

IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI

Decision No. [2022] NZEnvC 48

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14 of the First  
Schedule of the Act

BETWEEN GRANDVIEW 2011 LIMITED

(ENV-2018-CHC-225)

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: 29 March 2022

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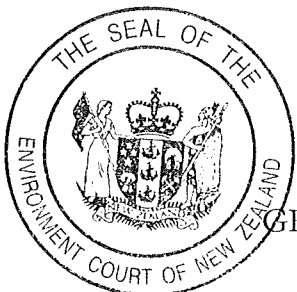
**CONSENT ORDER**

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

- (1) the appeal is allowed to the extent that Dunedin City Council is directed to amend the provisions of the proposed Dunedin City Second Generation District Plan, as set out in Appendix 1, attached to and forming part of this order;
- (2) the appeal by Grandview 2011 Limited allocated as DCC Reference

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numbers 21, 377 and 378 is resolved and 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 consent order relates to an appeal by Grandview 2011 Limited ('Grandview') against the decision of the Dunedin City Council approving the proposed Dunedin City Second Generation District Plan ('2GP'). The appeal relates to the zoning and landscape protection for land located at 231 and 235 Signal Hill Road.

[2] The consent documentation was placed on hold due to the relationship (or entanglement) of the appeal with Variation 2, as detailed by the memorandum of counsel dated 17 December 2021. The parties have now filed a memorandum dated 15 March 2022 advising the entanglement between Grandview's appeal and Variation 2 no longer exists, as the relevant submitters on Variation 2 have now withdrawn those submissions.

[3] I have read and considered the consent memorandum of the parties dated 28 September 2021 which proposes to resolve the appeal in its entirety. The agreement reached involves:

- (a) rezoning 231 and 235 Signal Hill Road from Hill Slopes Rural Zone to Rural Residential 1 Zone;
- (b) including an "Area of Significant Biodiversity Value" ('ASBV') on the 2GP planning maps, depicting a number of identified areas of significant indigenous vegetation located at 235 Signal Hill Road;
- (c) including a description of this ASBV area and its values in Appendix

A1.2 “Schedule of Areas of Significant Biodiversity Value”;

- (d) applying a new “structure plan mapped area” over 235 Signal Hill Road and the inclusion of associated performance standards, assessment guidance and policy in Section 17 Rural Residential Zones.

[4] I have also read the affidavits of Ms Macleod<sup>1</sup> and Mr Ewans<sup>2</sup> who have satisfied me that the amendments sought to resolve these appeals on this topic are appropriate.

[5] I have also considered the relationship between this appeal and that of Michael Ovens.<sup>3</sup> Counsel for the Council had taken the view that because several of the changes to the Plan in the consent memorandum for the Grandview appeal were likely to be the same as those required to resolve the Ovens’ appeal, that this meant they needed to be lodged, and possibly considered, contemporaneously.<sup>4</sup> The Council has reconsidered this position and considers the relief sought by this order is site-specific to this appeal only, and will not be linked in any way to the Ovens’ appeal.<sup>5</sup> I accept counsel’s explanation.

#### **Other relevant matters**

[6] Otago Regional Council, Candler Sheffield Rogers, Christine Keller and Fieke Neuman have given notice of an intention to become a party to this appeal under s274 of the Resource Management Act 1991 (‘the RMA’ or ‘the Act’) and have signed the memorandum setting out the relief sought.

[7] The parties agree that costs should lie where they fall and accordingly no order for costs is sought.

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<sup>1</sup> Affidavit of J E Mcleod, affirmed 9 December 2021.

<sup>2</sup> Affidavit of R A Ewans, affirmed 9 December 2021.

<sup>3</sup> ENV-2018-CHC-292, relating to the zoning of 28 Patmos Avenue.

<sup>4</sup> Memorandum of counsel dated 17 December 2021 at [16]-[17].

<sup>5</sup> Memorandum of counsel dated 15 March 2022 at [4]-[8].

[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.

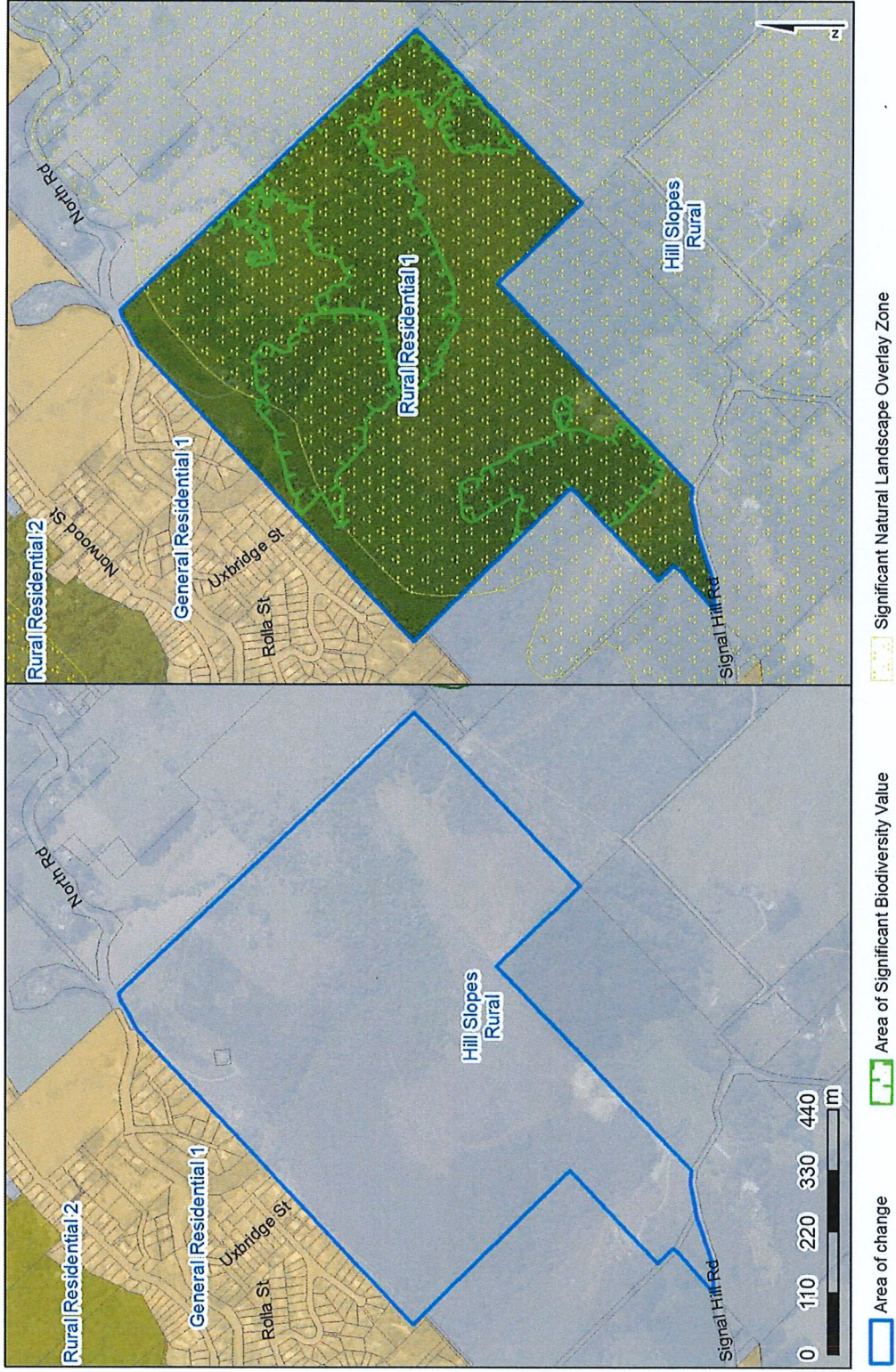


**P A Steven**  
**Environment Judge**



# Appendix 1

- 1 Amend the Planning Map for 231 and 235 Signal Hill Road as follows:



- 2 Add new Policy 17.2.3.X:

Only allow activities in a **structure plan mapped area** where they are designed to:

- a. maintain or enhance any special values of the site as listed in Appendix A12; and
  - b. ensure any other design outcomes listed in Appendix A12 are achieved.
- 3 Amend 17.3.3 Land Use Activity Status Table to add to 17.3.3.1 Performance standards that apply to all land use activities as follows:  
  
x. **Structure plan mapped area** performance standards (where relevant)
  - 4 Amend 17.3.4 Development Activity Status Table to add to 17.3.4.1 Performance standards that apply to all development activities as follows  
  
x. **Structure plan mapped area** performance standards (where relevant)
  - 5 Amend 17.3.5 Subdivision Activity Status Table to add a new performance standard to 17.3.5.2 "All other general subdivision in the Rural Residential 1 Zone" as follows:  
  
x. **Structure plan mapped area** performance standards (where relevant)
  - 6 Add new 'structure plan mapped area' performance standards in Section 17 Rural Residential Zones as shown below:

## **Rule 17.Y Structure Plan Mapped Area Performance Standards**

### **17.Y.1**

- a. In addition to the performance standards in 17.5, 17.6 and 17.7 and any relevant overlay zones or mapped areas, activities in a **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 17.5, 17.6 or 17.7, the standard in this section supersedes that standard.

## **17.Y.X Signal Hill Road Structure Plan Mapped Area Performance Standards**

### **17.Y.X.1 Land use performance standards**

- a. Density

- i. Standard residential activities must not exceed a density of one residential activity per site. (Note that Rule 17.Y.X.3 limits the maximum number of sites in the **structure plan mapped area**.)
- ii. One family flat is allowed per site in association with a standard residential activity that meets this performance standard for density.
- iii. Standard residential activity that contravenes this performance standard is a non-complying activity.
- iv. For the sake of clarity, this performance standard supersedes Rule 17.5.2.

### **17.Y.X.2 Development performance standards**

- a. Buildings and structures associated with any residential activity, except for the residential activity in existence at 235 Signal Hill Road on 19 February 2021, and the residential activity consented by LUC-2020-159, must be located outside the Flagstaff-Mt Cargill Significant Natural Landscape Overlay Zone.
- b. Development activities that do not meet this standard are non-complying activities.

### **17.Y.X.3 Subdivision performance standards**

- a. Access
  - i. Subdivision activities must provide suitably designed and formed public walking access through the mapped area, to connect:
    1. North Road (the point marked '1' on Figure 17.Y.X) with the paper road at Thirstane Street (the point marked '2' on Figure 17.Y.X); and
    2. the new accessway within the subdivision (the point marked '3' on 17.Y.X) with the eastern corner of the mapped area (the point marked '4' on Figure 17.Y.X).
  - ii. The required timing of the creation of these accessways is as follows:
    1. where the subdivision is not staged:
      1. legal access for pedestrians to fulfil clause i above must be created, and access from point 1 to point 2 must be formed, prior to the issuing of the section 224c certificate for the subdivision;
      2. access from point 3 to point 4 must be formed within five years of the issuing of the section 224c certificate for the subdivision.
    2. where the subdivision is staged (either via multiple resource consents or via multiple stages of one resource consent):

1. legal access for pedestrians to fulfil clause i must be created prior to the issuing of the section 224c certificate for the first stage that creates any residential site(s) located wholly or partly outside the SNL;
  2. access from point 1 to point 2 must be formed in accordance with staging; and
  3. access from point 3 to point 4 must be formed within five years of the issuing of the section 224c certificate for the first stage that creates any residential site(s) located wholly or partly outside the SNL.
- iii. Subdivision activities must ensure that the accessway corridor that provides vehicle and pedestrian access to dwellings located along the north-western boundary of the site, outside the SNL, is: accessible to the public; and designed with a carriageway formation that is consistent with the standard required for a Legal Road.
  - iv. Subdivision activities must provide legal access for pedestrians between 534 North Road and the accessway described in clause iii above. Where the subdivision is not staged, this legal access must be created prior to the issuing of the section 224c certificate for the subdivision. Where the subdivision is staged, it must be created prior to the issuing of the section 224c certificate for the first stage that creates any site(s) located wholly or partly outside the SNL.
  - v. There is no requirement to form the access for pedestrians described at clause iv.
  - vi. Subdivision activities that do not meet this standard are non-complying activities.
  - vii. For the sake of clarity, this standard is additional to Rule 17.7.1.
- b. Minimum site size
- i. There is no minimum site size for new resultant sites, but the average area of the resultant sites must be no less than 2ha.
  - ii. Resultant sites created and used solely for the following purposes are exempt from the minimum site size standard:
    1. Scheduled ASBV;
    2. any covenant created to protect the Proposed Vegetation Protection Area;
    3. reserve;
    4. access;
    5. utility; or
    6. road.
  - iii. For the sake of clarity, this standard supersedes Rule 17.7.5 Minimum Site Size.
  - iv. Subdivision activities that do not meet this standard are non-complying activities.



**17.Y.X.4 Assessment guidance**

- a. In addition to the assessment guidance for subdivision provided in Rule 17.10.4, Rule 6.11.2.7 and Rule 6.11.2.8, the following guidance is provided for the assessment of subdivision activities in the Signal Hill Road Structure Plan Mapped Area.

General assessment guidance:

- b. To appropriately manage effects on the safety and efficiency of the transport network, Council will generally prefer that the accessway described at Rule 17.Y.X.3.a.iii is vested in Council as road, unless an assessment of the physical constraints of the site demonstrates that it is not practicable for the full length of the accessway to be of sufficient width to vest in Council as road.

Conditions that may be imposed include:

- c. A bond to ensure formation of the public walking access described at Rule 17.Y.X.3.a.i.2, in accordance with the timeframe specified at Rule 17.Y.X.3.a.ii.

**Figure 17.Y.X Signal Hill Road Structure Plan Mapped Area**



7 Add assessment rules as follows:

**Amend** Rule 17.12.6 Assessment of non-complying performance standard contraventions, as follows:

Y.	<b><u>Structure plan mapped area performance standards</u></b>	<p><u>Relevant objectives and policies (priority considerations):</u></p> <p>a. <u>Strategic Directions – Objective 2.4.1, Policy 2.4.1.8</u></p> <p>b. <u>Objective 17.2.3</u></p> <p>c. <u>Activities in a <b>structure plan mapped area</b> are designed to</u></p> <p>i. <u>maintain or enhance any special values of the site listed in Appendix A12; and</u></p> <p>ii. <u>ensure any other design outcomes listed in Appendix A12 are achieved (Policy 17.2.3.X).</u></p>
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8 Amend appendix A1.2 to add new ASBV as follows:

<b>Site number</b>	<b>Name (Location)</b>	<b>Area (ha)</b>	<b>Description and values</b>	<b>Other protection status</b>
C1XX	<u>Normanby (Signal Hill) slopes</u>	21.6	<u>Important remnant of a much-reduced podocarp-broadleaved dry forest type dominated by kowhai, narrow-leaved lacebark, lowland ribbonwood, matai and totara. Includes areas of regenerating forest dominated by kanuka. Supports 60 indigenous plant species including 1</u>	<u>Protective covenant on land title</u>

			<u>nationally at-risk and 9 locally important plant species.</u>	
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9 Insert new Appendix A12 structure plan mapped area values:

**A12. Structure Plan Mapped Area Values**

**A12.Y Signal Hill Road**

**A12.Y.1 Description of area**

The Signal Hill Road structure plan mapped area covers an area of just over 56 hectares on the south-eastern slopes of North East Valley between the suburbs of Normanby, Mt Mera and North East Valley, and the peak of Signal Hill.

The area is sloping and steep in places and extends between approximately 130 and 390m above sea level. It forms part of a sequence of folded gullies and spurs uphill from the northern end of North East Valley, and the upper reaches of the area contain a gently rounded ridgetop that adjoins Signal Hill. The peak of Signal Hill is located immediately to the southeast.

This mapped area contains several areas of indigenous vegetation, which together are scheduled as an Area of Significant Biodiversity Value. See Appendix A1.2 (Site C1XX). The majority of the area is also overlain by the Flagstaff-Signal Hill Significant Natural Landscape Overlay Zone. See Appendix A3.3.2.

The location of the area creates an opportunity to extend and enhance the existing network of public walking tracks in the vicinity of Signal Hill, connecting them into Northeast Valley, which in turn will connect walking access to Mt Cargill.

**A12.Y.2 Values to be maintained or enhanced**

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

- a. 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.
  - i. Conditions on subdivision consent will:

1. require a detailed survey to be undertaken of any area of indigenous vegetation to be cleared, to identify whether any species in Appendix 10A Protected Indigenous Species are present (note that removal of these species will require land use consent, and as a condition of this consent, Council would require appropriate revegetation to be undertaken within the mapped area);
2. ensure that subdivision layout results in the area shown as "Proposed Vegetation Protection Area" in Figure 17.Y.X being retained within as few separate resultant sites as practicable, taking into account the area of land per site needed to self-service for wastewater;
3. ensure that subdivision layout results in the two areas of scheduled ASBV that are located outside the "Proposed Vegetation Protection Area" being retained within up to three resultant sites;
4. require protection on an ongoing basis of the area of vegetation marked as "proposed vegetation protection area" on Figure 17.Y.X; and
5. require establishment of a stock proof fence around this area.

- b. The landscape values of the mapped area, which include the relevant values of the Significant Natural Landscape (SNL) set out in Appendix A3.3.2.

### **A12.Y.3 Other design outcomes to be achieved**

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

- a. ensure that safe pedestrian access is provided from North Road to Thirlstane Street; and
  - b. provide for a public walking track that will connect North Road to the existing tracks on Signal Hill.
- 10 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.

