

**Before a Panel Appointed by the
Dunedin City Council**

Under the Resource Management Act 1991 (**RMA**)

In the Matter of Hearing 4 of the Proposed Variation 2 (Additional
Housing Capacity) of the Second Generation Dunedin
District Plan – Appeals Version (**2GP**)

By **DDS Properties (2008) Limited**

And

By **Meats of New Zealand Limited**

**Response to Section 42A Addendum
on behalf of:**

DDS Properties Limited
(Submission 242 – Requested Site 195)

and

Meats of New Zealand Limited
(Submission 232 – Requested Site 200)

Dated 22nd November 2022

Background:

1. My name is Emma Rayner Peters. I hold a BA and LLB both from the University of Otago and a First Class Honours degree and MA with Distinction, both from the University of Canterbury. I have worked as a solicitor in the areas of commercial and environmental law. I have been the principal of Sweep Consultancy Limited since 2003 providing resource management advice predominantly in the Dunedin City, Clutha, Waitaki, Queenstown Lakes and Central Otago districts.
2. I have prepared this evidence based upon my investigations and knowledge of the submission, further submissions and Variation 2 of the Dunedin City Second Generation District Plan Appeals Version including Council's s32 report, s42a report including the addendum, evidence from Council staff, minutes issued by the Panel and the National Policy Statement for Highly Productive Land.
3. I acknowledge we are not before the Environment Court. However, I have read the Code of Conduct for Expert Witnesses within the Environment Court Consolidated Practice Note 2014 and I agree to comply with that Code. This evidence is within my area of expertise, except where I state that I am relying on the evidence of another person. To the best of my knowledge, I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed in this evidence.
4. At the request of the Variation 2 Hearing Panel (**Panel**), Dunedin City Council (**Council**) has prepared an addendum to its Section 42A Report (**Addendum**). The Addendum addresses the relevant considerations in the National Policy Statement for Highly Productive Land (**NPS-HPL**) for those sites zoned rural and classified as Land Use Capability (**LUC**) 1, 2 or 3 land, as set out in the table attached to Mr Morrissey's response to Minute 17.

RS 195, RS 200 & HPL:

5. There remains disagreement between legal counsel, including the independent legal opinion provided by Simpson Grierson. From a planning perspective, I cannot identify whether the specific Variation 2 process was understood in the Simpson Grierson legal opinion; in particular, that RS 195 & RS 200 formed part of the original section 32 assessment. The Simpson Grierson opinion identifies a risk that a submitter can seek new sites to be included within Variation 2. The Panel's determination on scope confirmed that Variation 2 is limited to the sites specified

within the section 32 Report (and was only extended to consequential submissions). There is no risk that additional sites could have been filed as a means to take advantage of the NPS-HPL exemptions – as those submissions would have been out of scope. As such, the submitters remain of the opinion that the NPS-HPL does not apply to either RS 195 or RS 200.

6. Submission 242 requested rezoning RS 195 pursuant to a landscape plan with an amended structure plan provided with evidence – copy appended at Appendix 1.
7. Submission 232 requested rezoning RS 200 to a mixture of Township & Settlement and Large Lot Residential as well as providing for a reserve area as is shown in the landscape plan attached to submission 232 – copy appended for convenience at Appendix 2.
8. RS 195 and the LUC 3 land therein is shown in Figure 1 below.

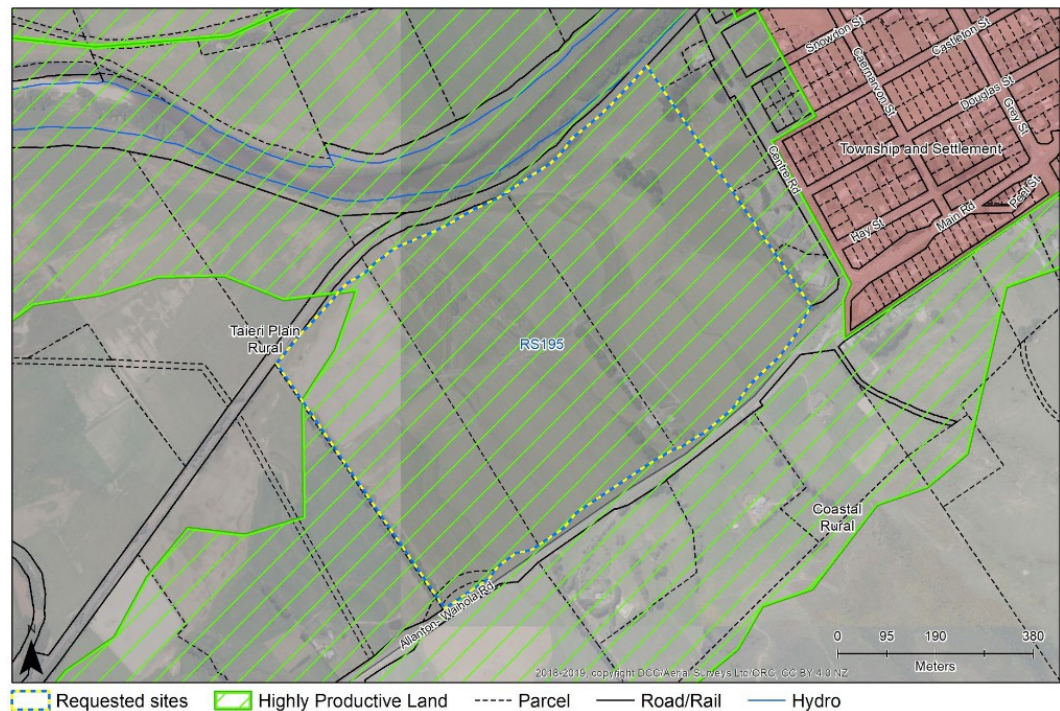


Figure 1: HPL in Relation RS 195¹.

9. RS 200 and the LUC 3 land therein is shown in Figure 2 below.

¹ Source: Addendum, Appendix 2.

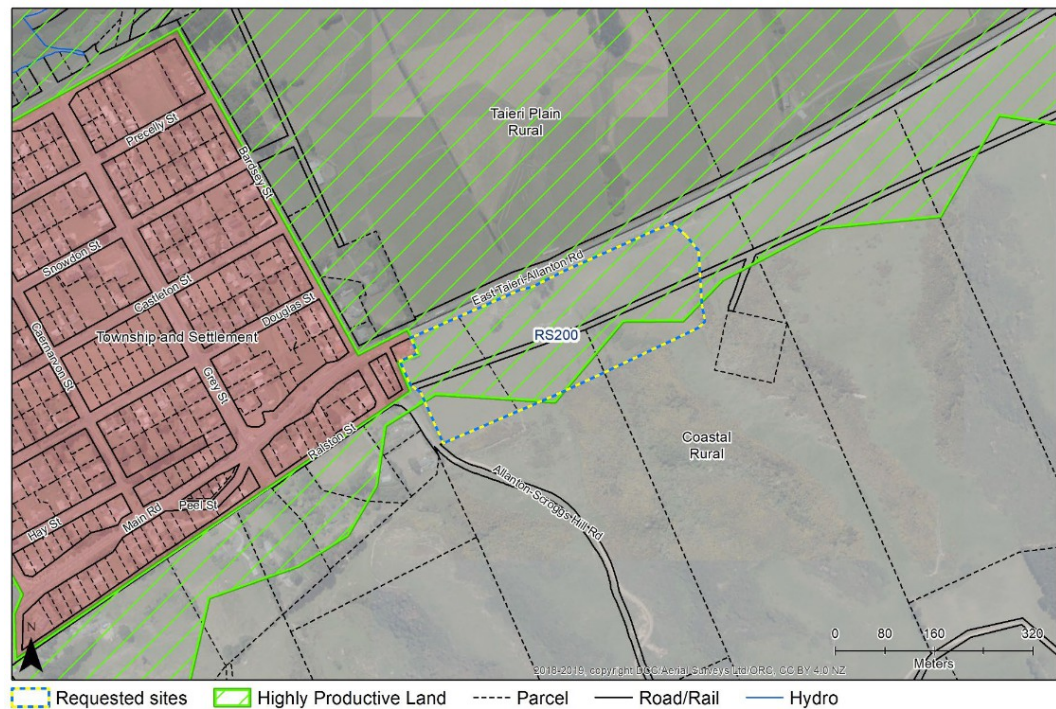


Figure 2: HPL in Relation RS 200².

Pathway to Rezone RS 195 and RS 200:

10. A pathway exists within the NPS-HPL to rezone those parts of RS 195 and RS 200 with LUC 3 land via Clause 3.6(1); there is also a potential pathway via clause 3.10 depending on the interpretation of 'use' and 'development'.
11. Clause 3.6(1) allows the Panel, 'standing in the shoes of' Council, to rezone residential RS 195 and RS 200 if:
 - (a) The rezoning is required to provide sufficient development capacity to meet demand for housing to give effect to the National Policy Statement on Urban Development 2020 (**NPS-UD**); and
 - (b) There are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the **same locality and market** while achieving a well-functioning urban environment; and
 - (c) The benefits of rezoning outweigh the costs associated with the loss of highly productive land for land-based primary production.
12. The construction of Clause 3.6(1) is that each of the sub-clauses (a), (b) and (c) are connected by an 'and', meaning each component must be met in order for this pathway to residential rezoning to be met. **The analysis below demonstrates that each component of Clause 3.6(1) can be met.**

² Source: Addendum, Appendix 2.

Sub-Clause 3.6(1)(a):

13. Sub-clause 3.6(1)(a) states:
 - (a) the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020; and
14. The Housing Capacity Assessment including its updates (**HCA**) is a high level report addressing development capacity and demand at a City-wide level. The conclusions reached, both within the HCA and by Council evidence relying on the HCA, rests upon the validity of the assumptions used in the model. The HCA does not provide information specific to Allanton.
15. Evidence was produced by Property Economics on behalf of the submitters for RS 154 and RS 175 which casts doubt on the validity of some of the assumptions on which the HCA relies.
16. In particular, the HCA utilises an assumption that long-term gain in house prices are required to generate the predicted capacity figures. Property Economics was unable to test the sensitivity assumptions to confirm the feasible capacity levels in the event house prices remain flat (or decline) due to Council refusing a LGOIMA request³. If the Panel adopts the 'no economic change' model as originally described within Table 11 (2019 HBA), then shortfalls in housing capacity arise.
17. Mr Stocker presented further evidence at the hearing but again did not provide the assumptions or sensitivity analysis to inform the Panel on how the model responds to the flat lining or decline of house prices.
18. Any doubt about the assumptions on which the HCA is based and the conclusions reached in the HCA must be read by the Panel in favour of the position that more land is required for Council to give effect to the National Policy Statement on Urban Development 2020. This is particularly so for 'outer townships' such as Allanton where the HCA provides scant information.
19. I consider that Clause 3.6(1)(a) is satisfied.

Sub-Clause 3.6(1)(b):

20. Sub-Clause 3.6(1)(b) states:

³ See Appendix 3 for copy of LGOIMA request and response.

- (b) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and

No Other Reasonably Practicable & Feasible Options:

- 21. Subclause 3.6(1)(b) is informed by sub-clause 3.6(2) which states:
 - (2) In order to meet the requirements of subclause (1)(b), the territorial authority must consider a range of reasonably practicable options for providing the required development capacity, including:
 - (a) greater intensification in existing urban areas; and
 - (b) rezoning of land that is not highly productive land as urban; and
 - (c) rezoning different highly productive land that has a relatively lower productive capacity.
- 22. The operative intensification provision provided by Variation 2 in relation to reducing the minimum site size to 400m² and allowing duplexes in General Residential 1 and Township and Settlement zones applies in principle to the Township and Settlement zone of Allanton because it has Council provided reticulated wastewater infrastructure⁴.
- 23. However, there are existing limitations regarding intensification within Allanton. For example: (i) the Hazard 1 (flood) Overlay Zone which has a high risk; (ii) topography which is cut across by the lineal historic settlement pattern; (iii) solar orientation; (iv) access to potential sites particularly the cost of formation; and (v) the 1.77 hectare reserve at 30 Castleton Street.
- 24. There are no 2GP appeals seeking to rezone residential land at/around Allanton. There is no other land adjacent to Allanton which can be rezoned residential via Variation 2. RS 195 and RS 200 contain the lowest class of HPL being LUC 3.

Same Locality and Market:

- 25. Sub-clause 3.6(1)(b) requires consideration of **development capacity within the same locality and market**.
- 26. In the Addendum, Ms Christmas appears to rely on the 'catchment' approach utilised in the HCA when interpreting 'same locality and market'. With respect, I do not agree that the two are necessarily the same.
- 27. Clause 3.6(3) says that development capacity is within the 'same locality and market' if it:

⁴ See for example 2GP Rule 15.5.2.1.i.

- (a) is in or close to a location where a demand for additional development capacity has been identified through a Housing and Business Assessment (or some equivalent document) in accordance with the National Policy Statement on Urban Development 2020; and
- (b) is for a market for the types of dwelling or business land that is in demand (as determined by a Housing and Business Assessment in accordance with the National Policy Statement on Urban Development 2020).
28. The key wording is that the site is ‘**close to a location**’ where demand for additional development capacity has been identified (e.g. Mosgiel). As identified above, if Property Economics critique is correct, then a shortfall of housing has been identified with the HCA.
29. This is particularly so when considering the factors in Clause 3.6(3)(b) in the context of Allanton, where:
- There is evidence demonstrating demand for more sections and housing within Allanton. In particular, demand for stand-alone housing⁵; and
 - Rezoning RS 195 and RS 200 residential provides for Allanton to become a rural centre and provides the greenfield zoned capacity for additional population necessary to support the continuation of school bus routes to schools within both Mosgiel and Dunedin and the provision of additional services within Allanton as proposed by RS 195 including health services (GP rooms), cafe, work spaces, takeaway and space for personal services; thereby ensuring Allanton is a well functioning township.

30. I consider that Sub-Clause 3.6(1)(b) is satisfied.

Sub-Clause 3.6(1)(c):

31. Sub-Clause 3.6(1)(c) states:
- (c) the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.
32. 'Land-based primary production' is defined in the NPS-HPL as meaning: “... *production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land.*”
33. Evidence has previously been provided to the Panel regarding the limitations of using RS 195 and RS 200 for land based primary production other than

⁵ See page 5, paragraph 4 of the Dunedin City Council Housing Framework Predictions *The Housing We'd Choose*.

pastoralism. The limitations include such factors as topography for use of machinery, proximity of SH1 and Allanton, inability to irrigate, gradient for winter crops and proximity of waterways including the Taieri River.

34. I consider that sub-clause 3.6(1)(c) has been satisfied.

Additional Comments:

35. On behalf of the submitters it is noted that:

- Rezoning RS 195 and RS 200 provides for Allanton to become a township supporting local shops and services, in effect a rural centre. It also provides for reserve areas including walking and biking paths.
- RS 195 in particular represents an amazing opportunity for Allanton which is the 'gateway' to the City, located on SH1, beside the main trunk railway line and within close proximity of the airport.
- RS 195 and RS 200 have been subject to full public scrutiny via the submission and further submission process. It is open to the Panel to rezone these sites residential.
- RS 195 and RS 200 are both very well suited to being rezoned residential and any adverse effects on landscape can be mitigated by controls on built form and mitigation (indigenous) planting.
- The effect of rezoning RS 195 and RS 200 on HPL is negligible given both sites are zoned LUC 3 (the lowest class of LUC) and given the volume of LUC 1, 2 and 3 land in the Taieri Plain Rural zone.
- The NPS-HPL and flooding/instability constraints in the Dunedin area mean that there is little room for expansion of the City to provide choice in both types and location of housing and the necessary supply of housing. The areas of RS 195 and RS 200 to be rezoned residential as identified on the structure plan / landscape proposal are unaffected by these constraints.
- Given the long lead times in rezoning land, undertaking development works and constructing houses, it is critical that a very wide margin in terms of supply of residential zoned land is provided via greenfield residential rezonings Hearing 4, Variation 2 decisions.

- It is not the role of Council to overly control the supply of land for housing. The NPS-UD 2020 sets a minimum level in relation to supply of residential zoned capacity and there is no prohibition on the exceedance of that minimum level. Truly, supply of residential capacity is the only lever that Council has to bring about affordable housing which is one of the stated objectives of the NPS-UD 2020⁶.
- Council has not been overly accurate in its analysis of demand, zoned capacity or required capacity to meet demand in previous iteration. For example, with respect to: (i) the Dunedin City District Plan 2006, the Environment Court imposed residential rezoning of tracts of land around Mosgiel; and (ii) with respect to the 2GP – it was only upon the NPS-UD 2020 coming into force that Dunedin City Council understood it needed more residential capacity, hence Variation 2.
- Any future development strategy promulgated by Council in and of itself does not rezone land residential. The need for: (i) the Otago Regional Council to undertake its mapping and adopt a plan/plan change with respect to highly productive land (3 years); and (ii) Dunedin City Council to undertake its Future Development Strategy (likely 2 to 3 years but could be longer if it is to be informed by the Otago Regional Council's mapping/plan exercise); means that there will be a long lead time between residential rezoning which occurs pursuant to Variation 2 and any Council initiated plan change for further greenfields residential capacity (likely 2 – 5 years after the completion of i and ii). Changes resulting from private plan changes can only be made to an operative plan.

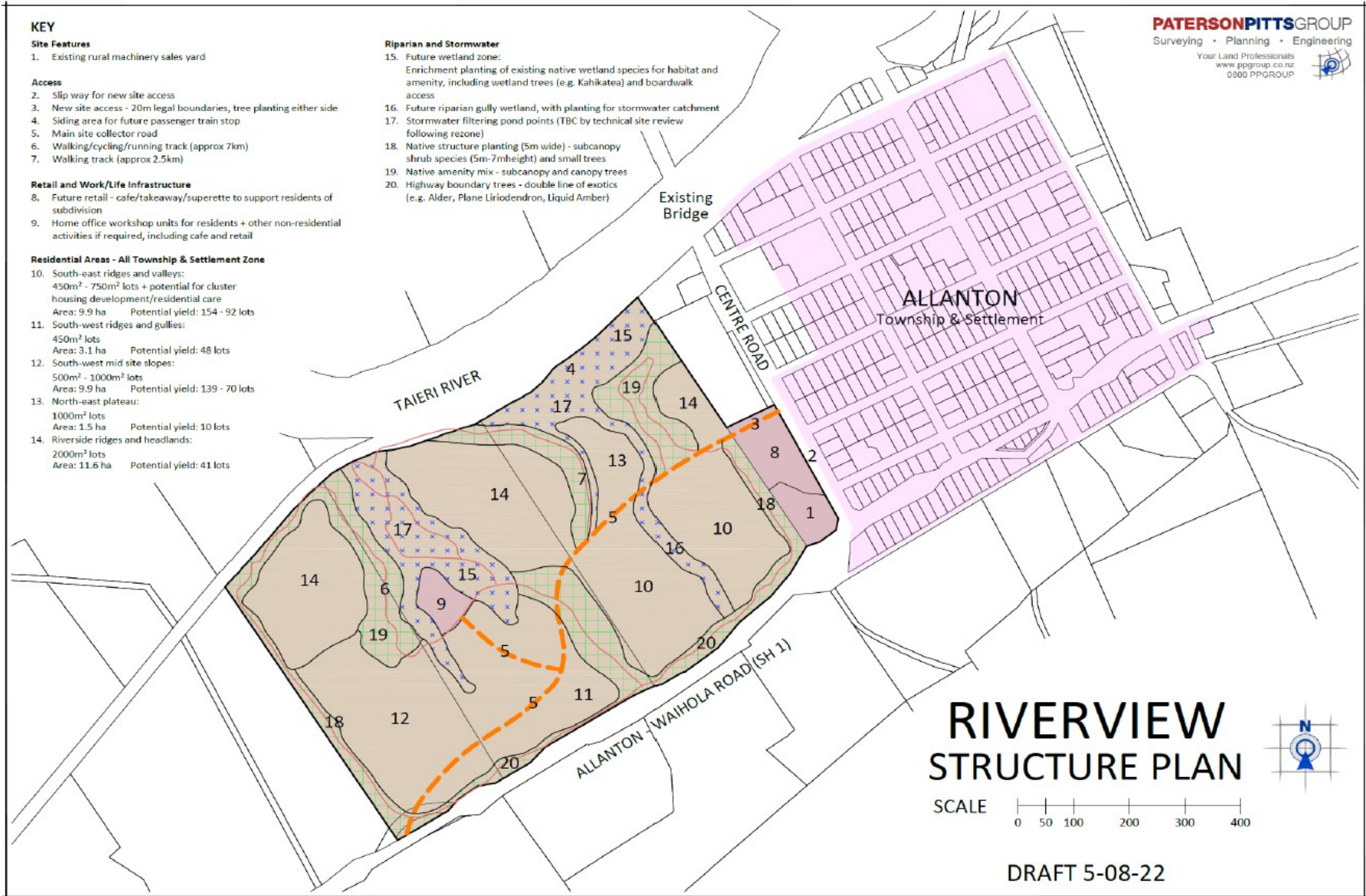
Dated this 22nd day of November 2022.



Emma Rayner Peters (BA (First Class Honours), MA (Distinction), LLB)

6 See Objective 2.

Appendix 1: Structure Plan for RS 195 – NB Note 20 should refer to 'Highway Boundary Planting – Natives of Appropriate Size'.



Appendix 2: Landscape Proposal for RS 200.

KEY

1. Boundary planting - retain existing native plants and in-fill with exotic trees which are consistent with the farm landscape, as well as additional native species
2. Access through the site provides connection with Ralston Street
3. Slip road off main highway allows for safe access into the site
4. Stage One - Township and settlement: 4.3 ha approx, 500 - 750m² lot size, approximately 61 - 41 lots
5. Stage One - Conservation and enhancement area, 20.8 ha approx
6. Parkland area to be planted with exotic canopy trees to provide recreation area
7. Stage Two - Large lot residential: 2.4 ha approx, 2000m² lot size, approximately 8 lots
8. Stage Two - Conservation and enhancement area, 6.1 ha approx
9. Farm access track



489 EAST TAIERI-ALLANTON ROAD

LANDSCAPE PROPOSAL

DATE: 12-03-21 SCALE @A3: 1:5000
 DWG: 002 REVISION #: A

Appendix 3: LGOIMA Request and Response.

Subject: Local Government Official Information and Meetings Act 1987 (LGOIMA) Request - Updated Housing Capacity Assessment Report
From: Jenny Lapham <Jenny.Lapham@dcc.govt.nz>
Date: 14/10/2021, 2:36 pm
To: "sweepconsultancy@gmail.com" <sweepconsultancy@gmail.com>

Kia Ora Emily

I refer to your e-mail below and also your conversations with Nathan Stocker (Team Leader Research and Monitoring). I understand from Nathan that he has provided you with some of the information asked for namely Russell Jones review, Infometrics review and housing preferences survey.

Nathan also spoke to you in regards to the difficulty of providing 'a list of assumptions used in the GIS model' and discussed whether or not this could be refined. You indicated that you did not have a more targeted request. Therefore, pursuant section 17(f) of LGOIMA we are declining to provide this information due to substantial collation.

In regards to your request for an excel spreadsheet with the property-level capacity results I advise that pursuant to section 7(j) of LGOIMA to prevent the disclosure or use of official information for improper gain or improper advantage we decline to provide this information.

As we have declined to provide some information requested you are advised that you have the right to seek a review by the Office of the Ombudsman. <https://www.ombudsman.parliament.nz/what-ombudsman-can-help/complaints-about-government-agencies>

Ngā mihi

Jennifer Lapham
Governance Support Officer
Governance Group

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Requester Details

Name:	Emma Peters
Organisation:	Sweep Consultancy Limited
Address:	P.O. Box 5724 Dunedin 9054
Phone:	0274822214
Email:	emma@sweepconsultancy.co.nz

Hi,

My request is in relation to information forming the basis of the updated Housing Capacity Assessment Report provided to the Planning and Environment Committee for a August 2021 meeting - report available at https://www.dunedin.govt.nz/_data/assets/pdf_file/0009/831744/Housing-capacity-assessment-for-Dunedin-City-2021.pdf

Specifically what I seek is the following:

A copy of the Russell Jones review (Feb 2020); and A copy of the Infometrics review (June 2020); and A copy of the collated Housing Preferences Survey data; and A list of assumptions used in the GIS model; and An excel spreadsheet of updated property addresses with capacity for between 6-19 and 20+ residential units - I had previously been supplied this information in August 2019 but want to double check it as a lot of property development has gone on in the meantime.

The purpose that this information will be used for is in relation to 2GP appeals and Variation 2 residential rezone submissions (both in and out of scope) only.

Please treat this request as urgent as there are upcoming Environment Court mediation dates for 2GP appeals and the Variation 2 hearing for residential rezone sites are likely to be held early 2022.

Cheers,

Emma Peters Consultant Sweep Consultancy Limited P.O. Box 5724 Dunedin 9054 Phone 0274822214
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Rebecca Murray

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