

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV 2018 CHC 285

**I MUA I TE KOOTI TAIAO O AOTEAROA
ŌTAUTAHU ROHE**

IN THE MATTER of the Resource Management Act 1991 (RMA)

AND

IN THE MATTER of an appeal under section 120 of the Act

BETWEEN THE PRESERVATION COALITION TRUST

Appellant

AND DUNEDIN CITY COUNCIL

Respondent

**MEMORANDUM FOR THE PRESERVATION COALITION TRUST (PCT) ON
CONSEQUENTIAL RELIEF**

23 July 2020

Solicitor:
Richard Allen Law Associates Ltd
e: richard@richardallenlaw.co.nz

Counsel Acting:
Rob Enright
Barrister
Auckland & Wānaka
e: rob@publiclaw9.com
m: 021 276 5787

MAY IT PLEASE THE COURT

Introduction

- 1 By minute dated 14 July 2020, PCT was directed to identify consequential relief, or give reasons why relief cannot be particularised. PCT apologises for the delayed filing of this memorandum.
- 2 Consequential relief is identified at paragraph [12] of the second amended Notice of Appeal dated 18 May 2020. Particulars are identified below, in marked-up format (underlining, ~~strike-out~~, **highlighted**).

12 Vertical and horizontal integration

12.1 Issue

In light of relief sought by PCT, whether consequential amendments are required **including as follows:**

- (a) ~~Whether to amend relevant provisions in Chapter 17 (Rural Residential) to avoid adverse effects on values protected by ONL and ONF overlays; and to manage (including avoid) adverse effects on values protected by SNL overlays.~~

In the event that relief is granted for Issues [8], [9], [10], then whether to amend Chapter 17 Rules as indicated in track change (underlined/strike-out/yellow highlight):

17.3.3 Land use activity status table

Residential activities	a. RR	b. ONF/HNCC /ONL	c. SNL/NCC	d. ASBV
12. Standard residential	P	NC	P-RD	NC

17.3.4 Development activity status table

	a. RR	b. ONF/HNCC /ONL	c. SNL/NCC	d. ASBV
3. New buildings greater than 60m2 footprint on a landscape building platform	P	NC	C-RD	RD
4. New buildings or structures less than or equal to 60m2 footprint Or Additions and alterations that result in a building or structure that is less than or equal to 60m2 footprint	P	NC	P-C	P

5. New buildings or structures greater than 60m2 footprint Or additions and alterations that result in a building or structure that is greater than 60m2 footprint	P	NC	RD	RD

17.8.2 Assessment of Controlled Activities

2 New buildings or structures less than 60m2 footprint Or additions and alterations that result in a building or structure that is less than 60m2 footprint	a. Location , Size, design and appearance of buildings	Objective 10.2.5 Outstanding Natural Features (ONFs), Outstanding Natural Landscapes (ONLs) and Significant Natural Landscapes (SNLs) are protected from inappropriate development; and their values, as identified in Appendix A3 , are maintained or enhanced.

- (b) In the event that relief is granted for Issues [8] and [9], whether to amend RD¹ discretion for subdivision and buildings within RR zones outside landscape overlays to address effects on landscape values within the overlays as follows:

17.10.2 Assessment of restricted discretionary land use activities

Land Use Activities		Matters of Discretion	Guidance on the assessment of resource consents
1	All restricted discretionary land use activities in the rural residential zones that also involve development activities	a. Effects on rural residential character and visual amenity values	<i>Relevant objectives and policies:</i> i. Objective 17.2.3 ii. Any adverse effects from development on rural residential character and visual amenity will be avoided or, if avoidance is not practicable, adequately mitigated (Policy 17.2.3.3). <i>Potential circumstances that may support a consent application include:</i>

¹ Restricted discretionary (RD)

		iii. Landscaping or other forms of screening will be used to reduce the visibility of development from surrounding properties and public viewpoints. iv. Signage and entranceways are in character with the surrounding environment. b. Effects on landscape values of ONL or SNL overlay zones	iii. Landscaping or other forms of screening will be used to reduce the visibility of development from surrounding properties and public viewpoints. iv. Signage and entranceways are in character with the surrounding environment. v. Objective 10.2.5 Outstanding Natural Features (ONFs), Outstanding Natural Landscapes (ONLs) and Significant Natural Landscapes (SNLs) are protected from inappropriate development; and their values, as identified in Appendix A3, are maintained or enhanced.
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17.10.4 Assessment of restricted discretionary subdivision activities

Activity		
General Subdivision Add General subdivision on sites contiguous to, but not within, ONF, ONL or SNL overlays.	Add i. Effects on landscape values	Add Objective 10.2.5 Outstanding Natural Features (ONFs), Outstanding Natural Landscapes (ONLs) and Significant Natural Landscapes (SNLs) are protected from inappropriate development; and their values, as identified in Appendix A3, are maintained or enhanced.

- (c) Whether other consequential amendments are required in relation to Issues [8.1], [9.1] and [10.1] above.

Comment:

Consequential relief is not particularised, because it is contingent on the outcome of Issues 8.1, 9.1 and 10.1. If no primary relief is granted, then no consequential amendments will follow. Consequential relief may not be anticipated prior to merits findings by the Court. As to scope for consequential relief related to the higher order planning and statutory framework (including statutory functions, NZCPS, RPS); discussed in *Albany North Landowners v Auckland Council* [2017] NZHC 138.

12.2 2GP provisions appealed

Identified at [8.1], [9.1] and [10.1] above.

12.3 Reasons for Appeal

Consequential amendments to achieve vertical and horizontal integration; align with the relevant statutory framework, Council's statutory functions, Part 2 RMA and the regional policy framework.

12.4 Relief

Amend 2GP provisions in response to the issues identified at [12.1] above.

- 3 It is anticipated that the above track-changes would be made to the second amended Notice of Appeal. This is consistent with proposed timetable directions set out in Council's memorandum dated 22nd July 2020.

Dated this 23rd July 2020

A handwritten signature in black ink, appearing to be 'Rob Enright', written over a horizontal line.

Rob Enright
Counsel for Appellant