



THE PROPOSED
**SECOND
GENERATION
DISTRICT PLAN**
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MEMORANDUM FROM THE 2GP HEARINGS PANEL CHAIRPERSON

Introduction to the Decisions

These decisions are the culmination of a lengthy process under the Resource Management Act 1991 (RMA). The Dunedin City Council undertook extensive investigations and public consultation, then on 26 September 2015 publicly notified the 2GP. This drew 1,055 submissions, from all types of organisations and individuals. The submissions were summarised by DCC staff and allocated “submission reference points”. Some submitters had only one submission point; others had over 100. In total there were over 6,300 submission points. The summary of submission points was publicly notified, providing the opportunity required by the RMA for anyone to make “further submissions” supporting or opposing submissions.

A number of submissions were received after the closing date, for various reasons. We considered it reasonable to accept those received before 3 March 2016, and to accept late further submissions made on them.

The DCC appointed the Hearings Panel and delegated to us the required process of conducting hearings and making decisions, with reasons, on the submissions and further submissions. The hearings ran from 12 May 2016 to 8 December 2017, normally three days a week – a total of 105 hearing days or part days.

In a Memorandum to the Parties dated 12th April 2016 we introduced ourselves, noting our range of professional and community experience and acknowledging from the outset that:

“We have to be ‘open’ to all the evidence and argument you are going to put to us, setting aside any views we may have previously expressed as hearings commissioners or councillors. However, we can and should use our training and experience to better understand the issues we are dealing with.”

Hearings were organised by topics, and our decisions are also grouped by the same topics. The hearing topics were, for the most part, organised according to sections in the Plan, such as “Residential” or Network Utilities”. Within these overarching topics, submission points were organised in the s42A reports prepared for us by the DCC based on related provisions, or in sub-topics (requests for specific outcomes that cut across different provisions).

There were also three cross plan hearing topics. The first of these was Plan Overview. This topic addressed requests that related to the structure, format, or drafting protocol used in the Plan, or ‘general’ content that appeared in several sections. The second topic was simply called ‘Cross-Plan Provisions’ and dealt with submission related to the following subtopics: commercial advertising, service stations; community correction facilities, emergency services and defence facilities, and mining activities. Finally, the Urban Land Supply topic dealt with the strategic directions related to zoning, requests for larger areas of rezoning for urban land uses, and the transitional zoning provisions of the Plan.

This division of submissions into topics has allowed us to focus on one topic at a time, but it meant that some submitters had to attend more than one hearing, and may now have to look at more than one topic decision to find our responses to their requests.

Within the topic decisions, we have generally grouped submissions in a similar way to the way they were grouped in the s42A reports, but with some variations where this reflected the way we considered submissions in our deliberations. Within the decision reports, usually it has been logical to address submissions on the objectives and policies first as they set the framework, followed by the rules implementing the objectives and policies, and then provisions relating to particular properties. We encourage readers to consider topic decisions as a whole, rather than just turning to the decision on the sub-topics relevant to their particular submission points. The planning map showing zone boundaries, overlay zones and mapped areas are also an important part of many decisions.

It should be emphasised that our “scope” to make decisions has been limited by the scope of the submissions. The open public process for district plan reviews requires submitters to state what specific provisions of a proposed district plan they support or oppose, and if they oppose something, what alternative they suggest. This enables others to lodge ‘further submissions’ in support or opposition to those suggestions.

District plans are complex documents and inevitably some non-expert people have difficulty identifying all the provisions relevant to their concern, and have difficulty drafting alternative suggestions. In considering submissions that were not entirely clear and the scope that they provided, we had to balance the right of non-experts to participate and seek relief to address their concerns with the rights of people potentially affected to understand what a submitter was seeking and potentially lodge a further submission on that idea. Sometimes we had to carefully consider who may be ‘prejudiced’ if we made a decision to accept a submission that was not clear. Where there was low risk of prejudice we have applied scope more liberally to help identify relief for submitters based on their core concerns and where that risk is higher we have been more cautious in only considering what was specifically suggested.

In a few cases we sought legal advice on scope.

Sometimes submitters raised general points or requested specific things at hearings beyond the scope of their submissions, based on our analysis above. Where we believe these had merit, we have noted in the decisions that we have no scope to make the change sought but recommend that the Council undertakes further investigation leading to a possible “plan change” public process to address the matter.

In the course of hearing the submissions, quite a number of anomalies in the 2GP were highlighted. That is inevitable with any proposed district plan. We have exercised the power under clause 16 of the 1st Schedule to the RMA to address these, noting that in the decisions concerned. We note the DCC planners, through the normal delegation that rests with the City Development Manager, have also used clause 16 to tidy up minor errors in their final preparation and publication of the ‘decisions version’ of the Plan.

The submissions and the presentations at the hearings provided us with a huge amount of detail about particular matters and properties. In assessing that we have endeavoured to keep the purpose of RMA, set out in section 5 of the Act, in our minds and to “give effect to” the Matters of National Importance listed in section 6, to “have particular regard to” the Other Matters listed in section 7, and to “take into account the principles of the Treaty of Waitangi” as required by section 8.

We have also been mindful that the 2GP must “give effect to” National Policy Statements, the New Zealand Coastal Policy Statement, and the Otago Regional Policy Statement (RMA section 75). The 2GP must also comply with National Environmental Standards, and we have to “have regard to”, among other things, the Proposed Otago Regional Policy Statement, management plans and strategies prepared under other Acts, and listings under the Heritage New Zealand Pouhere Taonga Act 2014.

As recorded in our decisions, during the hearing process the legal significance of several of these changed. In particular, the decisions version of the Regional Policy Statement was

released on 1 October 2016 and while most of the appeals were resolved by mediation it is not yet operative, the National Environmental Standard for Plantation Forestry came into force, and the National Policy Statement on Urban Development Capacity (NPS-UDC) came into force on 1 December 2016. The last of these has been particularly significant because it sets out objectives and policies for planning urban capacity and imposes an obligation on the Council to collect data on a regular basis to monitor the availability of residential and other urban land to ensure adequate land is zoned and serviced.

The first report by the Council on urban capacity under the NPS-UDC is due in December 2018. Obviously, we did not have the benefit of this information in making our decisions. We relied on analysis undertaken by the Reporting Officers and their experts, while acknowledging that a more thorough analysis would be available shortly.

The hearing panel members have felt a great responsibility to make the best decisions we can, because these decisions will have significant effects on the ability of people and communities in the Dunedin City Council area (one of the largest council areas in New Zealand) to use natural and built resources to meet their needs, now and in the future. The decisions also define the levels of protection given to the various elements of the natural environment to ensure resource use is sustainable. We have had to evaluate the risk of identified, sometimes long-term, adverse outcomes as well as the often more certain and shorter-term benefits of a contested provision.

It has been obvious, particularly with the more controversial provisions in the 2GP, that there is usually no solution that will satisfy everyone – a range of matters advanced by advocates for different perspectives has to be taken into account. It is not a matter of finding a technically “correct” decision.

When time allowed during the hearings we visited most of the localities and properties discussed during the hearings. This was to help us understand the evidence better, not to gather our own evidence.

The information and assessments in the original submissions and the further submissions, and particularly the evidence and arguments presented at the hearings, have been of immense assistance to our understanding of the issues and to our decision-making. We have been impressed by the amount of effort many hearing participants put into their presentations, and we are conscious that for many this was voluntary public-spirited effort.

With a hearing panel of six we were able to have members opt out of some topic hearings because of other commitments. It also made it easy for panel members to avoid hearing or deliberating on anything where they felt they had a potential conflict of interest. We observed the good practice of members deliberating only on matters they had heard. In the final stages of decision-making however it was necessary to ensure consistency between draft decisions in all topics, and necessarily there had to be some discussion by all panel members of how to resolve inconsistencies.

Early in the process we discussed how we would handle any disagreements about decisions. Sometimes panels mention in a decision that a decision was not unanimous, or they record who dissented, or they even include a dissenting opinion. All those options were available to us, but in the event, although we had robust discussions about many issues, no one considered it necessary to record any disagreement. We all stand by all the decisions as a coherent package.

We had the benefit of comprehensive reports on the submissions (section 42A reports) from planners in the Council’s City Development team, led by Dr Anna Johnson. These were circulated before each topic hearing and submitters referred to them extensively when presenting alternative assessments. It was pleasing that the Council reports carefully evaluated the submissions and frequently recommended that we adopt submitters’ suggestions. We are particularly grateful to Dr Johnson and her team for being amenable to providing additional

information and assessment when we requested it and reconvened some hearings. All additional information and assessment that could be considered 'evidence' was made public through the website, and often circulated to affected parties for comment. We received additional technical support from Dr Johnson and Mr Paul Freeland as 'Senior Planners' to assist us with drafting of decisions we wished to implement, advice on scope, and advice on plan interpretation. They sought legal review of their advice before providing it, where they considered that necessary.

The hearing process was also assisted by the Hearings Administrator provided by the Council, Ms Jennifer Lapham. Ms Lapham and her team provided an exceptional service to both the panel and submitters, including setting up the hearing rooms, sending out notices, telephoning submitters to confirm intentions to attend hearings, taking minutes and answering numerous enquiries. We are grateful for all of that.

A handwritten signature in blue ink that reads "David W. Collins". The signature is written in a cursive, flowing style.

David W. Collins

Dunedin 2GP Hearings Panel Chairperson