

**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

JAMES LIN 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. James Lin Limited (**JLL**), appeals against a decision of the Dunedin City Council on the Dunedin City Council Second Generation Plan (**the 2GP Decision**).
2. JLL made a submission regarding the Dunedin City Council Second Generation Plan (OS1021).
3. JLL is also a successor to the submission of Peter White (OS776), who is a Director of James Lin Limited.
4. JLL is not trade competitor for the purposes of section 308D of the Resource Management Act 1991.
5. JLL received notice of the decision on 7 November 2018.
6. The 2GP decision was made by Dunedin City Council.
7. The 2GP decision JLL is appealing is:
 - (a) The Urban Land Supply Hearings Panel Report, particularly section 3.8.3.4, where the Commissioners declined the relief to zone 76 Hagart-Alexander Drive General Residential 1; and
 - (b) The decision to decline the relief to zone rural zoned areas bounded by Hagart-Alexander Drive, Gladstone Road North and Wingatui Road to either General Residential 1, Low Density Residential, Large Lot Residential Zone 1, Large Lot Residential 2, or a combination of these zones.

Together referred to as “The Land”. See plan attached at Appendix 1. 76 Hagart-Alexander Drive is outlined in yellow, the balance of the land subject to this appeal is shaded in grey.

8. The reasons for the appeal are:
- (a) The Council has 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 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 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.
- (g) The 2GP Decision does not give sufficient weight to the Reporting Officer's recommendations that 76 Hagart-Alexander Drive, 51 Wingatui Road and 67 Gladstone Road be subject to the future residential overlay zone, given 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.
- (h) The 2GP Decision does not give sufficient weight to the possibility for infrastructure constraints to be addressed at the time of application for resource consent or the site specific evidence presented regarding these matters.
- (i) The 2GP Decision not to rezone the Land does not achieve the Strategic Directions relevant to the site.
- (j) The 2GP Decision did not consider the context of the Land and the adverse effects that would arise if the Land were to be used for high intensity productive purposes. As such the 2GP Decision places too much weight on the potential long term productivity of the Land.

- (k) The 2GP Decision did not take into account reverse sensitivity effects from potential farming activities on neighbouring residential areas.
- (l) 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.
- (m) 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.

9. JLL seek the following relief:

- (a) 76 Hagart-Alexander Drive be rezoned as General Residential 1;
- (b) The Land bounded by Hagart-Alexander Drive, Gladstone Road North and Wingatui Road to either General Residential 1, Low Density Residential, Large Lot Residential Zone 1, Large Lot Residential 2, or a combination of these zones;
- (c) Any further or consequential relief to give effect to the above;
- (d) Costs of and incidental to this appeal.

10. I attach the following documents to this notice:

- (a) A copy of JLL's original submission and Peter White's Original Submission;
- (b) A copy of the relevant parts of Urban Land Supply Hearings Panel Report, in particular section 3.0-3.4.1, 3.4.3-3.6 3.8.1-3.8.2.5 and section 3.8.3.4; and
- (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 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
Owhiro Park Limited	C/- Paterson Pitts Group Limited PO Box 5054 Moray Place, Dunedin	Kurt.bowen@ppgroup.co.nz
Athol Parks	106 Gladstone Road North, Mosgiel 9024	athol@citywalks.co.nz
Judith Justice	148 Gladstone Road North, Mosgiel 90240	

APPENDIX 1 – Extract of the Decision identifying the land subject to this appeal

