

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

Decision No. [2022] NZEnvC 155

IN THE MATTER of the Resource Management Act 1991

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

BETWEEN MICHAEL OVENS

(ENV-2018-CHC-292)

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: 17 August 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 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
- (2) the appeal by Michael Ovens (DCC Reference numbers 73, 367 and



380) is resolved by this order.

B: Under s285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent order relates to the appeal by M Ovens (DCC reference numbers 73, 367 and 380) on the zoning and subdivision rules in relation to Patmos Avenue, Dunedin in the proposed Second Generation District Plan ('2GP').

[2] I have read and considered the consent memorandum of the parties dated 11 February 2022, the memorandum of counsel dated 1 August 2022 and the affidavits of Katie Emma Sunley James affirmed on 29 July 2022 and Richard Andrew Ewans affirmed on 19 January 2022.

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

[4] Ms James and Mr Ewans have satisfied me that the rezoning of part of 28 Patmos Avenue from Rural Residential 2 to Rural Residential 1, subject to a structure plan mapped area overlay with performance standards protecting biodiversity values, along with the scheduling of the bulk of the property as an Area of Significant Biodiversity Value, is appropriate and consistent with achieving the relevant objectives of the 2GP.

[5] Ms James also assessed other appeals on decisions on 2GP and advises that there is no overlap between appeals that would prevent a consent order from being issued. In addition, Ms James says that no appeal on 2GP has the potential to

amend the policy framework of 2GP in a way that would change their assessment of the changes set out in the memorandum.¹

Other relevant matters

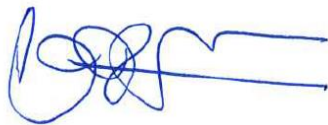
[6] The Otago Regional Council gave notice of an intention to become a party under s274 of the Resource Management Act 1991 (‘the RMA’ or ‘the Act’) and has signed the memorandum setting out the relief sought.

[7] For completeness, I record the parties’ attestation 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.

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

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.



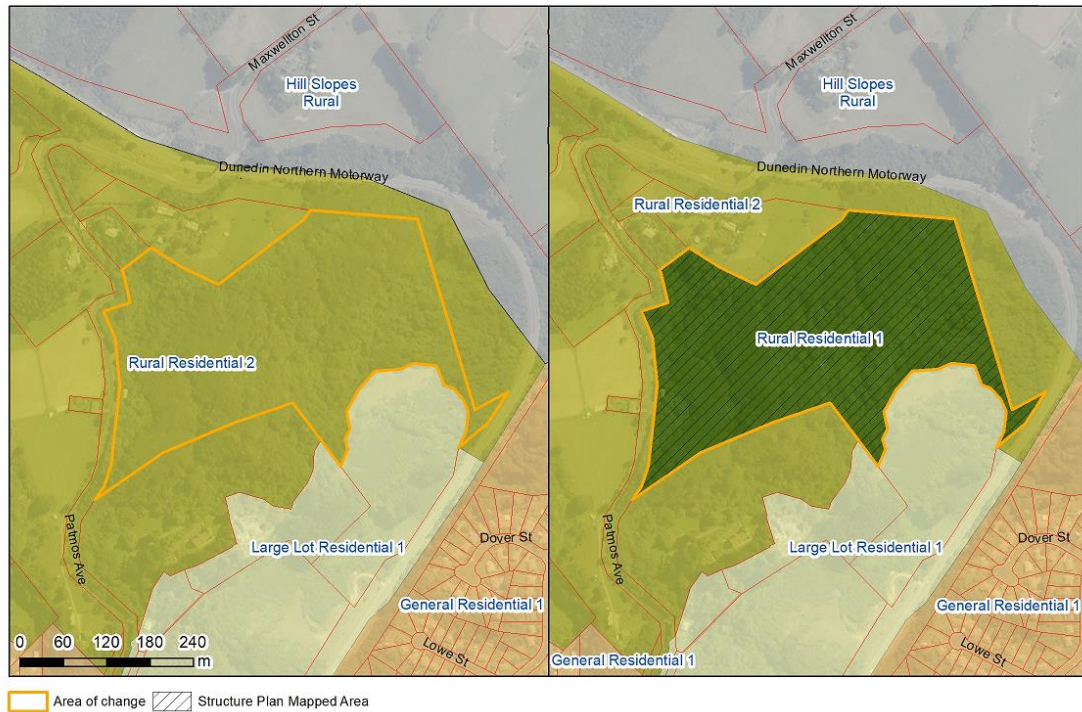
P A Steven
Environment Judge



¹ Affidavit of K E S James affirmed 29 July 2022 at [52]-[56].

Appendix 1

Amend 2GP planning map to change the zoning of 28 Patmos Ave from Rural Residential 2 (RR2) to Rural Residential 1 (RR1) and show the structure plan mapped area over 28 Patmos Avenue, as shown below:



17.Y.2 Patmos Avenue (Rural Residential) Structure Plan Mapped Area Performance Standards

17.Y.2.1 Land use performance standards

a. Density

- i. Standard residential activities must not exceed a density of one residential activity per site, with a maximum of one residential activity located in Area A and up to three residential activities located in Area B (see Figure 17.Y.2A).
- ii. One family flat is allowed per site in association with a standard residential activity that complies with this performance standard for density, provided it is located in the same residential building as the primary residential activity;
- iii. Standard residential activity that contravenes this performance standard is a non-complying activity.

For the sake of clarity, this performance standard supersedes Rule 17.5.2.

17.Y.2.2 Development performance standards

- a. Footprint of residential buildings
 - i. New residential buildings must not exceed 250m² footprint and additions and alterations must not result in a residential building that is greater than 250m² footprint.
 - ii. Activities that contravene this performance standard and result in a residential building less than or equal to 300m² footprint are discretionary activities.
 - iii. Activities that contravene this performance standard and result in a residential building greater than 300m² footprint are non-complying activities.
- b. Setbacks
 - i. Boundary setbacks must meet Rule 17.6.9, except that in Area A the minimum setback from road boundary for residential buildings is 6m.
- c. Vegetation clearance
 - i. Indigenous vegetation clearance must meet Rule 10.3.2.1, except that:
 - 1. additional indigenous vegetation clearance is permitted, if necessary, to widen the existing track (represented by the pink line in Figure 17.Y.2A) up to the minimum necessary to meet Rule 6.6.3.9 Width of driveways; and
 - 2. an additional 50m² of indigenous vegetation clearance is permitted for the formation of passing bays immediately adjacent to the existing track in order to form the shared driveway; and
 - 3. in Area B, indigenous vegetation clearance must not exceed a maximum area of 350m² per resultant site over an initial 3-year time period from the issuing of new certificates of title to be considered indigenous vegetation clearance – small scale, after which indigenous vegetation clearance must meet 10.3.2.1.c.ix.
 - ii. For the sake of clarity, all vegetation clearance must meet Rule 10.3.2.2 and all indigenous vegetation clearance must meet Rule 10.3.2.3.

17.Y.2.3 Subdivision performance standards

- a. Access
 - a. Subdivision activities must provide for a shared driveway to serve the residential activities in Area B, following the existing track,

- with individual driveways to building platforms constructed from the closest practicable point along the shared driveway.
- b. Subdivision activities that contravene this performance standard are non-complying activities.
 - c. For the sake of clarity, this performance standard applies in addition to Rule 17.7.1.
- b. Minimum site size and maximum number of sites
- i. Subdivision activities must create no more than four resultant sites within the **structure plan mapped area**.
 - ii. The sites must be of a size, shape and location that enables all relevant performance standards to be met.
 - iii. Resultant sites created and used solely for the following purposes are exempt from this performance standard:
 - 1. Scheduled ASBV or QEII covenant;
 - 2. reserve;
 - 3. access;
 - 4. network utilities; or
 - 5. road.
 - iv. Subdivision activities that contravene this performance standard are non-complying activities.
 - v. For the sake of clarity, this performance standard supersedes Rule 17.7.5.
- c. Shape
- i. Each resultant site must provide for a building platform outside of the area mapped as an ASBV and must enable Rule 17.Y.2.1.a to be met.
 - ii. Resultant sites created and used solely for the following purposes are exempt from the shape standard:
 - 1. Scheduled ASBV or QEII covenant;
 - 2. reserve;
 - 3. access;
 - 4. network utilities; or
 - 5. road.
 - 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.

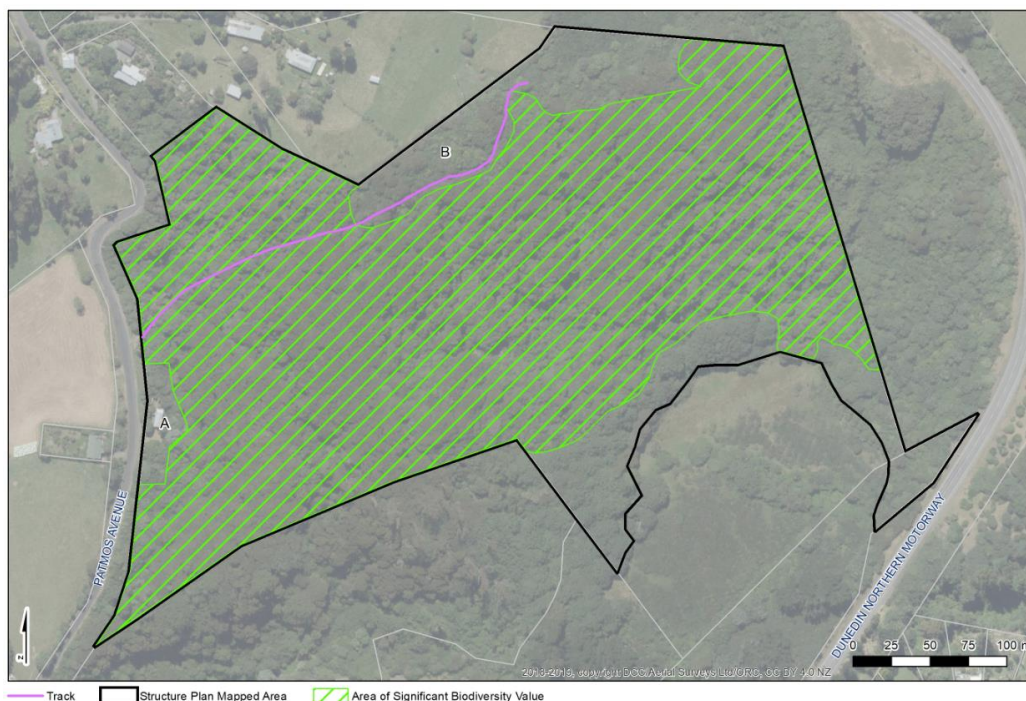


Figure 17.Y.2A: Patmos Avenue (Rural Residential) structure plan mapped area

Note 17.Y.2A – Other requirements outside of the District Plan

1. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to electricity transmission and distribution lines. Compliance with this code is mandatory. Compliance with this plan does not ensure compliance with NZECP 34:2001.

Amend Rule 17.11.3 Assessment of discretionary performance standard contraventions, as follows:

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

Site number	Name Location)	Area (ha)	Description and values	Other protection status
<u>C167</u>	<u>Patmos Ave</u>	<u>9.33</u>	<u>Tall diverse regenerating kanuka forest and broadleaved (tree fuchsia-mahoe) forest with remnant canopy podocarps including rimu and totara.</u>	<u>NA</u>

Insert new Appendix A12 structure plan mapped area values:

A12.1 Patmos Avenue (Rural Residential) Structure Plan Mapped Area

A12.1.1 Description of area

The Patmos Avenue (rural residential) structure plan mapped area is located on the eastern side of Leith Valley, within a semi-rural setting, against the backdrop of the Dunedin Northern Motorway and the foot slopes of Mount Cargill to the north, and the suburb of Pine Hill to the east. The site is dominated by regenerating indigenous forest with high indigenous biodiversity values and there is a scheduled Area of Significant Biodiversity Value over much of the site on the lower and mid slopes (see A1.2 C167). On the upper slopes in Area B (as shown in Figure 17.Y.Y), indigenous biodiversity values are generally more modified, with a less developed understorey and patches of invasive weeds such as gorse, broom and hawthorn present in previously cleared areas. Indigenous biodiversity values in Area A are

also modified, primarily by planted exotic trees associated with the current building.

A12.1.2 Values to be maintained or enhanced

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

- a. The biodiversity values of the mapped area, which include areas of indigenous vegetation including important mature native tree specimens and remnant canopy podocarps including rimu and totara; and the aesthetic coherence of the indigenous forest setting. Both the biodiversity values and the aesthetic values have been protected through the application of an ASBV and restrictions on building platforms, density of residential development and the footprints of residential buildings.

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.

