

**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

BLUESKIN BAY HOLDINGS LTD

Appellant

AND

DUNEDIN CITY COUNCIL

Respondent

NOTICE OF APPEAL

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

Solicitor on record: Bridget Irving
Solicitor to contact: Derek McLachlan
P O Box 143, Dunedin 9054
Ph: (03) 477 7312
Fax: (03) 477 5564
Email: bridget.irving@gallawaycookallan.co.nz
Email: derek.mclachlan@gallawaycookallan.co.nz

To: The Registrar

Environment Court

Christchurch Registry

1. Blueskin Bay Holdings appeal against a decision of the Dunedin City Council on the following:

(a) A decision on the Second Generation District Plan ("2GP");

2. Blueskin Bay Holdings made a submission on the zoning of land at 9 and 131 Double Hill Road, 1507, 1531, 1545, 1549 and 1553 Waikouaiti-Waitati Road, and 30, 33 and 47 Kilpatrick Road (OS1008).

3. I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

4. I received notice of the decision on 7 November 2018.

5. The decision was made by the Dunedin City Council.

6. The decision I am appealing is:

The decision to refuse to grant relief in relation 131 Double Hill Road, 1507, 1553 Waikouaiti-Waitati Road, and 30, 33 and 47 Kilpatrick Road. below as set out in the Urban Land Supply Hearings Panel Decision and the Rural Residential Zone Hearings Panel section, in particular Section 3.8.9.4.

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 rural residential or residential zoned land 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 for rural residential land.
 - (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 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, such as residents who wish to live on a large lot being willing to settle for standard residential sized sections provided through General Residential 1 zoning. 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 weight on the reporting officer's evidence that the 2GP makes ample provision for rural residential zoned land;
- (g) The 2GP Decision has erred in finding that the proposal would result in adverse landscape and amenity effects. The decision places insufficient weight on the landscape evidence presented at the hearing. In particular:
 - (i) The site does not contain rural landscape values requiring protection;
 - (ii) Rural residential activity is already evident within the area, therefore, the proposal will not result in reverse sensitivity effects;
 - (iii) The effects of fragmentation already exist in the area;
 - (iv) The landscape evidence concludes that intensification would be acceptable with additional controls in place. This is a matter that can be addressed through the design stage.
- (h) The Council has erred when it held that the proposal will result in adverse effects on the traffic network. The only concerns identified by Council in the Planner's Report were the effects of complaints from dust and maintenance due to increased use.
- (i) The 2GP Decision has erred when it finds that the land can be farmed in an economically viable manner. This makes an inappropriate presumption as to future use and amalgamation. The decision results in an inefficient use of land.
- (j) The 2GP Decision has erred in finding that the proposal is inconsistent with the policy framework concerning infrastructure and capacity. This places insufficient weight on the fact that

water and waste services can be provided on-site and will not result in any extra demand on Council infrastructure.

- (k) The 2GP Decision has erred when they have held that on-site disposal systems are inappropriate.
- (l) The Council have erred in their interpretation and application of the National Policy Statement on Urban Development Capacity 2016 (NPSUDC). The 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 made available in the 2GP. Therefore, the 2GP Decision fails to adequately provide for the demand for different types, sizes and locations of development.
 - (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 seems to have been given to the loss of commercial space if residential activities were to intensify in the commercial zones.

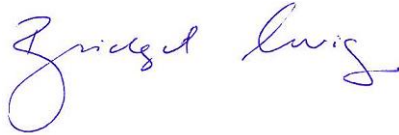
- (vii) Inadequate consideration has been given to why existing residential zoned land within the urban area has not been developed and whether those reasons are likely to persist.
 - (viii) Inadequate consideration has been given to whether some existing housing stock will continue to remain available. This is particularly relevant in relation to South Dunedin and Waitati.
 - (ix) The 2GP Decision places insufficient weight on market demand, particularly in the Waitati and the Blueskin Bay area.
 - (x) The 2GP Decision fails to give adequate regard to the realities of developing land and the long lead times associated with this. This will exacerbate 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.
- (m) The 2GP Decision does not achieve sustainable management.

8. I seek the following relief:

- (a) To rezone 1507, 1553 Waikouaiti-Waitati Road, and 30, 33 and 47 Kilpatrick Road, 131 Double Hill Road from Coastal Rural Zone and Residential Rural 2 to Rural Residential 1, or Large Lot Residential 2 Zone or transitional residential or some combination of these zonings.
- (b) Any further consequential relief required to give effect to the above;
- (c) Costs of and incidental to this appeal.

9. I attach the following documents to this notice:

- (a) A copy of my original submission OS1003 ;
- (b) A copy of the relevant extracts of the 2GP Decision; and
- (c) A list of names and addresses of persons to be served with a copy of this notice.



Bridget Irving/Derek McLachlan

Solicitor for the Appellant

DATED 19 December 2018

Address for service

for Appellant: Gallaway Cook Allan
 Lawyers
 123 Vogel Street
 P O Box 143
 Dunedin 9054
Telephone: (03) 477 7312
Fax: (03) 477 5564
Contact Person: name/name

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
Andrew Peter Smith and Kerry Margaret Smith	1549 Waikouaiti- Waitati Road RD 2 Waitati Dunedin 9085 New Zealand	
Jill Albert	90 Double Hill Road RD 2 Waitati 9085 New Zealand	
Miro Trust	80 Double Hill Rd RD2 Waitati Dunedin 9085 New Zealand	beatrice.lee@actrix.co.nz
Graham McIlroy	1553 Waikouaiti - Waitati Road RD 2 Waitati 9085 New Zealand	graham.mcilroy@gmail.com