DUNEDIN CITY COUNCIL | kaunihera a-rohe o Ōtepoti

6 September 2021

MEMORANDUM TO: **MEMBERS OF THE HEARINGS COMMITTEE**

Commissioner Gary Rae (Chairperson) and Councillors
Jim O'Malley and Steve Walker

2GP Variation 2 – Hearing 1

Please find enclosed the following:

Evidence provided from submitters –

a) Evidence from Nigel Bryce on behalf of Otākou Health Ltd
Refer to pages 1 - 7

Thank you

Jenny Lapham and Wendy Collard
GOVERNANCE SUPPORT OFFICERS

Encl

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of the Dunedin Second Generation District Plan Variation 2

STATEMENT OF NIGEL ROLAND BRYCE

10 September 2021

STATEMENT OF EVIDENCE OF NIGEL ROLAND BRYCE

1.0 INTRODUCTION

1.1 My name is Nigel Roland Bryce. I am a Principal Planning and Policy Consultant at 4Sight Consulting Limited ('**4Sight**'), and I am the company's National Planning Manager, based here in Dunedin. My responsibilities include managing 4Sight's planning service, which includes over 50 planners across eight regional offices across New Zealand. At a professional level I have been involved with reviewing and submitting on national, regional and district planning instruments, designing and implementing consultation programmes, the preparation of resource consent applications, the management of resource consent processes, and the preparation and presentation of expert evidence.

1.2 This evidence is in support of the submissions and further submissions lodged by Ōtākou Health Limited to Variation 2 (Additional Housing Capacity) to the Proposed 2GP.

2.0 QUALIFICATIONS AND EXPERIENCE

2.1 I am a qualified and experienced environmental planner, having completed a Bachelor of Resource and Environmental Planning at Massey University in 1996. I am also a full member of the New Zealand Planning Institute, and I am an accredited hearing commissioner.

2.2 I have over 24 years' experience as a resource management practitioner in New Zealand and in the United Kingdom, which includes both public and private sector planning roles. I have a broad range of planning and process management experience.

2.3 I confirm that I have read and agree to comply with, the Code of Conduct for Expert Witnesses, as set out in the Environment Court's Consolidated Practice Note. I can confirm that this evidence is within my area of expertise, with the exception of where I confirm that I am relying on the evidence of another person.

3.0 STRUCTURE OF EVIDENCE

3.1 My evidence will address those submission points that are of concern to Ōtākou Health Limited (including both primary and further submissions) made to Variation 2 in relation to Change C1 (Social Housing) and Change B6 (Exemptions to minimum site size for existing development).

3.2 Ōtākou Health Limited prepared a primary submission to Variation 2 of the Proposed 2GP. Ōtākou Health Limited's primary submission to Variation 2 (Council Submitter Number OS13) submitted on Change C1 (Social Housing) and sought to support in part the approach taken under Variation 2 to introduce 'social housing' into the Proposed 2GP under Change C1. Further submissions made by Ōtākou Health Limited supported the relief sought by a number of primary submitters, who wanted an expansion of the definition of social housing to cover un-registered social housing providers.

3.3 Ōtākou Health Limited's primary submission also sought to amend the definition of "Papakāika", however this was found to be out of scope, and we did not take this matter further. The relief sought as part of this submission is instead sought through broadening the proposed definition of 'Social Housing'.

3.4 Donna Matahere-Atariki will also be presenting on submissions to the 'Social Housing' definition in addition to this evidence presented. Donna is the deputy chairperson of Te Rūnanga o Ōtākou, and former executive director of Arai Te Uru Whare Hauora. Donna is also a trustee to Wellsouth Primary Health Network. Lastly, Donna is a co-founder of the multi-million-dollar community healthcare hub, Te Kāika, which is operated by Ōtākou Health Limited.

3.5 I note, for completeness, that when preparing this evidence, I have reviewed the following statutory planning instruments, reports and statements of evidence:

- The relevant supporting information to Variation 2;
- Dunedin City Council legal submissions to Variation 2;
- The separate Dunedin City Council Section 42A Report ('Officer's Report');
- The Resource Management Act 1991 ('the Act' or 'the RMA')

4.0 OFFICERS REPORT:

4.1 I have reviewed the Officer's report for Variation 2 Additional Housing Capacity (Party 1 – Provisions).

4.2 There are a number of matters raised in Ōtākou Health Limited's and the further submissions to Variation 2 that I consider requires further analysis and my evidence expands upon this.

5.0 SOCIAL HOUSING (CHANGE C1)

5.1 A new definition for 'Social Housing' is proposed to be added to the Proposed 2GP as part of Variation 2 (Change C1). The proposed definition is as follows:

"Residential activity where premises are let by or on behalf of the DCC; or by Kāinga Ora-Homes and Communities or a registered community housing provider where in accordance with the Public and Community Housing Management Act 1992."

5.2 As set out in Council's legal submissions at paragraph 20 "it is Council's position that the proposed Social Housing provisions are a pro-active approach to provide a density bonus for social housing (through restricted discretionary resource consents) in recognition of the

effects of enabling social housing to better achieve Objective 2.6.1 Housing Choices, in particular."

5.3 Ōtākou Health Limited, supports in part (primary submission point S268.006), the approach taken under Variation 2 to introduce 'social housing' into the Proposed 2GP under Change C1. Ōtākou Health Limited understands that Variation 2 (through Change C1) creates separate provisions for 'social housing' so that it can have a more enabling framework for contravention of the density standard in the General Residential 1 and Township and Settlement Zones and other supporting provisions. Ōtākou Health Limited generally supports this approach, however, notes that by focusing specifically on 'social housing', Change C1 fails to integrate broader housing objectives for entities, such as Ōtākou Health Limited, that may elect to advance housing opportunities in a manner that sit outside of those defined under the definition of 'social housing'. In other words, while the intent is that the approach taken by Council is to enable social housing in the City, the reality is that the density bonus framework promulgated, will not be open to entities, such as Ōtākou Health Limited, should they wish to bring forward housing that directly supports low-income whanau in the General Residential 1 Zone. This then calls into question the effectiveness of the approach taken under Change C1, as it is only open to registered social housing providers.

Officer's Report (Social Housing)

5.4 The Officer's report as it relates to all submissions that seek amendments to Change C1 are outlined included below:

"I recommend rejecting all submissions that seek amendments to Change C1 for the following reasons:

- *The social housing provisions are not required in the Inner City Residential or General Residential 2 zones (as requested by Generation Zero (Dunedin) S177.004), as these zones already provide for medium density housing;*
- *I consider that the social housing provisions should not be extended to unregistered providers (as requested by Mark Geddes S128.006 and Dunedin City Baptist Church S239.010), other types of developers (Survey & Spatial NZ Coastal Otago S282.027, Kurt Bowen S300.024 and Paterson Pitts S206.027), or everybody (Otago Regional Council S271.003), to assist with managing the risk that the provisions will be subverted to provide for a higher density of development within the relevant zones than anticipated, including to appropriately manage the risk of significant cumulative effects on 3 waters infrastructure and manage the demand for new connections;*
- *The request from Waka Kotahi (S235.009) for a new assessment matter for multi-unit development is outside the scope of changes being considered as part of Variation 2. I note that Waka Kotahi's concerns appear to relate primarily to potential development of areas of greenfield rezoning that adjoin state highways and these concerns may be broadly addressed by amendments proposed in Change D2, as discussed in relation to their submission on the NDMA changes in Section 4.5.1. Furthermore, I note the acoustic insulation requirements that already apply to residential activity within 40m of a state highway (Rule 15.5.1);*
- *I consider that performance standards for design outcomes (as requested by Dunedin City Baptist Church S239.010) are not required, as the performance standards for all standard residential activity will continue to apply to social housing. In addition, the proposal includes an amendment to the multi-unit development rule so that consent will be required for development that meets this definition, with a matter of discretion for effects on streetscape amenity and character. Furthermore, social housing providers have their own guidance regarding well-designed social housing developments to meet the needs of their clients."*

5.5 The planner therefore did not recommend any amendments however noted that:

"If the Panel are of a mind to make amendments to further address concerns raised by social housing providers, the following options could be considered:

- *Addition of a sunset rule so the social housing provisions expire on a specified date, similar to that already in place for the rural density performance standard (Rule 16.5.2.1.h.ii). This would enable the social housing provisions to only be used as an interim measure until 3 waters infrastructure upgrades can be undertaken to support broader increases in density; and/or*
- *Amendments to enable the provisions to apply so long as there is a minimum percentage of social housing included in the proposed activity, for example 70%, to enable mixed housing. This is to address a matter raised by Kāinga Ora in consultation that it may wish to provide a mix of affordable housing and social housing.*

Comments:

5.6 With respect to the second point raised by the Planner (as outlined above in Paragraph 5.4), I note that the Section 42A Officer did not specifically respond to the key relief sought by Ōtākou Health Limited.

5.7 In essence, via the relief sought through further submissions, Ōtākou Health Limited sought the addition of wording that broadens the application of 'social housing' to not just apply to 'registered housing providers' but also be extended to include entities such as Te Rūnanga o Ngāi Tahu (and its interests) who may bring forward housing that directly supports low-income whanau within the Ōtepoti and the provision for housing for Māori.

5.8 Ōtākou Health Limited is considering a range of housing options within Dunedin, both on General Residential 1 and 2 zoned land, which may include the provision of 'social housing' through partnerships with Kainga Ora, however other housing opportunities may also be provided. Te Rūnanga o Ngāi Tahu has recently advanced a Shared Equity Housing initiative pilot programme based in Ōtautahi, which is intended to help Ngāi Tahu whānau purchase their first home. Te Rūnanga o Ngāi Tahu purchases up to 30 per cent equity in the home, meaning that whānau only need to come up with a deposit for the remaining 70 per cent and similar opportunities could be applied here in Ōtepoti.

5.9 The areas in which Ōtākou Health Limited are looking at development for housing for Māori are for the majority, located within the General Residential 2 Zone and already benefit from increased densities through Variation 2, however it is considered that the above relief would enable more social and affordable housing for the City.

5.10 While I appreciate the section 42A officer's concerns that the provisions should not be extended to unregistered providers in order to assist with managing the risk that the provisions will be subverted to provide for a higher density of development, I consider that this risk is overstated, especially if the extent of this was confined to a narrow group of unregistered providers.

Relief Sought:

5.11 As a consequence, I consider that it would be effective for the definition of 'Social Housing' to be amended as follows:

"Residential activity where premises are let by or on behalf of the DCC; or by Kāinga Ora-Homes and Communities or a registered community housing provider where in accordance with the Public and Community Housing Management Act 1992 or alternatively an entity listed in Appendix/Schedule xx ."

It is anticipated that a list of additional entities such as Te Rūnanga o Ngāi Tahu and its interests (including Ōtākou Health Limited) would then be listed either within the definition or as an appendix or schedule within the Proposed 2GP.

6.0 CHANGE B6 (Exemptions to minimum site size for existing development)

6.1 Ōtākou Health Limited submitted in partial support of Change B6 as it relates to the activity status exemptions for general subdivision that does not comply with minimum site sizes. Proposed Rule 15.7.4.1.j enables subdivision of lawfully established habitable residential buildings as a restricted discretionary activity where the resultant lot is of a size and shape that means the residential building is able to meet all the relevant land use and development performance standards.

6.2 Ōtākou Health Limited sought further recognition for multi-unit developments that would provide a restricted discretionary activity status for undersized allotments where a subdivision application is advanced concurrently with a land use consent application.

Officer's Report (Exemptions to minimum site size for existing development)

6.3 The Officer did not recommend that the requested changes be accepted, providing reasoning that:

"there is a need for this exception to be carefully worded so that it does not provide a loophole by which an applicant could undertake a subdivision with significantly undersized lots that could then each be developed with a standalone dwelling."

6.4 Furthermore, the Officer noted that:

"That is, the exception does not only apply to residential buildings established as a permitted activity, it also applies to buildings established by way of a land use consent."

Comments:

6.5 The requested amendments to Rule 15.7.4.1.j seek to provide for multi-unit development that include freehold subdivision as a restricted discretionary activity. Currently, the Proposed 2GP only provides for this as a non-complying activity, which introduces significant investment uncertainty for housing providers.

6.6 A consenting pathway already exists within the Proposed 2GP for restricted discretionary multi-unit developments in the General Residential 2 zone. A key limitation of this is that it only provides for unit title subdivision which achieves the same development outcomes as what could be achieved under a freehold subdivision. Having freehold title exerts a considerable influence on the market appeal and therefore the commercial viability of housing developments. There have been multiple instances where in trying to meet market demand for freehold title, housing developments have unnecessarily been subject to a non-complying activity status. Providing for concurrent subdivision and land use applications within this exemption would address this shortcoming.

6.7 In relation to the concerns raised by the section 42A officer, the officer suggests that housing development would be subsequent to the subdivision, whereas the requested change to the exemption that is sought would enable land use and subdivision to be considered together to avoid that outcome. Other authorities around New Zealand have moved towards rule frameworks which provide for comprehensive site redevelopments to be considered concurrently, with the Auckland Unitary Plan (e.g. Rule E38.9.2.1) being a leading example of this. It is considered that this is a best practice approach to providing for multi-unit redevelopments that ensure that the expected character and amenity outcomes are still

achieved. It should be noted that a restricted discretionary activity status still provides for Council to decline a consent.

6.8 In direct response to the primary submission (S268) from Ōtākou Health Ltd and TGC Holdings Ltd (S246.001), the section 42A Officer states:

"I do not recommend making the changes sought by Ōtākou Health Ltd (S268) or TGC Holdings Ltd (S246.001) regarding applying the exception where an associated land use consent is complied with, as this relief is already effectively provided for in the recommended drafting. That is, the exception does not only apply to residential buildings established as a permitted activity, it also applies to buildings established by way of a land use consent. I consider it unnecessary to specifically state this within the rule.

***Ultimately, if a residential building meets the criteria for the exception to apply (has a code compliance certificate or building permit under the pre-Building Act regime)** the plans would have been checked by the planning department at the time building consent was applied for to ensure compliance with the district plan or an approved land use consent.*

I would anticipate that any application for subdivision which seeks to rely on this exception to the Minimum Site Size performance standard, lodged concurrently with a land use consent application (or prior to satisfying the requirement for issue of CCCs for the relevant buildings), would be able to do so through the application of a condition of consent stating the same requirements as this rule. If the Panel are of a mind, an amendment could be made to the assessment rule for subdivision (at Rule 15.11.4.1.a) setting this out as a condition that may be imposed. I also note that the wording of "lawfully established" has been removed as part of my recommended changes, so it is unnecessary to clarify this term as sought by the submitters."

6.9 We note that the above assessment only considers single residential units and duplex dwellings (which are currently or proposed to be provided for under Variation 2 as permitted activities), however, multi-unit developments currently require resource consent as a restricted discretionary activity and therefore are unable to meet the existing exemption as outlined above. On this basis, the freehold subdivision of a multi-unit development would always be a non-complying activity which we do not consider to be a desirable outcome.

6.10 We believe that above assessment therefore fails to consider larger scale residential developments (multi-unit developments) which are critical for additional housing capacity and a pathway needs to be made available for freehold subdivisions and multi-unit developments that are not unnecessarily subject to a non-complying activity status. This is especially true given that the same scale of development could be advanced as a restricted discretionary activity through the unit title subdivision and multi-unit development provisions as explained above in paragraph 6.6.

6.11 The following relief therefore seeks to expand the existing exception for general subdivision that contravenes the standard for minimum site size (as a restricted discretionary activity) in order to better enable larger scale multi-unit development and associated freehold subdivisions which based on our experience is something that is attractive in the current market.

6.12 Finally, as raised in paragraph 6.3 above 'loopholes' can be adequately avoided through conditions of consent (including consent notices) which tie joint subdivisions (and the resultant titles) and land uses together and this is something that I have applied when processing for other local government authorities. This has already been undertaken in practice by Council as part of various non-comply freehold subdivisions and multi-unit developments and has proven effective.

Relief Sought

6.13 The following relief is sought under Rule 15.7.4(2):

(a) That minimum site size exemptions under Rule 15.7.4(2) be amended to apply to subdivision in accordance with an existing approved or concurrently approved land use resource consent, or for any lots around an existing lawfully established development.

(b) That exemption to Rule 15.7.4(2) is provided with a note that sets out that for the purposes of determining whether a building is lawfully established development, it must be governed by existing use rights; be permitted under the proposed 2GP, or be undertaken in accordance with an approved land use resource consent.

Subdivision in accordance with an approved land use resource consent

(c) That Subdivision advanced under a) retain the restricted discretionary activity status, however, include a matter of discretion that subdivision relating to an approved land use consent must comply with that resource consent, including all conditions and all approved plans.

7.0 SUMMARY

7.1 In summary, I recommend that those provisions discussed within Sections 5 and 6 of this statement be further amended to ensure that they are consistent with the Resource Management Act 1991, and seek to better align with the overarching intent of the policy framework supporting Variation 2. I consider that my recommended changes promote both good resource management and planning practice and accord with the purpose of the Act and the manner that should be applied.

7.2 I thank the Commissioner for affording the time to consider this statement.

Nigel Roland Bryce, B.REP, NZPI.

10th of September 2021