
SUBMISSION BY GORDON ROAD SPILLWAY RESIDENTS GROUP

Second Generation District Plan

6 April 2023

**SUBMISSION ON AN APPLICATION UNDER SECTION 293 OF THE RESOURCE
MANAGEMENT ACT 1991**

To: districtplansubmissions@dcc.govt.nz
Submission of Gordon Road Floodway
Dunedin City Council
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AND TO Otago Regional Council
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Submitter Details:

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This is a submission on the Gordon Road Floodway consultation in relation to the Second Generation Dunedin City District Plan (2GP)

We wish to be heard in support of our submission.

1. Introduction

- 1.1 In 2006 Residents of the Gordon Road Floodway were taken by surprise with the Silverstream spilling over its banks and inundating our properties. For the majority, our houses were not flooded and only the land, outdoor sheds and garages were affected adversely. It was after this event that we all came to learn we were living on an engineered spillway.
- 1.2 There were six houses inundated in the 2006 flood event, four of these have had water inside since during heavy rain events when the Spillway has become operational.

- 1.3 In 2017 “The Gordon Road Spillway Residents Group” was formed. Many hours were put into obtaining and gathering information from the ORC on the formation of the spillway (engineered in 1974). The ORC has been very reluctant to pass on any information regarding the spillway and to this day it is still a battle to get information.
- 1.4 We have consistently argued that the Spillway is not working as per design and has not been maintained. In 2019, Jean-Luc Payan and Bikesh Shrestha submitted a recommending report to Gavin Palmer (General Manager Operations) which confirmed that the Gordon Road Spillway was originally designed and engineered to operate at a flow rate higher than $175.58\text{m}^3/\text{s}$. However, by November 2018 the Spillway was now becoming operational at a flow rate of $115\text{m}^3/\text{s}$. The reason given for this change was due to bed aggradation and decreased sectional area of the Silver Stream.
- 1.5 After meeting with the ORC and getting confirmation that their assessment showed a reduced capacity in the spillway, it took well over a year of repeated requests to receive a copy of this report from the ORC.
- 1.6 An example of the M4 and M3 Drains meeting at the Riccarton Road/Dukes Road Intersection in the November 2018 flood event. (Undersized and ineffective culvert).



- 1.7 It has now been 7 years since the Gordon Road Spillway Group have been discussing these issues and we are still no further ahead. A token gesture of adding soil to a few dips in the flood bank has been the only “maintenance” carried out on the Spillway. No work has been done to address the bed aggradation to restore the original spillway design threshold of $175\text{m}^3/\text{s}$.
- 1.8 The Group asked for district planning documentation detailing the Spillway. Despite the engineering of the Spillway being documented in the 1974 Revised East Taieri Internal Flood Control and Drainage Scheme Report, we have been unable to find

details of the flood hazard associated with the Spillway in any planning instrument from the Silverpeaks County, Mosgiel Borough, Otago Catchment Board, or DCC Transitional District Plan. We remain bewildered as to how residents occupying the area affected by deliberate spillway inundation are to have known of that hazard. As such, the majority of residents have unwittingly purchased property within an engineered spillway as there was no information on any LIM reports to the effect.

1.9 This is a copy of an emailed request for information around district planning documentation, and the response given:

Dear Julie,

Gavin Palmer (Otago Regional Council) has forwarded your request for information on behalf of The Gordon Road Spillway Residents Group.

With regard to your questions, we've provided our responses below in red:

- What was the governance documentation prior to 1995, that fulfilled the purpose of a District Plan – providing guidance on what people can do on their land and how it can be developed?

From 1991 it was the Transitional District Plan. This was a compilation of the district plans from the councils merged in 1989 to make the current DCC. The Transitional Plan existing until 2005. The spillway was probably within the Silverpeaks Plan.

- Given the evident role the Gordon Road Spillway performs in the Taieri Flood Protection Scheme, where does the Spillway feature in the current District Plan, first released 1995?

Our Resource Consents Manager is not aware that it is specifically mentioned. The hazard part of the assessment matter for (s18.6.1(b), (t)) for a subdivision application is where it would be considered.

- How is it that Building Consents have been given for houses (at least 6) to be built, with no minimum floor height restrictions, on land affected by inundation from the Spillway since it was engineered?

The New Zealand Building Code requires the minimum floor levels for new houses to be built for a 1:50 event. We do not have specific data for what constitutes a 1:50 event within the Taieri area. What we do know though is the last flood event was deemed greater than a 1:50 event. This means when we are assessing applications one of the questions asked is 'how can you prove the minimum floor level is compliant with a 1:50 event?'. One solution for this could be knowing the levels when it previously flooded. If they build to that level then that approach means the floor level would be compliant (noting the code is a minimum standard only and doesn't preclude people from having a higher floor level).

The above general comments are made in the absence of the specific details of the houses being referred to. The Building Solutions team are happy to review the 6 houses if you are able to give the details.

Kind regards,

Nicola

Nicola Pinfold

Group Manager Community and Planning

Dunedin City Council / Kaunihera-a-rohe o Otepoti

- 1.10 What is apparent from this email from the DCC is that they had no idea about the magnitude of risk posed by the Gordon Road Spillway and simply relied on building consent applicants to provide inundation risk estimates for a 1:50 year event at the time building consent is sought.
- 1.11 Due to the lack of any district planning documentation, many Residents, despite carrying out due diligence, have purchased properties on the Floodway with no knowledge that the property they were purchasing was on a spillway.
- 1.12 Since the engineering of the Spillway in 1974, the DCC have issued building consents for new builds, and since the 2006 flood event they have issued consents for extensions/renovations.
- 1.13 The DCC have issued building consents for dwelling extensions (that by their nature would likely be allowed under Hazard 1) within the zone as recently as 2022, after the proceeding currently in front of the Environment Court had begun.
- 2. The reasons for our opposition to the appeal by the ORC to have the entire spillway classified as Hazard 1A**
 - 2.1 The proposed rezoning will result in the activity status for natural hazard sensitive activities changing from non-complying to prohibited.
 - 2.2 While a non-complying activity status is still an onerous activity status and sets a high statutory barrier for consenting, it does not entirely “close the door” to the possibility of acceptable proposals.
 - 2.3 As identified in the notified material, there are many existing houses within the affected area. Although now zoned Rural Taieri Plain with a minimum site size of 40 Ha, only 1

property (Southern Light Farms) is anything like that size. Most of the properties are less than 5 hectares and are only capable of reasonable use for lifestyle purposes. Very few properties within the affected area do not have a house on them already.

- 2.4 Haz1A prohibited activity status will, over time, prevent these landowners from continuing to use their properties. The activity status also prevents landowners from taking proactive measures to potentially mitigate the risk of flooding on their residential dwellings. For example:
 - (a) Increasing the minimum floor levels of their dwelling through foundation design (such as piles);
 - (b) relocating the house to less vulnerable parts of the property, and locating less vulnerable activities to lower levels of the property, for example, garaging and sheds;
 - (c) Exploring opportunities to create and use higher ground through earthworks, or to rebuild/relocate dwellings to existing areas of high ground within a property.
- 2.5 Furthermore, in the event of a significant flood, the opportunity for landowners to only exercise existing use rights based on the nature and scale of the existing dwelling will only encourage more “like for like” development, it will not enable greater resilience. It will not provide an opportunity for the above types of measures to be adopted in the design of the residential property.
- 2.6 Experience with the Christchurch earthquake recovery shows that disaster recovery will often take more than 12 months. If properties have to be vacated for more than 12 months for flood repair, then there is a risk that existing use rights will be lost and any application to resume residential activities will be prohibited. That is completely unfair and unacceptable.
- 2.7 Our submission is that existing use rights are an unsatisfactory basis to recognise the legitimacy of the existing houses in the affected area.
- 2.8 The revised mapping of the Floodways includes Hazard Vulnerability Classifications from H1 to H5. The level of flood hazard exposure and risk therefore varies considerably across the floodway (and this is acknowledged by the ORC affidavits, such as by Jean Luc Payan), yet all areas will be treated equally with the same blunt

instrument approach. The crudeness of the proposed Haz1A area mapping relative to the hazard vulnerability classification mapping shows that prohibited activity status across the whole area is not justified.

- 2.9 Further to the above, it would appear that there are extensive areas to the north of the floodway that are subject to the same classification (H1 to H4) yet the same level of land use control is not applied to these areas.
- 2.10 Within the proposed Haz1A area, the vast majority of existing houses are within an area with modelled water depth of less than 0.5m. That is relatively easy to accommodate with good design and many houses have never been inundated. We are not aware of any existing houses within an area of modelled water depth exceeding 1m. Locals know where the most vulnerable areas are and avoid them. The Haz1A status does not achieve anything in terms of risk avoidance.
- 2.11 The supporting material for the change in activity status from non-complying to prohibited includes statements that “It is critical that the safe operation and integrity of the spillway and floodway are maintained and protected in order to guarantee the level of service of the flood protection scheme the Mosgiel community is relying on”. The ORC’s flood protection scheme has the benefit of a designation to protect its operation. Haz1A status makes no difference to the ORC’s powers to protect the operation of its scheme.
- 2.12 It is not clear how changing the activity status for houses from non-complying to prohibited would affect the “safe operation or integrity of the spillway or floodway” nor how it would reduce the level of service for Mosgiel, given the spillway would continue to preferentially spill into this area irrespective of the activity status change. Notably other farm buildings, fencing etc are still provided for in this area and therefore will have the same diversionary effect as buildings accommodating sensitive activities.
- 2.13 While we appreciate that the ORC and DCC does not wish to see further residential development within this area, it is simply that the existing landowners want to be able to continue to exercise their existing uses and maintain at least an ability to apply for resource consent to undertake residential activity within their sites. The existing density rules are such that if an existing dwelling is already located within a title, no further residential activity will be likely. The outcome being sought by the ORC and DCC can therefore be achieved without the prohibited activity status.

2.14 We understand, based on the affidavit of Jean Luc Payan that the ORC operates, maintains and monitors the Scheme Flood Banks to a “high standard”. We also understand that irrespective of the maintenance and monitoring regime, reliance of earth floodbanks for flood protection also means accepting some residual risk exposure. I note however, that the suggestion that breaches in the scheme floodbank network could potentially modify the characteristics of the flood hazard (duration, depth and velocity) in the Gordon Road Floodway applies to any built up area located behind flood banks (such as Mosgiel) and is not unique to this area.

2.15 The section 32 evaluation does not adequately address the costs/benefits of the change:

- (a) The need to rely on existing use rights is identified as a cost. As noted earlier, this will have implications for existing landowners and may prevent them from taking their own action to mitigate the risk of flooding.
- (b) Another cost identified is the inability for landowners to erect new dwellings. As noted in the report, there are only seven sites without existing dwellings and two of these have land that extends beyond the floodway. They therefore have an ability to construct a new dwelling elsewhere on their land (despite the level of risk being the same - H1 to H4) as a restricted discretionary activity.
- (c) The section 32 evaluation itself notes that further residential activity on the existing sites would require a resource consent and notes “gaining resource consent would be challenging, even setting aside the implications of the hazard overlay”. This is due to the density requirements of the plan. If the Council’s primary concern is about the increased risk associated with further residential activity establishing within the floodway (which appears to be case based on the affidavits and the sole “benefit” of the change quantified in the section 32 relating to this matter), by their own admission this would be challenging from a consenting perspective. Furthermore, the ORC holds a designation over the land, therefore s176 approval would be required for any activity that prevents or hinders a public work.
- (d) The section 32 indicates that Option 3 is not appropriate as it would not give effect to the 2GP objectives due to the risk to people and property, particularly in the higher flood category area. This is a cursory assessment, at best, as:

- (i) The likelihood of obtaining consent for further residential activities is low (and acknowledged by the DCC) due to density rules.
 - (ii) The risk to existing people and property occupying this area is not increasing, it is existing and remains unchanged as a result of the change in activity status.
 - (iii) The outcomes sought by the ORC and DCC through its appeal can be effectively achieved by a non-complying activity.
- (e) In Jean-Luc Payan's evidence for the ORC he states that the spillway is well maintained. This is not true. The current hydraulic capacity of the spillway before activating is just 115 cumecs versus the original 175 cumecs which the stop banks were engineered to handle. This is due to aggradation and lack of maintenance from the ORC. This is a 34% reduction in capacity, significantly increasing the frequency of an activation, and increasing the severity of an activation by 60 cumecs. There is no reason why the original design hydraulic capacity cannot be restored. The section 32 report fails to evaluate the relative costs and benefits of the ORC restoring the design spillway threshold of 175 cumecs as a means to mitigate the 100 year ARI flood risk, as opposed to imposing the cost on landowners. We submit that the Haz1A proposal is a cost reallocation exercise to shift flood protection scheme maintenance cost away from the ORC and impose it on landowners. The relative benefits and costs of that have not been evaluated.

2.16 Overall, the proposed changes have not been appropriately evaluated in terms of section 32 of the RMA as there are alternative options to the ORC and DCC that have not been considered or formed part of their evaluation.

Section 85 Challenge

2.17 We submit that Haz1A status would make the use of the land within the area incapable of reasonable use and that the grounds of challenge to the proposal pursuant to section 85(3B) are made out.

3. We seek the following decision from the Environment Court:

3.1 The area should not be rezoned to Hazard 1A, as proposed by the ORC and DCC.

3.2 A declaration that Haz1A overlay status satisfies the grounds under section 85(3B) of the Act and that an order modifying or deleting Haz1A overlay provisions under section 85(3A)(a)(i) be made in the event that the case for Haz1A status is otherwise made out.

3.3 In the alternative, the Haz1A provisions be modified to enable:

- (a) One Standard Residential Activity within an associated Residential Unit within a list of titles located within the floodway. This list should include all those properties that contain an existing dwelling at the time the s293 application was made and where the record of title does not include any area outside of the floodway of a suitable size to accommodate a dwelling.
- (b) Performance standards for any new building to include a minimum floor level requirement to avoid inundation in the modelled 100 year ARI event plus an allowance for freeboard.



Phil Page

Counsel for Gordon Road Spillway Residents Group

Schedule 1**Schedule of Group Members**

Property Address	Owners
69 Dukes Road South Taieri	Darren Stanley Palmer and Melanie Rae Palmer
113 Dukes Road South Taieri	Geoffrey Philip Thompson and Jenny-Lee Burt and O N D Trustees Limited
117 Dukes Road South Taieri	Jennifer Ann Quelch and Richard Aidan Quelch and Kam Nlak Trustee Company Limited
127 Dukes Road South Taieri	John William McLaren and Ronda Margaret Owens and Albert Alloo and Sons Trustee Company Limited
133 Dukes Road South Taieri	Abraham Oskam and Dini Jeanette Irene Oskam
137 Dukes Road South Taieri	Craig Andrew Struthers and Julie Struthers
147 Dukes Road South Taieri	Raymond Alexander Wilson and Janice Heather Wilson and Downie Stewart Trustee Limited
149 Dukes Road South Taieri	Garth Alexander Thomson and Christine Ann Oliver
155 Dukes Road South Taieri	Brian Alister Bennett and Jill Anna Bennett
161 Dukes Road South Taieri	Jason Alan Breen and Lisa Jane Breen

169 Dukes Road South Taieri	Margaret Eileen Pollitt and Terence Vincent Pollitt
209 Dukes Road South Taieri	Pamela Joan Bain
248 Riccarton Road West Mosgiel	Ivan Walter Glass and Belinda Christine Elizabeth Glass
255 Riccarton Road West Mosgiel	Belinda Jane Horne and Franklin Ferguson Horne and Carey John Weaver
264 Riccarton Road West Mosgiel	Mark Kerry Jenkins and Rebekah Marie Jenkins
293 Riccarton Road West Mosgiel	Alice Frances Sinclair
323 Riccarton Road West Mosgiel	Shayne William King and Andrina Irene King
327 Riccarton Road West Mosgiel	Stephen Robert Watkins and Nicola Jane Grant
313 Riccarton Road West Mosgiel	Kristen Leigh Slocombe and Lee Ann McGuirk
347 Riccarton Road West Mosgiel	Rey Graham Murphie and Katherine Murphie
349 Riccarton Road West Mosgiel	Gilbert Noel Black and Judith Isobel Black and Samuel Richard Crush
353 Riccarton Road West Mosgiel	Bronwyn Anne Miles and Laurence William Ashworth
357 Riccarton Road West Mosgiel	Samuel George Smith and Freya Margaret Smith and

	Cook Allan Gibson Trustee Company Limited
359 Riccarton Road West Mosgiel	Eric Patrick Johnston and Moyra Jane Johnston and Practice Management Trustee Limited
371 Riccarton Road West Mosgiel	Gail Carol Heenan and Arthur McNicoll Heenan
413 Riccarton Road West Mosgiel	Gary John Reed and Lorraine Elizabeth Anne Reed