

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

Decision No. [2026] NZEnvC 17

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14(1) of the
First Schedule to the Act

BETWEEN FLETCHER GLASS

(ENV-2018-CHC-222)

FBG DEVELOPMENTS LIMITED

(ENV-2023-CHC-18)

Appellants

AND DUNEDIN CITY COUNCIL

Respondent

Court: Environment Judge P A Steven
Environment Commissioner M C G Mabin

Hearing: In Chambers on the papers

Last case event: 30 January 2026

Date of Decision: 11 February 2026

Date of Issue: 11 February 2026

FINAL DECISION OF THE ENVIRONMENT COURT

A: We approve the version of the structure plan and related rules favoured by the Council as these give effect to the interim decision of the court. The

FBG DEVELOPMENTS LIMITED v DUNEDIN CITY COUNCIL – FINAL DECISION



court directs the Council to amend the 2GP by the insertion of the final Watts Road structure plan mapped area and rules as set out in Annexure A at section 15.8.34.

B: Costs are reserved. Any application is to be made within 10 working days of the date of this final decision. A reply is to be filed 10 working days thereafter, and any final reply five working days later.

REASONS

[1] This is a final decision on the zoning of a property at 35 Watts Road, 37 Watts Road, 43 Watts Road and 309 North Road, Dunedin, following an interim decision dated 15 September 2025.¹

[2] By that interim decision, the parties were directed to prepare and file a final structure plan and associated plan provisions giving effect to the decision for the whole of the appeal site.

[3] A memorandum was filed by the parties on 26 January 2026 (the January memorandum) accompanied by the documents directed by that interim decision. However, the parties raised dispute as to the following three matters:²

- (a) the decision that a residential transition zone (RTZ) overlay should be placed over Areas C, D and E of the appeal site in place of the proposal for a private development agreement (PDA) which had been promoted by the appellants at the hearing;
- (b) the maximum number of sites able to be developed in Area E; and
- (c) dispute as to the definition of the boundary of the Restricted Development Areas – Biodiversity (RDAB) depicted in Figure 15.8.34A.

¹ [2025] NZEnvC 309.

² These being three of the five issues resolved by the interim decision.

[4] We address these issues.

Residential Transition Zone

[5] The dispute over the application of the RTZ overlay is said to turn on the meaning of paragraphs [163] and [164] of our interim decision that states:

[163] We conclude that a RTZ should be placed over Area D permitting development within this area once wastewater network upgrades have been completed. Release provisions that apply to the land should be those that are contained within the 2GP, subject to the inchoate changes currently going through the Sch 1 process.

[164] Although we have not yet received the consent orders for other areas to be rezoned, we can indicate that we would be requiring the same outcome, in place of the PDA proposal, for Areas C and E, for reasons set out in this decision.

[6] These passages follow our discussion of the competing arguments on the rezoning of Area D in paragraphs [41]-[61] and [143]-[164] which will not be repeated, beyond noting that the appellants resisted the Council's position that a RTZ should apply to this land which would be released under existing chapter 12 provisions once planned wastewater network upgrades had been completed.

[7] The appellants proposed that the wastewater infrastructure issue be resolved by a PDA, terms of which would require wastewater detention to be provided on the quarry for land pending completion of the Council's planned upgrades. The court did not favour the appellants preferred solution for several reasons not confined to the fact that an executed PDA was not in place at the time of the hearing.

[8] An executed PDA was provided to the court with the January memorandum.³ Mr Glass submits that now the parties have signed a wastewater

³ Although the court had not directed the parties to do that.

PDA, the RTZ is not necessary and there is no need for the court to require it. We disagree.

[9] We agree with the Council's position that the RTZ should be applied to Areas C, D and E to give effect to the decision that we have already made on that issue. It would then be open to the Council to decide whether to release the RTZ over the appeal site ahead of the completion of the planned upgrades based upon the terms of the PDA, in accordance with the release provisions in chapter 12 of the 2GP.⁴

[10] Under the rules, provisions of the specified future residential zone will apply to any part of the zone that is "released" by the Chief Executive Officer (CEO) or their delegate certifying that identified triggers or requirements have been met. As to these provisions we noted in our interim decision that, during the hearing, we were informed (from the bar) that a change was on foot to change the 2GP to accommodate alternative release triggers.

[11] If those provisions are now operative (and we were not told about that) it will be for the CEO to decide whether terms of the PDA meet the release provisions.

Maximum number of sites in Area E

[12] The parties have differing views on the meaning of the court's decision in relation to the maximum number of sites able to be developed in Area E. Counsel refers to paragraph [176] of our decision, where we concluded that the structure plan should limit density of dwelling numbers on Areas C and E to that assessed in the RDA report.⁵

[13] As noted by the Council in the January memorandum, the RDA report

⁴ Rules 12.3 Release of Land in the Residential Transition Overlay Zone (RTZ).

⁵ Which contained a geotechnical assessment of the land.

assessed and identified 12 sites and accordingly its position is that this is the number of sites that should be provided for in the structure plan. Mr Glass considers that the court should allow 14 sites. This is on the basis that two additional sites had been identified in the evidence provided to the court on behalf of the appellants.

[14] The appeal is attempting to relitigate an issue that has been decided. We are functus officio on that issue. Only 12 sites can be developed within Area E for reasons set out in our interim decision.

Indigenous biodiversity mapping

[15] The interim decision required provision for a RDAB on an area of land within Area C based on the evidence of Ms Metcalfe who gave evidence for the Council. This area was depicted on Figure 15.8.34A alongside other areas recommended for protection by Ms Metcalfe, not all of which were approved by the court in the interim decision.

[16] In the January memorandum, Mr Glass raises concerns as to the accuracy of the mapping claiming that the boundary is driven by the canopy as opposed to the presence of vegetation on the ground. His position is that the boundaries currently appear to extend over access roads and asks that the court provide either:

- (a) a direction for joint site verification and corrected mapping by the Council and Ahikā prior to finalising the RDAB boundaries; or
- (b) confirmation that RDAB boundaries may be refined at resource consent stage by reference to site-specific ecological assessment, including appropriate setbacks from formed access roads and platforms, noting that their preference is for the latter of these two.

[17] The Council supports the depiction of the RDAB depicted in Figure 15.8.34A without change. As noted by the Council, Mr Glass had the opportunity to present evidence to the court challenging the proposed RDAB boundaries but

elected not to do so.⁶

[18] We also agree with the Council on this issue. We further note that the 2GP structure plan provisions contain area-specific performance standards and special information requirements addressing several issues when a subdivision is proposed (assuming the RTZ overlay has been released). These provisions are in addition to the performance standards and information requirements for subdivision within a residential zone that is not the subject of the structure plan requirements.

[19] The parties have agreed to the inclusion of land-use performance standards pertaining to the Watts Road structure plan area that would apply to the appeal site, including rules that will restrict buildings and structures and vegetation clearance within the RDAB. Contravention of the rule requires a restricted discretionary activity consent. Otherwise, subdivision requires consent as a controlled activity (assuming all other relevant performance standards are complied with).

[20] When a subdivision is proposed for land within Area C, it will be apparent to the applicant whether, and to what extent, the mapped boundary of the RDAB encroaches on the access road. The rules that apply to the RDAB land only prevent vegetation clearance, or the erection of buildings or structures within the RDAB boundary.

[21] It is conceivable that some vegetation clearance may be needed for the land to be formed as the access road, although it is unlikely that structures or buildings would be proposed in this location. Accordingly, the prospect of any problems associated with the current (perceived) location of the boundary of the RDAB appears to be slim.

[22] Even so, if any issues do arise, the developer is able to seek a resource

⁶ Although Mr Milne (a landscape architect) gave evidence addressing Ms Metcalfe's recommendations, no ecological evidence was called by the appellants.

consent application for a restricted discretionary activity consent if (say) some vegetation clearance is found to be justified within the RDAB boundary. That does not strike the court as being a particularly onerous process given that the discretion would be restricted to biodiversity values.

[23] The court does not consider that it would be appropriate to direct that a survey of the boundary of the RDAB is undertaken jointly by the Council and Ahikā before finalising the structure plan provisions. It should be noted Ms Metcalfe's recommendations result from a site visit to the appellants' property under access arrangements directed in a decision of the court in circumstances where that visit had been opposed by the appellants. The Council sought permission for Ms Metcalfe to undertake a peer review of a biodiversity assessment carried out by the appellants' experts, Ahikā, which the court approved by decision issued on 8 May 2025.⁷

[24] Identification of the RDAB boundaries result from the assessment undertaken by Ms Metcalfe which, as noted above, was not challenged by the appellants at the hearing. In those circumstances, there is no reason why the Council ought to be required to incur any further cost associated with a determination of the RDAB boundaries. That is a cost that should be fully absorbed by the applicant in a later subdivision consent application process.

Outcome

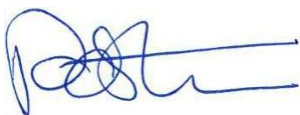
[25] Accordingly, we approve the version of the structure plan and related rules favoured by the Council as these give effect to the interim decision of the court. The court directs the Council to amend the 2GP by the insertion of the final Watts Road structure plan mapped area and rules as set out in Annexure A at section 15.8.34.

⁷ [2025] NZEnvC 148.

Costs

[26] As a final matter, the January memorandum notes that costs are not resolved as between the Council and the appellants, particularly in relation to the order needed for inspection of the appeal site by the Council's ecologist. Accordingly, the issue of costs is reserved, and any application is to be made within 10 working days of the date of this final decision. A reply is to be filed 10 working days thereafter, and any final reply five working days later.

For the court



P A Steven
Environment Judge

Annexure A

Overlays and Mapped Areas to be Applied:

Area A = Not part of the SPMA – zoning agreed

Area B = Retains Rural Hill Slopes Zoning, but part of SPMA

Area C = General Residential 1 Zone

Area D = LLR1 Zone

Area E = LLR1 Zone

15.8.34 Watts Road Structure Plan Mapped Area Rules

15.8.34.1 Application of structure plan mapped area rules

- a. The performance standards in Rule 15.8.34 do not apply to land within the **Watts Road structure plan mapped area** until such time as the RTZ applying to the part of the land under consideration has been released in accordance with Rule 12.3.1.

15.8.34.2 Land use performance standards

- a. Density
 - i. In 'Area C' of the **Watts Road structure plan mapped area**, standard residential activities must not exceed the density limits for the General Residential 1 Zone set out in Rule 15.5.2 (note that Rule 15.8.34.4.a limits the maximum number of sites in the **Watts Road structure plan mapped area**).
 - ii. In 'Area D' and 'Area E' of the **Watts Road structure plan mapped area**, standard residential activities must not exceed a density of one residential activity per site in the Large Lot Residential Zone (note that Rule 15.8.34.4.a limits the maximum number of sites in the **Watts Road structure plan mapped area**), except that:
 1. one ancillary residential unit is allowed per site in association with a standard residential activity, provided that the number of habitable rooms across both the primary residential activity and the ancillary residential unit does not exceed one habitable room per 400m² of site area in the Large Lot Residential 1 Zone.
 - iii. Activities that contravene this performance standard are non-complying activities.
 - iv. For the sake of clarity, this performance standard supersedes Rule 15.5.2.1.g and is additional to Rule 15.5.14.

15.8.34.3 Development performance standards

- a. Location
 - i. New buildings and structures must not be located within the 'Restricted Development Area - Biodiversity' as shown on Figure 15.8.34A.
 - ii. Activities that contravene this performance standard are restricted discretionary activities.
- b. Vegetation Clearance
 - i. Indigenous vegetation clearance must not occur in the areas marked 'Restricted Development Area – Biodiversity' on Figure 15.8.33A.
 - ii. The following types of vegetation clearance are exempt from Rule 15.8.33.3.b.i:

1. clearance that is part of conservation activity involving vegetation clearance and replacement with indigenous species;
2. clearance for the maintenance of fences (including gates), provided:
 1. any fence posts are located outside of the dripline of mature indigenous trees listed in Appendix 10A.3 to section 10 of the Plan; and
 2. the erection of new fences does not damage:
 1. specimens of threatened plant species listed in Appendix 10A.1;
 2. important breeding refuge, feeding or resting sites for indigenous fauna listed in Appendix 10A.2 to section 10 of the Plan; or
 3. mature indigenous trees listed in Appendix 10A.3 to section 10 of the Plan.
 3. clearance for the maintenance (but not extension) of existing network utilities, irrigation infrastructure, tracks, drains, structures, roads, or firebreaks;
 4. clearance that is consistent with or provided for as part of a conservation management strategy, conservation management plan, reserve management plan or covenant established under the Conservation Act 1987 or any other Act specified in the First Schedule of the Conservation Act 1987;
 5. clearance for the purpose of the sustainable customary harvest of food or resources undertaken by Manawhenua, in accordance with tikaka Māori;
 6. clearance that is required to remove material infected by unwanted organisms as declared by Ministry for Primary Industries' Chief Technical Officer, or to respond to an emergency declared by the Minister for Primary Industries under the Biosecurity Act 1993;
 7. clearance of a pest plant listed in Appendix 10B to Section 10 of the Plan; and
 8. clearance that is necessary to maintain the flow of water free from obstruction or for natural hazard mitigation activities.
- iii. Activities that contravene this performance standard are restricted discretionary activities.
- iv. For the sake of clarity, this performance standard is additional to Rule 15.6.14.

15.8.34.4 Subdivision performance standards

- a. Maximum number of sites
 - i. The maximum number of resultant sites within the **Watts Road structure plan mapped area** is as follows:
 1. Area B: 0 sites
 2. Area C: 7 sites
 3. Area D: 10 sites
 4. Area E: 12 sites
 - ii. Area B must be incorporated into one or more of the sites in surrounding areas.
 - iii. Note: The actual number of sites that can be achieved after meeting the requirements of Rule 15.8.34.5.a and other standards and requirements may be less than these figures.
 - iv. Resultant sites created and used solely for the following purposes are exempt from both clause i and clause ii of this performance standard:
 1. scheduled ASBV or QEII covenant;
 2. reserve;

3. access;
 4. utility; or
 5. road.
- v. Activities that contravene this performance standard are non-complying activities.
 - vi. For the sake of clarity, this performance standard is additional to Rule 15.7.4.

b. Area D Access

- i. All resultant sites within Area D of the **Watts Road structure plan mapped area** must be accessed via a single right of way off Watts Road.
- ii. Activities that contravene this performance standard are non-complying activities.
- iii. For the sake of clarity, this performance standard is additional to Rule 6.6.3.

15.8.34.5 Special information requirements

a. Geotechnical investigation report

- i. Applications for subdivision activities within the **Watts Road structure plan mapped area** must include a geotechnical investigation report by a suitably qualified person (usually a geotechnical engineer), unless such a plan has already been approved as part of an earlier subdivision consent. This assessment must:
 1. examine the ground stability over the whole mapped area;
 2. confirm that the site is suitably stable, and any proposed work will not introduce or exacerbate slope instability;
 3. determine adequate setbacks from steep slopes and identified areas of instability, including a detailed assessment of the known landslides and embankments adjacent to Lindsay Creek and provide recommendations for development;
 4. identify any “No Build Areas” where development, including earthworks, should be avoided;
 5. identify areas suitable for residential development and a suitable building platform for each resultant lot;
 6. provide a consideration of batter angles, and recommendations for appropriate batter angles to be implemented on site;
 7. provide an assessment of adverse effects related to instability associated with vegetation clearance, and provide recommendations on any required measures to minimise vegetation clearance; and
 8. review the proposed stormwater management for the subdivision in terms of effects on land instability and overland flow paths and identify any restrictions or requirements for stormwater management that should be included as conditions of consent in order to ensure risk from land instability is low.
- ii. For the sake of clarity, the standard assessment guidance in Rule 11.5.2.5 still applies.

b. Landscape plan

- i. Applications for subdivision in Area D must include a landscape plan (prepared by a suitably qualified or experienced landscape architect or ecologist) for the following areas (unless this plan has been provided and accepted through an earlier subdivision consent application):
 1. the area marked ‘Restricted Development Area – Landscape Mitigation’ on Figure 15.8.34A.
 2. a minimum area of 20% of each resultant site within Area D.
- ii. The landscape plan must include the following:
 1. an outline of the objectives of the landscape plan;

2. a description of the area to be planted, including description of vegetation values present that should remain, presence of any problematic weed species (and how these will be managed), animal pest control and fencing;
 3. a schedule of ecologically appropriate species to be planted, to provide landscape mitigation for built development in Area D and enhance ecological values of the surrounding area;
 4. a plan depicting location and species density;
 5. any site preparation required;
 6. measures that will be used to protect, monitor and maintain plantings, including replacement of dead plants; and
 7. any measures (such as consent notices or other legal instruments) that will be used to ensure the planting required by Rule 15.8.34.5.b is maintained in a healthy state in perpetuity by any current or future property owners.
- iii. The planting required by the landscape plan in the area marked 'Restricted Development Area – Landscape Mitigation' on Figure 15.8.34A must be undertaken prior to issue of 224(c) certification.
 - iv. The planting required by the landscape plan on each resultant site within Area D (minimum area of 20%) must be undertaken within the first growing season (1st May to 30th September) following construction of a dwelling on the resultant site.
 - v. The subdivision must include an appropriate legal mechanism in relation to the planting required on resultant sites, to ensure the planting required by Rule 15.8.34.5.b.i.2 is undertaken by the property owner within the first growing season (1st May to 30th September) following construction of a dwelling on the resultant site and maintained in perpetuity.

15.8.34.6 Assessment guidance

- a. In the case of contravention of Rule 15.8.34.3.a, the following matter of discretion applies:

Performance Standard		Matter of discretion	Guidance for the assessment of resource consents
i.	Location (Rule 15.8.34.3.a)	1. Effects on biodiversity	<i>Relevant objectives and policies:</i> i. Objective 10.2.1 ii. Policy 10.2.1.1

- b. In addition to assessment guidance for subdivision activities in rules 15.11.4 and 15.11.5 the following guidance applies.

General assessment guidance:

- c. In assessing effects related to risk from natural hazards and effects of stormwater from future development, Council will consider the geotechnical investigation report submitted with the application (as required by Rule 15.8.34.5.a).
- d. In assessing effects related to risk from natural hazards in relation to Area B (in addition to the assessment guidance provided in Rule 11.5.2.5), Council will consider as part of any subdivision consent, the proposed ownership arrangements for this site to ensure they enable clear responsibility for ongoing maintenance. The subdivision must ensure that the shape and size of any site (or sites) which contain this land are capable of a reasonable use (e.g. associated with a permitted residential land use).

- e. In assessing the effects on landscape values (Rule 10.6.3.15) Council will consider the landscape plan required by Rule 15.8.34.5.b).

Geotechnical conditions that are likely to be imposed include:

- f. A requirement that 'no build' areas and areas identified as suitable for building platforms in the Geotechnical Investigation Report required by Rule 15.8.34.5.a are registered on the records of title by way of consent notice.
- g. A requirement that all earthwork plans are to be reviewed by a suitably qualified geologist/geotechnical engineer with regular inspections by a qualified geologist/geotechnical engineer to monitor slope stability during proposed earthworks development.
- h. A requirement that any development of this site is subject to the design, supervision and certification by suitably qualified engineers that confirm that the site is suitably stable, and any proposed work will not introduce or exacerbate slope instability.
- i. A requirement that all walls retaining over 1.5m or supporting a surcharge or slope (including roading), will require the design and construction supervision by an appropriately qualified person.
- j. A requirement that no accessway earthworks (cut or fill) is to be undertaken within 50m of the Felix Street West landslide without supervision and inspections from a qualified geologist or geotechnical engineer.
- k. A requirement that any modification and design of stormwater flows, or new culverts must be designed by an appropriately qualified person to ensure that:
 - i. overland stormwater flows are not interrupted;
 - ii. will not increase any adverse effects from local ponding during storm rainfall events; and
 - iii. stormwater discharge onto the surrounding slopes is prevented, so as not to exacerbate land instability.
- l. A requirement that no stormwater or any other infrastructure is to traverse across the area of the Felix Street West landslide.

Other conditions that may be imposed include:

- m. A requirement for legal instruments and bonds to ensure the planting required by Rule 15.8.34.5.b is undertaken and maintained in perpetuity, in accordance with the plan submitted under Rule 15.8.34.5.b, and to establish the legal responsibilities for the ongoing maintenance of the planted areas.
- n. A requirement that land within the 'Restricted Development Area - Biodiversity' on Figure 15.8.34A must be held in the same title or titles as a residential land use within the **Watts Road structure plan mapped area**.
- o. A requirement that land within Area B on Figure 15.8.34A must be held in the same title or titles as a residential land use within the **Watts Road structure plan mapped area** or an adjacent property, and a requirement for legal instruments or bonds to establish the legal responsibilities for the ongoing maintenance of Area B.

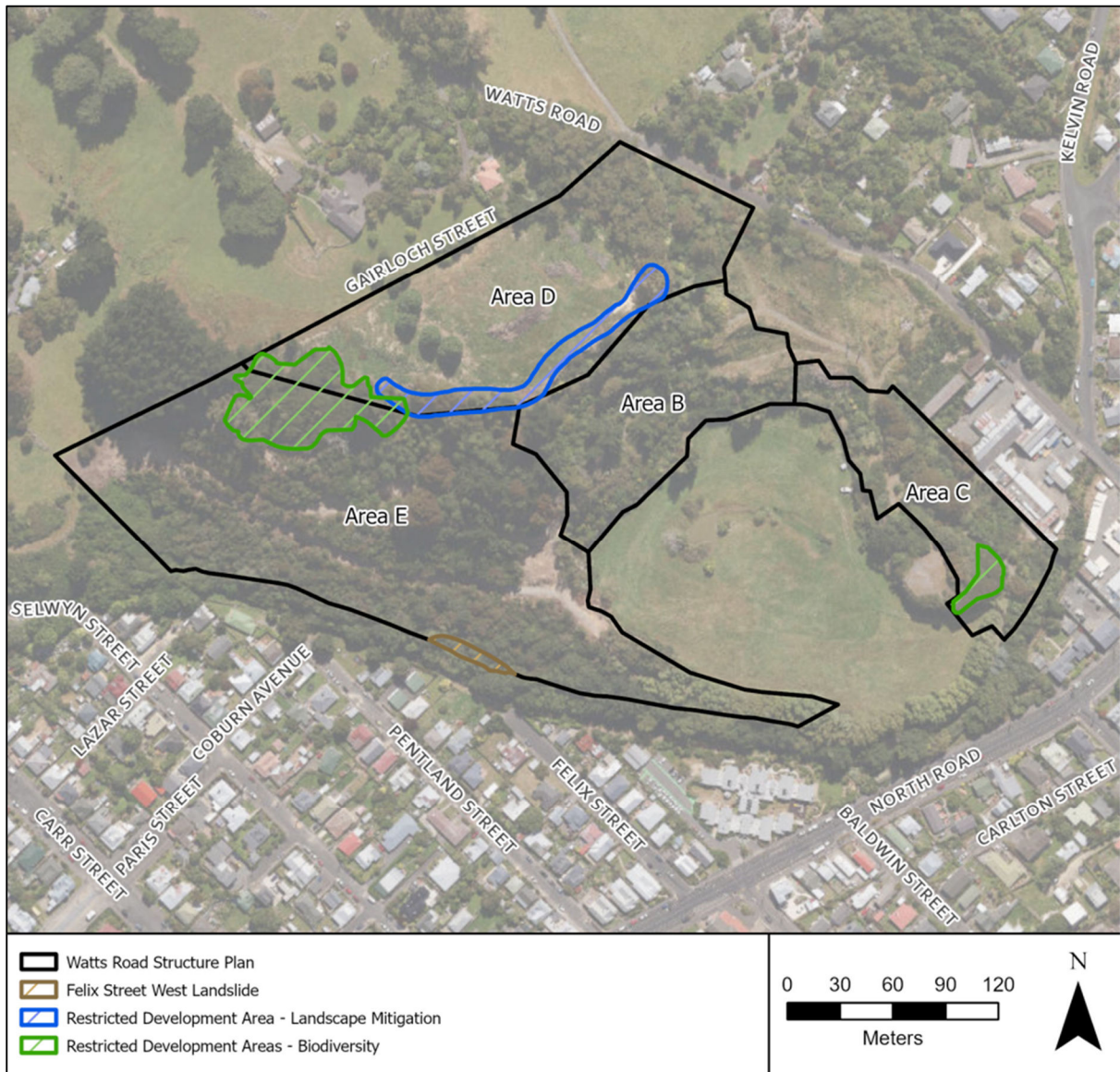
Consequential changes required to existing plan provisions:

Rule 10.9 Special Information Requirements

10.9.1 Landscape Building Platforms

1. Landscape building platforms must be identified for subdivision activities that create new residential development potential in a landscape or coastal character overlay zone, and may also be required by Council for other types of subdivision, if considered necessary to ensure any future land use or development will meet Policy 10.2.3.7 or Policy 10.2.5.10, as relevant.
2. Landscape building platforms are to be registered against the certificate of title by way of consent notice.
3. The identification of landscape building platforms must be supported by an assessment of the effects on, as appropriate: the landscape values identified in Appendix A3; or the natural character of the coast values identified in Appendix A5. The assessment must consider, but not necessarily be limited to, the following factors:
 1. the extent to which the location of the building platforms follows relevant design guidelines in Appendix A11;
 2. the visual prominence of the location of the building platforms;
 3. the effects on landscape or natural character values of buildings constructed to the maximum building envelope provided for by the performance standards on each identified building platform;
 4. the appropriateness of the location within the context of the wider landscape or coastal setting;
 5. the effects of driveways or vehicle tracks that will be required to access the building platforms; and
 6. whether the clustering of building platforms with other building platforms or existing buildings will minimise adverse effects on landscape or natural character values.
4. The assessment must be conducted by a landscape architect or similarly qualified person, supported by any other expert assessment necessary to assess effects on any specific values of the overlay zone (for example, cultural or ecological values, if assessment of those effects is beyond the expertise of the landscape architect).
5. If landscape building platforms are approved through the subdivision consent process, the construction of new buildings greater than 60m² footprint within the landscape building platform will be subject to Rule 16.3.4.3.b (rural zones) or Rule 17.3.4.3.c (rural residential zones) or Rule 15.3.4.2 (residential zones).

Figure 15.8.34A: Watts Road structure plan





- Residential Transition Zone
- Large Lot Residential 1
- General Residential 1
- Rural
- General Residential 2

