



14 October 2022

City Planning  
Dunedin City Council  
PO Box 5045  
Dunedin 9054

Our Ref: D17615

Attn: Chairperson: Variation 2 Hearing Panel

Dear Sir

## MINUTE 18 AND NPS-HPL

On behalf of a number of Variation 2 submitters whom we are presently acting for, we have considered the National Policy Statement (HPL), the matters raised in Minute 18, and the planning and legal submissions relating to Minute 17.

We have also had the opportunity to review the legal submission from Galloway Cook Allan, relating to the submission by Gladstone Family Trust, which addresses a number of matters that are common to the sites that we are representing. This legal submission is attached to this response as Appendix A.

In the Reporting Officer's Reply to Minute 17, following consideration of Council's legal advice, the reporting officer has advised that it is believed the following sites (which are owned by our clients) are affected by the NPS-HPL:

- Mark and Jacqui Taylor, 119 Riccarton Road West, RS109
- Bill Hamilton, 25 McMeakin Road Abbotsford, RS14
- Alan David, David Eric Geeves and Nicola Jane Algie, 55 McMeakin Road Abbotsford, RS14
- Nash and Ross Ltd (Steve Ross), 42A Lamber Street Abbotsford, RS14
- Outram Developments Ltd, 85 Formby Street Outram, RS175

The Reporting Officer has concluded that these sites comprise '*land that meets the criteria identified in clause 3.5(7)(a) of the NPSHPL, but not the exceptions in clause 3.5(7)(b).*'

Following our scrutiny of the NPS-HPL, Council's legal submission, and the legal submission of Galloway Cook Allan for Gladstone Family Trust, we do not believe that the Reporting Officer's conclusion regarding these three properties is correct.

We consider that the above sites do meet the criteria of the NPS-HPS exceptions provided in clause 3.5, and in particular the sub-part 3.5(7)(b), which provides an exemption for land that is-

- (i) *identified for future urban development; or*
- (ii) *subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.*

We consider that all of the sites noted above (comprising the RS109, RS14, and RS175 land) fit the definition of areas 'identified for future urban development' (as defined in section 1.3 of the policy). This conclusion is reached on the basis that the 2GP meets the definition of a 'strategic planning document' (as also defined in section 1.3). Accordingly, the exception available by 3.5(7)(b)(i) is applicable.

These sites have survived thus far through the rezoning process, thus ensuring that they are within the scope of the variation. One criterion of being 'in scope' is that a site is likely to be suitable for commencing urban development over the next 10 years. It is our view that all of the above sites are likely to be suitable for development within this timeframe. Furthermore, all of the above sites are recorded in a document '*at a level of detail that makes boundaries of the area identifiable in practice*' as required by clause 1.3(1)(b)(ii). With this in mind, we submit that the above sites were initiated through, and remain subject to, a Council initiated notified plan change for rezoning from rural to urban. Accordingly, the exception available by 3.5(7)(b)(ii) is applicable.

Consequently, due to the identified sites meeting the exceptions allowed by both 3.5(7)(b)(i) and 3.5(7)(b)(ii), we conclude that these sites are not captured by the NPS-HPL.

For completeness, we conclude the same assessment applies to a number of additional Variation 2 sites, whose owner's we also represent. These sites have not been identified in the Reporting Officers evidence as being potentially subject to the NPS-HPL. We consider that it may be helpful for these sites to be identified in this response, and for this response to submit our view that these additional sites are similarly not captured by the NPS-HPL for the very same reasons that are described above.

These additional sites are:

- Campbell Family Trust, 16 Hare Road, GF03
- Robert Mathieson, 33 Emerson Street, GF07
- Victor and Fiona Nicholson, 41 Emerson Street, RS169
- Bob and Rose Cunninghame, 210 Signal Hill Road, RS161
- Harry Harding, 233 Signal Hill Road, GF12
- Peter Marr and Marja van Loon, 234 and 290 Malvern Street, RS176
- Danielle Nicolson, Tim Lequeux and Sorrel O'Connell Milne, 177 Tomahawk Road, RS193
- Craig James and Kirsten Jane Duncan (Duncan Clan Family Trust) 90 Blackhead Road, RS157
- Fletcher Glass, 35-43 Watts Road and 309 North Road, RS206, RS206a and RS77

For any further information or discussion in respect of this response, please do not hesitate to contact the author below.

Yours faithfully

**PATERSON PITTS GROUP**



**Kurt Bowen**  
Planner

**Appendix A:**

Legal submission from Galloway Cook Allan, relating to the submission by Gladstone Family Trust.

<b>Under</b>	the Resource Management Act 1991 (the <b>Act</b> )
<b>In the Matter</b>	of a hearing in relation to Variation 2 to the proposed Second Generation Dunedin City District Plan ( <b>2GP</b> )
<b>By</b>	<b>Gladstone Family Trust</b> <b>Applicant</b>

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**LEGAL SUBMISSIONS ON BEHALF OF GLADSTONE FAMILY TRUST**

**DATED 13 OCTOBER 2022**

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## LEGAL SUBMISSIONS ON BEHALF OF GLADSTONE FAMILY TRUST

### May it please the Hearing Panel:

1. These submissions respond to the Panel's minutes 17 and 18 and the legal submissions of counsel for the Dunedin City Council (**DCC**) dated 6 October 2022.
2. We agree that the relevant clause of the National Policy Statement for Highly Productive Land 2022 (NPS) is clause 3.5(7):
  - (7) Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:
    - (a) is
      - (i) zoned general rural or rural production; and
      - (i) LUC 1, 2, or 3 land; but
    - (b) is not:
      - (i) identified for future urban development; or
      - (ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.
3. It is submitted, that during the transitional period land with rural zoning of LUC classes 1, 2 or 3 is deemed highly productive land unless the criteria in (b) are met.
4. The focus of these submissions is the exemption in Clause 3.5(7)(b)(ii).
5. Clause 3.5(7)(b)(i) refers to land which is identified however clause 3.5(7)(b)(ii) does not refer to land being identified. In our submission the land is not required to be identified by Council to fit within the plan change exception.
6. The land must only be subject to a Council initiated plan change or an adopted, notified plan change to rezone it from rural to residential zoning. It is submitted that this requirement is in the alternative. Either a plan can be council initiated or, it can be a plan adopted and notified

by Council. Private plan changes which have not been adopted and notified are excluded.

7. It is submitted that Variation 2 is a Council initiated plan change to, among other things, rezone Greenfields land from rural to residential zoning.
8. Regardless of whether the land has been identified by DCC or by submitters it is before the Panel because it is in scope of Variation 2.
9. When the NPS comes into effect, the otherwise highly productive land promoted by the submitters continues to be within the ambit of the plan change - that is it is capable of being rezoned by it. Variation 2 can rezone the land from rural to residential.
10. Land which may be rezoned by Variation 2 is, in our submission subject to the variation because the variation can change its zoning.
11. We submit that this approach is consistent with the plan change process under the Act. The Schedule 1 process provides for public notice to be given so that submitters can propose alternative methods to achieve the purposes of the plan change, the plan and ultimately the Act. The Panel then weighs up the options to arrive at the most appropriate method to achieve those purposes.
12. In our submission it would frustrate the process under Schedule 1 to read into the NPS a requirement for the DCCs approval or identification to be necessary for the land to be subject to Variation 2. To do so would have the effect of predetermining the Panel's decision by separating out land promoted by DCC from land promoted by submitters.
13. In practice there is no distinction between the two categories of land in the Panel's assessment of what method is most appropriate to give effect to the purposes of variation 2, the objectives and policies of the 2GP and the purposes of the Act.
14. We submit the meaning of "land subject to the council-initiated plan change" includes all land which can be rezoned by Variation 2 until the

plan change becomes operative. At that point the land is no longer capable of being rezoned by Variation 2 and then, and only then would it be deemed highly productive land provided it met the transitional criteria.

15. In our submission all otherwise highly productive land before the Panel for consideration remains exempt from the NPS deeming it so by virtue of clause 3.5(7)(b)(ii) until it is no longer subject to the variation. The only logical point for that to occur is when that part of Variation 2 to which the land is subject is finally determined and beyond appeal.

Dated 13 October 2022

A handwritten signature in blue ink, appearing to be 'Phil Page' or 'Rebecca Crawford', with a stylized, cursive script.

Phil Page / Rebecca Crawford

Counsel for Gladstone Family Trust