

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2022] NZEnvC 68

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14(1) of the
First Schedule of the Act

BETWEEN UNIVERSITY OF OTAGO

(ENV-2018-CHC-270)

Appellant

AND DUNEDIN CITY COUNCIL

Respondent

Environment Judge P A Steven – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 28 April 2022

CONSENT ORDER

A: Under s279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed to the extent that Dunedin City Council is directed to amend the provisions of the proposed Dunedin City Second Generation District Plan as set out in Appendix 1, attached to and forming part of this order; and



(2) the part of the appeal by the University of Otago (DCC reference number 241) is resolved and that the remaining parts are to be dealt with at a later date.

B: Under s285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent order relates to the University of Otago appeal (DCC reference number 241) on the proposed Second Generation Dunedin City District Plan ('2GP').

[2] I have read and considered the consent memorandum of the parties dated 10 March 2022 and the accompanying affidavit of Peter Benjamin Rawson, affirmed 21 April 2022.

[3] The court will only make orders if it is satisfied it is appropriate to do so and where there is no relationship between the provisions proposed to be amended by consent order and other appeals before the court.

[4] Mr Rawson has satisfied me that the amendments sought are appropriate and consistent with achieving the relevant objectives of the 2GP. Mr Rawson says that following these amendments the 2GP will continue to give effect to the relevant policies of the operative Otago Regional Policy Statement 2019 and proposed Otago Regional Policy Statement 2021. Mr Rawson also assessed other appeals on decisions on 2GP and advises that there is no overlap between appeals that would prevent a consent order from being issued. In addition, Mr Rawson says that no appeal on 2GP has the potential to amend the relevant objectives of 2GP in a way that would change his assessment of the changes set out in the

memorandum.¹

Other relevant matters

[5] No (other) person has given notice of an intention to become a party under s274 of the Act.

[6] For completeness, I record the parties' attestation that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, Part 2, and on that basis request the amendment shown in Appendix 1 be made.

[7] The parties agree costs should lie where they fall and accordingly no order for costs is sought.

Outcome

[8] All parties to the proceeding have executed the memorandum requesting the orders. On the information provided to the court, I am satisfied that the orders will promote the purpose of the Act so I will make the orders sought.



P A Steven
Environment Judge



¹ Affidavit of Peter Rawson affirmed 21 April 2022 at [33].

Appendix 1

1 Amend Policy 7.2.1.2, as follows:

Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless:

- a. there is a significant risk to personal/public safety or a risk to personal safety that is required to be managed under health and safety legislation;
- b. the tree poses a substantial risk to a scheduled heritage building or scheduled heritage structure;
- c. there is a moderate to significant risk to buildings;
- d. the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities; ~~or~~
- e. removal of the tree will result in significant positive effects in respect of the efficient use of land; or
- f. removal of the tree is required to allow for significant public benefit that could not otherwise be achieved, and the public benefit outweighs the adverse effects of loss of the tree.

2 Amend Rule 7.8.2.1.c Assessment of non-complying activities, as follows:

c. Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless:

- i. there is a significant risk to personal/public safety or a risk to personal safety that is required to be managed under health and safety legislation;
- ii. the tree poses a substantial risk to a scheduled heritage building or scheduled heritage structure;
- iii. there is a moderate to significant risk to buildings;
- iv. the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities; ~~or~~
- v. removal of the tree will result in significant positive effects in respect of the efficient use of land (~~Policy 7.2.1.2~~); or
- vi. removal of the tree is required to allow for significant public benefit that could not otherwise be achieved, and the public benefit outweighs the adverse effects of loss of the tree (Policy 7.2.1.2).

- 3 Amend Rule 7.4 Notification, as follows:
 1. Applications for resource consent for the following activities will be publicly notified in accordance with section 95A of the RMA:
 1. Removal and any other work on a scheduled tree that will lead to the death or terminal decline of a scheduled tree, except where:
 - a. ~~the tree is dead or in terminal decline~~
 - b. a. the tree is dead or in terminal decline {cl.16} and the application is accompanied by written documentation by a suitably qualified arborist to this effect; or
 - b. the scheduled tree is within the Campus Zone.
 2. All other activities are subject to the normal tests for notification in accordance with sections 95A-95G of the RMA.
- 4 Make any consequential changes to plan numbering as required as a result of the above amendments. Minor referencing and style changes may also be made for consistency with the 2GP formatting.

