

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

Decision No. [2024] NZEnvC 216

IN THE MATTER of the Resource Management Act 1991

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

BETWEEN DANIELLE CLAIRE NICOLSON,  
SORREL O'CONNEL MILNE AND  
TIM LEQUEUX

(ENV-2023-CHC-15)

Appellants

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: 2 September 2024

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**CONSENT ORDER**

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A: Under s279(1)(b) of the Resource Management Act 1991, the Environment  
Court, by consent, orders that:

- (1) the appeal is allowed to the extent that Dunedin City Council is to  
amend the proposed Dunedin City Second Generation District Plan  
as set out in Appendix 1, attached to and forming part of this order;

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and

(2) the appeal is otherwise dismissed.

B: Under s285 of the Resource Management Act 1991, there is no order as to costs.

## **REASONS**

### **Introduction**

[1] This proceeding concerns an appeal by Danielle Claire Nicholson, Sorrel O'Connell and Tim Lequeux against a decision of the Dunedin City Council as part of Variation 2 to the Dunedin City Second Generation District Plan. The appeal relates to the zoning of 177 Tomahawk Road ('the site') and sought amendments to provisions that applied to the site.<sup>1</sup>

[2] I have read and considered the consent memorandum of the parties dated 23 August 2024 which sets out the agreement reached between the parties to resolve the appeal. The agreement reached involves:

- (a) rezoning the site in accordance with the Structure Plan by splitting the General Residential 1 ('GR1') area into two (Areas A and B) zoned GR1 and changing the zoning of the remainder of the site (Area C) to Peninsula Coast Rural zone ('PCR');
- (b) applying a 'New Development Mapped Area' to Areas A and B;
- (c) adjustments to the boundary of the 'Biodiversity Enhancement Area';
- (d) addition of a new rule to establish density limits for the GR1 portions of the Structure Plan and the PCR portion of the Structure Plan;
- (e) addition of a new rule to establish controls on new buildings and structures located within the Biodiversity Enhancement Area;

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<sup>1</sup> 177 Tomahawk Road was rejected for inclusion in Variation 2. The Variation 2 process deemed submissions on the rejected sites to be within scope.

- (f) addition of a new rule to require a preliminary administrative subdivision separating Areas A and B from Area C. The preliminary subdivision includes amalgamation of all parcels of land within Area C into a single record of title, and provides for a pedestrian accessway connecting Gloucester Street and Tomahawk Road;
- (g) amendment to Rule 15.8.AP.1.c providing for one site in new Area B and one site in new Area C;
- (h) deletion of Rule 15.8.AP.1.b which required an esplanade reserve;
- (i) addition of new rules 15.8.AP.3.a.ii, iii, iv, v and vi which introduce additional information requirements for the Biodiversity Enhancement Plan to be submitted with any application for subdivision;
- (j) addition of a new rule requiring a geotechnical assessment for subdivisions within Area A; and
- (k) addition of a guidance note within the introduction to the Rural Zones Chapter Rules to ensure the Structure Plan Rules within the PCR portion of the site applies.

[3] I have also read and considered the affidavits of Emma Spalding and Zoe Lunniss, both affirmed 16 August 2024. The affidavits together explain the scope to make the changes sought, the rationale for the agreed changes in terms of s32AA RMA and assesses the agreed changes through a biodiversity focused lens. The affidavits have satisfied me that the amendments sought are suitable.

### **Other relevant matters**

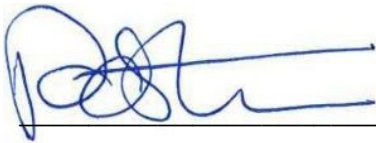
[4] Otago Regional Council gave notice of an intention to become a party to this appeal under s274 of the Resource Management Act ('the RMA') and has signed the memorandum setting out the relief sought.

[5] The parties advise 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, Pt 2.

### **Outcome**

[6] 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 the present purposes that all parties to the proceeding have executed the memorandum requesting the orders. On the information provided to the court, I am satisfied that the orders will promote the purpose of the Act so I will make the orders sought.



**P A Steven**  
**Environment Judge**



## APPENDIX 1

### 15.8.AP Gloucester Street Structure Plan Mapped Area Rules

#### **15.8.AP.X**

- a. The performance standards, assessment guidance and special information requirements in Rule 15.8.AP apply to all parts of the **Gloucester Street structure plan mapped area**, including land zoned General Residential 1 and land zoned Peninsula Coast Rural.

#### **15.8.AP.Y Land use performance standards**

- a. Density
- i. In 'Area A' and 'Area B' of the **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.AP.1.c limits the maximum number of sites in the **structure plan mapped area**).
  - ii. In 'Area C' of the **structure plan mapped area**, standard residential activities must not exceed a density of one residential activity per site. For the sake of clarity, this performance standard supersedes Rule 16.5.2.1.f.
  - iii. Activities that contravene this performance standard are non-complying activities.

#### **15.8.AP.Z Development performance standards**

- a. Location
- i. In 'Area C' of the **structure plan mapped area**, new buildings and structures must not be located within the Biodiversity Enhancement Area identified on Figure 15.8.APA, with the exception of the following structures, to be used for purposes associated with indigenous biodiversity enhancement activities:
    - 1. one plant nursery structure, with no solid roof, with a maximum area of 60m<sup>2</sup>; and
    - 2. up to three additional structures, with a maximum area of 10m<sup>2</sup> each.
  - ii. Activities that contravene this performance standard are restricted discretionary activities.

#### **15.8.AP.1 Subdivision performance standards**

##### X. Preliminary subdivision

- i. The first subdivision of the **Gloucester Street structure plan mapped area** must entail a preliminary subdivision to separate Area A and Area B from Area C. All parcels of land within Area C must be amalgamated (resulting in a single record of title for Area C).
- ii. The preliminary subdivision must provide for a legal accessway of a suitable width to be used for pedestrian access that connects Gloucester Street with Tomahawk Road. This accessway must be vested in Council as accessway.

- iii. For the sake of clarity, in relation to Area B, rules 6.8.1 and 9.3.2 apply to the preliminary subdivision.
  - iv. Activities that contravene this performance standard are non-complying activities.
- a. ~~Access~~
- i. ~~Unless already provided for as part of an earlier subdivision, subdivision activities must provide for, at a minimum, a legal accessway of a suitable width to be used for pedestrian access that connects Gloucester Street with Tomahawk Road. This accessway must be vested in Council as accessway.~~
  - ii. ~~Subdivision activities that do not meet this standard are non-complying activities.~~
- b. ~~Esplanade reserves and strips~~
- i. ~~Subdivision activities must provide an esplanade reserve with a minimum width of 15m along the property boundary labelled C in Figure 15.8.APA.~~
  - ii. ~~Subdivision activities that do not meet this performance standard are restricted discretionary activities and will be assessed in accordance with Rule 10.5.3.2.~~
- c. Maximum number of sites
- i. The maximum number of resultant residential sites within the part of the **structure plan mapped area** labelled A is eight.
  - ii. The maximum number of resultant residential sites within the part of the **structure plan mapped area** labelled B is one.
  - X. The maximum number of resultant residential sites within the part of the **structure plan mapped area** labelled C is one.
  - iii. Resultant sites created and used solely for the following purposes are exempt from this performance standard:
    - 1. Scheduled ASBV or QEII covenant;
    - 2. reserve;
    - 3. access;
    - 4. utility; or
    - 5. road.
  - iv. ~~The balance lot resulting from any subdivision of residential sites in land parcel Pt Lot 1 DP 2138 or land parcel Pt Lot 2 DP2138 must be amalgamated with Lot 1 DP 10814.~~
  - v. Activities that contravene this performance standard are non-complying activities.
  - Z. For the sake of clarity, this performance standard supersedes Rule 15.7.4 (Area A and Area B) and Rule 16.7.4 (Area C).
- d. Stormwater
- i. Prior to any subdivision application, a stormwater discharge consent must be obtained from the Otago Regional Council, if required, for any stormwater discharge from the site. For the sake of clarity:

1. The applicant is responsible for obtaining any resource consents, with input from the Dunedin City Council.
  2. The consent must be issued in, or transferred to, the Dunedin City Council's name.
  3. All costs associated with obtaining resource consents associated with stormwater discharge are to be borne by the developer.
- ii. Activities that contravene this performance standard are non-complying activities.
- ~~e. For the sake of clarity, these performance standards are additional to those in Rule 15.7.~~

### **15.8.AP.2 Assessment guidance**

- a. In assessing whether the subdivision design maintains or enhances areas with important natural environment values (Rule 12.X.2.5.d), Council will consider the biodiversity enhancement plan required by Rule 15.8.AP.3.
- b. In assessing any contravention of Rule 15.8.AP.1.d.ii, Council will consider the effectiveness and efficiency of stormwater management and effects of stormwater from future development (Objective 9.2.1), particularly in relation to water quality impacts on Tomahawk Lagoon.
- c. In the case of contravention of Rule 15.8.AP.Z, the following matter of discretion applies:

Performance standard		Matter of discretion	Guidance for the assessment of resource consents
i.	Location (Rule 15.8.AP.Z)	1. Effects on biodiversity	<i>Relevant objectives and policies:</i> 1. Objective 10.2.1 2. Policy 10.2.1.1

c.

### **15.8.AP.3 Special information requirements**

- a. Biodiversity enhancement
  - i. Applications for subdivision must include a biodiversity enhancement plan for the area marked Biodiversity Enhancement Area on Figure 15.8.APA, showing how vegetation will be enhanced and restored to assist with maintaining or improving indigenous biodiversity on the site and water quality in the Tomahawk Lagoon, unless this plan has been provided and accepted through an earlier subdivision consent application.
  - ii. The biodiversity enhancement plan must include measures to be used to exclude stock from the Biodiversity Enhancement Area. This will involve identification of which areas of the site (outside of the Biodiversity Enhancement Area) are to contain stock, and fully fencing those identified areas.
  - iii. The biodiversity enhancement plan must identify the location of any proposed structures to be erected within the Biodiversity Enhancement Area (noting that one plant nursery structure and up to three 10m<sup>2</sup> structures are permitted under Rule 15.8.AP.Z.a).

- iv. The biodiversity enhancement plan must not include clearance of indigenous vegetation in the Biodiversity Enhancement Area, except that this standard does not apply to indigenous vegetation clearance that is:
1. for the erection, maintenance or alteration of fences (including gates), provided:
    1. any fence posts are located outside of the dripline of mature indigenous trees listed in Appendix 10A.3;
    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; or
      3. mature indigenous trees listed in Appendix 10A.3;
  2. for the maintenance (but not extension) of existing network utility activities, irrigation infrastructure, tracks, drains, structures, roads, or firebreaks;
  3. for the extension of network utilities to service a dwelling within Lot 1 DP 10814;
  4. for the construction of tracks up to 3m in width, provided track construction 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; or
    3. mature indigenous trees listed in Appendix 10A.3;
  5. 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;
  6. 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. for the clearance of a pest plant listed in Appendix 10B;
  8. for the clearance of Coprosma repens and Olearia traversiorum; or
  9. necessary to maintain the flow of water free from obstruction or for natural hazard mitigation activities.
- v. The biodiversity enhancement plan must not include clearance of the existing macrocarpa trees within 25 metres of Lot 2 DP 10814 or Crown Land Block VII Otago Peninsula Survey District, except in the following circumstances:
1. where there is advice from an ecologist that the trees are compromising the ecological or biodiversity values of the riparian area or lagoon; or
  2. where there is advice from an arborist of declining tree health or that they pose a health and safety risk to people working in the vicinity of the trees.
- vi. Where the biodiversity enhancement plan proposes removal of existing macrocarpa trees anywhere within the Biodiversity Enhancement Area, the tree to be removed must be replaced with an ecologically appropriate species from Appendix 10A.3 that

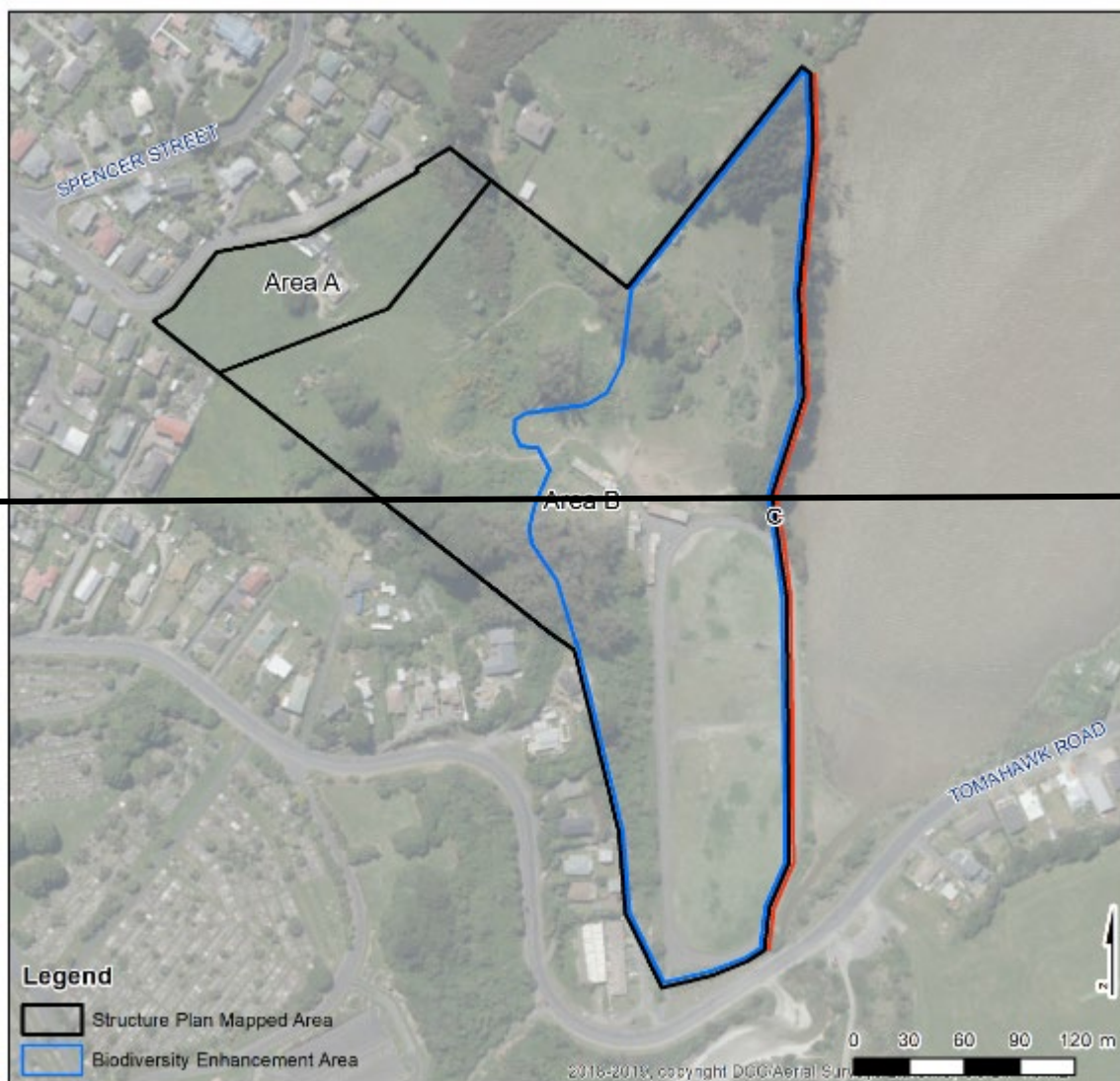


will reach at least the height and stature of the removed macrocarpa at maturity. The replacement tree must be planted within 6 months of the removal of the macrocarpa, maintained to a point of self-sufficiency and replaced if required.

**b. Geotechnical assessment**

- i. Applications for subdivision activities within Area A 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 examine the ground stability over the entirety of Area A, and identify suitable building platforms.
- ii. For the sake of clarity, the standard assessment matters in Rule 11.5.2 still apply.

**Figure 15.8.APA: Gloucester Street structure plan**





**Rural Zone Cross Reference to be inserted in Rule 16.3.2 (after 'Additional activity status rules in hazard overlay zones' clauses and before the 'Performance Standards' header):**

*Rules applying in the Gloucester Street structure plan mapped area*

- X. Residential activities and subdivision activities within the **Gloucester Street structure plan mapped area** are managed under provisions in Section 15.8.AP Gloucester Street Structure Plan Mapped Area Rules.

