

**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 OTAGO REGIONAL COUNCIL

(ENV-2018-CHC-290)

Appellant

AND DUNEDIN CITY COUNCIL

Respondent

Environment Judge P A Steven – sitting alone under s279 of the Act

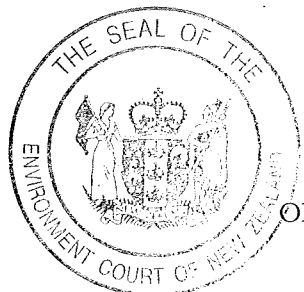
In Chambers at Christchurch

Date of Consent Order: 5 August 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 Dunedin City Council is directed to make the amendments to the provisions and planning maps of the proposed Dunedin City Second Generation District Plan as set out in Appendix 1, attached to and forming part of this order;
- (2) the part of the appeal concerning development within the Hazard (Flood) Overlay Zones, allocated DCC reference number 65 is resolved. The remaining parts of the appeal will 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 Otago Regional Council against the decision of the Dunedin City Council approving the proposed Dunedin City Second Generation Plan ('2GP'). The appeal relates to provisions concerning development within the Hazard (Flood) Overlay Zones.

[2] I have read and considered the consent memorandum of the parties dated 31 May 2021 which proposes to partially resolve the appeal. I have also read and considered the affidavit of Ms Hickey who has satisfied me that the proposed amendments sought to resolve this part of the appeal are appropriate and granting the relief sought will not impact on the resolution of any other proceeding.¹

Other relevant matters

[3] Federated Farmers of New Zealand have given notice of an intention to become a party to this appeal under s274 of the Resource Management Act ('the RMA') and has 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.

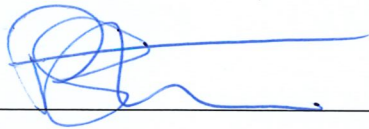
[5] The parties advise that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and

¹ Affidavit of S C Hickey affirmed 18 May 2021 [37]-[40], [48]-[66].

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.



P A Steven
Environment Judge



APPENDIX 1

Policy 2.2.1.7

1. Delete Policy 2.2.1.7 as follows:

~~Policy 2.2.1.7~~

~~In the hazard overlay zones, provide for more lenient rules on the expansion of existing activities in the acknowledgement of the pre-existing financial investment and other operational ties in a site.~~

Rule 15.3.6

2. Amend Rule 15.3.6 as follows:

15.3.6 Activity Status in Hazard 1 (Flood) Overlay Zone and Hazard 2 (Flood) Overlay Zone

Activity		Activity status	
		a. Haz1 (flood)	b. Haz2 (flood)
<u>Land Use Activities</u>			
1.	Natural hazards sensitive activities	NC	RD
2.	Natural hazards potentially sensitive activities	NC	RD
<u>Development Activities</u>			
3.	New buildings, and additions and alterations to buildings, which <u>that create within any two calendar-year period</u> more than 36m ² of new ground floor area	RD	RD

Rule 16.3.6

3. Amend Rule 16.3.6 as follows:

16.3.6 Activity Status in Hazard 1 (Flood), Hazard 1A (Flood) and Hazard 2 (Flood) Overlay Zones

Activity		Activity status		
		a. Haz1A (flood)	b. Haz1 (flood)	c. Haz2 (flood)
<u>Land Use Activities</u>				
1.	Natural hazards sensitive activities	Pr	NC	RD
2.	Natural hazards potentially sensitive activities	NC	NC	RD
<u>Development Activities</u>				
3.	New buildings, and additions and alterations to buildings, <u>which that create within any two calendar-year period: more than 36m² of new ground floor area in the Henley mapped area, or more than 60m² of new ground floor area outside the Henley mapped area</u>	RD	RD	RD

Rules 17.3.6.3, 18.3.8, 19.3.6, 20.3.6, 22.3.6, 24.3.6, 31.3.6 and 33.3.6

4. Amend rules 17.3.6.3, 18.3.8.3, 19.3.6.3, 20.3.6.3, 22.3.6.3, 24.3.6.2, 31.3.6.3 and 33.3.6.3 as shown below in Rule 17.3.6 which is included as an example:

17.3.6 Activity Status in Hazard 1 (Flood) Overlay Zone and Hazard 2 (Flood) Overlay Zone

Activity		Activity status	
		a. Haz1 (flood)	b. Haz2 (flood)
<u>Land Use Activities</u>			
1.	Natural hazards sensitive activities	NC	RD
2.	Natural hazards potentially sensitive activities	NC	RD

		Activity status	
Activity		a. Haz1 (flood)	b. Haz2 (flood)
<u>Development Activities</u>			
3.	New buildings and additions and alterations to buildings, which <u>that create within any two calendar-year period</u> create more than 60m ² of new ground floor area	RD	RD

Activity Status Introductions – consequential amendments

5. Make a consequential amendment in relation to amendments 2-4 above, to 15.3.2.8 (Activity Status Introduction) as follows:

15.3.2 Activity Status Introduction

1. The activity status tables in rules 15.3.3 - 15.3.5 show the activity status of activities in the residential zones and the overlay zones indicated, provided any performance standards shown in the far right column are met.
2. ...

Additional activity status rules in hazard overlay zones

7. ...
8. In the Hazard 1 (flood) Overlay Zone or the Hazard 2 (flood) Overlay Zone, the activity statuses in Rule 15.3.6 apply to the following activities:
 - a. natural hazards sensitive activities;
 - b. natural hazards potentially sensitive activities, and
 - c. new buildings and additions and alterations to buildings, ~~that~~ create within any two calendar-year period create more than 36m² of new ground floor area.
9. ...

6. Make a consequential amendment in relation to amendments 2-4 above, to 16.3.2.7 (Activity Status Introduction) as follows:

16.3.2 Activity Status Introduction

1. The activity status tables in rules 15.3.3 - 15.3.5 show the activity status of activities in the residential zones and the overlay zones indicated, provided any performance standards shown in the far right column are met.
2. ...

Additional activity status rules in hazard overlay zones

7. ...
8. In the Hazard 1 (flood) Overlay Zone or the Hazard 2 (flood) Overlay Zone, the activity statuses in Rule 16.3.6 apply to the following activities:
 - a. natural hazards sensitive activities;
 - b. natural hazards potentially sensitive activities, and
 - c. new buildings and additions and alterations to buildings, ~~which~~ that create within any two calendar-year period: more than 36m² of new ground floor area in the Henley Mapped Area, or more than 60m² of new ground floor area outside the Henley mapped area.
9. ...

7. Make a consequential amendment in relation to amendments 2-4 above, to the Activity Status Introduction of 17.3.2.8, 18.3.2.8, 19.3.2.8, 20.3.2.8, 22.3.2.8, 24.3.2.8, 31.3.2.8 and 33.3.2.8 as shown below in 17.3.2.8 which is included as an example.

17.3.2 Activity Status Introduction

1. The activity status tables in rules 17.3.3 - 17.3.5 show the activity status of activities in the residential zones and the overlay zones indicated, provided any performance standards shown in the far right column are met.
2. ...

Additional activity status rules in hazard overlay zones

7. ...
8. In the Hazard 1 (flood) Overlay Zone or the Hazard 2 (flood) Overlay Zone, the activity statuses in Rule 17.3.6 apply to the following activities:
 - a. natural hazards sensitive activities;
 - b. natural hazards potentially sensitive activities, and
 - c. new buildings and additions and alterations to buildings, which that create within any two calendar-year period more than 60m² of new ground floor area.
9. ...

Assessment of all restricted discretionary activities – consequential amendments

8. Make a consequential amendment in relation to amendments 2-4 above, to assessment rule 11.5.2.2 as follows:

11.5.2 Assessment of all restricted discretionary activities			
Activity		Matters of discretion	Guidance on the assessment of resource consents
2.	In a hazard 1 (flood), 1A (flood) or 2 (flood) overlay zone: <ul style="list-style-type: none"> • new buildings and additions and alterations to buildings, <u>which that create within any two calendar-year period:</u> more than 36m² of new ground floor area in a residential zone <u>or in the Henley mapped area</u>, or <u>more than</u> 60m² of new ground floor area in all other zones <u>locations</u> 	a. Risk from natural hazards	<i>Relevant objectives and policies:</i> <ol style="list-style-type: none"> i. Objective 11.2.1 ii. The scale, location and design of the building or other factors mean risk is avoided, or is no more than low (Policy 11.2.1.4)

9. Make a consequential amendment in relation to amendments 2-4 above, to assessment rule 15.11.5.1 as follows:

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
1.	<p>In a hazard 1 or 2 (flood) overlay zone (see Rule 15.3.6):</p> <ul style="list-style-type: none"> New buildings, and additions and alteration to buildings, which that <u>create within any two calendar-year period</u> more than 36m² of new ground floor area 	a. Risk from natural hazards	See Rule 11.5

10. Make a consequential amendment in relation to amendments 2-4 above, to assessment rule 16.10.5.12 as follows:

16.10.5 Assessment of restricted discretionary activities in an overlay zone, mapped area or affecting a scheduled item			
Activity		Matters of discretion	Guidance on the assessment of resource consents
12.	<p>In a hazard 1, 1A or 2 (flood) overlay zone (see Rule 16.3.6):</p> <ul style="list-style-type: none"> New buildings and additions and alterations to buildings, which create more than 60m² of new ground floor area <u>New buildings and additions and alterations to buildings that create within any two calendar-year period: more than 36m² of new ground floor area in the Henley mapped area, or more than 60m² of new ground floor area outside the Henley mapped area</u> 	a. Risk from natural hazards	See Rule 11.5

11. Make a consequential amendment in relation to amendments 2-4 above, to assessment rules 17.10.5.8, 18.10.5.4, 19.10.6.2, 20.10.5.2, 22.10.2.2, 24.8.3.1, 31.10.3.1 and 33.10.3.3 as shown below in 17.10.5.8 which is included below as an example.

17.10.5 Assessment of restricted discretionary activities in an overlay zone, mapped area or affecting a scheduled item			
Activity		Matters of discretion	Guidance on the assessment of resource consents
8.	<p>In a hazard 1 or 2 (flood) overlay zone (see Rule 17.3.6):</p> <ul style="list-style-type: none"> New buildings and additions and alterations to buildings, <u>which that create within any two calendar-year period</u> more than 60m² of new ground floor area 	a. Risk from natural hazards	See Rule 11.5

Note to plan users regarding existing use rights

12. Amend note to plan users 15.3.6A, 16.3.6A, 17.3.6A, 18.3.8A, 19.3.6A, 20.3.6A, 22.3.6A, 24.3.6A, 31.3.6A and 33.3.6A as shown below in Note 15.3.6A which is included as an example.

Note 15.3.6A - Other RMA considerations

1. Section 10 of the RMA (existing use rights) provides for land to be used in a manner that contravenes a rule in a district plan if the use was lawfully established before the rule became operative or the proposed plan was notified, and the effects of the use are the same or similar in character, intensity and scale to those which existed before the rule became operative or the proposed plan was notified.
2. ~~For the purposes of the natural hazards provisions only, with respect to section 10 of the RMA (existing use rights), Council will generally consider that a land use activity is similar in character, intensity, and scale where:~~
 1. ~~for a residential activity, there is less than 25m² increase in ground floor area of any residential building(s), in any consecutive 10 year period; or~~
 2. ~~for a residential activity, a new building is to be used solely as a garage or shed; or~~
 3. ~~for all other natural hazards sensitive activities and natural hazards potentially sensitive activities, the ground floor area of any buildings increases by less than 100% in any consecutive 10 year period.~~
2. Accordingly, these activities that are shown to have effects that are the same or similar in character, intensity and scale to those which existed before the rule became operative or the proposed plan was notified will not usually trigger the provisions for natural hazards sensitive activities and natural hazards potentially sensitive activities in Rule 15.3.6. However, Council will consider specific circumstances associated with the development and how this affects the character, intensity and scale of effects from the land use activity.

New note to plan user

13. Add new note to plan users 15.3.6B, 16.3.6B, 17.3.6B, 18.3.8B, 19.3.6B, 20.3.6B, 22.3.6B, 24.3.6B, 31.3.6B and 33.3.6B as shown below in Note 15.3.6B which is included as an example.

Note 15.3.6B – Other requirements outside the District Plan

1. Clause E1 – Surface water of the New Zealand Building Code (Building Regulations 1992, Schedule 1) contains requirements regarding buildings and sitework (including earthworks) in relation to managing surface water and effects on other property.
2. Buildings and structures that will divert water may require resource consent under the Otago Regional Plan: Water.
3. If buildings and structures affect the flow of water, this effect is also subject to the common law principle of natural servitude.

Amendment to planning map

14. Add a “**Henley mapped area**” to the 2GP planning map as shown below:



Consequential amendments

15. Make any consequential changes to plan numbering required as a result of the above amendments.

