

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

Decision No. [2023] NZEnvC 53

IN THE MATTER

of the Resource Management Act
1991

AND

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

BETWEEN

GRAEME AND MARIE
BENNETT

(ENV-2018-CHC-227)

(ENV-2018-CHC-228)

Appellants

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 2023

CONSENT ORDER

A: Under s279(1)(b) of the Resource Management Act 1991 ('RMA' or 'the Act'), 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 Graeme and Marie Bennett (DCC Reference numbers 48, 50, 51 and 52) 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 two appeals by Graeme and Marie Bennett (‘the Bennetts’) on the provisions of the proposed Second Generation Dunedin City District Plan (‘2GP’) regarding the rezoning of lands at 3 Chelivode Street, from Rural Costal to Township and Settlement zoning, (DCC Reference number 48)¹ and 128D Doctors Point Road from Rural Costal and/or Township and Settlement to Large Lot Residential 2 zoning (DCC Reference numbers 50 and 51).²

[2] The appeals sought to remove the boundary of the Flagstaff-Mt Cargill SNL overlay on 128D Doctors Point Road to the 110m contour (DCC Reference number 52).

[3] I have read and considered the consent memorandum of the parties dated 12 July 2022 which proposes to resolve the appeal.

[4] I have also read and considered the affidavit by B T Morrissey dated 10 August 2022, who has satisfied me that the amendments proposed will achieve the objectives of the 2GP, and that granting the relief sought will not

¹ ENV-2018-CHC-227.

² ENV-2018-CHC-228.

impact on the resolution of any other proceeding.³

[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 RMA, including Part 2.

Other relevant matters

[6] Otago Regional Council, Blueskin Bay Watch Society Incorporated, Kāti Huirapa Rūnaka Ki Puketeraki and Anthony Haere Parata had given notice of an intention to become parties under s274 of the Act. Mr Parata withdrew his notice on 18 December 2020. The three active s274 parties have signed the memorandum setting out the relief sought.

[7] The parties advise that:

- (a) the parties have agreed to a Deed of Private Development in relation to stormwater management; and
- (b) the appellant and Blueskin Bay Watch Society Incorporated will enter into a private agreement; and
- (c) the amendments:
 - (i) for the rezoning are consistent with Policy 2.6.2.1 under s32AA Assessment; and
 - (ii) for the SNL boundary change are consistent with Policy 2.4.4.1 – 2.4.4.3 under s32AA Assessment; and
 - (iii) are consistent with higher order documents under s75.

[8] No other person has given notice of an intention to become a party under s274 of the Act.

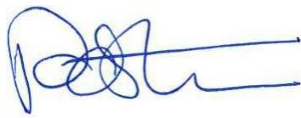
[9] The parties advise that all matters proposed for the court's

³ Affidavit of B T Morrissey affirmed 10 August 2022 at [69] and [78].

endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

Outcome

[10] 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.



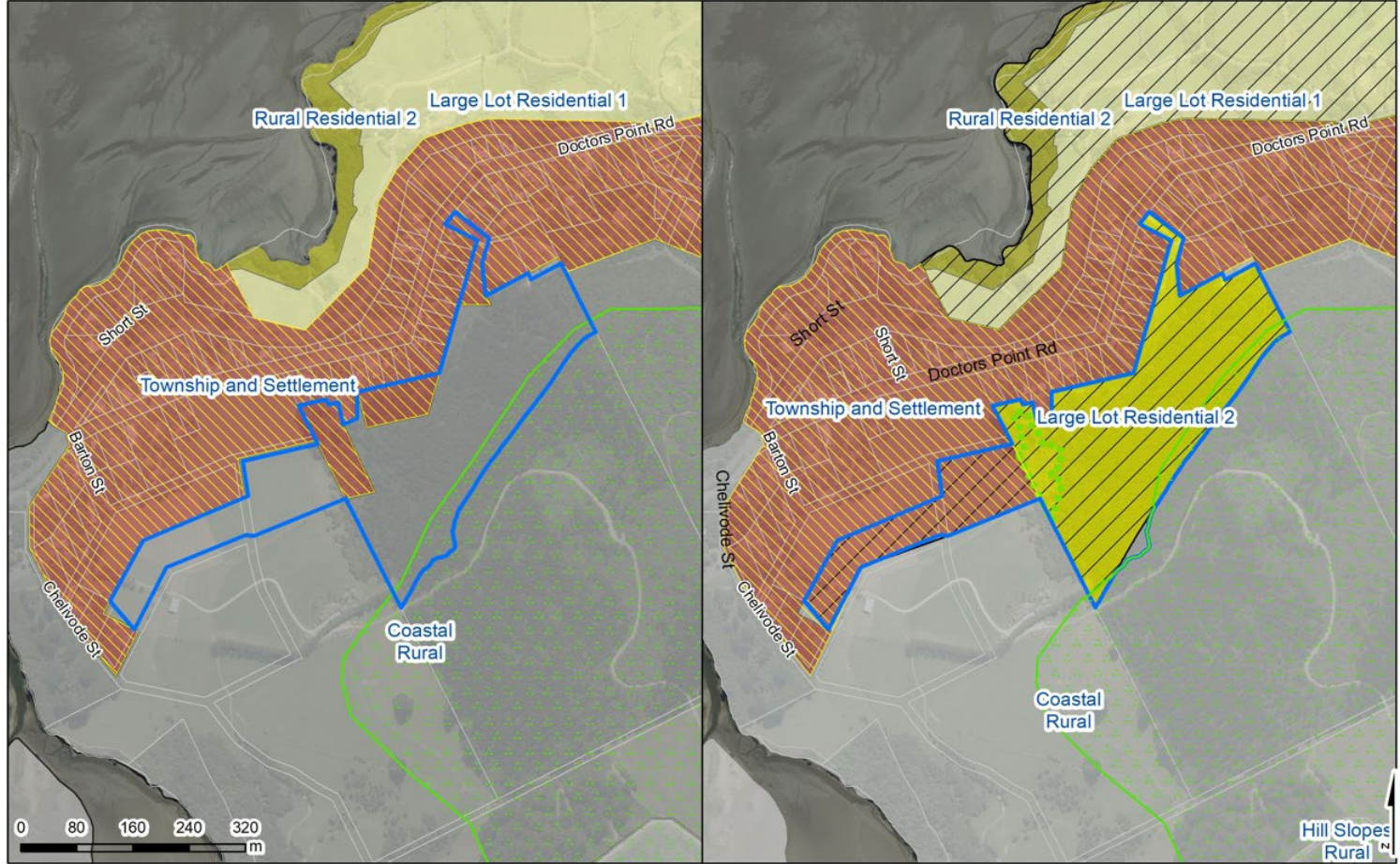
P A Steven
Environment Judge



Appendix 1

1. Amend the Planning Map, as shown below, to:
 - a. Rezone the appeal area of 3 Chelivode Street from Rural Coastal to Township and Settlement zoning, overlain by a “No DCC Reticulated Wastewater Mapped Area”;
 - b. Rezone the appeal area of 128D Doctors Point Road from Rural Coastal and/or Township and Settlement to Large Lot Residential 2 zoning, and remove the “No DCC Reticulated Wastewater Mapped Area”;
 - c. Apply a “Chelivode Street Structure Plan Mapped Area” over the full extent of both appeal areas;
 - d. Apply an Urban Biodiversity Mapped Area (UBMA) over part of 128D Doctors Point Road; and
 - e. Amend the boundary of the Pūrākaunui and Ōrokonui Significant Natural Landscape Overlay Zone at this location.





- Area of change
- Chelivode Street Structure Plan Mapped Area
- Urban Biodiversity Mapped Area
- Significant Natural Landscape
- No Reticulated Waste Water Mapped Area

2. Amend Appendix A10 to include:

A10.X Chelivode Street

A10.X.1 Description of the area

The UBMA is a small area (0.5 ha) of regenerating kanuka-broadleaved forest located on private property.

A10.X.1.1 Description of urban environment allotments

The following properties, which are located either entirely or partly within this UBMA, may contain land which qualifies as an urban allotment as defined in s76(4C) of the Resource Management Act 1991:

- 128D Doctors Point Road

A10.X.2 Biodiversity values to be protected

1. Vegetation/habitat types

- a. The site supports native forest dominated by regenerating kanuka-broadleaved forest. Common canopy species include kanuka, tree fuchsia, mahoe, red mapou, kohuhu and seven-finger/pate. Other tree or shrub species present include lancewood, mingimingi, round-leaved coprosma, thin-leaved coprosma, lemonwood and three-finger. Native ground cover is well-established and commonly includes bush flax, hen and chickens fern, hookgrass, crown fern, shield fern and hound's tongue fern. Climbers present include bush lawyer, native jasmine and pohuehue.
- b. The area has previously had an arboretum of native tree species planted. While many species are ecologically valuable, many species planted are North Island species or otherwise non-local native species such as tawa, rewarewa, and red beech.

2. Rare and notable species, habitats or communities:

- a. Includes established plantings of canopy podocarp species native in the area such as rimu, totara, kahikatea, matai, and miro which are listed in Appendix 10A.3 Important native tree list.
- b. Indigenous vegetation in this UBMA is classified as " acutely threatened " based on the Threatened Environment Classification having less than 10% of the original vegetation cover remaining nationally.

3. Species diversity and naturalness

- a. The vegetation is dominated by indigenous species but is modified in places by invasive weeds and planted non-local native species.

A10.X.3 Principal threats to biodiversity values

<u>Threat</u>	<u>Description</u>
1. <u>Plant and animal pests</u>	<ol style="list-style-type: none"> a. <u>The invasive weed cotoneaster is present throughout the area and is sometimes common.</u> b. <u>Some mature sycamore are present at the northern end of the area.</u>

	<ul style="list-style-type: none"> c. <u>The area is surrounded by pine trees on the eastern and southern sides.</u> d. <u>Some planted North Island species or otherwise non-local native species are present.</u> e. <u>Invasive plant pests pose the greatest threat to the conservation values of this UBMA, but threats from animal pests such as possums, rats and mustelids are also present.</u>
2. <u>Fragmentation/loss of continuity/edge effects</u>	<ul style="list-style-type: none"> a. <u>The area is vulnerable to edge effects because of its size and nearby sources of invasive weeds.</u>

A10.X.4 Key management actions to be required or encouraged

<u>Threat</u>	<u>Key management actions</u>
1. <u>Plant and animal pests</u>	<ul style="list-style-type: none"> a. <u>The highest priority is the removal and continued control of sycamore and cotoneaster.</u> b. <u>Non-local native species should also be removed.</u> c. <u>Animal pest control would improve the habitat for native fauna, and regular possum control would also improve the ecological condition of the forest.</u>
2. <u>Fragmentation/loss of continuity/edge effects</u>	<ul style="list-style-type: none"> a. <u>Ensuring appropriate invasive species control on margins of adjacent plantation forestry.</u> b. <u>Ensure harvest of plantation forest trees does not damage UBMA values.</u>

3. Amend Rule 15.6.6.2 Maximum Height as follows:

- a. New buildings and structures, and additions and alterations must not exceed the following maximum height above ground level:

...

- v. Except:

1. rooftop structures are exempt from the performance standard for height provided they do not exceed the maximum height limit for all other buildings and structures by more than one third of that limit.
2. within the Huriawa height restriction mapped area (see Figure 15.6.6.2A):
 1. new buildings and additions and alterations to buildings on sites between Rockal Street and Kilda Street must not protrude through a horizontal plane 4.5m above ground level at the Sulisker Street boundary of the site;

2. new buildings and additions and alterations to buildings on sites between Rona Street and Rockal Street must not exceed 4.5m.
- X. within the Pukehiki Township and Settlement Zone, and the Chelivode Street Structure Plan mapped area, which is subject to new buildings and structures, and additions and alterations located within a Significant Natural Landscape Overlay Zone, new buildings and structures, and additions and alterations must not exceed 5m above ground level.
4. Add a new Rule 15.8.Y, Chelivode Street Structure Plan Mapped Area Performance Standards, as follows:

15.8.Y Chelivode Street Structure Plan Mapped Area Performance Standards

- a. In addition to the performance standards in 15.5, 15.6 and 15.7, activities in the **Chelivode Street 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.
- b. Except where otherwise specified, the performance standards in Rule 15.8.Y apply to all parts of the **Chelivode Street structure plan mapped area**, including land zoned Township and Settlement and land zoned Large Lot Residential 2.

15.8.Y.1 Land use performance standards

- a. Density
- i. Standard residential activities in the **Chelivode Street structure plan mapped area** must not exceed the following density limits:

<u>Zone</u>		<u>i. Minimum site area for a residential unit (including ancillary residential units):</u>	<u>ii. Maximum development potential per site</u>
<u>a.</u>	<u>Large Lot Residential 2 Zone</u>	<u>1 per 3500m²</u>	<u>1 habitable room per 700m²</u>
<u>b.</u>	<u>Township and Settlement Zone within a no DCC reticulated wastewater mapped area</u>	<u>1 per 1000m²</u>	<u>1 habitable room per 200m²</u>

- ii. For the purposes of this standard:

- a. the calculation of habitable rooms includes rooms in sleep outs;
 - b. the calculation of minimum site area includes access legs provided for rear sites; and
 - c. the calculation of maximum development potential applies to standard residential activity for determining whether a second unit in a single residential building or in the form of a duplex, can be developed.
 - iii. More than one residential building may only be built on a site if all residential buildings are able to meet all the following performance standards if they were ever subdivided into separate sites:
 - a. site coverage;
 - b. height in relation to boundary;
 - c. setbacks; and
 - d. access.
 - iv. Standard residential activity that contravenes the performance standard for density is a non-complying activity, except contravention of the following standards only is a restricted discretionary activity:
 - a. contravention of Rule 15.5.2.3 (bulk and location performance standard for multiple residential buildings on the same site).
- b. Service connections
- i. All activities in the part of the **structure plan mapped area** that is zoned Large Lot Residential 2 must self-service for water supply.
 - ii. All activities in all parts of the **structure plan mapped area** must discharge any wastewater to the communal wastewater system required by Rule 15.8.Y.3.b.
 - iii. Activities that contravene this performance standard are non-complying activities.

15.8.Y.2 Development performance standards

- a. Activities within the Significant Natural Landscape Overlay Zone
 - i. New buildings, new structures and additions and alterations associated with residential activities, but excluding fencing, must be located outside the Pūrākaunui and Ōrokonui Significant Natural Landscape Overlay Zone.
 - 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 15.6.6.2, Rule 15.6.Y and Rule 15.6.Z for new buildings, new structures and additions and alterations within the Pūrākaunui and Ōrokonui Significant Natural Landscape Overlay Zone.

15.8.Y.3 Subdivision performance standards

a. Access

- i. Subdivision activities must provide a suitably designed and formed internal road network connecting to Doctors Point Road.
- ii. This road must be vested with the Council as part of the section 223 certification for the subdivision (or the relevant stage of subdivision if subdivision is staged).
- iii. In addition to the roading connection to Doctors Point Road, subdivision activities must provide a cycle and pedestrian accessway for public use between the new roading within the **structure plan mapped area** and Chelivode Street (via Buckingham Street or Mixbury Street, which is the paper road that runs parallel to Buckingham Street, to the south-east). Where not already legal road or road to vest, the land of the accessway must have adequate legal provision for public use (including over balance land for staged subdivisions) created as part of the section 223 certification for the subdivision.
- iv. The accessway described in Rule 15.8.Y.3.a.iii above must be designed to be able to be used by emergency vehicles but otherwise closed to vehicle access.
- v. Activities that do not meet this standard are non-complying activities.
- vi. For the sake of clarity, this performance standard is additional to Rule 6.8.1.

b. Wastewater infrastructure

- i. Subdivision activities must provide, if not already present, a communal wastewater system that is designed to facilitate connection to a public wastewater network.
- ii. The communal wastewater system must be installed, and ready to allow connections, prior to the issuing of the section 224c certificate for the subdivision.
- iii. The communal wastewater system must include the following components:
 1. a UV treatment module designed to minimise the risk of any pathogens passing out of the system;
 2. nitrogen and phosphorous attenuation modules that reduce their concentration prior to any discharge to the ground of treated wastewater; and
 3. a telemetric monitoring system that is capable of distributing an instantaneous alert in the event of infrastructure failure or accidental discharge to the Otago Regional Council and the Dunedin City Council.
- iv. The communal wastewater system must be installed and operated in accordance with a legal instrument that:
 1. is registered in favour of Dunedin City Council; and
 2. gives ownership and management responsibilities to a residents' association, which all lot owners must be members of, and which will be responsible for ensuring that the system is appropriately monitored, serviced, maintained

- and operated, in accordance with the manufacturer's specifications.
- v. Activities that contravene this performance standard are non-complying activities.
- vi. For the sake of clarity, this performance standard is additional to Rule 9.3.7.

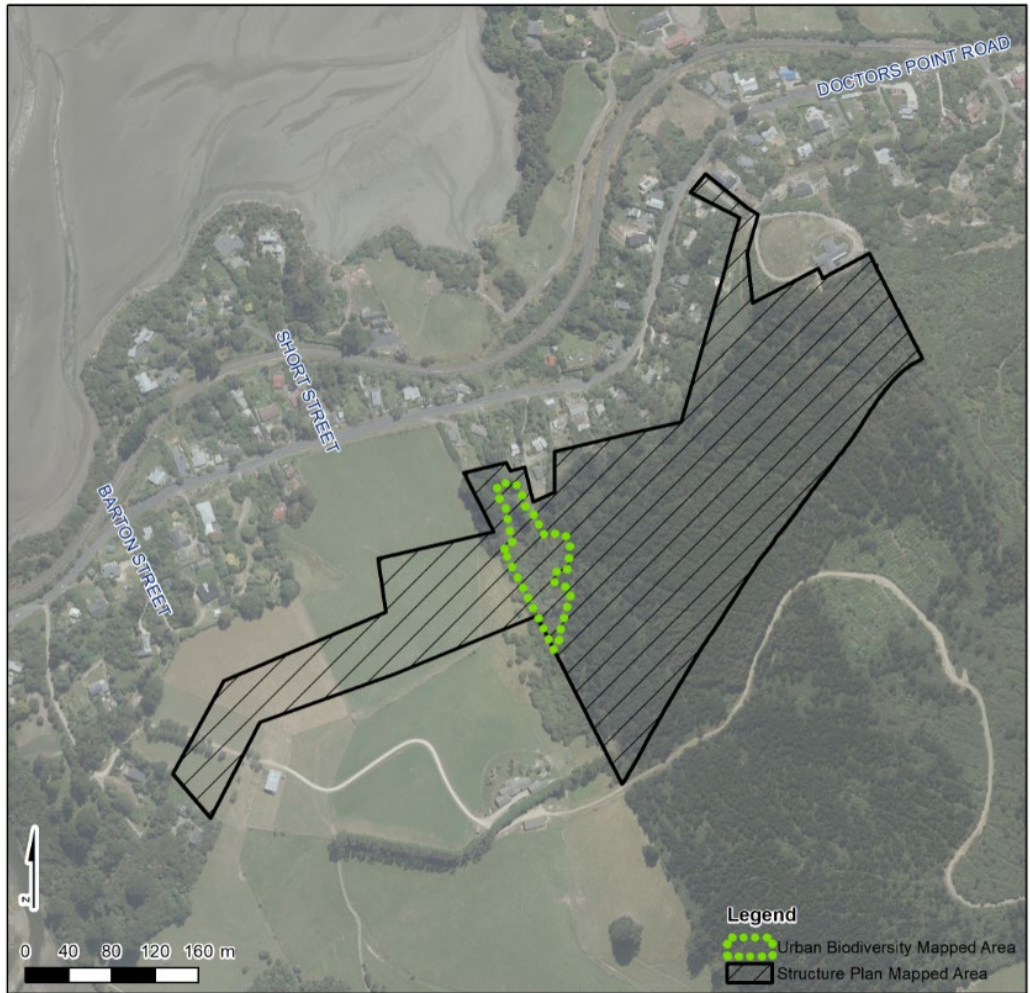
Note 15.8.Y.3X – Other requirements outside of the District Plan

1. Under the Regional Plan: Water, resource consent may be needed from the Otago Regional Council for any discharge of wastewater to water or land.
2. The area zoned Township and Settlement will be serviced under the restricted water supply scheme only.

15.8.Y.4 Information requirements

- a. Planting plan to enhance amenity values
 - i. Applications for subdivision activities within the **structure plan mapped area** must include a proposal, which covers the whole mapped area, for a planting plan to enhance the amenity values of the site, unless such a plan has already been approved as part of an earlier subdivision consent.
 - ii. For the sake of clarity, the standard assessment guidance in Rule 15.11.4.1 still applies.
- b. Natural hazards
 - i. Applications for subdivision activities within the **structure plan mapped area** must include a geotechnical investigation report by a suitably qualified person (usually a geotechnical engineer), unless such a plan has already been approved as part of an earlier subdivision consent. 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.
 - ii. For the sake of clarity, the standard assessment guidance in Rule 11.5.2.5 still applies.

Figure 15.8.YA Chelivode Street Structure Plan Mapped Area



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.

