

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO
ŌTAUTAHĪ ROHE**

BETWEEN

ROGER KEITH MILLER

Appellant

AND

DUNEDIN CITY COUNCIL

Respondent

NOTICE OF APPEAL

Under clause 14(1) of the Resource Management Act 1991

Solicitor Acting: S M Chadwick

Webb Farry

Lawyers

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NOTICE OF APPEAL

Under clause 14(1) of the Resource Management Act 1991

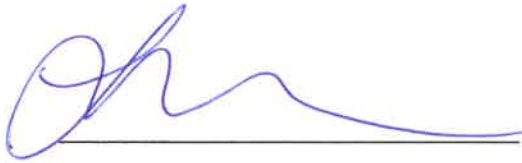
To: The Registrar
Environment Court
Christchurch

- 1 Roger Keith Miller appeals the decisions of Dunedin City Council on the proposed Second Generation Dunedin City District Plan ("2GP").
- 2 The Appellant made submissions on the provisions in the 2GP which relate to the zoning and the potential for development of his properties at Riccarton Road East, East Taieri for residential purposes.
- 3 The Respondent publicly notified the decisions on the 2GP on 7 December 2018.
- 4 The Appellant is not a trade competitor for the purposes of section 308D of the RMA.
- 5 The decisions were made by the Council's 2GP Hearings Panel.
- 6 The decisions appealed are:
 - 6.1 The zoning of the Appellant's land at 49 and 55A Riccarton Road East, East Taieri as Large lot residential 1 ("LLR1");
 - 6.2 The provisions of the 2GP which restrict and prevent the most efficient use of the Appellant's land for residential purposes; and
 - 6.3 The decision to use zoning to limit residential development of the Appellant's land, as opposed to taking an approach whereby any constraints on development are more appropriately assessed through specific rules and/or a resource consent process.
- 7 The reasons for the appeal are:
 - 7.1 Residential activity is clearly the most efficient use of the Appellant's land, and would also be in keeping with the surrounding properties which are already developed to a density generally in accordance with a General residential 1 ("GR1") zoning;
 - 7.2 The Appellant's land is surrounded on three sides by land zoned GR1, and the existing pattern of residential development around the Appellant's land should be equally provided for with a GR1 zoning of the Appellant's land;

- 7.3 There is no sound planning reason to distinguish between the Appellant's property and the surrounding GR1 zone, and good planning practice would be to zone the Appellant's land GR1;
- 7.4 The considerable demand for additional residential land in this area, in conjunction with the plan policies requiring prioritising efficient use of existing residential land, supports a zoning of the Appellant's land as GR1, particularly where it would effectively be an infilling of existing residential development;
- 7.5 The area available for residential development within the Appellant's properties will be reduced by the Dunedin City Council's acquisition of a large portion of 49 and 51 Riccarton Road East for road and this new road will be a robust and logical dividing line between the GR1 and LLR1 zones around the Appellant's property;
- 7.6 The Appellant's land holding is modest and would not create a significant increase in demand for infrastructure; and
- 7.7 The most appropriate and accurate method of assessing infrastructure constraints in relation to a specific development proposal is through the consent process which will be next step for the Appellant once the land is properly zoned.
- 8 The Appellant seeks the following relief:
- 8.1 That the appeal be allowed;
- 8.2 That the properties at 49 and 55A Riccarton Road East be zoned in keeping with the surrounding GR1 zone;
- 8.3 Such other relief as the Court sees fit; and
- 8.4 Costs.
- 9 **Attached** to this Notice of Appeal are the following documents:
- 9.1 A copy of the Appellant's submission.
- 9.2 A copy of the relevant part of the decision.

9.3 A list of the parties served with a copy of this appeal.

DATED this 18th day of December 2018



S Chadwick
Counsel for Roger Keith Miller

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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 or a further submission on the subject 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.

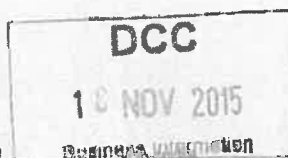
Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

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).

All further documents relating to the 2GP and this appeal can be found on the Council's 2GP website <https://2gp.dunedin.govt.nz/>



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*

Roger Keith Miller.

Organisation (if submission on behalf of an organisation)

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

Email address

Millorch & Xtra. Co. NZ

Postal address*

55A Riccarton Road East Taieri

Postcode* 9024

Phone number*

489 6264

Mobile number

027 652 0987

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

Zoning

Section name (where applicable):

For example: the residential zones

Residential 1 Large Lot

Map layer name (where applicable):

For example: General Residential 1 Zone

51 Riccarton Road 1 1 Lot 2.

55A Riccarton Rd East Taieri Lot 3

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)*

Rezone above properties 1 on Density Residential. 750 sametres.

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

More in keeping with the surrounding Residential Zone.

More efficient use of the existing infrastructure.

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

Transportation (Roading)

Section name (where applicable):

For example: the residential zones

Roading Status

Map layer name (where applicable):

For example: General Residential 1 Zone

Riccarton Rd East and West

Scheduled item number (where applicable):

For example: Reference #1147 - Scheduled Tree at 123 Smith Street

HADr / Centre street

My submission is*

State Highway 87

☐

I support the provision

☒

I oppose the provision

☐

I seek to have the above provision amended

Gordon Rd

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)*

Riccarton Rd East Remain as a Local Road

Riccarton Rd West Remain as Collector Rd

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

Riccarton Rd is a Residential Street and trucks should not be directed down this part of Riccarton Rd East

More Residential development will cause more adverse effects on the Residents of Riccarton Rd East

There are other Rural Roads that should be considered. eg Gladfield Rd. Riverside, HADr/centre st

This is the first part of changing the status of Riccarton Rd to State Highway 87 by Stealth.

By changing the status of Gordon Road this effectively stops it from being used as State Highway 87

 Roger Miller

10/11/15

Area for Rezoning highlighted on Map



Evidence to Dunedin City Council 2GP Hearings Panel

Submission Number: OS126.1
Submitter: Roger Keith Miller
Hearing: Residential Zone
Presenter: Paul Haddon
Date: October 2016

Presenter Background and Experience

- (1) My full name is Paul Maxwell Haddon. I am a Director of Terramark Limited, a Company providing consulting services in land surveying and resource management.
- (2) I represent submitter Roger Keith Miller, OS126.1.
- (3) My professional qualifications are:
 - a) Bachelor of Surveying, Otago (1982)
 - b) Licensed Cadastral Surveyor
 - c) Registered Professional Surveyor
 - d) Member of New Zealand Institute of Surveyors
 - e) Member of Consulting Surveyors of New Zealand
- (4) My professional experience comprises 32 years in private practice, consulting in land surveying and resource management.

Submission and Reasons

- (5) Mr Miller's submission requests that the properties at 51 & 55A Riccarton Road East, be rezoned Low Density Residential.
- (6) A photograph of the properties is attached.
- (7) The reasons provided are that this zoning would be in keeping with the surrounding residential zone, and provide for a more efficient use of the existing infrastructure.

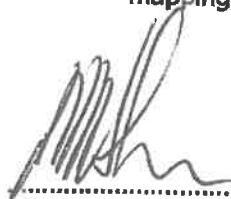
Evidence to Hearing

- (8) The 2GP as notified, proposes a zoning of Low Density Residential for the land adjacent to the subject properties.
- (9) Mr Miller in his submission requested the same zoning, to be more in keeping. The submission then, is entirely logical and appropriate for reasons of compatibility.
- (10) However, it is now the recommendation of the Planner in the Residential Sec 42A Report, that the surrounding zoning be changed to General Residential 1. The explanation is that this is to correct a mapping error.

- (11) As this recommendation has occurred after the submissions and further submissions part of the process, the logic and compatibility points presented by Roger Miller are eroded. He therefore now requests a General Residential 1 zoning, for the same reasons as in his submission.
- (12) If indeed, the Large Lot Residential 1 remains, we are potentially left with an "island" of 2000m² lots completely surrounded by a 500m² zoning. While they are both still residential zones, experience tells us that the differences are such that potential incompatibility and reverse sensitivity issues could arise.
- (13) The northern strip of 51 Riccarton Road East is a potential roading corridor connecting the East Taieri Structure Plan area to the east, to Riccarton Road to the west. While this is not identified as such on the East Taieri Structure Plan, it is a necessary link for traffic flow and connectivity reasons.
- (14) If and when that road is vested and constructed, it provides us with a more appropriate physical feature and planning tool to delineate between adjacent zonings (namely, the existing Large Lot Residential 1 to the north and the General Residential 1 zoning to the south).
- (15) The Section 42A Report cites a Low Density Residential zoning as placing additional and unplanned pressure on infrastructure capacity in Mosgiel, and having adverse effects on the infrastructure networks and increased flooding risks.
- (16) The Water and Waste Services Statement of Evidence in support of the Section 42A Report, states stormwater capacity is not available with the Mosgiel network. It, however, fails to acknowledge that detention of stormwater (in tanks with a restricted outlet) is an accepted means of mitigating flood risk. The concept of detention is now common and best practice, not only in Mosgiel but nationwide, and provides the means to ensure that post development flows do not exceed pre development Flows.

Outcome Sought

- (17) Roger Miller's submission requests a zoning in keeping with the surrounding.
- (18) That request stands, irrespective of the decision of this Panel in response to the surrounding mapping error.



.....
Paul Haddon





**SECOND
GENERATION
DISTRICT PLAN**

Residential Zones

Decision of Hearings Panel

**Proposed Second Generation Dunedin City
District Plan (2GP)**

7 November 2018



User guide to the decision reports and the marked-up decisions version of the 2GP

The decisions of the 2GP Hearings Panel are presented in 29 decision reports (one report per hearing topic).

The reports include the Panel's decisions and reasons and incorporate the requirements under s32AA.

At the end of each report a table has been included summarising all the decisions on provisions (Plan text) in that decision report.

Marked-up version of the Notified 2GP (2015)

The decisions include a marked-up version of the notified 2GP, which shows the amendments made to the notified plan in ~~strike-through~~ and underline. Each amendment has a submission point reference(s) or a reference to 'cl.16' if the amendment has been made in accordance with Schedule 1, clause 16(2) of the Resource Management Act. Schedule 1, clause 16(2), allows minor and inconsequential amendments to be made to the Plan.

Amendments to the Schedules below are not marked up as in other sections of the plan as they are drawn from a different source. Any changes to Schedules are detailed in the decision report for the relevant section.

Some very minor clause 16 changes such as typographical errors or missing punctuation have not been marked up with underline or strikethrough. More significant cl. 16 changes (such as where provisions have been moved) are explained using footnotes, and in some cases are also discussed in the decision.

Hearing codes and submission point references

As part of the requirement of the DCC to summarise all original submissions, all submission points were given a submission point reference, these references started with 'OS'. Further submissions were also summarised and given a submission point that started with 'FS'.

The submission points are made up of two numbers the first is the submitter number, which is followed by a full stop, the second part is the submission point number for that submitter.

For example, OS360.01 is submitter 360 and their first submission point.

The 2GP Hearings Panel has used these same submission point references to show which submission points different amendments were attributed to. However, to enable these changes to be linked to different decision reports, the reference code was changed to start with a decision report code, e.g. Her 308.244.

A list of hearing codes can be found on the following page.

It should be noted that in some cases where several submitters sought a similar change, the submission point reference may not include all of these submission points but rather include only one or say, for instance, "PO 908.3 and others".

Master summary table of all decisions

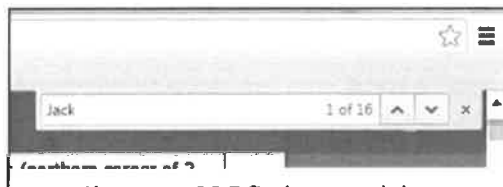
In addition to the summary table at the end of each decision report there is a master summary table that lists all decisions on provisions (Plan text), across all hearing topics, including details of the section(s) of the decision report in which that decision is discussed, and the relevant section(s) of the s42A reports. The s42A report sections will be helpful for appellants needing to identify which other parties have submitted on that provision, as notices of the appeal must be served on every person who made a submission on the provision or matter to which the appeal relates. The master summary table of decisions can be found on the decisions webpage of the 2GP website (2gp.dunedin.govt.nz).

List of hearing codes

Hearing topic	Code
Commercial Advertising (cross plan hearing topic)	CP
Commercial and Mixed Use Zones	CMU
Community Correction Facilities (cross plan hearing topic)	CP
Defence Facilities and Emergency Services (cross plan hearing topic)	CP
Designations	Des
Earthworks	EW
Heritage	Her
Industrial Zones	Ind
Major Facilities (without Port and Mercy Hospital)	MF
Manawhenua	MW
Mercy Hospital	Mer
Natural Environment	NatEnv
Natural Hazards	NatHaz
Natural Hazard Mitigation	HazMit
Network Utilities	NU
Plan Overview and Structure	PO
Port Zone	Port
Public Amenities	PA
Public Health and Safety (PHS)	PHS
Quarries and Mining Activities (cross plan hearing topic)	CP
Recreation Zone	Rec
Residential Zones	Res
Rural Zones	RU
Rural Residential Zones	RR
Scheduled Trees	ST
Service Stations (cross plan hearing topic)	CP
Temporary Activities	TA
Transportation	Trans
Urban Land Supply	ULS

How to search the document for a submitter number or name

1. If you want to search for particular submitter name, submission point or Plan provision in any of the reports (decision report, marked-up version of the Plan, or s42A report) the easiest way to do this is to use the 'Find' function.
2. When you have the document open, press the keys CTRL and F (Windows) or CMND and F (Mac) to bring up the 'PDF Finder'.



Chrome – PDF finder search box



Chrome – PDF finder search box

3. Once the PDF search box appears (in the top left or right corner of your browser) type in the submission number or submitter name and press enter on your keyboard.
4. The PDF finder will search for all instances of this term. Depending on the size of the document and your internet connection it may take a minute or so.
5. Press on the up or down arrows (Chrome) or 'next' (Internet Explorer) in the search box to view the different instances of the term until you find the one you are looking for.
6. An 'advanced search' function is available under the Edit tab in some PDF viewers, this allows you to search 'whole words' only to look for exact strings of letters or numbers

and provided a GeoSolve report. He was concerned that current and future development of this area would impact his rural views and amenity.

947. *Ms. Wouters and Mr. Rietveld* are separated from the Ashmore Street properties by the remainder of the *RPR Properties Ltd* rural block which has been proposed to be rezoned Large Lot Residential in the 2GP from its existing Rural zoning in the operative Plan. We note that these submitters' primary concern is the proposed development of the rest of this large rural block. These submissions are discussed in the Urban Land Supply Decision Report. Part of their concern is any residential development of these two sites will set precedents for other development on adjoining land. They also expressed concern that the owners of 119 and 121 Ashmore Street had not submitted on this rezoning, rather only the developers of the adjoining land who undertook the subdivision to separate these properties from the rural land.

4.27.2.1.1 *Decision and reasons*

948. We reject the submission by *RPR Properties Ltd* (OS 688.3) to rezone 119 and 121 Ashmore Street as GR1 and retain the rural zoning.
949. Although we had the benefit of aerial photographs and Google Street View images at the hearing, the panel made a site visit to better understand the submissions and evidence.
950. The submission from *RPR Properties Ltd* appears to us to be primarily designed to promote the company's aspirations for their much larger adjoining block. There is no legal impediment to that, but it means we do not have any information from the owners of the two areas in question about whether the present situation is inhibiting the sustainable management of this land. These areas were subdivided and added to the two adjacent residential properties to enable the owners of those properties to have more space. They appear to be making good use of that opportunity. If the present owners some day do not want such large properties, no doubt other people would. These two areas were not designed to be separate properties and the present access is only suitable as part of access to the two houses. Hypothetical legal access across DCC land cannot be taken into account.

4.27.3 Mosgiel

4.27.3.1 Request to rezone parts of 51 and 55A Riccarton Road East

951. *Mr Roger Miller* (OS126.1) requested rezoning of parts of 51 and 55A (Lot 2 DP 325236) Riccarton Rd East, Mosgiel, from Large Lot Residential 1 to Low Density Residential Zone because it would be more in keeping with the surrounding residential zone and an efficient use of the existing infrastructure.
952. Based on evidence from Ms Louisa Sinclair and Mr Jared Oliver of DCC Water and Waste Services on the rezoning to Low Density Residential Zone requested in the submission (*Assessing submissions to 2GP which seek rezoning of land to residential – Request for technical assessment* Memorandum, September 2016) the Reporting Officer considered that rezoning the property would place additional, unplanned pressure on the wastewater and stormwater infrastructure capacity in Mosgiel, creating adverse effects on the infrastructure networks and increased flooding risk (s42A Report, Section 5.13.7, p. 374). She noted that in response to submission OS172.3 (see mapping corrections in s42A Report, Section 5.13.11) she had recommended that the Low Density Zone in this area be rezoned to GR1 to correct a mapping error, therefore the Low Density Residential Zone suggested by *Mr Miller* would not reflect the corrected surrounding zone. The Reporting Officer recommended rejecting the submission and retaining the Large Lot Residential 1 Zone.
953. Mr Paul Haddon (surveyor) for *Mr Miller*, requested the same zoning as surrounding properties, which would now be GR1 as the Reporting Officer recommended changing the surrounding zone. He considered the lack of network infrastructure capacity can be overcome through on-site management and when the road is formed it will have a

better connection between residential areas. He considered the lack of capacity available in the stormwater network could be overcome with on-site detention tanks.

954. Ms Shelly Chadwick (counsel) also presented for *Mr Miller*, providing a description of location, size, and ownership of the site. She indicated there would still be an additional 27 extra sections if zoned GR1, with the area *Mr Miller* is looking to sell for road connection to the adjacent structure plan area is taken out of the property total. Ms Chadwick submitted that the DCC has had time to ensure adequate infrastructure is available for infill development and that many other sites in the Large Lot Residential 1 Zone are large and unlikely to be developed so therefore there may be spare capacity in infrastructure.
955. Ms Louisa Sinclair of the DCC Water and Waste Services provided expert evidence regarding the infrastructure in Mosgiel and the implications of the increase in density to GR1 requested for this site by the submitter at the hearing. She stated there were significant issues currently with the waste water treatment plant and stormwater generally in Mosgiel. She was of the opinion that changing the zoning from Large Lot Residential 1, as notified in the 2GP to GR1 could result in four times as many houses, creating significantly more impermeable surfaces and increasing stormwater flows that contribute to networks being overloaded and increases flooding risks. She indicated Water and Waste Services are still determining ways to address the stormwater issues that are occurring and that there is no capacity for new areas of residential development that have not already been factored into modelling and planning for the network.
956. In her revised recommendations, the Reporting Officer highlighted there were both stormwater and wastewater infrastructure issues for this area, as outlined on page 14 of the Water and Waste report on rezoning requests. She considered GR1 zoning may not provide sufficient space for on-site stormwater and wastewater management and noted that GR1 is normally connected to DCC networks.

4.27.3.1.1 *Decision and reasons*

957. We reject the submission by *Mr Miller* (OS126.1) to rezone parts of 51 and 55A (Lot 2 DP 325236) Riccarton Rd East, Mosgiel, from Large Lot Residential 1 to Low Density Residential Zone.
958. Although we had the benefit of aerial photographs and Google Street View images at the hearing, we undertook a site visit so as to better understand the submission and evidence.
959. We accept the evidence presented by *Mr Miller's* representatives at the hearing that Large Lot Residential 1 zoning will not lead to efficient use of flat residential land, but the evidence is clear that the capacity of the wastewater and stormwater systems in this area is not adequate to serve increased density. We understand from the general evidence provided by the Council's engineers about the overall situation in Mosgiel, that there are constraints in the major reticulation and disposal infrastructure; it is not a matter of just increasing the capacity of pipes between land like this and trunk mains.
960. We consider that if infrastructure capacity is available in the future there may be the option for *Mr Miller* to explore a plan change for this area to seek the GR1 zoning he desires.

4.27.4 West Harbour/North Coast

4.27.4.1 Request to rezone 8 and 10 Rimu Street

961. *Ms Rachel Gibb* (OS833.1) requested rezoning 8 and 10 Rimu St, Ravensbourne, from Rural Hill Slopes to GR1. Her key reason was that even when all three lots are combined the property would not be large enough for a viable farm, the land is steep and rough and has never been productive farmland, and all lots were part of an early subdivision of the area. *Mr Callum Fissenden* (FS2030.1) opposed the submission.