

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-285

Under	the Resource Management Act 1991 (RMA)
In the matter of	an appeal under clause 14(1) of the First Schedule of the RMA in relation to the proposed Second Generation Dunedin City District Plan (2GP)
Between	The Preservation Coalition Trust Appellant
And	Dunedin City Council Respondent

Application for Directions following ADR process

20 December 2019

Respondent's solicitors:

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**anderson
lloyd.**

May it please the Court

- 1 The parties attended an alternative dispute resolution meeting on 12 December 2019 facilitated by Ross Dunlop. The parties reached an agreement on various matters defining the scope of the appeal. A copy of that agreement signed by all parties present is attached marked **Annexure 1** ("agreement").
- 2 Arising out of this agreement the following directions are sought.

Coastal environment

- 3 Paragraph 8 of the agreement records that the Appellant agrees to withdraw its relief relating to the landward delineation of the coastal environment. A formal Notice of Withdrawal is to be filed by the Appellant by 29 January 2020. This will resolve this aspect of the appeal and no directions are presently sought.

ONL

- 4 One of the key parts to the appeal is the challenge to the ONL overlay in the area attached to the Appellants appeal marked "**Attachment 2**", referred to in the agreement as "Map 2" (and attached). This is a key topic in the appeal. The Appellant considers it raises the following issues:
 - (a) Whether the mapping of the ONL overlay in the area depicted at Map 2 is correct? (Paragraph 1 of the agreement).
 - (b) Whether there needs to be any consequential changes to the description of the ONL values and attributes at Appendix A3 to the 2GP once the overlay area is determined? (Paragraph 1 of the agreement).
 - (c) Whether there is a need for any changes to the description of values and attributes in Appendix A3 in the 2GP where the values and attributes exist in the coastal waters and contribute to the values in the ONL on land that is within the DCC jurisdictional boundary? (Paragraph 3 of the agreement).
 - (d) Whether the extent of the Rural Residential 1 zone as delineated in **Annexure 2**, and the Rural Residential 2 zones within the area of Map 2 should be altered, or not, in light of the determination of the ONL overlay? (Paragraph 10(b) of the agreement).
 - (e) Whether the existing agreement on the wording to policy 2.6.1.5(c)(iii) and (iv) should be confirmed in light of the resolution of the ONL overlay? (Paragraph 10(c) of the agreement).

5 Should these issues not be resolved between the parties it is considered a hearing is required. The following timetable is proposed:

- (a) By **29 January 2020** the Appellant is to advise the Court and parties:
 - (i) whether it seeks to amend the SNL overlay to an ONL overlay for the University Portobello Marine Science mapped area, whether in whole or part;
 - (ii) if it seeks an ONL overlay whether it seeks to amend the existing underlying performance standards (and relevant rules) for that site;
- (b) The landscape architects are to attend facilitated conferencing to advise the Court and the parties on:
 - (i) Their recommended positioning of the ONL overlay in the Map 2 area.
 - (ii) Whether their recommended ONL overlay has any implications from a landscape experts' perspective for the Rural Residential 1 zone in the areas shown as **Annexure 2** and the Rural Residential 2 zone in the wider Map 2 area.
 - (iii) Di Lucas is to provide her will say statement 14 days prior to conferencing which must include a marked up version of the attributes and values of the ONL overlay in the Map 2 area that she recommends should be included in Appendix A3 to the 2GP.
 - (iv) Any other landscape architect is to provide their will say statement seven days prior to caucusing.
 - (v) Conferencing is to take place in Dunedin, preferably between **14 and 21 February 2020**. Di Lucas and Mike Moore are both available during this time.
- (c) The following evidence timetable is to be followed:
 - (i) Dunedin City Council is to file and serve its evidence in chief – six weeks following the landscape experts' conferencing.
 - (ii) Appellant's evidence in chief to be filed and served four weeks after receipt of Dunedin City Council's evidence.
 - (iii) Any 274 parties – to file and serve their evidence three weeks after the receipt of the Appellants evidence.

(iv) Rebuttal evidence (if any) – to be filed and served three weeks after receipt of the 274 parties evidence.

(d) It is estimated that a hearing is likely to take approximately one week, and it is preferred this occur in Dunedin.

Other topics

Topic B: RR2 outside Map 2

6 The Appellant confirmed that its challenge to the extent of Rural Residential 2 zones outside of the Map 2 area (discussed above) is as identified in Di Lucas' maps dated 26 August 2019.

7 It is proposed that this topic remain on hold pending the outcome of the ONL issue above.

Topic C: other policy challenges relating to rural residential zoning

8 The parties requests a direction that the Appellant is to identify by 20 January 2020 what changes are sought to specific strategic direction polices relating to the rural residential zoning in the 2GP (in addition to those changes to policy 2.6.1.5(c)(iii) and (iv) which is already resolved).

Dated this 20th day of December 2019



Michael Garbett
Counsel for the Respondent



Rob Enright
Counsel for the Appellant

Craig Werner
Counsel for the Appellant

(iv) Rebuttal evidence (if any) – to be filed and served three weeks after receipt of the 274 parties evidence.

(d) It is estimated that a hearing is likely to take approximately one week, and it is preferred this occur in Dunedin.

Other topics

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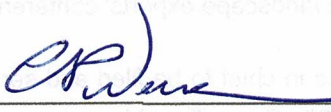
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Dated this 20th day of December 2019

Michael Garbett
Counsel for the Respondent

Rob Enright
Counsel for the Appellant



Craig Werner
Counsel for the Appellant

Annexure 1

ADR Meeting – The Preservation Coalition Trust v Dunedin City Council ENV-2018-CHC-285

This is an agreement of the Parties to the PCT appeal that attended an ADR meeting on 12 December 2019, facilitated by Ross Dunlop.

ONL

1. The parties agree that PCT have sought the land identified in attachment 2 (**Map 2**) to its appeal to be included in the ONL overlay. No party objects to this relief being within jurisdiction. The parties will need to discuss, and if not agreed, seek a hearing on the merits of the spatial extent of the overlay. PCT consider this may include consequential changes to ONL values and attributes within the map 2 area (subject to remaining within the Court's jurisdiction).
2. PCT do not seek to extend the ONL overlay in to the coastal waters, which are beyond the jurisdictional boundary of the DCC.
3. PCT do seek to amend the values and attributes in 2GP Appendix A3 to record that the coastal waters contribute to the landward ONL (limited to the coastal waters identified in PCT's Map 2).
4. For clarity PCT confirms that Issue 8 of its Statement of Issues should delete reference to "ONF".
5. Without prejudice to any jurisdictional issue in (1) above, the parties agree that the relevant landscape experts should caucus in relation to issue (3) above. Ms Lucas has agreed to provide, at least 14 days prior to caucusing, a marked-up version of the attributes and values that she recommends should be included in 2GP Appendix A3. This will operate as her will say statement on this matter. Any other landscape expert is to provide their will say statement 7 days prior to caucusing.
6. In relation to (1), PCT agrees that it will not oppose any third party with a relevant interest applying for a late waiver joining as a s274 party.

University of Otago Interests

7. By 29 January 2020 PCT will clarify to the parties:
 - a. whether it seeks to amend the SNL to an ONL overlay for the University Portobello Marine Science Mapped Area whether in whole or part;
 - b. if it seeks ONL, whether it seeks to amend the existing underlying performance standards (and relevant rules) for that site.

Coastal Environment

8. PCT agrees to withdraw its relief relating to the landward delineation of the coastal environment without prejudice to the ONL issue identified in (1) above. PCT will file a notice of withdrawal of the relevant parts of its appeal by 29 January 2020. For clarity, the NZCPS remains relevant to the ONL exercise in (1) above.

ONL Rules

9. PCT to advise the parties by 20 December 2019 as to whether it seeks changes to the ONL rules (as these relate to Map 2). If so, PCT must identify what those changes are and the basis of scope.

Grouping of Topics

10. The parties are agreed that the following topics should be case managed to a hearing:

Topic A: Map 2

The parties consider the following issues are interrelated and should be considered either at a single hearing or sequentially by the Court, so a decision can be issued on all matters at the same time.

- a. extent of ONL in Map 2 (including values and attributes);
- b. extent of RR 1 zone as delineated in the map attached to the DCC's application for directions dated 17 October 2019, and RR 2 zones in Map 2
- c. whether to amend Policy 2.6.1.5 c (iii) and (iv) (as identified in issue 6, PCT Statement of Issues). For clarity, PCT notes that a change in wording to that policy has been agreed, through mediation, but this was based on the delineation of the ONL in the 2GP.

Topic B: RR 2 Outside Map 2

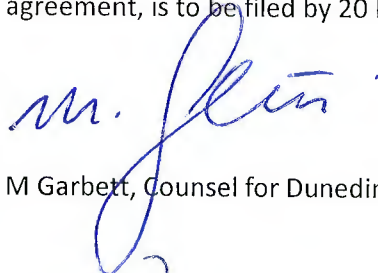
- a. extent of RR 2 outside of Map 2 as identified in Di Lucas' maps dated 26 August 2019 (exchanged as part of mediation, but not yet filed with the Court).

Topic C: Other Policy challenges related to Rural residential zoning

- a. PCT is to identify by 20 January 2020 what changes are sought to specific strategic direction policies related to the Rural Residential zoning in the 2GP, in addition to c above. When PCT has identified these policies, the Council will advise the Court what other appeals there are on related policies, for example Wyber, which would need to be considered together. This will be case managed in alignment with existing mediation agreements.

Next Steps

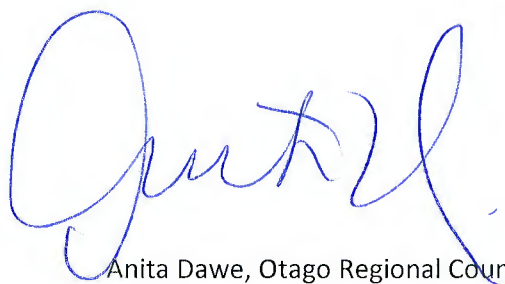
Counsel shall agree a draft timetable to case manage the above issues to a hearing including all relevant steps (such as caucusing and agenda for such). This memorandum, attaching this agreement, is to be filed by 20 December 2019.



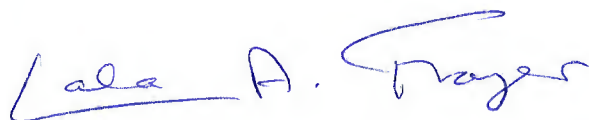
M Garbett, Counsel for Dunedin City Council



Craig Werner, The Preservation Coalition Trust

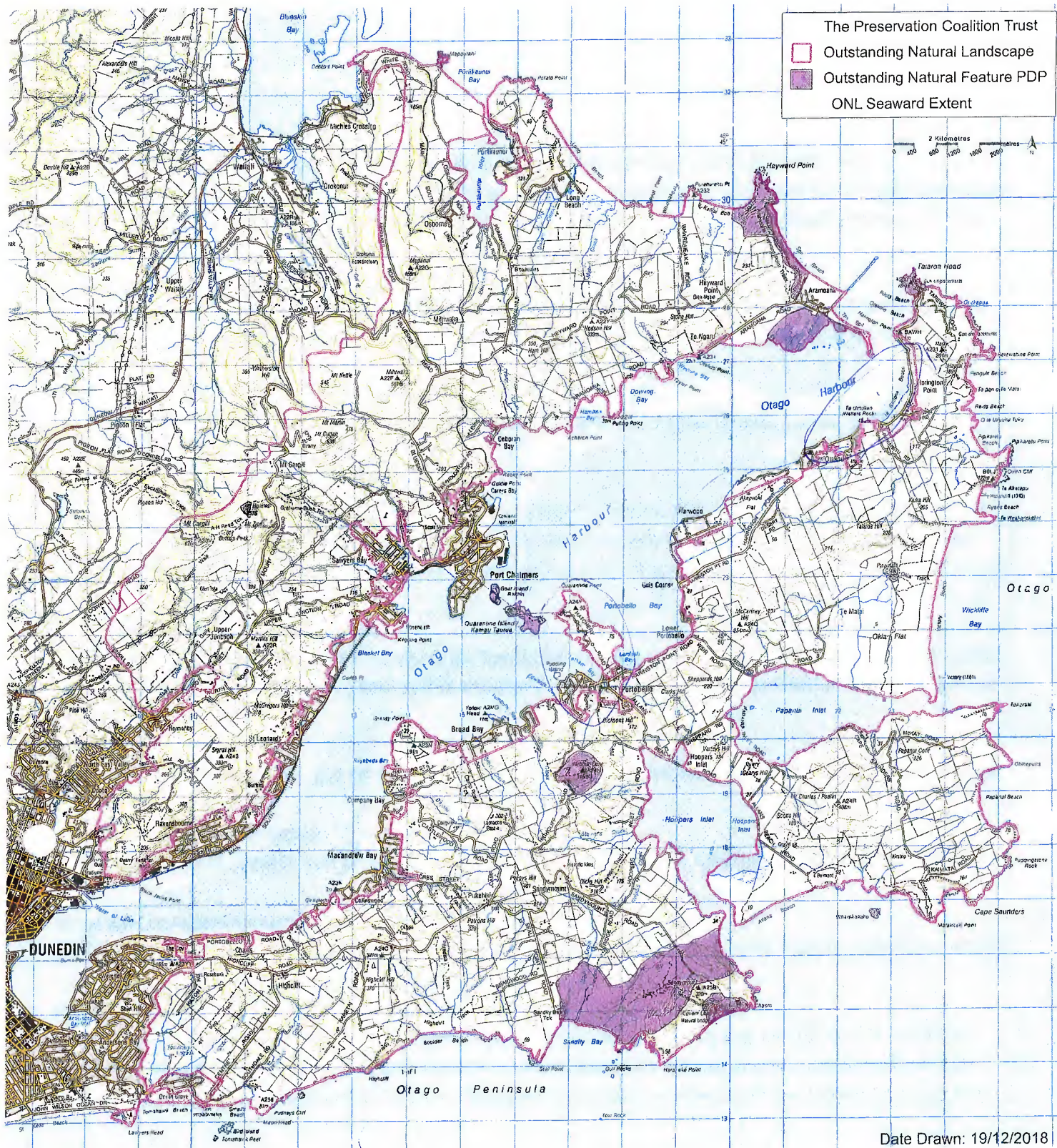
A handwritten signature in blue ink, appearing to read 'Anita Dawe'.

Anita Dawe, Otago Regional Council

A handwritten signature in blue ink, appearing to read 'Lala A. Frazer'.

Lala Frazer, Save the Otago Peninsula Incorporated Society

Attachment 2



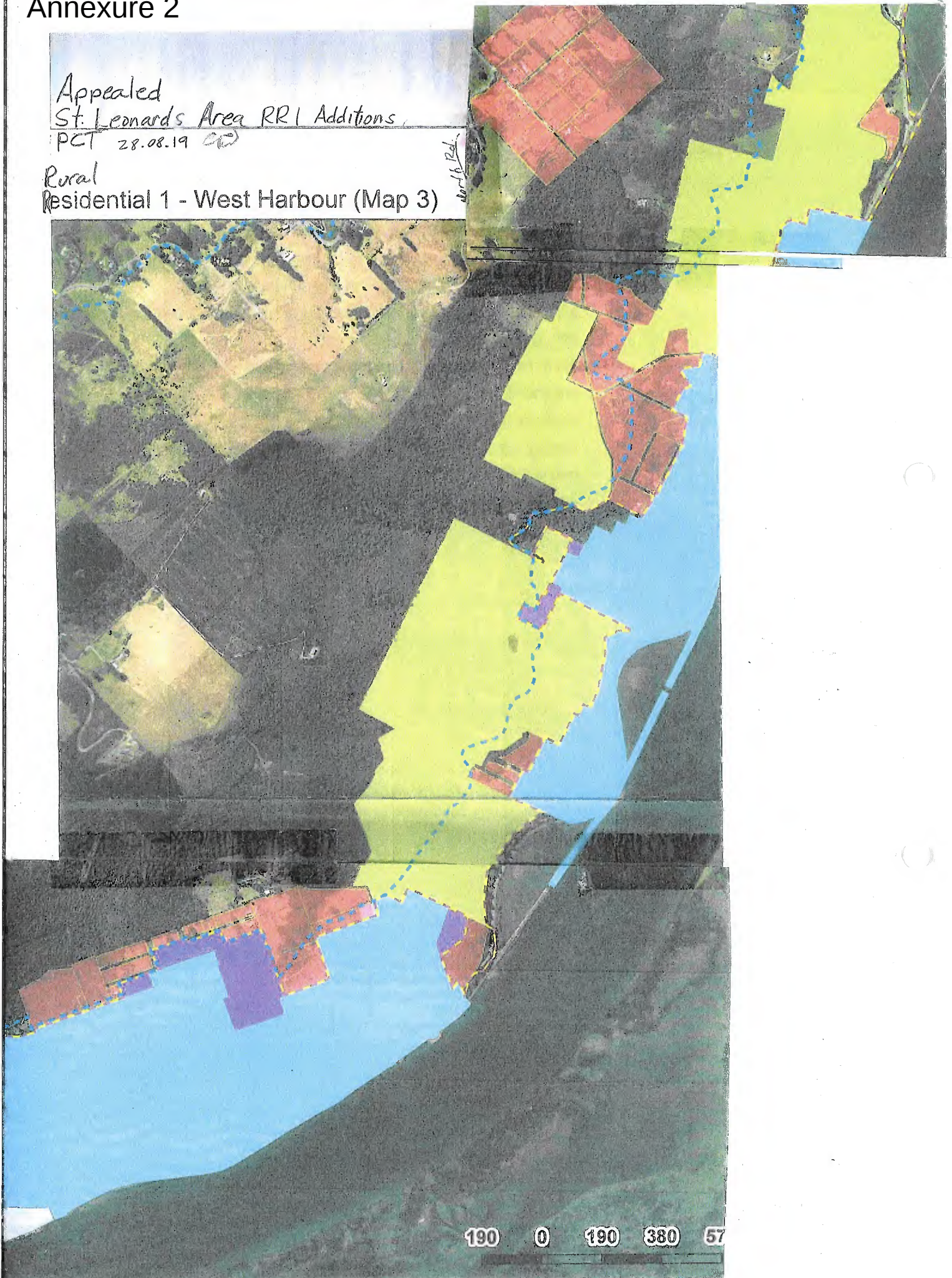
Dunedin 2GP - ONL sought by The Preservation Coalition Trust

Annexure 2

Appealed
St. Leonard's Area RRI Additions
PCT 28.08.19 C10

Rural
Residential 1 - West Harbour (Map 3)

Map 3



Rural Res 4 Sites

Rural Res 2 Sites

Rural Res 1 (operative)