

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under clause 14(1) of the First Schedule of the Act
BETWEEN	BARRY SMAILL
	(ENV-2018-CHC-280)
	Appellant
AND	DUNEDIN CITY COUNCIL
	Respondent

MINUTE OF THE ENVIRONMENT COURT

DCC Appeal Reference: 208
ICR Zone Rules
(19 May 2020)

Introduction

[1] This Minute is released for the purpose of case management and responds to the application for consent orders dated 28 February 2020.

[2] At the pre-hearing conference held on 18 March 2019 the court emphasised the importance of taking a top-down structured approach when scheduling appeals for mediation. The City Council has now taken this direction on board, reprioritising the appeals for resolution to ensure that points of appeal that are 'strategic' are dealt with ahead of lower order provisions such as rules, site specific zoning etc.¹

[3] I also said that the court would not make consent orders unless it was appropriate to do so and secondly, where there is no relationship between the provision as proposed to be amended by consent orders and other appeals before the court. It is vitally important this is respected, least the parties and it follows the court, spend time

¹ Dunedin City Council memorandum dated 24 April 2020.



considering ad hoc amendments to the rules ahead of other appeals on higher order provisions.

[4] The application for consent orders seeks to amend Rule 15.5.2.4 by introducing a further exception to the rule for non-complying activities and associated amendments to the assessment rule (Rule 15.10.3). It appears the amendments are to provide Mr Smaill a more favourable planning regime to develop four 8-bedroom dwellings. In saying that, the rule applies to Inner City Residential Zone generally and not to Mr Smaill's interest in land specifically.

[5] Subject to what we say next, would the clarity of Rule 15.5.2.4 be improved if the rule was amended to exclude what I suggest is superfluous wording, as follows:

Rule 15.5.2.4

Standard residential activity that contravenes the performance standard for density is a non-complying activity, except the following are restricted discretionary activities:

- (a) ...
- (b) ...
- (c) ... and;
- (d) ~~standard residential in the Inner City Residential Zone that contravenes the performance standard for maximum development potential per site (15.5.2.1.e.ii),~~ provided the maximum development potential per site of the activity proposed does not exceed 1 habitable room per 30m².

[6] That said, the application does not follow the court's guidance insofar as the parties seek orders in relation to lower order provisions in circumstances where there are linkages between this appeal and several other appeals listed in the affidavit of Ms E Christmas.² It is Ms Christmas' opinion that the resolution of those other appeals will have no bearing on the orders sought from the court.

² Affidavit of Emma Christmas affirmed 28 February 2020.



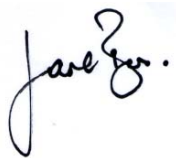
[7] Even so, as matters presently stand, the court is unable to satisfy itself that the rule will not be impacted in some way by those other proceedings. The parties have a choice – either:

- (a) the consent memorandum remains on the court file pending the resolution of those other proceedings; or
- (b) satisfy the court that the other appeals notwithstanding, the proposed amendments are the most appropriate provision by which to achieve the plan's objectives. To do this, the views of the parties to those other appeals will need to be canvassed.

[8] If it is proposed that the consent memorandum is to remain on the court file, this will be subject to a direction the draft consent orders are brought-up for further consideration when related appeals are scheduled for mediation or a hearing.

Directions

[9] I direct by **Tuesday 2 June 2020** the City Council, having conferred with the other parties, is to file and serve a memorandum explaining how it wishes to proceed and seeking directions as appropriate.



J E Borthwick

Environment Judge

Issued: 19 May 2020