

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

IN THE MATTER of the Resource Management Act 1991
AND of an appeal under clause 14 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 section 279 of the Act

In Chambers at Christchurch

Date of Order: 10 June 2021

CONSENT ORDER

A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed subject to the amended provisions marked in Appendix 1, attached to and forming part of this consent order; and
- (2) the appeal by University of Otago (ENV-2018-CHC-270) remains extant.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.



REASONS

Introduction

[1] This consent order relates to an appeal by University of Otago regarding the heritage precinct provisions and mapping in the proposed Dunedin City Second Generation District Plan ("2GP"). Specifically, the consent order relates to the University of Otago appeal regarding Policies 13.2.3.1, 13.2.3.2, 13.2.3.5, 13.2.3.6 and 13.2.3.7 and Schedule A1.1 of 2GP.

[2] The appeal sought to:

- (a) amend Policies 13.2.3.1 – 2 by deleting the word 'Require' and replace it with 'encourage' (DCC Reference number 215);
- (b) amend Policies 13.2.3.5 – 13.2.3.7 by deleting 'Only' from the start of each policy (DCC Reference number 215); and
- (c) delete the part of the Dundas-Castle Street heritage precinct that is within the Campus Zone, and the part bounded by Clyde, Forth, Dundas Streets and Harbour Terrace (DCC Reference number 236).

[3] Heritage New Zealand is a s274 party to this appeal.

Agreement reached

[4] The parties have settled an agreement which resolves the appeal in part.

[5] The agreed changes are intended to introduce a consenting pathway that enables a balancing of the effects on the University of Otago and Otago Polytechnic, with the effects on Heritage Streetscape Character. The agreement 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 map.

[6] The remaining parts of the appeal will be dealt with at a later date.¹

Consideration

[7] The court has now read and considered the appeal, the consent memorandum of the parties dated 30 July 2020, the affidavit of Dr Anna Louise Johnson affirmed 18 March 2021, and the affidavit of Emma Christmas affirmed 18 March 2021.

[8] The court is making this order under s279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s297. The court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties agree the appeal is to remain extant; and
- (c) all parties are satisfied 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.

[9] Dr Johnson has assured the court that the proposed amendments are drafted in line with the 2GP drafting protocol set out in the *2GP Style Guide April 2019 – incorporating change made through 2GP decisions*.²

¹ The topic and appeal reference points for the unresolved appeal points are as follows: Group 2c Campus Zone provisions (DCC Reference number 185, 187, 190, 191, 196, 198), Group 3b Harbourside Edge Zone (DCC Reference number 203), Group 3a Relocatable Buildings (DCC Reference number 205), Group 3b Hazardous Substances (DCC Reference number 213), Group 4a 692 Cumberland Street (DCC Reference number 224), Group 4a Tree Rules (DCC Reference number 241). For completeness it is noted that appeal points on Campus Zoning (DCC Reference number 206 and 246) have been withdrawn.

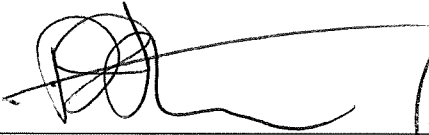
² https://www.dunedin.govt.nz/data/assets/pdf_file/0007/715867/2GP-Style-Guide.pdf, affidavit of Dr A L Johnson, at [10].

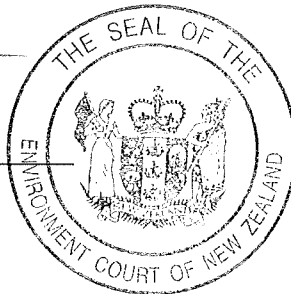
[10] The court will only make orders if it is satisfied it is appropriate to do so and where there is no relationship between the provision as proposed to be amended by consent order and other appeals before the court. I am satisfied there are no other appeals on the provisions being amended through this consent order. I am satisfied pursuant to s32AA of the RMA, that the amendments proposed are the most appropriate way to achieve the relevant objectives. As the orders will promote the purpose of the Act, I will make the orders sought.

Orders

[11] The court orders, by consent that:

- (a) the changes shown in Appendix 1 be made;
- (b) the parts of the appeal by University of Otago (DCC Reference numbers 215 and 236) are resolved;
- (c) the remaining parts of the appeal by University of Otago remain extant;
and
- (d) there is no order for costs.


P A Steven
Environment Judge



APPENDIX 1

Rule 15.11.5.4

| 15.11.5 Assessment of restricted discretionary activities in an overlay zone, mapped area, heritage precinct or affecting a scheduled heritage item | | | |
|--|---|--|--|
| Activity | | Matters of discretion | Guidance on the assessment of resource consents |
| 4. | In a heritage precinct: All RD activities due to being in a heritage precinct | a. Effects on heritage streetscape character | See Rule 13.6 |
| X. | <u>In the Forth Street mapped area:</u> <ul style="list-style-type: none"> All RD activities due to being in a heritage precinct | a. <u>Effects on the efficient and effective operation of the Otago University and the Otago Polytechnic</u> | <u>Relevant objectives and policies:</u> i. <u>Objective 2.3.1; Policy 2.3.1.6</u> {Uni215, Uni236} |

Rule 34.10.4.1

| 34.10.4 Assessment of restricted discretionary development activities | | | |
|--|---|--|---|
| Activity | | Matters of discretion | Guidance on the assessment of resource consents |
| 1. | In a heritage precinct: <ul style="list-style-type: none"> All restricted discretionary activities due to being in a heritage precinct | a. Effects on heritage streetscape character | See Rule 13.6 |
| | | <u>b. Effects on the efficient and effective operation of the Otago University and</u> | <u>Relevant objectives and policies:</u> i. <u>Objective 34.2.1</u> iii. <u>Campus activity is enabled within the Campus Zone (Policy</u> |

| 34.10.4 Assessment of restricted discretionary development activities | | |
|---|------------------------------|---|
| Activity | Matters of discretion | Guidance on the assessment of resource consents |
| | <u>the Otago Polytechnic</u> | <u>34.2.1.1). {Uni215, Uni236}</u> |

Precinct description A.2.1.3

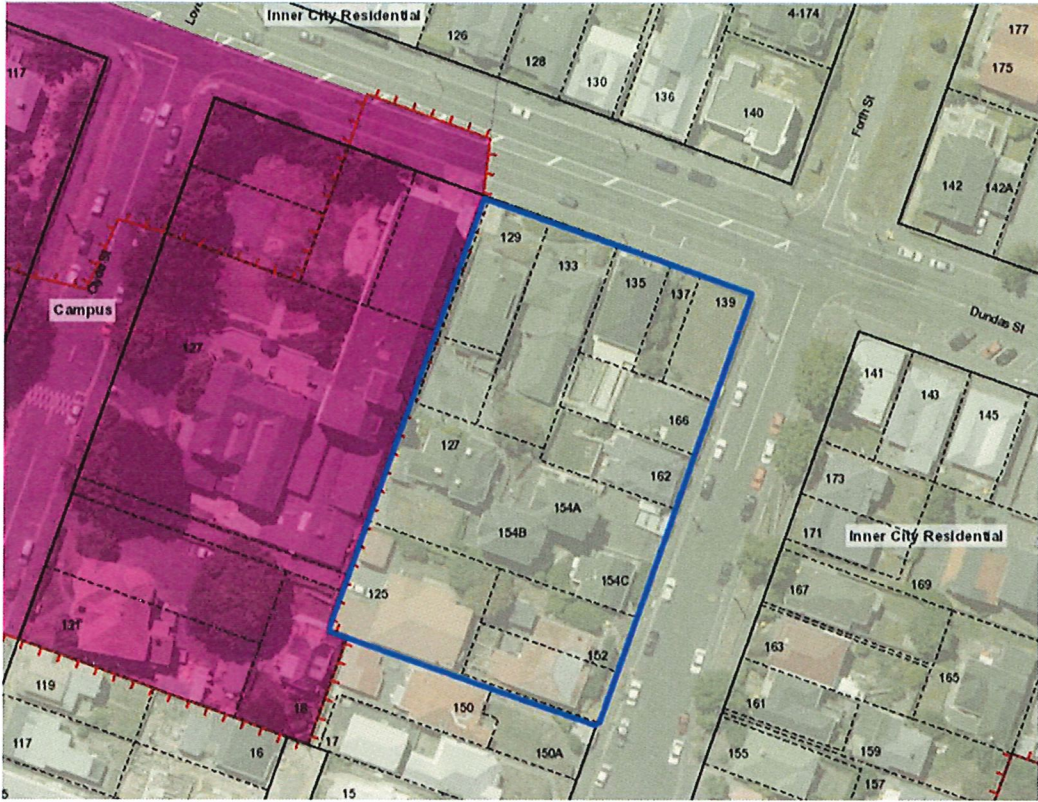
A2.1.3.1 Description of area

Add paragraph 7 as follows:

However, the Plan also acknowledges the importance of the University of Otago and Otago Polytechnic to the city's economic and social wellbeing and has strategic objectives around supporting the efficient and effective operation of these institutions. This is particularly relevant in both the Campus Zone and in the adjoining residential areas (in particular **Forth Street mapped area**). This requires balancing the potential need for development in these parts of the heritage precinct to support these institutions with development design that maintains the heritage character and values in the precinct. To achieve this, assessment rules for redevelopment within these areas allow for consideration of the positive effects on the efficient and effective operation of the University of Otago and Otago Polytechnic. {Uni215, Uni 236}

Change to 2GP Planning Map

Add new Forth Street mapped area **{Uni215, Uni236}**



 = Forth Street mapped area

