

**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

BA BUILDING 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. BA Building Limited appeals against a decision of the Dunedin City Council on the following:
 - (a) Second Generation Dunedin District Plan (**"The 2GP Decision"**).
2. BA Building Limited made a submission regarding the 2GP (OS989).
3. BA Building Limited is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. BA Building Limited received notice of the decision on 7 November 2018.
5. The 2GP Decision was made by Dunedin City Council.
6. The 2GP Decision BA Building Limited is appealing is:
 - (a) The decision to refuse the relief sought in OS989 (set out in section 3.8.3.5.1-4 of the Urban Land Supply Decision of Hearings Panel to rezone the land at 41 Soper Road and 20-21 Henderson Street, Mosgiel legally described as Lot 1-3 DP 485873 ("The Land") General Residential 1.
7. The reasons for the BA Building 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 Councils 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 Land is adjacent to land zoned General Residential 1 and is bounded on the other two sides by designations, D40, being the Railway, and D218 being the East Taieri Drainage Scheme. Comprising approximately 7Ha, it is an appropriate area and location to provide for residential development that is feasible.
 - (g) The 2GP Decision placed too much weight on potential reverse sensitivity effects if the Land was to be further developed, and inadequate weight on the options available to address these potential effects through rules or at the time of subdivision.
 - (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 approach taken to this issue in the 2GP Decision was inconsistent.
 - (i) The 2GP Decision does not achieve sustainable management.
8. I seek the following relief:
- (a) The Land be rezoned General Residential 1; and
 - (b) Any consequential relief required to give effect to the above; and
 - (c) Costs of and incidental to this appeal.
9. I attach the following documents to this notice:
- (a) A copy of BA Building's original submission
 - (b) A copy of part 3.8.3.5.1-4 of the Urban Land Supply Decision of Hearings Panel; 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 "Bridget Irving". The signature is fluid and cursive, with the first name "Bridget" written in a larger, more prominent script than the last name "Irving".

B Irving

Solicitor for the Appellant

DATED this 19th day of 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
Kipad Construction Limited	11 Bedford Street, St Clair, Dunedin	Allan@cubittconsulting.co.nz
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