

Form 7

Notice of appeal to Environment Court against decision on proposed policy
statement or plan or change or variation

Clause 14(1) of Schedule 1, Resource Management Act 1991

To The Registrar
Environment Court
Christchurch Registry

1. We, Danielle Claire Nicolson, Sorrel O'Connell Milne and Tim Lequeux, appeal against part of a decision of Dunedin City Council on the following plan variation:
Variation 2 - 2nd Generation Plan DIS-2021-1
2. We made submissions on that variation to the 2nd Generation Plan ("2GP"):
 - FS64
 - FS242
 - S33.001
3. We are not a trade competitor for the purposes of section 308D of the Act.
4. We received notice of the decision on 8 February 2023.
5. The decision was made by Dunedin City Council ("the Council").
6. The part of the decision that we are appealing against is:
The hearing report in particular at 2.3.13.5.12; and appendix 1 15.8.AP, including:
 - a) The decision to rezone the entirety of the site to General Residential 1.
 - b) The decision to impose structure plan rules that:
 - Require the developer to provide an esplanade reserve of an extra 15m along the property boundary of area marked C (being the west side of the Tomahawk Lagoon).
 - Limit the number of dwellings of any subdivision to 9, rather than the 34 submitted in our structure plan.
 - Require the developer to amalgamate areas A and B.
 - Require the developer to obtain stormwater resource consent from Otago Regional Council ("ORC") prior to subdivision application.

The reasons for the appeal are:

7. We are the landowners of the site 177 Tomahawk Road, Dunedin and have a special interest in the part of the decision which relates to our land. We agree with the decision generally to rezone 177 Tomahawk Road to General Residential 1 and only appeal the decision in part.

8. We advise of our reasons for appealing the decision as follows.

Rezoning entire site to General Residential One

9. The Council gave insufficient weight to our proposed structure plan, values, and desired use of our land by rezoning the entire site to General Residential 1 (rather than limiting to the area(s) proposed by us in our structure plan).

10. The Council have erred in merging the Variation 2 objectives with the general 2GP objectives by imposing rules that result in large sections (average 8,666m²). The outcome of the decision being that one dwelling is allowed in a 7-hectare area of residential land and / or the amalgamation of land from Area B with the subdivisions in Area A. Such large sections are not in keeping with the 2GP objective of developing compact residential environments. Adjacent residential lots range from 600-1000m².

11. The Council were wrong to rezone the bottom piece of the site to General Residential 1 while simultaneously recognizing that the bottom part of the site is not appropriate for development.

12. The Council paid inadequate consideration to the proposed benefit of retaining a small rural pocket in the lower area which limits development and maintains part of the Peninsula Coast Rural landscape.

Esplanade reserve

13. The decision does not provide adequate reasoning for imposing a restrictive provision, i.e., a subdivision without providing an esplanade is a restricted discretionary activity. The Council requires 10 percent of the total site for the esplanade. This area includes a significant portion of the existing access road and an important shelter belt.

Limiting development to 9 dwellings

14. The Council were wrong to limit development to 9 dwellings, rather than 34 submitted in our structure plan.

15. The primary issue of concern being stormwater management; the Council placed

- insufficient weight on the expert storm water assessment provided by us (both the initial assessment and the updated assessment). The site can easily accommodate a much larger yield (and was initially assessed for 120 dwellings) achieving the principal of Variation 2 to enable more housing in appropriate locations in Dunedin.
16. The Council (see comments in the Hearing Report at 2.3.13.5.11, 1404 relating to stormwater) were wrong to rely on an assumption of the perspective of ORC, rather than the information provided expert stormwater assessment.
17. The decision does not give due regard to the fact that the ORC did not attend the hearing for this site.
18. Provision was given to allow a dwelling in Area C of the proposed Structure Plan (2.3.13.5.12, 1405 and 1406) due to the existence of an unoccupied house in the area, however a similar allowance was not made for another unoccupied house on the western aspect of the site, in Area B of the proposed Structure Plan.

Stormwater resource consent

19. The Council were wrong to place insufficient weight on expert evidence to restrict the number of dwellings and then simultaneously apply an excessive and restrictive requirement to obtain prior approval of resource consent.
20. The Council have erred in their application of the Variation 2 objectives by making land available for development, but imposing a requirement that may result in a 'catch-22' scenario for the developer, whereby the developer is unable to obtain a subdivision consent following the approval of a storm water discharge resource consent based on a specific subdivision.

We seek the following relief:

- (a) Retain General Residential 1 zone for the upper areas of the site (which are appropriate for development) and labelled A and B in our proposed Structure Plan that was submitted to the Council prior to hearing (see attached document Revised Structure Plan).
- (b) Return Areas C and D in our proposed structure plan to Peninsular Coast Rural (see attached document Revised Structure Plan) with an allowance to replace the existing unoccupied house.
- (c) Amendment of subdivision rules as follows:
- 15.8.AP.1 (b): Removal of requirement for esplanade reserve strip.
 - 15.8.AP.1 (c) (i) and (ii): Increase maximum number of residential sites.

- 15.8.AP.1 (c)(iv): Removal of requirement for amalgamation.
- 15.8.AP.1 (d): Removal of requirement for stormwater discharge consent prior to subdivision application.

We attach the following documents to this notice:

- (a) a copy of further submission FS64
- (b) a copy of the original submission S33.001
- (c) a copy of further submission FS242
- (d) a copy of the original submission S20.001
- (e) a copy of the original submission S283 c/- Paterson Pitts Group.
- (f) a copy of the relevant part of the Variation 2 Decision, being:
 - The hearing report 2.3.13 (p182-188)
 - Appendix 1 of the Hearing Report, 15.8.AP
- (g) any other documents necessary for an adequate understanding of the appeal, including:
 - i) Evidence submitted to the Council on 5 August 2022:
 - E3Scientific Stormwater Management Options dated 28 March 2022
 - Geotechnical Report dated 14 December 2021
 - (Original Proposed) Structure Plan prepared by Paterson Pitts Group
 - Additional Geotechnical Advice of 5 August 2022
 - Response to s42A report prepared by Paterson Pitts Group
 - ii) Letter from Aukaha 10 August 2022 setting out views of Te Rūnanga o Ōtākou
 - iii) Heritage New Zealand Pouhere Taonga Accidental Discovery Protocol (to go with Aukaha letter of 10 August 2022)
 - iv) Evidence submitted to Council on 7 October 2022 in response to Minute 14:
 - Response to Minute 14 prepared by Paterson Pitts Group with the following attachments
 - Revised Structure Plan (attachment 1)
 - Updated Stormwater Management Options prepared by E3 Scientific (attachment 2)
 - Planting Plan (attachment 3)
 - Post-meeting letter (attachment 4)
- (h) a list of names and addresses of persons to be served with a copy of this notice.

Date: 15 March 2023



Signature of appellant:

(*or* person authorised to sign on behalf of appellant)

signed by Danielle Nicolson on behalf of all appellants

Address for service of appellant: 32 Gloucester Street, Andersons Bay

c/ dani.nicolson@gmail.com

Telephone: 034777267

Fax/email: dani.nicolson@gmail.com

Contact person: Dani Nicolson or Tim Lequeux

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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 Act.

You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (*see* form 38).

How to obtain copies of documents relating to appeal

If the copy of this notice served on you does not have attached a copy of the appellants' submission and / or the part of the decision appealed; these documents may be obtained, on request, from the appellant(s).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Schedule 1 form 7: replaced, on 3 September 2020, by regulation 7(3) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2020 (LI 2020/180).