

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-270

Under the Resource Management Act 1991

In the matter of an appeal under clause 14(1) of the First Schedule of the RMA
in relation to the proposed Second Generation Dunedin City
District Plan (**2GP**)

Between **University of Otago**

Appellant

And **Dunedin City Council**

Respondent

Affidavit of Emma Christmas

Affirmed *18 March* 2021

Concerning:

Appeal by the University of Otago

Group 2c

Topic Heritage precinct provisions and mapping

Appeal points DCC References 11, 19

Respondent's solicitors:

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**anderson
lloyd.**

I, **Emma Christmas** of Dunedin, Senior Policy Planner, hereby solemnly and sincerely affirm:

- 1 I am a senior policy planner at Dunedin City Council.
- 2 I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. This evidence has been prepared in accordance with it and I agree to comply with it. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
- 3 I have been employed by Dunedin City Council as a policy planner for eight years. During this time, I have primarily worked on drafting the 2GP, assessing submissions, preparing and presenting s42A reports and working on the appeals. Prior to this, I was self-employed as a planner for 10 years, working mainly on consent applications. Prior to that I was Team Leader Consents at Environment Canterbury for five years. I am a certified independent hearings commissioner and a full member of the New Zealand Planning Institute.

Introduction

- 4 This affidavit provides the rationale, and an assessment in terms of section 32, of the changes agreed in the following consent memorandum:
 - (a) Consent memorandum – Heritage precinct provisions and mapping, dated 30 July 2020.
- 5 Heritage New Zealand is a section 274 party to this appeal.
- 6 The appeal by the University of Otago sought to:
 - (a) Amend policies 13.2.3.1 - 2 by deleting the word 'require' and replacing it with 'encourage';
 - (b) Amend policies 13.2.3.5 – 13.2.3.7 by deleting 'only' from the start of each policy; and
 - (c) Delete the part of the Dundas Street - Castle Street Residential Heritage Precinct that is within the Campus Zone, and the part bounded by Clyde, Forth, Dundas Streets and Harbour Terrace.
- 7 From mediation, I understand that the University's primary concerns are:
 - (a) To ensure that campus-related development within identified parts of the Heritage Precinct is considered in light of the importance of the

effective and efficient operation of the University and Polytechnic, as well as the relevant heritage precinct objectives and policies.

Agreement reached

- 8 As outlined in the attached consent memorandum, agreement has been reached between the parties to make amendments that address the issues identified in paragraph 7. These changes are intended to introduce a consenting pathway that enables a balancing of the effects of development within part of the Dundas Street – Castle Street Residential Heritage Precinct on the University of Otago and Otago Polytechnic, with the effects on heritage streetscape character. This includes:
- (a) Adding a new matter of discretion (effects on the efficient and effective operation of the Otago University and Otago Polytechnic) for restricted discretionary development activities within the Campus-zoned part of the heritage precinct;
 - (b) Adding a 'Forth Street' mapped area to an area of the Inner City Residential zoned part of the heritage precinct (adjoining Forth and Dundas streets), and adding the same new matter of discretion to restricted discretionary development activities within this area; and
 - (c) A consequential change to Appendix A2.1.3 (Dundas Street – Castle Street Residential Heritage Precinct - Description of area) to describe this issue and the purpose of the Forth Street mapped area.

Scope

- 9 The University's appeal seeks to remove the part of the Dundas Street – Castle Street heritage precinct that is within the Campus Zone, and the part surrounded by Clyde Street, Forth Street, Dundas Street and Harbour Terrace. This includes the area identified in the consent memorandum as the Forth Street mapped area. It also sought to amend the heritage precinct policies to be less compelling and more encouraging of the need to protect heritage streetscape. The reasons given included that:
- (a) The heritage precinct policies should provide greater flexibility in the use and development of sites;
 - (b) The Campus Zone forms part of the operational campus rather than a residential precinct; and
 - (c) The area bounded by Clyde, Forth, Dundas streets and Harbour Terrace is strategically important for future Campus development.

- 10 The appeal sought a more enabling framework for areas that are likely to be developed by the University or Polytechnic as part of their ongoing operations. The agreed changes achieve this outcome in a different manner than sought in the appeal; by retaining the heritage precinct protection but by also enabling consideration of the operational needs of the University and Polytechnic. I consider that the changes are within the broad scope of the appeal.

Assessment of other appeals

- 11 As part of my assessment of the appropriateness of this change, I have considered whether there are other appeals on the provisions affected by these amendments, to understand whether there is overlap between different appeals on the same provisions in the plan.
- 12 There are no other appeals on the provisions proposed to be changed through this consent memorandum.

Planning background

- 13 The 2GP strategic objectives recognise the importance of, and seek to protect, the heritage streetscape character of heritage precincts. While the 2GP also contains provisions in relation to protection of historic heritage values (Objective 2.4.2 and 13.2.1 and underlying policies and rules), the protection of heritage streetscape character falls from Objective 2.4.1:

The elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected and enhanced. These include:

- a) important green and other open spaces, including green breaks between coastal settlements;*
- b) trees that make a significant contribution to the visual landscape and history of neighbourhoods;*
- c) built heritage, including nationally recognised built heritage;*
- d) important visual landscapes and vistas;*
- e) the amenity and aesthetic coherence of different environments; and*
- f) the compact and accessible form of Dunedin.*

14 Policy 2.4.1.3 requires the identification of buildings that contribute to the heritage streetscape character of heritage precincts and the management of changes to these buildings.

15 Objective 13.2.3 requires that:

The heritage streetscape character of heritage precincts is maintained or enhanced.

16 The policy and rules underlying this objective manage new buildings and changes to existing buildings within the precincts.

17 The 2GP also recognises the importance of the University and Polytechnic to the economic productivity and social wellbeing of the city, and seeks to protect their operation. Objective 2.3.1 is:

Land, facilities and infrastructure that are important for economic productivity and social well-being, which include industrial areas, major facilities, key transportation routes, network utilities; and productive rural land:

- a. are protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and*
- b. in the case of facilities and infrastructure, are able to be operated, maintained, upgraded and, where appropriate, developed efficiently and effectively.*

18 Policy 2.3.1.6 is:

Identify facilities that contribute significantly to the economic productivity and social wellbeing of the city, including the University of Otago and Otago Polytechnic campuses, hospitals, schools and Invermay, zone these as major facilities and use rules to:

- a. enable them to continue to operate efficiently and effectively, while minimising as far as practicable any adverse effects on surrounding areas; and*
- b. protect them from activities that may lead to reverse sensitivity.*

19 These provisions are reflected in Objective 34.2.1 in the Campus section. Policies and rules seek to provide for the effective and efficient operation of

the University and Polytechnic as tertiary education and research facilities and provide for related activities.

Decision background

- 20 The University's original submission to amend the policies (submission OS308.253) is discussed in the Heritage decision¹ only in relation to a change made by the Panel to Policy 13.2.3.5, to include a reference to earthquake strengthening. The reason for rejecting the submission in relation to other policies is not stated. Changes were made to the heritage precinct policies in response to other submissions.

Consistency with higher order documents (s75)

Otago Regional Policy Statement (partially operative)

- 21 The Otago Regional Policy Statement (**OPRS**) includes the following relevant objectives and policies in relation to the character and amenity of urban areas.

- 22 Objective 4.5:

Urban growth and development is well designed, reflects local character and integrates effectively with adjoining urban and rural environments.

- 23 Policy 4.5.3 is:

Design new urban development with regard to: ...

- f) Recognition and celebration of physical and cultural identity, and the historic heritage values of a place; ...*

- 24 The agreed changes do not amend the 2GP's objectives and policies in relation to historic heritage protection, but rather relate to protection of amenity and character values (in particular heritage streetscape character). Protection of these values is achieved through Objectives 2.4.1 and 13.2.3, and their related policies and rules. These are discussed below.

- 25 There are no provisions relevant to the operation of the University and Polytechnic.

¹ Heritage Decision of the Hearings Panel Proposed Second Generation Dunedin City District Plan (2GP), 7 November 2018. See section 3.2.5

Section 32AA Assessment

- 26 The relevant Objectives are 2.4.1 and 13.2.3 (in relation to heritage streetscape character), and 2.3.1 and 34.2.1 (in relation to the operation of the University). The agreed changes do not amend the 2GP's objectives and policies in relation to protection of heritage streetscape character. However, for development within identified parts of the precinct, they introduce the additional consideration of the effects of the proposal on the operation of the University and Polytechnic. This allows for these potentially competing objectives to be considered together and an appropriate balance struck in a way that is not possible under the existing provisions. As a result, it is possible that in some cases protection of heritage streetscape character may be deemed less important than the operation of the tertiary institutions. This is a decision that will be made case by case for each development.
- 27 In that respect, the amendments may mean that Objective 13.2.3 is not achieved as effectively. However, when considering the objectives of the plan as a whole, allowing the competing objectives to be balanced should result in better overall outcomes. In my view, the amendments are a more appropriate way of achieving the plan's objectives as a whole.

Effect of any appeals on relevant objectives and policies

- 28 For completeness, I have assessed the appeals on the related objectives, policies and strategic directions to ensure no appeals are likely to change the policy framework in a way that would change the above s32AA assessment.
- 29 There are no relevant appeals.
- 30 Overall, I support the Court approving the proposed changes to the 2GP to resolve this appeal.

Affirmed at Dunedin)

By Emma Christmas)

this 18 day of March 2021)

before me:)

.....
A Solicitor of the High Court of New Zealand

Emma Christmas

Stephen Mark McAnulin
Barister
Dunedin