

From: Arlene Goss
To: [REDACTED]
Subject: Response to request
Date: Wednesday, 19 October 2016 09:15:50 a.m.
Attachments: [image001.png](#)
[Letter to DCC encl new layout for 41 Dalziel Road \(28-2-13\) \(3\).pdf](#)
[Advice from AndersonLloyd 040316.pdf](#)
[Alternative Scheme Plan.pdf](#)

Angela Ruske
[REDACTED]

Dear Angela,

Official information request for RESOURCE CONSENT INFORMATION LUC 2012-504 & SUB 2012-92, 41 DALZIEL ROAD, DUNEDIN

I refer to your official information request dated 30-September-2016 for the applicants' presentation letter distributed to the committee panel and submitters with regard to the revised layout changes to the above application, and second, the letter from Anderson Lloyd Lawyers that accompanied this letter.

I have searched the files and attached the documents that best match the description you have given. If these are not the documents you have requested please get back in touch with me with more details, such as the date of the letter.

If you wish to discuss this further with us, please feel free to contact me and I can put you in touch with the appropriate planner.

Yours sincerely
Arlene Goss

Arlene Goss
Governance Support Officer
Dunedin City Council

50 The Octagon, Dunedin; P O Box 5045, Moray Place, Dunedin 9058, New Zealand
Telephone: 03 477 4000
Email: Arlene.Goss@dcc.govt.nz



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Sweep Consultancy Limited
P.O. Box 5724
Dunedin 9058
Phone 027 482 2214

27 February 2013

Howard Alchin
Planner
Dunedin City Council
PO Box 5045
Dunedin

Sent via email

Without Prejudice

Dear Howard,

A meeting was held with the Dunedin City Council on 21 February 2013. Ms Emma Peters, Mr Tom Richardson and Mr Craig Horne attended on behalf of the applicant. Mr Howard Alchin, Mr Campbell Thomson, Mr Alan Worthington and Ms Debbie Hogan attended on behalf of the Dunedin City Council. Several different potential layouts were canvassed at that meeting with valuable input obtained from the Dunedin City Council staff members which has been used to produce the attached alternative layout.

The factors taken into account by the applicant when designing the alternative layout are:

1. The submission of the Otago Regional Council which requested that all building platforms and accesses be on Class A land.
2. A submission from Mr Lindsay Robertson wanting the 'rural outlook' from Halfway Bush to be protected.
3. A concern from the processing planner that the bush be in one lot to ease complexity for the Dunedin City Council. This will also account for the submission from Amber Fraser-Smith.
4. A concern noted in the planning report from the City Policy team and echoed by the processing planner that the potential for future intensification be protected if at all possible.
5. A concern raised at the meeting on 21 February 2013 by the Senior Planner (Notified) that any change in layout is within the scope of the notified application.
6. Commercial considerations for the applicant with respect to cost of development and saleability of the lots.

The directors of RPR Properties Limited are of the opinion that the 'flexible approach' used in this case has resulted in an alternative layout which is of greater merit.

Please find attached an alternative scheme plan in which RPR Properties Ltd has adjusted the boundaries of the lots.

The adjustment to the boundaries of the lots and the specific reasons for the adjustments are detailed below:

1. Change of Lot 3 building platform to Class A land in response to the submission from ORC.
2. 'Shuffle' of building platforms 4, 8, 9 and 10 to:
 - Place these further away from Taieri Road in response to the submission of Lindsay Robertson.
 - Provide an access to Lot 9 (formerly Lot 10) which is located on Class A land in response to the submission from ORC.
3. Include all of the bush and gully area, former Lot 3 and all land north of the powerlines in Lot 7 in response to the submission from the ORC, the submission of Amber Fraser-Smith and the concerns raised in the planning report.
4. Decrease the size of Lot 6 and increase the size of Lot 5 in response to the submission from Lindsay Robertson and the desire from the City Policy team to preserve the potential for further intensification of the Class A land at a future date.

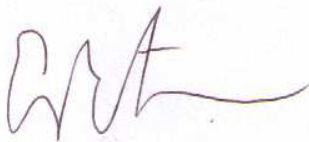
At the meeting the Mr Thomson, Senior Planner (notified), cautioned that any alternative layout needed to remain within the scope of the notified application.

The attached alternative layout is within the scope of the notified application for the following reasons:

- a) The changes have been made in direct response to opposing submissions and concerns raised in the planning report.
- b) The overall intensity and density of the proposed subdivision remains the same. That is, there are still nine lots which can be built on.
- c) There is only one change in building platform (i.e. Lot 3) to give this lot a building platform on Class A land.
- d) The effects of the alternative layout are the same as or even potentially less than the notified application.

This letter does not constitute the applicant's right of reply. The aim of this letter is to inform the Council and Committee of the reasons for the proposed changes in layout.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Emma Peters', with a stylized, flowing script.

Emma Peters
Consultant
Sweep Consultancy Limited

4 March 2013

For: Campbell Thomson

Dunedin City Council
PO Box 5045
Moray Place
DUNEDIN 9058

By email - cthompson@dcc.govt.nz

Anderson Lloyd
Level 10, Otago House
Cnr Moray Place & Princes Street
Dunedin 9016, New Zealand
Private Bag 1959, Dunedin 9054
P: 03 477 3973
F: 03 477 3184
Also in:
Christchurch
Queenstown
www.andersonlloyd.co.nz

Dear Campbell

Changes to application to subdivide 41 Dalziel Road – within scope?

Advice

1. Applying the legal principles we set out below, we conclude the proposed change is within scope.
2. The change to the layout of the subdivision does not change the number of lots or the location of the buildable areas specified in the application. The bush area remains undeveloped and protected, but in one lot. The changes are in response to submissions and the staff recommendations.
3. The changes are essentially a redrawing of the boundary for the lots that contained some of the bush. This has resulted in a slight clustering of smaller lots along the access way, and a larger "bush lot". In our assessment the proposal remains in substance the same, being subdivision into nine new lots for rural residential development.
4. The changes do not prejudice any of the submitters or the general public who did not submit on the application as notified.
5. We have not seen any planning assessment regarding any change of effects due to the clustering. We consider as the proposed dwellings remain the same in number, and would be located generally in the same places on site that visual effects would remain the same. The bush could be better and more uniformly managed. We can easily see any effects from the change will be positive or at least neutral.
6. As the proposal is substantially the same and the effects remain the same, or better we conclude no persons are prejudiced by the change. We conclude the change is within scope, and can be considered.

Background

7. RPR Properties ("the applicant") applied on 12 November 2012 to subdivide 41 Dalziel Rd into 9 lots of approximately 2ha and for associated residential

land-use consent. The land is zoned rural and subdivision into site smaller than 15ha is non-complying.

8. A stream and a bush area is located in the east – southeast of the original lot. The original application had 6 of the proposed 9 lots containing components of this bush area. The building platforms for these 6 lots were not located in the bush and the applicant offered to covenant the bush.
9. The application was notified and 7 submissions received. The Public Notice said *"Resource consent is sought for a non-complying activity, being the subdivision of the above land into nine new lots for rural residential development, plus two small lots to be transferred to adjoining properties. The proposed Lots 2 to 10 will all be rural residential sized lots of approximately 2ha..."* Submissions in opposition included geotechnical concerns from the Otago Regional Council ("ORC") and stream protection concerns from Amber Fraser-White. The ORC submission said *"The ORC approach provides an opportunity to reconsider the proposed layout and access arrangements and identify fit for purpose building platforms and access. These matters should be considered in the context of the geotechnical constraints and the potential of development to exacerbate natural hazard issues..."*
10. The section 42A report recommended that the bush area should be included in one lot. By putting all the bush in one lot there is a corresponding reduction in size of some of the other lots. On 27 February 2013 the applicant submitted a new plan with a single lot containing all of the bush. The areas shown as "buildable area" on the subdivision plan have not changed. The applicant noted the following considerations for designing the alternative layout:
 - a. ORC submission requesting building platforms to be on Class A land;
 - b. Lindsay Robinson's submission requesting the retention of the rural outlook from Halfway Bush;
 - c. Amber Fraser-Smith's submission for the esplanade reserve to remain;
 - d. City Policy's request that potential for future intensification be protected;
 - e. Whether the change is within scope; and
 - f. Economic considerations.
11. The plan dated 27 February 2013 now includes 5 lots that are substantially smaller than 2ha. The lot containing the bush is much larger at 10.9ha.

Cases on Scope

12. We advise based on the cases below, key considerations when deciding whether an amendment is within scope are:
 - a. Whether it is in substance a different application or materially different to what was applied for;

- b. Likely changes to environmental effects; and
- c. Whether there is any prejudice to other parties and those who did not submit.

13. The leading authority on the scope of an application and possible amendments to it is the Supreme Court's decision in *Waitakere City Council v Estate Homes Limited*¹. In that case the applicant had applied for a subdivision and agreed to construct a road to an arterial road standard on the basis that it would be compensated for providing an arterial road instead of a local road. The Council then refused to provide the request for compensation and on appeal the applicant wished to revert to its application being for a local road. At paragraph 29 of its decision the Supreme Court said:

We accept that in the course of its hearing the Environment Court may permit the party which applied for planning permission to amend its application, but we do not accept that it may do so to an extent that the matter before it becomes in substance a different application. The legislation envisages that the Environment Court will consider the matter that was before the Council and its decision to the extent that it is an issue on appeal.

14. The Supreme Court then went on to quote from a decision in *Body Corporate 97010* at page 525 that:

We think it plain that jurisdiction to consider an amendment to an application is reasonably constrained by the ambit of an application in the sense that there will be permissible amendments to detail which are reasonably and fairly contemplatable as being within the ambit, but there may be proposed amendments which go beyond such scope. Where the details of an amendment fall within the ambit or outside it will depend on the facts of any particular case, including such environmental impacts as may be rationally perceived by an authority.

15. Further, at paragraph 35, the Supreme Court in *Waitakere* said:

When, on appeal to the Environment Court, an applicant seeks to have an application granted on a materially different basis from that put forward to the Council, considerable care is required before the Environment Court permits the matter proceed on that different basis. Not every alteration and approach would require an applicant to make a fresh application to the Council, rather than to proceed by way of appeal. It is a question of degree. Furthermore, as the majority of the Court of Appeal recognised, the question of any prejudice to other parties, and the general public, is always relevant.

16. The High Court summarised the position in *Atkins v Napier City Council*² at paragraphs 20 and 21 saying:

I consider the test, as developed by the Environment Court and Court of Appeal through a series of cases, is whether the activity for which resource consent is sought, as ultimately proposed to the consent authority, is significantly different in its scope or ambit from that originally applied for and notified (if notification was required) in terms of:

¹ [2006] NZSC112

² [2009] NZRMA 429

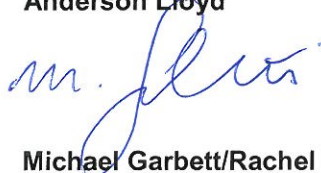
- *The scale or intensity of the proposed activity, or*
- *The altered character or effects/impacts of the proposal.*

Where there might have been other submitters, had the activity that is ultimately proposed to the consent authority been that applied for and notified, as a means of applying or answering the test but it is not the test itself.

Next Steps

17. Even though the change is within scope the submitters should be given an opportunity to comment on the change. Comment could be made at a reconvened hearing (if this is planned) or in writing within five working days of receipt of the change.

Yours faithfully
Anderson Lloyd



Michael Garbett/Rachel Brooking

Partner Owner/Associate

P: 03 467 7173

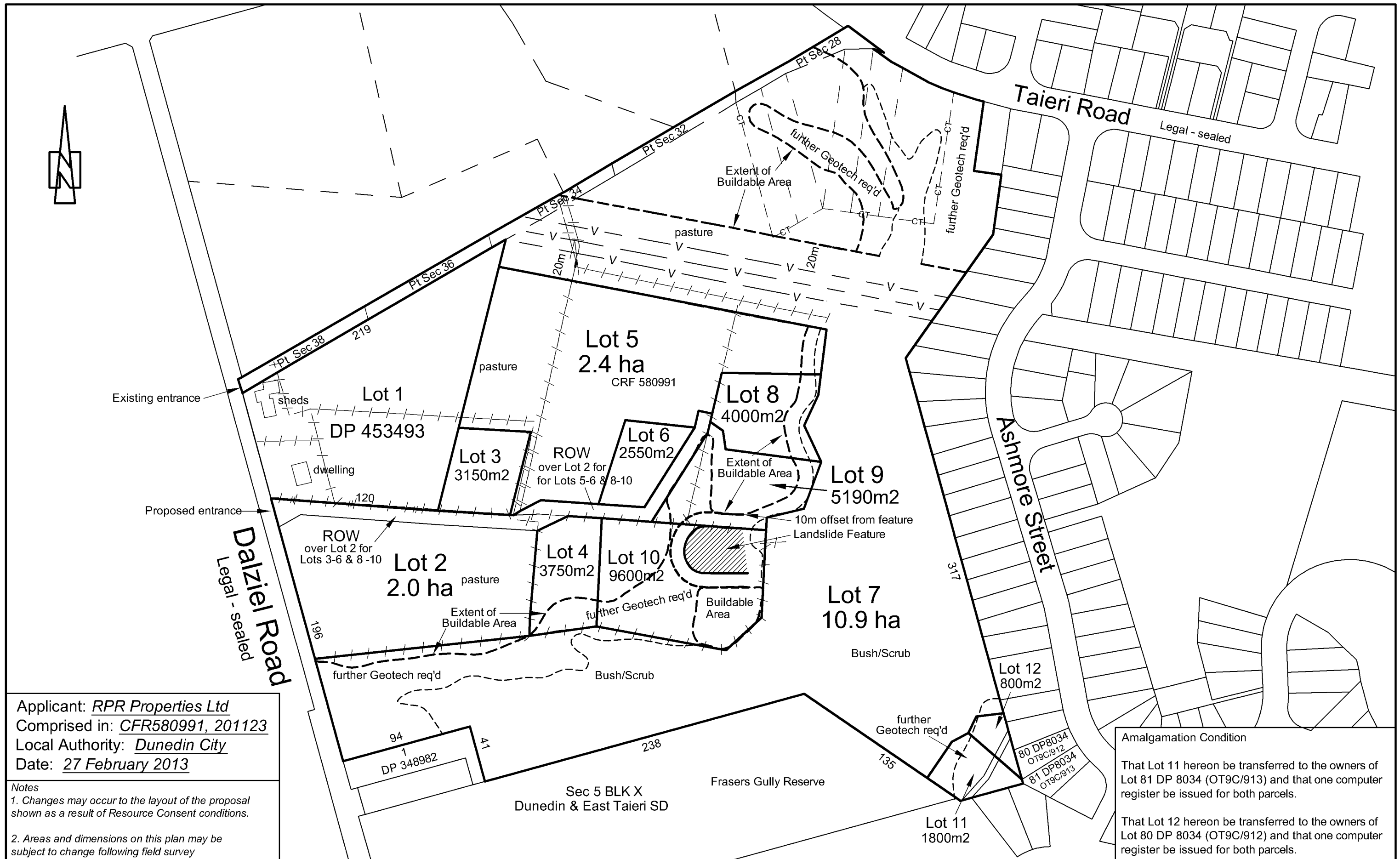
M: 027 668 9752

E: michael.garbett@andersonlloyd.co.nz

P: 03 467 7183

M: 027 334 4258

E: rachel.brooking@andersonlloyd.co.nz



Applicant: RPR Properties Ltd
Comprised in: CFR580991, 201123
Local Authority: Dunedin City
Date: 27 February 2013

Notes

1. Changes may occur to the layout of the proposal shown as a result of Resource Consent conditions.

2. Areas and dimensions on this plan may be subject to change following field survey

CRAIG HORNE

Registered Surveyor

5 MAIN SOUTH ROAD EAST TAIERI
P.O. BOX 56 MOSGIEL

PH (03) 4847008
FAX (03) 4847009

**Proposed Subdivision of Lot 2 DP 453493, Pt Sec's 28,
32, 34, 36, & 38 Wakari SD and Lots 11 - 16 DP 531**
Dalziel & Taieri Roads, Wakari

Ref: RPR Properties Ltd D85

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