

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV-2018-CHC-

IN THE MATTER

Of an appeal pursuant to clause 14
of the First Schedule of the
Resource Management Act 1991
against decisions on the Dunedin
City Council Second Generation
Plan

BETWEEN

BEN PONNE

Appellant

AND

DUNEDIN CITY COUNCIL

Respondent

**NOTICE OF APPEAL UNDER CLAUSE 14 SCHEDULE 1 OF THE
RESOURCE MANAGEMENT ACT 1991**

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

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To: The Registrar

Environment Court

Christchurch Registry

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1. Ben Ponne appeals against a decision of the Dunedin City Council on the following on the Dunedin City Second Generation Plan (The 2GP Decision).
2. Ben Ponne made a submission regarding the Dunedin City Second Generation Plan (OS733; FS2196)
3. Ben Ponne is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Ben Ponne received notice of the decision on 7 November 2018.
5. The 2GP Decision was made by Dunedin City Council.
6. The decision Ben Ponne is appealing is the Urban Land Supply, Rural Zone and Rural Residential Zone Decisions of Hearings Panel reports, in particular:
 - (a) Section 3.8.9.1 of the Rural Residential Zone Report where the Commissioners declined rezone 58 and 73 Reservoir Road, Warrington (Records of Title OT5C/1090 and OT18B/461) as Rural Residential Zone.
 - (b) The decision to decline the alternative relief sought in Ben Bonne's submission, being the insertion of a rule in the Rural (Coastal) Zone permitting residential development on existing undersized rural lots as set out in the Rural Zone Decision of Hearings Panel.
7. The reasons for the appeal are:

- (a) The Council have erred in their interpretation and application of the National Policy Statement on Urban Development Capacity 2016 (NPSUDC).
- (b) The 2GP Decision fails to give effect to the NPSUDC in particular:
 - (i) The 2GP Decision fails to provide enough 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 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.
- (c) 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 Council's to provide a margin in excess of projected demand.
- (d) The 2GP Decision is inconsistent in its treatment and reliance on demand projections and speculates as to the behaviour of the market, such as residents who wish to live on a large lot being willing to settle for standard residential sized sections provided through General Residential 1 zoning. There was no evidential basis for this speculation.
- (e) 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.

- (f) The 2GP Decision placed too much weight on the reporting officer's evidence that the 2GP makes ample provision for rural residential zoned land;
- (g) The 2GP decision placed too much weight on the availability of undeveloped land adjacent to the Township and Settlement Zone at Warrington and in doing so failed to recognise that it would be appropriate to extend that area to existing undersized rural lots in the vicinity;
- (h) The 2GP Decision will blight the land which is not currently productive and does not possess natural qualities that would enable this. The 2GP Decision erred in failing to recognise the potential to relieve pressure for development of highly productive land by enabling some rural residential development on poorly productive land such as the subject site;
- (i) Failing to enable residential dwellings on existing undersized rural lots is inefficient and does not enable land owners to provide for their wellbeing.
- (j) The 2GP Decision does not achieve the strategic directions relevant to the site;
- (k) The decision will result in inefficient use of the site and a failure to achieve the purpose of the Act.

8. Ben Ponne seeks the following relief:

- (a) The Land be rezoned Rural Residential 2;

- (b) Rule 17.3.5 be amended so that the activity status for general subdivision in the Rural Residential Zone is Discretionary;
 - (c) Any consequential relief required to give effect to the above.
 - (d) If the above relief is not granted a new rule be included within the Rural Zone enabling a residential dwelling to be established on existing undersized rural zoned sites.
 - (e) Costs of and incidental to this appeal.
9. The following documents are attached to this notice:
- (a) A copy of the original submission and further submission;
 - (b) A copy of the sections 3.0-3.4.2, 3.4.5 and 3.8.9.1 of the Rural Residential Zone Hearings Panel Decision Report; sections 3.2.12.7.4-3.2.12.10 of the Rural Zone Hearings Panel Decision Report; and sections 3.0-3.4.1, 3.4.3-3.6., 3.8.1-3.8.2.5 of the Urban Land Supply Hearing Panel Decision Report.
 - (c) A list of names and addresses of persons to be served with a copy of this notice.



B Irving

Solicitor for the Appellant

DATED 19 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.

List of names of persons to be served with this notice

Name	Address	Email Address
Dunedin City Council	PO Box 5045, Dunedin 9054	2gpappeals@dcc.govt.nz
Bruce Wayne Taylor	7 St James Place Fairfield Dunedin 9018 New Zealand	
Glenelg Gospel Trust	11 Bedford Street St Clair Dunedin 9012 New Zealand	allan@cubittconsulting.co.nz
Agresearch	PO Box 97431 Manakau 2241 New Zealand	graeme.mathieson@emslimited.co.nz
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Salisbury Park Limited	11 Bedford Street St Clair Dunedin 9012 New Zealand	allan@cubittconsulting.co.nz
Douglas Hall	553 North Road North East Valley Dunedin 9010 New Zealand	
Craig Horne Surveyors Limited	PO Box 56 Mosgiel 9053 New Zealand	crhorne@xtra.co.nz
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