

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2023] NZEnvC 65

IN THE MATTER

of the Resource Management Act
1991

AND

appeals under clause 14(1) of the
First Schedule of the Act

BETWEEN

STEPHEN GREGORY
JOHNSTON

(ENV-2018-CHC-295)

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: 18 April 2023

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 to the extent that Dunedin City Council is
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; and



STEPHEN GREGORY JOHNSTON v DUNEDIN CITY COUNCIL

(2) the appeal by Stephen Gregory Johnston (DCC Reference number 364) is otherwise 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 Stephen Johnston on the provisions of the proposed Second Generation Dunedin City District Plan ('2GP') regarding the rezoning of lands at 33 Ōtākou Golf Course Road, Harington Point (DCC Reference number 364).

[2] The appeals sought to rezone part of 33 Ōtākou Golf Course Rd (Pt Akapatiki A Block) from Peninsula Coast Rural Zone to Rural Residential 1 Zone.

[3] I have read and considered the consent memorandum of the parties dated 28 March 2023 which proposes to resolve the appeal.

[4] I have also read and considered the affidavit by K James dated 12 April 2023, who has satisfied me that the amendments proposed will achieve the objectives of the 2GP, and that granting the relief sought will not impact on the resolution of any other proceeding.¹

[5] 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 Resource Management Act 1991 ('RMA')

¹ Affidavit of K James affirmed 12 April 2023 at [69] and [73].

or ‘the Act’), including Part 2.

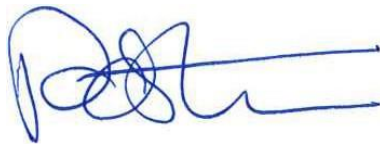
Other relevant matters

[6] No one has given notice of an intention to become a party under s274 of the Act.

[7] 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

[8] 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 2GP planning map to:
 - a) Change the zoning of part 33 Ōtākou Golf Course Road (shown as 'Area of change in Figure 1 below');
 - b) Apply a structure plan mapped area over part 33 Ōtākou Golf Course Road (shown as 'Structure Plan Mapped Area' in Figure 1 below); and
 - c) Show 10 separate areas of indigenous vegetation, which collectively make up a new Area of Significant Biodiversity Value (ASBV), as shown in the structure plan diagram on page 10 below (Figure 17.Y.YYA Ōtākou Golf Course Road structure plan).

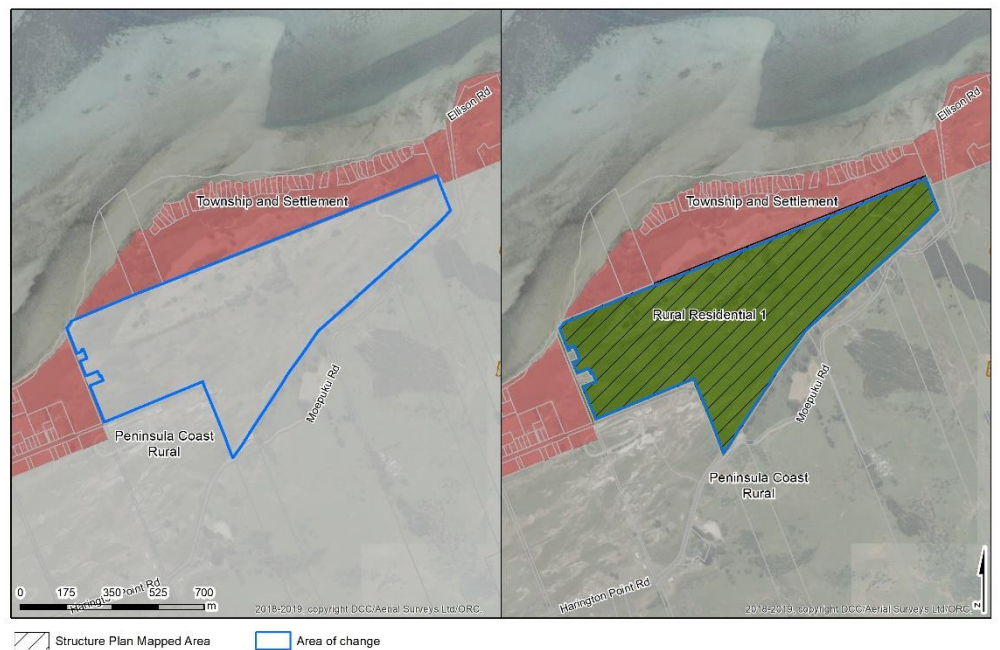


Figure 1: Proposed change of zoning for part 33 Ōtākou Golf Course Road.

- 2 Insert new structure plan mapped area performance standards in 2GP Section 17:

Rule 17.Y Structure Plan Mapped Area Performance Standards

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17.Y.YY Ōtākou Golf Course Road Structure Plan Mapped Area Rules

17.Y.YY.1 Earthworks performance standards

a. Small Scale Thresholds

i. Earthworks not listed in Rule 8A.5.1.1 must not exceed the earthworks – small scale thresholds provided for earthworks in NCC overlays in Rule 8A.5.1.3, Rule 8A.5.1.4 or Rule 8A.5.1.5 to be considered earthworks – small scale (note that earthworks in an ASBV or within 5m of a water body or MHWS must not exceed the earthworks – small scale thresholds provided for earthworks in these areas).

ii. Earthworks that exceed these thresholds are treated as earthworks – large scale.

Note 17.Y.Y.1A Other relevant District Plan provisions

1. Earthworks – large scale must comply with the setback from coast and water bodies performance standard (Rule 10.3.3).

17.Y.YY.2 Land use performance standards

a. Density

i. Standard residential activities must not exceed a density of 12 standard residential activities within the whole **structure plan mapped area** (note that Rule 17.Y.YY.4.b limits the maximum number of sites in the **structure plan mapped area**).

ii. Activities that contravene this performance standard are non-complying activities.

iii. For the sake of clarity, this performance standard applies in addition to Rule 17.5.2.

17.Y.YY.3 Development performance standards

a. Maximum height

i. New buildings, new structures, and additions and alterations must not exceed a maximum height above ground level of 5.5m.

ii. Activities that contravene this performance standard are restricted discretionary activities.

iii. For the sake of clarity, this performance standard supersedes Rule 17.6.5.

b. Reflectivity

i. New buildings, new structures (except fences), and additions and alterations, must have exterior surfaces, including roofs, that have a light reflectance value (LRV) of 30% or less, except that this rule does not apply to:

1. natural wood finishes;
2. glass;
3. clear plastic;
4. soffits; or
5. flues.

ii. For the purposes of this standard, exterior surface materials whose LRV changes due to weathering (e.g. stone) the LRV will be measured based on an 'as weathered' condition.

iii. Activities that contravene this performance standard are restricted discretionary activities.

c. Area of buildings and structures

i. New buildings and structures up to 60m² footprint are permitted activities.

ii. New buildings and structures that are no more than 300m² footprint are controlled activities.

iii. New buildings and structures that contravene this performance standard (are more than 300m² footprint) are non-complying activities.

d. Access

i. Site development activities must provide suitably designed and formed public walking access through the area marked 'Development Area' on Figure 17.Y.YYA, to connect Ōtākou Golf Course Road with Harwood Street and the coast, in general alignment with the route marked as 'Indicative Walking Track' in blue on Figure 17.Y.YYA, unless this has already been provided.

ii. The public accessway must provide for public access in perpetuity.

ii. Site development activities that contravene this performance standard are non-complying activities.

iii. For the sake of clarity, this performance standard is additional to Rule 6.6.

17.Y.YY.4 Subdivision performance standards

a. Access

i. Subdivision activities must provide suitably designed and formed public walking access through the area marked 'Development Area' on Figure 17.Y.YYA, to connect Ōtākou Golf Course Road with Harwood Street and the coast, in general alignment with the route marked as 'Indicative Walking Track' in blue on Figure 17.Y.YYA, unless this has already been provided.

ii. Legal access to fulfil clause i. above must be created, and accessways must be formed, prior to the issuing of the section 224c certificate for the subdivision.

iii. Subdivision activities that do not meet this standard are non-complying activities.

iv. For the sake of clarity, this performance standard is additional to Rule 6.8.1.

b. Maximum number of sites

i. Subdivision activities must not result in more than 12 sites within the area marked 'Development Area' on Figure 17.Y.YYA, plus an additional 'balance lot' provided that the use of the 'balance lot' is restricted through an appropriate legal instrument to only rural or community activities.

ii. Resultant sites created and used solely for the following purposes are exempt from this standard:

1. scheduled ASBV, QEII covenant and/or any covenant created to protect biodiversity restoration areas;

2. reserve;

3. access;

4. network utilities; or

5. road.

iii. Activities that contravene this performance standard are non-complying activities.

iv. For the sake of clarity, this standard applies in addition to Rule 17.7.5 (Minimum Site Size).

c. Shape

i. Each resultant site must provide for a building platform within the area marked 'Development Area' (outside of ASBVs) on Figure 17.Y.YYA

ii. Resultant sites created and used solely for the following purposes are exempt from this standard:

1. scheduled ASBV, QEII covenant and/or any covenant created to protect biodiversity restoration areas;

2. reserve;

3. access;

4. network utilities;

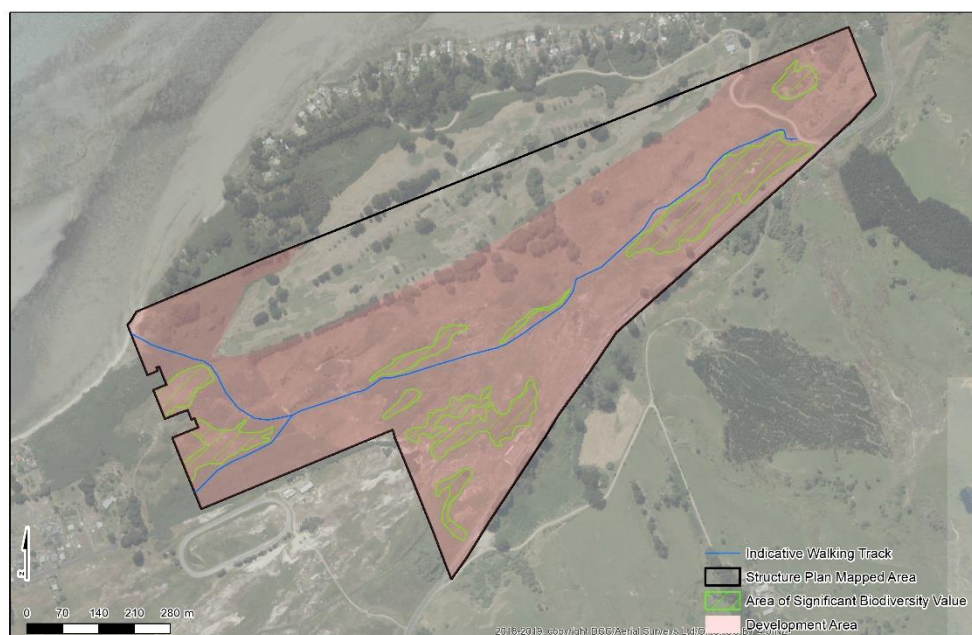
5. road; or

6. a single balance lot that may only be used for rural activities and community activities.

iii. Subdivision activities that contravene this performance standard are non-complying activities.

iv. For the sake of clarity, this performance standard applies in addition to Rule 17.7.6.

Figure 17.Y.YYA: Ōtākou Golf Course Road structure plan



Note 17.Y.YY.4A - Other requirements outside of the District Plan

1. Minimum floor levels are required by the New Zealand Building Code to safeguard people from injury or illness and other property from damage caused by surface water. These are implemented through the building consent process. Surface water is defined in the Building Code as "all naturally occurring water, other than sub-surface water, which results from rainfall on the site or water flowing onto the site, including that flowing from a drain, stream, river, lake or sea" (Schedule 1, Building Regulations 1992).

2. The discharge of human sewage through on-site wastewater treatment systems is managed by rules in the Regional Plan: Water for Otago. Resource consent may be required from the Otago Regional Council for new systems.

17.Y.YY.5 Additional matter of discretion and assessment guidance for earthworks – large scale

a In addition to the assessment guidance for earthworks – large scale provided in Rule 8A.7, the following guidance is provided for the assessment of earthworks – large scale in the **Ōtākou Structure Plan Mapped Area.**

b Matter of discretion

i. Effects on special values and other design outcomes to be achieved.

c Guidance on the assessment of resource consents

Relevant objectives and policies:

i. Objective 17.2.3.

ii. Activities in the **structure plan mapped area** are designed to:

1. maintain or enhance any special values of the site listed in Appendix A12; and

2. ensure any other design outcomes listed in Appendix A12. are achieved (Policy 17.2.3.X).

General assessment guidance:

iii. See relevant guidance in Appendix A12, and, in relation to biodiversity values, the special information requirements in 17.Y.YY.9.c.

17.Y.YY.6 Assessment of controlled activities

a The following guidance is provided for new buildings and structures greater than 60m² footprint in the **Ōtākou Structure Plan Mapped Area.**

b Matter of control

i. Size, location and appearance of buildings and structures.

c Guidance on the assessment of resource consents

Relevant objectives and policies:

i. Objective 17.2.3.

ii. Activities in the **structure plan mapped area** are designed to:

1. maintain or enhance any special values of the site listed in Appendix A12; and

2. ensure any other design outcomes listed in Appendix A12 are achieved (Policy 17.2.3.X).

General assessment guidance:

iii. See relevant guidance in Appendix A12, and, in relation to biodiversity values, the special information requirements in 17.Y.YY.9.c.

Conditions that may be imposed include:

iv. Restrictions on the location and size of buildings and structures.

v. Requirements for landscaping and other forms of screening of buildings and structures.

17.Y.YY.7 Additional matter of discretion and assessment guidance for development performance standard contraventions

a. In addition to the assessment guidance for development performance standard contraventions provided in Rule 17.9.4, the following guidance is provided for the assessment of contraventions of the maximum height and reflectivity performance standards in Rule 17.Y.YY.2.

b. Matter of discretion

i. Effects on special values and other design outcomes to be achieved.

c. Guidance on the assessment of resource consents

Relevant objectives and policies:

i. Objective 17.2.3.

ii. Activities in the **structure plan mapped area** are designed to:

1. maintain or enhance any special values of the site listed in Appendix A12 and

2. ensure any other design outcomes listed in Appendix A12 are achieved (Policy 17.2.3.X).

General assessment guidance:

iii. See relevant guidance in Appendix A12.

17.Y.YY.8 Additional matters of discretion and assessment guidance for subdivision and land use consents

- a. In addition to the matters of discretion and assessment guidance for subdivision consents provided in rules 17.10.4 and 9.6.2.Z, the following guidance is provided for the assessment of subdivision activities in the **Ōtākou Golf Course Road structure plan mapped area**. This guidance also applies to applications for land use consent for any discretionary or non-complying activities.
- b. Matters of discretion
 - i. Effects of wastewater from future development.
 - ii. Effects on special values and other design outcomes to be achieved.
- c. Guidance on the assessment of resource consents

Relevant objectives and policies (priority considerations):

- i. Strategic Directions: Objective 2.4.1, Policy 2.4.1.8.
- ii. Objective 17.2.3.
- iii. Activities in the **structure plan mapped area** are designed to:
 - 1. maintain or enhance any special values of the site listed in Appendix A12 and
 - 2. ensure any other design outcomes listed in Appendix A12 are achieved (Policy 17.2.3.X).

General assessment guidance:

- iv. In addition to the matters covered by Rule 9.6.2.Z, Council will consider as part of the assessment of any consent application for subdivision or for any activity requiring wastewater disposal:
 - 1. the effectiveness of proposed wastewater management on any sites to be used for residential development or for any activities that require wastewater disposal. This includes, but is not limited to, how the subdivision layout or activity provides for appropriate areas to be used for effluent dispersal that will ensure effluent dispersal does not create adverse effects on the amenity or health and safety of neighbours, or adverse environmental effects on water bodies and the coastal environment.

and is able to achieve the objectives and policies of this Plan as well as any relevant regional or national plans and policies. Council may identify the Otago Regional Council as an affected party in relation to this matter.

v. See relevant guidance in Appendix A12 and the special information requirements in 17.Y.YY.9.a.

Conditions that may be imposed include:

iv. The locations of effluent dispersal areas.

v. A legal instrument that requires all wastewater treatment systems (including dispersal fields) meet the following standards:

1. wastewater treatment to a minimum of secondary standard before discharge;
2. design and location of wastewater discharge that ensures there will be no off-site surface discharge or runoff;
3. design and location of wastewater systems that ensures ready access for system testing;
4. the wastewater system is designed and installed by suitably qualified persons/entities; and
5. requirements for owners of the wastewater treatment system to comply with maintenance and operational requirements set by the manufacturer or designer.

17.Y.YY.9 Special information requirements

a. Wastewater management

i. Applications for land use activities which require wastewater disposal or subdivision must include a proposal for on-site wastewater management prepared by a chartered professional engineer or other suitably qualified person with suitable experience in wastewater system design. The proposal must include:

1. an up to date assessment of the predicted impact of sea level rise on the site, using the NZSearise website: <https://www.searise.nz> (4739 SSP5-8.5 Projection to 2150 including Vertical Land

Movement (VLM) values), or any future updated source approved by Council;

2. the results of soil permeability testing; and

3. demonstrate one or more options for effective on-site wastewater management for all sites to be used for residential activity or for any activities which require wastewater disposal.

ii. The proposal must include suggestions for conditions that will ensure future development will effectively manage wastewater in a way that does not create adverse effects on the amenity or health and safety of neighbours, or adverse environmental effects on the coastal environment or water bodies, and is able to achieve the objectives and policies of this Plan as well as any relevant regional or national plans and policies.

b. Stormwater management

i. Applications for subdivision or for any activities which require stormwater disposal must comply with Rule 9.9.X.7 and include:

1. an up to date assessment of the predicted impact of sea level rise, using the NZSearise website: <https://www.searise.nz> (4739 SSP5-8.5 Projection to 2150 including Vertical Land Movement (VLM) values), or any future updated source approved by Council; and

2. the results of soil permeability testing.

ii. The proposal must include suggestions for conditions that will ensure future development will effectively manage stormwater in a way that does not create adverse effects on the amenity or health and safety of neighbours, or adverse environmental effects on the coastal environment or water bodies, and is able to achieve the objectives and policies of this Plan as well as any relevant regional plans and policies.

c. Biodiversity restoration

i. Applications for earthworks – large scale, land use, site development or subdivision activities must include a proposed biodiversity restoration plan for the **structure plan mapped area**, prepared by a suitably qualified or

experienced ecologist, unless this plan has been provided and accepted through an earlier consent application. The restoration plan should include the following:

1. an outline of the objectives of the restoration plan;
2. a description of the site, including existing biodiversity values (both flora and fauna);
3. proposed restoration areas that will enhance or restore biodiversity values, including a description of restoration that will be undertaken of the existing golf course area, should this area no longer be used as a golf course;
4. an assessment of how biodiversity restoration will contribute to the maintenance and enhancement of the biodiversity values of the ASBV areas within the **structure plan mapped area** and enhance ecological connectivity in the surrounding area;
5. a planting plan that includes a list of ecologically appropriate species to be planted within the whole **structure plan mapped area**, including for any mitigation planting established to screen built development;
6. a description of site preparation, and the location, species density and staging of planting; and
7. a description of measures to be used to protect, monitor and maintain plantings and habitats.

4 Insert new Area of Significant Biodiversity Value in Appendix A1.2 as follows:

<u>C1YY</u>	<u>Ōtākou Golf Course Road</u>	<u>6.58 ha</u>	<u>Dune slack wetland vegetation communities including rushes, sedges and turf plants. Indigenous plants include rautahi, pukio (sedge grasses), wī (rush) and herbs such as silverweed, native <i>Lobelia</i> and water milfoil species as well as a nationally at risk species (<i>Centrolepis minima</i>). The presence of</u>	<u>N/A</u>
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			<p><u>aquatic plants such as red pondweed and water fern in areas with no standing water indicates the presence of ephemeral wetland habitat. Important habitat values for birds.</u></p>	
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5 Insert new Appendix A12 structure plan mapped area values:

A12.A Ōtākou Golf Course Road

A12.A.1 Description of area

The **Ōtākou Golf Course Road structure plan mapped area** covers an area of approximately 60ha on the harbour side of the Otago Peninsula at Harington Point. The **structure plan mapped area** lies between township and settlement zoned residential sites on the coastal edge and Harington Point Road. The Ōtākou golf course occupies the northern part of the mapped area. The site lies largely within the Ōtākou Native Reserve **wāhi tūpuna mapped area** (see Appendix A4.34) and is adjacent to the Ōtākou Harbour **wāhi tūpuna mapped area** (see Appendix A4.23). The western corner of the mapped area forms part of an archaeological site (Occupation site, Harwood - A008) in the Schedule of Protected Heritage Items and Sites (Appendix A1.1). The wider area is also subject to an **archaeological alert layer mapped area**, meaning that there is a strong likelihood of it containing archaeological remains.

The area is low-lying and includes stable duneland and naturally uncommon dune slack wetland ecosystems, which provide habitat for water birds. The mapped area contains 10 individual areas of significant indigenous wetland vegetation, ranging in size from 0.11-2.46ha, which are scheduled as an Area of Significant Biodiversity Value (ASBV), see Appendix A1.2 (C1YY).

A12.A.2 Values to be maintained or enhanced

Earthworks, land use, development and subdivision in the **Ōtākou Golf Course Road structure plan mapped area** must maintain or enhance the following values:

1. 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.
 - a. Conditions of consent will:
 - i. require the implementation of an approved biodiversity restoration plan, referred to at Rule 17.Y.YY.9.c above; and

- ii. require protection in perpetuity of the significant indigenous vegetation and significant habitats of indigenous fauna in the land overlain by scheduled ASBV, and the areas of planting identified in the biodiversity restoration plan.
2. The natural character of the coastal environment associated with the existing duneland ecosystems, and the character and amenity of the semi-rural setting.
3. The relationship between Manawhenua and wāhi tūpuna and the cultural values associated with wāhi tūpuna, which are set out in appendices A4.34 and A4.23.

A12.A.3 Other design outcomes to be achieved

Land use, development and subdivision in the Ōtākou Golf Course Road structure plan mapped area must:

1. provide for a safe public walking track that connects Harington Point Road to Harwood Street and the shoreline of Otago Harbour; and
 2. ensure safe and effective on-site wastewater management that does not create adverse effects on the amenity or health and safety of neighbours, or adverse environmental effects on the coastal environment or water bodies.
6. 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.

