

**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

BETWEEN

RB AND SO CHIN

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. RB and SO Chin appeals against a decision of the Dunedin City Council on the Dunedin City Council Second Generation Plan (The 2GP Decision).
2. RB and SO Chin made a submission and a further submission regarding the Dunedin City Council Second Generation Plan (OS888; FS2418).
3. RB and SO Chin are not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. RB and SO Chin received notice of the 2GP Decision on 7 November 2018.
5. The 2GP Decision was made by Dunedin City Council.
6. The 2GP Decision RB and SO Chin are appealing is:
 - (a) The Urban Land Supply Hearings Panel Report, in particular section 3.8.3.4, where the Commissioners refused the submission to rezone 10.2ha of 66 Hagart-Alexander Drive from Rural (Taieri Plains) Zone to Rural Residential 1 or Rural Residential 2; and
 - (b) The Decision to decline the relief sought to amend the minimum site size rules in the Rural Zone, Rural Residential 1 and Rural Residential 2 Zones.
7. The reasons for my 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 and availability of development opportunities commensurate with recent Mosgiel supply within Dunedin City. There was no evidential basis for this speculation.
- (e) The 2GP Decision raised concerns regarding the infrastructure provision in the absence of any evidence that those matters were an issue in relation to this Land.
- (f) The 2GP Decision 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.

- (g) The 2GP Decision did not consider the potential effects on surrounding residential properties if the Land were to be used for high intensity productive purposes. The surrounding activities make high intensity land use of the site inappropriate.
- (h) The 2GP Decision placed too much emphasis on potential low flood hazard risk and inadequate weight on the options available to address this. The 2GP Decision's approach to this issue was inconsistent;
- (i) The 2GP Decision does not give sufficient weight to the Reporting Officer's recommendations that 66 Hagart-Alexander Drive (**the Land**) be zoned Rural Residential with a Structure Plan applied to ensure a development pattern capable of higher density development in the future;
- (j) The 2GP Decision misinterprets the Reporting Officer's recommendation that the land is acceptable for higher density development and places too much weight on the evidence of Michael Bathgate who considered that Rural Residential zoning is not intended to be a holding pattern for future residential development. Whether such an intention exists or not is irrelevant.
- (k) The 2GP Decision does not give sufficient weight to the Reporting Officer's recommendation that the current rural zone acts as a "placeholder" to preserve the site for future residential development, meaning that the sites are a logical option for future expansion of Mosgiel;
- (l) The 2GP Decision placed too much weight on rural character values and other aesthetic considerations given that the land is

not subject to a rural character landscape overlay, a landscape conversation area or any other type of visual amenity overlay. There was no evidence that suggested there were adverse effects likely to arise in relation to these matters.

- (m) The Decision does not put sufficient weight on the fact that the Land adjoins a mostly-developed cluster of properties at Rural Residential 2 scale.
 - (n) The Decision put too much weight on the view that undersized lots may have future productive potential as a general proposition, without having adequate regard to the specific characteristics of the Land;
 - (o) The 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 and whether this would be appropriate given the context of the Land;.
 - (p) The Decision will result in inefficient use of the Land and a failure to achieve the purpose of the Act with respect to the land.
8. RB and SO Chin seek the following relief:
- (a) The Land be zoned Rural Residential 1 or Rural Residential 2; or
 - (b) Any further consequential relief required to give effects to the above;
 - (c) Any alternative relief that achieves the outcome sought above;
 - (d) Costs of and incidental to this appeal.
9. The following documents are attached to this notice:
- (a) A copy of RB and SO Chin's original submission and further submission;
 - (b) A copy of the relevant sections of the Urban Land Supply Hearings Panel Report; and

- (c) A list of names and addresses of persons to be served with a copy of this notice.

A handwritten signature in blue ink, appearing to read "B Irving". The signature is fluid and cursive, with the first letter of the first name being a large, stylized capital 'B'.

B Irving

Solicitor for the Appellant

DATED 19 December 2018

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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
Cranbrook Properties Limited	C/- Paul Haddon, Terramark PO Box 235, Mosgiel 9053	paul@terramark.co.nz
Terence & Deborah Kennedy	57 Wingatui road, Mosgiel 9024	