

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

Decision No. [2025] NZEnvC 193

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14 of the First
Schedule of the Act

BETWEEN COLE BENNETTS

(ENV-2023-CHC-22)

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: 16 June 2025

CONSENT ORDER

A: Under s279(1)(b) RMA,¹ the Environment Court, by consent, orders that:

- (1) the appeal is allowed to the extent that the Dunedin City Council is directed to amend the provisions of the Dunedin City District Plan by making the changes set out in Annexure 1, attached to and forming part of this consent order; and

¹ Resource Management Act 1991.



(2) the appeal by Cole Bennetts is otherwise dismissed.

B: Under s285 RMA, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns an appeal by Mr Bennetts on Variation 2 to the Second-Generation Dunedin City District Plan. The appeal sought:

- (a) That 23 Sretlaw Place, Brockville (RS110) be rezoned to General Residential 1 and that a structure plan mapped area be applied to the site.

[2] I have read and considered the consent memorandum of the parties dated 17 April 2025 which sets out the agreement reached between the parties to resolve the appeal by making the following amendments to the plan:

- (a) apply a Residential Transitional Overlay Zone (RTZ) to the site at 23 Sretlaw Place, to be released once wastewater upgrades in the Kaikorai Valley catchment are completed. Upon release of the RTZ, the site will be zoned GR 1, in accordance with the Structure Plan attached;
- (b) the site is to be subject to a 'Structure Plan Mapped Area' overlay (SPMA) and a 'New Development Mapped Area' overlay (NDMA);
- (c) establish a density limit of 12 lots for the SPMA;
- (d) no buildings, structures or stormwater pond within 200-year ARI flood hazard extent;
- (e) requirement for a geotechnical assessment at subdivision stage;
- (f) requirement for a 10m planting strip along the northern boundary and a 5m strip along the western boundary (north of the proposed pedestrian accessway) and a 2m strip along the western boundary

(south of the proposed pedestrian accessway), with a landscape plan to be submitted at subdivision stage;

- (g) requirement for pedestrian access through to the Frasers Gully recreation reserve to the west; and
- (h) requirement for connection to the Council's reticulated wastewater network via a gravity connection, if available. If not available, a requirement for individual E/One pumps for each resultant site.

[3] The agreement reached is supported by the affidavit of Emma Jane Spalding.²

Other relevant matters

[4] Otago Regional Council, Ann Venables and Justin Venables, joined this appeal under s274 RMA, and have signed the memorandum setting out the relief sought.

[5] There are no issues of scope or jurisdiction.

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

Outcome

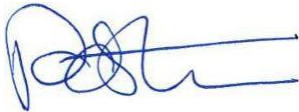
[7] The court makes this order under s279(1) RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s297. The court understands for present purposes that:

- (a) all relevant parties to the proceedings have executed the memorandum requesting this order; and
- (b) all parties are satisfied that all matters proposed for the court's

² Affirmed 28 April 2025.

endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the RMA, including in particular, pt 2.

[8] The appeal is allowed to the extent that the Dunedin City Council is directed to amend the provisions of the Dunedin City District Plan by making the changes set out in Annexure 1, attached to and forming part of this consent order



P A Steven
Environment Judge

Annexure 1

Overlays & Mapped Areas to be Applied:

- Structure plan mapped area.
- New development mapped area.
- Residential transition overlay zone.
- Future residential zone: General Residential 1

Rule 15.8 Structure Plan Mapped Area Rules

Rule 15.8.31 Sretlaw Place Structure Plan Mapped Area Rules

15.8.31.1 Application of structure plan mapped area rules

- a. Rules 15.8.31.2 to 15.8.31.6 do not apply to land within the **Sretlaw Place 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.

15.8.31.2 Land use performance standards

- a. Density
 - i. Standard residential activities in the **Sretlaw Place structure plan mapped area** must not exceed a density of one residential activity per site (note that Rule 15.8.31.4.a limits the maximum number of sites in the **Sretlaw Place structure plan mapped area**), except that:
 1. one ancillary residential unit is allowed per site in association with a standard residential activity on the same site, provided that the number of habitable rooms across both the primary residential activity and the ancillary residential activity does not exceed one habitable room per 100m² of site area.
 - ii. Activities that contravene this performance standard are non-complying activities.
 - iii. For the sake of clarity, this performance standard supersedes rule 15.5.2, and ancillary residential units must also meet the requirements of Rule 15.5.14.

15.8.31.3 Development performance standards

- a. Location

- i. Buildings and structures activities must not be located within the 'Restricted Development Area (Hazard),' or the 'Landscape Area' shown on Figure 15.8.31A.
- ii. Activities that contravene this performance standard are non-complying activities.

15.8.31.4 Subdivision performance standards

a. Maximum number of sites

- i. The maximum number of resultant sites within the **Sretlaw Place structure plan mapped area** is 12 sites.

Note: the actual number of sites that can be achieved after meeting the requirements of Rule 15.8.31.6.a and other standards and requirements may be fewer than 12.

- ii. Resultant sites created and used solely for the following purposes are exempt from clause a.i of this performance standard:
 - 1. scheduled ASBV or QEII covenant;
 - 2. reserve;
 - 3. access;
 - 4. utility; or
 - 5. road.
- iii. Activities that contravene this performance standard are non-complying activities.
- iv. For the sake of clarity, this performance standard is additional to Rule 15.7.4.

b. Access

- i. Subdivision activities within the **Sretlaw Place structure plan mapped area** must make provision for a suitably designed and formed pedestrian path for public use through the **Sretlaw Place structure plan mapped area** in general alignment with the route marked in blue on Figure 15.8.31A, to connect from Sretlaw Place to the Frasers Gully walking track to the west of the site, unless this has already been provided as part of a previous subdivision consent.
- ii. Where not located within legal road, the land occupied by the pedestrian path must have adequate legal provision for public use

(including over balance land for staged subdivisions) created as part of the first subdivision of the land into residential lots, as appropriate.

- iii. The pedestrian path must be formed prior to the issuing of the section 224(c) certificates for any resultant sites.
- iv. Activities that contravene this performance standard are non-complying activities.
- v. For the sake of clarity, this performance standard is additional to Rule 6.8.1.

c. Wastewater infrastructure

- i. Where legal access to connect to Council's reticulated wastewater network via gravity connection is achievable this method must be used, if this is not achievable, individual E/One pumps are required for each resultant site.
- ii. Activities that contravene this performance standard are restricted discretionary activities.
- iii. For the sake of clarity, this performance standard is additional to Rule 9.3.2.5.

d. Stormwater management

- i. Any stormwater detention pond proposed as part of the integrated stormwater management plan (as required by Rule 9.9.3) must not be located within the extent of the 200-year flood hazard, as shown on Figure 15.8.31A.
- ii. Activities that contravene this performance standard are non-complying activities.
- iii. For the sake of clarity, this performance standard is additional to Rule 9.9.3.

15.8.31.5 Assessment guidance

- a. In addition to assessment guidance for subdivision activities in Rule 15.11.4, the following guidance applies:

General assessment guidance

- b. In assessing effects on risk from natural hazards, Council will consider the geotechnical investigation report submitted with the application (as required by Rule 15.8.31.6.a).

- c. In assessing whether the subdivision design maintains or enhances areas with important natural environment values as required by Rule 12.X.2.5.d, Council will consider the landscape plan required by Rule 15.8.31.6.b.

Conditions that may be imposed include:

- d. A requirement that ‘no build’ areas, building platforms, and any required setbacks from stormwater drainage identified by the geotechnical investigation report required by Rule 15.8.31.6.a are registered on the records of title by way of consent notice;
- e. Conditions necessary to give effect to the Landscape Plan required by Rule 15.8.31.6.b; and
- f. A requirement that land within the ‘Landscape Area’ on Figure 15.8.31A must be held in the same title or titles as a residential land use within the **Sretlaw Place structure plan mapped area**.

15.8.31.6 Special information requirements

- a. Geotechnical investigation report
 - i. Applications for subdivision activities within the **Sretlaw Place 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, identify areas suitable for residential development and a suitable building platform for each resultant lot;
 - 2. determine adequate setbacks from steep slopes and identified areas of instability;
 - 3. identify any “No Build Areas” where development, including earthworks, should be avoided;
 - 4. include identification and assessment of areas of uncontrolled fill and include measures to ensure the land is sufficiently stable to support development; and
 - 5. include an assessment of groundwater flows to determine any remedial drainage measures required, such as permanent cut-off drains upslope of the development, to mitigate all sources of slope saturation.
 - 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 must include a landscape plan (prepared by a suitably qualified or experienced ecologist or landscape architect) for the areas marked 'Landscape Area' on Figure 15.8.31A unless this plan has been provided and accepted through an earlier subdivision consent application. The landscape plan should include the following:
 1. an outline of the objectives of the landscape plan;
 2. a minimum planting depth of 10m along the northern boundary of the **Sretlaw Place structure plan mapped area** and minimum planting depth of 2m (south of the pedestrian accessway) and 5m (north of the pedestrian accessway and within the area covered by Easement EI6368191.17) along the western boundary as identified on the **Sretlaw Place structure plan mapped area**;
 3. a schedule of ecologically appropriate species to be planted, including for mitigation planting to provide screening for built development within the SPMA when viewed from the Frasers Gully walking track, to assist with maintaining a sense of naturalness for users of the Frasers Gully walking track; and planting within the easement area (Easement Reference EI6368191.17) adjacent to the pedestrian path which may consist of ferns or shrubs and other lower-height amenity planting.
 4. a plan depicting location, species density and staging of planting;
 5. any site preparation required;
 6. measures that will be used to protect, monitor and maintain plantings, including pest and weed control and 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 15.8.31.5.b.i is maintained in a healthy state in perpetuity by any current or future property owners.
- ii. The planting required by the landscape plan must be undertaken prior to issue of 224(c) certification.

Figure 15.8.31A: Sretlaw Place structure plan

