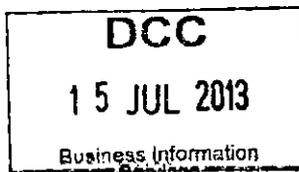


11 July 2013

Dunedin City Council
P O Box 5045
Moray Place
DUNEDIN 9058



For Planning Manager

Dear Sir/Madam

BALMORAL DEVELOPMENTS (OUTRAM) LIMITED v DUNEDIN CITY COUNCIL

We enclose by way of service a copy of a Notice of Appeal which has been filed with the Environment Court.

Yours faithfully
GALLAWAY COOK ALLAN

A handwritten signature in black ink, appearing to be "Chris Timbs".

Chris Timbs
Solicitor (Dunedin)

chris.timbs@gcalegal.co.nz

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV-2013-CHC-

IN THE MATTER of an appeal under Clause 29(6) of
First Schedule, Resource
Management Act 1991

BETWEEN **BALMORAL DEVELOPMENTS
(OUTRAM) LIMITED**

Appellant

AND **DUNEDIN CITY COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT
AGAINST DECISION ON PLAN CHANGE 14**

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

Solicitor on record: P J Page
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TO: The Registrar
Environment Court
Christchurch

1. Balmoral Developments (Outram) Limited ("Balmoral") appeals against a part of a decision of the Dunedin City Council's Hearings Committee ("the Committee") on the following plan change:
 - (a) Plan Change 14: Holyhead Street, Outram (Residential 6 Zone).
2. Balmoral lodged the original Plan Change request and made a submission on the Plan Change.
3. Balmoral received notice of the decision on 17 June 2013.
4. The decision was made by the Committee.
5. The part of the decision that Balmoral is appealing is:
 - (a) The decision to decline the proposed plan change to the extent that it seeks to re-zone Lot 2 DP 20759 (94 Holyhead Street, Outram) and Lot 1 DP 17247 (51 Mountfort Street, Outram) from Rural to Residential 6 Zone.
6. The reasons for the appeal are as follows:
 - 7.1 Broadly there appear to be three major appeal issues as a result of the Committee's decision on Plan Change 14 ("PC14"). They are:
 - (a) The Committee's reliance on and findings in relation to 'High Class Soils' on the proposed site;
 - (b) The Committee's comparison with, analysis and reliance on the Spatial Plan; and
 - (c) The Committee's reliance on 'alternate site' considerations and discussion in their decision.

There are errors of fact and law in the issues listed above which are expanded on further in this Notice of Appeal.

7.2 District Plan Policies

It is submitted that the Committee erred in its interpretation of the Dunedin City District Plan when considering PC14.

(a) **Policy 4.3.1:**

Decision

The Committee's interpretation of this policy is unduly restrictive and incorrect.

Reason for Appeal

- (i) The Committee was wrong to conclude that amenity values would not be maintained or enhanced by the Balmoral development.

(b) **Policies 4.3.2 and 4.3.3:**

Decision

The Committee concluded "*it makes better planning sense to make full use of existing infrastructure that has capacity available rather than undertake development that requires an expansion or upgrade of infrastructure*" (Decision, page 11). They state "*there is existing infrastructural capacity elsewhere on the Taieri that should, in our opinion, be utilised first*" (Decision, page 11).

Reason for Appeal

The Committee's interpretation of these policies is unduly restrictive and incorrect.

- (i) The Committee was wrong to conclude that existing infrastructural capacity elsewhere on the Taieri that should be utilised first rather than expanding infrastructure services into the Balmoral development.

(c) **Policies 4.3.4 and 6.3.10:**Decision

The Committee concluded that the existence of high class soils on the site meant that the site should not be developed. They stated there is *"insufficient justification for the loss of this land to productive uses"* (Decision, page 12). Their reasons for this included:

- (i) On a site visit they noted how productive the site was with good grass growth even after a period of drought (Decision, page 11).
- (ii) They did not believe it would always be uneconomical to farm the land and noted *"we have heard no evidence to suggest this will always be the case"* (Decision, page 12).
- (iii) That alternatives should be fully considered before high class soils are selected for a use that will result in their loss (Decision, page 12).
- (iv) They considered other parts of Outram could be developed as infill, for residential development and there was a lack of proven strong demand for the sites (Decision, page 12).

Reason for Appeal

- (i) The Committee was wrong to reach conclusions on the productivity of the site based on one site visit, nor were they experts.
- (ii) The Committee was wrong on the evidence to find that the land was capable of economic horticultural production in the future.
- (iii) The Committee was wrong to find that possible "infill" development counted against residential zoning of the site.

- (iv) The Committee was wrong to conclude that there was limited justification for the use of this land for residential development due to a lack of proven strong demand.

(d) **Policies 4.3.7 and 4.3.8**

Decision

The Committee concluded that there was no indiscriminate mixing of incompatible uses at the existing zone boundary. As there was no issue they concluded it did not need to be remedied by means of this plan change.

Reason for Appeal

- (i) The Committee was wrong on the evidence to conclude that there were no issues regarding potential incompatible uses and developments of land at the existing zone boundary at the Balmoral site.
- (ii) Consequently the Committee was wrong to conclude it was not an issue requiring remedy through PC14.

7.3 **Efficient Use of Natural and Physical Resources**

- (a) The Committee was wrong to conclude that there is no demand for the proposed sections within Outram.
- (b) The Committee was wrong to require a district-wide residential demand assessment before approving the Plan Change.
- (c) The Plan Change will enhance the sustainability of existing community services and infrastructure with Outram.

7.4 **Connectivity with Outram**

- (a) The subdivision design provides a high level of internal accessibility and good external connection for all modes of transport.

7.5 **Natural Hazards**

- (a) The proposed development will not exacerbate natural hazard risk, and hazard related matters are properly capable of resolution at subdivision consent stage.

7.6 **Spatial Plan**

- (a) It is submitted the Committee placed too much weight on the Spatial Plan.
- (b) The Committee was wrong to characterise the Plan Change as not "focussed on existing settlements". The Plan Change is properly characterised as "infill" within the natural town boundaries of Outram.
- (c) The Committee states the plan change request is "*contrary to the policy direction of the Spatial Plan*" (Decision, page 15). However they fail to indicate or explain exactly what those policies are, nor provide any analysis of how or why PC14 is contrary to those policies.

7.7 **Regional Policy Statement**

- (a) The Committee was wrong to conclude that the plan change request was contrary to Policies 5.5.2 and 5.5.3 of the Regional Policy Statement.

7.8 **Section 32 Analysis**

- (a) The Committee erred in its Section 32 analysis. The analysis is wrong because:
- (i) In accordance with *Brown v DCC* [2003] NZRMA 420 the High Court held that determination of a site specific plan change will not involve a comparison with alternative sites (paragraph 19). The alternative site 'theme' is apparent throughout the Committees entire decision.

- (ii) The Committee concluded at page 13 of their decision that smaller lot sizes than those proposed would represent a more efficient use of land. There is no evidential basis for this determination.
- (iii) The Committee was wrong to conclude that allowing development would erode their ability to sustainably provide infrastructure elsewhere. There is capacity within the existing network for development and any upgrade costs would be borne by the developer. It is unclear how development would prevent the 'sustainable provision' of infrastructure elsewhere and no reason is given for the Committee's decision.
- (iv) Further, at page 15 of their decision the Committee recognises that the proposed storm water system will actually benefit Outram. As the cost is borne by the developer, the Council will not have to pay to improve the storm water system, enhancing their ability to provide infrastructure elsewhere.

7.9 **Part II Matters**

- (a) The Committee's decision on Part II matters is a repetition of its reasons on the discrete subject matter already referred to, and is wrong for the reasons already expressed.

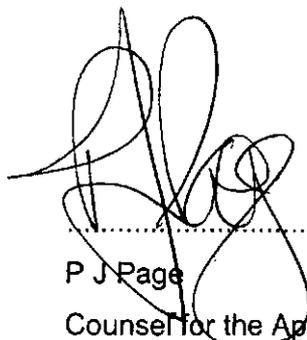
8. Balmoral seeks the following relief:

- (a) That the amendments sought to the District Plan are adopted as set out in the proposed plan change.

9. Balmoral attaches the following documents to this notice:

- (a) a copy of my original plan change request (can be obtained upon request from the Applicant);
- (b) a copy of the relevant decision (can be obtained upon request from the Applicant); and

- (c) a list of names and addresses of persons to be served with a copy of this notice.



.....
P J Page
Counsel for the Appellant

11 / 7 / 2013
.....
Date

Address for service

Of Appellant: Gallaway Cook Allan
Lawyers
Cnr High and Princes Streets
P O Box 143
Dunedin 9054

Telephone: (03) 477 7312
Fax: (03) 477 5564
Contact Person: P J Page

Note to appellant

You may appeal only if –

- you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and
- in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55 (2B), may consider only the question of law raised.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

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 and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court 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 or service requirements (see form 38).

Advice

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