

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

IN THE MATTER	of the Resource Management Act 1991
AND	of appeals under clause 14(1) of the First Schedule of the Act
BETWEEN	BRUCE WAYNE TAYLOR AND THE ESTATE OF LAWRENCE TAYLOR (ENV-2018-CHC-244) FEDERATED FARMERS OF NEW ZEALAND INC (ENV-2018-CHC-254) BLUESKIN PROJECTS LIMITED AND OTHERS (ENV-2018-CHC-276) ROBERT FRANCIS WYBER (ENV-2018-CHC-281) THE PRESERVATION COALITION TRUST (ENV-2018-CHC-285) Appellants
AND	DUNEDIN CITY COUNCIL Respondent

**MINUTE OF THE ENVIRONMENT COURT
(19 May 2020)**

Introduction

[1] The court is considering the application for consent orders filed in relation to the above proceedings and in this Minute we address the proposed orders for:



- (a) Robert Francis Wyber (ENV-2018-CHC-281);¹ and
- (b) Blueskin Projects Limited and Others (ENV-2018-CHC-276); Federated Farmers of New Zealand Inc (ENV-2018-CHC-254) and Bruce Wayne Taylor and the estate of Lawrence Taylor (ENV-2018-CHC-244)² referred collectively to as “Blueskin Appeals”.

[2] The application for consent orders is supported by affidavits from Dr A L Johnson³ and J E Macleod.⁴

Preliminary comment

[3] In an endeavour to understand the amendments in context, and as a check on whether there is any relationship between the amendments proposed for the two appeals, the court prepared its own schedule of higher order provisions (see attached). Time does not permit the court to prepare a schedule that includes all higher order provisions, only those proposed to be amended. The Wyber consent order would enable the rezoning⁵ of rural land for rural residential purposes, while the Blueskin appeal would create two or maybe four consenting pathways for residential development in rural areas.

[4] Ms Macleod is alive to the issues arising from the demand for rural land for residential purposes. While she addresses Objective 2.6.1 and Policy 2.6.1.4 (amongst other relevant provisions) in her affidavit, we are not yet clear whether the cumulative impact of these proposed changes on the rural land resource has been evaluated, particularly in the context of Objective 2.6.1 and its supporting policies. It follows we remain to be assured the changes maintain the overall coherence of the strategic directions for rural land.

[5] Presently, we are contemplating setting these appeals down for a hearing – even if only for the court to satisfy itself of these matters.

¹ Dated February 2020.

² Dated 10 March 2020.

³ Affidavit of Anna Louise Johnson affirmed 16 March 2020.

⁴ Affidavit of Jane Elliot Macleod affirmed 13 March 2020.

⁵ Parties are to confirm rezoning is by way of plan change. It seems to us that it is preferable to make this clear in the plan provision unless the City Council wants to attract resource consent applications for residential development in rural land that purport to apply the Wyber provisions.



Wyber

[6] Not all parties to the Wyber appeal have agreed to the making of consent orders; with The Preservation Coalition Trust (the Trust) declining to sign the same.

[7] While the signatories to the Wyber consent documentation request the orders be made, Dr Johnson advises against this course as there are (at least) three related appeals seeking relief in respect of strategic directions. These appeals include:

- (1) Saddle Views Estate Limited ENV-2018-CHC-287 (DCC reference 323);
- (2) Tussock Top Farms Limited ENV-2018-CHC-282 (DCC reference 301); and
- (3) The Preservation Coalition Trust ENV-2018-CHC-285 (DCC references 75 and 82 are to be confirmed if notice of appeal is amended).

Given the provisions are not yet settled, we decline to comment on the draft orders before the court.

Blueskin application for consent orders

[8] While the Trust is not a party to the appeals, it will shortly seek leave to file an amended notice of appeal and once done the parties will need to consider whether the relief to be pursued by the Trust interfaces with the Blueskin appeals.

[9] I will preface my comments on the proposed amendments by saying that it is difficult reviewing proposed changes in isolation from the planning and follows that it is possible that the court has overlooked a relevant provision or comment made by one of the deponents.

[10] The consent documentation appears to hold open consenting pathways for non-complying activities. Specifically:

- (a) subdivision activities that do not meet the minimum site size; and
- (b) proposed residential activities that do not comply with density standards.

[11] For both subdivision and land use activities, two separate policy streams are proposed which I loosely group as follows:



Group A (consent memorandum, Appendix A, pp 1–5)

Policy 2.2.3.3;
 Policy 2.3.1.2;
 Policy 16.2.1.7; and
 Rules 16.12.5.1 and 16.13.2.

Group B (consent memorandum, Appendix A, pp 5-13)

Section 16: Introduction;
 Objective 16.2.1;
 Policy 16.2.1.5; and
 Rules 16.12.5.6, 16.5.2, new 16.9.3.X, 16.11.3.X and 16.5.14.2.

[12] By way of a preliminary question, is it intended that an applicant need bring themselves under both Policy 16.2.1.5 and Policy 16.2.1.7 to come within secure the consenting pathway? If both, there appears to be two new consenting pathways if one or the other, then four new consenting pathways.

[13] I comment next on each group in turn.

Group A

[14] Commencing with the strategic directions, in relation to Policy 2.2.3.3(b)(iii) is the consenting pathway for residential activities that are proposed to be located on **existing** sites or for **proposed** sites (in each case the sites would not comply with the minimum site size)? Secondly, is Policy 2.2.3.3(b)(ii) redundant insofar as it repeats s 104(1)(a) of the Act? Alternatively, was it the parties' intention to expand on s 104(1)(a), to ascribe greater weight – in limited circumstances – to the proposed plan's biodiversity outcomes (part Objective 2.2.3 "Dunedin's significant indigenous biodiversity is protected or enhanced" and Policy 2.2.3.2) relative to other strategic directions (say Objective 2.3.1 "land and facilities important for economic productivity and social well-being" and Policy 2.3.1.2) or something else?

[15] Policy 16.2.1.7 (b)(i) – it is unclear whether the parties have turned their minds to whether the consenting pathway for a positive effect on rural productivity could create tension as between the strategic directions and how this may be resolved on a consent application. For example, how would the plan respond to a proposal to erect greenhouses on high class soils together with residential development on undersized



allotments. To take another example, what is the plan's response to a proposal for greenhouses within an outstanding natural landscape together with residential development on undersized allotments?

[16] Policy 16.2.1.7(b)(i) – what is meant by “long term land management” and how can this be practically upheld?

[17] Policy 16.2.1.7 (b)(i) – what is meant by “significant positive effects”? Planners may be very familiar with effects-based language, but does this assist the public's understanding of **how** the plan intends to implement the outcomes articulated by the objectives?

[18] Rule 16.12.5.1 Assessment of non-complying performance standard contravention – it is highly unusual for assessment matters to be given for non-complying activities in this manner. That is because the non-complying activities are unsupported by the objectives and policies and, therefore, not anticipated under a rule regime. Is it not more rational that residential activities on undersized sites are a discretionary activity in the circumstances listed in Policy 16.2.1.7 and in all other cases non-complying?

[19] Rule 16.12.5.1 Assessment of non-complying performance standard contravention (g). Farming is defined as “the use of land and buildings for the purpose of the commercial production of vegetative matter or livestock”. It follows all farming is “commercial”. While not defined is not “horticulture” also farming? The assessment matters introduce two new terms “commercial-scale horticulture” and “other commercial-scale farming”. Is it intended that the epithet “commercial-scale” qualify “farming” and if so, how?

Group B

[20] Rule 16.12.5.6 Assessment of non-complying performance standard contravention – the rule clearly pertains to the creation of new undersized sites intended for rural residential use. Our comment at paragraph [18] above applies; is it not more rational that the subdivision activity is a discretionary activity in the circumstances listed in Policy 16.2.1.5?



Density provision

[21] No change to the maximum density of residential activity standard (Rule 16.5.2) is proposed, save in relation to Peninsula Coast Rural Zone. Does the density standard apply to proposals seeking consent under one of the proposed consenting pathways and if so can its application be illustrated?

Directions

[22] I direct:

- (a) by **Tuesday 2 June 2020**, the Dunedin City Council is to file an affidavit from either Dr Johnson or Ms Macleod succinctly responding to paragraphs [8]-[19] of this Minute;
- (b) further directions will then issue.

The block contains a handwritten signature in black ink, which appears to read 'J E Borthwick', positioned to the left of a circular purple seal. The seal features the text 'THE SEAL OF THE' at the top and 'ENVIRONMENT COURT NEW ZEALAND' at the bottom, surrounding a central coat of arms.

J E Borthwick

Environment Judge

Issued: 19 May 2020

Wyber:



Blueskin:



Reference	Decision version	Consent memorandum
Definitions		New: Unfunded public infrastructure upgrades Upgrades of public infrastructure involving capital spending that is not included either in the DCC's Long Term Plan or the NZT A's Regional Land Transport Strategy. Cluster A group of adjoining sites of a similar size.
Policy 2.2.3.3	2.2 Dunedin is Environmentally Sustainable and Resilient Objective 2.2.3: Indigenous biodiversity Dunedin's significant indigenous biodiversity is protected or enhanced, and restored; and other indigenous biodiversity is maintained or enhanced, and restored; with all indigenous biodiversity having improved connections and improved resilience. Policy 2.2.3.3 Maintain or enhance indigenous biodiversity in the rural environment through rules that: a. require indigenous vegetation clearance to be set back from the coast, wetlands and water bodies, and that restrict indigenous vegetation clearance in the coastal environment and in wetlands; b. protect significant indigenous vegetation and/or significant habitats of indigenous fauna in Areas of Significant Biodiversity Value (ASBVs); c. protect threatened species and mature examples of important native trees, and otherwise limit the clearance of indigenous vegetation; d. manage the location and scale of development adjacent to the coast and water bodies;	Maintain or enhance indigenous biodiversity in the rural environment through rules that: a. rules that: a. i. require indigenous vegetation clearance to be set back from the coast, wetlands and water bodies, and that restrict indigenous vegetation clearance in the coastal environment and in wetlands; b. ii. protect significant indigenous vegetation and/or significant habitats of indigenous fauna in Areas of Significant Biodiversity Value (ASBVs); c. iii. protect threatened species and mature examples of important native trees, and otherwise limit the clearance of indigenous vegetation;



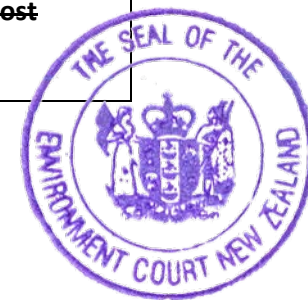
	e. require esplanade reserves or esplanade strips when land is subdivided adjacent to the coast and identified water bodies; and f. require the assessment of effects on biodiversity values for discretionary and noncomplying land use, development and citywide activities.	d. iv. manage the location and scale of development adjacent to the coast and water bodies; and e. v. require esplanade reserves or esplanade strips when land is subdivided adjacent to the coast and identified water bodies; and b. policies and assessment rules that: f. i. require the assessment of effects on biodiversity values for discretionary and non-complying land use, development and city-wide activities; ii. require the assessment of positive effects on biodiversity values for restricted discretionary, discretionary or non-complying land use, development and city-wide activities; and iii. create a pathway for residential activities to be established on sites in the rural zones that contravene the minimum site area for residential activity (density standard) where the activity is associated with a significant contribution to the enhancement or protection of biodiversity values.
Policy 2.3.1.2	2.3 Dunedin is Economically and Socially Prosperous Objective 2.3.1: Land and facilities important for economic productivity and social wellbeing Land and facilities that are important for economic productivity and social wellbeing, which include industrial areas, major facilities, key transportation routes, network utilities; and productive rural land are: a. protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and b. in the case of facilities, able to operate efficiently and effectively. Policy 2.3.1.2 Maintain or enhance the productivity of farming and other activities that support the rural economy through:	



	a. rules that enable productive rural activities; b. rules that provide for rural industry and other activities that support the rural economy; c. zoning and rules that limit subdivision and residential activity based on; i. the nature and scale of productive rural activities in different parts of the rural environment; ii. the location of highly productive land; and iii. potential conflict with rural water resource requirements; d. rules that restrict residential activity within the rural environment to that which supports productive rural activities or that which is associated with papakāika; e. rules that require residential buildings to be set back from boundaries to minimise the potential for reverse sensitivity; f. rules that restrict subdivision that may lead to land fragmentation and create pressure for residential oriented development; g. rules that prevent the loss of high class soils; and h. rules that restrict commercial and community activities in the rural zones to those activities that need a rural location or support rural activities.	Maintain or enhance the productivity of farming and other activities that support the rural economy through: a. rules that enable productive rural activities; b. rules that provide for rural industry and other activities that support the rural economy; c. zoning and rules that limit subdivision and residential activity based on; i. the nature and scale of productive rural activities in different parts of the rural environment; ii. the location of highly productive land; and iii. potential conflict with rural water resource requirements; and iv. in the case of residential activity: 1. recognition of the existing pattern of subdivision in different parts of the rural environment; and 2. provision for papakāika. d. restrict residential activity within the rural environment to that which supports productive rural activities or that which is associated with papakāika; e. rules that require residential buildings to be set back from boundaries to minimise the potential for reverse sensitivity; f. rules that restrict subdivision that may lead to land fragmentation and create pressure for residential oriented development; g. rules that prevent the loss of high class soils; and h. rules that restrict commercial and community activities in the rural zones to those activities that need a rural location or support rural activities.
2.6 Dunedin has Quality Housing Choices and	Objective 2.6.1: Housing choices There is a range of housing choices in Dunedin that provides for the community's needs and supports social wellbeing. Policy 2.6.1.3	



Adequate Urban Land Supply Objective 2.6.1: Housing choices Policy 2.6.1.3	Apply rural residential zoning to clusters of sites in separate land tenure already developed or mostly developed for rural residential activity before 7 November 2018, and that meet the criteria in Policy 2.6.1.5, as follows: a. where the cluster comprises sites already subdivided, or which have consent to subdivide, to an average density of greater than 2ha and less than 4ha, and are either already being used for rural residential activity or there is a high degree of likelihood they will be developed for rural residential activity in the short term, Rural Residential 1 zoning is appropriate; and b. where the cluster comprises sites each under 15ha with an average site size of generally between 4ha and 10ha, Rural Residential 2 zoning is appropriate.	Delete policy
Policy 2.6.1.4	Apply new rural residential zoning only where: a. there is a demonstrated shortage of rural residential land for lifestyle farming or hobby farming; b. the amount of land zoned rural residential appropriately balances providing some land resource for lifestyle farming or hobby farming with the overall Plan objectives that: i. Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations (Objective 2.2.4); ii. public infrastructure networks operate efficiently and effectively and have the least possible long term cost burden to the public (Objective 2.7.1); and iii. the multimodal land transport network, including connections between land, air and sea transport networks, operates safely and efficiently for all road users (Objective 2.7.2); c. the proposed zoning meets the criteria contained in Policy 2.6.1.5; and d. the plan change proposal:	Policy 2.6.1.4 2.6.1.3 Apply new rural residential zoning only where Provide for lifestyle blocks or hobby farming through the application of rural residential zoning as follows: a. there is a demonstrated shortage of rural residential land for lifestyle farming or hobby farming; a. the proposed zoning meets the criteria outlined in Policy 2.6.1 .4; and b. considering, based on the predicted market availability of rural residential zoned land for the next 5 years, whether the amount of land proposed to be rezoned rural residential appropriately balances providing some land resource for lifestyle farming or hobby farming with the overall Plan strategic spatial planning objectives outlined in objectives 2.2.4, 2.7.1 and 2.7.2; that:- i. Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations (Objective 2.2.4);

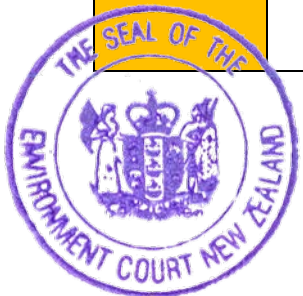


	i. considers first rezoning of Rural Residential 2 to Rural Residential 1 land to increase capacity; ii. considers next rezoning of any remaining clusters of sites below the minimum site sizes in the rural zones; and iii. only after the options in clause i and ii are assessed as inappropriate and/or unfeasible, considers the conversion of other rural sites to rural residential land.	ii. public infrastructure networks operate efficiently and effectively and have the least possible long term cost burden to the public (Objective 2.7.1); and iii. the multi-modal land transport network, including connections between land, air and sea transport networks, operates safely and efficiently for all road users (Objective 2.7.2); and c. the proposed zoning meets the criteria contained in Policy 2.6.1.5; and d. the plan change proposal, the following prioritisation will be applied: i. considers first rezoning of Rural Residential 2 to Rural Residential 1 land to increase capacity; ii. considers next rezoning of any remaining clusters of sites below the minimum site sizes in the rural zones; and iii. only after the options in clause i and ii are assessed as inappropriate and/or unfeasible, considers the conversion of other rural sites to rural residential land. c in the first instance, only applying rural residential zoning to land in separate tenure as follows: i where the site or sites are part of a cluster of sites at an average site size of greater than 2ha and less than 4ha, Rural Residential 1 zoning is appropriate; and ii. where the cluster comprises sites each under 15ha with an average site size of between 4ha and 10ha, Rural Residential 2 zoning is generally appropriate. but Rural Residential 1 zoning may be appropriate if it can achieve a similar outcome in terms of the criteria in Policy 2.6.1.4; and d. only after those options in c.i and c.ii are assessed as inappropriate, unfeasible or unavailable, considering the rezoning of other rural sites of low productive capacity to rural residential zoning.
Policy 2.6.1.4		Policy 2.6.1.5 2.6.1.4



~~Identify areas for new~~ Use the following criteria to assess the appropriateness of rural residential zoning, ~~in accordance with Policy 2.6.1.4 based on the following criteria~~ when considering any proposal for rezoning under Policy 2.6.1.3:

- a. the land is unlikely to be suitable for future residential zoning in line with Policy 2.6.2.1;
- b. rezoning is unlikely to lead to pressure for **unfunded public infrastructure** upgrades including road sealing, unless an agreement between the infrastructure provider and the developer on the method, timing, and funding of any necessary public infrastructure provision is in place; and
- c. considering the ~~zoning~~, rules, and potential level of development provided for, **the proposed rural residential** zoning is the most appropriate ~~in terms of to achieve~~ the objectives of the Plan, in particular:
 - i. the character and visual amenity of Dunedin's rural environment is maintained or enhanced (Objective 2.4.6);
 - ii. land and facilities that are important for economic productivity and social well-being, which include industrial areas, major facilities, key transportation routes, network utilities and productive rural land are:
 - 1. protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and
 - 2. in the case of facilities, able to operate efficiently and effectively (Objective 2.3.1). Achieving this includes generally avoiding areas that are highly productive land or may create conflict with rural water resource requirements;
 - iii. Dunedin's outstanding and significant natural landscapes and natural features are protected (Objective 2.4.4). Achieving



this includes ~~generally avoiding the application of new rural residential zoning in ONF, ONL and SNL overlay zones~~

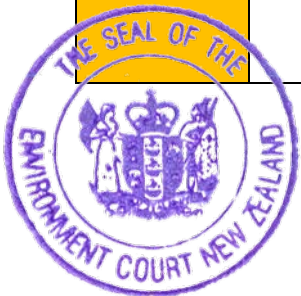
1. avoiding the application of new rural residential zoning in the ONF and ONL overlay zones; and
2. generally avoiding the application of new rural residential zoning in the SNL Overlay Zone, unless rules (such as rules that restrict the location of building platforms) can ensure that Objective 2.4.4 will be achieved;

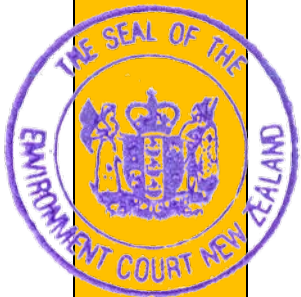
iv. the natural character of the coastal environment is preserved or enhanced (Objective 2.4.5). Achieving this includes: ~~generally avoiding the application of new rural residential zoning in ONCC, HNCC and NCC overlay zones~~

1. avoiding the application of new rural residential zoning in the ONCC and HNCC overlay zones; and
2. generally avoiding the application of new rural residential zoning in the NCC Overlay Zone, unless rules (such as rules that restrict the location of building platforms) can ensure that Objective 2.4.5 will be achieved.

v. Dunedin's significant indigenous biodiversity is protected or enhanced, and restored; and other indigenous biodiversity is maintained or enhanced, and restored; with all indigenous biodiversity having improved connections and improved resilience (Objective 2.2.3). Achieving this includes generally avoiding the application of new rural residential zoning in ASBV and UBMAi **unless rules (such as rules that restrict the location of building platforms) can ensure that Objective 2.2.3 will be achieved.**

vi. the biodiversity values and natural character of the coast and riparian margins are maintained and enhanced (Objective 10.2.2);

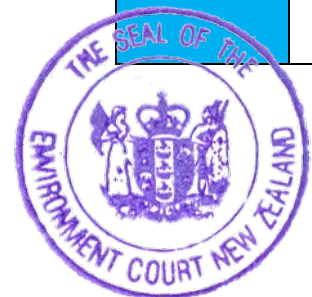




		vii. subdivision and development activities maintain and enhance access to coastlines, water bodies and other parts of the natural environment, including for the purposes of gathering of food and mahika kai (Objective 10.2.4); viii. the relationship between Manawhenua and the natural environment is maintained or enhanced, including the cultural values and traditions associated with wahi tōpuna, mahika kai and occupation of original native reserve land through papakaika (Objective 14.2.1): ix. the elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected or enhanced. These include: 1. important green and other open spaces including green breaks between coastal settlements; 2. trees that make a significant contribution to the visual landscape and history of neighbourhoods; 3. built heritage, including nationally recognised built heritage; 4. important visual landscapes and vistas; 5. the amenity and aesthetic coherence of different environments; and 6. the compact and accessible form of Dunedin (Objective 2.4.1); and x. the potential risk from natural hazards, including climate change, is no more than low, in the short to long term (Objective 11.2.1).
Section 16 Rural Zones	From top of page 2 of this section of the plan:	In response to these issues, seven rural zones and their objectives, policies and rules manage Dunedin's rural environment in a manner

16.1 Introduction	In response to these issues, seven rural zones and their objectives, policies and rules manage Dunedin's rural environment in a manner that recognises its diversity. The Plan emphasises the importance of providing for rural activities and for other activities which are reliant on or associated with the rural environment, while acknowledging that residential uses are clearly secondary and subordinate to these activities. This approach seeks to achieve the strategic outcomes for the rural zones, while ensuring that environmental effects are managed at an acceptable level. A limited degree of flexibility has been incorporated into the subdivision rules that apply in the rural zones, via provision for surplus dwelling subdivision. The rural zones are supported by overlays relating to landscape, natural character of the coast, and scheduled areas of significant indigenous vegetation and habitats of indigenous fauna. Provisions	that recognises its diversity. The Plan emphasises the importance of providing for rural activities and for other activities which are reliant on or associated with the rural environment, while acknowledging that residential uses are clearly secondary and subordinate to these activities. This approach seeks to achieve the strategic outcomes for the rural zones, while ensuring that environmental effects are managed at an acceptable level. To achieve this, the plan sets a minimum site size for subdivision based on average rural property sizes in different parts of the rural environment, using the average property size as an indicator of the site size required for a commercial rural activity. A limited degree of flexibility has been incorporated into the subdivision rules that apply in the rural zones, via provision for surplus dwelling subdivision. The minimum site size required for new residential activities (Rule 16.5.2 Density) is set based on the median rural property size in each rural zone, to better reflect the current pattern of subdivision (which includes sites that are not used for commercial farming). The use of median rather than average property size as a basis for this standard reduces the number of existing sites that fall below the density standard for new residential activity because the median rural property size is lower than the average rural property size in all rural zones. The rural zones are supported by overlays relating to landscape, natural character of the coast, and scheduled areas.....
Objective 16.2.1	Rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the wellbeing of communities where these activities are most	Rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of communities where these activities are most appropriately located in a rural rather than an

	appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.	urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.								
Policy 6.2.1.5	Require residential activity, with the exception of papakāika, in the rural zones to be at a level (density) that supports farming activity and achieves objectives 2.3.1, 2.4.6, 16.2.2, 16.2.3 and 16.2.4 and their policies.	Delete entirely and replace with: Avoid subdivision activities that create one or more resultant sites that contravene the minimum site size standard for the zone, unless: a. the subdivision is provided for under Policy 16.2.1.10; or b. the subdivision, considered as a whole: i. will not result in an increase in the number of sites that contravene the minimum site size; and ii. will not result in an increase in the residential development potential of the subject land, beyond that provided for by the density land use performance standard and the minimum site size subdivision standard; and iii. will meet policies 16.2.3.8 and 16.2.4.3								
Policy 16.2.1.7	Avoid residential activity in the rural zones on a site that does not comply with the density standards for the zone, unless it is the result of a surplus dwelling subdivision	Avoid residential activity in the rural zones on a site that does not comply with the density standards for the zone, unless: a. it is the result of a surplus dwelling subdivision; or b. the residential activity will be associated with long term land management and/or capital investment that will result in: i. significant positive effects for rural productivity; and/or ii. a significant contribution to the enhancement or protection of biodiversity values								
Rule 16.5 Land Use Performance Standards Rule 16.5.2 1. Density	<table border="1"><thead><tr><th>Rural Zone</th><th>i. Minimum site size – first residential activity per site</th><th>ii. Minimum site size – second residential activity per site</th><th>i. Minimum site size – third residential activity per site</th></tr></thead><tbody><tr><td>...</td><td>...</td><td>...</td><td>...</td></tr></tbody></table> h. Except, i. papakāika may be developed at a density of 6 residential units, or 15 habitable rooms per site, whichever is the lesser.	Rural Zone	i. Minimum site size – first residential activity per site	ii. Minimum site size – second residential activity per site	i. Minimum site size – third residential activity per site	...	...	...	...	... h. Except, i. papakāika may be developed at a density of 6 residential units, or 15 habitable rooms per site, whichever is the lesser.
Rural Zone	i. Minimum site size – first residential activity per site	ii. Minimum site size – second residential activity per site	i. Minimum site size – third residential activity per site							
...	...	...	...							



ii. in the Middelmarsh Basin, Hill Country and High Country rural zones, a single residential activity is permitted on any site that existed before 26 September 2015, and that is 15ha or larger, provided the residential activity is established prior to 7 November 2023.

i. Multiple standard residential activities (additional primary residential buildings (houses)) are only allowed on a single site where they are located no closer than 80m from other residential buildings on the same site (family flats or sleepouts are considered part of the same residential activity), except:

i. multiple residential units developed as part of papakāika may be located closer than 80m to each other.

j. if a site is crossed by a boundary between two or more rural zones, the maximum density of the standard residential activity must meet the density required for the rural zone in which the residential activity is to be established; and

i. the total site size must meet the minimum site size for the zone in which the residential activity is to be established; and

ii. for each new residential activity per site, a minimum of 2ha of the site per residential activity must be located within the rural zone in which the residential activity is to be established.

2. One family flat is allowed per site in association with a standard residential activity that meets this performance standard for density.

3. Standard residential activity that contravenes the performance standard for density is a non-complying activity, except:

a. papakāika that contravenes the performance standard for density is a discretionary activity.

ii. in the Middelmarsh Basin, High Country and Hill Country rural zones, a single residential activity is permitted on any site that existed before 26 September 2015, and that is 15ha or larger, provided the residential activity is established prior to 7 November ~~2023~~ 2025.

iii. in the Peninsula Coast Rural zone, a single residential activity is permitted on any site that existed before 26 September 2015, and that is 15ha or larger.

i. Multiple standard residential activities (additional primary residential buildings (houses)) are only allowed on a single site where they are located no closer than 80m from other residential buildings on the same site (family flats or sleepouts are considered part of the same residential activity), except:

i. multiple residential units developed as part of papakāika may be located closer than 80m to each other.

j. if a site is crossed by a boundary between two or more rural zones, the maximum density of the standard residential activity must meet the density required for the rural zone in which the residential activity is to be established; and

i. the total site size must meet the minimum site size for the zone in which the residential activity is to be established; and

ii. for each new residential activity per site, a minimum of 2ha of the site per residential activity must be located within the rural zone in which the residential activity is to be established.

2. One family flat is allowed ~~per site~~ in association with ~~a each~~ standard residential activity that meets this performance standard for density.

3. Standard residential activity that contravenes the performance standard for density is a non-complying activity, except:

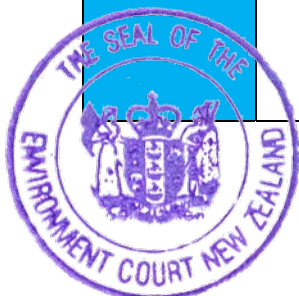
a. papakāika that contravenes the performance standard for density is a discretionary activity; and

b. a family flat that contravenes Rule 16.5.2.2 is:

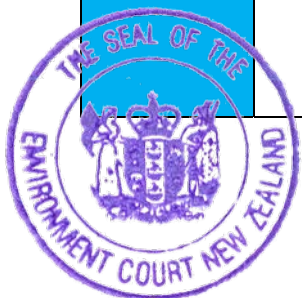
i. a restricted discretionary activity where the area of the site is 15ha or more;



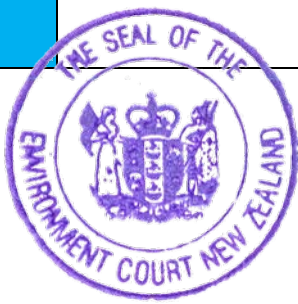
		ii. a discretionary activity where the area of the site is less than 15ha.																		
Rule 16.5.14.2 Family Flats - Design	a. Family flats must: i. not exceed a maximum gross floor area of 60m²; ii. be on the same available water and wastewater infrastructure connection, or the same nonreticulated wastewater disposal system as the primary residential unit; iii. be on the same household electricity account; iv. share the same vehicle access as the primary residential unit; and v. be attached to or located in the same residential building as the primary residential unit, or located within 30m of the primary residential building (house), as measured as the closest distance between any wall of the primary residential building and any wall of the family flat. b. Standard residential activity that contravenes this performance standard is a restricted discretionary activity.	a. Family flats (which include farm workers’ accommodation) in all rural zones must: i. not exceed a maximum gross floor area of 60m²; b. Family flats in the Coastal, Hill Slopes, Peninsula Coast and Taieri Plain rural zones must: i. be on the same available water and wastewater infrastructure connection, or the same non-reticulated wastewater disposal system as the primary residential unit; ii. be on the same household electricity account; iii. share the same vehicle access as the primary residential unit; and iv. be attached to or located in the same residential building as the primary residential unit, or located within 30m of the primary residential building (house), as measured as the closest distance between any wall of the primary residential building and any wall of the family flat. c. Standard residential activity that contravenes this performance standard is a restricted discretionary activity.																		
New Rule 16.9.3.X		Rule 16.9.3.X (assessment guidance for family flats that contravene density standard, on sites of 15ha or over): <table><tr><td colspan="4">16.9.3 Assessment of restricted discretionary performance standard contravention</td></tr><tr><td colspan="2">Performance standard</td><td>Matters of discretion</td><td>Guidance on the assessment of resource consents</td></tr><tr><td>1</td><td>Family flats - design</td><td>....</td><td>a.</td></tr><tr><td>X</td><td>Density (family flats on sites of 15ha or over)</td><td>a. Effects on long term maintenance of rural land for</td><td>Relevant objectives and policies: a. Objectives 16.2.4. b. The scale, size and nature of activities on highly productive</td></tr></table>			16.9.3 Assessment of restricted discretionary performance standard contravention				Performance standard		Matters of discretion	Guidance on the assessment of resource consents	1	Family flats - design		a.	X	Density (family flats on sites of 15ha or over)	a. Effects on long term maintenance of rural land for	Relevant objectives and policies: a. Objectives 16.2.4. b. The scale, size and nature of activities on highly productive
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		productive rural activities	land means that any loss of current or potential future rural productivity would be: i. insignificant in any high class soils mapped area; and ii. no more than minor in other areas of highly productive land (Policy 16.2.4.2) Potential circumstances that may support a consent application include: c. Family flats are located in the existing curtilage of the main dwelling, outside productive parts of the site.
		b. Reverse sensitivity effects	Relevant objectives and policies: a. Objectives 16.2.2 b. Residential buildings minimise, as far as practicable, the potential for reverse sensitivity by being set back an adequate distance from site boundaries (Policy 16.2.2.1.a)
		c. Effects on health and safety	Relevant objectives and policies: a. Objectives 9.2.2 b. Only allow land use and development in areas without public water supply,



				wastewater and stormwater infrastructure where these activities ensure wastewater and stormwater will be disposed of in such a way that avoids or, if avoidance is not practicable, ensures adverse effects on the health of people on the site or surrounding sites are insignificant (Policy 9.2.2.7).
			d. Effects on efficiency and affordability of infrastructure	Relevant objectives and policies: a. Objectives 9.2.1 b. Development will not lead to future pressure for unplanned expansion of the public wastewater and/or water supply infrastructure (Policy 9.2.1.1.b).
new Rule 16.11.3.X (assessment guidance for family flats that contravene density standard, on sites less than 15ha)		Rule 16.11.3.X (assessment guidance for family flats that contravene density standard, on sites less than 15ha)		
		16.11.3 Assessment of discretionary performance standard contravention		
		Activity		
		2.	Density (Papakāiika)	b. ...
		X	Density (family flats on sites less than 15ha)	Relevant objectives and policies (priority considerations): c. Objectives 16.2.3, 16.2.4. d. The density of residential activity maintains the rural character values and visual amenity of the rural zones (Policy 16.2.3.2).



				e. The scale, size and nature of activities on highly productive land means that any loss of current or potential future rural productivity would be: i. insignificant in any high class soils mapped area; and ii. no more than minor in other areas of highly productive land (Policy 16.2.4.2) f. The density of residential activity will not, over time and/or cumulatively, reduce rural productivity by displacing rural activities (Policy 16.2.4.4). Relevant guidance from other sections (priority considerations): g. See Section 9.7 for guidance on the assessment of resource consents in relation to objectives 9.2.1 and 9.2.2; and effects related to efficiency and affordability of infrastructure and public health and safety
Rule 16.12 Assessment Of non-complying activities 16.12.5 1. Density	Rule 16.12 Assessment of non-complying activities Rule 16.12.1 Introduction 1. Non-complying activities will be assessed in accordance with section 104, 104B and 104D of the RMA meaning Council may grant or refuse the application, and, if granted, may impose conditions. 2. Rules 16.12.2 16.12.5 provide guidance on how a consent application for the listed noncomplying activities will be assessed, including: a. relevant objectives and policies that will be considered as a priority with respect to s104(1)(b)(vi); and b. general assessment guidance, including any effects that will be considered as a priority. 3. Rules 16.12.2 16.12.5 apply as follows:	Rule 16.12 Assessment of non-complying activities Rule 16.12.1 Introduction etc as for decisions version 		



.....
d. Rule 16.12.5 applies to noncomplying performance standard
contraventions
.....

6.12.5 Assessment of non-complying performance standard
contravention

1. Density	<i>Relevant objectives and policies (priority considerations)</i> a. Objectives 16.2.1, 16.2.3, 16.2.4. b. Policies 16.2.1.7, 16.2.3.2, 16.2.4.4 c. Strategic Directions: objectives 2.2.2, 2.3.1, policies 2.2.2.1, 2.3.1.2, 2.4.6.2 <i>Relevant guidance from other sections (priority considerations)</i> d. See Section 9.8 for guidance on the assessment of resource consents in relation to Objective 9.2.1 and effects related to the efficiency and affordability of infrastructure.
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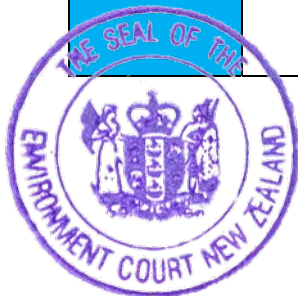
16.12.5 Assessment of non-complying performance standard
contravention

1. Density	<i>Relevant objectives and policies (priority considerations)</i> a. Objectives 16.2.1, 16.2.3, 16.2.4. b. Policies 16.2.1.7, 16.2.3.2, 16.2.4.4 c. Strategic Directions: objectives 2.2.2, 2.3.1, policies 2.2.2.1, 2.3.1.2, 2.4.6.2 c. The residential activity is the result of a surplus dwelling subdivision (Policy 16.2.1.7.a); or will be associated with long term land management or capital investment that will result in: i. significant positive effects for rural productivity; or ii. a significant contribution to the enhancement or protection of biodiversity values (Policy 16.2.1.7.b)
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Related strategic directions

d. Objectives 2.2.2, 2.3.1, 2.4.6, policies 2.2.2.1, 2.3.1.2, 2.3.1.3, 2.4.6.2

Relevant guidance from other sections (priority considerations):



			e. See Section 9.8 for guidance on the assessment of resource consents in relation to Objective 9.2.1 and effects related to the efficiency and affordability of infrastructure. General assessment guidance f. In assessing whether a proposal for land management or investment meets Policy 16.2.1.7.b.i and/or 16.2.1.7.b.ii, Council will consider the information provided with the consent application (see Special Information Requirements – Rule 16.13.2). g. Types of land management or capital investment that may meet Policy 16.2.1.7.b.i, depending on the specific circumstances of the site and proposal, include substantial investment in farm buildings or other farm assets required for commercial-scale horticulture or other commercial-scale farming. h. In assessing whether a proposal may meet Policy 16.2.1.7.b.ii, Council will consider the ecological context of the site and proposal at a local level, rather than requiring the contribution to be significant at an ecological district or citywide level. Conditions that may be imposed include, but are not limited to: i. Conditions to ensure that the land management or capital investment will be completed or substantially underway (and thereafter staged), prior to the establishment of residential activity, or, where this is not possible, a bond is taken to ensure the actions required to meet Policy 16.2.1.7.b are undertaken.	
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			j. Conditions to ensure that existing areas of indigenous vegetation and/or the habitats of indigenous fauna are legally protected in perpetuity.	
16.12.5 6 Minimum site size	6.12.5 Assessment of non-complying performance standard contravention	6.12.5 Assessment of non-complying performance standard contravention	6.12.5 Assessment of non-complying performance standard contravention	
6. Minimum site size	<i>Relevant objectives and policies (priority considerations):</i> a. Objectives 2.2.2, 2.2.4, 2.3.1, 2.4.6 b. Objectives 16.2.3, 16.2.4 c. Areas important for food production are protected from subdivision activities that may diminish food production capacity (Policy 2.2.2.1). d. Subdivision activities that provide for residential activity at a rural residential or urban scale are avoided (Policy 2.2.4.4). e. The productivity of farming and other activities that support the rural economy is maintained or enhanced through restricting subdivision activities that may lead to land fragmentation and create pressure for residential oriented development (Policy 2.3.1.2). f. The identified character values of the rural zones are maintained (Policy 2.4.6.2). g. Subdivisions are designed to ensure any associated future land use and development maintain or enhance the rural character and visual amenity of the rural zones (Policy 16.2.3.8). h. Subdivisions are designed to ensure any future land use and development will: i. maintain or enhance the productivity of rural activities; ii. maintain highly productive land for farming activity, or ensure any loss is insignificant on any	6. Minimum site size	<i>Relevant objectives and policies (priority considerations):</i> a. Objectives 2.2.2, 2.2.4, 2.3.1, 2.4.6 b. Objectives 16.2.1, 16.2.3, 16.2.4 c. Areas important for food production are protected from subdivision activities that may diminish food production capacity (Policy 2.2.2.1). d. Subdivision activities that provide for residential activity at a rural residential or urban scale are avoided (Policy 2.2.4.4). e. The productivity of farming and other activities that support the rural economy is maintained or enhanced through restricting subdivision activities that may lead to land fragmentation and create pressure for residential oriented development (Policy 2.3.1.2). f. The identified character values of the rural zones are maintained (Policy 2.4.6.2). f. The subdivision, considered as a whole: i. will not result in an increase in the number of sites that contravene the minimum site size (Policy 16.2.1.5.b.i); and ii. will not result in an increase in the residential development potential of the subject land, beyond that provided for by the density land use performance standard and the minimum site size subdivision standard (Policy 16.2.1.5.b.ii); and iii. will meet policies 16.2.3.8 and 16.2.4.3 (Policy 16.2.1.5.b.iii).	





	high class soils mapped area and no more than minor on other areas of highly productive land; iii. maintain land in a rural rather than rural residential use; and iv. not increase the potential for reverse sensitivity (Policy 16.2.4.3). <i>Potential circumstances that may support a consent application include:</i> i. A legal mechanism is proposed that will ensure that any proposed undersized allotment can not be used for a residential activity, and overall there is no net increase in residential development potential. <i>General assessment guidance:</i> j. In determining whether land is 'highly productive land', Council will consider its land use capability (LUC) classification, the high class soils mapped area (HCS), as well as any other evidence related to productive values. The expectation is that land in the HCS and/or that has a LUC 13 classification will be considered 'highly productive land'. Note that information about the LUC classification is provided on the Landcare Research website (https://www.landcareresearch.co.nz) and LUC 13 areas are shown on the Data Map (https://apps.dunedin.govt.nz/webmaps/secondgenerationplandata/). <i>Relevant guidance from other sections (priority considerations):</i> k. See Section 9.8 for guidance on the assessment of resource	g. Subdivisions are designed to ensure any associated future land use and development maintain or enhance the rural character and visual amenity of the rural zones (Policy 16.2.3.8). h. Subdivisions are designed to ensure any future land use and development will: i. maintain or enhance the productivity of rural activities; ii. maintain highly productive land for farming activity, or ensure any loss is insignificant on any high class soils mapped area and no more than minor on other areas of highly productive land; iii. maintain land in a rural rather than rural residential use; and iv. not increase the potential for reverse sensitivity (Policy 16.2.4.3). <i>Related strategic directions:</i> i. Objectives 2.2.2, 2.2.4, 2.3.1, 2.4.6, policies 2.2.2.1, 2.2.4.4, 2.3.1.2, 2.4.6.2 <i>Potential circumstances that may support a consent application include:</i> j Where necessary A a legal mechanism is proposed that will ensure that any proposed undersized allotment can not be used for a residential activity, and overall there is no net increase in residential development potential compliance with Policy 16.2.1.5.b.ii. <i>General assessment guidance:</i> k. With respect to Policy 16.2.4.3.c, Council will generally consider that a subdivision that creates a new undersized
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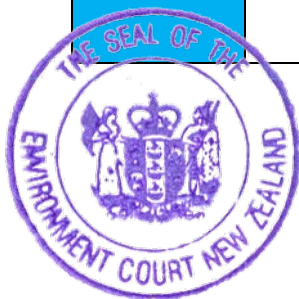
	consents in relation to Objective 9.2.1 and effects related to the efficiency and affordability of infrastructure.	site intended for rural residential use meets this policy, provided that the subdivision meets Policy 16.2.1.5.b.i & b.ii – for example in the case of a subdivision involving an existing undersized site and a site that exceeds the MSS, which transfers land from the smaller site to the larger site, and transfers a residential development right from the larger site to the smaller site. l. In determining whether land is 'highly productive land', Council will consider its land use capability (LUC) classification, the high class soils mapped area (HCS), as well as any other evidence related to productive values. The expectation is that land in the HCS and/or that has a LUC 13 classification will be considered 'highly productive land'. Note that information about the LUC classification is provided on the Landcare Research website (https://www.landcareresearch.co.nz) and LUC 13 areas are shown on the Data Map (https://apps.dunedin.govt.nz/webmaps/secondgenerationplandata/). <i>Relevant guidance from other sections (priority considerations):</i> k. See Section 9.8 for guidance on the assessment of resource consents in relation to Objective 9.2.1 and effects related to the efficiency and affordability of infrastructure.
New rule 16.13.2 (special information requirement)		16.13.2 Land management or capital investment for productivity or biodiversity gains 1. A resource consent application that includes a proposal for land management or investment intended to achieve significant positive effects for rural productivity (Policy 16.2.1.7.b.i) should, in most circumstances, be supported by a farm management plan or similar

ts) as follows:

document, prepared by a suitably qualified person, which sets out how gains to rural productivity will be achieved over the medium to long term.

2. A resource consent application that includes a proposal for land management or investment intended to achieve a significant contribution to the enhancement or protection of biodiversity values (Policy 16.2.1.7.b.ii) must be supported by an ecological restoration plan, prepared by an ecologist or similarly qualified person, which includes the following:

- a. a description of the site, including the area or areas to be enhanced;
- b. a description of any indigenous vegetation present, including a species list;
- c. a description of the indigenous wildlife present and known to use the site;
- d. an ecological assessment of the significance of the site using the criteria in Policy 2.2.3.2;
- e. an assessment of how ecological restoration may contribute to providing connectivity with ecological corridors or nearby areas of ecological importance;
- f. an assessment of the benefits to biodiversity values of a range of practicable options for biodiversity enhancement, and confirmation that the proposed option is suitable for the site and conforms to best practice;
- g. a schedule of ecologically appropriate species to be planted, including botanical names;
- h. a planting plan depicting the location, species density and staging of planting;
- i. measures that will be used to maintain plantings, including the replacement of any dead or non-thriving plants;
- j. any other measures proposed to enhance habitat for indigenous fauna;



		k. measures to be used to exclude stock from the enhancement area; l. measures to be used to achieve long-term effective control of plant and animal pest species; and m. the approach to be used to monitor the restoration measures set out in the restoration plan and actions to be taken if measures are not being fulfilled.

