrians) within the designation site is within the ambit of this hearing.
- 35 Against that backdrop, the questions posed by the Commissioners must be answered as follows.
- 36 It is beyond the scope of Section 171 to recommend conditions on design and the facilities within the Bus Hub, where the purpose of the condition is to provide for the amenity of Hub users.
- 37 It is also beyond the scope to require the designating authority to provide specific facilities or a specific standard of facilities for Hub users.
- 38 Accordingly, shelter for bus users cannot be prescribed by conditions.
- 39 Conditions could be imposed on paving, if that was considered necessary to manage the interaction between Bus Hub users and other users of the public open space within the designation site.
- 40 No link can be made to any of the plans presented by the ORC. Those plans are conceptual. They are indicative only. They are intended to give the public, the territorial authority and the Commissioners an understanding how the designation may be implemented to facilitate an assessment of effects on the environment. ORC accepts that it must finalise the design and go through the outline plan process.

- 41 A designation provides RMA permission to use land for a public work. The designation does not need to be linked to a specific design or layout. If so, the outline plan process would be redundant. The requiring authority needs to be able to give effect to the designation in a way that is responsive to not only current but also future functional requirements and customer expectations. It should not be locked into any particular design or layout. Flexibility is necessary.



A J Logan
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Dated: 31 October 2017