

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV-20180-CHC-

IN THE MATTER

Of an appeal pursuant to clause 14
of the First Schedule of the
Resource Management Act 1991

BETWEEN

**CRAIG HORNE SURVEYORS
LIMITED AND BLUESKIN
PROJECTS LIMITED**

Appellant

AND

DUNEDIN CITY COUNCIL

Respondent

NOTICE OF APPEAL

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

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To: The Registrar

Environment Court

Christchurch Registry

1. Craig Horne Surveyors Limited and Blueskin Projects Limited ("The Appellants"), appeals against a decision of the Dunedin City Council on the Dunedin City Council Second Generation Plan.
2. The Appellants made a submission regarding the Dunedin City Council Second Generation Plan (Craig Horne - OS704) (Blueskin Projects Limited – OS739).
3. The Appellants is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. The Appellants received notice of the decision on 7 November 2018.
5. The decision was made by Dunedin City Council ("the 2GP Decision").
6. The decision The Appellants is appealing is:
 - (a) The Decision in relation to Rural Zones
 - (b) The Decision in relation to Natural Hazards
 - (c) The Decision in relation to Urban Land Supply
 - (d) The Decision in relation to Scheduled Trees
 - (e) The Decision in relation to Transportation
7. The reasons for the appeal are:
 - (a) The 2GP Decision fails to give effect to the NPSUDC in particular:
 - (i) The 2GP Decision fails to provide enough urban development capacity.
 - (ii) The 2GP Decision does not provide sufficient diversity amongst the development capacity that is made available

in the 2GP. Therefore, the 2GP Decision fails to adequately provide for the demand for different types or sizes of development and in different locations.

- (iii) Some of the development capacity provided in the 2GP Decision is not commercially feasible. As a result, the 2GP Decision overstates the capacity made available by the 2GP.
- (iv) The 2GP Decision relies on capacity being provided on land that is not available for development, such as the Balmacewen and St Clair Golf Courses.
- (v) The 2GP Decision relies on development yields from the land identified for development (including Inner City Residential and Residential) that are significantly higher than what is feasible.
- (vi) The 2GP Decision relies on supply being available from commercial land without any evidence as to the supply available from this source, or the likelihood of it being taken up. Further no account appears to have been given to the loss of commercial space if residential activities were to intensify in the commercial zones.
- (vii) Inadequate consideration has been given to why existing residential zoned land within the urban area has not been developed and whether those reasons are likely to persist.
- (viii) Inadequate consideration has been given to whether some existing housing stock will continue to remain available. This is particularly relevant in relation to South Dunedin.
- (ix) The 2GP Decision places insufficient weight on market demand, particularly with respect to demand for new development capacity in Mosgiel.

- (x) The 2GP Decision fails to have adequate regard to the realities of developing land and the long lead times associated with this. This will exacerbate the identified shortfalls in the future.
- (xi) The 2GP Decision fails to strike an appropriate balance between efficient development and the obligation to provide choice to the community by providing a range of dwelling types.
- (b) The 2GP Decision is based on the flawed premise that rezoning is only appropriate if there is a shortfall in capacity and the individual sites meet the criteria of the strategic directions. Allowing a shortfall in capacity to occur or persist is contrary to the NPSUDC which requires the Council to provide sufficient capacity to meet the needs of people and communities and future generations. In doing this the NPSUDC actually compels Councils to provide a margin in excess of projected demand.
- (c) The 2GP Decision is inconsistent in its treatment and reliance on demand projections and speculates as to the behaviour of the market, such as whether demand for land in Mosgiel is genuine. There was no evidential basis for this speculation.
- (d) The 2GP Decision places disproportionate weight on infrastructure provision to determine the appropriateness of a site for rezoning. This once again places an overarching emphasis on Council efficiency rather than the other obligations such as providing choice. This fails to recognise the matters of national significance identified in the NPSUDC. The 2GP Decision also placed insufficient weight on the evidence that funding mechanisms for infrastructure would be reviewed in light of zoning decisions. Therefore the 2GP Decision will continue to perpetuate the lack of infrastructure provision to new land within Dunedin.
- (e) The 2GP Decision fails to consider that existing undersized lots in the Rural Zone cannot be used economically as rural land.

Maintaining rural zoned land for existing undersized does not resolve rural land fragmentation, but acts to perpetuate stagnant and unproductive rural land.

- (f) The 2GP Decision placed too much weight on the maintenance of rural productivity in the long-term, and in doing so, created an artificial assumption about what the future environment would look like.
- (g) The 2GP Decision places too much weight on the possibility for a single farm to be made up of multiple land holdings but does not accept the reality that many existing undersized Rural Zone land is held in separate ownership, making it very difficult to use productively.
- (h) The minimum lot sizes for Rural Zone are not the most appropriate to achieve the objectives and policies of the rural zones.
- (i) The 2GP Decision place performance standards did not accept the evidence of Craig Horne at the Rezoning Hearings that the minimum site size standards are too restrictive and inflexible.
- (j) The 2GP Decisions erred in accepting the Reporting Officer's recommendation that the 2GP provides sufficient capacity in the proposed rural residential zones for lifestyle or hobby farming which does not rely on economically viable farming.
- (k) The 2GP Decision does not promote rural residential living.
- (l) The 2GP Decision seeks to retain rural productive land but does not frame the overarching objectives and policies in a way which enables those activities. The 2GP Decision is therefore inconsistent in its approach to activities in the Rural Zone.
- (m) The 2GP Decisions do not achieve the purposes and principles of the Act.

8. The Appellants seek the following relief:

- (a) Rezoning of land in Mosgiel CBD to Inner City Residential;
 - (b) Rezoning of 15 Church Street, Mosgiel to Inner City Residential.
 - (c) Amendments to the 2GP as set out in the Table attached at Appendix 1 to this Notice of Appeal;
 - (d) Any other consequential relief to give effect to the relief sought;
 - (e) Cost of and incidental to this appeal.
9. I attach the following documents to this notice:
- (a) A copy of the original submissions;
 - (b) A copy of the relevant part of the Decisions relating to the Rural Zone, Natural Hazards, Scheduled Trees, Transportation and Urban Land Supply;
 - (c) A list of names and addresses of persons to be served with a copy of this notice.



Bridget Irving

Solicitor for the Appellant

DATED this 19th day of December 2018.

Address for service

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Advice to Recipients of Copy of Notice

How to Become a Party to Proceedings

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court, and serve copies on the other parties, within 15 working days after the period for lodging a notice of appeal ends. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to Obtain Copies of Documents Relating to Appeal

The copy of this notice served on you does not attach a copy of the relevant decision. These documents may be obtained, on request, from the Appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.

APPENDIX 1 – Table of relief sought

CHAPTER AND PROVISION	REASON	RELIEF SOUGHT
Hazard 2 (flood), Hazard 3 (flood) and Hazard 3 (coastal)	These hazard zones do not have any functional purpose.	Remove from the Hazard overlays from the Planning maps.
RURAL CHAPTER 16		
Objective 16.2.1	The 2GP Decisions fails to recognise that it is appropriate to enable a range of rural activities in the rural zone that are not primarily focused on farming activities	Rural zones are reserved for <u>that enable</u> productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of communities where these activities are most appropriately located in a rural <u>environment</u> rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.
Policy 16.2.1.2	As above.	Provide for rural activities, veterinary services, rural industry, rural contractor and transport depots, community activities, emergency services, cemeteries and crematoriums in the rural zones where the effects will be adequately managed in line with objectives 16.2.2 and 16.2.3, 16.2.4 and their policies, and the objectives and policies of any relevant overlay zones.
Policy 16.2.1.5	The 2GP Decisions are too restrictive and inflexible in regards to the density of residential activity within rural zones.	<u>Enable</u> Require residential activity, with the exception of papakāika, in the rural zones to be at a level (density) that supports farming activity and achieves objectives 2.3.1, 2.4.6, 16.2.2, 16.2.3 and 16.2.4 and their policies.

Policy 16.2.1.7	The 2GP does not adequately provide for residential development on existing undersized lots in the Rural Zone. The 2GP can be amended to be more enabling for residential development in rural zones provided that various factors such as infrastructure, natural hazards and amenity values are maintained.	Delete policy 16.2.1.7 and replace with <u>Provide for rural residential living in the rural zones on existing undersized titles in the following circumstances:</u> (a) <u>The title is located within or adjoins an enclave of existing undersized titles, some of which are developed;</u> (b) <u>Natural hazards can be avoided, remedied or mitigated;</u> (c) <u>Adequate set backs are provided to maintain the amenity values of adjoining properties and to minimise reverse sensitivity;</u> (d) <u>Infrastructure, including the roading network, is not compromised.</u> <u>Provide for further subdivision for rural residential living purposes in the rural zones within areas that are already fragmented.</u>
Policy 16.2.2.5	The 2GP Decisions do not enable a range of activities in the Rural Zone. It is appropriate, to locate the types of activities that this policy anticipates in the rural zone with a less restrictive effects based test.	Only allow <u>Enable</u> rural tourism - large scale, rural research - large scale (outside the Invermay Farm mapped area), rural contractor and transport depots - large scale, community and leisure - large scale, sport and recreation, veterinary services, visitor accommodation, cemeteries, crematoriums, intensive farming, domestic animal boarding and breeding (including dogs), rural industry, mining, service stations, or landfills where <u>significant</u> adverse effects on the amenity of residential activities on surrounding properties will be avoided or, if avoidance is not practicable, adequately mitigated.

Policy 16.2.3.6	The 2GP Decisions should be framed to enable a range of activities in the Rural Zone.	Only allow <u>Enable</u> community and leisure - large scale, sport and recreation, early childhood education, service stations, and visitor accommodation where the adverse effects of development on rural character and visual amenity are avoided or, if avoidance is not practicable, no more than minor.
Policy 16.2.3.8	The 2GP does not adequately provide for residential development on existing undersized lots in the Rural Zone. The 2GP can be amended to be more enabling for residential development in rural zones provided that various factors such as infrastructure, natural hazards and amenity values are maintained.	Only allow <u>Enable</u> subdivision activities where the subdivision is designed to ensure any associated future land use and development will maintain or enhance the rural character and visual amenity of the rural zones <u>or meets the criteria of Policy 16.2.1.7.</u>
Policy 16.2.4.3	The 2GP Decisions place too much weight on the rural productivity of rural land even where that land is undersized and not possible to be farmed productively. Where that is the case, the 2GP should make provisions for the productive use of that land. Otherwise, land in Dunedin is at risk of becoming stagnant.	Only allow activities other than farming on highly productive land where: a. the scale, size and nature of the activity means that any loss of current or potential future rural productivity would be: i. insignificant in any high class soils mapped area; and ii. no more than minor in other areas of highly productive land; iii. unless <u>the location is an existing area of fragmented rural land.</u> b. for mining, the activity must locate on highly productive land due to operational requirements and there are no practicable alternative locations.

Policy 16.2.4.3	The 2GP does not adequately provide for residential development on existing undersized lots in the Rural Zone. The 2GP can be amended to be more enabling for residential development in rural zones provided that various factors such as infrastructure, natural hazards and amenity values are maintained.	Only allow subdivision activities where the subdivision is designed to ensure any future land use and development will: a. maintain or enhance the productivity of rural activities; b. maintain highly productive land for farming activity, or ensure the effects of any change in land use are: i. insignificant on any high class soils mapped area; and ii. no more than minor on other areas of highly productive land; iii. <u>Consistent with Policy 16.2.1.7</u> c. maintain land in a rural rather than rural residential land use; and d. not increase the potential for reverse sensitivity. In the event that the above relief is declined, add a new provision below (d) as follows: e. where the subdivision is designed to enable the development of those activities anticipated in Policies 16.2.2.5 and 16.2.3.6
Policy 16.2.4.4	The 2GP Decisions do not make adequate provisions for rural residential development in the planning maps. In lieu of that rezoning, the 2GP should make it easier for resource consent to be granted for rural residential type development on existing undersized	Require residential activity in the rural zones to be at a density that will not, over time and/or cumulatively, reduce rural productivity by displacing rural activities <u>while recognising the need to enable appropriate development, including rural residential development, of existing undersized rural sites.</u>

	lots.	
Rule 16.5.2.3	Rural residential type development should be encouraged in the rural zoned in lieu of sufficient zoning provisions in the 2GP. This would have the effect of ensuring that infrastructure, amenity, design and natural hazards have been taken into account when applying for resource consent.	Standard residential activity that contravenes the performance standard for density is a non-complying activity, except: a. papakāika that contravenes the performance standard for density is a discretionary activity. b. <u>Standard residential activity on sites 15 hectares or above that were consented before 26 September 2015 shall be permitted activities.</u> c. <u>Standard residential activity provided for by Policy 16.2.1.7 shall be a restricted discretionary activity.</u> <u>Council's discretion is restricted to:</u> i. <u>Setbacks and screening to minimise adverse effects on the amenity values of adjoining properties and to minimise reverse sensitivity effects;</u> ii. <u>The provision of appropriate infrastructure to minimise any adverse effects water quality;</u> iii. <u>The bulk and design of the dwelling to minimise adverse visual effects;</u> iv. <u>Measures to avoid or mitigate natural hazards.</u> e. <u>Standard residential activity on existing undersized rural sites as at 26 September 2015 not provided for by Policy 16.2.1.7 and that are smaller than 15 hectares shall be a discretionary</u>

Rule 16.5.2	As above	Amend the minimum site size for the first residential activity per site as follows: 16.5.2.b 100ha <u>15ha</u> 16.5.2.f 20ha <u>15ha</u> 16.5.2.g 25ha <u>15ha</u>
Rule 16.7.4	As above	Amend the minimum site size for new resultant sites as follows: 16.7.4.a 40ha <u>15ha</u> 16.7.4.b 100ha <u>15ha</u> 16.7.4.c 100ha <u>15ha</u> 16.7.4.d 25ha <u>15ha</u> 16.7.4.e 80ha <u>15ha</u> 16.7.4.f 40ha <u>15 ha</u> 16.7.4.g 40ha <u>15ha</u>
Rule 7.5.2.1	Expanding this control on works around trees places unnecessary and unreasonable restrictions on landowners, particularly in urban areas where large trees can present a significant challenge to effective and efficient utilisation of land.	The following activities must not take place under the dripline of a scheduled tree, or within a distance from the trunk equivalent to half the height of the tree, whichever is the greater , if they involve ground excavation or the installation of impermeable surfaces on the ground (See Figure 7.5.2A):
Rule 6.6.3.9.a.i	4 m remain unnecessarily wide and will constrain the ability for infill development to be facilitated for no	Minimum legal width be amended from 4 m to 3.5.

	benefit. It will simply result in inefficient use of land.	
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Rule	Name	Submitter number	Address
16.2.1.2	Federated Farmers of New Zealand	919	cryder@fedfarm.org.nz ; kreilly@fedfarm.org.nz
	Wallace Corporation	343	Jamie.lomas@harkness.co.nz
	New Zealand Defence Force	583	Robert.owen@nzdf.mil.nz ; Rebecca.davies@nzdf.mil.nz
	Glenelg Gospel Trust	350	allan@cubittconsulting.co.nz
	Salisbury Park	488	allan@cubittconsulting.co.nz
	Blueskin Projects Limited	739	allan@cubittconsulting.co.nz
	CTW Holdings Limited	742	allan@cubittconsulting.co.nz
	G & J Sommers Edgar	889	alla@cubittconsulting.co.nz
	Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou	2456	tim@ktkoltd.co.nz

	Forest and Bird NZ	958	s.maturin@forestandbird.org.nz
16.2.1.5	AgResearch	2398	Graeme.mathieson@emslimited.co.nz
	Rural Contractors New Zealand Incorporated	2450	Graeme.mathieson@emslimited.co.nz
	Timothy George Morris	951	776 Weedons Ross Road, West Melton 7618
	Timothy Morris on behalf of RG and SM Morris Family Trust	1054	tmorris@tonkintaylor.co.nz
	Harboursides and Peninsula Preservation Coalition	2267	craigwerner@gmail.com
16.2.1.7	Fonterra	807	Tom.atkins@russellmcveagh.com
	Jane McLeod	2169	Janemcleod42@gmail.com
	New Zealand Fire Service Commission	2323	Alice.burnett@beca.com
	NZ Institute of	490	maaike@terramark.co.nz

	Surveyors – Coastal Otago Brach		
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	David & Kerry Hiom	2473	Hioms@xtra.co.nz
	Allan and Sylvia McLeary and Farry & Co Trustees Limited	832	mnidd@farry.co.nz
16.2.2.5	Otago Regional Council	2381	Warren.hanley@orc.govt.nz
	Waste Management Limited	796	abrabant@tonkintaylor.co.nz
16.2.2.6	No new submitters		
16.2.3.5	No new submitters		
16.2.3.6	No new submitters		

16.2.3.8	No new submitters		
16.2.4.2	Horticulture New Zealand	1090	Rachel.mcclung@hortnz.co.nz
16.2.4.3	Egg Producers Federation of New Zealand	2437	p.israelson@harrisingrierson.com
	Salisbury Park Ltd	488	allan@cubittconsulting.co.nz
	Save the Otago Peninsula Inc Soc	900	stopincsoc@gmail.com
	Robert and Sharron Morris	355	143 Seal Point Road, RD 2 Dunedin 9077
16.2.4.4	No new submitters		
16.5.2.3	No new submitters		
16.7.4	Burkhard and Marita Eisenlohr	844	bmegp@xtra.co.nz
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	Zealand		
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	Peter Wilson	954	peter@edinburghreality.co.nz
Rule 15.6.2.2	Carol Devine	252	caroldevine@me.com
	Property Council	317	alex@propertynz.co.nz

	New Zealand		
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	Southern Heritage Trust and City Rise up	293	barsby@xtra.co.nz
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	Michael Doherty	695	ytrehod@gmail.com
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	Hilary Hutton	722	tyneland@xtra.co.nz
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