

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of two appeals under section 120 of the Act
BETWEEN	RPR PROPERTIES LIMITED
	(ENV-2016-CHC-30)
	KEEP HALFWAY BUSH SEMI-RURAL INCORPORATED
	(ENV-2019-CHC-134)
	Appellants
AND	DUNEDIN CITY COUNCIL
	Respondent
AND	of an appeal under clause 14(1) of the First Schedule of the Act
BETWEEN	KEEP HALFWAY BUSH SEMI-RURAL INCORPORATED
	(ENV-2018-CHC-218)
	Appellant
AND	DUNEDIN CITY COUNCIL
	Respondent

MINUTE OF THE ENVIRONMENT COURT
(14 May 2020)

Introduction

[1] The Registry has brought to my attention an email from Ms Wouters, a member of Keep Halfway Bush Semi-Rural Inc (“the Society”), raising concerns about correspondence she and other members of the Society have received. A copy of the undated correspondence Ms Wouters received is attached and labelled Annexure A.



[2] The concern appears to be that representatives of RPR Properties Ltd have contacted members of the Society directly with a proposal to resolve the appeal. Ms Wouters seeks the advice of the Registry as to how to prevent future correspondence.

[3] The court does not know whether the addresses of Society members were obtained from its records or from the public record (e.g. the White Pages). Even so, it is not the Registry's function (nor my own) to give advice on how to stop future correspondence.

[4] I would say that there is nothing unusual in parties endeavouring to resolve disputes directly and indeed the court encourages this. That said, many people find litigation stressful and so I take this opportunity to remind parties, whether they are represented or not, that they are to work constructively in an endeavour to find solutions and to narrow the issues. Working constructively includes treating each other respectfully and professionally (see the Environment Court Practice Note 2014 at cl 1.2: Communication and co-operation amongst parties).

Where to from here

[5] The parties will be aware that Dunedin City Council has recently re-evaluated its prioritisation of appeals for mediation. The City Council has assessed the Society's appeal on the proposed District Plan as having low-medium priority. While at the time of writing informal discussions had yet to commence, the City Council has indicated that it was hopeful of circulating an options paper for the parties' consideration towards the end of May 2020. I will ask the Registry to attach a copy of the City Council's memorandum dated 24 April 2020 and the draft Case Management Schedule for your information, together with a copy of the court's Minute dated 5 May 2020 in response.

[6] There are three appeals before the court. Aside from the Society's appeal on the proposed District Plan, the Society and RPR Properties Ltd have appealed decisions on applications for resource consent. Unless I hear to the contrary, the three appeals appear to be dealing with the same subject matter and so it is my present intention to refer them to the same mediation.



[7] The court will be in contact again, once the scheduling of proceedings to mediation is finalised.

J E Borthwick

Environment Judge

Issued: 14 May 2020

SCHEDULE OF INCLUSIONS

- 1. You are a Member Listed in the Appeals explanation**
- 2. Explanation of the Proposal in plain language**
- 3. Addendum A**
- 4. Site Plan for reference**

**ADDENDUM A
PROPOSAL TO RESOLVE ENVIRONMENT COURT APPEAL**

To: THE SOCIETY MEMBERS OF KEEP HALF WAY BUSH SEMI RURAL
SOCIETY INC.

From : RPR PROPERTIES LIMITED
Tom and Loretta Richardson

That the Keep Half Way Bush Semi Rural Society. in accordance with acceptance of the terms of The Proposal and the addition of the agreed Addendum A now form
THE PROPOSAL TO RESOLVE ENVIRONMENT COURT APPEAL

That the Landowner will offer to negotiate at a formal Mediation, the timing of the development of the balance of the unfenced Bare Land as per enclosed Site Plan. This land lies to the north of the power lines and borders Taieri Road and some properties in Ashmore Street.

The acceptance of the Proposal must allow planning and consent processes which would facilitate the construction of a Roadway to Taieri Road as required by the 2GP structure plan area X.

This offer to negotiate the unfenced Bare Land development timetable remains in force until 21st May 2020

NAME

ADDRESS

SIGNATURE

Date

Dear Keep Half Way Bush Society Member,

Further to my last mail out, "*Testing the Humanity of the KHBSR Society*" and the other documents that were included.

We have subsequently become aware, after responses received, that an explanation may be warranted as to why you are being included in these Society mailouts.

The reason is, because your name is listed as one of the current KHBSR Society's members, and has been included in both the 2GP Appeal, and the 2x section Appeal that were lodged with the Environment Court of New Zealand by the KHBSR Society. Both these Appeals are against the DCC decisions.

This, as a named KHBSR society member, makes you very much part of the proceedings and decision making of your society committee and any financial implications that may apply from the Society decisions and actions.

By default, you have also been a party to any Appeals or actions or decisions that your Committee has made over the past 5 years on your behalf, and may make in the future as a KHBSR member.

All society members need to be aware that they can be called to take the stand, whether voluntary or by Subpoena as a witness, to the Society's position, should either or both Appeals be heard in the Environment Court, and you could be questioned on the decisions of your society and your participation or otherwise in those decisions made to date.

However, the purpose of this mail out is to update you on the correspondence and the progress made since the January 2020 meeting in the Mayor's Lounge, (refer last letter to members).

We have continued to try and find common ground with the Society committee but unfortunately there has been no positive response from the Society.

We have since offered the KHBSR Society an additional incentive to reach an agreement with the landowners. Please refer to the Addendum A which invites input into the timing of the bare land development, but to date the committee has not responded to that offer. This offer is being withdrawn on the 21st May 20

However what has become clear is that there appears to be no serious intent by the KHBSR Society to negotiate a common position between the landowners, that can be taken to an Environment Court Mediation, **for an Out of Court resolution.**

Therefore, our lawyer has advised that it looks very likely the Society's Appeals will head to the Environment Court. This is a very expensive option, as there is a requirement for the Parties involved to engage a Barrister and expert witnesses to back up their argument.

Below is the link to the KHBSR Society 2GP Appeal document Copy and paste this link to your internet browser eg google, safari or whatever you use, and enter

https://www.dunedin.govt.nz/data/assets/pdf_file/0008/716246/ENV-2018-Appeal-Keep-Halfway-Bush-Semi-Rural-Inc.pdf

If you do not support the society's Appeals and were not advised that you were a party to either Appeal lodged with the Environment Court and you do not want to be implicated or involved, you need to make this known prior to any Environment Court Mediation or Court Hearing.

Unfortunately, The Privacy Act prohibits the advising to you, of another persons details, so you can address any correspondence or questions to either

loretta@westacottheights.co.nz

0274 321 737

61 Saunders Street Brockville Dunedin 9011

Simon.Anderson@rossdowling.co.nz

PO Box 1144 Dunedin 9054

0274 988 009

EXPLANATION OF PROPOSAL IN PLAIN TERMS (reference the Proposal)

BACKGROUND

- A. The two Appeals that the KHBSR has lodged with the Environment Court are **against the decision of the Dunedin City Council** 2GP decision to rezone the Dalziel Road to large Residential sections of 2000m²

The DCC has informed the President and the Secretary of the society, at a meeting with the landowners, that the DCC will vigorously defend their rezoning of the land. Further they informed the society that they must accept the changes of zoning to allow to meet the critical housing shortage. Dunedin has a critical housing shortage and this land is 8 minutes from the city centre and Moray Place. The land has DCC supplied water and sewer service connections installed to the boundary. The Land does **not comply** with the rural residential profile that the Society was seeking. The society must also accept that because of the proximity to the city, the DCC has included this area of land in their Variation 2 rezoning for high density residential development the same as Ashmore Street and Tairei Road density. The developer installed infrastructure has capacity for this to occur, and there are no hazards on the land to prevent development, regardless of some suggestions by locals, that there are.

- B. ENV2019-134 is an appeal lodged by the KHBSR **against the decision Dunedin City Council** to Grant Consents for 2x sections 12 and 13 (as per plan). These sections are sold, and there are two families waiting to take possession of these sections, so they can build their new family home. Both these purchasers have existing homes that will be released to the market for a new owner once Titles have been issued. At the hearing the DCC commissioners said that these 2 sections did not adversely affect the close neighbours, and Granted the consent for these 2 sections.

- C. In 2015 the landowner lodged an application for a 34-section subdivision. This was opposed by a neighbour, who canvassed the area and the KHBSR society was formed based on your support for her, and you became a member of the KHBSR Society, and remain so today. The DCC had at the time advised that the land was likely to be rezoned to large residential 2000m² sections and had extended sewer and water to the boundary of the land in 2014 for future use when subdivided. The landowners have kept this 34-section appeal in place, because of the opposition from the KHBSR so to enable mediation and compromise. This can be withdrawn at any time due to the land being now zoned Large lot Residential 1.
- D. We do own the major part of the rezoned land and would like the KHBSR appeal to be resolved

PROPOSAL

1. General explanation

- (a) This is just confirming that the KHBSR do not support the DCC residential rezoning to the large 2000m² sections, and the landowners support the DCC residential rezoning to large 2000m² sections
- (b) If there is any common ground it is hard to identify, due to the President not communicating clearly the society preferences to enable negotiation
- (c) The DCC did advise everyone at the January 2020 meeting in the Mayors Lounge, that they had included the Dalziel Road land to be rezoned to intensive residential development in the future, if it has not been already developed and established as large 2000m² sections.
- (d) As the landowner, should the KHBSR wish to progress this Proposal, there could be protection placed on these large 2000m² sections to prevent the proposed high-density development. To date there appears to be no interest of the KHBSR President to even discuss compromise in this way
- (e) Clearly, if the KHBSR withdrew their appeals, progress could be made with the large section sizes which would probably prevent the smaller size section development on the land.
- (f) There are complaints of the road noise from the subdivision but this is entirely due to the appeals and opposition from the KHBSR. Why? because the completion and sealing of the roadways takes money and as there is

further construction to take place, if it was completed the heavy vehicles would damage the roadways beyond repair and would need to be totally replaced. This is a senseless waste of money and time.

- (g) You as a member, must make you own decision, form your own views and make it known to both the landowner and the President of your society. The choices are to accept the large 2000m2 sections against high density subdivisions in the future, which will result in the exact opposite that the KHBSR was formed to prevent. Just to give you an idea of size.

3x Ashmore street sections size is approximately 1x 2000m2 section.

Another example is from the Ashmore Street Dairy to the Blake Street corner there would be about **9x houses** instead of the approximate **21 houses** along this Ashmore Street distance.

- (h) At this time the Landowners is not promising that higher density will not occur, but to date the President has not engaged in any conversation with the landowner, to see if there is any way to prevent this, or to get any assurance of 2000m2 only sections for any time period in the future.
- (i) Again, the landowner is saying they will enable the large sections sizes if the KHBSR withdraw their appeals and let the subdivision progress for this
- (j) The President has always identified roaming dogs as a real issue from the subdivision for the neighbourhood. We have advised the society on many occasions that the subdivision has a dog policy and certain breeds are not allowed to be owned by residents. Further every house boundary must have electronic dog fencing to prevent the dogs from leaving the property.

The other issue is Dalziel Road traffic safety. The irony of this is, if the society had not opposed the development since 2015, the development would be completed with 2000m2 and no threat of higher density development in the future, but more importantly Dalziel Road would be redundant, as the Taieri Road entrance would well and truly have been constructed and been used for a number of years, So basically its chicken and egg. The society withdraws the appeals Dalziel Road will be replaced by Taieri Road sooner and that Society issues will be resolved

- (k) Naturally, this is not a perfect world and not everyone can achieve what they seek, but conversely this should be a world of compromise and that everyone feels that being fair and just, are the hallmarks of sharing a

neighbourhood in a friendly and welcoming way. The large 2000m2 sections is the very best outcome for the neighbourhood, and will enhance the neighbourhood with new executive homes and well cared for and manicured sections.

- (l) It has been confirmed by all parties to the KHBSR appeals, that the Society Appeal will not be likely to succeed in the Environment Court. But as long as the appeals are in place the likely hood is that, the DCC will progress to the higher density development zone, and start placing restrictions on the house placements on the large 2000m2 sections if development has no occurred.

2. Withdrawal of Appeals

The landowners will withdraw the 34-lot subdivision appeal.

This will end all the landowners appeals in the Environment Court.

3. The landowners will provide a guarantee to the Society in favour of the 31 Dalziel Road and 19 Dalziel Road that the existing granted consents conditions will remain in place once the Society withdraws the appeals.

So not to complicate this explanation the property owners of 31 and 19 Dalziel Road are aware of the Consent conditions that apply to them and should be confident that these conditions remain in place by this guarantee by Deed. This explanation takes into account (a) (b) (c)

4. That the KHBSR withdraw their two appeals.

(a) The society appeals are at an end

5. This payment is being made to try and help the President's major concern of roaming dogs on her property. At the January meeting it was agreed that monetary assistance for a protective planted hedge on the 42 Dalziel Road boundary to help keep the roaming dogs out. However, it was agreed at the time of the writing of the Proposal that the amount to \$10000 should include all members to enable sufficient funds for any expenses the society may have incurred to date when negotiating this Proposal to a beneficial close. We thought that a donation to the pony club may benefit more members.

The disbursement of this donation is at the sole discretion of the society members. This is a one-off amount and not negotiable.

6. The landowner has a protective covenant on the subdivision stone walls which were constructed in the late 1950's by the Mcleod family. The residents use all the rocks found on their properties and these rocks are a unique feature of the subdivision. The covenants will be made available to all members as part of the acceptance procedures.

7. There is minor damage to the corner of a rock wall associated with 31 Dalziel Road which the landowners will repair at their own cost

8. This is to give assurance that if any damage is sustained to the rock walls that forms the boundary of 31 Dalziel Road within the subdivision (excluding the rock wall on the road boundary of 31 Dalziel Road) they will be repaired

9. Taieri Road entrance. The development of the 34 sections would have utilized the Taieri Road as the subdivision entrance. The DCC 2GP rezoning has confirmed that this is the preferred entranceway for the development.

There are two schools of thought, the Taieri Road residents don't want this option and the Dalziel Road don't want the Dalziel option. However, the DCC has made the decision for us all, that the eventual future entrance way will be Taieri Road. There was concern exactly where the entrance will be. This cannot be accurate as this can only be ascertained at the time of a construction site plan and ground levels and suitability for construction can take place. However, to give you an idea it will be in the vicinity of, opposite the residents 480 482 Taieri Road. As previously advised the construction will minimize the adverse effects from vehicle light spill.

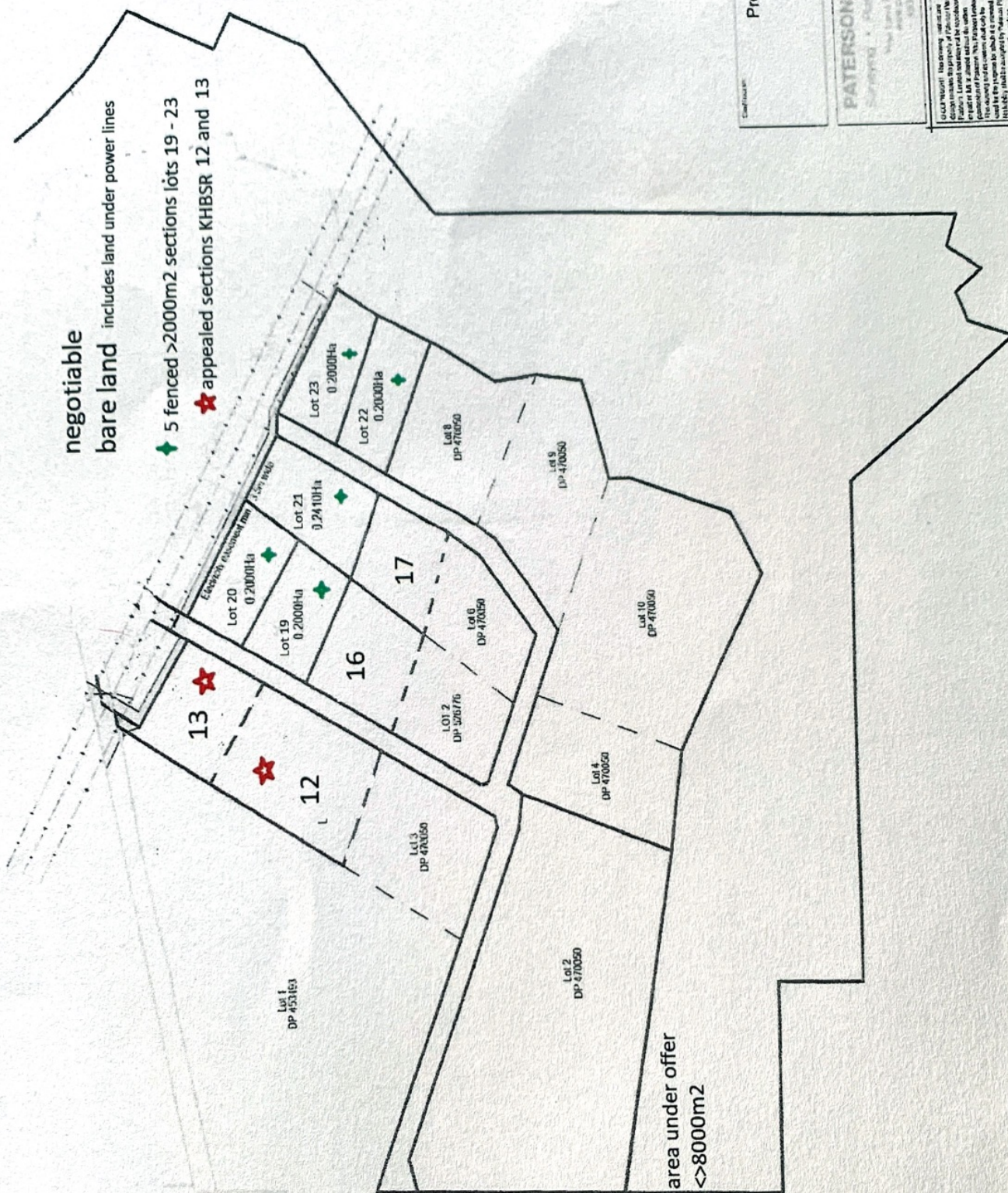
DCC will of course be required to approve the design and will ensure that the entranceway will comply with the expectation of the environment as part of the consent process *Timeline for this though is years away as discussed elsewhere*

11 If you, as a member of the Society can see logic and positive good reason to accept this Proposal, or at least think this Proposal document is worth some serious negotiation with the landowners, to enable closure and the withdrawal of the KHBSR appeals can you please indicate this as soon as possible to both the landowner (encl SAE) and your President, so we can commence the suggested plan. Refer other Contacts if you don't know your Presidents details

- (a) After 2 weeks of the society signing this Proposal, items 2,3,4,5,8, must happen at the same time. This means that all the appeals are withdrawn
- (b) Items 6 must be provided at or before (a) occurs
- (c) Item 7 is to be undertaken as soon as possible and it is accepted that the landowner is legally bound to repair this wall.

It should be acknowledged that all the 20x landowners that attended the January meeting are all supporting the DCC zoning the land Large Lot Residential 1, and most of them are also s274 parties to the Society's Appeal in support of the DCC .

The landowners and residents are being kept informed of the Society's Appeal and the communications to date regarding the Proposal and are fully aware of the reasons for the lack of progress in their subdivision.



Proposed Subdivision Layout
Westacott Heights

APRIL 2020

DUNEDIN

PATERSON PITTS GROUP

Surveyors & Engineers

1000 Lakeside Drive, Dunedin 9010

03 477 1111

03 477 1111

03 477 1111

03 477 1111

03 477 1111

03 477 1111

03 477 1111

03 477 1111

03 477 1111

03 477 1111

03 477 1111

03 477 1111

03 477 1111