

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

Decision No. [2022] NZEnvC 147

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14(1) of the
First Schedule of the Act in relation to
the proposed Second Generation
Dunedin City District Plan ('2GP')

BETWEEN BA BUILDING LIMITED

(ENV-2018-CHC-259)

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: 12 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 subject to the changes shown in Appendix 1 are made; and
- (2) that the part of the appeal by BA Building Limited (DCC Reference



number 137) is resolved and that 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 BA Building Ltd on the zoning of the land at 41 Soper Road and 20-21 Henderson Street, Wingatui ('the site'), under the proposed Second Generation Dunedin City District Plan ('2GP'). Its appeal sought that 2GP be amended to rezone the site to General Residential 1.

[2] I have read and considered the consent memorandum of the parties dated 25 July 2022 which details the agreement reached by the parties to resolve the appeal. The agreement involves the following:

- (a) amending the 2GP planning maps to rezone the site to General Residential 1;
- (b) amending the 2GP planning maps to add a new 'Henderson Street Structure Plan Mapped Area', covering the site;
- (c) adding new Rule 15.8.AI Henderson Street Structure Plan Mapped Area Performance Standards to Section 15 Residential Zones; and
- (d) adding an exemption to Rule 8A5.8 Removal, of high class soils so that this rule does not apply within the Henderson Street Structure Plan Mapped Area.

[3] I have also read and considered the affidavit of Mr P B Rawson who has satisfied me that the amendments proposed are appropriate and that granting the

relief sought will not impact on the resolution of any other proceeding.¹

Other relevant matters

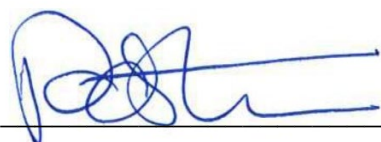
[4] Ms J D Stadnyk (on behalf of Soper Road Residents) and Otago Regional Council have given notice of an intention to become parties under s274 of the Resource Management Act 1991 ('RMA' or 'the Act') and have signed the memorandum setting out the relief sought.

[5] The parties agree that costs should lie where they fall and accordingly no order of costs is sought.

[6] 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.

Outcome

[7] 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 P B Rawson affirmed 28 July 2022 at [83]-[86].

Appendix 1

Appendix 1

- 1 Amend the 2GP Planning Map for 41 Soper Road and 20-21 Henderson Street, Wingatui, to rezone the land from Rural Residential 1 to General Residential 1 and add a new Henderson Street Structure Plan Mapped Area, as follows:



- 2 Amend Rule 8A.5.8 Removal of high class soils, as follows:

8A.5.8 Removal of high class soils

1. Earthworks must not remove topsoil or subsoil that is located within the high class soils mapped area from the site, except this rule does not apply within:
 - X. the Henderson Street Structure Plan Mapped Area.
2. Activities that contravene this performance standard are restricted discretionary activities.

- 3 Amend Rule 15.8 Structure Plan Mapped Area Performance Standards by adding new Rule 15.8.AI Henderson Street Structure Plan Mapped Area Performance Standards, as follows:

Rule 15.8.AI Henderson Street Structure Plan Mapped Area Performance Standards

In addition to the performance standards in 15.5, 15.6 and 15.7, activities in the Henderson Street structure plan mapped area must meet the area-specific performance standards below. Where a performance standard in this section specifically provides an exemption or alternative performance standard to a standard in 15.5, 15.6 or 15.7, the standard in this section supersedes that standard.

15.8.AI.1 Notification

With respect to resource consent applications in the structure plan mapped area that include a new or modified integrated stormwater management plan or details for a stormwater management system as required by Rule 15.8.AI.3.c, any owners of land within the area to which the proposed plan or system relates and the Otago Regional Council will be considered an affected person in accordance with section 95B of the RMA where their written approval is not provided.

Rule 15.8.AI.2 Subdivision performance standards

- a. Access
 - i. Subdivision activities must establish, if not already present, a legal Road linking Soper Road and Henderson Street.
 - ii. This road must be vested in the DCC as Road prior to the issuing of the section 224c certificates for any resultant sites.

- iii. Activities that contravene this performance standard are non-complying activities.
 - iv. For the sake of clarity, this performance standard is additional to Rule 6.8.1.
- b. Stormwater easement
- i. Subdivision activities must establish, if not already present, a 4m wide easement along the western boundary of 41 Soper Road in favour of DCC for stormwater conveyance and associated infrastructure.
 - ii. Activities that contravene this performance standard are non-complying activities.

Rule 15.8.A1.3 Information requirements

- a. Integrated Transport Assessment
- i. Applications for subdivision activities must include an Integrated Transport Assessment (ITA) for the whole **structure plan mapped area**, unless such a plan has already been approved as part of an earlier subdivision consent. ITAs must include, but are not limited to, the following matters (see further information on the content of ITAs in Rule 6.14.2):
 - 1. An assessment of the effects of subdivision on the safety and efficiency of the existing transport network, which identifies any transport infrastructural improvements deemed necessary to ensure adverse effects on the safety and efficiency of the transport network, for all modes, are appropriately addressed in accordance with Objective 6.2.3 and Policy 6.2.3.8.
 - 2. Consideration of internal roading design, layout, and connection points to the existing transportation network for all modes of transport in accordance with the Dunedin Code of Subdivision and Development 2010 or NZS 4404:2010.
- b. Geotechnical investigation report
- i. Applications for subdivision activities, multi-unit development or supported living facilities must include a geotechnical investigation report prepared by a suitably qualified

geotechnical consultant , unless such a plan has already been approved as part of an earlier subdivision or land use consent. The geotechnical report must examine the ground stability over the entire area and identify areas suitable for building platforms, taking into account the risk to people, buildings and associated infrastructure from earthquake, with particular consideration of the Titri Fault shown crossing the **structure plan mapped area**, as described in the GNS Science Consultancy Report 2020\88, dated April 2021.

c. Stormwater management

- i. Applications for subdivision activities, multi-unit development or supported living facilities within the **structure plan mapped area** must include a proposed integrated stormwater management plan that addresses the whole area and is prepared in accordance with clauses iii – v of this rule, unless an earlier approved subdivision or land use consent includes such a plan, prepared in accordance with this rule.
- ii. Where an integrated stormwater management plan has already been provided as part of an earlier approved subdivision or land use consent, but did not include design details for stormwater management systems for any part of the **structure plan mapped area**, applications for activities set out in clause (i) must provide those details in accordance with clauses (iv) and (v) of this rule in a way that is consistent with the integrated stormwater management plan approved as part of the earlier consent.
- iii. The integrated stormwater management plan must:
 1. Demonstrate how Policy 9.2.1.Y will be achieved.
 2. Provide details in accordance with clause iv of this rule of all stormwater management systems for the hydrologically connected parts of the **structure plan mapped area** and details of how those systems will be installed in full or in planned stages prior to development. The stormwater infrastructure must be designed to be resilient
 3. Ensure that stormwater will be managed for both the current climatic conditions and climatic conditions based on climate change projections.

4. Take account of the loss of storage capacity of the undeveloped land.
5. Ensure that:
 - a. there is no increase in the peak stormwater discharge rate from the **structure plan mapped area** into the stormwater public infrastructure, or into a private, Otago Regional Council, or natural/informal stormwater system or overland flow path (at any point) between pre-development to post-development based on the assessment required in clause (iii)(10); or
 - b. where this is not practicable, any adverse effects from an increase in discharge on the stormwater system are no more than minor.
 - c. For the sake of clarity, the stormwater management plan does not need to avoid volume increases.
6. Include stormwater detention infrastructure that is designed to temporarily store and release flows from a generated 1% annual exceedance probability (AEP) rainfall event, such that peak pre-development flows are not exceeded in the post-development condition.
7. Demonstrate that secondary flows at the **structure plan mapped area's** upstream and downstream boundaries are not changed or adversely affected.
8. Include the use of low-impact (or water-sensitive) design features, which may include features such as:
 - a. grassed/landscaped swales and other vegetation areas;
 - b. infiltration trenches/bio-retention systems;
 - c. storage ponds/wetlands/sediment ponds;
 - d. rainwater tanks harvesting and reuse;
 - e. rain gardens, rooftop greening and planting;
 - f. porous surface treatments; and

1. the design and location of 'primary infrastructure' ('primary infrastructure' includes both open and closed conduits and must be designed to contain the flows generated by the 10% AEP rainfall event);
2. the design and location of 'secondary flow paths', with and without blockage of the primary stormwater system, through the development to the downstream boundary. 'Secondary flow paths' means the flow path over which surface water will flow if the primary flow path becomes overloaded or inoperative and consists of overland flow paths with sufficient capacity to transfer the flows generated by rainfall events up to the 1% AEP event. Secondary flow paths shall be clearly identified, and where possible aligned with natural flow paths and located on public land. If located in private property, 1% AEP secondary flows should be through primary infrastructure unless protected by an easement;
3. to the design features that will enable safe operation in super-design conditions (for a 0.5% AEP rainfall event, but a greater rainfall event can be used if the applicant chooses to do so). Safe operation means without catastrophic, rapid or structural failure. This is to ensure that the proposed stormwater management system has a fail-safe mechanism. This does not mean the stormwater management system is to be designed to retain the volume of stormwater for a 0.5% AEP rainfall event;
4. the location and design details of stormwater management systems, including detention infrastructure required to meet clause c.iii.6 above;
5. how the integrity of the stormwater mitigation and management system will not be compromised during and after subdivision (for example ensuring that open drains that form part of the system will not be blocked or altered);
6. how erosion and sedimentation will be managed effectively within the **structure plan mapped area** during earthworks and as the **structure plan**

mapped area is developed, by taking measures and installing devices, where necessary, to:

- i. divert clean runoff away from disturbed ground;
 - ii. control and contain stormwater run-off;
 - iii. avoid sediment laden run-off from the mapped area; and
 - iv. protect existing drainage infrastructure sumps and drains from sediment run-off; and
7. the design and location of stormwater quality treatment that demonstrates the expected quality of stormwater leaving the specified system and its treatment of at least the 'first flush' volume (90th percentile daily rainfall depth) or flow rate (90th percentile rainfall intensity) in accordance with best practice techniques for at least 75% Total Suspended Solids (TSS) removal on a long-term average basis;
 8. if a stormwater management system cannot practicably be designed to meet one or more of clauses 3 to 7 above in relation to additional stormwater discharge, an assessment of the broader catchment to determine whether design solutions external to the mapped area are available to manage the additional stormwater discharges as a result of the development on the mapped area;
 9. how the stormwater management system will not create or exacerbate adverse effects that are more than minor outside the **structure plan mapped area**. This includes consideration of cumulative effects; and
 10. where any proposed stormwater management system is intended to vest as public infrastructure, the design must incorporate an adjustable outlet mechanism such that the present day peak discharge flow rate from the **structure plan**

mapped area is not exceeded as a result of the development but that the outlet can be progressively adjusted for future climate change discharge rates up to the fully developed stormwater management system design capacity.

- v. The integrated stormwater management plan, and the design of the integrated stormwater management systems, must be prepared by a chartered professional engineer or other suitably qualified person who has (or can call on) experience in hydrology, hydraulics, stormwater design, flood risk management and construction management.

Note 15.8.AI.3X - General advice

- a. Where the results of an Integrated Transportation Assessment required by Rule 15.8.AI.3.a demonstrate the need for either:
 - i. Transportation Infrastructure upgrades outside of the site, or
 - ii. Transportation infrastructure built to a higher specification because of the need to provide for new growth areas or improve level of service for existing areas;

the responsibility and funding for these upgrades will be negotiated between all landowners and the DCC. Where necessary, the DCC will appoint an independent facilitator or mediator to assist in these negotiations.

- b. Where the stormwater management plan required by Rule 15.8.AI.3.c involves the construction of infrastructure across sites owned by more than one landowner, the responsibility and funding for these upgrades will be negotiated between all landowners and, if necessary (e.g. in cases where infrastructure is to be built to a higher specification because of the need to provide for new growth areas or improve level of service for existing areas), the DCC. Where necessary, the DCC will appoint an independent facilitator or mediator to assist in these negotiations.
- c. In the case of both transportation and stormwater infrastructure:

- i. The DCC will require those persons undertaking development to pay a fair, equitable, and proportionate amount of the costs of capital expenditure to service growth.
- ii. DCC's contribution to any off-site upgrades or delivery of higher specification for infrastructure will be based on an assessment of the public vs private benefit of the upgrade. This means that in principle the landowner(s) of the **structure plan mapped area** and/or new development mapped area will only be required to pay that portion of the costs of the upgrades that is necessary to address the effects of or needs of their proposed development area. The balance of the costs will generally be funded through development contribution charges as set out in the DCC's Development Contributions Policy (10 year plan 2021-2031), which details the charges on a per equivalent household unit by area of benefit basis.
- iii. It is further noted that the completion of these upgrades prior to s224 certification or at a certain point in time agreed to in a condition of consent may be required.

15.8.AI.4 Assessment guidance

- a. In addition to assessment guidance for subdivision provided in Rule 15.11.4, the following guidance is provided for the assessment of subdivision activities within the **Henderson Street structure plan mapped area**.

General assessment guidance

- b. In assessing effects on the safety and efficiency of the transport network, Council will consider the Integrated Transport Assessment (ITA) submitted with the application (as required by Rule 15.8.AI.3.a), including whether upgrades to transportation infrastructure are required to enable the development provided for in the **structure plan mapped area**.
- c. In assessing effects on risk from natural hazards, Council will consider the geotechnical investigation report submitted with the application (as required by Rule 15.8.AI.3.b).
- d. In assessing (as relevant) effects on efficiency and affordability of infrastructure, effects of stormwater from future development and/or effectiveness and efficiency of stormwater management, and taking into account climate change, Council, will consider:

- i. the proposed stormwater management plan submitted with the application (as required by Rule 15.8.A1.3.c);
- ii. any consequential effects that might arise, including, but not limited to:
 1. effects on personal safety;
 2. risks from surface water flooding;
 3. risks to property from inundation;
 4. risks to the ability of Council to meet its consent conditions for public infrastructure, which could lead to effects on freshwater quality and ecosystem health; and
 5. risks to the integrity and function of existing public infrastructure.
- iii. the need for water saving devices or other methods to manage demand on water supply.

Conditions that may be imposed include:

- a. A requirement for the stormwater management system to be installed prior to certification of the survey plan pursuant to section 224c of the RMA.
- b. A requirement for easements, covenants, consent notices, or bonds to ensure future development will be in accordance with the stormwater management plan.
- c. A requirement for the stormwater management system to be vested in the DCC, with necessary easements and a maintenance or defect period agreement in place prior to vesting.
- d. A requirement that, prior to the vesting in DCC of the road linking Soper Road and Henderson Street, the road is constructed to a suitable standard commensurate with its intended use, in accordance with the Dunedin Code of Subdivision and Development 2010 or New Zealand Standard 4404:2010.
- e. A requirement that any required upgrades identified by the ITA be completed prior to a particular stage in the subdivision.
- f. Conditions requiring water saving devices including but not limited to, low-flow shower heads, 6/3 dual flush toilets and aerated sink mixers.

Figure 15.8.AI: Henderson Street structure plan



- 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.

