

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

Decision No. [2022] NZEnvC 182

IN THE MATTER of the Resource Management Act 1991

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

BETWEEN S JOHNSTON

(ENV-2018-CHC-297)

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 September 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 be made;
- (2) the part of the appeal (DCC Reference number 119) by Stephen Gregory Johnston 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 proceeding concerns an appeal by Stephen Gregory Johnston regarding the Patmos Avenue Structure Plan Mapped Area Performance Standards in the proposed Second Generation Dunedin City District Plan ('2GP').

[2] The appeal sought that the above standards were amended to allow a minimum subdivision lot size of 1,000m² at 18 Patmos Avenue within the Large Lot Residential Zone.

[3] I have read and considered the consent memorandum of the parties dated 6 September 2022 which proposes to resolve the appeal. The parties have entered into a private agreement outside the 2GP, but in reliance on it, have agreed to the following amendments to Rule 15.8.7 Patmos Avenue Structure Plan Mapped Area Performance Standards:

- (a) decrease the minimum site size at 18 Patmos Avenue (Area C in Figure 15.8.7A) from 2,000m² to 1,000m² (Rule 15.8.7.2.b.i);
- (b) limit access to 18 Patmos Avenue via the right of way through PT Lot 3 DP 3151 (Rule 15.8.7.2.a.ii), noting that the more detailed assessment at the time of subdivision of vehicle access requirements may determine that fewer sites are appropriate to be accessed through this right of way; and
- (c) protect the biodiversity values in the riparian areas along the main creek currently dominated by native bush to the north and north-east of the house, and the three specimens of mature trees on the 2GP Appendix 10A.3 Important native tree list (Rule 15.8.7.1.b and Rule 15.8.7.1.c).

Other relevant matters

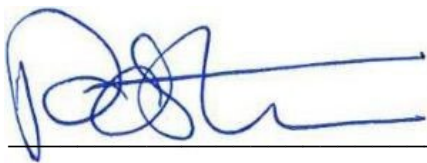
[4] No person has given notice of an intention to become a party under s274 of the Resource Management Act 1991 ('the Act').

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

[6] 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, Pt 2.

Outcome

[7] 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 Rule 15.8.7 as follows:

15.8.7 Patmos Avenue Structure Plan Mapped Area Performance Standards

- ~~1. Vehicle access must not be provided through the part of 28 Patmos Avenue that is outside the Patmos Avenue structure plan mapped area (see Figure 15.8.7A).~~
 - ~~2. The minimum site size for new resultant sites in the area marked A on the Patmos Avenue structure plan (see Figure 15.8.7A) is 1,000m².~~
 - ~~3. The minimum site size for new resultant sites in the area marked B on the Patmos Avenue structure plan (see Figure 15.8.7A) is 2,000m².~~
 - ~~4. 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.~~
 - ~~5. In the case of conflict with performance standards 15.5 to 15.7, the rules in this performance standard apply.~~
 - ~~6. Subdivision, land use and development activities that contravene this performance standard are a non-complying activity.~~
- a. In addition to the performance standards in 15.5, 15.6 and 15.7, activities in the **Patmos Avenue 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 standards in this section supersedes that standard.

15.8.7.1 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 (if required) 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 15.8.7A, except for indigenous vegetation clearance that is:
 - 1. Part of conservation activity involving vegetation clearance and replacement with indigenous species;
 - 2. Clearance for the maintenance of fences (including gates);
 - 3. Clearance for the maintenance (but not extension) of existing network utilities, irrigation infrastructure, tracks, drains, structures, roads, or firebreaks;
 - 4. 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;
 - 5. 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;
 - 6. Clearance of a pest plant listed in Appendix 10B to Section 10 of the Plan; and
 - 7. Clearance that is necessary to maintain the flow of water free from obstruction or for natural hazard mitigation activities.
 - ii. Vegetation Clearance must not damage any protected tree identified on Figure 15.8.7A (2x Hall’s totara, 1x rimu).
 - iii. Activities that contravene this performance standard are non-complying activities.
- c. Setback from protected trees
The three protected tree specimens identified on Figure 15.8.7A (2x Hall’s totara, 1x rimu) must not be damaged through any site development activities; and
- i. Buildings and structures must not be located under the dripline or within a distance equivalent to half the height ~~5m radius~~ of the trees, whichever is the greater.
 - ii. Vehicle tracks, driveways and other site development activities (including earthworks) must not occur under the dripline or within a distance equivalent to half the height of the trees, whichever is the greater.

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

15.8.7.2 Subdivision performance standards

a. Access

- i. Access for vehicles must not be provided through the part of 28 Patmos Avenue that is outside the **Patmos Avenue structure plan mapped area** (see Figure 15.8.7A).
- ii. No more than six resultant sites in the **structure plan mapped area** may access Patmos Avenue via the right of way through PT LOT 3 DP 3151.
- iii. Activities that contravene this performance standard are non-complying activities.
- iv. For the sake of clarity, this performance standard is additional to Rule 6.6.3.

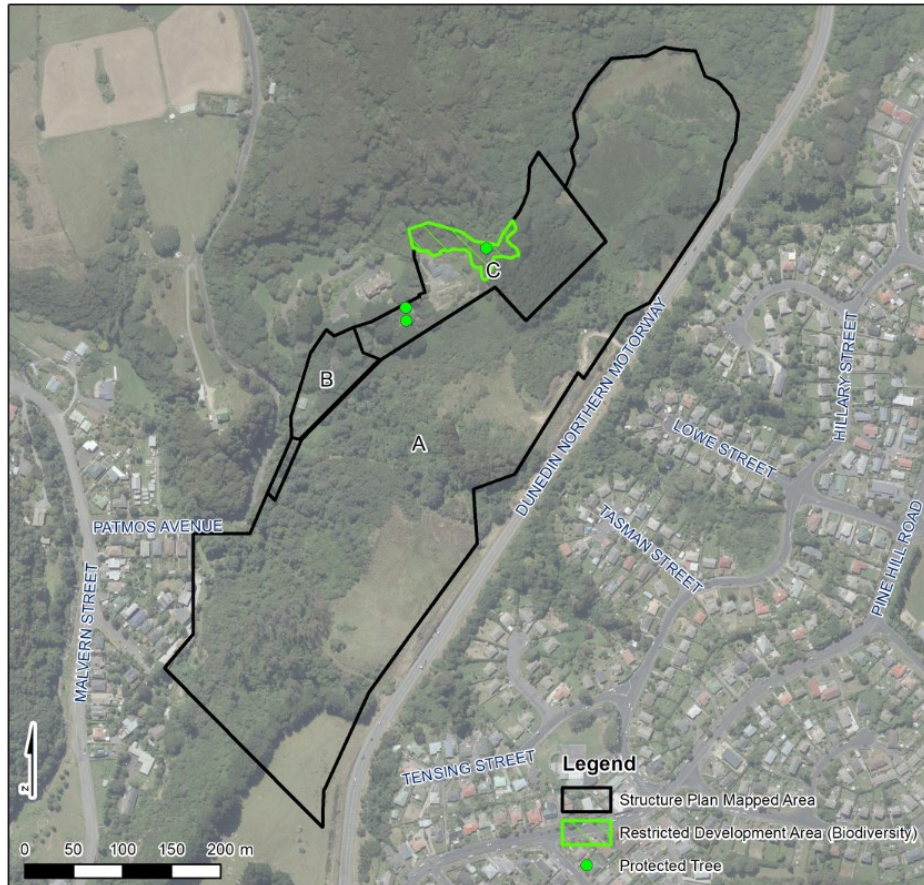
Note 15.8.7.2A – General advice

The number of sites that are able to access the **structure plan mapped area** via the right of way through PT LOT 3 DP 3151 has been capped at six resultant sites in order to manage effects on the scheduled heritage building at 16 Patmos Avenue (B425, Bishopgrove (ex Bible College). Assessment of a subdivision application may result in a greater level of restriction on access for vehicles across this right of way.

b. Minimum site size

- i. The minimum site size for new resultant sites in the areas marked A and C on the Patmos Avenue structure plan (see Figure 15.8.7A) is 1,000m².
- ii. The minimum site size for new resultant sites in the area marked B on the Patmos Avenue structure plan (see Figure 15.8.7A) is 2,000m².
- iii. Activities that contravene this performance standard are non-complying activities.

- 2 Delete existing Figure 15.8.7A Patmos Avenue structure plan mapped area and replace with a new figure as follows:



- 3 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.

