

Form 7

Notice of appeal to Environment Court against decision on proposed policy statement or plan or change or variation

Clause 14(1) of Schedule 1, Resource Management Act 1991

To the Registrar
Environment Court
Auckland, Wellington, and Christchurch

I, Ross Thomas McLeary, appeal against a decision of Dunedin City Council on the following plan:

Dunedin City District Plan 2018

I made a submission on that plan.

I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

I received notice of the decision on 7 November 2018.

The decision was made by Dunedin City Council.

The part of the decision that I am appealing is:

- The decision to reject the submission that sought greater flexibility in respect to the subdivision and dwelling rules in the Rural Residential zones in the Second Generation District Plan for Dunedin City.

The reasons for the appeal are as follows:

- The exceptions provided to the subdivision and density performance standards in Rule 17.7.6 are too restrictive to adequately recognise the variability of the topography within the Rural Residential 1 Zone.
- The decision to reject the lay submission for the reason that:

“the members of the public have (not) had sufficient opportunity to consider and submit (on the submission)”

is not credible.

The first of the submission bullet points in submission OS1052.1 reads:

“Rural Residential Zone sizes should be reduced from 2ha to account for natural land features”

I seek the following relief:

- Add a further bullet point d. to Rule 17.7.5 as follows:

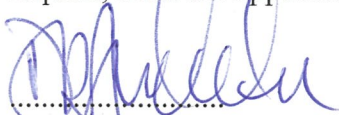
d. The average lot size shall not be less than 2ha when averaged across the certificate of title which is being subdivided with all lots being subject to a covenant that prohibits further division of the lots in the subdivision"

The purpose of this relief is to enable subdivision to take into account the natural land features without increasing the density of the subdivision,

I attach the following documents* to this notice:

- a) a copy of my submission ~~or further submission (with a copy of the submission opposed or supported by my further submission):~~
- b) a copy of the relevant part of the decision:
- ~~e) any other documents necessary for an adequate understanding of the appeal:~~
- ~~d) a list of names and addresses of persons to be served with a copy of this notice.~~

*These documents constitute part of this form and, as such, must be attached to both copies of the notice lodged with the Environment Court. The appellant does not need to attach a copy of a regional or district plan or policy statement. In addition, the appellant does not need to attach copies of the submission and decision to the copies of the notice served on other persons if the copy served lists these documents and states that copies may be obtained, on request, from the appellant.



Signature of appellant
(or person authorised to sign
on behalf of appellant)

17 December 2018

Date

Address for service of appellant:

Telephone: 027 372 3479

Email: scrogghillfarm@outlook.co.nz

Contact person: Ross McLeary

Note to appellant

You may appeal only if—

- you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and
- in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55(2B), may consider only the question of law raised.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38).

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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 or service 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 appellant's submission and (*or or*) the decision (*or* part of the decision) appealed. These documents may be obtained, on request, from the appellant.

*Delete if these documents are attached to copies of the notice of appeal served on other persons.

Advice

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

Dunedin City Council

30 NOV 2015



THE PROPOSED
SECOND
GENERATION
DISTRICT PLAN

SUBMISSION FORM

This is a submission on the Proposed Second Generation
Dunedin City District Plan (2GP) for Dunedin pursuant to
Clause 6 of Schedule 1 of the Resource Management Act 1991.

Once you have completed this form, include any supporting documentation and return to the Dunedin City Council.

MAKE YOUR SUBMISSION:

Online: www.2gp.dunedin.govt.nz

Email: planning@dcc.govt.nz

Post to: Submission on 2GP
Dunedin City Council
PO Box 5045
Moray Place
Dunedin 9058

Deliver to: DCC Customer Services Agency
Ground floor
Civic Centre
50 The Octagon
Dunedin

Please note that all submissions are public information. Your name, contact details and submission will be available to the public and the media. The DCC will only use your information for the purposes of this plan review process.

All submissions must be received before 5pm on Tuesday, 24 November 2015.

SUBMITTER DETAILS Fields indicated by an asterisks (*) are mandatory.

Full name of submitter or agent* Ross Thomas McLeary

Organisation (if submission on behalf of an organisation) Scraggs Hill Farm Limited

Address for service for submitter or agent* Please provide an address where you would like correspondence sent to

Email address Scraggshillfarm@outlook.co.nz

Postal address* 252 Scraggs Hill Road, Brighton, Dunedin Postcode 9031

Phone number* 027 37 234 79 Mobile number _____

TRADE COMPETITION Fields indicated by an asterisks (*) are mandatory.

Please note: If you are a person who could gain an advantage in trade competition through your submission, your right to make a submission may be limited by clause 6(4), Schedule 1 of the Resource Management Act 1991.

Please tick one of the following*

I could ☐ could not ☒ gain an advantage in trade competition through this submission.

If you could gain an advantage in trade competition through this submission, please tick one of the following*

I am ☐ am not ☐ directly affected by an effect of the subject matter of the submission that:

(a) adversely affects the environment; and

(b) does not relate to trade competition or the effects of trade competition

HEARINGS Fields indicated by an asterisks (*) are mandatory.

Please tick one each of the following*

I would like ☒ would not like ☐ to be heard in support of my submission

If others submitters make a similar submission, I will ☒ will not ☐ consider presenting a joint case with them at a hearing

SUBMISSION DETAILS Fields indicated by an asterisks (*) are mandatory.

Please identify the specific provision(s) of the Proposed Second Generation Dunedin City District Plan that your submission relates to*.

Provision name and number (where applicable):

For example: Rule 15.5.2 Density

Section name (where applicable):

For example: the residential zones

Rural Residential Zones Rural Zones
Significant Natural Landscapes

Map layer name (where applicable):

For example: General Residential 1 Zone

Wahi Tupuna, Hazard zone 2 - land instability, flood zone
Significant Natural Landscape, class High class soils.

Scheduled item number (where applicable):

For example: Reference #T147 - Scheduled Tree at 123 Smith Street

My submission is*

☐

I support the provision

☒

I oppose the provision

☒

I seek to have the above provision amended

Choose the most appropriate statement. If more than one applies, for example you support the provision in part but wish to have part amended (removed or changed), choose 'have the provision amended' and explain this in the 'decision I seek' field.

The decision I seek is that (please give precise details, such as suggested amended wording)*

Reasons for my views (you may attach supporting documents)*

R. M. Long
Dunedin Councils Hill House Ltd

Signature of submitter (or person authorised to sign on behalf of submitter)
(A signature is not required if you make your submission by electronic means.)

30th Nov 2015

Date

PO 3

Impacts to COF Limited (155 Scroggs Hill Road)

- Rural Residential Zone sizes should be reduced from 2Ha. To account for natural land features.
- Land currently zoned as Hazard 2- land instability on 155 Scroggs Hill Road does not exist where it is marked on the zoning map.
- Area marked as high class soil on 155 Scroggs Hill Road, is incorrectly located.

Impacts to Scroggs Hill Farm Limited (252 Scroggs Hill Road)

- Rural Residential Zone sizes should be reduced from 2Ha. To account for natural land features.
- Rural zoned subdivision of 40ha is an improvement, but still uneconomical and needs to be much larger.
- The minimum building spacing is impractical in certain situations. Sometimes they need to be adjoining for stock handling purposes as an example. An amendment should be made for this exception.
- Areas zoned as Hazard 2- land instability are grossly overstated on this block. These should be scaled to accurately reflect the reality.
- The Significant Natural Landscape zoning is huge, years ago it was agreed between DCC and myself that the peak of Scroggs hill had this zoning. This should remain as agreed. Or the implications of further extending this zoning should be absorbed by another party, not the landholder.
- The flood zoning in the Allanton area is far too high. A portion of land zoned as a flood zone is up as high as 30m above sea level.
- High class soils have been incorrectly identified on the map.
- Wahi Tupuna Zoning: A summary of information relating to this zoning should be provided to all affected landholders, this has not happened. I reserve the right for future discussions.
- I wish to speak on all of the above during the public hearings.

R. J. M. Long

Director

Scroggs Hill Farm Ltd

183. Accordingly, we have concern that Policy 17.2.4.4 does not provide an appropriate policy test. There is also a drafting issue with the policy in that it incorporates an outcome (and thus reads more like an objective), instead of a policy test. We consider that a policy test akin to that in Policy 17.2.1.6, which provides for other forms of subdivision as long as there is no increase in development potential, would be appropriate for Policy 17.2.4.4. This would allow for a boundary adjustment in the Rural Residential 2 Zone as a non-complying activity, but still meet the objective of maintaining the productive potential of the rural residential zones.
184. We consider that amending Policy 17.2.4.4 in this manner would provide partial relief to the submission of *Darren Homer* (OS307.1) who sought a more enabling activity status for subdivision in the Rural Residential 2 Zone. We note also our decision in the Plan Overview Decision Report to accept the submission of *Federated Farmers of New Zealand* (OS919.1) and review the use of the word "avoid" in the 2GP, in light of implications from case law that it could be taken to have a prohibitive meaning. We consider that amending Policy 17.2.4.4 also grants partial relief to this submission.
185. We have amended Policy 17.2.4.4 as follows: "Avoid further general subdivision of sites in the Rural Residential 2 Zone to maintain these sites for larger lifestyle blocks or hobby farms (small holdings) unless it does not result in an increase in residential development potential." {RR 307.1, PO 919.1}
186. We have also made a consequential change to assessment Rule 17.12.5.1.b.

3.3.4 Submissions on subdivision performance standard

187. The *Construction Industry and Developers Association (CIDA)* (OS997.38) submitted that any subdivision that does not comply with the minimum site size standard for the Rural Residential 1 Zone should be discretionary, except for in the listed circumstances (a)-(c) in Rule 17.7.5.2 (relating to the minimum site sizes of resultant lots), where it should be a restricted discretionary activity. No specific reasons were given for making this request.
188. *HPPC* (OS447.124) sought the removal of the assessment rule (17.11.3.2.b) used in assessing subdivision activity that is discretionary according to the criteria listed in Rule 17.7.5.2. *HPPC* stated that "If meeting the MSS (minimum site size) is important then the site should remain undeveloped (not new RR) or the larger parent site should not be subdivided. Neither the 2GP Strategic Direction nor the Spatial Plan seek to encourage additional RR lifestyle living".
189. *Scroggs Hill Farm Limited* (OS1052.1) sought to amend Rule 17.7.5 to reduce the minimum site size for new resultant sites in the rural residential zones below 2ha, to account for natural land features.
190. In relation to the *CIDA* submission, the Reporting Officer, Michael Bathgate, did not consider that any contravention of minimum site size should be a discretionary activity, stating "the use of a discretionary status would create the real risk that cumulative contraventions of the standard would undermine the zone function, and result in a transition away from lifestyle or hobby farming towards large lot residential activity" (s42A Report, p. 81).
191. Mr Bathgate also did not support the 'averaging' circumstances in Rule 17.7.5.2 being treated as restricted discretionary, stating the rule "was introduced to deal with, in effect, unforeseen and site-specific circumstances that make meeting the minimum site size impractical. The variability in situations where this rule may be applied, and consequent variability in potential effects, make it very difficult to adequately and effectively limit matters of discretion" (s42A Report, p. 81).
192. Mr Bathgate also recommended rejection of the *HPPC* submission, noting that it was in effect a submission against that part of the rule that provides for the averaging approach to subdivision. He did not consider that it is the intent of this part of the rule to encourage additional rural residential sites, and noted the requirement for an average site size of at least 2ha across all sites in a subdivision is just that (i.e. an

average lot size) and cannot be used to create additional sites, but this mechanism does allow for better outcomes in terms of the layout and design of resultant rural residential sites (s42A Report, pp. 81-82).

193. In response to the *Scroggs Hill Farm* submission, the Reporting Officer assumed this referred to the minimum site size for the Rural Residential 1 Zone, due to the reference to 2ha and the fact that the submitter's property contains this zoning. The Reporting Officer considered that the averaging approach in Rule 17.7.5.2 provides sufficient flexibility to vary site sizes and the pattern of subdivision based around natural land features, and that any further reduction in site sizes should either be contemplated as part of a non-complying subdivision consent application or as a plan change seeking another type of zoning (s42A Report, pp. 79-80).
194. At the hearing, Mr Craig Werner and Mr Bradley Curnow appeared on behalf of *HPPC* and tabled a statement. This confirmed that "The HPPC view is that this is an un-needed scheme which will increase RR structure density, above and beyond the 56% increase in RR site development. Proper introductory timing of this 'averaging' scheme should in our view be when a RR site capacity shortfall is encountered in the distant future. Currently there is a large RR over capacity. This schemes only positive outcome seems to relate to maximisation of the number of sites a landowner might sell" (p. 5).
195. At the hearing, Mr Ross McLeary appeared for *Scroggs Hill Farms Limited*. Mr McLeary said that 110ha of his 1,400ha farm property is zoned Rural Residential 1. He said he wants to develop less land at a more intensive scale, to minimise the amount of land taken away from the farm. Instead of the 55 residential sites that could be created on the 110 ha, Mr McLeary said he seeks to develop 35 or 40 sites but on smaller than 2 ha blocks. Whilst this was not strictly a request for rezoning of the land, we heard and considered the points made as they are related to the issues of rural residential zoning and minimum lot sizes, and have made a decision on it below.

3.3.4.1 Decision and reasons

196. We reject the submission of *CIDA* (OS997.38) to change the activity status of subdivision for the Rural Residential 1 Zone. We agree with the reasons given by the Reporting Officer, as recorded above, for rejecting this request. We also note the lack of any rationale or supporting evidence accompanying this request.
197. We reject the submission of *HPPC* (OS447.124). We agree with the reasons outlined above by the Reporting Officer, and in particular draw the submitter's attention to the fact that Rule 17.7.5.2 does not allow for any additional sites to be created in the Rural Residential 1 Zone over and above what is provided for under Rule 17.7.5.1.
198. We reject the submission of *Scroggs Hill Farm Ltd* (OS1052.1), as we do not consider the minimum site size for the Rural Residential 1 Zone at this location should be reduced below 2ha.
199. Our reasons are that while we have sympathy for the outcome sought by the submitter to retain as much of his property as possible in farming, we do not consider that the submission gave enough clarity or scope for us to accept the development outcomes described by Mr McLeary at the hearing. While the submission did refer to reducing rural residential zone sizes below 2ha at 155 and 252 Scrogg Hill Road, the submitter is in effect asking for some form of large lot residential development, and we do not consider that members of the public have had sufficient opportunity to consider and submit on this. Taking into account the principles of natural justice, we consider that this could more appropriately dealt with through a private Plan Change or as part of the next Plan review.

3.3.5 Requests for a 1ha minimum site size in Rural Residential 2

200. Ten submitters⁵ sought to amend Rule 17.5.2.1.c so that the minimum site size to establish a new residential activity in the Rural Residential 2 Zone is 1ha, and to remove

⁵ *Glenelg Gospel Trust* (OS350.3, 4); *Craig Horne* (OS368.5, 6); *Salisbury Park Ltd* (OS488.2, 3); *John Buchan* (OS610.4, 5); *Kimberly John Taylor* (OS660.4, 5); *Chris Kelliher* (OS666.4, 5); *Blue Grass Ltd* (OS693.4, 5);

Notice of Appeal sent to:

- The Registrar
Environment Court
Christchurch
Email:Christine.mckee@justice.govt.nz
- The Dunedin City Council
Email 2gpappeals@dcc.govt.nz