

**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

GLADSTONE FAMILY TRUST

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. Gladstone Family Trust (**the Trust**), appeals against a decision of the Dunedin City Council on the Dunedin City Council Second Generation Plan (The 2GP Decision).
2. The Trust made a submission regarding the Dunedin City Council Second Generation Plan (OS249)
3. The Trust is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. The Trust received notice of the decision on 7 November 2018.
5. The 2GP Decision was made by Dunedin City Council.
6. The 2GP Decision the Trust is appealing is the Urban Land Supply Hearings Panel Report, particularly
 - (a) the part of the Urban Land Supply decision report which declined the Trust's relief to rezone part of 77 Chain Hills Road, Mosgiel from Rural (Hill Slopes) Zone to Low Density Residential in line with an existing resource consent for the site;
7. The reasons for the Trust's 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 2GP Decision placed too much emphasis on amenity effects in the absence of any evidence that the development would have adverse effects.
- (g) The 2GP Decision wrongly concluded that the existing consents were not germane to the assessment of the relief sought. In particular the opportunity for land that is not feasible for residential land to be removed from the residential zone.
- (h) The 2GP Decision does not give adequate weight to the Reporting Officers recommendation to rezone the Land to Low Density Residential;
- (i) The 2GP Decision placed too much weight on existing infrastructure constraints and the need for new land to be rezoned in order to enable infrastructure planning to occur or the evidence presented that demonstrated such matters can be addressed at the time of resource consent applications;
- (j) The Land is not within an infrastructure constraint overlay zone, capacity has already been addressed through development of adjacent land by the Trust.
- (k) The 2GP Decision placed too much weight on the cumulative effects of rezoning on this relatively small area of land.
- (l) The 2GP Decision fails to recognise that providing development on land without identified High Class Soils will assist in relieving pressure for development on land where that resource exists.
- (m) The 2GP Decision failed to acknowledge the potential for improved transport connectivity to Chain Hills residents.
- (n) 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 conservation area or any other type of visual amenity overlay;

- (o) The Decision does not consider the evidence of Ms Peters which provides that effects on visual amenity are best dealt with at the time of application for resource consent;
- (p) The 2GP Decision does not achieve sustainable management of the Land.

8. The Trust seeks the following relief:

- (a) To zone the 10 lots (being Lots 103 – 112 on the plan attached to the Trust's original submission) on 77 Chain Hills Road as Low Density Residential; or
- (b) And any other alternative relief to give effect to the above;
- (c) Any further consequential relief to give effect to the above;
- (d) Costs of and incidental to this appeal.

9. I attach the following documents to this notice:

- (a) A copy of the original submission;
- (b) A copy of the relevant parts of the Urban Land Supply Hearings Panel Decision Report
- (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

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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