

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

Decision No. [2022] NZEnvC 102

IN THE MATTER of the Resource Management Act 1991

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

BETWEEN DOUGLAS WAYNE HALL

(ENV-2018-CHC-232)

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: 16 June 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 ('B' and 'C') are made;
- (2) that the parts of the appeal by Douglas Wayne Hall (DCC Reference numbers 37 and 339) are resolved and that the appeal is 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 Douglas Wayne Hall regarding the zoning of 636 North Road in the Proposed Second Generation Dunedin City District Plan ('2GP'). Mr Hall sought the following changes:

- (a) the rezoning of the part of 636 North Road ('Area 1') from Rural Hill Slopes to General Residential 1 ('GR1'), and amendments to the North Road Structure Plan to reflect the zoning change (DCC Reference number 37); and
- (b) the rezoning of the part of 636 North Road ('Area 2') from Rural Hill Slopes to GR1, and amendments to the North Road Structure Plan to reflect the zoning change and insert suitable provisions within the Structure Plan to ensure that any necessary supporting infrastructure upgrades are implemented in a suitable matter and timeframe (DCC Reference number 339).

[2] I have read and considered the consent memorandum of the parties dated 11 February 2022, the supporting affidavits of Richard Andrew Evans and Bede Tavener Morrissey and the further joint memorandum of 1 June 2022, all of which proposes to resolve the appeal. The parties have agreed on the following:

- (a) either rezoning the whole appeal area at 636 North Road to GR1 (if the court considers it within its jurisdiction), or rezone Area 1 to GR1 and apply a Residential Transition Zone ('RTZ') to Area 2;
- (b) amend the existing Rule 15.8.10 North Road Structure Plan Mapped Area Performance Standards to include the following for the whole appeal area:

- (i) requirement for the protection of an identified area of indigenous vegetation (Rule 15.8.10.1.b);
 - (ii) requirements relating to vehicle and pedestrian access (Rule 15.8.10.2.a);
 - (iii) requirement for a geotechnical assessment to be provided at the time of subdivision that examines the ground stability over the entire area and identifies areas suitable for residential development and, if required, suitable building platforms, to be prepared prior to subdivision (Rule 15.8.10.3.a);
 - (iv) requirement for an Integrated Transport Assessment to be provided at the time of subdivision, including details of specific matters that must be assessed in the ITA (Rule 15.8.10.3.b); and
 - (v) requirement that a proposal for amenity tree planting and public amenities be provided at the time of subdivision (Rule 15.8.10.3.c).
- (c) amend Rule 8A.5.8 Removal of high class soils to exempt earthworks undertaken in the North Road Structure Plan Mapped Area.

[3] The court will only make orders if it is satisfied that it is appropriate to do so and there is no relationship between the proposed provisions to be amended by the consent order and other appeals before the court.

[4] Mr Morrissey and Mr Evans have satisfied me that the amendments sought are appropriate and consistent with achieving the relevant objectives of the 2GP. Both have established that the proposed rezoning and amendments to the structure plan are appropriate. Moreover, I am satisfied that amendments sought will not impact on the resolution of any other proceeding.¹

¹ Affidavit of B T Morrissey, affirmed 21 April 2022; Affidavit of R A Evans, affirmed 26 April 2022.

Scope issue

[5] Parties also identified a scope issue to the court in relation to Mr Hall's original submission and appeal. While Mr Hall's original submission sought GR1 zoning for Area 2, his appeal to the court sought General Residential 1 Transitional (now 'RTZ') zoning for this area. Parties accordingly agreed on two alternative proposals to address this issue.

[6] I have concluded that the parties' proposed amendment to rezone Area 2 as GR1 is not in scope. Accordingly, I have determined that the court will make the parties' agreed order to rezone Area 1 as GR1, and Area 2 as RTZ.

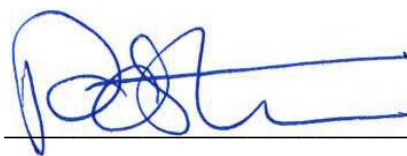
Other relevant matters

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

[8] 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.

Outcome

[9] 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.

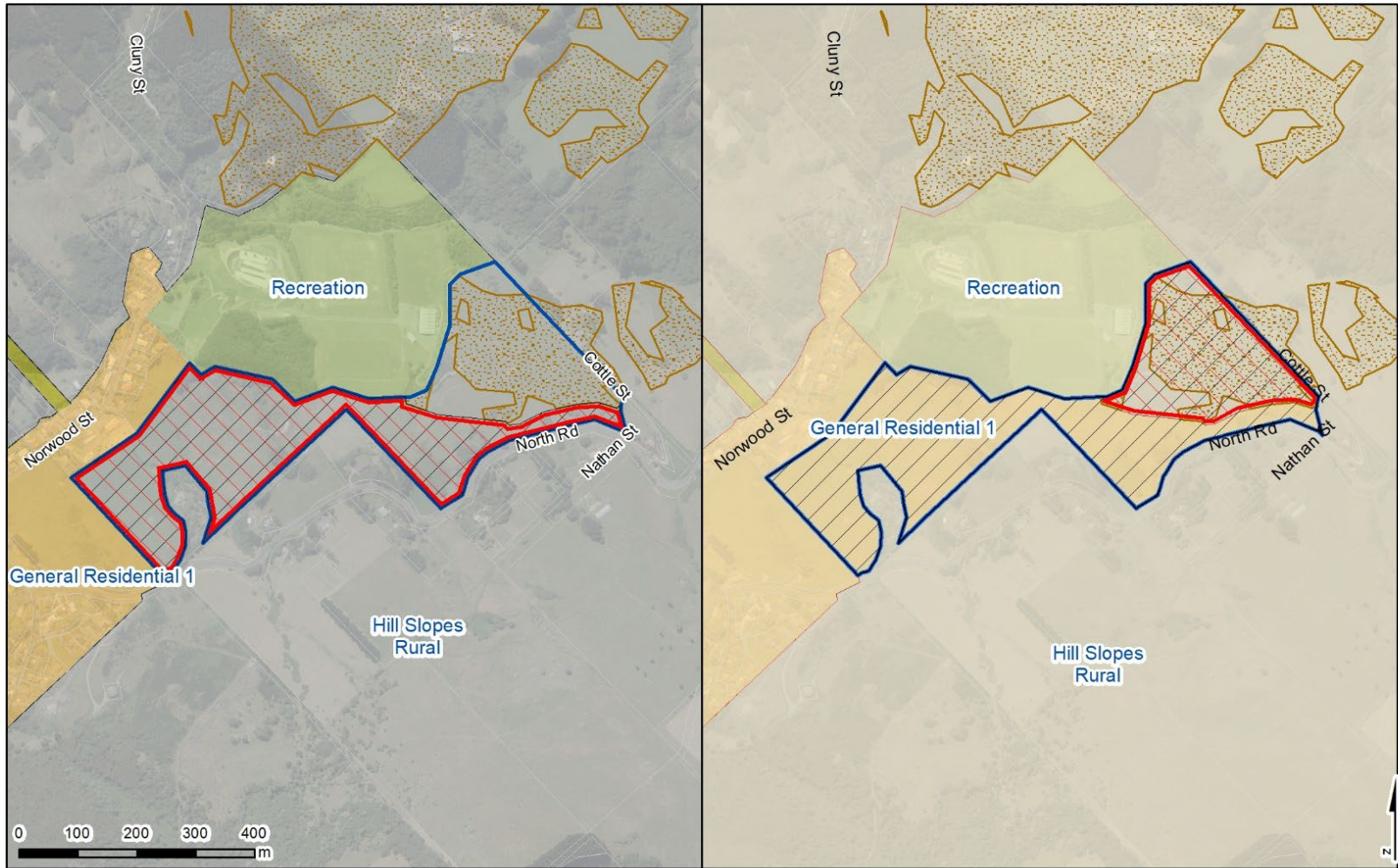



P A Steven
Environment Judge




Appendix 1 (B and C)

1. Amend the Planning map as shown below, to rezone Area 1 of 636 North Road from Rural Hill Slopes to General Residential 1 zoning, and remove the Residential Transition Overlay Zone from this land. Also, to apply a Residential Transition Zone to Area 2 of 636 North Road and extend the North Road Structure Plan Mapped Area over the whole of the land.



 Area of change

 High Class Soils

 North Road Structure Plan Mapped Area

 Transition Overlay Zones

North Road Structure Plan Mapped Area Performance Standards

2. Amend Rule 8A.5.8 as follows:

8A.5.8 Removal of high class soils

1. Earthworks must not remove topsoil or subsoil that is located within the high class soils mapped area from the site, except that this rule does not apply within:
 - a. the North Road Structure Plan Mapped Area.
 2. Activities that contravene this performance standard are restricted discretionary activities.
3. Amend Rule 15.8.10 as follows:

15.8.10 North Road Structure Plan Mapped Area Performance Standards

- ~~1. Vehicle access must be provided between Norwood Street and North Road.~~
 - ~~2. Construction of dwellings must not take place until all roading, stormwater, wastewater and water supply infrastructure is in place for that stage of the development, and connections to future stages, and adjoining sites, are provided for.~~
 - ~~3. In the case of conflict with performance standards 15.5 to 15.7, the rules in this performance standard apply.~~
 - ~~4. Activities that contravene this performance standard are non-complying activity.~~
- a. In addition to the performance standards in 15.5, 15.6 and 15.7, activities in the **North Road structure plan mapped area** must meet the area-specific performance standards below. Where a performance standard in this section specifically provides an exemption or alternative performance standard to a standard in 15.5, 15.6, or 15.7, the standard in this section supersedes that standard.

15.8.10.1 Development performance standards

- a. Timing of construction
 - i. Construction of dwellings must not take place until all roading, stormwater, wastewater and water supply infrastructure is in place for that stage of the development, and connections to future stages, and adjoining sites, are provided for.
 - ii. Activities that contravene this performance standard are non-complying activities.
- b. Vegetation clearance
 - i. Indigenous vegetation clearance must not occur in the area of indigenous vegetation marked "Restricted development area (biodiversity)" in Figure 15.8.10A.

- ii. The following types of indigenous vegetation clearance are exempt from Rule 15.8.10.1.b.i, indigenous vegetation clearance that is:
 - a. part of conservation activity involving vegetation clearance and replacement with indigenous species;
 - b. clearance for the maintenance of fences (including gates), provided:
 - i. any fence posts are located outside of the dripline of mature indigenous trees listed in Appendix 10A.3; and
 - ii. the erection of new fences does not damage:
 - 1. specimens of threatened plant species listed in Appendix 10A.1;
 - 2. important breeding, refuge, feeding or resting sites for indigenous fauna listed in Appendix 10A.2; or
 - 3. mature indigenous trees listed in Appendix 10A.3.
 - c. clearance for the maintenance (but not extension) of existing network utilities, irrigation infrastructure, tracks, drains, structures, roads, or firebreaks;
 - d. clearance that is consistent with or provided for as part of a conservation management strategy, conservation management plan, reserve management plan or covenant established under the Conservation Act 1987 or any other Act specified in the First Schedule of the Conservation Act 1987;
 - e. clearance that is required to remove material infected by unwanted organisms as declared by Ministry for Primary Industries' Chief Technical Officer, or to respond to an emergency declared by the Minister for Primary Industries under the Biosecurity Act 1993;
 - f. clearance of a pest plant listed in Appendix 10B to Section 10 of the Plan;
 - g. clearance that is necessary to maintain the flow of water free from obstruction or for natural hazard mitigation activities;
 - h. clearance of non-indigenous plant species and replanting within 3 months with indigenous or non-indigenous plant species, not on the pest plant list in Appendix 10B to Section 10 of the Plan, that will attain at least the same height and coverage as the plants that have been cleared
- iii. Activities that contravene this performance standard are non-complying activities.

15.8.10.2 Subdivision performance standards

a. Access

Subdivision activities must provide for the following:

- i. A road to connect Norwood Street and North Road.
- ii. A minimum of two roading connection points from the structure plan mapped area onto North Road. Note: additional connections may be required, subject to the results of the

Integrated Transport Assessment referred to at Rule 15.8.10.3.b.

- iii. The Norwood Street legal road corridor must be widened along the full length of the frontage of the structure plan mapped area onto Norwood Street, to a minimum of 16.0m and both sides of this section of Norwood Street must be upgraded in accordance with Table 3.1R of the Dunedin Code of Subdivision and Development.
- iv. A footpath must be constructed along the entire length of the frontage of the structure plan mapped area onto North Road (including a linkage across the frontages of 633 and 649 North Road). This footpath may be constructed in stages but must match the development of the subdivision along North Road at all times.
- v. Subdivision activities that contravene this performance standard are non-complying activities.

15.8.10.3 Information requirements

a. Natural hazards

- i. Applications for subdivision activities within the structure plan mapped area must include a geotechnical investigation report by a suitably qualified geotechnical consultant. This assessment should examine the ground stability over the whole mapped area and identify areas suitable for residential development and, if required, suitable building platforms. This assessment must be prepared and submitted to Council for approval prior to, or as part of, the resource consent application for the first stage of any subdivision.

For the sake of clarity, the standard assessment matters in Rule 11.5.2 still apply.

b. Transportation

- i. Prior to any subdivision of the structure plan mapped area, an Integrated Transport Assessment (ITA) for the whole mapped area must be prepared and submitted to Council for approval prior to, or as part of, the resource consent application for the first stage. The ITA must include, but is not limited to, the following matters (see further information on the content of ITAs in Rule 6.14.2):
 - a. The appropriate number and location of intersections onto North Road. This will also need to assess the sight distances at any new intersections to ensure compliance with Austroads Guide to Road Design Part 4A: Unsignalised and Signalised Intersections (www.austroads.com.au).
 - b. An assessment of driveway locations (existing and new), including proximity to intersections.
 - c. An assessment of streetlighting on North Road.
 - d. An assessment of the full length of Norwood Street and whether any improvements are deemed necessary to support the development for all modes of transportation, in addition to those specified in Rule 15.8.10.2.a.iii. This may

- include footpath extensions and/or installation of safe crossing points. This assessment will also need to include the intersection of North Road and Norwood Street.
- e. Consideration of internal roading design, layout, and connection points to the existing transportation network for all modes of transport (including cyclists) in accordance with the Dunedin Code of Subdivision and Development 2010.
 - f. Consideration of appropriate design measures to encourage traffic generated by the subdivision to use North Road rather than Norwood Street.
 - g. Consideration of potential linkages to Cottle Street and if these are appropriate.

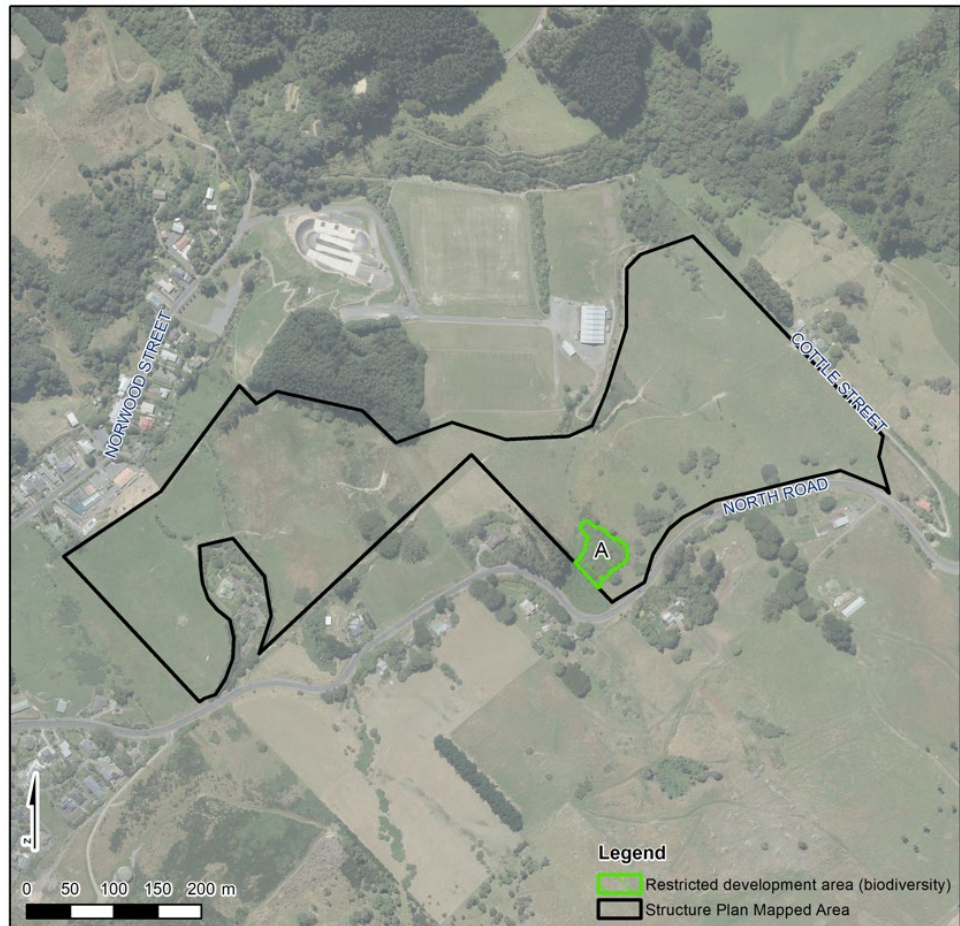
For the sake of clarity, the standard assessment matters in Rule 6.11.2 still apply.

c. Amenity tree planting and public amenities

- i. Prior to any subdivision application of the structure plan mapped area, the applicant must provide a proposal, which covers the whole mapped area, for areas of amenity tree planting (including, but not limited to, street trees) and public amenities. This proposal must be prepared and submitted to Council for approval prior to, or as part of, the resource consent application for the first stage of any subdivision.

For the sake of clarity, the standard assessment matters in Rule 15.11.4 still apply.

- 4. Delete the existing Figure 15.8.10A North Road structure plan mapped area and replace with a new figure as follows:



5. 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.

