

**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

ROBERT FRANCIS WYBER

Appellant

AND

DUNEDIN CITY COUNCIL

Respondent

NOTICE OF APPEAL OF ROBERT FRANCIS WYBER

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

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To: The Registrar

Environment Court

Christchurch Registry

1. Robert Francis Wyber ("Mr Wyber") appeals against a decision of the Dunedin City Council on the following:
 - (a) Second Generation Dunedin City District Plan (2GP Decision)
2. Mr Wyber made a submission regarding the Dunedin City Council Second Generation Plan (OS394).
3. Mr Wyber is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Mr Wyber received notice of the decision on 7 November 2018.
5. The decision was made by Dunedin City Council.
6. The decision Mr Wyber is appealing is:
 - (a) Decisions related to Strategic Direction 2.6 and 2.7 and their associated Objectives and Policies.
7. The reasons for Mr Wyber's appeal are:
 - (a) The changes made to the Objectives and Policies supporting 2.6 Dunedin has Quality Housing Choices and Adequate Urban Land Supply are extensive and significantly change the effect of these provisions.
 - (b) The Council's decisions on Strategic Direction 2.6 attributed to my submission are inconsistent with the relief that my submission sought.
 - (c) The 2GP Decision fails to give effect to the National Policy Statement for Urban Development Capacity, in particular;

- (i) The 2GP Decision effectively precludes the identification of greenfields development to meet demand;
 - (ii) The 2GP Decision effectively precludes rezoning of land for different types of development, preventing urban land supply that provides the community with choice.
 - (iii) The Decision prioritises other objectives in the 2GP over the obligations in the NPSUDC, such as “a compact city” over providing choice in locations where there is demonstrated demand that exceeds supply.
 - (iv) The 2GP Decision does not enable adequate supply of urban land to be available for the life of the plan. Therefore, the 2GP Decision fails to achieve the NPSUDC or achieve the strategic directions as they relate to urban land supply.
 - (v) The 2GP Decision over estimates the capacity that will be made available by the land that has been rezoned in the 2GP Decision. Therefore, there will inevitably be increasing demand for further land during the life of the Plan. The current provisions are prohibitive in this regard.
- (d) The 2GP Decision did not give adequate consideration to the demonstrated demand for greenfields urban land supply within Dunedin.
 - (e) The 2GP Decision did not give adequate consideration to the demonstrated demand for rural residential land supply options within Dunedin. This is compounded by the refusal to enable existing undersized rural sites to be utilised for residential purposes.
 - (f) Incorporating matters related to a compact city, public transport and public infrastructure into the policy consideration for rural residential land is unnecessary.
 - (g) It is inappropriate to utilise infrastructure constraints as a basis for refusing to rezone land when the Council operates a policy of

not planning infrastructure to supply land that is not yet zoned for residential purposes. The Council's approach in this regard is circular.

8. Aurora seeks the following relief:
 - (a) Amendments to the 2GP as set out in the Table attached at Appendix 1 to this Appeal.
9. The following documents are attached to this notice:
 - (a) A copy of Mr Wyber's original submission.
 - (b) A copy of the relevant parts of the 2GP Decision; 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 "Brian Irving". The signature is fluid and cursive, with the first name "Brian" and the last name "Irving" clearly distinguishable.

B Irving

Solicitor for the Appellant

DATED this 19th Day of December 2018

Address for service

for Appellant: Gallaway Cook Allan
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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

APPENDIX 1 – Table of Relief Sought		
PROVISION (using provision numbers from the tracked version included within the Decisions Reports)	REASON	RELIEF SOUGHT
Policy 2.6.1.1	Prefacing development on the need to support public transport fails to recognise that people are entitled to choice.	Delete reference to Objective 2.4.4 or Amend Policy 2.6.1.1 so that supporting Objective 2.2.4 is achieved if possible, but it not an absolute requirement.
Policy 2.6.1.Y	Some Rural Residential zoning should be enabled to provide choice in accordance with the NPSUDC. The proposed provision simply 'locks in' existing supply.	Amend Policy 2.6.1.Y to enable rural residential rezoning where appropriate.
Policy 2.6.1.3	It is inconsistent with the NPSUDC to wait until there is a demonstrated shortfall in in rural residential land before new land is zoned for this purpose. Rural Residential land does not rely on public infrastructure such as waste and storm water. Development that does not require these services should be enabled. It is anomalous to require matters relating to a compact city to apply to rural residential land. People seek out Rural Residential opportunities precisely because they do not have a desire to be	Amend Policy 2.6.1.Y to: a. enable rezoning to ensure capacity is available before a shortfall occurs. b. allow rural residential zones that do not rely on provision of public infrastructure (bring waste and water services). c. remove references to a compact city.

	within an urban environment.	
Policy 2.6.3.1	The timelines within the 2GP will not ensure that Adequate Urban Land Supply is available for the life of the plan. The consequence of this is that within a short timeframe the 2GP will not give effect to the NPSUDC or the Strategic Directions within the 2GP. The policy is based on an incorrect premise which is to meet shortage of supply. The NPSUDC requires adequate supply to be available (i.e. so that a shortage does not exist). Longer term signals will also assist the Council with infrastructure planning. Identification of new land for development inevitably leads to the need for new infrastructure. The approach taken in the decision requires the Council to plan infrastructure for land that is not yet zoned. That is counter intuitive. The Policy creates (rather than resolves) a conflict between providing land for urban supply and rural productivity. The provisions provide no guidance as to what constitutes productive land.	Make Amendments to achieve the following: 1. Increase the timeline during which adequate supply must be available for to at least 15 years. 2. References to productive rural land should relate to highly productive land only. 3. Provide for identification of new residential zoned land to enable infrastructure planning to take place. 4. Recognise that new development will at time require extension of public transport.
Policy 2.6.3.2	The submission generally supported this Policy but the 2GP Decision has deleted it.	Reinstate Policy 2.6.3.2 with amendments requested in the submission as follows:

		<i>Manage the release of new urban land by requiring a Council resolution to allow transition from rural zoned land to the new urban zone when:</i> a. for residential zoning there is a need for new land; b. the Council is satisfied that the amount and location of the land reflects both; i. for residential zoning an appropriate amount of land based on projected land needs for a <u>15 year</u> period; ii. an appropriate location based on a logical staging of development from the point of infrastructure provision; and c. There is sufficient existing, or planned and approved transport, wastewater and stormwater infrastructure capacity to accommodate industrial development d. The Council are satisfied that the design of the proposed development, as outlined in a
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		development plan appropriate for the scale of the development will meet the relevant objectives and policies of this plan.
Policy 2.7.1.1.	Rezoning and infrastructure planning needs to take place in a co-ordinated way. The 2GP does not currently achieve this.	Amend Policy 2.7.1.1. to infrastructure planning occurs to assist in providing adequate urban land supply.
Appendix 12B – Capacity Methodology	The methodology is unrealistic and unworkable. It does not accurately reflect the drivers of demand within Dunedin which produces perverse outcomes.	Delete the Appendix

LIST OF PARTIES TO BE SERVED

Dunedin City Council		2gpappeals@dcc.govt.nz
NZTA	Po Box 5245 Moray Place, Dunedin 9058	Planning-dunedin@nzta.govt.nz
Radio New Zealand	PO Box 123 Wellington 6140	Gary.fowles@radionz.co.nz
Harboursides and Peninsula Preservation Coalition	30 Howard Street, Macandrew Bay, Dunedin 9014	Craigwerner.ww@gmail.com
Save the Otago Peninsula	PO Box 23 Portobello, Dunedin 9048	stopincsoc@gmail.com
Bus Users Group	12 Woodhaugh Street, Dunedin 9010	busgodunedin@gmail.com
Howard Saunders	292 York Place, City Rise, Dunedin 9016	Howard.saunders@vodafone.co.nz
Federated Farmers of New Zealand	PO Box 5242 Moray Place, Dunedin, 9058	cryder@fedfarm.org.nz ; kreilly@fedfarm.org.nz
Elizabeth Kerr	5/5 Pitt Street, North Dunedin, Dunedin 9016	ejkerr@ihug.co.nz
Urban CoHousing Otepoti Limited	187 Maintland Street, Dunedin Central, Dunedin 9016	
Anthony Parata	1113 Coast Road, RD 1, Waikouaiti 9471	tekainga@xtra.co.nz
John Campbell	864 North Road, RD 2 Waitati 9085	Johnandmaryjanecampbell@gmail.com
Property Council of New Zealand	PO Box 1033 Shortland Street, Auckland 1010	alex@propertynz.co.nz