

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

IN THE MATTER of the Resource Management Act 1991

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

BETWEEN BP OIL NEW ZEALAND LIMITED
& OTHERS

(ENV-2018-CHC-291)

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: 20 September 2021

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 the 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 parts of the appeal allocated DCC reference numbers 352 and 353



DCC 2GP – Petrol Station Rules and Industrial Zone Provisions – Consent Order

are resolved, any outstanding parts of the appeal remain 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 an appeal by BP Oil New Zealand Limited & Others¹ against the decision of the Dunedin City Council approving the proposed Dunedin City Second Generation Plan ('2GP'). Specifically, the appeal relates to the service station provisions of the 2GP.

[2] I have read and considered the consent memorandum of the parties dated 10 August 2020 which proposes to resolve the appeal. I have also considered the memorandum of counsel dated 17 September 2021 filed in response to the matters of clarification raised by the court.²

Other relevant matters

[3] Several parties gave notice of an intention to become a party to this appeal under s274 of the Resource Management Act 1991 ('the RMA'). Of those Aurora Energy Limited and Liquigas Limited have an interest that extends to the matters resolved by this order. Both have signed the memorandum setting out the relief sought.

[4] The parties to the appeal agree that costs should lie where they fall and accordingly no order for costs is sought.

¹ ENV-2018-CHC-291.

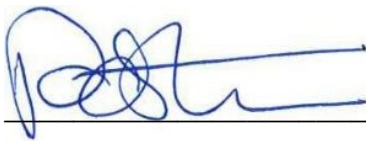
² Email from the Registry to Georgia Cassidy and Michael Garbett (15 September 2021).

[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, Pt 2.

Outcome

[6] 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.

[7] In making the Order, the court has added strike through to Appendix 1 to remove references to "(where available)" included in the proposed drafting of Policy 15.2.1.7 and Policy 16.2.1.11 and the associated assessment rules in the "Service Station Provisions" that were accepted by the Council as redundant.³



P A Steven
Environment Judge



³ Memorandum of counsel dated 17 September 2021. Strike through added to Policy 15.2.1.7, assessment rule 15.12.2.7.b.ii., Policy 16.2.1.11 and assessment rule 16.2.11.2.7.b.ii.

Appendix 1

Amendments to provisions

Section 15 Residential Zones (Oil Companies, appeal point 352)

- a. Amend Policy 15.2.1.7 as follows:

Provide for service stations on a strategic or arterial road, where ~~it is not practicable, due to a lack of site availability and/or special locational requirements,~~ to locate in the PPH, TR, CEC, industrial or centre zones

- a. safe and convenient access to the site for pedestrians and cyclists can be provided;
 - b. there is adequate public infrastructure (where available) to service the development or any necessary upgrades to public infrastructure will be provided;
 - c. the service station will not detract from the economic and social vibrancy and viability of any nearby centres; and
 - d. policies 15.2.3.4 and 15.2.4.7 can be achieved.
- b. Amend Rule 15.12.2.7, which guides the assessment of service stations on strategic roads or arterial roads in residential zones, as follows:

15.12.2 Assessment of discretionary activities	
Activity	Guidance on the assessment of resource consents
7. Service stations on a strategic road or arterial road	<p><i>Relevant objectives and policies (priority considerations):</i></p> <ol style="list-style-type: none"> a. Objectives 15.2.1, 15.2.3 and 15.2.4. b. Provide for service stations on a strategic road or arterial road only where it is not practicable, due to a lack of site availability and/or special locational requirements, to locate in the PPH, TR, CEC, industrial or centre zones <ol style="list-style-type: none"> i. <u>safe and convenient access to the site for pedestrians and cyclists can be provided;</u> ii. <u>there is adequate public infrastructure (where available) to service the development or any necessary upgrades to public infrastructure will be provided;</u> iii. <u>the service station will not detract from the economic and social vibrancy and viability of any nearby centres; and</u> iv. <u>policies 15.2.3.4 and 15.2.4.7 can be achieved (Policy 15.2.1.7).</u>

	<p>c. Service stations are designed and located to avoid or, if avoidance is not practicable, adequately mitigate, adverse effects on the amenity of surrounding residential properties (Policy 15.2.3.4).</p> <p>d. Service stations are designed and located to avoid or, if avoidance is not practicable, adequately mitigate, adverse effects on streetscape amenity (Policy 15.2.4.7).</p> <p><i>General assessment guidance</i></p> <p>e. In assessing the effects on the amenity of surrounding residential properties and the streetscape amenity, Council will consider the:</p> <ul style="list-style-type: none"> i. design and location of buildings, forecourts/yards and signs; ii. location of access/egress points; iii. effects of vehicle movements on the site; and iv. the hours of operation, light spill, noise and location of service station development in relation to site boundaries. <p>f. See Rule 6.12.2.1 for guidance on the assessment of the effects on the safety and efficiency of the transportation network, and other transportation effects.</p> <p>X. <u>In assessing the effects on public infrastructure, Council will consider the extent to which the service station is likely to attract pedestrians and cyclists and if necessary whether safe and convenient access for pedestrians and cyclists is available or will be provided.</u></p> <p><i><u>Potential circumstances that may support a consent application include:</u></i></p> <p>Y. <u>The service station is located on a site previously used for service station activity or that is otherwise a Hazardous Activities and Industries List (HAIL) site.</u></p> <p>Z. <u>Any necessary upgrades to available public infrastructure will be made.</u></p> <p><i>Conditions that may be imposed include:</i></p> <p>g. Requirements for fencing, landscaping and/or setbacks of buildings, forecourts/yards, signs and</p>
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		<p>access/egress points to minimise adverse visual or nuisance effects from noise, lighting and/or vehicle headlights on surrounding properties.</p> <p>h. Restrictions on hours of operation.</p> <p>i. Restrictions on on-site lighting.</p> <p>j. Requirements for screening of storage areas.</p> <p>k. Requirement to control dust.</p> <p>l. Conditions related to building design, scale and bulk including roof lines, height, façade articulation, colour and materials to ensure compatibility with surrounding residential amenity.</p> <p>m. Restrictions on signage</p>
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Section 16 Rural Zones (Oil Companies, appeal point 352)

- c. Amend Policy 16.2.1.11, as follows:

Provide for service stations on a strategic or arterial road, where: ~~it is not practicable, due to a lack of site availability and/or special locational requirements, to locate in the PPH, TR, CEC, industrial or centre zones~~

- a. safe and convenient access to the site for pedestrians and cyclists can be provided;
- b. there is adequate public infrastructure (where available) to service the development or any necessary upgrades to public infrastructure will be provided;
- c. the service station will not detract from the economic and social vibrancy and viability of any nearby centres; and
- d. policies 16.2.2.5 and 16.2.3.6 can be achieved.

- d. Amend Rule 16.11.2.7, which guides the assessment of service stations on strategic roads or arterial roads in rural zones, as follows:

16.11.2 Assessment of discretionary land use activities		
Activity		Guidance on the assessment of resource consents
7.	Service stations on a strategic	<p><i>Relevant objectives and policies (priority considerations):</i></p> <p>a. Objectives 16.2.1, 16.2.2, 16.2.3</p> <p>b. Provide for service stations on a strategic road or arterial road only where: it is not practicable, due to a</p>

	road or arterial road	<p>lack of site availability and/or special locational requirements, to locate in the PPH, TR, CEC, industrial or centre zones</p> <ul style="list-style-type: none"> i. <u>safe and convenient access to the site for pedestrians and cyclists can be provided;</u> ii. <u>there is adequate public infrastructure (where available) to service the development or any necessary upgrades to public infrastructure will be provided;</u> iii. <u>the service station will not detract from the economic and social vibrancy and viability of any nearby centres; and</u> iv. <u>where policies 16.2.2.5 and 16.2.3.6 can be achieved (Policy 16.2.1.11).</u> <p>c. Service stations are designed and located to avoid or, if avoidance is not practicable, adequately mitigate adverse effects on the amenity of residential activities on surrounding properties (Policy 16.2.2.5).</p> <p>d. Service stations are designed and located to avoid or, if avoidance is not practicable, ensure adverse effects of development on rural character and visual amenity are no more than minor (Policy 16.2.3.6).</p> <p><i>General assessment guidance:</i></p> <ul style="list-style-type: none"> e. In assessing the effects on the amenity of surrounding residential properties and the streetscape amenity, Council will consider the: <ul style="list-style-type: none"> i. design and location of buildings, forecourts/yards and signs; ii. location of access/egress points; iii. effects of vehicle movements on the site; and iv. the hours of operation, light spill, noise and location or service station development in relation to site boundaries. <p><u>X. In assessing the effects on public infrastructure, Council will consider the extent to which the service station is likely to attract pedestrians and cyclists and if necessary whether safe and convenient access for pedestrians and cyclists is available or will be provided.</u></p> <p><u><i>Potential circumstances that may support a consent application include:</i></u></p>
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		<p><u>Y. The service station is located on a site previously used for service station activity or that is otherwise a Hazardous Activities and Industries List (HAIL) site.</u></p> <p><u>Z. Any necessary upgrades to available public infrastructure will be made.</u></p> <p><i>Conditions that may be imposed include:</i></p> <ul style="list-style-type: none"> f. Requirements for fencing, landscaping and/or setbacks of buildings, forecourts/yards, signs and access/egress points to minimise adverse visual or nuisance effects from noise, lighting and/or vehicle headlights on surrounding properties. g. Restrictions on hours of operation. h. Restrictions on on-site lighting. i. Requirements for screening of storage areas. j. Requirement to control dust. k. Conditions related to building design, scale and bulk including roof lines, height, façade articulation, colour and materials to ensure compatibility with surrounding rural amenity. l. Restrictions on signage. <p><i>Relevant guidance from other sections (priority considerations):</i></p> <ul style="list-style-type: none"> m. See Rule 6.12.2.1 for guidance on the assessment of the effects on the safety and efficiency of the transportation network, and other transportation effects.
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Section 6 Transportation (Oil Companies, appeal point 352)

- e. Amend the description of an arterial road in Table 6A.2 Road Classification, in Appendix 6A Road Classification Hierarchy, as follows:

Classification	Description
Arterial	Roads <u>(including an urban high density corridor)</u> that connect, distribute and collect within and between residential, rural, commercial and industrial areas; as well as providing access to properties. In urban areas, these roads support a range of travel modes including frequent public transport services and considerable pedestrian and

Classification	Description
	cycle activity. On an arterial road, it may be appropriate to prioritise road space allocation/road design to support safe cycling and/or public transportation. This can result in less space for on-street parking. In rural areas, an arterial road carries moderate volumes of general traffic, including a higher percentage of heavy vehicles serving key sites of primary industry. Although it may also support some residential development, an arterial road in a rural area is not expected to meet the same standards that apply in urban areas such as kerb and channel gutters and street lighting.

Section 19 Industrial Zones (Oil Companies, appeal point 353)

- f. Amend Rule 19.9.6.1, which applies to activities in an amenity route mapped area that contravene the Boundary setbacks performance standard (Rule 19.6.9.1) or the Boundary treatments – landscaping performance standard (Rule 19.6.1), as follows:

19.9.6 Assessment of performance standard contraventions in an overlay zone, mapped area or affecting a scheduled item		
Performance standards	Matters of discretion	Guidance on the assessment of resource consents
<p>1. In an amenity route mapped area:</p> <ul style="list-style-type: none"> • Boundary setbacks • Boundary treatments - landscaping 	<p>a. Effects on streetscape amenity</p>	<p><i>Relevant objectives and policies:</i></p> <ul style="list-style-type: none"> i. Objective 19.2.2 ii. Development along an amenity route mapped area provides a high level of streetscape amenity by: <ul style="list-style-type: none"> 1. providing landscaping of a height and density adequate to maintain or enhance the amenity of the route and to mitigate the visual impact of industrial activities and development; and

			<p>2. setting back buildings an adequate distance to allow this landscaping (Policy 19.2.2.2).</p> <p><i>Potential circumstances that may support a consent application include:</i></p> <p>iii. There are positive effects on streetscape amenity from better building or site design outcomes achieved through not meeting the performance standard. These include the use of building treatments such as murals, green walls, or activation treatments.</p> <p>iv. The alternative boundary treatment proposed is necessary to address traffic safety issues that could arise if the standard was complied with; and is necessary to achieve Objective 6.2.3.</p> <p>X. <u>The alternative boundary treatment is necessary to allow for the redevelopment of, or additions and alterations to, existing buildings.</u></p>
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