

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

Decision No. [2022] NZEnvC 238

IN THE MATTER of the Resource Management Act 1991

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

BETWEEN BLUESKIN BAY HOLDINGS
LIMITED

(ENV-2018-CHC-279)

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: 23 November 2022

CONSENT ORDER

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

- (1) the appeal is allowed subject to the changes shown in Appendix 1 being made;
- (2) the appeal by Blueskin Bay Holdings Limited (DCC Reference number 150) is resolved and that 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 Blueskin Bay Holdings Limited ('Blueskin') on the provisions of the proposed Second Generation Dunedin City District Plan ('2GP') regarding the rezoning of land at Waitati from Coastal Rural Zone and Rural Residential 2 Zone to more intensive zoning.

[2] I have read and considered the consent memorandum of the parties dated 8 November 2022 which proposes to resolve the appeal.

[3] I have also read and considered the affidavit by B T Morrissey dated 21 November 2022, who has satisfied me that the amendments proposed will achieve the objectives of the 2GP, and that granting the relief sought will not impact on the resolution of any other proceeding.¹

Other relevant matters

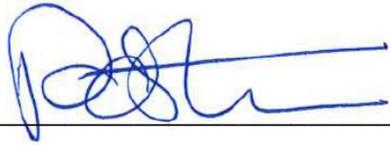
[4] Otago Regional Council has given notice of an intention to become a party under s274 of the Resource Management Act 1991 ('RMA' or 'the Act') and has signed the memorandum setting out the relief sought.

[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, Part 2.

¹ Affidavit of B T Morrissey affirmed 21 November 2022 at [69] and [78].

Outcome

[6] 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.

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke, positioned above a horizontal line.

P A Steven
Environment Judge



Appendix 1

- 1 Amend 2GP planning map as shown below in Figure 1 to:
 - a) change the zoning of 131 Double Hill Road, 1507 and 1553 Waikouaiti-Waitati Rd, and 30, 33 and 47 Kilpatrick Rd to Rural Residential 1 Zone (shown as 'Area of change'); and
 - b) apply a structure plan mapped area over the entire area (shown as Structure Plan Mapped Area).

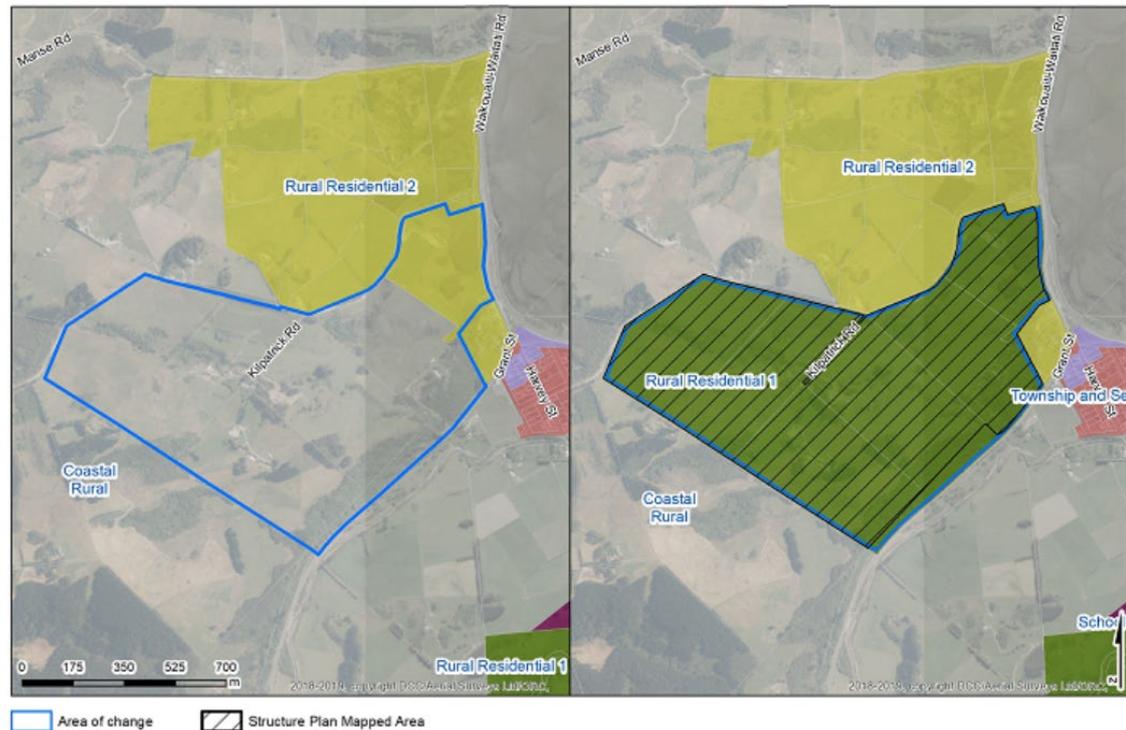


Figure 1: Mapping changes

- 2 Amend 2GP planning map to show six separate areas of indigenous vegetation, which collectively make up a new Area of Significant Biodiversity Value (ASBV), as shown in the structure plan diagram below (Figure 17.Y.ZZA: Double Hill Road Structure Plan).
- 3 Insert new structure plan mapped area performance standards in 2GP Section 17:

17.Y.ZZ Double Hill Road Structure Plan Mapped Area Rules

17.Y.ZZ.1 Development performance standards

- a. Natural hazards
 - i. Earthworks in the areas shown hatched red on the Double Hill Road structure plan and labelled

'Restricted Development Area (Land Instability Hazard)' (see Figure 17.Y.ZZA), for the purposes of Rule 8A5.1, will be treated as earthworks in a Hazard 2 (land instability) Overlay Zone.

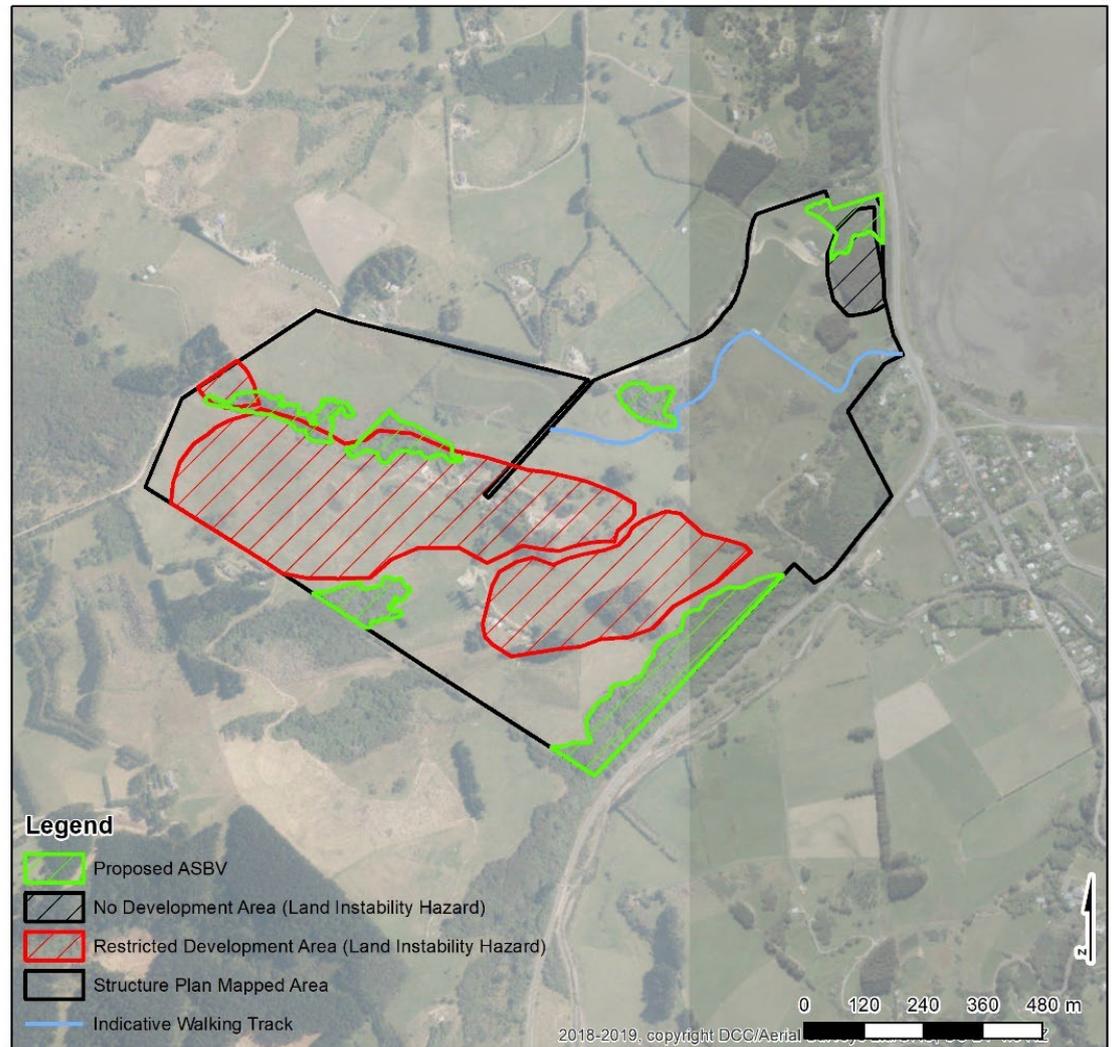
- ii. New buildings must not be located in the area of land shown hatched black on the Double Hill Road structure plan and labelled 'No Development Area (Land Instability Hazard)' - (see Figure 17.Y.ZZA).
- iii. Activities that contravene clause ii of this performance standard are prohibited activities.

17.Y.ZZ.2 Subdivision performance standards

a. Access

- i. Subdivision activities must provide a suitably designed and formed public walking access through the **structure plan mapped area**, in general alignment with the route marked in blue on Figure 17.Y.ZZA.
- ii. Legal access to fulfil clause i above must be created, and accessways must be formed, prior to the issuing of the section 224c certificate for the subdivision.
- iii. Subdivision activities that do not meet this standard are non-complying activities.
- iv. For the sake of clarity, this performance standard is additional to Rule 6.8.1.

Figure 17.Y.ZZA: Double Hill Road structure plan



17.Y.ZZ.3 Additional matter of discretion and assessment guidance

- a. In addition to the matters of discretion and assessment guidance for subdivision consents provided in Rule 17.10.4 and Rule 9.6.2.Z, the following guidance is provided for the assessment of subdivision activities in the **Double Hill Road structure plan mapped area.**
- b. Matter of discretion
 - i. Effects of wastewater from future development.

c. Guidance on the assessment of resource consents

Relevant objectives and policies (priority considerations):

- i. Strategic Directions: Objective 2.4.1, Policy 2.4.1.8.
- ii. Objective 17.2.3.
- iii. Activities in the **structure plan mapped area** are designed to:
 1. maintain or enhance any special values of the site listed in Appendix A12; and
 2. ensure any other design outcomes listed in Appendix A12 are achieved (Policy 17.2.3.X).

General assessment guidance:

- iv. In addition to the matters covered by 9.6.2.Z, Council will consider as part of the assessment of any consent application for subdivision:
 1. the effectiveness of proposed wastewater management on any sites to be used for residential development, including, but not limited to, how the subdivision layout provides for appropriate areas to be used for effluent dispersal that will ensure effluent dispersal does not create adverse effects on the amenity or health and safety of neighbours, or adverse environmental effects on water bodies, and is able to achieve the objectives and policies of this Plan as well as any relevant regional plans and policies (see Special Information Requirements 17.Y.ZZ.4).

Conditions that may be imposed include:

- v. The locations of effluent dispersal areas.
- vi. A legal instrument that requires all wastewater treatment systems (including dispersal fields) installed on the resultant sites to meet the following standards:
 1. wastewater treatment to a minimum of secondary standard before discharge;
 2. design and location of wastewater discharge that ensures there will be no off-site surface discharge or runoff;
 3. design and location of wastewater systems that ensures ready access for system testing;

4. the wastewater system is designed and installed by suitably qualified persons/entities; and
5. requirements for owners of the wastewater treatment system to comply with maintenance and operational requirements set by the manufacturer or designer.

Note 17.Y.ZZ.3A Other requirements outside of the District Plan

- a. The discharge of human sewage through on-site wastewater treatment systems is managed by rules in the Regional Plan: Water for Otago. Resource consent may be required from the Otago Regional Council for new systems.

17.Y.ZZ.4 Special information requirements

- a. Wastewater management
 - i. Applications for subdivision within the **Double Hill Road structure plan mapped area** must include a proposal for on-site wastewater management prepared by a chartered professional engineer or other suitably qualified person with suitable experience in wastewater system design. The proposal must demonstrate one or more options for effective on-site wastewater management for all sites to be used for residential activity and include suggestions for conditions that will ensure future development will effectively manage wastewater in a way that does not create adverse effects on the amenity or health and safety of neighbours, or adverse environmental effects on water bodies, and is able to achieve the objectives and policies of this Plan as well as any relevant regional plans and policies.
- b. Geotechnical investigation report
 - i. Applications for subdivision activities in the area shown hatched red on the Double Hill Road structure plan and labelled 'Restricted Development Area (Land Instability Hazard)' (see Figure 17.Y.ZZA) must include a comprehensive geotechnical investigation report by a suitably qualified geotechnical consultant. The geotechnical

report must examine the ground stability within the red hatched area to be subdivided and identify areas suitable for development and, if required, suitable building platforms, and any areas where development, including earthworks, should be restricted.

c. Integrated Transport Assessment

i. Applications for subdivision of the **Double Hill Road structure plan mapped area**, must include an Integrated Transport Assessment (ITA) for the whole mapped area. The ITA must include, but is not limited to, the following matters (see also further information on the content of ITAs in Rule 6.14.2):

1. An assessment of the effects of subdivision on the safety and efficiency of the existing transport network, which identifies any transport infrastructural improvements deemed necessary to ensure adverse effects on the safety and efficiency of the transport network, for all modes, are appropriately addressed in accordance with Objective 6.2.3 and Policy 6.2.3.8. The assessment must include information on the upgrade of the State Highway 1/Double Hill Road intersection, and widening and sealing of Double Hill Road and Kilpatrick Road.
2. Identification of any areas of land that will need to be vested in the DCC as road, in order to achieve an appropriate minimum legal road width.
3. Consideration of internal roading design, layout, and connection points to the existing transportation network for all modes of transport in accordance with the Dunedin Code of Subdivision and Development 2010.

4 Insert new Appendix A12 structure plan mapped area values:

A12.Z Double Hill Road Structure Plan Mapped Area

A12.Z.1 Description of area

The **Double Hill Road structure plan mapped area** covers an area of approximately 92.2 hectares in the Blueskin Bay area, north of Dunedin. The **structure plan mapped area** is located west of Waitati, inland from State Highway 1. The area is hilly, with multiple sub-catchments that flow into the Waitati River outside the **structure plan mapped area**. Most of the area is covered in pasture, but there are also patches of regenerating and mature indigenous vegetation, and small patches of exotic-dominated shrubland and scrub. The mapped area contains six individual stands of indigenous vegetation, ranging in size from 0.65 – 4.16 ha, which are scheduled as an Area of Significant Biodiversity Value (ASBV)(see A1.2 C1YY).

A12.Z.2 Values to be maintained or enhanced

Land use, development and subdivision in the **Double Hill structure plan mapped area** must maintain or enhance the following values:

1. The biodiversity values of the mapped area, which include the values of the scheduled Area of Significant Biodiversity Value (ASBV), which are set out in Appendix A1.2.

A12.Z.3 Other design outcomes to be achieved

Land use, development and subdivision in the **Double Hill structure plan mapped area** must:

1. Provide for a safe public walking track that connects Kilpatrick Road with Waikouaiti-Waitati Road (State Highway 1) in the general vicinity of the intersection with Harvey Street, to allow access to Waitati township;
2. ensure that safe and effective on-site wastewater management that does not create adverse effects on the amenity or health and safety of neighbours, or adverse environmental effects on water bodies, is achieved for all sites to be used for residential activity; and
3. be appropriately located and managed to ensure the risk from natural hazards is no more than low.

- 5 Insert new Area of Significant Biodiversity Value in Appendix A1.2 as follows:

<u>C1YY</u>	<u>Double Hill Road</u>	<u>8.93 ha</u>	<u>Comprised of six individual stands of regenerating podocarp-broadleaf forest, ranging in size from 0.65ha-4.16ha. The stands are comprised of species that are commonly found in regenerating bush throughout Dunedin, including: mahoe, kanuka, kotukutuku (fuchsia), makomako (wineberry), kapuka (broadleaf) and several species of coprosma. The more notable emergent species, found in two of the areas are miro, matai and kahikatea.</u>	<u>NA</u>
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- 6 Make any consequential changes to plan numbering as required as a result of the above amendments. Minor referencing and style changes may also be made for consistency with the 2GP formatting.

