

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management Act 1991
AND of an appeal under section 120 of the Act
BETWEEN NEW ZEALAND HISTORIC PLACES
TRUST- POUHERE TAONGA
(ENV-2010-CHC-242)
Appellant
AND DUNEDIN CITY COUNCIL
Respondent

Environment Judge J R Jackson sitting alone pursuant to section 279 of the Act
In Chambers at Christchurch

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 and resource consent LUC-2008-580 is granted so that the heritage façades at 380, 386 and 392 Princes Street be retained with the replacement building at 372-378 Princes Street and behind the façades conforming to the concept plans prepared by Fulton Ross Team Architects. The amended conditions for LUC-2008-580 for 372-392 Princes Street and 11 Stafford Street are set out in Annexure 1, attached to and forming part of this order;
- (2) the appeal is otherwise dismissed.

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



REASONS

Introduction

[1] On 5 October 2010 the New Zealand Historic Places Trust, Pouhere Taonga lodged an appeal against a decision of the Dunedin City Council granting consent to Prista Apartments Limited to demolish four façades and buildings at 372-392 Princes Street and also at 11 Stafford Street and to construct two replacement buildings with onsite car parking (LUC-2008-580).

[2] The New Zealand Historic Place Trust, Pouhere Taonga appealed the granting of consent and subsequently restricted its appeal to the four listed façades on Princes Street that can be described as follows:

- (a) 372-378 Princes Street, a long two-storeyed building that is currently painted green;
- (b) 380 Princes Street, a short two-storeyed building that is currently painted pink;
- (c) 386 Princes Street known as the Mason Building, a three-storeyed building that is currently painted cream; and
- (d) 392 Princes Street, a short two-storeyed building that is currently painted blue and is next to the Empire Hotel. This building contains a brick oven that will require an authority to modify.

[3] It is recorded that initially there were substantial delays, agreed to by all parties, in progressing this appeal. These delays were due to the Christchurch earthquakes which affected the applicant's businesses in Christchurch.

[4] Evidence was exchanged by all parties in the period of March to May 2013. The appellants and applicant engaged in negotiations in mid-2013 and eventually reached an agreement in principle regarding the retention of three of the listed façades. The parties agree to:

- (a) The retention of three of the listed façades being: 380, 386 and 392 Princes Street. The fourth façade at 372-378 Princes Street will be demolished; and
- (b) Consent conditions that specify the protocols to be followed for supporting the retained façades.

[5] The court has now read and considered the consent memorandum of the parties dated 19 June 2014, which proposes to resolve the appeal.

Other relevant matters

[6] Elizabeth Jane Kerr and Peter Entwisle have given notice of an intention to become a party under section 274 of the Resource Management Act 1991 ("the RMA" or "the Act") and have signed the memorandum setting out the relief sought.



Orders

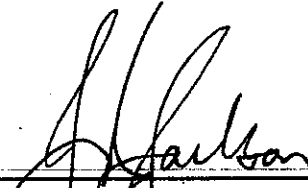
[7] The court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) 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.

DATED at Christchurch

26

June 2014



J R Jackson
Environment Judge



Issued: **26 JUN 2014**

ANNEXURE 1

Consent Type: Land Use

Consent Number: LUC-2008-580

Location of Activity: 372, 374, 376, 378, 380, 386 & 392 Princes Street, 11 Stafford Street, Dunedin.

Legal Description: Lot 1 DP 8704 (CFR OT391/45) and Lot 1 DP 366424 (CFR 269174).

Lapse Date: 1 July 2021, unless the consent has been given effect to before this date. The lapse period applies to both the Stafford Street and Princes Street buildings, so that substantial progress for each building has to occur by the stated lapse date. If substantial progress has not been made on one or the other of the new buildings by the stated date, the consent is deemed to have lapsed in respect to that building only. The lapse date shall apply regardless of the date the consent is deemed to commence.

That pursuant to section 34A(1) and 104B and after having regard to Part II matters and sections 104 and 104D of the Resource Management Act 1991, the Dunedin City Council grants consent to a non-complying activity being:

- *the demolition of the existing listed façade and the building at 372, 374, 376, & 378, 380, 386 & 392 Princes Street;*
- *the demolition of the buildings behind the façades at 372, 374, 376, 378, 380, 386 & 392 Princes Street and 11 Stafford Street. The existing listed façades at 380, 386 & 392 Princes Street are to be retained;*
- *the demolition of the building at 11 Stafford Street;*
- *the construction of new buildings at 372, 374, 376, & 378, 380, 386 & 392 Princes Street and 11 Stafford Street and new buildings incorporating the existing listed façades of the buildings at 380, 386 & 392 Princes Street;*
- *residential activity with under-width access onto Stafford Street; and*
- *the construction of new buildings greater than maximum height for the zone;*

on the sites legally described as Lot 1 DP 8704 (CFR OT391/45) and Lot 1 DP 366424 (CFR 269174), subject to the following conditions imposed under section 108 of the Act as follows:

1. ~~*Prior to any demolition occurring on site, the consent holder shall enter into a bond or bonds with Council. One bond shall be for the sum of \$50 000 for 11 Stafford Street, and the other, \$300 000 for all the Princes Street buildings combined. If the Stafford Street frontage and the Princes Street frontage of the subject sites are to be redeveloped in sequence rather than simultaneously, the bonds can likewise be paid sequentially, provided the respective bond for each frontage is paid prior to any physical works commencing on that specific frontage. The bonds are to allow for mitigation measures to be put in place should the new façades not be constructed directly following the demolition of the existing buildings, thus resulting in adverse effects on the townscape values of the South Princes Street Townscape Precinct. The*~~



~~bond shall be in cash or be secured by a guarantee in a form satisfactory to the Resource Consents Manager.~~

1. The proposal shall be given effect to generally in accordance with:
 - a. The plans prepared by Baker Gardner Architects, received at Council with the original application for LUC-2008-580 on 21 October 2008, in regard to the Stafford Street building only;
 - ~~b. the plans prepared by Gary Todd Architecture, received at Council with the original application for LUC-2008-580 on 24 May 2010, in regard to the Princes Street building;~~
 - b. The plans prepared by Fulton Ross Team Architects dated December 2013 as attached to this consent;
 - c. The information submitted with the original application received at Council on 21 October 2008, and the further information received at Council on 24 and 27 July 2009, and 24 May 2010;

except where modified by the following:

2. The two sites shall be formally amalgamated, and the new computer freehold register provided to Council as confirmation this has occurred.
3. A photographic record of the condition of the facades to be retained at 380, 386 & 392 Princes Street must be undertaken immediately prior to development works commencing, and must be submitted to Council for its records.
- ~~5. That the penthouse level of the Princes Street building shall have greater decorative elements incorporated into the building facade. The decorative elements shall be consistent with the rest of the Princes Street facade, and the characteristics of the South Princes Street Townscape Precinct values. The revised design shall be submitted to the Resource Consents Manager for approval prior to the demolition of the Princes Street buildings.~~
4. Prior to any physical works occurring on-site, the consent holder shall supply to the Resource Consents Manager a signed construction agreement with an agreed start date and letter from the consent holder's financial backer stating that they are holding funds or have approved finance to pay for the contract.
5. The consent holder shall advise the Resource Consents Manager of the intention to commence demolition works at least five working days prior to any demolition works being undertaken.
6. Demolition must not occur until building consent is approved for the replacement buildings.

7. That the construction of the new building for Princes Street shall commence within four weeks of the demolition of the existing Princes Street buildings, and the new

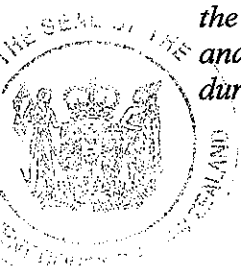


Stafford Street building within four weeks of the demolition of the existing 11 Stafford Street building.

8. Prior to any demolition works occurring on-site the consent holder will engage a suitably qualified and experienced engineer to prepare a Façade Retention Plan in consultation with the Council's Policy Planner - Heritage. The principal purposes of the Façade Retention Plan are to:
- a. demonstrate how the facades at 380, 386 and 392 will be propped during the demolition of the existing buildings and construction of the new buildings.
 - b. Set out methods and measures to be employed to protect the facades from any damage during demolition or construction works that could lead to the failure of the facades.

The Façade Retention Plan will be peer reviewed by an independent suitably qualified and experience engineer prior to being submitted to Council and demolition / construction works beginning on site.

9. The Façade Retention plan will be adhered to throughout the development of the application site.
10. The consent holder will engage a suitably qualified and experienced engineer to supervise the demolition and construction works in accordance with the Façade Retention Plan. If a façade is damaged or at risk of failure during the demolition and construction works, the consent holder will take any and all immediate remedial action that is specified by the engineer as necessary to secure the retention of the facades to be retained at 380, 386 and 392 Princes Street.
11. The consent holder shall advise the Council of any remedial actions that are undertaken in accordance with condition 11 above as soon as is practicable.
12. Prior to the demolition of the existing buildings, plans showing access and parking arrangements for the new buildings shall be submitted to the Transportation Operations Manager and approved.
13. Prior to the demolition of the existing buildings on-site, a plan detailing the water supply, waste water and stormwater drainage provisions for the new buildings shall be submitted to, and approved by, Council's Water and Waste Services Business Unit. The supply of water to the site and the disposal of wastewater and stormwater shall be in accordance with the approved plan.
14. The existing services to the buildings shall be cut and plugged prior to their demolition.
15. A Traffic Management Plan applying to the Princes Street redevelopment, and another for the Stafford Street redevelopment, shall be submitted to and approved by the Transportation Operations Manager prior to the commencement of any demolition and construction work for each frontage, as appropriate. Traffic shall be managed during the construction phase in accordance with the approved plans.



16. *An appropriate electronically controlled traffic light system shall be employed to control vehicle movements to the parking area. Priority shall be given to vehicles exiting the site, and the design and location for the signals shall be submitted to and approved by the Transportation Operations Manager prior to their establishment.*
17. *A waiting area shall be permanently marked at the bottom of the ramp, and shall be located in such a way as to not impede vehicles exiting the site.*
18. *The existing right of way in favour of 13 Stafford Street shall be widened to the full available width between buildings, for its full length, in order to provide legal width for the passing of vehicles.*
19. *The new Stafford Street building shall not be built over the existing right of way on the site, in any location.*
20. *A new water connection with meter and backflow preventer will be required for the new commercial premises. An additional water connection will be required for the residential units in the buildings. These shall be installed as necessary.*
21. *That any debris carried onto the road during construction shall be removed immediately at the expense of the consent holder.*
22. *That any damage to any part of the footpath or road formation as a result of the construction works shall be reinstated at the expense of the consent holder.*
23. *The consent holder shall ensure that all practicable measures are used to mitigate erosion and to control and contain sediment-laden stormwater run-off from the site during any stages of site disturbance that may be associated with this development.*
24. *The new residential units shall be noise insulated so as to achieve a maximum L_{eq} of 30dBA for bedrooms and 35dBA for other rooms. Insulation for the new buildings should be calculated so as to achieve a minimum performance standard of $D_{sm nT, w} + C_u > 30$, as required the District Plan Inner City Noise provisions.*

Advice Notes:

1. In addition to the conditions of a resource consent, the Resource Management Act establishes through Section 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effects created from an activity they undertake. A similar responsibility exists under the Health Act 1956.
2. Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
3. It is the responsibility of any party exercising this consent to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.

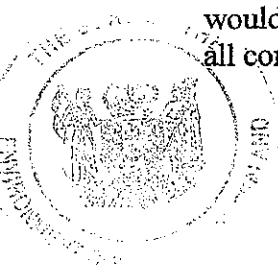


4. This is a resource consent. Building consent might be required before any work is undertaken on site. Please contact the Building Control Office, Development Services, to establish when a building consent is required.
5. The Empire Hotel Building located to the South of the application site is a Category 1 Registered Building under the Historic Places Act 1993. Whilst it is located outside of the application site it is recommended that it is taken into account when demolition and construction plans are being prepared. The building is known to be in relatively poor condition and as a result may be more susceptible to damage caused by activities on the application site.
- ~~5. The Committee would like to see as many of the facades of the existing Princes Street buildings retained and incorporated into the design of the new building as possible. Accordingly, the Committee recommends that the consent holder give consideration to the retaining of the facades, and in particular, that of 386 Princes Street, but does not require this as a condition of consent.~~
6. The construction of the new buildings is to comply with the New Zealand Building Code and the Building Act 2004.
7. Any issues to do with drainage can be handled via the building consent process.
8. It is expected that the construction of the buildings shall be limited to the times set out below and shall comply with the following noise limits as per New Zealand Standard NZS 6803:1999. – *Upper Limits for Construction Noise in Industrial or Commercial areas.*

Time Period	Duration of Work		
	Typical duration	Short-term duration	Long-term duration
	L _{eq} (dBA)	L _{eq} (dBA)	L _{eq} (dBA)
0730-1800	75	80	70
1800-0730	80	85	75

Should there be residential activity within the area, the noise for 1800 to 0730 may need to be reduced.

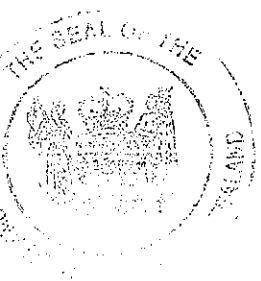
9. It is an offence under the Historic Places Act 1993 to damage, destroy or modify the whole or any part of an archaeological site without prior consent of the New Zealand Historic Places Trust. An archaeological authority from the New Zealand Historic Places Trust will be required for this project prior to work commencing. Should the construction work unexpectedly disturb a site of archaeological significance, the consent holder is to cease work in that area and shall consult with, or obtain a further Archaeological Authority from, the New Zealand Historic Places Trust before recommencing construction activity. If in doubt, the consent holder should consult with the Trust as to the nature and extent of any artefact or materials that, if found, would indicate the presence of an archaeological site. The consent holder must ensure all contractors are advised accordingly.

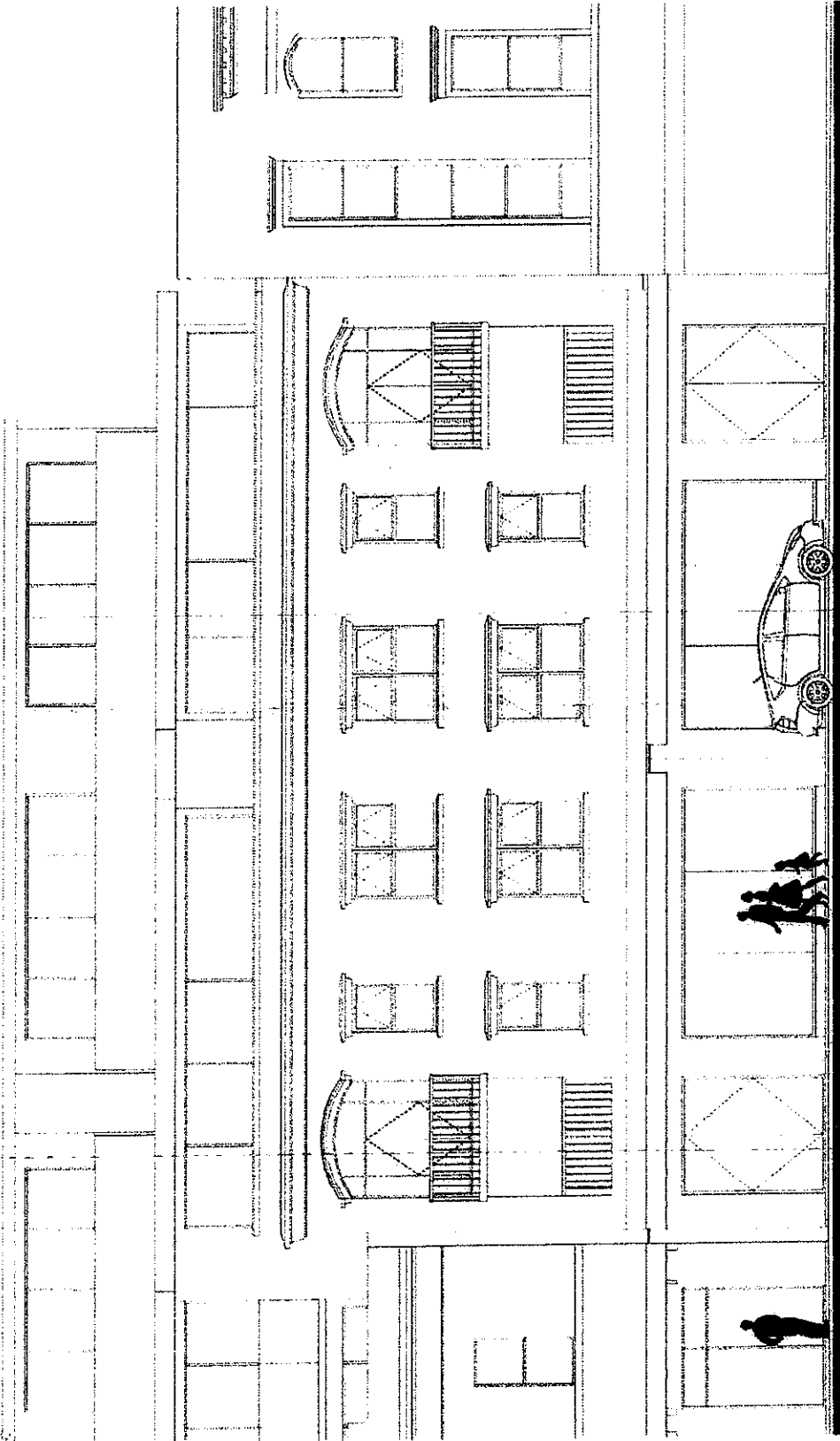
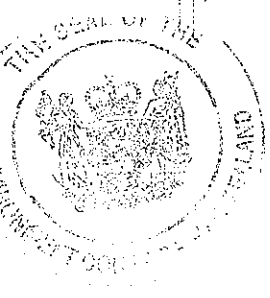


10. It is advised that the World Health Organisation guidelines recommend a maximum Leq of 30dBA for bedrooms and 35dBA for other rooms. Insulation for the new buildings should be calculated so as to achieve a minimum performance standard of $D_{sm nT, w} + C_u > 30$, as required the District Plan Inner City Noise provision.
11. Should any of the proposed retail outlets provide services that are regulated by Environmental Health, then the premises should be constructed to comply with any such Act, Regulations or Bylaws.
12. If heat pumps are to be installed within the proposed buildings, they should be installed so as to ensure that noise emissions comply with the permitted noise levels of the District Plan. Heat pumps should be installed in such a position, and include sufficient baffling to prevent motor and compressor noise creating an environmental noise nuisance.
13. The Water and Waste Services Business Unit require that the installation and connection of any new water reticulation to the existing public water system shall be carried out after the consent holder has completed and submitted an 'Application for Water Supply' form to the Council and following the consent holder's acceptance of the quote for the required work (as per the Dunedin City Council's Terms and Conditions for the Supply of Water and the Dunedin City Council Code of Subdivision (Part 4)). A quote for the required work can be obtained from either the Dunedin City Council (DCC) or an approved water supply connection installer (AWSCI).
14. This consent does not address signage for the new buildings or businesses. It is expected that any new signage will comply with the District Plan provisions, or will obtain further resource consent.
15. The requirements of Parts 4 and 5 (Drainage and Water Supply) of the Dunedin City Council's 'Code of Subdivision' shall be complied with.
16. The following documents are recommended as best practice guidelines for managing erosion and sediment-laden run-off and for the design and construction for erosion and sediment control measures:
- ARC Technical Publication No. 90 Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Regions, March 1999.
 - Environment Canterbury, 2007 'Erosion and Sediment Control Guidelines for the Canterbury Region' Report No. CRCR06/23.
 - Environment Canterbury, 2007 'Erosion and Sediment Control Guidelines for Small Sites'.



Attachment 1 – Plans Prepared by Fulton Ross Team Architects dated December 2013





Sheet	SKETCH
Date	1/10/2013
Drawn by	C.A.O. Inc.
Project No.	5593
Sheet No.	SK01
Per	

Drawing Title	ELEVATION
Scale	1/32 @ A2
Drawn by	C.A.O. Inc.
Date	December 2013
Drawn	10
Check	10
Date	December 2013

Project No.	572 - 302 Prince Street Dunedin
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