

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under section 120 of the Act
BETWEEN	ALICE WOUTERS
	(ENV-2016-CHC-64)
	Appellant
AND	DUNEDIN CITY COUNCIL
	Respondent
AND	KRENFORD HOLDINGS LTD AND RPR PROPERTIES LTD
	Applicants

Environment Judge J J M Hassan – sitting alone pursuant to section 279 of the Act

In Chambers at Christchurch

Date of Consent Order: 11 June 2018

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 subdivision and land use consent is granted subject to the amended conditions marked 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] This proceeding concerns an appeal by Alice Wouters against a decision of the Dunedin City Council, granting subdivision¹ and land use² consent to Krenford Holdings Limited and RPR Properties Limited in respect of land at 35 and 49 Dalziel Road, Dunedin.³

[2] The court has now read and considered the consent memoranda of the parties dated 17 May and 5 June 2018⁴ which propose to resolve the appeal.

Other relevant matters

[3] No person has given notice of an intention to become a party under section 274 of the Resource Management Act ("the RMA" or "the Act")

Orders

[4] The court is making this order under section 279(1) 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 and relevant objectives and policies of the operative Dunedin City District Plan and the Regional Policy Statement for Otago.


J J M Hassan
Environment Judge



¹ SUB-2016-45.

² LUC-2016-245.

³ Legally described as Lot 5 DP 470050 (CFR 634081); Lot 7 DP 470050 (CFR 634083); Lot 9 DP 470050 (CFR 634085).

⁴ The parties were asked to supply further information regarding the settlement reached, including tracked conditions.

Annexure 1

Application Type: Subdivision and Land use Consent

Application Number: SUB-2016-45 & LUC-2016-245

Location of Activity: 35 and 49 Dalziel Road, Dunedin

Legal Description: Lot 5 DP 470050 (CFR 634081) and Lot 7 DP 470050 (CFR 634083)

SUB Lapse Date: 4 May 2023, unless the consent has been given effect to before this date.

LUC Lapse Date: LUC-2016-245 shall lapse 5 years from the date that the s223 certificate for SUB-2016-45 is issued. For clarity, the lapse date shall apply to each lot independently, so that the giving effect of the land use for one lot does not mean that the land use for the other lot has been given effect.

Subdivision SUB-2016-45

*Pursuant to Section 34A(1) and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being the subdivision (including subdivision earthworks for access formation) of land at 35 and 49 Dalziel Road, legally described as Lot 5 DP 470050 (CFR 634081), and Lot 7 DP 470050 (CFR 634083) subject to conditions imposed under Section 108 of the Act*

Conditions:

- 1 *The proposal shall be undertaken in general accordance with the details submitted with the resource consent application SUB-2016-45 received by the Council on 2 June 2016 and further information provided at the resource consent hearing on 14 September 2016, and the revised plan (excluding details in blue) prepared by Paterson Pitts Group entitled, 'Lots 1 & 2 Being a Proposed Boundary Adjustment Subdivision of Lots 5 & 7 DP 470050,' dated 8 November 2016, except where modified by the following conditions of consent:*
- 2 *Prior to the commencement of earthworks approved by this subdivision consent, the consent holder shall complete the following:*
 - a) *Before any construction works commence, the consent holder shall provide notice to the Resource Consent Monitoring team by email to rcmonitoring@dcc.govt.nz advising who the supervisor shall be for the design and supervision of the earthworks.*
 - b) *The consent holder shall advise the Council, in writing, of the start date of the works. The written advice shall be provided to Council at least five (5) working days before the works are to commence.*
 - c) *Advise all neighbouring property owners and residents of the proposed works at least seven days prior to works commencing.*
 - d) *Ensure all earthworks are designed and supervised by an appropriately qualified person in accordance with NZS 4431-1989 Code of Practice for Earthfill for Residential Development.*



3 While undertaking earthworks approved by this subdivision consent, the consent holder shall ensure that:

- a) All measures (including dampening of loose soil) shall be undertaken to ensure that dust, resulting from the proposed earthworks, does not escape the property boundary.
- b) 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 subdivision.
- c) All fill shall be designed, supervised and certified by a suitably qualified individual.
- d) Any areas of certified or uncertified fill within the new lots shall be identified on a plan, and the plan and certificates submitted to Council for Council records.
- e) Any fill material to be carted to the site shall be comprised of clean fill only.
- f) Any material trafficked onto the road carriageway shall be removed as soon as possible at the consent holder's expense.
- g) All construction noise shall comply with the following noise limits as per New Zealand Standard NZS 6803:1999.

Time of Week	Time Period	Leq (dBA)	L max(dBA)
Weekdays	0730-1800	75	90
	1800-2000	70	85
	2000-0630	45	75
Saturdays	0730-1800	75	90
	1800-2000	45	75
	2000-0630	45	75
Sundays and public holidays	0730-1800	55	85
	1800-2000	45	75
	2000-0630	45	75

Note: the lower limits for Sundays and public holidays will prevent the operation of heavy machinery.

4 Prior to certification of the cadastral dataset pursuant to Section 223 of the Resource Management Act 1991, the subdivider shall ensure the following:

- a) If a requirement for any easements for services, including private drainage, is incurred during the survey then those easements shall be granted or reserved and included in a Memorandum of Easements on the cadastral dataset.
- b) Easements in gross in favour of the Dunedin City Council shall be created over any infrastructure to be vested in Council that passes through private land, and shall be shown on the survey plan in a Memorandum of Easements in Gross. The easement(s) must be made in accordance with the relevant section(s) of the Dunedin Code of Subdivision and Development 2010.

5 Prior to certification pursuant to Section 224(c) of the Resource Management Act, the subdivider shall complete the following:

- a) A consent notice shall be prepared for registration on the Computer Freehold Register for Lot 1 hereon which requires:



'An individual waste water pump system shall be installed when building a dwelling within the site.'

- b) *A fence shall be installed on the boundary of Lot 1 where it adjoins Lot 1 DP 453493. This fence shall be installed to the following standards:*

- i. The fence shall comprise a 1.8m high post and wire deer fence.*
- ii. The fence shall include a shade cloth covering on the lower half of the fence on new Lot 1's side of the fence. The shade cloth shall be of a darker tone which is sympathetic to the surrounding natural environment (e.g. grey, brown or green).*

- c) *A consent notice shall be prepared for registration on the title of new Lot 1 for the following on-going condition:*

'For a period of 10 years from the date of issue of the Computer Freehold Register for this site, the fence and associated shade cloth installed along the north-western boundary shared by this site with Lot 1 DP 453493 site shall be maintained in good condition by the property owner of this site.'

- d) *That a planted corridor shall be installed on the boundary of Lot 1 where this site adjoins Lot 1 DP 453493. Lists A to D shall be attached to the consent notice of condition 5(e) below. The associated plantings shall be installed to the following standards:*

- i. The plantings shall be installed throughout a 3.0m wide corridor from the boundary in question.*
- ii. Larger trees shall be planted in a row at a distance of 1.0m from the boundary and at a separation of 2.0m from each other. These trees shall be selected from the 'List A' attached as Appendix 2 to this certificate, and shall be installed at a starting height of 1.8m (to grow to an anticipated height of 3.0m).*
- iii. Medium sized shrubs shall be planted in a row at a distance of 2.0m from the boundary, at a separation of 2.0m from each other, and staggered such that they are centred between the trees required by ii. above. These shrubs shall be selected from the 'List B' attached as Appendix 2 to this certificate and shall be installed at a starting height of 0.8m (to grow to an anticipated height of 1.6m).*
- iv. Small sized plants shall be planted in a row at a distance of 2.6m from the boundary and at a separation of 0.8m from each other. These plants shall be selected from the 'List C' attached as Appendix 2 to this certificate and shall be installed at a starting height of 0.3m (to grow to an anticipated height of 0.8m).*
- v. Under no circumstances are the plants from 'List D' attached as Appendix 2 to this certificate to be installed, or otherwise allowed to grow, within the 3.0m wide planted corridor. These plants are recognised as being potentially poisonous to animals.*

- e) *That a consent notice shall be prepared for registration on the title of new Lot 1 for the following on-going condition:*

'The 3.0m wide corridor of plantings along the north-western boundary shared by this site with Lot 1 DP 453493 site shall be maintained in good condition by the owner of this site. Any vegetation that perishes due to



natural causes shall be replaced by plants selected from the attached Lists A to C as soon as is practicable by the title holder.'

'Under no circumstances are the plants from the attached List D to be planted, or otherwise allowed to grow, within the 3.0m wide planted corridor. These plants are recognised as being potentially poisonous to animals.'

- f) *That the consent notice 9575090.13 shall be cancelled from the title of Lot 5 DP 470050 (CFR 634081).*
- g) *That a plan shall be prepared for Lot 1 showing the yards for Lot 1 as detailed by condition 5 of LUC-2016-245. The plan shall also show the areas within Lot 1 which were identified by the plan of Consent Notice 9575090.13 as not being suitable for buildings (i.e. the gully area). This area shall also be identified on the plan as a 'no build area'. The plan shall be attached to the consent notice of condition 5(h) below.*
- h) *That a consent notice shall be prepared for registration on the title of new Lot 1 for the following on-going conditions:*

'No buildings or structures shall be constructed within those areas shown on the attached plan as having limitations to development unless site specific geotechnical investigation determines to Council's satisfaction that the land is suitable for development.'

'The buildable area for the site shall be that land within the yards as shown on the attached plan. These yards shall override the yards of the underlying zoning. These yards are also subject to any over-riding restriction imposed by geotechnical conditions as shown on the attached plan.'

'Any dry stone rock walls within this lot shall not be destroyed or removed but shall be maintained as a landscape amenity feature.'

'Where any part of the dwelling platform is to be founded on engineered fill, then this shall be specified, supervised and certified by an appropriately qualified person in accordance with NZS 4431-1989 Code of Practice for Earthfill for Residential Development'

'The 3.0m wide corridor of plantings along the north-western boundary shared by this site with Lot 1 DP 453493 site shall be maintained in good condition by the owner of this site. Any vegetation that perishes due to natural causes shall be replaced as soon as is practicable by the title holder'

'Forestry activity is prohibited'

- 6 *That a private covenant between the owners of the new Lot 1 and the owners of Lot 1 DP 453493 must be registered against the titles before or contemporaneously with the issues of the new titles.*

Land Use LUC-2016-245

*pursuant to Section 34A(1) and 104D and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying** activity to establish a single residential unit on each of Lots 1*



and 2 at 35 and 49 Dalziel Road, subject to a conditions imposed under Section 108 of the Act.

Conditions:

- 1 *The proposal shall be undertaken in general accordance with the details submitted with the resource consent application LUC-2016-245 received by the Council on 2 June 2016 and further information provided at the resource consent hearing on 14 September 2016, and the revised plan (excluding details in blue) prepared by Paterson Pitts Group entitled, 'Lots 1 & 2 Being a Proposed Boundary Adjustment Subdivision of Lots 5 & 7 DP 470050,' dated 8 November 2016 except where modified by the following conditions of consent:*

Conditions applying to Lots 1 and 2

- 2 *The activity authorised by this consent shall produce no greater than 8 lux of light onto any other site used for residential activity during nighttime hours pursuant to Rule 21.5.4 (i)(b) of the District Plan.*
- 3 *The consent holder shall ensure noise from activity taking place on the site will not exceed the performance standard set out in Rule 21.5.1 of the District Plan.*
- 4 *Stormwater from right of ways, roads, drives, drain coils and water tank overflows are not to create a nuisance on any adjoining properties.*
5. *Any residential dwelling and any associated structures on new Lot 1 shall be undertaken in accordance with the following yard setbacks:*
 - i. *In respect of the boundary between new Lot 1 and Dalziel Road, a yard setback of 12.0m must be maintained.*
 - ii. *In respect of the boundary between new Lot 1 and Taieri Road, a yard setback of 12.0m must be maintained.*
 - iii. *In respect of the boundary between new Lot 1 and all other property boundaries, excluding Lot 1 DP 453493, a yard setback of 4.0m must be maintained. The yard in respect of Lot 1 DP 453493 shall be 10.0m.*
- 6 *Prior to residential activity being established on new Lot 1, a planted corridor shall be installed within new Lot 1 along the common boundary shared with Lot 1 DP 453493. The associated plantings shall be installed to the following standards:*
 - i. *The plantings shall be installed throughout a 3.0m wide corridor from the boundary in question.*
 - ii. *Larger trees shall be planted in a row at a distance of 1.0m from the boundary and at a separation of 2.0m from each other. These trees shall be selected from the 'List A' attached as Appendix 2 to this certificate, and shall be installed at a starting height of 1.8m (to grow to an anticipated height of 3.0m).*
 - iii. *Medium sized shrubs shall be planted in a row at a distance of 2.0m from the boundary, at a separation of 2.0m from each other, and staggered such that they are centred between the trees required by ii. above. These shrubs shall be selected from the 'List B' attached as Appendix 2 to this certificate and shall be installed at a starting height of 0.8m (to grow to an anticipated height of 1.6m).*
 - iv. *Small sized plants shall be planted in a row at a distance of 2.6m from the boundary and at a separation of 0.8m from each other. These plants shall be selected from the 'List C' attached as Appendix 2 to this certificate and shall be installed at a starting height of 0.3m (to grow to an anticipated height of 0.8m).*



- v. *Under no circumstances are the plants from 'List D' attached as Appendix 2 to this certificate to be installed, or otherwise allowed to grow, within the 3.0m wide planted corridor. These plants are recognised as being potentially poisonous to animals.*
7. *The dominant colours of all roof structures within new Lot 1 (including any accessory buildings) shall be comprised of darker tones which are sympathetic to the surrounding natural environment (e.g. greys, browns and greens), with light reflectivity value (LRV) not exceeding 20%.*
8. *The dominant colours of all external building wall structures within new Lot 1 (including any accessory buildings) shall be comprised of tones which are sympathetic to the surrounding natural environment (e.g. greys, browns, greens and creams), with light reflectivity value (LRV) not exceeding 50%. The materials used for the external building wall structures, excluding windows, shall not have a glossy or shiny appearance.*

Advice Notes:

- 1 It is advised that the matter of an esplanade strip is likely to be revisited at a future date.
- 2 In addition to the conditions of resource consent, the Resource Management Act establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
- 3 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.
- 4 The lapse period specified above may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
- 5 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.
- 6 This is resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for the work.
- 7 Any vehicle access from the carriageway to the property boundary will be over road reserve and is to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Council's Transportation Operations Department).
- 8 Parts 4, 5 and 6 (Stormwater Drainage, Wastewater and Water Supply) of the Dunedin Code of Subdivision and Development 2010 must be complied with.
- 9 The installation and connection of a new water service to the existing public water reticulation system or the upgrading of an existing water service connection will be carried out after the Consent Holder has completed and submitted an 'Application for Water Supply' form to the Water and Waste Services Business Unit or an approved AWSCI, as per the Dunedin City Council Water Bylaw 2011.

A quote for the required work must be obtained from an approved water supply connection installer (AWSCI). The list of AWSCI's, application form and the full process can be found here <http://www.dunedin.govt.nz/services/water-supply/new-water-connections>.



- 11 All aspects relating to the availability of water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service.
- 12 The Asset Planning Engineer and Quality Inspector, Water and Waste Services shall be notified by the development engineer prior to any inspections and/or tests sign offs for water and waste infrastructure to be vested in Council.
- 13 The following documents are recommended as best practice guidelines for managing erosion and sediment-laden run-off:
 - ARC Technical Publication No. 90 Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region, 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."
- 14 Private drainage issues and requirements (including any necessary works) are to be addressed via the building consent process.
- 15 Certain requirements for building on this site may be stipulated via the building consent process and are likely to include the following points:
 - (a) Stormwater from driveways, sealed areas and drain coils is not to create a nuisance on any adjoining properties.
 - (b) For sites level with or above the road, the finished floor level of any building is to be a minimum of 150mm above the crown of the road.
 - (c) For sites below the road, the finished floor level is to be no less than 150mm above the lowest point on the site boundary. Surface water is not to create a nuisance on any adjoining properties.
 - (d) For secondary flow paths, the finished floor level shall be set at the height of the secondary flow plus an allowance for free board.
 - (e) As required by the New Zealand Building Code E1.3.2, surface water resulting from an event having a 2% probability of occurring annually, shall not enter dwellings. The finished floor level shall be set accordingly.
- 16 Should any stormwater discharge from the site not connect to the Council's reticulated network, it is advised that the Otago Regional Council be consulted before works commence, to determine if the discharge of stormwater will enter any waterway and what level of treatment and/or discharge permit, if any, may be required.
- 17 If the consent holder:
 - (a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder should without delay:
 - (i) notify the Consent Authority, Tangata whenua and Heritage New Zealand and in the case of skeletal remains, the New Zealand Police.
 - (ii) stop work within the immediate vicinity of the discovery to allow a site inspection by Heritage New Zealand and the appropriate runanga and their advisors, who shall determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Site work should recommence following consultation with the Consent Authority, Heritage New Zealand, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.



- (b) discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder should without delay:
- (i) stop work within the immediate vicinity of the discovery or disturbance; and
 - (ii) advise the Consent Authority, Heritage New Zealand, and in the case of Maori features or materials, the Tangata whenua, and if required, should make an application for an Archaeological Authority pursuant to the Historic Places Act 1993; and
 - (iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work should recommence following consultation with the Consent Authority.



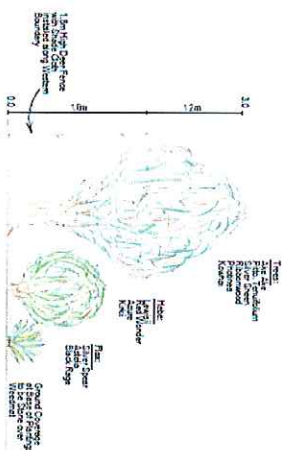


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1. Window heights of existing dwelling have been gauged from site photographs.
2. View lines shown 1 and 1 are from respective windows to high point in existing ground.
3. View lines shown 2 and 2 are from respective windows to top of proposed planting.
4. View lines shown 3 and 3 are from respective windows to highest line of building space.

1. Trees and plants to be installed at 2.0m spacings (each row offset from previous).
2. Trees to be installed at 1.8m height maturity, to grow to 3.0m height over 2 years.
3. Consent Notices to be installed on Tiles for Lots 1 and 3 to ensure ongoing maintenance of fences and plantings.



LOTS 1, 2 & 3 BEING A PROPOSED
BOUNDARY ADJUSTMENT SUBDIVISION
OF LOTS 5, 7 & 9 DP 470050

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[illegible]

Appendix 2: Approved Tree List

List A

- Akeake varieties
- Pittosporum Tenuifolium varieties
- Ribbonwood (NZ native) varieties
- Photinea varieties

List B

- Corokia (NZ native) varieties
- Coprosma (NZ native) varieties

List C

- Astelia (NZ native) varieties
- Flax (NZ native) varieties

List D (poisonous plants – not to be installed)

- | | |
|----------------------|----------------|
| • Arum Lily | • Milk Thistle |
| • Avocado | • Oak Tree |
| • Box Tree | • Oleander |
| • Buttercup | • Pine Tree |
| • Delphinium | • Rhododendron |
| • Foxglove | • Taro |
| • Lily of the Valley | • Yew |

