

BEFORE DUNEDIN CITY COUNCIL

IN THE MATTER of the Resource
Management Act 1991
(**the RMA**)

AND

IN THE MATTER an application for
Notice of Requirement
from Dunedin City
Council for a
designation in relation
to the Mosgiel
Community and
Recreational Area,
DIS-2018-1

DECISION OF COMMISSIONER APPOINTED BY DUNEDIN CITY COUNCIL

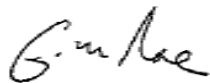
15 MARCH 2019

Commissioner: Gary Rae

DECISION

1. Having carefully considered all the relevant reports and documentation supplied with the application, submissions received, along with legal submissions, expert evidence, lay submitter evidence and the s. 42A report presented to me during the course of the hearing, I have resolved to **confirm** the Notice of Requirement for the Mosgiel Community and Recreation Area, in Mosgiel, **with conditions** set out in Section 12 of this Decision report. My report, including reasons for the Decision, follows.

Dated this 15th day of March 2019



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Gary Rae, Chair, Independent Commissioner

1 INTRODUCTION

1.1 Background

- [1] Dunedin City Council (***the Requiring Authority***) is seeking a designation for a Mosgiel Community and Recreational Area. The site for the proposal comprises Memorial Park, Peter Johnstone Park, the Mosgiel Pool and part of Reid Avenue between Memorial Park and Peter Johnstone Park. The primary driver for the proposed designation is to make provision for a new Mosgiel Aquatic Centre.
- [2] A Notice of Requirement¹ (***the NOR***) was lodged with Dunedin City Council (***DCC***), and was publicly notified on 10 November 2018. The NOR is described in Section 2 of this Decision report.
- [3] The submission period closed on 7 December 2018, with a total of 22 submissions received. One submission was neutral, 12 submissions were in support (with two requesting modifications), and 9 submissions were in opposition.
- [4] A table highlighting submitters support, opposition or neutral position is attached to this Decision report as ***Appendix 1***.

1.2 Hearing Procedures

- [5] The hearing was held in the Edinburgh Room at the Dunedin City Council on 18 February 2019.
- [6] I was appointed by the DCC as a certified Independent Commissioner to hear submissions and make a decision on the Notice of Requirement, in recognition that DCC owns the land subject to the NOR.
- [7] The following staff and consultants were in attendance at the hearing:
 - ***Paul Freeland***, DCC Senior Planner/ advisor to the Commissioner
 - ***Wendy Collard/Lauren McDonald***, DCC Governance Support Officers
 - ***Robert Buxton***, Reporting Officer Planner (planning consultant)
 - ***Grant Fisher***, DCC Planner/ Engineer Transport
 - ***Louisa Sinclair***, DCC 3 Waters Policy Analyst,

¹ No: DIS-2018-1

- [8] **Carlo Bell**, Environmental Health Team Leader with DCC, provided written evidence to assist the section 42A report, but did not appear at the hearing.
- [9] I undertook a site visit on 17 February 2019, prior to the hearing.
- [10] The hearing was adjourned on 18 February 2019, in order for a set of draft conditions to be provided by the Requiring Authority. Supplementary evidence and updated draft conditions were received from Louise Taylor, consultant planner for the Requiring Authority, on 25 February 2019. That information was sent to submitters, and the hearing was closed on 25 February 2019.

1.3 Other Appearances

- [11] Legal submissions on behalf of the Requiring Authority were presented by **Michael Garbett** (Anderson Lloyd). He called the following witnesses:
- **Robert West**, Group Manager, Parks and Recreation, Dunedin City Council
 - **Andy Carr**, Traffic Engineer
 - **Allen Ingles**, Civil Engineer
 - **Mike Moore**, Landscape Architect
 - **Louise Taylor**, Consultant Planner
- [12] **John Brenkley**, Planning and Partnerships Manager, DCC was also in attendance but did not present a written statement.
- [13] The following submitters appeared, and presented statements, at the hearing:
- **Peter Sim**, 181A Gordon Road, Mosgiel
 - **Bill Feather** and **Irene Mosley**, on behalf of the Taieri Community Facilities Trust
 - **Sarah Davie-Nitis** and **Martin Dillon**, on behalf of the Mosgiel-Taieri Community Board
 - **Brian Miller**, for himself and on behalf of Hands Off Memorial Gardens

1.4 Procedural Matters

- [14] **Mr Brian Miller** raised a procedural matter at the hearing. He contended the Notice of Requirement did not meet the requirements of Part 2 of the RMA, as it did not properly assess the effects on the wider community such as on wastewater, stormwater, water supply, transportation and flooding. He read out an excerpt from evidence of a DCC officer presented at the proposed Dunedin City District Plan (the 2GP) which referred to

concerns regarding the network capacity along SH 87, and he said that had not been adequately addressed. Mr Miller requested that the hearing be postponed until the concerns he had raised had been addressed.

[15] **Mr Garbett**, counsel, opposed the request, noting that the effects listed above had all been thoroughly assessed as part of specialist assessments provided with the application. He drew attention in particular to the Infrastructure Assessment by Mr Ingles, and the Transportation Assessment by Mr Carr, both of which had addressed the wider effects on the infrastructure networks in Mosgiel.

[16] **Mr Buxton**, DCC reporting officer, said he did not support the request, noting that the NOR had included specialist reports, and the Territorial Authority had responded to those with specialist reviews from the appropriate staff at DCC.

Determination:

[17] After considering the request, and the responses from Mr Garbett and Mr Buxton, I determined that the application had addressed all of those wider effects, and was not deficient in terms of the RMA. I directed that the hearing should proceed so that the evidence with respect to the matters raised by Mr Miller could be tested through my questioning of the Requiring Authority and the DCC staff.

[18] Mr Miller said he did not agree with the determination, and he would not stay at the hearing to present his submission.

2 THE NOTICE OF REQUIREMENT

2.1 Description of the proposal

[19] The designation sought is for "Mosgiel Community and Recreation Area". In summary, the purpose of the designation is to enable the existing recreational and community activities to continue to operate and to develop, but also to provide the framework for a new Aquatic Centre to be developed somewhere within the area to be designated.

[20] The reasons for the NOR were described by **Mr Garbett** as being:

- (a) To allow Council to have flexibility to lawfully operate Peter Johnstone Park and Memorial Park for their sporting, cultural and community activities; and
- (b) To enable the establishment and operation of a new Aquatic Centre.

- [21] The NOR includes additional reports on infrastructure; transportation; landscape and visual effects; noise; and consultation material. The NOR also includes a range of suggested conditions that would apply to any new development, including a new Aquatic Centre. These include conditions relating to building bulk and location; building design and appearance; landscape treatment; signage; tree protection; lighting; car parking; noise; stormwater; earthworks and accidental discovery.
- [22] As no detail of location or design of any new development has been provided with the NOR it would be necessary, following the confirmation of a designation, for a separate application(s) for an Outline Plan of Works for any new buildings or development to be lodged under section 176A of the RMA. That would enable specific detailed design matters to be assessed by DCC as the territorial local authority. Any proposed development outside of the conditions of the designation that did not comply with the relevant District Plan rules would necessitate a resource consent application.

2.2 Description of the site and location

- [23] The NOR includes a Designation Plan (attached to this Recommendation as (**Appendix 2**), showing the location, and areas, of the land proposed to be designated. The legal descriptions of the land affected are provided in Table 1 on Form 18 of the NOR.
- [24] The land proposed to be designated for Mosgiel Community and Recreation Area comprises Memorial Park (Gordon Road), Peter Johnstone Park (Reid Avenue), 215 Gordon Road, and part of the Reid Avenue road reserve.
- [25] Activities within this land area include the Taieri Rugby Football Club and a Scout Hall (Peter Johnstone Park), football grandstand, squash club, athletic club buildings, and Mosgiel Caravan Park (Memorial Park); Mosgiel Pool off Gordon Road; Memorial Park Gardens, and DCC Mosgiel Service Centre and library off Hartstonge Avenue and Reid Avenue.
- [26] There are three existing designations on the site. Two are administered by DCC, these being:
- (a) D706 - the Eden Street aeration tank and water treatment plant on Gordon Road; and
 - (b) D615 - the Mosgiel Service Centre and Library.
- [27] The proposal is that the Mosgiel Service Centre and Library designation will be incorporated into the new designation and later uplifted. The existing water treatment

station designation will remain because it serves a different purpose. The third designation is for the Lower Taieri Flood Protection Scheme (D217) administered by the Otago Regional Council, which is also to remain.

- [28] The NOR states that any works on the site will be designed to ensure no conflict with D706 and D217, and there are processes under the RMA to ensure that the approval of the requiring authority for a designation is obtained before doing any works that are not in accordance with the designation.

2.3 Statutory Requirements

- [29] Dunedin City Council is a 'requiring authority' pursuant to section 166 of the RMA. It gave notice to DCC, the territorial local authority, under section 168(1), and clause 4 the first schedule of the RMA, of a requirement for a designation for a public work, this being for the Mosgiel Community and Recreation Area on the land concerned.
- [30] The statutory framework for notices of requirement made by a territorial authority is set out in section 168A of the RMA. The DCC has financial responsibility for the public works, and so is able to lodge an NOR under section 168A(1)(a).
- [31] Section 168A(3) requires that, 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 (relevantly):

(a) any relevant provisions of:

(iii) a regional policy statement or proposed regional policy statement; and

(iv) a plan or proposed plan

(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 decision on the requirement.

- [32] These matters are addressed below, albeit in a different order for efficiency and convenience.

3 IS THE DESIGNATION REASONABLY NECESSARY

- [33] The objectives of the requiring authority were outlined by **Mr Garbett**, counsel, as being to operate, maintain, upgrade and expand the various sporting, cultural and community activities facilities within the designation, in a manner which provides for their current and future needs. A further objective is to enable an efficient and flexible approach to achieve this, while also managing any actual or potential adverse effects on the surrounding community.
- [34] **Mr West**, DCC's Group Manager – Parks and Recreation Services, elaborated on these objectives, and also noted that the primary driver was the demand for a new aquatic facility. He said a designation was the preferred approach rather than relying on zoning provisions, as it would provide a simpler process, provide flexibility around the location of future developments, as well as enabling protection of existing amenity values for both users of the space and neighbours. He noted that the major part of the parks and gardens subject to the designation are held by DCC as a reserve under the Reserves Act and that this places obligations on DCC in terms of managing the reserves.
- [35] **Mr Peter Sims** questioned the use of the designation process, in particular as this would provide for a future aquatic centre without any details of this being made available for public scrutiny. I note that other submitters not in attendance had also raised concern at what they saw as the wide scope of the designation and the uncertainty regarding future development.
- [36] I questioned the requiring authority's witnesses on this, noting in particular that the recently released decisions on the 2GP have rezoned the site from Residential to Recreation, and this new zoning is more appropriate and makes provision for the existing, and proposed, buildings and activities on the site.
- [37] **Ms Taylor's** evidence was that the designation process is the preferred approach to meeting the requiring authority's objectives. She acknowledged the new Recreation zoning was appropriate, but drew attention to the benefits provided by the designation process as outlined above. Ms Taylor also said the designation will provide certainty for future development, noting that the existing activities are operating under existing use rights which can be problematic. **Mr Buxton** agreed with Ms Taylor that the

designation process is reasonably necessary to achieve the requiring authority's objectives.

- [38] The planners acknowledged that an Outline Plan process for new development would not normally involve consultation with neighbours, but the conditions of the designation provide a basis for protecting the existing amenities enjoyed by neighbours.

My Findings:

- [39] From the evidence of Mr West, Ms Taylor and Mr Buxton I accept that the designation is reasonably necessary to achieve the objectives of the requiring authority for which the designation is sought.
- [40] It provides flexibility in managing and funding new development, such as a new aqua centre, whilst providing a framework for managing existing activities and for assessing future development via the conditions on the designation and by the Outline Plan process.

4. REGIONAL POLICY STATEMENTS

- [41] The evidence of **Ms Taylor**, supported by **Mr Buxton**, was that there are no relevant provisions of any national policy statements or regional plans.
- [42] The NOR assessed the designation as being consistent with the Operative Otago Regional Policy Statement. At the hearing Ms Taylor advised that the Proposed Otago Regional Policy Statement has now been made partially operative and should be given significant weight compared to the Operative RPS.
- [43] **Ms Taylor's** evidence was that the designation is consistent with the key relevant provisions of the Proposed RPS, these being Objective 4.1 and Policy 4.1.1 (maintaining and enhancing public access to areas of value to the community): Objective 4.4 (ensure the community can make the most of the natural and built resources available for use); and Objective 4.5 (ensure adverse effects of this are minimised).
- [44] **Mr Buxton** agreed with that assessment, and there was no opposing submission or evidence presented to me on this matter.

My Findings:

- [45] I accept the expert planning evidence that the designation is consistent with the relevant provisions of both the Operative RPS and the Proposed RPS.

- [46] The designation's purpose is to provide for recreational and community facilities so the community can continue to have access to them, while managing and minimising any adverse effects.

5. DISTRICT PLANS

- [47] **Ms Taylor's** evidence was that decisions on submissions have now been issued on the Proposed Dunedin District Plan (2GP), and no appeals have been lodged with respect to the Recreation Zoning of the site. She said the only appeals on this zoning lodged were in relation to the Recreation objectives, policies and rules on fencing and screening. **Mr Freeland**, DCC's Senior Policy Planner, confirmed this to be the case.
- [48] The planning evidence was that full weight can be given to the 2GP's provisions relating to this. This is particularly useful in understanding the potential permitted development or changes on the site, and what the community and neighbours might reasonably expect can occur on this site.
- [49] **Ms Taylor's** evidence was that the designation is "wholly consistent" with the key relevant policy provisions of the 2GP, including Policy 20.2.1.1 (enable sport and recreation, leisure activities and community activities); and Objective 20.2.1 (supports the efficient and effective operation of the recreation area, and enhance amenity of surrounding properties). Mr Buxton agreed with that assessment.

My Findings:

- [50] I accept the expert planning evidence that the designation is consistent with the key policy provisions of the 2GP, and that these can be given full weight in this assessment. I adopt this part of the evidence of Ms Taylor².

6. EFFECTS ON THE ENVIRONMENT

- [51] The following is a brief summary of the evidence and submissions heard with respect to the effects on the environment of allowing the requirement, with my findings and reasons.

(a) Positive Effects

- [52] Section 168(3A) provides that positive effects on the environment are to be considered, and these may include any positive effects to offset or compensate for any adverse effects on the environment.

² Louise Taylor statement of evidence, paragraphs 93 – 98.

[53] **Ms Taylor's** evidence was that there are likely to be significant positive effects arising from the activity enabled by the designation, as follows:

(a) Wider community benefit from the existing recreation and community facilities being able to continue to operate in a more co-ordinated and flexible way to reflect changing community needs. The designation conditions would provide better control of effects of any new buildings and car parking than the existing district plan framework as they have been specifically developed for the intended uses on this site.

(b) The designation will specifically provide for a replacement aquatic centre to be constructed, providing a superior facility on the site for the wider community's benefit.

[54] The evidence of **Mr West**, previously referred to, also outlined the positive effects of a designation in terms of DCC's management and future development of the reserves.

[55] Several submissions outlined the benefits of the activities enabled by the designation as providing for a new aqua centre, as well as improved management of existing community and sporting facilities on the site³.

[56] At the hearing, **Ms Sarah Nitis**, current Chair of Mosgiel-Taieri Community Board, supported by **Mr Martin Dillon**, outlined the Community Board's support for the proposed aquatic centre, and the benefits it would bring to the community. She said that it had considerable community support, evidenced by over 2,000 submissions being made on the Long Term Community Plan, with the majority being in support. **Ms Irene Mosley**, Chair of the Taeiri Community Facilities Trust also gave evidence in support of the aquatic centre.

My Findings:

[57] I accept the evidence and submissions that the activities enabled by the designation will have positive effects on the environment.

[58] The mitigation of adverse effects on the environment, including by conditions of the designation, is examined in the subsequent sections of this part of the Decision report.

³ Refer to Summary of Submissions Table in Appendix 1

(b) Visual, Landscape, and Amenity Effects

- [59] The key concerns to several of the submitters, including **Peter Sims** who appeared at the hearing, were the potential visual effects from a future aquatic centre on the site, and the loss of open green space arising from what was seen as a fairly open-ended designation. The concerns seem to have been exacerbated by the NOR not including details of a precise location for the complex within the site, and with no design plans available of the proposed height, bulk, and set backs of the building.
- [60] Other submitters who also raised concerns through their written submissions were **Beverley Sim, John Sim, Linda Ratcliffe, Margaret Sim, Russell Sim, Hands Off Memorial Gardens, Brian Miller, and Shaun Paul**. The primary concern was the potential for an aquatic centre to be located in the Memorial Gardens, which are included in the wider designation.
- [61] In partial response to those concerns the Requiring Authority, through the evidence of Mr West, volunteered a condition on the designation that the new aquatic centre will not be located in the Memorial Gardens.
- [62] In evidence, **Mr Moore**, consultant landscape architect, said that the site has strong open space linkages, provides a strong contrast of the parkland with surrounding urban areas, and has key amenity values associated with the gardens and trees in the Memorial Gardens. He said that the designation provides for the continuation of existing activities on the site and the changes to the existing landscape character will be modest.
- [63] He noted that future development will be assessed by way of an Outline Plan process, and that conditions had also been developed for the designation. The conditions would safeguard the open/space parklands values of this site so that any adverse effects on landscape character are likely to be of low significance or could be positive, with the retention of gardens and with new tree plantings.
- [64] **Mr Moore** outlined the volunteered conditions and these included:
- Building height: 10 metres;
 - Lighting towers/goal post height: 30 metres;
 - Building floor area: 3,200m²;
 - Building site coverage: 5.5%;

- Building setbacks from designation boundaries: 4.5m;
- Recession planes: 45 degrees from ground level at boundaries;
- Length of new or extended buildings: 65 metres;
- Painted finishes: Light Reflectance Values of 35%;
- Screening: of service areas
- New/extended car parking areas: set back 1.5 metres and 12% of the area is to be planted
- Signs: to meet District Plan standards except for regulatory, directional and warning signs
- Tree protection: existing trees requiring removal for new development are to be replaced;
- Lighting: to meet District Plan standards
- Aquatic Centre location: not to be located within Memorial Garden.

[65] **Mr Moore** said that, in developing these conditions, he had taken account of the relevant standards in the Recreation Zone of the 2GP, to form an appropriate basis for a 'permitted baseline' comparison. He said that the conditions proposed for the designation will ensure that any adverse effects will be low compared with the amenity standards anticipated for the Recreation Zone. For example, the larger scale buildings permitted by the designation will be mitigated by more generous set backs, and new controls on colour and screening of service areas that are not in the rules for the Recreation Zone.

[66] **Ms Taylor** noted the designation provides for bulkier buildings but there are additional controls to mitigate those effects, and for other amenity effects such as noise, lighting, and signs the relevant 2GP standards had been incorporated.

[67] **Mr Buxton** generally agreed with the evidence of both Mr Moore and Ms Taylor, but he had some suggestions with respect to the wording of conditions. In particular, he suggested the building setback control be modified so that for any portion closer than 10 metres from a designation boundary the maximum length of that portion shall reduce by 5 metres for every 1 metre closer to the boundary.

- [68] Mr Buxton also had some suggestions with respect to the noise condition, in particular requiring noise control fences adjacent to car parking areas near residential sites, noise insulation for buildings, and a Noise Management Plan for buildings that may accommodate functions. His suggestions were largely accepted in principle by the requiring authority witnesses.

My Findings:

- [69] I accept the expert of evidence of Mr Moore, supported by the evidence of Ms Taylor and Mr Buxton, that the designation will, overall, maintain the landscape values of the parklands and gardens of the site.
- [70] The evidence was that the scale and extent of development available under the conditions of the designation is comparable to development permitted under the Recreation Zoning of the 2GP. Whilst new buildings may potentially be larger, Mr Moore's evidence was that the designation would contain additional controls on building set backs; design and appearance; tree protection, landscaping, and replacement planting to compensate for this.
- [71] The assessment of new development will be available through the Outline Plan process, and any development exceeding the conditions would necessitate a resource consent process. In that way I accept that the amenities of neighbours will be maintained at a level commensurate with normal development anticipated by the Recreation Zoning of the site.

(c) Traffic and Transportation Effects

- [72] Submitters not in attendance at the hearing who raised transportation concerns were **D Cormack (Wenita Forest Products Ltd), A Henry** and **S Paul**. The main concerns related to an aquatic centre and the increased traffic flows this would bring, particularly at Reid Avenue, and at Eden Street/Gordon Road/Silverstream Bridge area. Concerns were also raised about parking congestion.
- [73] **Mr Carr**, consultant transportation engineer, said in evidence that he acknowledged that although a precise site for the aquatic centre had not been identified at this stage, his Transportation Assessment report had evaluated the transportation implications from several potential locations for this facility. In each case, he had concluded that the safety and efficiency of the transportation networks will not be adversely affected, and levels of service would remain high in the critical weekday peak hours.

- [74] He said a Traffic Management Plan would be required for large and infrequent events, as standard practice. He noted smaller events may occur more frequently but will typically take place on the weekends and outside peak periods on the roading network, and so the effects are mitigated. Improvements may need to be made at existing site accesses depending on the location of the aquatic centre but he said that following consultation with the NZ Transport Agency (NZTA) it had been agreed any new or improved access to Gordon Road would require approval from NZTA.
- [75] **Ms Taylor** discussed the relevant conditions suggested for the designation and these included the approval required from NZTA for new or improved accesses onto Gordon Road, as well as matters relating to car parking and access to be included in Outline Plans.
- [76] **Mr Fisher**, a DCC transport planner, prepared a memorandum to assist Mr Buxton's section 42A Report. Mr Fisher said he generally agrees with Mr Carr's Transportation Assessment report, however he suggested conditions be added regarding dimensions of parking spaces and formation of new or extended parking areas.
- [77] **Mr Buxton** made some suggestions for the conditions relating to the car parking requirement and access to provide some flexibility, as addressed in the Conditions section of this Decision report.

My Findings:

- [78] The expert evidence, from the Requiring Authority and the DCC, was conclusive that the transportation effects from the activities provided for by the designation can be managed and mitigated by conditions so that the any adverse effects are no more than minor. This was uncontested by any submitters at the hearing and I had no other expert evidence on this matter before me.
- [79] I accept that evidence, noting also that substantial agreement was also reached between the Requiring Authority's experts and the DCC's reporting officers regarding the matters to be covered in conditions on site access and parking.

(d) Infrastructure Effects

- [80] Concern was expressed by **Mr Brian Miller**, as part of his procedural challenge addressed earlier in this Decision report, as to the increased use of the Mosgiel infrastructure as a result of a new aquatic centre which would bring hundreds of extra people into Mosgiel. He also noted the decisions on the 2GP were that Mosgiel's residential area cannot be increased because of a lack of infrastructure, and approval

to this NOR would be anomalous with that. **Mr Shaun Paul's** written submission also raised a concern about potential flooding from additional built development on the site.

- [81] **Mr Ingles**, consultant infrastructural engineer, gave evidence for the Requiring Authority on the effects on infrastructure. He said that the current network has sufficient capacity to accommodate the increased flows associated with the aquatic centre without the need for upgrades, noting that pool demand is mainly outside the peak demand periods of the day associated with domestic use of water.
- [82] His evidence was that the wastewater network has capacity to accommodate the increased flows associated with the pool during normal operation. He said a trade waste consent will be required, and this can manage the timing and volume of larger pool discharges on the network, and the nature of discharges will have no significant effect on the downstream wastewater treatment system.
- [83] Mr Ingles said upgrades are planned to the existing stormwater system which is currently under capacity, and some allowance had been made for an increase in impervious surfacing at this site. He said any development at the site will have a less than minor effect on volumes and flood levels in the Silver Stream and to flood risk to adjacent farmland and properties downstream. He also noted the presence of 11kV power cables running through the site and said relocation of a section of the cable may be required depending upon the final location of the pool development.
- [84] **Ms Louise Sinclair** from DCC's 3 Waters department confirmed that the stormwater upgrades were imminent. She also requested an analysis be undertaken of water supply and wastewater as part of an Outline Plan process. **Ms Taylor** said that this would be done internally in any event by DCC as it is the requiring authority, and the onus should rather be on providing data on daily flow demand for water supply and wastewater rather than a full analysis under Council's model.

My Findings:

- [85] I accept the Requiring Authority's expert evidence on infrastructure effects. Subject to some wording of suggested conditions this evidence was largely uncontested by DCC's 3 Waters staff.
- [86] I am therefore able to conclude that the activities authorised by the designation will have no more than minor effects on the City's infrastructure and will have no significant impact in terms of flooding. I also accept the requiring authority need only provide data to DCC on water supply and wastewater rather than a full assessment as part of an Outline Plan process.

7. ALTERNATIVE SITES OR METHODS

- [87] Under section 168A(3)(b) of the RMA consideration of alternative sites or methods of undertaking the works is required if the requiring authority does not have an interest in the land sufficient for undertaking the work, or it is likely that the work would have a significant effect on the environment.
- [88] **Mr Garbett** confirmed that the requiring authority, i.e. DCC, owns all of the land affected by the NOR. I have also concluded, in Section 6 of this Decision Report, that there will be no significant environmental effects likely to arise.

My Findings:

- [89] For those reasons there is no requirement to assess alternative sites or methods in this instance.
- [90] I note that, notwithstanding this **Ms Taylor's** evidence was that alternative methods had been considered, including a resource consent and a plan change or variation to the district plan to enable an aquatic centre, but the designation option was preferred. I also note that **Mr Buxton** agreed that the designation was an appropriate option.⁴

8. ANY OTHER MATTERS

- [91] Some submitters, in particular **Peter Sim** and **Russell Sim**, had raised concerns about the implications of the Reserves Act 1977, and the ability of DCC to establish and use the designation. **Mr Buxton** in his section 42A report had also suggested that there should be some assessment of the relevance of the Reserves Act 1977 to this NOR, noting that this might address concerns raised by some submitters.
- [92] This can be considered as an 'Other Matter' in terms of Section 168A(3)(d) of the RMA.
- [93] My impression from hearing from Mr Peter Sim was that the concerns had diminished somewhat as a result of the Requiring Authority's decision to not locate the aquatic centre in the Memorial Gardens. However, he remained concerned that this would be an indoor facility and therefore was contrary to the Reserves Management Plan established under the Reserves Act 1977.
- [94] It is not within my jurisdiction to make a determination under the Reserves Act. However, I acknowledge the evidence of **Mr West** which was that DCC needs to make decisions that are consistent with the Reserves Act and the DCC's general policies on

⁴ S42A Report, Section 11

management of the reserves. **Ms Taylor's** evidence was that the proposal is consistent with the Reserves Act 1977 Section 40(1) in that it manages and controls reserves for their intended purpose; the relevant DCC Reserves Management Plan and the Sports Ground Management Plan; and the Parks and Recreation Strategy.

My Finding:

- [98] I am satisfied, on the evidence of Mr West and Ms Taylor, that the NOR does not conflict with any relevant provision of the provision of the Reserves Act to the extent it would affect my ability to confirm the designation for this land in the District Plan for Community and Recreation Area.

9. PART 2 OF THE RMA

- [99] **Ms Taylor's** evidence was that, based on the direction in *RJ Davidson Family Trust v Marlborough District Council*, as both the Proposed Regional Policy Statement and the 2GP are very recent documents there is no need to address Part 2 of the RMA. In any event Ms Taylor also gave her view that the only relevant aspects of Part 2 would be in Section 7, and that the NOR was for an efficient use of the site; it will maintain and enhance the amenity values present on the site, and for neighbours and users; and overall it will maintain and enhance the quality of the Mosgiel and wider Taeiri environment.
- [100] **Mr Buxton**, in his Section 42A Report, stated that if the Memorial Gardens were set aside from building development, the ethic of stewardship would be achieved. He also considered that in terms of Section 7, the amenity values and quality of the environment, there is no presumption the site must remain the same, and that development of the site in an appropriate manner can achieve those matters.

My Findings:

- [101] I accept Ms Taylor's evidence that Part 2 is not relevant to consideration of this NOR, but acknowledge the expert planning advice from both planners that the NOR is, in any event, consistent with the relevant Section 7 matters.

10. CONCLUSION

[102] For all the reasons set out in this Decision report I consider the NOR satisfies all of the matters I am required to have regard to in terms of Section 168A of the RMA.

[103] I set out below the conditions that attach to the designation, and a commentary to provide some explanation in addition to that provided on conditions within Section 6, the Effects on the Environment.

11 COMMENTARY ON CONDITIONS

[103] The development of draft conditions was an iterative process, first initiated by the Requiring Authority as part of the NOR. **Mr Buxton**, assisted by DCC staff, commented on those draft conditions as part of the Section 42A Report, and the Requiring Authority's witnesses responded to those comments further at the hearing.

[103] A set of updated conditions was submitted by **Ms Taylor** during the adjournment of the hearing. Those conditions reflect and respond to the questions and discussion that took place at the hearing, and I have adopted them with only some minor editorial changes for clarity.

[104] A key change is that the conditions have now been ordered in two sections. The first section contains the conditions which provide standards which must be met, and any departure will necessitate a resource consent process. The second section contains those matters which must be addressed as relevant through an Outline Plan of Works, over and above those matters listed in section 176A of the RMA.

[105] The first conditions may be regarded as 'hard and fast' standards that must in all cases be met. The latter conditions are more designed to provide some flexibility as to the means to achieve outcomes, for example in the provision of car parking areas where the Requiring Authority may be encouraged to provide impervious or semi-pervious surfacing when the usual standards require hard sealed areas.

[106] Overall, conditions structured in this way will provide more clarity when it comes to monitoring, and will further assist DCC staff in assessing Outline Plans.

[107] The approved conditions also have some other changes from earlier versions as follows.

[108] Condition 6(b), landscape treatment for car parking areas, has been amended to set out the minimum size of any trees required as part of new or extended carparks. The

size of exotic and New Zealand natives was recommended by Mr Moore, in response to questions.

- [109] Condition 10, Otago Regional Council's Designation D217 (Lower Taieri Flood Protection Scheme) has been retained. Whilst it may be seen as superfluous (on the basis that ORC can control what occurs on its own designation) the Requiring Authority advised at the hearing that this condition was specifically requested by ORC.
- [110] Condition 11, noise, sets out the relevant parts of Rule 9.3.6 of the Decisions Version of the Dunedin Proposed District Plan. This will provide certainty as to the applicable standard in the event of any subsequent changes to the relevant rule.
- [111] Condition 15, transportation, has been amended to reflect Mr Buxton's recommendation to avoid using a building area threshold, and now refers to any development which increases traffic movements.
- [112] Condition 17(b), 3 Water Infrastructure, has been amended to apply to any works that may affect stormwater management. This condition has been amended following comments from Mr Buxton after the hearing, and the condition now addresses stormwater implications of minor works as well as larger scale changes to impermeable surfaces.

12 CONDITIONS

1. Height

- a. New buildings and structures and extensions to existing buildings and structures must not exceed a maximum height of 10m, excluding servicing equipment on a roof provided the servicing equipment does not exceed the maximum height by more than 3m, except that:
- b. New lighting towers and goal posts must not exceed a maximum height of 30m.

2. Building footprint (per building)

- a. The maximum building footprint for any individual building (new or extensions to existing buildings) is 3200m².

3. Combined building site coverage

- a. The maximum combined building site coverage within the designation area is 5.5%.

4. Minimum building and structure setbacks from boundaries and height in relation to boundaries

- a. The minimum setback for buildings from designation boundaries is 4.5m. This condition does not apply to structures such as fences.
- b. For all designation boundaries other than road boundaries, buildings and structures (excluding lighting towers, goal posts and fences) must not protrude through a plane rising at an angle of 45 degrees measured from ground level at the designation boundary.
- c. For all designation boundaries other than road boundaries, lighting towers and goal posts must not protrude through a plane rising at an angle of 75 degrees measured from ground level at the boundary.
- d. There are no boundary setback or height plane controls for fences.

5. Building design and appearance

- a. The maximum length of the façade of any new building or extension to existing buildings is 65m, however any building façade greater than 20m in length must have glazing or other architectural feature to break up the solid appearance of the building.
- b. For any portion of a building closer than 10m from the designation boundary other than a road boundary, the maximum length of that portion of the building (as measured parallel to the boundary) must reduce from 65m by 5m for every 1m the building is closer to that boundary.
- c. Painted finishes for new or extended existing buildings must not exceed Light Reflectance Values (LRV) of 35%.

6. Landscape treatment to car parking areas

- a. New or extended car parking areas are to be set back a minimum of 1.5m from all designation boundaries and the setback areas are to be planted to mitigate adverse effects of the car parks on adjacent residential properties, including from light spill from vehicles.
- b. New or extended car parking areas are to have a minimum of 12% of the total area of the car park planted, including at least 1 tree per 120m² of the total car park area. Such trees must be expected to grow to at least 3m high. When planted:
 - i. exotic trees must be a minimum of 2m in height and 35mm litre grade;
 - ii. New Zealand native trees must be a minimum of 1m in height and Pb 6.5 grade.

7. New Signage

Signs erected after 14 March 2019 must comply with the following conditions, except that regulatory signs, directional signs and warning signs that do not exceed 0.25m² are exempt from these standards:

- a. General:
 - i. Signs visible from a public place must meet all of the following performance standards, which are relevant.
 - ii. Signs must also comply with Rule 6.7.3 of the DCC Second Generation Plan where visible from a road.
 - iii. Signs must not be illuminated or digital.
- b. Performance standards that apply to all ancillary signs, except commercial sponsorship signs:
 - i. Ancillary signs must only display the name, and logo of the relevant land use activity or organisation (e.g. DCC), locational, directional or informative information relevant to the area, or rules of the area or use of the area.
 - ii. Ancillary signs that promote or advertise retail, restaurants, or conference meeting and function ancillary to sport and recreation must not be visible from a public place outside the recreation area.
- c. Signs attached to buildings:
 - i. any signs displaying the club/s name on clubrooms must not exceed a maximum total area of 5m² per building face;
 - ii. the maximum number of permanent commercial sponsorship signs is one sign for the naming rights sponsor of the sport and recreation activity (club), with a maximum area of 3m², except: for clubs that operate in an enclosed area that is only open to members, apart from during events, there is no maximum number of commercial sponsorship signs, provided those signs are not visible from outside of the enclosed area;
 - iii. other signs must not exceed a total maximum area of 1m² per building face;
 - iv. signs must remain entirely within the visual profile of the building or structure; and
 - v. signs must not project higher than the lowest point of the roof, except as mounted flat against a parapet or gable end.

d. Freestanding signs:

- i. must not exceed a maximum total area of all display faces of 3m²; and each display face must not exceed 1.5m² in area;
- ii. must not exceed a maximum height above ground level of 4m; and
- iii. must be positioned within the designation boundaries and located so they do not obstruct any parking, loading or access areas.

e. Portable freestanding signs:

- i. Commercial sponsorship and other signs erected for matches, competitions, or events must not be displayed for more than one day before the competition/event, and must be removed within one day of completion of the competition/event.
- ii. Any other portable signs must not exceed one sign per activity, and 0.9m in height and 0.6m in width.
- iii. Signs must be positioned within designation boundaries.

8. Tree protection

- a. Any trees that are removed through the development of community and recreational facilities must be replaced with suitable trees.

9. Lighting

- a. Light spill measured at any point of the vertical plane that marks the boundary of a residential zone or any site used for residential purposes must not exceed the following limits:

Time		Limit
i	7am – 10pm	10 Lux
ii	10pm – 7am	3 Lux

- b. This standard does not apply to light spill from the headlights of motor vehicles.
- c. Light spill must not be emitted in the angles above the horizontal.
- d. All outdoor lighting, except street lighting, must be shielded from or directed away from adjacent roads and designation boundaries.

10. Otago Regional Council Lower Taieri Flood Protection Scheme Designation

- a. No buildings can be located within Otago Regional Council's Designation D217 (Lower Taieri Flood Protection Scheme).

11. Noise

- a. Activities on the site must not exceed the following noise emission limits:

Zoning of receiving property	Noise level measured at the boundary of the receiving property (i.e. outside the designation boundary) or the notional boundary of noise sensitive activities in a rural zone		
	7.00am to 7.00pm	7.00pm to 10.00pm	10.00pm to 7.00am
Residential	50 dB LAeq (15min)	45dB LAeq (15min)	i. 40 dB LAeq (15min); and ii. 70 dB LAFmax
Taieri Plain (rural)	55 dB LAeq (15min)	50dB LAeq (15min)	i. 40 dB LAeq (15min); and ii. 70 dB LAFmax
Principal Centre	60 dB LAeq (15min)	60dB LAeq (15min)	i. 60 dB LAeq (15min); and ii. 85 dB LAFmax

- b. Except:
- i. sport and recreation not involving the use of motor vehicles, amplified sound, or firearms are exempt from this standard;
 - ii. construction noise is exempt from this standard and must be measured and assessed in accordance with NZS6803:199 Acoustics Construction Noise; and
 - iii. noise generated by pyrotechnics and firing of a ceremonial cannon.
- c. Unless stated otherwise noise must be measured in accordance with NZS 6801:2008 – Acoustics – Measurement of environmental sound, and assessed in accordance with NZS 6802:2008 Acoustics – Environmental noise.

12. Accidental Discovery

If the requiring authority:

- a. discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder must, without delay:
 - i. notify the Consent Authority, Tangata whenua and Heritage New Zealand and in the case of skeletal remains, the New Zealand Police.
 - ii. stop work within the immediate vicinity of the discovery to allow a site inspection by Heritage New Zealand and the appropriate runanga and their advisors, who must determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Any koiwi tangata discovered should be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation.

Site work must recommence following consultation with the Consent Authority, Heritage New Zealand, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.

- b. discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder must without delay:
 - i. stop work within the immediate vicinity of the discovery or disturbance; and
 - ii. advise the Consent Authority, Heritage New Zealand, and in the case of Maori features or materials, the Tangata whenua, and if required, should make an application for an Archaeological Authority pursuant to the Historic Places Act 1993; and
 - iii. arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work must only recommence following consultation with the Consent Authority.

13. Aquatic Centre Location

There must be no aquatic centre or parking area for an aquatic centre located within the Mosgiel Memorial Gardens as identified in Figure 1:



Figure 1: Mosgiel Community and Recreation Area Designation identifying Memorial Garden

In addition to requirements of s176A, outline plans must include, where relevant, the information set out in conditions 14 - 22:

14. Screening of service and storage areas

Service and storage areas associated with new or extended existing buildings demonstrating effective screening to maintain amenity within the parks, on adjacent streets, and for neighbours.

15. Tree protection

The location and details of suitable replacement trees removed through the development of community and recreational facilities (refer Condition 8).

16. Car parking and Access Requirements

- a. Demonstration of 1 carpark to every 3 people a new building will be designed for. A reduced level of carparking may be provided where an Integrated Transport Assessment (which may include a Travel Management Plan) identifies that fewer additional parking spaces are required. Consideration should also be given to providing overflow carparking spaces using permeable surfacing.

- b. For any development that increases traffic movement, consideration of whether upgrade or reconfiguration of the vehicle access into the site is necessary to manage increased traffic flows.
- c. Demonstration of consultation undertaken with the New Zealand Transport Agency to identify the most effective, efficient and safe access to SH87 for the development of the aquatic centre, stating how the outcomes of the consultation have been addressed.
- d. An assessment of on-site parking areas against Rule 6.6 Parking, Loading and Access, of the Dunedin City Council Second Generation District Plan, including justification of any non-compliances and any mitigation proposed.

17 Noise

- a. Where any new car parking area is within 5m of a residential site, a noise control fence constructed from a durable material of at least 10kg/m² free from cracks, gaps and holes should be considered in consultation with the adjoining landowner. Where a noise control fence is agreed to be required, the car park should be designed so that any parked car is at least 1m from any fence.
- b. Suitable noise insulation for buildings and plant should be utilised to ensure noise generated onto adjacent residential properties achieves the night time noise levels of condition 11 above.
- c. For buildings that may accommodate functions, a Noise Management Plan should be prepared to ensure noise generated onto adjacent residential properties achieves the night time noise levels of condition 11 above.

18. 3-Water Infrastructure

Water Services

- a. Provision of average and peak daily flow demand to allow inclusion in Dunedin City Council's hydraulic water model.

Stormwater Services

- b. For any increase in impermeable area consideration of drainage patterns and stormwater management to ensure works do not create or exacerbate flooding. For any increase in impermeable area of more than 2000m², a stormwater management plan is required to determine whether a site-specific stormwater solution is necessary, including potential for direct flow to Silverstream via pump.

- c. As part of such an assessment, consideration must be given to whether stormwater detention via wetlands/greenspace is appropriate.

Wastewater Services

- d. Average and peak daily flows of wastewater to allow assessment of effects of the anticipated wastewater discharge impact on the reticulated wastewater network.

Existing Services

- e. For any development or earthworks within 3m of any 3-Waters infrastructure, written approval from the Development Engineer, 3-Waters must accompany the outline plan. This approval may include consideration for an easement in gross in favour of DCC over any existing, relocated or new 3 Waters infrastructure.
- f. New trees must not be planted such that once fully grown the dripline, or the distance from the trunk equivalent to half the height of the tree, whichever is the greater, is expected to be within 1.5m of Council pipes.

19. Minimum floor levels

- a. An assessment of effects of flooding, including setting floor levels in any new buildings, additions to buildings or change of use of existing buildings.

20. Earthworks

- a. An assessment of the effects of earthworks, including the effects on any adjoining properties or stop bank, and whether a sediment control plan is required.

21. Hours of Operation

- a. Consideration of whether the hours of operation should be controlled.

22. Construction

- a. An assessment of the effects of construction, including noise, vibration, traffic movement and hours of work, including mitigation as appropriate.

Appendix 1 - Summary of submissions

Submitter	Support or Oppose	Wish to be heard?	Reasons for submission	Decision Sought
L J Lumsden / Polson McMillian Trustee Company	Support	No	<ul style="list-style-type: none"> Not specified. 	Not specified.
Reid Park Kindergarten	Support	No	<ul style="list-style-type: none"> Build pool sooner than later. 	Not specified.
Patricia Maria Tennant	Support	No	<ul style="list-style-type: none"> Not specified. 	Not specified.
Alasdair Edward Tennant	Support	No	<ul style="list-style-type: none"> Not specified. 	Not specified.
Peter Sim	Oppose	Yes	<ul style="list-style-type: none"> Inappropriate use of Designation process. Encroachment of buildings on green space should not unduly limit outdoor recreational use. Council as a good neighbour should not cause a nuisance to neighbouring properties by the building itself or associated uses including vehicle movements. Amenity values and physical features should not be compromised by buildings. Designation should not include the gardens area. Future uses open-ended, and buildings for "Community purposes" are not outdoor activities and should be located elsewhere. Designation should have an expiry date once pool project completed. Pool site should be specified. 	Withdraw Requirement or, as a second preference, modify Requirement.
Wenita Forest Products Limited	Support	No	<ul style="list-style-type: none"> Generally supportive but concerned about impact on their business - specifically noise, traffic and security. 	Provide more information on managing and mitigating noise, parking traffic and security concerns.

Submitter	Support or Oppose	Wish to be heard?	Reasons for submission	Decision Sought
Beverley M Sim	Oppose	No	<ul style="list-style-type: none"> Identify Memorial Gardens in the Designation area. Terminology open-ended, "Community purposes – including and not limited to". Designation should have an expiry date. Pool site should be specified. Designation process offers little protection for open spaces and residents. 	Not specified.
John S Sim	Oppose	No	<ul style="list-style-type: none"> No need to include Memorial Gardens in the Designation area. Terminology open-ended, "Community purposes – including and not limited to" could allow buildings for non-outdoor use. Designation should have an expiry date once pool project completed. Pool site should be specified. Designation process offers little protection for open spaces and residents, and community purpose buildings should be located elsewhere. 	Does not want to lose more green space in Mosgiel.
Linda Ratcliffe	Oppose	No	<ul style="list-style-type: none"> Terminology open-ended, "Community and recreational amenities and facilities – including and not limited to", opens way for increase in indoor activities not related to outdoor recreation areas. Need to protect green space. 	Withdraw proposed Designation.
Margaret Sim	Oppose	No	<ul style="list-style-type: none"> Terminology leaves gardens exposed to further encroachment of inappropriate buildings that are not part of the Requirements. 	Withdraw Requirement.
Andrew Graeme Henry	Support	No	<ul style="list-style-type: none"> Support in total. 	May require a Traffic Control Plan for Eden St/Gordon Rd/Silverstream bridge area.
Jenco Properties Limited	Neutral	No	<ul style="list-style-type: none"> As owner of the Wenita site (11 Hartstonge Avenue) concerned about impact on their property - specifically noise, shading, loss of privacy and increased security risks. 	Preserve the part of the Mosgiel Gardens between the Mosgiel Service Centre and 11 Hartstonge Avenue as green space.

Submitter	Support or Oppose	Wish to be heard?	Reasons for submission	Decision Sought
Russell Sim	Oppose	No	<ul style="list-style-type: none"> Terminology open-ended, including the name and purpose of the Designation allowing for buildings and structures not associated to outdoor recreation reserves. Mosgiel fastest growing area of DCC and important to protect open green public space. Submitter provides a history of the reserve and quotes from the DCC Reserve Management Plan General Policies. Site of pool uncertain. Designation eliminates resource consents and public challenge to decisions. 	Withdraw Requirement.
Mosgiel Taieri Community Board	Support	Not specified	<ul style="list-style-type: none"> Supports the intention of the designation to provide a range of recreational and community uses. Endorses the consultation process undertaken. 	Not specified.
Taieri Community Facilities Trust	Support	Yes	<ul style="list-style-type: none"> The designation is a crucial step towards developing a centrally located aquatic centre for Mosgiel. 	Supports the application.
Hands Off Memorial Gardens	Oppose	Yes	<ul style="list-style-type: none"> Terminology open-ended, allowing developers to do as they wish. Mosgiel needs large and centralised green spaces to give it identity and be a destination town. Considerable areas of green space have been lost since amalgamation. 	Withdraw proposed Designation.
Nevan Trotter on behalf of the Mosgiel Association Football Club, Athletics Taieri, Taieri Cricket Club	Support	No	<ul style="list-style-type: none"> Understand future development may include an aquatic centre. Wish to maintain the right to meaningful and full consultation. 	Not specified.
Brian Miller	Oppose	Yes	<ul style="list-style-type: none"> Many parts not supported, too many to list. Will cover at the hearing. 	Decline the Designation.
Denise Ross	Support	No	<ul style="list-style-type: none"> Designation is a step closer to a centrally located community pool which will benefit Mosgiel and Dunedin. 	Not specified.

Submitter	Support or Oppose	Wish to be heard?	Reasons for submission	Decision Sought
Taieri Rugby Football Club	Support in Part	Not specified .	<ul style="list-style-type: none"> Supports the new aquatic centre being within the proposed designation except it is totally opposed to it being located in the Peter Johnstone Park grounds or the Reid Avenue car parking area. Open to discussion on multi-purpose use of the Peter Johnstone Park grounds facilities for wider community and other Taieri Sports clubs as demand increases. 	Not specified.
St John Taieri Area Committee	Support	No	<ul style="list-style-type: none"> Supports development of aquatic centre and enhancement of designation area. Concerned about retaining the hardstand area between St John and Senior Citizen Hall at 5 Hartstonge Avenue and Mosgiel Service Centre at 7 Hartstonge Avenue for access to the Service Centre, Memorial Park gardens and Senior Citizens Hall. 	Continue development of the aquatic centre. Retain the hardstand between 5 and 7 Hartstonge Avenue and entrance to Senior Citizens Hall.
Shaun Paul	Oppose	Yes	<ul style="list-style-type: none"> No particular site for the aquatic centre has been designated. His property has existing outlook and amenity values. Therefore cannot identify effects on his property which could arise from: vehicle and pedestrian access; parking; flooding; loss of landscaping; visual impact; height and setback of buildings, fences and planting; noise; and light. 	Withdraw proposed Designation.

Appendix 2 – Designation Plan

