

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti 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

17 October 2019

Respondent's solicitors:

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**anderson
lloyd.**

May it please the Court

- 1 This report addresses the progress on this appeal. The parties have attended Court assisted mediation and a series of meetings. This report is structured as follows:
 - (a) Those matters that have been agreed. These are recorded, and the withdrawals, or partial withdrawals can be noted on the Court files.
 - (b) Topics that are not yet resolved but is hoped they can be. A further report is proposed to be provided updating progress on that.
 - (c) The five topics that have not been agreed, where the Respondent is seeking directions to progress these topics to a hearing.

Areas of agreement

- 2 Below is an outline of the issues where the Appellant and Respondent have agreed issues at mediation. These issues are not considered to require hearing time and are recorded here as agreed.

Appeal point 90, Policy 2.6.1.5 (Group 1 topic – Rural residential strategic)

- 3 Agreement is reached to amend clauses c.iii and c.iv of Policy 2.6.1.5 to delete the word “generally” in relation to ONF, ONL, ONCC and HNCC overlay zones. Changes to Policy 2.6.1.5.c are shown in **Appendix A** below (noting that this policy may be renumbered to 2.6.1.4 depending on resolution of other appeals). This agreed position is based on the landscape overlays as they are when they have been assessed to date.

Appeal point 99, Mapping of RTZ zones (Group 1 topic, Residential zoning – Broad)

- 4 Agreement that the scope of the Preservation Coalition Trust (**PCT**) appeal on RTZ zoning is limited to the RTZ zone at the Cove (as shown on attached PCT appeal map 3/5).
- 5 Agreement has been reached that this appeal point should be reallocated to Group 3 topic, Landscape/coastal mapping. This has been accepted and actioned already by the Court in the Court's Minute dated 13 September 2019.

Appeal point 342, Mapping of Large Lot and Low Density Residential zoning (Group 1 topic, Residential zoning – Broad)

- 6 Agreement that there is no scope for PCT to pursue this point. PCT hereby withdraw this part of their appeal.

Appeal point 343, Incentive scheme for amalgamation of rural sites (Group 1 topic, Rural strategic)

- 7 Agreement that there is no scope for PCT to pursue this point. PCT hereby withdraw this part of their appeal.

Appeal points not yet resolved/resolution in progress

Appeal point 91, Minimisation and sequencing of rural residential zone expansion (Group 1 topic – Rural residential strategic)

- 8 Agreement has been reached that the relief sought on this point should be via amendment to strategic policies 2.6.1.3, 2.6.1.4, 2.6.1.5 (noting that these may be rationalised to two policies 2.6.1.3 and 2.6.1.4 depending on resolution of this and other appeals).
- 9 Following the Rural Residential Strategic mediation, the Council meet with a representative of appellant Robert Francis Wyber to further discuss the drafting of the Rural Residential Strategic zoning policies. A revised version of policies 2.6.1.3 and 2.6.1.4 was circulated to relevant parties on 30 August 2019. Feedback was received from Wyber and PCT. The Council circulated this feedback along with the Council response on 12 September 2019, seeking further feedback on the combined output to other parties. Further feedback from parties has not been received to date.

Directions Sought

- 10 It is therefore considered that this topic should be capable of resolution, and a further progress report is proposed by the Council by **29 November 2019**.

Areas of Disagreement

- 11 There are five topics raised by this appeal that are outlined below. These have not been resolved and the Respondent considers a hearing on these will be required. This position is not agreed by PCT, which it has indicated it prefers to remain as part of Group 3.
- 12 The Respondent's position is that the first topic is an over-arching issue that influences the Appellant's position on the remaining four topics. This first topic is where the Appellant seeks for the Otago Peninsula and the hill slopes surrounding the harbour to be subject to an Outstanding Natural Landscape Overlay (DCC appeal points 75 and 82). This was grouped as a Topic 3 issue. The Respondent's view is that this affects the Appellant's position in relation to three Topic 1 strategic topics being:
- (a) Rural Residential 1 mapping (DCC appeal point 96).

- (b) Rural Residential 2 mapping (DCC appeal point 73).
 - (c) Hill slopes standards (DCC appeal point 71).
- 13 This also affects the topic: New Building standards (DCC appeal point 70), which was a Group 3 topic. This is related to the standards not only in the proposed Peninsula/harbour environs, but also in all the other District ONLs and ONCCs.
 - 14 These widespread zones and standards are all within the area the Appellant seeks to be covered by an enlarged Outstanding Natural Landscape overlay. This is disputed by the Appellant.
 - 15 The Respondent therefore considers these five topics are all directly inter-related, and progress on the Topic 1 strategic issues, is unlikely to be made until the Outstanding Natural Landscape overlay is determined, in combination with the Topic 1 zones, and standards referred to above. The Respondent requests that these topics are grouped and referred to a hearing.
 - 16 The Appellant disagrees stating that: mapping issues for RR1 are limited to St Leonards (within the peninsula) but RR2 extends to other parts of the City; therefore the mapping issues are not all inter-related. More generally these mapping issues are not Group 1 strategic, and therefore properly part of Group 3, allowing for mediation as part of Group 3. Hill Slope standards (appeal point 71) are zone-(not overlay) specific and part of Group 3.

Directions Sought

- 17 The following directions are proposed by the Respondent to bring these topics to a hearing:
 - (a) The following appeal points are grouped together and will progress to a hearing:
 - (i) Outstanding Natural Landscape Mapping (DCC appeal points 75 and 82).
 - (ii) Rural Residential 1 Mapping (DCC appeal point 96).
 - (iii) Rural Residential 2 Mapping (DCC appeal point 93).
 - (iv) Hill slopes standards (DCC appeal point 71).
 - (v) New building standards (DCC appeal point 70).
 - (b) The parties' landscape experts are to conference and report to the Court and parties on what they agree on, and what they disagree on, and why, by **22 November 2019**.

- (c) The Respondent is to file and serve its evidence in chief by **20 December 2019**.
 - (d) The Appellant is to file and serve its evidence in chief by **14 February 2020**.
 - (e) The 274 Parties are to file and serve their evidence in chief by **6 March 2020**.
 - (f) Rebuttal evidence is to be filed and served by **20 March 2020**.
 - (g) These topics will be allocated a hearing after 23 March 2020 (at this stage it is estimated this could take 1 week).
- 18 The following directions are proposed by the Appellant: retain Group 3 classification; or schedule a judicial teleconference to discuss appropriate directions.

Explanation of the content of these topics

- 19 Below is more detail on the subject matter of these five topics, and the current scope of the issues raised.

Appeal points 75 & 82, Significant Natural Landscape mapping (Group 3 topic, Landscape/coastal mapping)

- 20 The PCT contends that areas including and extending beyond the Flagstaff-Mt Cargill SNL and the North West Peninsula SNL should be reclassified as Outstanding Natural Landscapes.
- 21 This is a major overlay in the plan and is not agreed. This is a priority issue for the Respondent. If these appeal points are to be pursued then a hearing will be required.

Appeal point 96, Rural Residential 1 mapping (Group 1 topic, Rural residential strategic)

- 22 Informal meetings with PCT and discussions during mediation have narrowed the scope of this appeal point to Rural Residential 1 sites zoned rural in the operative Plan in the vicinity of St Leonards. The sites now under appeal are depicted in red shading in the **attached** map as provided by PCT.
- 23 The Council does not support the relief sought to remove the Rural Residential 1 zoning and apply a rural zoning. The Council notes that this appeal point may be linked to appeal point 75, to apply an ONL overlay in the wider vicinity.

Appeal point 93, Rural Residential 2 mapping (Group 1 topic, Rural residential strategic)

- 24 Informal meetings with PCT and discussions during mediation have narrowed the scope of this appeal point to those Rural Residential 2 sites indicated in a memorandum to the Court dated 26 August 2019.
- 25 The Council does not support the relief sought (as narrowed) to remove the Rural Residential 2 zoning and apply a rural zoning. The Council notes that this appeal point may be linked to appeal points 75 and 82, to apply an ONL overlay in some of the areas where the Rural Residential 2 sites exist.

Appeal point 71, Hill Slopes Rural Zone subdivision and density performance standards (Group 1 topic, Rural strategic)

- 26 Council has questioned whether the PCT appeal has sufficient scope to include the Hill Slopes Rural Zone density standard (Rule 16.5.2.1.d). Council do not agree to the relief sought under appeal point 71 for the Hill Slopes Rural Zone as results from the PCT revised position. But Council does not oppose waiver of the appeal to expressly seek this relief; as confirmed by the mediation agreement. PCT therefore seeks waiver to expressly include the density standard.
- 27 The mediation agreement on this point recorded that PCT conduct direct discussions with any party still opposed to the relief sought under appeal point 71 to try and reach resolution, and then issue a further memorandum as to the outcomes and next steps. No resolution has been reached.

Appeal point 70, New building and structure standards (Group 3 topic – Landscape/coastal provisions)

- 28 There are two aspects to this relief sought:
- (a) A new building and structure screening standard for ONF, ONL, SNL, ONCC, HNCC, NCC overlays and the Hill Slopes Rural zone. The Council does not support the relief sought but considers there may be opportunities for exploring alternative relief, such as amendments to assessment guidance in the Natural Environment section of the 2GP. PCT does not consider guidance can restrict scale; this may require performance standard rules.
 - (b) Inclusion of rules in the Natural Environment and Rural sections for all activity status types in all landscape and coastal overlays and the Hill Slope Rural Zone to avoid, remedy or mitigate adverse effects on landscape naturalness (examples provided, relating to density of residential activity including family flats, area and design of buildings and

structures). The Council considers that much of the relief sought is not within the scope of the submission of the PCT's predecessor organisation, HPPC, and the Respondent does not agree with the relief sought. PCT disagrees.

Appeal point 86, Mapping of coastal environment/coastal overlays (Group 3 topic – Landscape/coastal mapping)

- 29 Similar to the issue raised in relation to the Outstanding Natural Landscape mapping discussed above, the parties have discussed this appeal point and the Respondent considers that the Appellant may be seeking wide ranging but unspecified overlays of the coastal environment and coastal overlays.
- 30 It is unclear from the appeal the extent of these overlays that are sought. The Respondent considers that depending on the size of the overlays they perhaps should have been included in Group 1. To provide the Respondent and parties clarity on the extent of the coastal environment and coastal overlays sought in this part of the appeal directions are sought to require the Appellant to identify the extent of those overlays and the relief sought.

Directions Sought

- 31 The Respondent seeks the following directions:
- (a) By **29 November 2019** the Appellant is to file and serve on the parties to this part of the appeal a map identifying the coastal environment/coastal overlays that are sought to be added to the plan.
 - (b) The Appellant is also by **29 November 2019** to identify the relief it seeks in terms of the objectives, policies and rules to apply within that mapped area.
 - (c) Leave is reserved for further directions to be applied for once that material is circulated and considered by the other parties.

Dated this 17th day of October 2019



Michael Garbett/Rachel Brooking
Counsel for the Respondent

Rob Enright
Counsel for the Appellant (excluding appeal points 70 & 71)

Craig Werner
Authorised Representative for PCT for appeal points 70 & 71

Appendix A

Policy 2.6.1.5.c

- iii. Dunedin's outstanding and significant natural landscapes and natural features are protected (Objective 2.4.4). Achieving this includes avoiding the application of new rural residential zoning in the ONF and ONL overlay zones and generally avoiding the application of new rural residential zoning in ~~ONF, ONL and the~~ SNL Overlay Zone ~~overlay zones~~;
- iv. the natural character of the coastal environment is preserved or enhanced (Objective 2.4.5). Achieving this includes avoiding the application of new rural residential zoning in the ONCC and HNCC overlay zones and generally avoiding the application of new rural residential zoning in ~~ONCC, HNCC and the~~ NCC Overlay Zone ~~overlay zones~~;

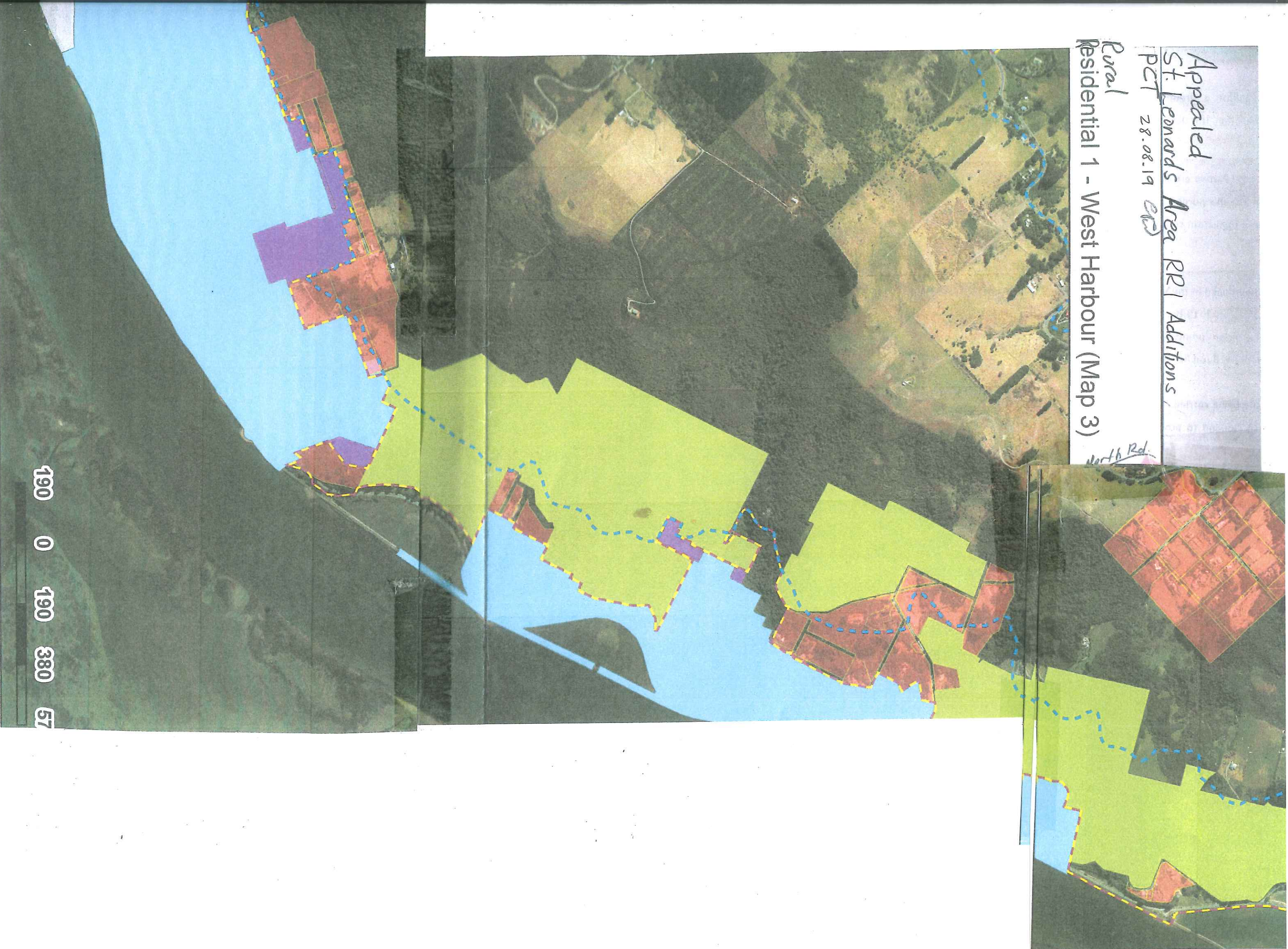
Appealed
St. Leonards Area R1 Additions

PCT 28.08.19 *ew*

Rural

Residential 1 - West Harbour (Map 3)

North Rd.



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Rural Dae 4 Citae

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Rural Rae 1 (nnerative n)