

BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH

I MUA 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 to the Act  
BETWEEN BARRY SMAILL  
(ENV-2018-CHC-000280)  
Appellant  
AND DUNEDIN CITY COUNCIL  
Respondent

Environment Judge J E Borthwick – sitting alone under s 279 of the Act

In Chambers at Christchurch

Date of Consent Order: 17 December 2020

---

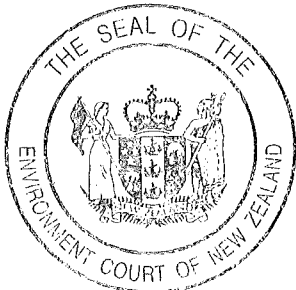
**CONSENT ORDER**

---

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

- (1) the appeal, as it relates to DCC appeal point 208, is allowed subject to the amended provisions marked Appendix 1, attached to and forming part of this order; and
- (2) DCC appeal point 208 is thereby resolved.

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



## REASONS

### Introduction

[1] Mr Smaill filed an appeal against the decision of the Dunedin City Council approving a proposed plan. In respect of the first of his appeal points (DCC appeal point 208) he sought the following relief:

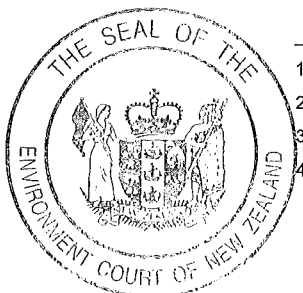
Remove Table 15.5.2.1.e – Density or amend so that the density provision is equivalent to the density provided for in the Residential 4 Zone under the Operative District Plan.

[2] A consent memorandum has been lodged, resolving DCC appeal point 208 by making changes to Rules 15.5.2.4, 15.10.3 and 9.5.3.<sup>1</sup> The rationale for the changes, and the assessment of the changes in terms of s 32AA of the RMA is explained in an affidavit of Ms Emma Christmas, a senior policy planner at Dunedin City Council.<sup>2</sup>

[3] Ms Christmas explained that the agreed amendments are:

- (a) A change to the density standard that would introduce a restricted discretionary activity rule for densities of between the (permitted) density of one habitable room per 45m<sup>2</sup> of site area and one habitable room per 30m<sup>2</sup>. Densities greater than one habitable room per 30m<sup>2</sup> of site area would remain a non-complying activity.
- (b) Consequential changes to assessment rules to guide assessment of restricted discretionary consent applications.<sup>3</sup>

[4] The Council also lodged an affidavit of Dr Anna Louise Johnson, who stated that no amendments to the 2GP strategic directions are required as a result of the agreed changes to resolve the appeal, and the changes do not impact the current horizontal or vertical alignment of the provisions.<sup>4</sup>




---

<sup>1</sup> Consent memorandum dated 28 February 2020.  
<sup>2</sup> E Christmas affidavit dated 4 December 2020.  
<sup>3</sup> E Christmas affidavit dated 4 December 2020 at [8].  
<sup>4</sup> A L Johnson affidavit dated 4 December 2020 at [10].

[5] 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 orders and other appeals before the court. Ms Christmas and Dr Johnson have satisfied me that that the orders are appropriate. Moreover, there are no other appeals on any of the provisions proposed to be changed, and so granting the relief sought by this order will not impact on the resolution of other proceedings.

### **Other matters**

[6] There are no s 274 parties to this appeal.

[7] Dr Johnson has also 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*.<sup>5</sup>

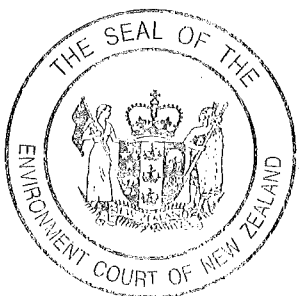
[8] For completeness, I record the parties' attestation that they are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to relevant requirements and objectives of the RMA, including Part 2 and on that basis request that the amendments shown in strikethrough and underline in Appendix 1 are made.

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

[10] I note that the proposed new Rule 9.5.3 (X) in Appendix 1 was described as "Density – standard residential in in ICR Zone (Rule 15.5.2.4.d)". The Court has amended the consent order to correct that error by removing the second occurrence of the word "in" appearing in Rule 9.5.3 (X).

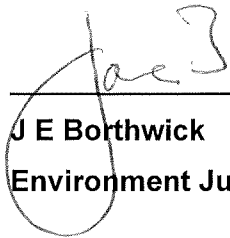
### **Outcome**

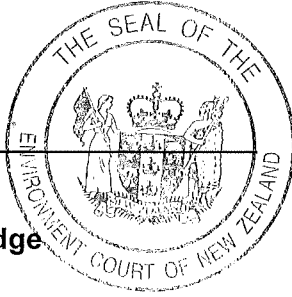
[11] All parties to the proceeding have executed the memorandum requesting the orders. Based on the information before me, I am satisfied pursuant to s 32AA of the Resource Management Act 1991, that the amendments proposed are the most



5

appropriate way to achieve the relevant objectives. As the orders will promote the purpose of the Act I will make the orders sought.

  
**J E Borthwick**  
**Environment Judge**



## APPENDIX 1

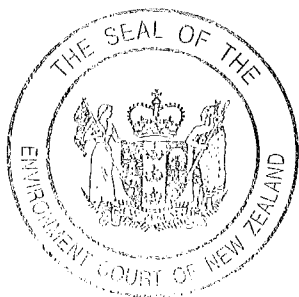
Amend the assessment rule for restricted discretionary performance standard contraventions Rule 9.5.3 (add new row after 3 and make consequential changes to the numbering of remaining rows) {Small}

X.	<u>Density - standard residential in ICR Zone (Rule 15.5.2.4.d)</u>	<u>a. Effects on efficiency and affordability of infrastructure</u>	<p><u>Relevant objectives and policies:</u></p> <p>i. <u>Objective 9.2.1</u></p> <p>ii. <u>Development in an area with public water supply and/or wastewater infrastructure will not exceed the current or planned capacity of that infrastructure or compromise its ability to service any activities permitted within the zone (Policy 9.2.1.1).</u></p> <p><u>General assessment guidance:</u></p> <p>iii. <u>In determining whether Policy 9.2.1.1 is achieved, Council will consider the cumulative effects of the proposed development together with existing development and permitted development that is likely to arise in the future.</u></p>
----	---	---	--

**Amend density performance standard Rule 15.5.2.4 {Small}**

Standard residential activity that contravenes the performance standard for density is a non-complying activity, except the following are restricted discretionary activities:

- a. papakāika that contravenes the performance standards for density;
- b. standard residential in the General Residential 2 Zone (infrastructure constraint mapped area) that contravenes the performance standards for maximum



development potential per site, provided the maximum development potential per site of the activity proposed does not exceed 1 habitable room per 45m<sup>2</sup>; and

- c. contravention of Rule 15.5.2.3 (bulk and location performance standards for multiple residential buildings on the same site); and
- d. standard residential in the ICR Zone that contravenes the performance standard for maximum development potential per site (15.5.2.1.e.ii), provided the maximum development potential per site of the activity proposed does not exceed 1 habitable room per 30m<sup>2</sup>.

**Amend the assessment rule for restricted discretionary performance standard contraventions Rule 15.10.3 {Smaill}**

3.	<p>Density - (<del>Rule 15.5.2.4.b</del>)</p> <ul style="list-style-type: none"> <li>• standard residential in General Residential 2 Zone infrastructure constraint mapped area (<u>Rule 15.5.2.4.b</u>).</li> <li>• <u>standard residential in ICR Zone (Rule 15.5.2.4.d)</u></li> </ul>	a. Effects on efficiency and affordability of infrastructure	See Rule 9.5
----	---	--	--------------

