

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)

OPENING SUBMISSIONS FOR OTAGO REGIONAL COUNCIL

ROSS DOWLING MARQUET GRIFFIN
SOLICITORS
DUNEDIN

Solicitor: A J Logan

Telephone: (03) 477 8046
Facsimile: (03) 477 6998
PO Box 1144
DX YP80015

OPENING SUBMISSIONS FOR OTAGO REGIONAL COUNCIL

May it Please the Panel:

Introduction

- 1 The Otago Regional Council ("ORC") seeks a designation for a Central City Bus Hub for the Dunedin public transport network.

The Site

- 2 The site is, in general terms, Great King Street, between St Andrews Street to the North and Moray Place to the South; part of Moray Place is encompassed by the designation footprint.
- 3 The site is more particularly described in the Notice of Requirement¹.
- 4 Most of the land to be designated is the road owned and controlled by the Dunedin City Council ("DCC") under the Local Government Act 1974.
- 5 The balance is small areas of land, along street frontages, which is privately owned and occupied.
- 6 None of the land is owned by the ORC.
- 7 To implement the designation, ORC must secure the agreement of owners and occupiers, including DCC.

Nature of the Works

- 8 The primary functions of the Bus Hub are to provide Central City termini for bus services and a transfer point connecting services.
- 9 The physical elements making up the Hub are listed, non-exhaustively, in the Notice of Requirement².

¹ See in particular Annexure 1 and Appendix A

² Notice of Requirement, pages 1 and 2, and Annexure 2

Requiring Authority

- 10 ORC is a local authority under the Local Government Act 2002. As such it is permitted to give Notice of Requirement for a designation for a public work in the District Plan³.

Role of the Territorial Authority

- 11 The role of the City Council is to consider the Notice of Requirement and submissions received on it and then recommend to the requiring authority (in this case ORC) whether the notice be confirmed, modified, subject to conditions or withdrawn⁴.

- 12 Section 171(1) RMA states that:

"(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."*

- 13 Some points require elaboration.

- 14 The focus of Section 171 is on effects. The evaluation of effects by the territorial authority is informed by having particular regard to the matters listed in paragraphs (a), (b), (c) and (d).

³ Section 166 RMA

⁴ Section 171(2) RMA

- 15 *"Having particular regard to"* requires the territorial authority to expressly take each of the matters listed into account. It may give each such weight as it thinks fit. It can choose to give no weight to a particular matter. That would be so, for example, if the listed consideration is irrelevant to the subject matter of the notice of requirement (for example, the New Zealand Coastal Policy has no application to this NOR because the site is outside the coastal environment).
- 16 Some matters raised in submissions go beyond a consideration of effects on the environment. These topics include:
- 16.1 Changes to bus routes, unrelated to the Bus Hub (eg Arthur/Russell Streets): G Calder and L Angelo;
- 16.2 Bus fares: G Calder;
- 16.3 Which agency should be responsible for public transport in Dunedin: A Parks and L Angelo;
- 16.4 Bus size and type; research supporting the "Bus Hub" proposal: P Day.
- 17 The need for the Bus Hub is not a consideration for the Panel. This hearing is not an enquiry into the validity of the ORC's public transport objectives. Those objectives have been set in other documents, developed through public consultation processes, under the Land Transport Management Act 2003. They are now fixed. The focus of this hearing is exclusively on the effects of this particular proposal to implement the relevant Regional Council public transport objectives.

"Subject to Part 2"

- 18 The function of Part 2 on considering notices of requirement (and resource consent applications) is a matter of debate.
- 19 In the context of a notice of requirement, the law requires Part 2 to be considered and, in the event of conflict, prevail⁵.

⁵ *McGuire v Hastings District Council* [2002] 2 NZLR 577, *Queenstown Airport Corporation v QLDC* [2013] NZHC 2347 [68-70], and *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZRMA 375; compare to *R J Davidson Family Trust v Marlborough District Council* [2017] NZRMA 227 (Resource Consent Application)

Effects on the Environment

20 The potential effects on the environment are:

20.1 Transport;

20.2 Visual and amenity;

20.3 Heritage;

20.4 Noise; and

20.5 Odour and fumes.

Transport

21 Within the designation site, the principal impact will be the loss of on-street parking. Otherwise, the impact on the use of Great King Street and Moray Place as roads will be minor.

22 Within the designation site, access-ways will be unaffected.

23 The re-routing of bus services and the retirement of bus stops elsewhere in the Central City area will free up kerb space and enable the DCC, as road controlling authority, if it wishes, to allocate the available space for parking.

24 Intersections within the designation site and elsewhere will need to be modified to accommodate the re-routing of bus services. The impact of the Bus Hub on the efficient functioning of the transport network will be insignificant.

25 The expert evidence of Messrs Carr, Lightowler, Metherell and Weir demonstrates that transport effects are minor and well within tolerable bounds.

Visual and Amenity

26 Design is at a preliminary stage. Concepts provided with the Notice of Requirement and discussed in the evidence of Ms Cambridge and Ms Justice are sympathetic to both the inner city environment and the needs to maintain and enhance public amenity and to respect heritage items.

Heritage

27 Ms Justice proposes conditions that manage the interface with the two heritage buildings adjoining the designation site.

Noise

- 28 Noise will be of two kinds, construction and operational.
- 29 Construction noise can be managed through conventional standards.
- 30 The principal operational noise will be generated by buses. The Land Transport Rules cover noise emissions.

Odour and Fumes

- 31 The Land Transport Rules also govern and limit the emissions from vehicles.

Community House

- 32 ORC recognises the susceptibility of Community House to noise, odour and fume discharges. It has reached agreement on how to manage those impacts.

Alternatives

- 33 It is not for the territorial authority to undertake its own evaluation or substitute its own judgement.
- 34 What the territorial authority must do is consider whether the ORC has given adequate consideration to alternative sites, routes or methods. The enquiry is into the process followed by ORC, not whether the best site, route or method has been chosen.
- 35 The need to evaluate alternatives only arises if either the requiring authority does not have an interest in the land sufficient for undertaking the work or it is likely that the work will have significant adverse effects on the environment.
- 36 None of the land in the designation site is owned by ORC.
- 37 However, the ORC's assessment is that the Bus Hub, subject to the conditions it promotes, will not have significant adverse effects on the environment.
- 38 For completeness, site selection is reviewed in Annexure 5 of the Notice of Requirement and discussed in the evidence of Mr Collings and Mr Weir.

Planning Instruments

- 39 Between them, Ms Justice and Mr Buxton have comprehensively identified and reviewed the relevant planning documents (National Policy Statement for Urban Development, Operative Regional Policy Statement, Proposed Otago Regional Policy Statement, Operative District Plan and 2GP). They have found nothing in them which conflicts with the proposed designation or creates an inconsistency.
- 40 They have considered, as expert planners, the submission by Mr Smith to the contrary and disagree. Their expert opinion must be preferred.

ORC's Objectives

- 41 Under the Land Transport Management Act 2003, ORC is responsible for public transport services in the Otago region. That responsibility includes the management of the public transport network in Dunedin City.
- 42 The ORC's objectives for public transport in Dunedin City are set out in various documents, prepared and adopted, after public consultation, including in particular the Otago and Southland Regional Land Transport Plan and the Otago Regional Public Transport Plan. Both these documents identify the need for a Central City Bus Hub for Dunedin City for an improved transport network and enhanced customer service⁶.
- 43 The Notice of Requirement is a step towards giving effect to the ORC's public transport objectives in Dunedin City.
- 44 Further, the Bus Hub is not a permitted activity under either the Operative District Plan or 2GP. It is a bundle of activities not envisaged nor authorised by either document.
- 45 A designation is the appropriate planning tool to provide RMA authorisation and allow, long-term, the establishment and operation of the Hub in a way which is responsive to functional requirements and customer expectations.
- 46 Matters of detailed design are controlled through the outline plan processes.

⁶ These provisions are similar and set out in more detail in Annexure 6 of the application

Other Matters

- 47 A designation provides "*planning permission*" for the designated activity. It does not in itself give ORC access to or use of the designated site. Arrangements must be made with owners and occupiers.
- 48 Much of the land is road.
- 49 The affected roads are owned, managed and controlled by the Dunedin City Council under the Local Government Act 1974.
- 50 Neither the Resource Management Act, nor a designation under that Act, overrides the position of the City Council as owner.
- 51 The proposal has been developed in consultation with the City Council. If the designation is confirmed, implementation will likewise be in conjunction with the City.
- 52 Access or other arrangements will be made with other owners and occupiers.
- 53 There do not appear to be any other matters which the DCC needs to consider to make a recommendation on the Notice of Requirement.

Conditions

- 54 Others discuss the merits of conditions.
- 55 Comments made in the planner's report and the Ngai Tahu Justice Holdings Limited submission on outline plans require some additional mention.
- 56 Ngai Tahu Justice Holdings Limited seeks a condition that requires consultation with it or its successor before any outline plan is submitted to the DCC, the outcome of consultation being reported in that outline plan.
- 57 Mr Buxton proposes an expansion of the matters which form part of any outline plan.
- 58 The contents of an outline plan are prescribed by statute: Section 176A RMA.
- 59 There is no legal basis for requiring, by conditions, additional matters, not stipulated by Parliament.

60 Further, the Ngai Tahu Justice Holdings Limited's position is unreasonable:

60.1 Ngai Tahu Justice Holdings Limited is a landowner; its proposed condition applies regardless of whether there is any effect on its land; and

60.2 There is nothing in fact to distinguish Ngai Tahu Justice Holdings Limited from any other landowner whose property adjoins the designation site; and

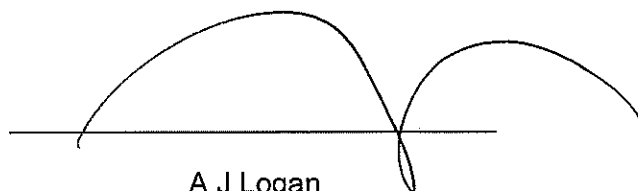
60.3 The outline plan process is deliberately, as legislated for, not a public process or a process formally engaging persons who are or claim to be affected.

Part 2

61 Public transport services are a necessary and vital part of a city with a population the size of Dunedin and its geographic spread. Such services require the necessary infrastructure to operate efficiently and effectively.

62 The proposed Bus Hub meets modern requirements and expectations for public transport services. It enables the community to provide for its social, economic and cultural wellbeing. The effects are, at worst, minor and can be managed satisfactorily. The proposal does not encroach on any matters of national importance under Section 6. Those matters in Section 7 which are relevant can and will be provided for. The proposal does not contravene any policy statement or plan.

63 The Panel may properly recommend that the designation be confirmed with the conditions proposed by ORC.

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a smaller, more intricate flourish.

A J Logan
Counsel for Otago Regional Council

Date: 24 October 2017