

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2022] NZEnvC 154

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14 of the First Schedule to the Act

BETWEEN HILARY JANE CALVERT

(ENV-2018-CHC-233)

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: 17 August 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 make the amendments to the provisions of the proposed Dunedin City Second Generation District Plan as shown in Appendix 1, attached to and forming part of this order.
- (2) the appeal is otherwise dismissed.



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

REASONS

Introduction

[1] This proceeding concerns an appeal by Ms H J Calvert against the decision of the Dunedin City Council approving the proposed Dunedin City Second Generation Plan ('2GP'). The appeal relates to the fence height and design rules for urban areas.

[2] I have read and considered the consent memorandum of the parties dated 21 July 2022 and the memorandum of counsel dated 29 July 2022 which detail the agreement reached by the parties to resolve this appeal.

[3] I have also read and considered the affidavit of Ms K E S James, affirmed on 29 July 2022, who has satisfied me that the amendments proposed will achieve the objectives of the 2GP, and that granting the relief sought will not impact on the resolution of any other proceeding.¹

Other relevant matters

[4] Ms H Hutton gave notice of an intention to become a party under s274 of the Resource Management Act 1991 ('the RMA' or 'the Act') and has advised the court that she agrees to the memorandum setting out the relief sought.

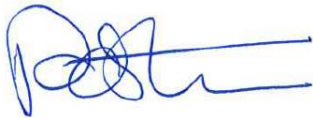
[5] The parties advise that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

¹ Affidavit of K E S James affirmed 29 July 2022 at [32] and [37].

[6] The parties agree that costs should lie where they fall.

Outcome

[7] All parties to the proceeding have executed the memorandum requesting the orders, or have agreed that the orders be made. 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



Appendix 1

Amendments

1. Make the following amendments to the 2GP:

Rule 9.5.3 Assessment of performance standard contraventions

6.	Fence height and design	a. Effects on health and safety	<p><i>Relevant objectives and policies:</i></p> <ul style="list-style-type: none"> i. Objective 9.2.2 ii. Fences in residential, recreation and some major facility zones are designed to allow a visual connection between buildings and public places, to enable opportunities for informal surveillance (Policy 9.2.2.8). <p><i>Potential circumstances that may support a consent application include:</i></p> <ul style="list-style-type: none"> iii. The increased height or reduced visual permeability is necessary to provide security for a business, or <u>to protect public well-being or to provide a reasonable level of privacy for bedrooms or bathrooms, where not otherwise achievable under Rule 15.6.2.2.</u> iv. Due to topography, the fence still enables a visual connection between buildings and public places.
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15.6.2.2 Visual Permeability

- a. Fences along road boundaries or boundaries adjoining a reserve (including within the boundary setbacks required by Rule 15.6.13) must be constructed to a length and/or height that maintains visual permeability for 50% of the length of the boundary measured at a height of 1.4m above ground level (see Figure 15.6.2.2A).
- b. The following fences are exempt from this requirement:
 - i. fences along the road boundary of a state highway;
 - ii. fences required to meet Rule 15.6.8 (Location and Screening of Outdoor Storage) or to otherwise screen service areas; and
 - iii. boundaries with a reserve that is not in the Recreation Zone or a residential zone.

- c. Fences that contravene this performance standard are restricted discretionary activities.

15.10.4 Assessment of development performance standard contraventions

4.	Fence height and design	a. Effects on health and safety	See Rule 9.5
		b. Effects on neighbourhood residential character and amenity	<p><i>Relevant objectives and policies:</i></p> <ul style="list-style-type: none"> i. Objective 15.2.4 ii. Fences are of a height and design that contributes positively to the streetscape amenity and character of the neighbourhood (Policy 15.2.4.4). <p><i>Potential circumstances that may support a consent application include:</i></p> <ul style="list-style-type: none"> iii. The increased height or reduced visual permeability is necessary to meet protection requirements, to provide security, minimise noise effects from a busy road or activity, or for public well-being. iv. An attractive interface with the street is achieved. v. The fence will be screened by landscaping. vi. <u>The fence is replacing a hedge of similar (or greater) height and visual permeability.</u>

