



**DUNEDIN CITY**

Kaitiaki Take Kōwhiri

**SUBMISSION FORM 13**

Submission concerning resource consent on limited notified application under sections 95B.

Sections 95B, Resource Management Act 1991

To: Dunedin City Council, PO Box 5045, Moray Place, Dunedin 9058

Resource Consent Number:

SUB-2016-45 & LUC-2016-245

Applicant: RPR Properties Ltd

Site Address:

35, 39, 41 and 49 Dalziel Road

Description of Proposal:

To reorganise the layout of the 4 subject sites by subdivision. The location of building sites for future dwellings will change as the result of the subdivision but no additional building sites will be created. Approval is also sought for approximately 650m<sup>3</sup> of earthworks. The proposed sites will use the existing access onto Dalziel Road.

I/We wish to lodge a submission on the above resource consent application:

Your Full Name: ALICE MARY WINTERS

Address for Service (Postal Address):

Post Code: 9010

Telephone:

Facsimile:

Email Address:

I: Support/Neutral/Oppose this Application

I: Do/Do Not wish to be heard in support of this submission at a hearing

If others make a similar submission, I will consider presenting a joint case with them at a hearing.  
(Delete the above statement if you would not consider presenting a joint case at a hearing)

Please use the back of this form or attach other pages as required

The specific parts of the application that this submission relates to are:

All

26 JUL 2016

My submission is (include the reasons for your views):

See attached 10 pages to letter to John Sule  
+ cover 1 = 11 + letter to Dr Bidrose  
reference  
decisions from  
previous subdivisions  
(Sub 2015 & LUC 2015-291)

The decision I wish the Council to make is (give precise details, including the parts of the application you wish to have amended and the general nature of any conditions sought):

Decline consent

Signature of submitter:

(or person authorised to sign on behalf of submitter)

Date: 26/07/16

**Notes to Submitter:**

**Closing Date:** The closing date for serving submissions on the Dunedin City Council is Wednesday, 27 July 2016 at 5pm. A copy of your submission must be served on the applicant as soon as reasonably practicable after the service of your submission on the Dunedin City Council. The applicant's address for service is RPR Properties Ltd, C/- Kurt Bowen, Paterson Pitts Group, PO Box 5933, Moray Place, Dunedin 9058.

**Electronic Submissions:** A signature is not required if you make your submission by electronic means. Submissions can be sent by email to [resconsent.submission@dcc.govt.nz](mailto:resconsent.submission@dcc.govt.nz)

**Privacy:** Please note that submissions are public. Your name and submission will be included in papers that are available to the media and the public. Your submission will only be used for the purpose of the notified resource consent process.

#### **Submission Response, 25 July 2014**

**Could this submission be read in full by the commissioners? I would like to avoid any misunderstanding and misinterpretations from summarizing that has happened in the past.**

**I am opposed to this Resource application and in this submission I will give reasons why this application should be declined. (This is the 3rd submission I have written in less than 12 months about this subdivision)**

- application is not for boundary adjustment but for subdivision of 35 Dalziel road ( lot 5)
- rules ,regulations and integrity of the current district plan
- legal reasons -environmental court and high court
- 2GP
- reverse sensitivity
- swap of titles sizes is not like for like in area or desirable location
- density of houses
- visual impact
- road to subdivision
- rural amenity and rural character
- setting a precedent

#### **Introduction**

My husband and I live at [REDACTED], a property we brought from Tom Richardson (real estate agent) and one of the directors of RPR Properties on the 10 of October 2012.

We spent 2-3 years looking for a lifestyle property in the area as we wanted to have a rural outlook, an opportunity to have animals, peace and quiet, 2 or less neighbours. All the things we did not have living in suburbia.

The property also provided:

- The lifestyle we wanted for our son
- Suited us as it was close to family and town
- An added bonus of a view to the sea.

I particularly wanted to live in the area as it was close to where I had been brought up and I used to regularly run and cycle around Dalziel Road, as well as Fraser Gully where I now walk.

#### **What we were promised**

When we brought the property from Mr Richardson he informed us that:

- He was going to split the remainder 18+ hectares into nine 2 hectare single dwelling lots with 2 parcels of land to be sold to adjoining land owners.
- We were to have one neighbour on our eastern boundary.
- There was going to be a road on our southern boundary that was going to service the 9 single dwelling houses on the rural residential properties

We were accepting of that level of development as most of the neighbourhood were rural residential with 2 hectare blocks.

I did however express concern when buying the property that the eastern boundary fence was close to the house but was informed, by Mr Richardson, that if you have a 2

hectare property you would not build on the boundary. We currently have a massive two story house at the closest point to our home on the eastern boundary. If the current consent is granted there could be at least four houses in total next to our eastern boundary. I am totally opposed to that.

#### **District Plan**

Prior to buying our home we looked at the Dunedin City council district plan. We noted we were on Rural land and that the adjoining property in question was also on rural land and the rest of the neighbourhood was zoned rural residential. We brought knowing that we were in a semi rural area which was one of the criteria we had. We would like to have trust in the integrity of the district plan. We just assumed that councils/people have rules and regulations to make it fair for all.

#### **What we agreed to**

We were accepting of 2 ha lots adjacent to our land and not aware of any intent of Mr Richardson to undertake intensive residential development of the land.

When we bought our home we expected the promises given to us by the developer to be honour instead of having to pay more cost in time, stress and money in an attempt to have what we were promised.

These developers are not adhering to their promises made to us at the time of our purchases. We would like them to honour the promises they have made to us prior to making further promises to other parties.

#### **Application**

##### **Subdivision**

The application is for a Boundary adjustment.

In my opinion this would appear to be a rather generous description of what the applicants intend. For all practical purposes, this application is in reality an attempt to subdivide lot 5 (35 Datzel road) into 3 non-complying sections with the balance of the parcel being transferred to lot 7(proposed lot 1).

The subdivision of lot 5 (2.2915 Ha) is:

- lot 3 is .2020Ha
- lot 4 is .2020Ha
- lot 2 is .2480 Ha
- lot 1 gets 1.6395Ha

#### **Not like for like in area**

This is in two ways:

- Firstly, the application indicates that the creation of these new smaller lots (lots 2, 3, 4) will be offset by the surrender of lot 8 and 9 (previously consented) to lots 7-future reference Lot 1. They fail to mention that these lots 8&9 are considerable larger than the purposed new lots. In fact the new proposed lots (lot 3 and lot 4) are less than half the size. For example both lots 3 (.2020Ha) and 4 (.2020 Ha) combined are smaller than lot 9 (.4860Ha) alone. The combine area of lots 8 and 9 (.8706Ha) being over twice as big as the combined area of lot 3 and lot 4.
- The second way that it is not like for like in area is that as the proposed lot of .2020 is over 10 times smaller than the current 2.2915 Ha. This will also change the character of the property from a rural residential size property of 2. 2915Ha to urban size properties .This would also destroy the semi-rural ambience.

**Not like for like in location**

The proposed land lots are not similar in location. If the current location of the tiles (lot 8&9) are kept this has less impact on our home than the current location proposal which has a massive negative impact on our home.

The major negative impact on rural amenities and rural character will be discussed in more detail in this submission.

**Increase in amounts of boundaries**

There would be more sites along our eastern boundary - currently there are two parcels of land, under the proposal this will increase to 4.

**Intensification along my eastern boundary**

This is close to our home.

Should this application be approved this appear to open the door to more intensification of the balance of the site-current lot 7, propose lot 1.

**Rural land and zone rules**

I find it really difficult to comprehend how I live on Rural land and the adjoining land in question is also zoned Rural that there can be a proposal that I would have four houses in a row along my eastern boundary.

In the rural zone there is only one dwelling for every 15 Ha. so how can this be happening.

The houses proposed are less than 80 metre apart.

We expect these rules to be upheld otherwise what is the point of these rules.

**Setting a precedent**

This can occur in two ways:

The first is if the developers succeed in the current resource consent application then there is nothing to stop the developers putting in another application to subdivide and do the same thing again.

The second concern is that because of the small size lots on rural land that this would signal to neighbouring land owners that they too could subdivide their land into smaller plots.

**Unsafe Rooding****Road to Subdivision - current Dalziel road entry /exit**

From Lianne Darby's report (2015):

(104) The Council's transportation planner noted that the available visibility at about 100 metres and was well short of the 210 metres recommended by Austroads.

With the traffic going out of the subdivision road it has been noted that cars tend to put their noses out causing cars from the north to go into the south bound lane to avoid them - potentially to crash.

- Because of safety concerns should there be a road there?
- Why was there not a traffic report with all these safety concern not done prior to the previous subdivision?

From experience since the subdivision road has been constructed it is more dangerous than initially envisaged, as a result the council should investigate having only a left hand turn.

#### **New road access**

This will increase the sound around my home instead of on one boundary the sound will be near my home on two boundaries (the eastern and the south)

#### **Datzel Road subdivision road sealing**

I would like the council to impose a date when the tarsal of the subdivision road will happen

I have asked for the date in every one of my submissions could I have one please.

#### **Water supply**

There is a bit of a mystery surrounding the water supply of number 37 Datzel road and how do they get there water. Is it tanked in or is it from an illegal town supply?

I am concerned as if number 37 Datzel road is getting there water supply though 31 Datzel road (illegally) are the proposed new properties going to be doing the same.

Shouldn't the currently house and properties in the subdivision get sort out first prior to adding more?

#### **Water runoff**

Concern if the proposed subdivision goes ahead than with more houses there would be more paved surface area so having less paddock area to soak up the rain water.

Rain water has to go somewhere and we do not want it coming onto our property and causing a problem.

#### **Foul Sewage Drainage**

Currently number 37 Datzel road is on a septic holding tank (which I am surprised the council allows due to the Health and Safety, as well as smell - Human faeces and Urine smell).

We are concerned that if they allow further houses to be built with this facility then we too will be exposed (more closely) with this health risk (and unpleasant odour).

#### **LEGAL**

#### **LUC 2015-291 and SUB 2015-54**

This was the previous resource consent which had the 2nd of two hearings on the 22 March 2016.

In this application the same sections were proposed.

This application was declined because:

- The committee has considered the effects of the proposal on amenity values and rural character and has concluded that they are more than minor....(point 6)
- Both landscape architects agree that the visual change will be significant.(point 6)
- The applicant expert surveyor appears to accept the effects on amenity and rural character are more than minor often describing them as acceptable in the evidence and submissions rather than minor.(point 7)
- The committee considers that the proposal will result in more than minor adverse environmental effects and is contrary to the key Sustainability and Rural zone objectives policies in the operative plan. As such, the committee considers the

*proposal fails the section 104D gateway test and as a result the committee is not able to consider the granting of consent to the proposal. (point 16)*

RPR Properties put in an appeal and the case is currently at the environmental court. (ENV-2016-30) RPR Properties LTD v DCC).

The current case (SUB 2016-45 & LUC 2016-245) is a part of the above case.

If the council allows this resource consent application (SUB 2016-45 & LUC -2016-245) to go through then this would challenge the commissioners decision (from the resource consent LUC 2015-291 & SUB 2015-54) and therefore changes the appeal in the environmental court.

Should this current resource consent not wait until it is heard in the environmental court?  
**LUC 2012-504 & SUB 2012-92**

This was the resource consent that was prior to the above one.

The DCC Resource Consent notice stated that the proposed lots would be all rural residential size lots of approximately 2 hectares.

I have recently discovered that the DCC did not follow proper process and when taken to the high court it would likely to be deemed illegal.

(please see letter written dated 21 June 2016 to Dr Sue Bidrose from Angela Ruske, President of the Keep Halfway Bush Semi - Rural Incorporated) which is included as part of this submission ).

## **2GP**

The reason that the property in question has been zoned large lot residential is because of the 2012 subdivision (**LUC 2012-504 & SUB 2012-92**).

Because of some of the small residential size properties the DCC planners deemed it to be large lot residential in the 2GP (for further information please refer to letter written dated 21 June 2016 to Dr Sue Bidrose from Angela Ruske, President of the Keep Halfway Bush Semi - Rural Incorporated which is included as part of this submission.

In any case the 2GP cannot be referenced as it is still in the development and hearings. Therefore we cannot second guess what the outcome of hearing will be and any subsequent appeals.

I note that under the large lot residential rules, section minimum size may in fact be 3500 square meters for un-serviced lots.

## **Mitigation**

The proposed yard sizes are given for rural residential or 2 GP large lot residential but this land is zoned Rural so the yard sizes should be in accordance with the rural rules. Front yard is 20 metres and side yard is 40 metres.

Proposal of 3 metre buffer planting along the shared boundary and a 1.8 metre high deer fence including shade cloth

Realistically how would this work?

Who would police this?

Who do we call?

We do not want plants as they could poison our animals.

We do not want shade cloth as our animal will chew it and it may cause harm to them.

Also ripped shade cloth could scare out animals. From a cosmetic point of view Shade cloth looks tacky.

The deer fencing would also be a problem as the proposed future neighbours might not

be agreeable /or wanting to have deer fencing in the future as they feel no need for it themselves e.g. their plants don't run away so they may request different kinds of fencing which would not be suitable for keeping animals in .

#### **Other points of note**

##### **Effect on the greater community**

This application would effect the greater Halfway Bush community as a large number of people put in a submission for the previous application. LUC 2015-291 and SUB 2015-54 Because of the concerns of the community a group was formed Keep Halfway Bush Semi Rural incorporated.

The objective of the group is to keep the semirural amenity and character of the Halfway bush area.

The group put in a section 274 to the environmental court wanting to ensure that the previous outcome by the commissioners will be upheld.

If the current subdivision is granted than this will effect the outcome of the environmental court which effects all the Halfway Bush community.

##### **Land need in the area**

According to Mike Dougherty, real estate agent for Edinburgh Realty (Information gained Sunday 17/7/16). There is a shortage of 2Ha sections of bare land in the Halfway Bush area) and there is a high demand for this.

We personally know of people who would like to have 2 Ha sections.

##### **Families waiting for sections.**

This is a little more than a diversion. If the applicant is so concerned about these families why aren't they being offered the existing lots 8 and 9 -already consented?

##### **Missing paperwork**

As this is a subdivision of lot 5 (35 Dalziel road) then all legal agreements regarding this should be given (e.g. the agreement between the developers and owners of 35 Dalziel road).

##### **Misleading information**

The last line in the box where it says lot 8 should this not be lot 9?

##### **Repeat numbers**

Why is there repeat numbers for the names of lots?

There is two lots named 1

And two lots named 2

Was this just to make it more confusing?

##### **Esplanade strip**

This is not a boundary adjustment and it is a subdivision and so the rules of a subdivision apply.

##### **Development contributions**

As this is a subdivision not a boundary adjustment are the developers attempting to get out of development contributions?

**How this proposed subdivision impacts our home by greatly affecting our rural amenities and rural character.**

## **Reverse sensitivity**

### **Impact on animals**

Usually we have horses and lambs on the property but we may look into Alpaca farming in the future.

If the subdivision goes ahead it will impede me from doing what we got our property for. The concern is that someone will annoy or even harm the animals, such as feeding the horses or taking the lambs. We already have had problems with domestic dogs killing lambs in the area!! Which is a major fear for all of us. Even dogs barking annoys and stresses the animals.

The increase in housing along my boundary fence will increase the likelihood of having more dogs.

A workman on the adjoining site when building the house had a dog which barked at a young horse (which was 6-7 months old) and scared him. The horse was very distressed and needed assistance to calm him down.

### **Plants**

We brought the rural property with lamb fencing. The fence is to stop the horses and the lambs from getting out. The lambs can eat through the bottom of the fence and the horses can graze from below or above the fence.

People on urban size land titles (as oppose to rural/rural residential size land) appear to have urban expectations such as planting without consideration of what is compatible with the rural environment.

For example I was very upset to find a Rhododendron plant put in by my neighbour (33 Datzel road) was near our boundary fence.

This causes great concern as it is poisonous to lambs and horses.

It has been known to kill lambs and we have lambs on our property this is a major health and safety hazard.

To try and resolve this potentially dangerous situation I approach the landscape gardens working on this property. They agreed that Rhododendron pose a risk to livestock including lambs and informed me they would raise this issue with the owner.

Subsequently a couple of weeks later (13 July 2016) the Rhododendron plant was still there so I approach the owner who was working in the garden and try to gain her attention by calling her name. When she finally acknowledged me she responded aggressively manner and yelled at me "I'm doing it right now" in regards to moving the Rhododendron plant.

I thanked her.

However later I noticed the Rhododendron had been moved slightly further away from the boundary fence so it is still posing a potential risk as the petals can blow in my paddocks and still be consumed by my lambs leading to potential death.

This is something my neighbour does not fully grasp.

It concerns me that my neighbour has had access to previous submissions that explain the health hazard of certain plants to rural animals.

It appears that even though she has employed professional landscapers she does not take into consideration when selecting her plants whether they are compatible with the rural environment.

### **Pesticides**

There is also a risk that people living in the residential area could use a pesticide that would harm the animals. I have already seen the current neighbour who lives on a residential size property in the proposed zone of just spraying her massive pile of topsoil with pesticide. She probably did not think of the consequence of this action on the horses and lambs that were grazing.

### **Fencing**

Fences are designed to keep Animals in.

Our neighbours on their urban size land have landscaped their garden. In doing so they have lowered the ground level on their side of the fence.

This has impacted our boundary fence as by lowering the ground it has left big gaps from the last wire of the lamb proof fencing making the lamb proof fencing ineffective in managing the lambs safely.

Again an example of an urban resident not knowledgeable or understanding of rural standard practice.

### **Complaints from residential neighbours**

I put this in my previous submission.

We do not want our residential neighbours complaining about:

- our animals/farm noises
- our animal smells ( including poo)
- our animals eating their garden
- our rural fences
- our rural activities
- our grass /our hay and other agriculture activities
- anything to do with rural living /animal or lifestyle.

If council approves this application then we want a reverse sensitivity order that the owners or occupiers of adjoining lots are unable to object from the effects arising from normal farming/animal grazing of the property.

I will not ask for this in this submission as at the hearing of the previously declined application on the 22 March 2016 this was discussed and it was shown that it would not work.

### **Unrealistic expectations**

The above shows that the developers can not expect new residents to plant plants that will not harm animals and to plant what is expected.

Who would police this and who would care?

It is unrealistic to expect this

Who would we call?

### **Wild bird life**

We are very fortunate that we have wild birds coming onto the property such as ducks, oyster catcher, and bell birds amongst others. It is one of the pleasures of living on a rural property.

There are concerns that more people moving into the area will have cats that will harm these birds and also the noise from the houses, while and after they are being built.

We used to have Tui's that visited but one year when our neighbours house ( number 33 Dalziel road) was being built -it was very noisy they flew away and have not returned

#### **Density of housing**

My husband and I were concerned when the massive house (33 Dalziel road) was being built in 2014 that we could end up with a line of massive houses and lots of neighbours.

I approach Simon Temple, real estate agent about the price of the 2 hectare land on the eastern boundary. He informed me that it was not for sale.

If this proposal goes through this will increase my neighbours on my eastern boundary to 4 and in total to 6.

This is in stark contrast to when we brought the property we were promised 2 neighbours.

Not many people even in suburbia have 6 direct neighbours.

I also have concern of the proposed lots could again be subdivided smaller so even more neighbours.

#### **Visual Impact**

One of the selling points of the property was the rural outlook, openness, space, view of paddocks and sea.

As the farm was going to be divided into 2 hectare blocks we expected our neighbours would have gardens or grazing animals such as horses, alpacas, cows or sheep.

We now watch beautiful sunrises and have a view of the sea. Unfortunately this is all under threat with the prospect of at least four houses on the eastern boundary.

We did not want to lose our rural outlook and views and end up looking at lots of houses

In this current proposal the impact of the new lots- two story houses along the boundary instead of the current one two story house and then open space

#### **Privacy**

A reason we brought in a semi rural area is for privacy. We wanted it and valued it.

We currently have a massive two story house looking over our home.

If this proposal goes through then there is the potential of at least 4 large houses looking over my home on my eastern boundary.

We are on rural zoned land and the proposed subdivision site is on rural land so logical says we should be able to have privacy.

When I lived in suburbia I had more privacy than what is proposed.

#### **Noise pollution**

I enjoy listening to the natural sounds of the environment such as hearing the birds, horses, lambs, alpaca's etc.

For the last 2 years we have heard the noise from the houses being built and earth works being done. It is loud and intrusive and this could lead to years of noise then we are going to hear the noise of the neighbours.

We do not want to listen to car radios, people talking, other peoples' music, lawn mowers, dogs barking, cars driving and motorbikes. We moved to this area to get away from that.

My sleep is already disturbed by the neighbours car and others coming and going from the subdivision road.

#### **Light pollution**

Currently we can watch the stars and the moon. If we have lighting from houses cars etc. this will be effected.

#### **Security**

With more people around the boundary of my property this increases the likelihood of people being on our property, harming our animals

- animals
- stone walls
- other property

#### **Rural community**

We live in a Rural community and people come together to help each other and help each other's animals. We have an unique situation as we have a pony club in the area and this is the heart of the community as most people have a direct or indirect connection with it by having horses, leasing land or knowing some one who goes to the pony club. I enjoy watching the kids and adults ride their horses around the road and to the pony club. Changing the character of the area by allowing small residential plots of only 2020 square metres area puts this at risk.

#### **Fair hearing**

We are hoping for a fair hearing and that the decision has not been already made by the council planner.

#### **Conclusion**

I would like the integrity of the district plan upheld, in doing this it would show that the council has respect for:

- Its own rules and regulations.
- The current case before the environmental court
- The Halfway Bush community
- The rural amenity and rural character of the area
- The care of the people and the animals.

Please decline this application

6 June 2016

**Mr John Sule**  
**Dr Sue Bidrose**  
Dunedin City Council  
50 The Octagon  
PO Box 5045 Moray Place  
Dunedin 9058

26 JUL 2016

Dear John,

**Immediate hold of all applications regarding RPR Properties subdivision,  
Dartel Road**

Further to your phone call on Friday, 3 June 2016 regarding, the application from RPR properties, Since I was unwell and unable to speak, due to having lost my voice, I now am writing to clarify my position on this situation.

I have now had the opportunity to seek further legal advise from a Barrister experienced in environmental resource consent case advising that the High Court would likely deem that the process used to approved to the 2012 consents to be illegal.

As you were aware the 2012 consents did not follow proper process.  
SUB-2012-92 & LUC - 2012-504

Therefore, with immediate effect, I am requesting that all current applications regarding the Dartel Road subdivision are place on hold and that no further applications are accepted whilst this matter is being investigated.

Also as you are aware, there a current appeal by RPR Properties in the Environment court (LUC 2015-291 & SUB 2015-54) therefore no further action should be taken by the DDC until this legal matter is resolved through the proper channels.

Finally, I would just like to add that as a Dunedin rate payer that I am concerned that rate payers' money is being wasted on litigation that could be avoided.

Yours sincerely

  
Alice Wouters



## Keep Halfway Bush Semi-Rural Inc

Mobile 021452111 email: ruske@stonebarn.co.nz 42 Dalziel Road, Halfway Bush, Dunedin

Dr Sue Bidrose  
CEO  
Dunedin City Council

21 June 2016

Keep Halfway Bush Semi-Rural Inc



Dear Dr Bidrose,

### **Re Consent Application: SUB-2012-92 & LUC-2012-504 by R P R Properties Ltd**

As the president of Keep Halfway Bush Inc I am writing to inform you of a procedural mistake made by the Council with regard to granting of the above consent. We have been advised to contact the Council in the first instance to see if this can be resolved prior to seeking further legal action.

Below is a an extract from the Resource Consent Notice:

**41 Dalziel Road, Halfway Bush, Dunedin being the land legally described as Lot 2 Deposited Plan 453493, Lott 11-14 Deposited Plan 531 and Part Lot 15 - 16 Deposited Plan 531 (CFR 5800991; 17.6562ha) and Part Sections 28, 32, 34, 36 & 38 Wakari SD (title to be issued).**

**Resource consent is sought for a non-complying activity, being the subdivision of the above land into nine new lots for rural residential development, plus two small lots to be transferred to adjoining properties.**

**The proposed Lots 2 to 10 will all be rural residential sized lots of approximately 2ha. ....**

As you can see, it was specifically stated in the notified application that Lots 2-10 (nine sites) will be rural residential sized Lots of approximately 2ha. Prior to this application the developer, R P R Properties, had looked at developing this land into 106 residential sites, which was opposed by both residents and the Council. There was little objection by residents to the the new proposed development of nine 2ha Lots as many in area believed it was in keeping with the surrounding properties and made best use of the

land - which is currently zoned Rural, despite being nestled in amongst Rural-Residential land. The Council declined this application at the submission hearing based on their concerns about the loss of a native gully on the property, and gave R P R Properties an option to submit a revised plan which protected the gully. The revised plan significantly changed the Lot sizes - reducing some of the Lots from 2ha to 0.25ha. The revised plan no longer met the Lot sizes stated in the application. Given the significant change in Lot sizes the correct procedure would have been for the Council to re-notify everyone and give them the option to re-submit. However the Council only sought "feedback" from those who made submissions on the initial application. Not only should the Council have sent a new application out to all the people notified in the first application, but a new hearing should also have been held.

Many residents opposed a further application made by the developer to subdivide this area into an additional 34 Lots (SUB-2015-54 & LUC-2015-291). This application was declined by the Committee earlier this year, due to the "more than minor" affects it would have on the area. It was at this meeting that many residents learnt for the first time that the Rural Residential application of nine 2ha Lots were not all 2ha in size, and no longer satisfied Rural Residential zoning. At this point we realised that the Council had granted the above application without following correct procedure, and as such we have been advised that this consent has been granted in error.

This is important because we believe residents would have opposed the smaller Lot sizes had they been informed of the changes in the revised plan. This has had further implications on development of this land as both the developer - and the Council in its 2GP re-zoning plan - have proposed to subdivide this land into even smaller Lot sizes. We are very confident that the Council planner would not have suggested this if the initial application of nine 2ha Rural Residential Lot sizes had been granted. Given that the Committee rejected R P R Properties application to create a further 34 Lots by subdividing some of the initial nine Lots to even smaller Lot sizes, it is evident that it is not in keeping with the surrounding Rural Residential area and not supported by those who live in the area.

We have consulted Trevor Shiels (QC) with regard to this matter, and he has advised us that the we would have a very good case if we were to take this matter to the High Court. We would like to avoid this if possible.

We believe that the initial application of nine 2ha Lots should be upheld. Given that some of these Lots have been sold (some of which are significantly smaller than 2ha) we are aware that these cannot be changed, but we would like to see the remaining unsold Lots to be changed so that they are at least 2ha in size. Given that most of the



titles on this land will meet the land size of Rural-Residential, we would like the land to be re-zoned Rural-Residential at the upcoming 2GP Hearing in February 2017, rather than the Large Lot Residential zone it is being considered for.

We look forward to hearing from you with regard to this and hope that we are able to resolve this issue quickly.

Yours Sincerely

Angela Ruske



18 April 2016

50 The Octagon, PO Box 5045, Moray Place  
Dunedin 9058, New Zealand  
Telephone: 03 477 4000, Fax: 03 474 3488  
Email: dcc@dcc.govt.nz  
www.dunedin.govt.nz

RPR Properties Limited  
C/- Paterson Pitts Group  
Attention: Kurt Bowen  
P O Box 5933  
Dunedin 9058

Dear Sir/Madam

**RESOURCE CONSENT APPLICATION, SUB-2015-54 and LUC-2015-291  
35, 41, 43, 47 & 49 DALZIEL ROAD, DUNEDIN**

The above applications for subdivision and land use consent were processed on a notified basis in accordance with Section 95 of the Resource Management Act 1991. The Consent Hearings Committee comprising Councillors Andrew Noone (Chairperson), Councillor Andrew Whiley and independent Commissioner David Whitney, heard and considered the application at a hearing on 22 March 2016.

At the end of the public part of the hearing, the Committee, in accordance with Section 48(1) of the Local Government Official Information and Meetings Act 1987, resolved to exclude the public.

A site visit was undertaken by the Hearings Committee on 21 March 2016 prior to the hearing.

The Committee has **declined** consent to the application on 18 April 2016. The full text of this decision commences below.

**The Hearing and Appearances**

The applicant was represented by:

- Tom & Loretta Richardson
- Kurt Bowen (Consultant Surveyor)

Council staff attending were:

John Sule (Advisor to Committee), Lianne Darby (Processing Planner), Grant Fisher (Transportation Planner) Barry Knox (Landscape Architect) and Jenny Lapham (Governance Support Officer).

Submitters presenting included:

- Basil Scott
- Ross McTaggart
- Angela Ruske
- Laura Hayes
- Valerie Dempster
- Alice Wouters
- Don Anderson (Consultant planner for A Wouters and Chris Rietveld)

### **Procedural Issues & Late Submissions**

No procedural issues were raised at the hearing. It was noted that Mr Anderson would be presenting submissions for Alice Wouters and Chris Rietveld as Keith Hovell was not available due to a serious illness in his family. It was noted by the Committee Advisor that procedural issues identified in the original submission were considered and responded to in writing prior to the hearing by the Committee Chair. Mr Anderson agreed that the procedural issues raised in the submission do not prevent the Committee from hearing the application.

Two late submissions were considered by the Committee. One that arrived on 11 February 2016 shortly after the closing date and this submission was accepted by the Committee. The other submission was very late being received on 25 February 2016 and it was not accepted. It was noted that this submission covered similar ground to others. A resolution was passed by the Committee to accept the submission from Asiya Barekzai received on 11 February 2016 and to refuse the submission from Johnathan Boyd received on 25 February 2016.

### **Principal Issues of Contention**

The principal issues of contention are as follows:

- The characteristics of the existing environment which include an earlier subdivision approved at a Rural Residential density.
- Whether the proposal was contrary to or inconsistent with the Objectives and Policies of the operative and proposed District Plans in relation to the Section 104D test.
- The degree and significance of adverse effects on rural amenity values and character resulting from the proposed subdivision and resulting development of dwellings.
- The significance of transportation effects and the suitability of the proposed vehicle access.
- The effectiveness of mitigation proposed by the application to address adverse effects.
- Precedent implications

### **Summary of Evidence**

#### ***Introduction from Processing Planner***

**Lianne Darby** outlined the application for subdivision of 35, 41, 43, 47, and 49 Dalziel Road into 34 residential lots and the residential development of these new sites. She noted that the five subject sites contain a total of 16.0ha, and the site range in size from 4860m<sup>2</sup> to 10.3ha. Ms Darby noted the land is zoned Rural in the operative Dunedin City District Plan and that subdivision into lots smaller than 15.0ha was considered to be non-complying activity. She noted that the site has frontage to Dalziel Road on its western boundary, and Taieri Road on its northeast boundary and that access for the new sites will be from Taieri Road.

Ms Darby noted that the land of the proposed residential lots for the most part Large Lot Residential 1 in the Proposed Second Generation Plan, and the proposed public reserve is shown as Rural – Hill Slopes. Ms Darby noted that the Proposed 2GP was publically notified after the lodgement of the resource consent application and therefore has very limited weight in regards to the application of the proposed rules. She noted that the rule regarding minimum lot size for rural land is in effect, and applies to proposed Lots 32, 33 and 34. The activity status of the application, as a non-complying activity, does not change under the proposed 2GP.

Ms Darby noted that the application was originally notified on 29 August 2015, and 29 submissions were received. The application was then revised with the primary access to the subdivision being transferred from Dalziel Road to Taieri Road. The revised application was then publically notified on 13 January 2016. Ms Darby identified that 44 submissions were received second time around: 16 submissions were in support, one was neutral in its stance, and 27 were in opposition.

Ms Darby noted that in making her assessment of the environmental effects of the proposal, she considered the nature of the application, the local environment, Council Officer comments, and the comments of submitters. Ms Darby considered that the proposed subdivision and residential development will have adverse effects as the rural character of the sites will be diminished, but she noted that the existing subject sites were not reflective of rural sites due to a prior subdivision. Ms Darby considered the continued use of Dalziel Road for a limited number of users was acceptable, and that the Taieri Road access will maintain the safe and efficient operation of Taieri Road. She observed that visual impact and amenity effects will be significant in the short term, but amenity will improve over time as new plantings mature.

Ms Darby considered the proposal to be consistent with many of the objectives and policies to do with manawhenua, hazards, transportation and subdivision. She considered the proposal to be inconsistent with those of the Sustainability and Rural zone sections but did not consider it to be contrary to any objectives and policies because of the existing environment. She acknowledged the assessment was finely balanced due to the rural zoning of the land. Ms Darby considered that the proposal will meet the thresholds to pass either of the gateway tests of section 104D, although if viewing the proposal in terms of the zoning rather than the existing environment will mean that neither gateway is cleanly met. Ms Darby considered that the Committee was in a position to consider the granting of consent.

In terms of precedent, Ms Darby considered that the subject site has a number of characteristics which were unusual for rural land, particularly the partially implemented existing underlying subdivision at a Rural Residential density. She considered the proposed subdivision and residential development would not set an undesirable precedent for the development of Rural-zoned land.

Ms Darby confirmed it was her recommendation to grant consent to the subdivision and land use proposals, subject to conditions. However, she noted the Committee must form its own view on its own assessment of the proposal, and may decide that declining consent is a more appropriate decision.

### ***The Applicant***

**Kurt Bowen** presented the applicants case describing the important features of the proposed subdivision and development proposal. He noted that large sites of 2000m<sup>2</sup> are proposed to promote a semi-rural environment. Mr Bowen noted that stone farm walls, the gully and the transmission lines that run through the site were the 3 obvious features of the site. He noted the applicant's intention was to establish a subdivision that incorporates important features of the local environment and its history. Mr Bowen noted the proposal would result in pedestrian pathways along existing stone wall and incorporate features such as open swale drains, gravel shoulders, neighbourhood reserves, rural style fencing provisions and provisions to promote landscaping throughout the development.

Mr Bowen discussed the proposed Taieri Road access and noted the existing Dalziel access will be restricted to servicing 9 new allotments which is equal to the number authorised under the earlier subdivision consent. Mr Bowen discussed the effects anticipated from the development focusing on landscape issues and the transportation effects of the proposed subdivision. Mr Bowen drew the Committee's attention to the positive effects of the development which included new reserves, connection to existing Council reserves, transportation connections and the retention of stone walls.

Mr Bowen concluded that the proposal was not contrary to the objectives and policies of the operative District Plan and agreed with Ms Darby on this aspect. He stated that as it was not contrary to the objectives and policies of any plan it passes the Section 104D gateway test and the Council Planner had reached the same conclusion. He noted that the provisions of the proposed District Plan should be given little weight.

Mr Bowen identified a range of concerns raised in submissions and detailed the applicant's specific response to the matters raised. He noted that the Council Planner's recommendation was to approve the consents and the applicant is in agreement with the Council Planner's recommendation. He agreed with the planner's conclusion in relation to effects, objectives and policies and precedent effects. Mr Bowen noted that the only major matter where there was not agreement with the proposed conditions was in relation to the walkway connection along the northern side of Lot 32. An alternative involving installing seating to promote use of the walkway adjacent to Lots 6 and 7 was proposed.

Mr Bowen concluded by advising that the applicant considers the proposed development presents the best possible use of the existing land resource. He noted that it offers a unique opportunity for the city to provide a well-integrated and desirable residential neighbourhood that is compatible within its local environment.

### **Submitters**

**Basil Scott** spoke in support of the application. He identified that he was a landowner at Halfway Bush and he outlined his involvement with the area over many years. Mr Scott noted the land was not particularly productive and the proposal was positive in providing infrastructure. He considered that positive effects that would arise from its approval. He noted that Dunedin needs growth. Mr Scott responded to questions from the Committee on productivity and his connections with the area.

**Ross McTaggart** spoke in support of the application. He considered that the proposal appeared to be a good use of the land resource. Mr McTaggart noted the transformation of the area over time from rural to a more residential character. He responded to questions from the Committee on a range of issues including traffic safety and he advised the Committee that getting out of his driveway on to Taleri Road was not too difficult.

**Angela Ruske**, a resident of Dalziel Road, spoke to a power point presentation noting that she was also speaking for other submitters in opposition that could not attend the hearing including Lynn Gipp, Lesley and Doug Ramsey, Murray and Aniko Flora and Leah Wilson. She also referred to the Dunedin Branch Pony Club which was not a submitter. Ms Ruske outlined for the Committee her background to living in the area noting that she farms and breeds alpacas on her Dalziel Road site and that she also operates a homestay business. She emphasised that the Rural residential nature of the area was a big part of the reason to purchase in the area. Ms Ruske values the semi-rural feel of the area highly and she considers that the amenity and character would be impacted by the proposed subdivision. She identified that the visual impact, effects on privacy, effects on her business, the increased likelihood of dog attacks and disturbance to farm animals as particular areas of concern for her. Ms Ruske identified traffic as an important issue noting that there were a number of recreation users of the area that would be impacted by the proposal.

Similar concerns were expressed by the other parties she was representing, some noted the presence of underground springs and were concerned about the implication of the springs on the development. In her concluding comments Ms Ruske noted that the proposal is in breach of the District Plan and the Resource Management Act. She considered the proposal would adversely impact to the rural residential amenity values of on Dalziel Rd and it would result in increased traffic and noise. In response to questions she noted that she had supported the initial design of the earlier rural residential subdivision as that density was consistent with the zoning on the opposite side of Dalziel Road.

**Laura Hayes** spoke in opposition to the proposal. Ms Hayes is an occupier of land at 31 Dalziel Road that she uses for running horses and sheep. She considered the change in the number of dwellings to be established on the land from 9 to 34 would impact significantly on the rural residential character and amenity of the area. Her particular concerns were in relation to impacts on livestock and reverse sensitivity conflicts. She identified concerns with traffic safety, noise including fireworks and dog attacks on stock. Ms Hayes responded to questions from the Committee on these and related issues.

**Valerie Dempster**, a resident of Taieri Road, spoke in opposition to the proposal noting that she had lived at her property for 54 years. She expressed concerns about safety in relation to the proposed Taieri Road intersection. She noted that traffic in the area often travelled at speeds that were well in excess of the speed limit. Ms Dempster did not agree with the accident numbers quoted in the traffic report and outlined that over the 54 years she had lived in the area she had witnessed a number of accidents.

Ms Dempster noted that the road was prone to flooding in high rainfall events and she spoke about the incidents she had witnessed. Ms Dempster noted that she did not see the need for a public reserve on Taieri Road noting that there was a large one located on Ashmore Street. She considered the gully to be a dangerous place for children because of the stream and flooding events. Ms Dempster responded to a number of questions on transport issues and accidents.

**Alice Wouters** spoke to circulated written submissions in opposition to the proposal; noting that she and her partner Chris Rietveld were owners and occupiers of 31 Dalziel Rd. She advised that she had lived in the Halfway Bush area for many years. Ms Wouters noted that she had supported the previous rural residential subdivision but she was completely opposed to the current proposal. Ms Wouters concerns were related to the significant impact on rural/rural residential character and amenity values that would arise from the proposal. She stated that this was contrary to the understanding with Mr Richardson when she and her partner purchased the property. She emphasised to the Committee that they had purchased the property at 31 Dalziel Road for the rural outlook and openness. Ms Wouters noted that they expected to see neighbours as they were aware of the rural residential subdivision but expected that these neighbours would be relatively few and have similar interests. She identified a range of concerns including traffic effects, noise reverse sensitivity, light pollution and peak stormwater flows. Ms Wouters considered the proposal will have a major effect on rural/rural residential character and amenity noting that an additional 29 houses cannot be called minor. She concluded by noting that the proposed intensification of residential activity will have a major impact on their home and did not accept the planners claim that the overall effects will be minor. Ms Wouters considered that approving the proposal would send a signal that the Council zoning and rules have little value and that land on the fringes of the city is open for housing intensification.

**Don Anderson** tabled and spoke to submissions made on behalf of Alice Wouters and Chris Rietveld focusing on the Section 104D test under the Resource Management Act and the Environment Court case that led to the establishment of the Rural provisions in the operative Dunedin City District Plan. Mr Anderson noted that the Court decision established 15ha as the minimum lot size in the operative plan. He considered that it was inconceivable that the proposal subdivision into lot sizes of 0.2ha can now be considered at worst to be inconsistent with the Objectives and Policies of the operative plan. Mr Anderson considered the proposal was clearly contrary to the objectives and policies of the operative District Plan. He noted that the objectives and policies of the Second Generation plan were subject to challenge and may change and as a result the weight that can be given to them is insignificant.

In terms of effects Mr Anderson noted that the effects arising from the transformation of the site into 33 residential lots were significant and that this view was supported by the expert evidence.

Mr Anderson spoke at length on the elements of the Environment Court decision and their relevance to the proposed development. He discussed rural yards and the significance of the non-complying activity status. He concluded that the proposal failed the Section 104D test and the Committee therefore could not consider granting the consent.

Mr Anderson was questioned on the position he advanced that if a rural zoned subdivision created sites less than 15ha in area then it was almost certain to be contrary to the operative District Plan.

### ***Council Officers***

**Grant Fisher** spoke to the expert traffic advice he had provided to the Committee. Mr Fisher discussed the constraints associated with Dalziel Road and he noted the road was challenging particularly to non-motorised users. He also acknowledged that winter driving conditions in the area could be challenging but this was no different to other hill suburbs.

He responded to the evidence and submissions that he had heard and in relation to the Taleri Road access he acknowledged that vehicles were often travelling above the speed limits. He noted in response to questions about this issue that development often assisted with slowing vehicles.

Mr Fisher noted that the crash statistics typically cover the last 5 years as road conditions and environments change over time. He considered that the transportation effects would be no more than minor overall. Mr Fisher responded to a number of questions from the Committee. In respect of plans for the proposed 4m strip on Dalziel Road, he advised that there were no fixed plans to widen the road. In respect of the Taleri Road Access being public or private Mr Fisher explained the Council position did not in favour a hybrid arrangement.

The Council's Landscape Architect **Barry Knox** noted that although the visual impact change would be major there were positives in that the gully system would be retained and there would be a link to the existing reserve. In response to questions regarding mitigation he noted colour schemes and planting would provide mitigation but that the effects were more about the density of the dwellings.

### ***Processing Planner's Review of Recommendation***

Ms Darby noted that the 5 sites to be subdivided although zoned rural did not have the characteristics of rural land and were nowhere near 15ha in area. She considered that had the land been rural in character then the proposal would have been contrary to the objectives and policies, but in her view it was not rural in character. In her view declining consent would not maintain, enhance or preserve a rural environment.

Ms Darby recommended maintained a 10m yard around the perimeter of the subdivision. She acknowledged that the effects would be significant in the short term but that over time the visual effects would become no more than minor. Ms Darby noted that any precedent would be limited in its scope and would be largely confined to the adjoining site at 31 Dalziel Road. She confirmed her recommendation was to grant consent.

Mr Darby was questioned by the Committee on the assessment of objectives and policies in respect of the loss of rural character and amenity. Ms Darby accepted that the openness of the land would be further diminished by the proposed subdivision and the proposed residential development but her view was that the land was no longer rural in character as the result of the previous subdivision.

### ***Applicants Right of Reply***

The applicant requested it be able to respond to some matter at the hearing and then provide a written right of reply for more substantive matters. Mr Bowen noted that in addition to the 4m strip that would be vested there would be significant development contributions and that this may provide funding for improvements to Dalziel Road to be sped up.

A comprehensive written Right of Reply was provided by the applicant on 22 March 2016 where the objectives and policies were traversed in some detail. In addition the reply responded to matters raised by submitters addressed the issue of precedent and addressed Part 2 considerations. The applicant concluded by advising the Committee that there was sufficient scope for the Committee to grant consent.

### **Statutory and Other Provisions**

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Committee considered. Regard was given to the relevant provisions of the following chapters of the Dunedin City District Plan: 4 Sustainability, 6 Rural Zones, 20 Transportation and 21 Environmental Issues. Statutory provisions considered included Sections 5, 7(c) and 7(f) within Part 2 of the Act. Regard was also given to the Regional Policy Statement for Otago.

### **Main Findings on Principal Issues of Contention**

The Hearings Committee has considered the evidence heard, the relevant statutory and plan provisions and the principal issues in contention. The main findings on the principal issues have been incorporated within the reasons discussed below.

### **Decision**

The final consideration of the application, which took into account all information presented at the hearing, was held during the public-excluded portion of the hearing. The Committee reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991. In addition, a site visit was undertaken prior to hearing. The Committee inspected the site and the local area and this added knowledge of the locality to the Committee's considerations.

### **Subdivision**

*That pursuant to Sections 34A(1) and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council declines consent to a **non-complying** activity being the subdivision of Lots 2, 5, 7, 9 and 10 DP470050 into 34 residential lots, road, access lots private parks and public reserve at 35, 41, 43, 47 and 49 Dalziel Road.*

### **Land Use**

*That pursuant to Sections 34A(1) and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council declines consent to a **non-complying** activity being residential activity on Lots 1 - 34 of Sub 2015-54.*

### **Reasons for this Decision**

#### **The Permitted Baseline and the Existing Environment.**

- 1 The permitted baseline for Residential Activity in the rural zone was described by Ms Darby in the Section 42A report. The Committee considers that the permitted baseline provides very little opportunity for the discounting of effects from the proposed subdivision and the associated land use activity.
- 2 The Committee accepts that the existing environment includes the preceding Rural Residential subdivision (SUB-2012-92 and variations) that has been completed and the associated land use for establishing dwellings on the new lots (LUC-2012-504 and variations) which has been partially implemented. The end result of that subdivision is identified by Ms Darby as nine houses on the hillside.

- 3 The Committee observes that the layout of this earlier subdivision will result in the clustering of these dwelling to a central portion of the parent site leaving Lot 7 as a relatively large balance lot. The Committee considers that this subdivision results in a rural residential character for the sites and it retains a large area of land preserving a degree of openness and separation from neighbours. The explanation for this design at the hearing was that it allowed the gully system to be maintained in one lot. The Committee observed that the design of the subdivision allowed a sense of openness to be retained and it also provided for future development opportunities through residential expansion onto the land.

#### Effects

- 4 The primary effects areas identified in the Section 42A report and in submissions are transportation and rural character and amenity. Reverse Sensitivity was also frequently raised as an issue primarily in relation to the impacts of the development on farm animals.
- 5 The Committee accepts the expert advice that the transportation effects will be no more than minor. It acknowledges that vehicles frequently speed along the stretch of Taleri Road where the primary access will be sited but it accepted expert evidence suggesting that this behaviour would likely change with development of the area, as it will appear less open and this will affect driver behaviour.
- 6 The Committee has considered the effects of the proposal on amenity values and rural character and has concluded that they are more than minor. A significant transformation will occur. Both landscape architects agree that the visual change will be significant. There will be a significant increase in the number of dwellings on the land, increased traffic, noise and lighting impacts.
- 7 Mr Anderson opined that in his view the effects are significant and he considers that this is supported by the expert evidence. Ms Darby accepts that the character of the site is to be fundamentally altered. She acknowledges that the effects will initially be significant but over time she considers that with the establishment of dwellings and vegetation the effects will reduce to a point where they are no more than minor. The Committee notes that this could take many years to occur and it agrees with the expert evidence that the change is significant and that the effects on amenity and rural character are more than minor. The Applicant's expert surveyor appears to accept the effects on rural amenity values and rural character are more than minor often describing them as acceptable in the evidence and submissions rather than minor.
- 8 The Committee noted that the sustainability section of the plan establishes a plan framework for zoning and identifies amenity values and compatibility as an important consideration in all zones. Impacts on rural amenity values are therefore an important effects consideration in the assessment of these applications. The Committee considers that the adverse effects of the proposal will be significant and cannot be adequately mitigated through conditions of consent. The Committee accepts that the land is rural residential in character but agrees that there is a marked difference between the 9 dwellings permitted under the previous consent at an overall 2ha density and the 34 Lots and associated dwellings proposed under these applications.
- 9 The Committee also considers the degree of adverse effects arising from other effects considerations such as reverse sensitivity is not significant. There will be increased potential for conflict but there was no compelling evidence that the effects will be more than minor.
- 10 The Committee acknowledges the positive effects of the development proposal and it notes that the subdivision appears well-designed. It retains the gully system, avoids hazardous land, provides transport connections and connections to existing reserves and retains stone walls. It also promotes amenity planting within large residential sites.

- 11 The proposal will result in a significant transformation in terms of the land use. It is the Committee's view that the expert evidence is that the effects on rural amenity and character are more than minor and the effects of rural character and amenity are a primary effects consideration. The Committee therefore considers the effects limb of the Section 104D test is not passed. The proposal must therefore pass the Objectives and Policy limb of the Section 104D test for the Committee to be able to consider granting consent.

Objectives and Policies

- 12 The Committee accepts the evidence it has received that it can only give very limited weight to the objectives and policies of the proposed Second Generation District Plan. The Large Lot Residential 1 zoning notified for the land has been opposed and submissions have not been heard. The Committee has given primary weight to the objectives and policies of the Operative District Plan.
- 13 Ms Darby advised the Committee in her opening that the overall objectives and policies assessment was finely balanced. In her view the proposal was not contrary to any objectives and policies as the previous subdivision meant that although the land was zoned rural it was not rural in character. As the land was already compromised Ms Darby considered the proposal was only inconsistent with the relevant objectives and policies of the Sustainability or Rural sections of the operative plan. Mr Bowen agreed with Ms Darby. Mr Anderson had a different view and he submitted that it was inconceivable that the proposed subdivision could be considered at worst inconsistent with the objectives and policies given the proposed size of the lots that are well under the 15ha minimum for rural zone lots established by the Environment Court.
- 14 The Committee considers that the planners appeared too focussed on the 15ha minimum site size. This minimum site size although mentioned in explanations to objectives and policies is not specifically identified in any of the rural zone objectives and policies in the operative plan. The objectives and policies are more focused on the characteristics of the rural environment. It agrees the 15ha minimum site size provides a yardstick for assessing characteristics and that the existing environment needs to be taken into account in the assessment of objectives and policies. However, if existing sites are already less than 15ha minimum this does not automatically mean that significant further erosion won't be contrary to the objectives and policies of the Rural zone. Further, any rural subdivision that creates sites significantly less than the 15ha minimum will not be automatically contrary to the objectives and policies of the operative District Plan as the existing environment needs to be considered. In this case the expert evidence identifies the transformation proposed as significant and this will result in a predominance of human made features, a significant diminution in open space and an increased population density.
- 15 The Committee accepts that the productivity of the site is not a significant consideration but it considers the proposal is contrary to a number of key Sustainability and Rural section objectives and policies relating to rural amenity values and character. This proposal will install a large lot residential development on land zoned rural. It accepts the previously subdivision alters the existing environment but it notes the adverse effects adverse effects associated with an additional 29 substantial houses will be significant. Even taking into account the existing environment the level of intensification proposed is considered to be the opposite of the environment the objectives and policies are trying to promote in relation to rural amenity values and rural character. The Committee finds that the proposal is contrary to the relevant objectives and policies of the Operative District Plan.

### **Determination**

- 16 The Committee considers that the proposal will result in more than minor adverse environmental effects and is contrary to the key Sustainability and Rural zone objectives policies in the operative plan. As such, the Committee considers the proposal fails the Section 104D gateway test and as a result the Committee is not able to consider the granting of consent to the proposal.
- 17 The Committee has significant sympathy for the applicant in this matter as the subdivision proposal appears to be well considered and well designed. No major issues were identified with infrastructural servicing. Despite this, the Committee considers that a development of this scale was always a difficult proposition under the current zoning and it would be more appropriately advanced through a plan change or the second generation plan process. It notes the reasons identified in SUB- 2012-92 signalled the potential difficulties as follows:
- The long term development of the balance land (Lot 7) land is not certain at this time. The Committee accepted that future rezoning of the land to residential could occur as part of the Second Generation District Plan (2GP). The Committee expressed a preference for any future development of the balance area to be undertaken once the review process for the 2GP is further advanced. In the event that any application for further development were lodged prior to the settlement of the 2GP provisions it would be considered on its merits, but may not find any support in the relevant planning documents.*
- 18 Recent expansions of the Mosgiel and Outram Residential zones have been achieved through a plan change process where the operative plan objectives and policies are not as central to decision making considerations. The Committee also notes that the timing of the 2GP notification may not have been helpful to the applicant in this case as preparations for the subdivision are advanced and the applicant is keen to progress the subdivision. It will be delayed by the lengthy 2GP hearings process.
- 19 The Committee observes that a number of submitters in opposition were supportive of, or at least could live with, the existing rural residential subdivision. This indicates that some have the realisation that the land has no long term future as rural land but they want to reduce the density of development to a rural residential character at worst. The Committee considers that the best use of the land is a matter better addressed through the 2GP hearings process and the Committee does not want to predetermine the outcome of the consideration of the zoning under the 2GP. The Committee note that the decision makers hearing the proposal for rezoning under the 2GP will not be as constrained in relation to consideration of the provisions of the operative plan. This is likely to make the case for rezoning the land as large lot residential or a more intensive residential zoning significantly stronger. The city will need to provide for expansion areas and in that regard the Committee observes that a Residential 1 density would be a more efficient use of the land as an expansion area.
- 20 The Committee has concluded that in terms of the operative plan, that must be given more weight, the refusal of the consents would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

### **Other Matters**

- 21 As it has determined that the proposal does not pass the gateway test the Committee does not need to consider whether the proposal is a "true exception".

**Right of Appeal**

In accordance with Section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received. The address of the Environment Court is:

The Registrar  
Environment Court  
PO Box 2069  
**CHRISTCHURCH 8140**

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The applicants.
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in Sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Please direct any enquiries you may have regarding this decision to John Suje, whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

Yours faithfully



Cr Andrew Noone  
**Chairperson**  
**Hearings Committee**



**DUNEDIN CITY**  
**COUNCIL**  
Kaunihera-a-rohe o Otepoti

### SUBMISSION FORM 13

Submission concerning resource consent on limited notified application under sections 95A.

Sections 95A, Resource Management Act 1991

To: Dunedin City Council, PO Box 5045, Moray Place, Dunedin 9058

**Resource Consent Number:**

SUB-2016-45 & LUC-2016-245

**Applicant:** RPR Properties Ltd

**Site Address:**

35, 39, 41 and 49 Dalziel Road

**Description of Proposal:**

To reorganise the layout of the 4 subject sites by subdivision. The location of building sites for future dwellings will change as the result of the subdivision but no additional building sites will be created. Approval is also sought for approximately 650m<sup>3</sup> of earthworks. The proposed sites will use the existing access onto Dalziel Road.

**I/We wish to lodge a submission on the above resource consent application:**

Your Full Name: Laura June Hayes

Address for Service (Postal Address):

[REDACTED]

Post Code: 9010

Telephone:

[REDACTED]

Facsimile:

Email Address:

[REDACTED]

I: **Support/Neutral/**Oppose this Application

I:

Do/Do Not wish to be heard in support of this submission at a hearing

If others make a similar submission, I will consider presenting a joint case with them at a hearing.

(Delete the above statement if you would not consider presenting a joint case at a hearing)

Please use the back of this form or attach other pages as required

**The specific parts of the application that this submission relates to are:**

Refer to separate sheets attached

**My submission is** [include the reasons for your views]:

Refer to separate sheets attached

**The decision I wish the Council to make is** [give precise details, including the parts of the application you wish to have amended and the general nature of any conditions sought]:

Refer to separate sheets attached.

**Signature of submitter:**

(or person authorised to sign on behalf of submitter)

**Date:**

26/07/16

**Notes to Submitter:**

**Closing Date:** The closing date for serving submissions on the Dunedin City Council is Wednesday, **27 July 2016 at 5pm**. A copy of your submission must be served on the applicant as soon as reasonably practicable after the service of your submission on the Dunedin City Council. The applicant's address for service is RPR Properties Ltd, C/- Kurt Bowen, Paterson Pitts Group, PO Box 5933, Moray Place, Dunedin 9058.

**Electronic Submissions:** A signature is not required if you make your submission by electronic means. Submissions can be sent by email to [resconsent.submission@dcc.govt.nz](mailto:resconsent.submission@dcc.govt.nz)

**Privacy:** Please note that submissions are public. Your name and submission will be included in papers that are available to the media and the public. Your submission will only be used for the purpose of the notified resource consent process.

**Submission concerning resource consent on limited notified application under sections 95A**

**The Specific parts of the application that this submission relates to are:**

Rural Zoning & Subdivision

Effects on the Environment

Section 6.7 (Rural) Sustainability, Amenity Values – Noise, Glare & Lighting, Odour, Bulk & Location. Water & Effluent Disposal, Conflict & Reverse Sensitivity

Section 14.7 (Landscape) Visibility, Adverse effects

Section 20.6 (Transportation) Vehicle crossing, Road Construction.

Section 21.6 (Environmental Issues) – as mentioned above

**My Submission is (include reasons for your views):**

I am the current leasee of the land at [REDACTED] which shares a direct boundary with the proposed activity described in the application.

The property is currently used for grazing of my own 2 horses and 3 sheep that I share ownership of with the owners of [REDACTED]. Hay is also grown & cut from the property each season to feed the animals that graze the property, surplus hay is sold to neighbours and friends specifically those with horses. On occasion I will also provide adjustment & schooling of friends horses if they are on holiday or wish to have their horse ridden by someone else for a period of time. This means that I am responsible for the health & safety of both my own animals and others animals that may come to stay.

I have grazed my horses at [REDACTED] since 2006 when it was operated as a 15hectare rural property until now. I am also a seasonal member of the local Dunedin pony club and ride throughout the area regularly. I consider my horses & myself as part of the community and hope to one day own a lifestyle property of my own in the area.

I wish to start by recognizing that it appears by looking at the submitted map provided by Paterson Pitts Group, that rather than a boundary adjustment, this actually appears to be a subdivision of lot 5 DP 470050 with a total of 4 lots being created on what is currently 1. It also appears as though there will now be a total of 10 lots rather than the currently approved 9. With Lot 1 now covering Lots 5,8,9 of DP 470050 & no changes made to Lots 2, 4, 7 & 10 DP470050. Therefore there are 4 new lots being created on an area (Lot 5 DP470050) that is currently approved for 3.

It also appears in the written approvals that there is an additional Lot 7 (a subdivision of the current Lot 7 DP470050) being created on the east side of the property, being requested for approval – this would then bring the total lots to 11 – 2 more than currently approved.

I also note that the written approvals and submitted map from Paterson Pitts Group differs in the naming of the lots and those lots that are being requested for adjustment.

Of these lots, Lot 7 DP470050, Lot 2 DP470050 & Lot 1 of the current application are of a size that would fit the rural-residential District Plan Rules, which suggests to me that the area still has a distinctly rural-residential feel and primary land use in the area is still primarily rural-residential rather than large lot residential which is what the size of the additional/re-arranged lots requested in this application fall into the District Plan rules as.

A property of 0.2020Ha falls far short of rural-residential District Plan rules of 2Ha per dwelling and even more short of the Rural District Plan rules of 15Ha per dwelling. Properties of the size being requested for approval within this application can not be used and will very likely not be used in the same way as a property of 2Ha or 15Ha and therefore does not fit with the rural-residential community that is dominant within the Dalziel Rd area (as this is the access point for this subdivision that is the area I feel it should fit best with). It may have residential addressed on one side but the vast gully between Ashmore St & Dalziel Rd provide a prominent and permanent boundary between residential & rural/rural-residential.

In fact all areas of the current application area is actually directly bordered by rural hill slopes to the north, rural-residential to the west & south & rural hill slopes to the east. Therefore an area that more readily resembles large lot residential will not be in keeping with the surrounding area and its land use at all.

'The relocation of consented but not established residential activities of Lots 8 & 9 DP470050 to a more desirable location of Lots 3 & 4' – why would this area be more desirable? If it is the rural-residential outlook that attracts these clients, then perhaps this suggests that there is a demand for this area to be kept rural-residential and the established lots should reflect the true meaning of this zoning and stay in keeping with current District Plan zoning restriction. What then happens if 31 Dalziel rd applies for subdivision to large lot residential in keeping with the 'neighbouring properties' in the future – is this desirable location now not so desirable as it's 'ambience' is now compromised.

It is recognized in the application that this request for approval is for a non-complying activity in all respects – however it goes further to not only be a non-complying activity in a rural zone but also in a rural-residential zone which is what this application seems to want to preserve and promote? However this clearly is requesting consent for zoning at a large lot residential level. Yard offsets also seem to follow these rural-residential zoning rules but clearly the area of land in question

restricts the buildable area along with being a complete contradiction to the application's wish to fit with the rural-residential ambience.

Yards, Height Restriction & Buffer Planting along private boundaries.

I accept that there needs to be buffer plantings and I appreciate the thought that has gone into the yard, fencing and buffer plantings allowance along the border of 31 Dalziel rd. All in respect of creating a buffer and 'safety net' between the livestock and neighbouring properties. However I don't believe that simply doing this will offset completely the affects laid out further in my submission and certainly won't offset the negative affects quickly enough to prevent any conflict & reverse sensitivity from occurring. I also believe that the addition of shade cloth would be detrimental to the health of livestock in the event of it ripping and it becoming a 'flag' flapping in the wind or tearing off and ending up across the paddocks at any stage creating a digestive risk to livestock.

Effects on the Environment

In accordance with Section 7(1)(d) of Schedule 4, adverse effect on natural, physical resources for present or future generations... what preservation is being made to our future generations for the lifestyle in which they grow up. A rural-residential lifestyle is far different than that of a residential lifestyle. Can a small section of 0.2020Ha be used in the same way as one of 2Ha? I would argue not and therefore there is an adverse effect on the natural & physical resources available in a rural-residential and rural environment.

Section 6.7 (Rural)

Sustainability;

'The proposed activity will not result in the need for capital investment by the City into the public infrastructure' – I wonder if perhaps it should? Should we not be looking forward to future infrastructure to support any development no matter how 'small' it may seem before development overtakes infrastructure in any instance.

Amenity Values – Noise;

There will certainly be an increase in net noise from the application land – the properties will be closer and in greater number, to the boundary of 31 Dalziel Rd – noise will more easily be heard from the proposed site than the previously consented sites.

Noise can disturb the livestock, cause stress in the form of scaring the animals and causing them to be on alert. This can come in the form of vehicles, dogs, human sounds like yelling, screaming, generally being loud, music, even noises from plastics or other things that are loose & may be flapping in the wind. By increasing the density of population alongside the bordering property the risk increases.

Amenity Values – Glare & Lighting;

This is already something that has created a notable difference since 33 Dalziel Rd has been established. Security lighting that shines directly onto the property of 13 Dalziel Rd, along with the general lighting that goes with simply having a house, it makes it more difficult to see at night due to the glare and creates shadows over the property – I can only imagine the increase in this with more housing alongside the boundary. I have concerns for the disturbance that this may cause my animals, lighting can affect their sleep patterns, disturb their peace, create unwanted and unnecessary stress to my livestock.

It is suggested that plantings will offset this over time but at what risk and disturbance to livestock in the meantime – it can take 5-10 years for plantings and especially sheltering trees to become established.

#### Amenity Values – Odour;

It seems that it has not yet been decided what kind of septic system will be used for these properties. Septic I believe requires a certain land area for run off and can also be smelly. What will occur to offset the potential odour from this and where will this run off go (given that the lay of the land is potentially onto the property of 31 Dalziel Rd...)

#### Amenity Values – Bulk & Location;

The applicant believes that bulk and location should be consistent with the provisions for rural-residential zoning and that the character of this environment will not be compromised – however the applicant wishes to place 4 houses on an area that if in keeping with rural-residential zoning would only allow 1. Therefore bulk is severely compromised and an increase in density will occur if this application is approved.

#### Amenity Values – Water & Effluent Disposal;

As above mentioned... by concern for run off from septic and a firm position on the type of effluent disposal that will be used. Along with where water will be sourced from as I believe this may affect the livestock water supply on 31 Dalziel rd due to an easement on the property?

#### Amenity Values – Conflict & Reverse Sensitivity;

I believe that livestock have not been considered enough within this application. Human residents may well live a good distance from the proposed lots but livestock will live a lot closer and due to living outside without any double glazed windows or insulated walls that decrease the effects of noise, glare, lighting and other potential stresses to them, they will have to cope with what will be to them a major chance. 31 Dalziel Rd is their home and they deserve to have home comforts. 1 of my horses may compete regularly and must cope with noise, lighting, and other various stressors at shows. However this is always on a short-term basis and home is where they go to recover and recuperate, as do humans. They should never have to cope

with stress at that level everyday – there is a great deal of evidence in regards to high stress in humans and it has also been well documented in horses. Even the act of separating horses from one another can cause stress that will affect performance, let alone the effects of noise, glare & lighting, along with dogs, activity that horses are not used to occurring in close vicinity and a general change to their surroundings.

I also have concerns in regards to plantings on the boundary. Animals and in particular different types of animals are susceptible to poisoning from various garden varieties. For example: sheep can die from eating Rhododendron, Horses can die from eating grass clippings (often casually thrown over the fence by unsuspecting neighbours). Sycamore seeds have caused 2 horse deaths in Canterbury over the past 12 months from winds blowing them onto a property from the neighbouring property. Colic from eating an excess of grains or food that is hard for a horse's digestive system to process can cause death. Mouldy hay (again something that can be thrown over the fence by unsuspecting neighbours) can cause respiratory infections that will affect performance and ruin a whole season and mean ongoing management for the lifetime of the animal. Generally a property owner who moves onto a rural-residential lifestyle property will have more of an idea of livestock and the special needs of them than someone who moves onto a residential property. By restricting the size of the neighbouring blocks the risk of neighbours who do not know these needs increases, as does the risk of any of these things happening that may put livestock in danger.

Dogs are also a concern. Farm dogs and those that are raised on a block of land that has animals on it are less likely to attack stock, than the 'domestic pet dog'. In fact these animals are more likely to cause death to stock through stress and mauling than a dog that is actually out to kill to feed itself.

#### Section 14.7 (Landscape) Visibility;

An addition of 4 houses to the site of Lot 5 will cause a significant change in visibility, more so with plantings that will block visibility and prior to these plantings becoming established through the building of new residential units on the application lots. The property is not just the house or dwelling on 31 Dalziel rd, it is the whole property, this visibility affects not only the human residents but also the livestock in residence.

#### Section 14.7 (Landscape) Adverse effects;

As already mentioned above.

#### Section 20.6 (Transportation) Vehicle crossing, Road Construction.

It appears as though there may be no change to vehicle crossings, however as already mentioned it appears that there may be more properties being added which increases the load on the vehicle crossing onto Dalziel Rd. I already question the use of this road for the currently consented 9 lots as the access point does not fit with

the required lines of site and is classified as a collector rd. Dalziel rd is narrow and is a rural road in view of the DCC, the addition of these lots – even if it seems to be a boundary readjustments continues to add pressure to the road and adds risk to other users of this road – Horse riders, cyclists, other vehicles, foot traffic, rural activities taking place on the road (loading/unloading of livestock – shifting of livestock.) The addition of groundwork crews, builders etc means that this access point is being well used and the risk continues to increase with the more development that is approved.

Section 21.6 (Environmental Issues) – as mentioned above

The Decision I wish the Council to make is (give precise details, including the parts of the application you wish to have amended and the general nature of any conditions sought):

I would like to see this application denied. I believe that this application fits better as a subdivision of Lot 5 rather than an adjustment of boundaries and I also disagree that the size of the lots being requested for approval are in keeping with either a rural or a rural-residential zoning. They are instead in keeping with large lot residential dwellings and therefore not with the surrounding area or in keeping with the surrounding community or in fitting with the lifestyle and sense of community gleaned from this style of living.

# FORM 13

Submission on application publicly notified or notice of which served under Section 94(1) concerning resource consent, water permit, or esplanade strip

Sections 94(1), 96, 127(3), 136(4), and 234(4), Resource Management Act 1991

To Dunedin City Council P O Box 5045 Moray place Dunedin

Resource Consent Number: SUB-2016-45 & LUC 2016-245

Applicant: RPR Properties Ltd

Site Address: 35, 39, 41, and 49 Dalziel Road

Description of Proposal: To reorganise the layout of the 4 subject sites by subdivision. The location of building sites for future dwellings will change as the result of the subdivision but no additional building sites will be created. Approval is also sought for approximately 650m<sup>2</sup> of earthworks. The proposed sites will use the existing access onto Dalziel road

I wish to lodge a submission on the above resource consent application

I Oppose this Application:  
a hearing

I Do wish to be heard in support of this submission at

If other make a similar submission, I will consider presenting a joint case with them at a hearing.

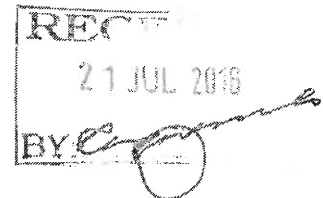
The specific parts of the application that this submission relates to are:

The substitution of three new lots of 2020m<sup>2</sup>, 2020m<sup>2</sup> and 2480m<sup>2</sup> for two much larger existing lots of 3846m<sup>2</sup> and 4860m<sup>2</sup>, two of the three new lots having a common boundary with lot 1 DP453493, the enlargement of the former lot 7 DP 470050, and the erection of a dwelling on each of the three new lots.

The reasons for this submission are:

The land upon which the new lots are to be created is zoned Rural in the operative district plan and in that zone, the minimum area for subdivision is 15 ha. That minimum area for subdivision has been the standard ever since the district plan was notified in 1995 and was confirmed by the Environment Court in its decision on Variation 9A. It is manifestly contrary to the operative District Plan Rural zone subdivision Objectives and policies to create new lots that have an area of only 2020m<sup>2</sup>, 2020m<sup>2</sup> and 2480m<sup>2</sup> when the minimum lot area in the Rural zone is 15,000m<sup>2</sup>. Not even the increased area of lot 7 (12.8266 ha) complies with the minimum lot size in the Rural zone.

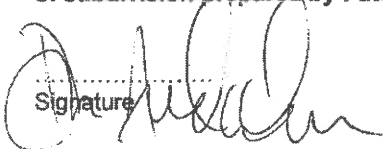
In terms of the three new dwellings, the Rural zone in the operative District plan requires a minimum side yard of 40m, which for the adjoining two lots (lot 3 and lot 4) would require a minimum of 80m separation of the two dwellings that are sought. No site dimensions are given on the plan of subdivision dated 31 June 2016 but lot 3 has a width of 30m and lot 4 has a width of 32m. Lot 2 has a minimum width of 40m (all scaled). It is



physically impossible to provide the required 80m separation between the proposed dwellings on the three proposed new lots. That separation was essential to the Environment Court decision on the amenities in the Rural zone in the operative district plan.

The decision we wish Council to make is:

That the application to subdivide and the use of the proposed lots 2,3,and 4 on the plan of subdivision prepared by Paterson Pltts Group dated 31 June 2016 be declined.

Signature 

Date 11 July 2016

Address for service of submitter: Mr Chris Rietveld, P [REDACTED]  
9042

Telephone: [REDACTED]

Fax/email : [REDACTED]

Contact person : Chris Rietveld, as above

A copy of this submission has been served on the applicant RPR Properties Ltd at P O  
Box 5933 Moray Place Dunedin