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From: Darryl Sycamore <darryl@terramark.co.nz>
Sent: Thursday, 4 March 2021 11:18 a.m.
To: District Plan Submissions
Subject: [#TM-D12006] Submission by K & L Accommodation Ltd
Attachments: Submission by K and L Accommodation on Variation 2.pdf

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Categories: Nat

Good morning,

Please find attached a submission by K & L Accommodation Limited on Proposed Variation 2 of the 2GP.

I would be grateful for an email acknowledging receipt.

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SUBMISSION ON THE DUNEDIN CITY COUNCIL'S PROPOSED VARIATION 2 OF THE SECOND GENERATION DISTRICT PLAN

Form 5

Submission on publicly notified proposal for policy statement or plan
Clause 6 of First Schedule, Resource Management Act 1991

To: Dunedin City Council
districtplansubmissions@dcc.govt.nz

Name of submitter: K and L Accommodation Limited

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This is a submission on the following proposed plan change –
Variation 2 of the Second Generation District Plan.

K and L Accommodation could not gain an advantage in trade competition through this submission.

The specific provisions of the proposal that the submission relates to and the decisions we seek from Council are as detailed on the following pages.

K and L Accommodation opposes the plan change in relation to the provisions raised in the submission.

K and L Accommodation wish to be heard in support of this submission.

Surveying, Resource Management and Engineering Consultants

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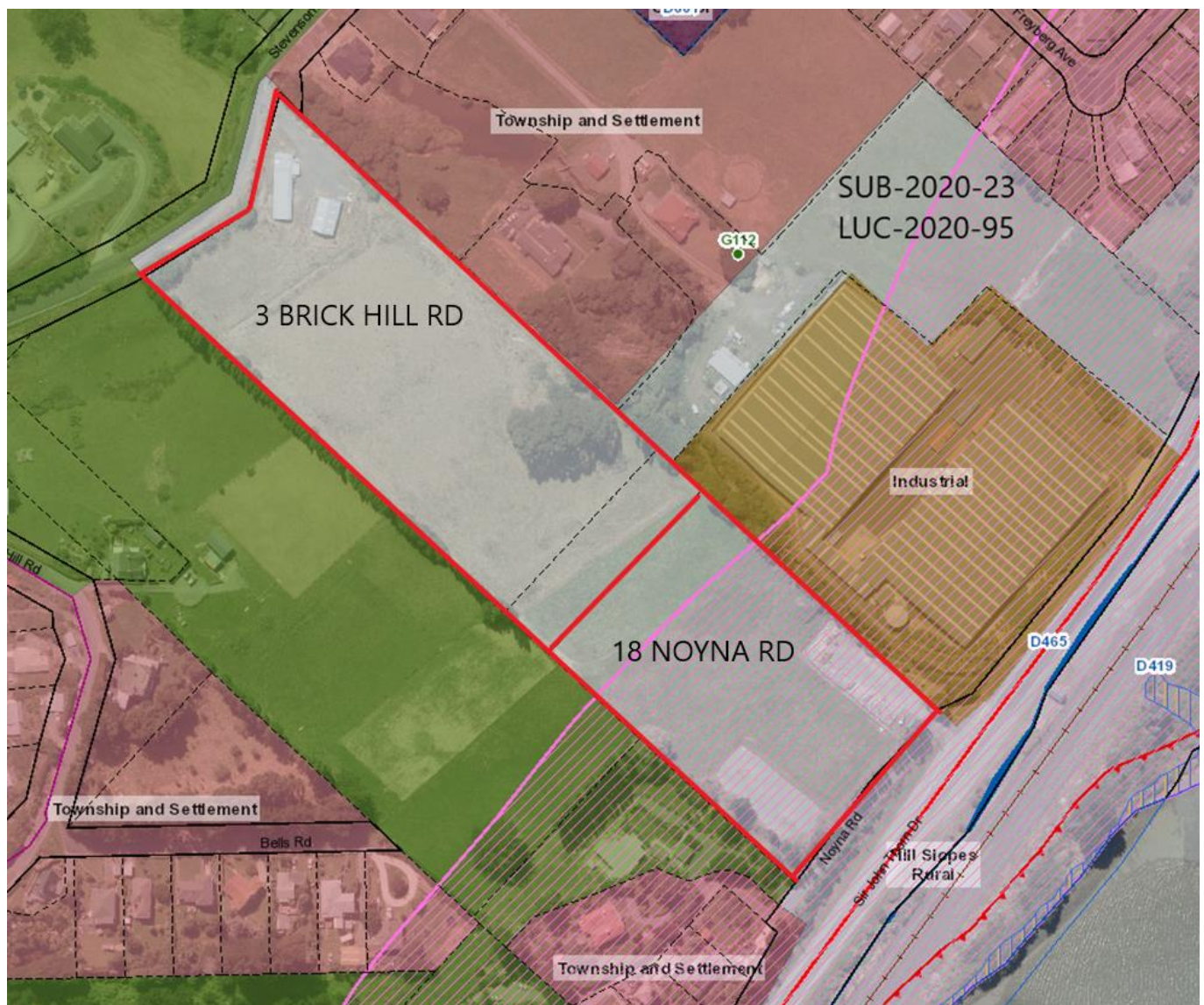
MEMBER OF NZ INSTITUTE OF SURVEYORS (NZIS) AND THE CONSULTING SURVEYORS OF NZ (CSNZ)



SUBMISSION ON VARIATION 2 OF THE SECOND GENERATION DISTRICT PLAN

1. INTRODUCTION

- 1.1 K and L Accommodation Limited welcomes the opportunity to submit to the Variation 2 of the 2GP.
- 1.2 Our clients own the property at 3 Brick Hill Road and 18 Noyna Road, Sawyers Bay. The sites are held in separate Records of Title and are zoned Rural Hills Slope in the 2GP. The lower extent of 18 Noyna Road is within an archaeological alert layer. Together, the land comprises approximately 3.4 hectares.



- 1.3 The submitters also own the adjoining land at 105, 109 and 117 Stevenson Avenue, with interests in 107 Stevenson Avenue. That land comprises the remaining portion of Rural Hills Slope land in this area and also some Township and Settlement zoned land. They have recently secured consent to subdivide this land into 19 residential sites in SUB-2020-23 and LUC-2020-95.
- 1.4 K and L Accommodation are highly motivated to establish additional residential land for the City.

2. SUBMISSION ON VARIATION 2

- 2.1 Variation 2 is a change to the proposed District Plan (2GP) which includes a suite of changes to enable additional housing capacity through specific rule and policy changes and through rezoning specific sites. The National Policy Statement on Urban Development Capacity (NPS-UD) directs the Council to enable greater intensification in areas of high demand and where there is the greatest evidence of benefit
- 2.2 The NPS-UD applies to all urban environments and is informed by population size and growth rates. Dunedin is now considered a Tier 2 urban environment, which includes a number of directive measures for addressing housing supply in the medium term.
- 2.3 In response to the NPS-UD a number of sites have been proposed to be rezoned to alternative residential zones that allow a greater residential density.
- 2.4 This land was put forward to Council as part of the initial evaluation to greenfields sites for inclusion. Our client's land was not selected by Council staff as suitable for rezoning. On this basis, we consider the site is within scope. This interpretation was supported in a discussion with DCC staff¹.
- 2.5 We note Appendix 4, the addendum for "Sites assessed for rezoning but were not included in the final proposal" did not include the site we promoted at the front end of the variation process. By inference, if the site is not excluded from the proposal, then it must be included in the proposal.
- 2.6 This oversight is consistent with the email² that states "this one fell through the cracks somewhere". That email goes on to state

"To confirm what we discussed on the phone:

- *We wouldn't support the site being included in Variation 2 as Rural Residential as it wouldn't support the purpose of the variation.*
- *We do plan to list the sites that were assessed and the reasons for rejection within an appendix to our section 32 report.*
- *Wastewater detention is being considered for some sites, but only where a minimum yield of 50 homes can be achieved."*

- 2.7 Having considered the points above, it is our view that
 - Any additional residential capacity is the primary intention of Variation 2,
 - There was an appendix of sites excluded, but the site owned by K and L Accommodation was not included in that list of exclusions, and
 - The specifics of how wastewater are managed is a fine-grained matter that can be resolved once the site is rezoned.
 - We are aware of greenfield sites that have capacity for approximately 12 residential units that were included for rezoning following Council assessment.
- 2.8 We consider the site is within scope of the Variation and that Council has erred in their assessment.
- 2.9 We consider the site comprising approximately 3.5ha is suitable for rezoning for residential use. This is supported by
 - the surrounding properties zoned Township & Settlement,
 - The 2020 consent decision for the adjacent land for 19 residential sites, and
 - The provision of piped services downslope of the site.

3.0 VARIATION 2 & SCOPE

¹ Pers comms between Maaik Duncan of Terramark and Nathan Stocker of DCC City Development

² Nathan Stocker, Urban Development Capacity Planner DCC to Maaik Duncan of Terramark dated 15 Dec 2020

- 3.1 The primary purpose of Variation 2 is to enable Dunedin City Council to meet its residential capacity obligations under the NPS-UD. It has been recognised by the Council that the existing housing capacity, as provided for by the 2GP, is currently insufficient. Variation 2 has been designed to address the identified shortfall through mechanisms such as new residential zone areas and adjustments to the density rules within existing residential zones.
- 3.2 Variation 2 has employed a 'selective' assessment method to narrow down the extent to which new residential zone areas have been identified. In support of this selective approach, the Council has stated:

Proposed changes have been informed by initial work on the next Future Development Strategy (Spatial Plan), which will look at how and where the city will grow over the next 30 years. A small number of areas were selected for more detailed evaluation as part of Variation 2. Other sites were suggested by landowners or Dunedin residents as part of the Planning for Housing survey in 2019 and key stakeholder consultation. That feedback aimed to help shape how and where the city should grow and has helped develop the proposed changes in Variation 2. All sites were evaluated against criteria including (but not limited to) natural hazards, the availability of 3 Waters infrastructure and access to services and public transport. The process involved ongoing discussions with key stakeholders and, for greenfield sites, landowners whose sites were evaluated as part of Variation 2.³

- 3.3 Variation 2 is not a full review of the 2GP's residential section's rule framework or zoning across the city. A more comprehensive updated plan for the next 30 years will be *developed separately as part of the next Spatial Plan, which will be jointly prepared with the Otago Regional Council (ORC).*⁴

The 2GP is still in the appeal phase and re-opening large parts of the plan to a new variation will slow the progress towards making the plan fully operative. Until the 2GP is operative, parts of the 2006 District Plan continue to apply along with the 2GP provisions, which increases the complexity and costs of processing consents. The changes proposed in Variation 2 are therefore as focused as possible, and scope has been deliberately limited to avoid re-consideration of a wide range of provisions.⁵

- 3.4 Whilst we endorse Council's approach for the Variation 2 process to be implemented as quickly as possible, it is considered that the selective identification of assessment properties cannot be relied upon as a technique to identify the complete package of parcels of land that best achieves the principal objective of Variation 2 nor the NPS-UD. In this regard, the section 32 report, which assesses only the parcels that have been selectively identified, is considered to be incomplete.
- 3.5 To elaborate, the Resource Management Act 1991 (RMA) sets out the requirements for preparation of a section 32 report (underlined text is author's emphasis)-

s32 Requirements for preparing and publishing evaluation reports

(1) An evaluation report required under this Act must—

- (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
- (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) summarising the reasons for deciding on the provisions; and*
- (c) contain a level of detail that corresponds to the scale and significance of*

³ https://www.dunedin.govt.nz/_data/assets/pdf_file/0007/806182/Variation-2-General-Public-Fact-Sheet.pdf

⁴ <https://www.dunedin.govt.nz/council/district-plan/2nd-generation-district-plan/plan-change-dis-2021-1-variation-2#doc>

⁵ https://www.dunedin.govt.nz/_data/assets/pdf_file/0007/806182/Variation-2-General-Public-Fact-Sheet.pdf

the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

3.6 The overarching objective of Variation 2 is to enable Dunedin City to meet its statutory residential capacity obligations. Section 32(1)(a) RMA requires that this objective is met in the manner that is most appropriate to achieve the purpose of the Act. Section 32(1)(b)(i) RMA requires the s32 evaluation to consider all reasonably practicable options for achieving the objective. This has not been done.

3.7 The purpose of the RMA is (underlined text is author's emphasis)-

5 *Purpose*

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*
 - (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

3.8 It is submitted that the Council's decision to limit the scope of Variation 2 to only a selection of nominated land parcels presents a risk that the most appropriate method of achieving the objective of the variation may not be reached. It is clear that the land at 3 Brick Hill Road and 18 Noyana Road have not had their potential for residential rezoning evaluated. Accordingly, it is our view that the s32 report completed in support of Variation 2 is currently incomplete and that the report may not be consistent with the expectations of the RMA, with particular regard to the consideration of 'other reasonably practicable options' as required by s32(1)(b)(i).

3.9 This matter is further complicated by the National Policy Statement on Urban Development 2020 (NPS-UD), which requires (underlined text is author's emphasis)-

3.2 *Sufficient development capacity for housing*

- (1) *Every tier 1, 2, and 3 local authority must provide at least sufficient development capacity in its region or district to meet expected demand for housing:*
 - (a) *in existing and new urban areas; and*
 - (b) *for both standalone dwellings and attached dwellings; and*
 - (c) *in the short term, medium term, and long term.*
- (2) *In order to be sufficient to meet expected demand for housing, the development capacity must be:*
 - (a) *plan-enabled (see clause 3.4(1)); and*
 - (b) *infrastructure-ready (see clause 3.4(3)); and*
 - (c) *feasible and reasonably expected to be realised (see clause 3.26); and*
 - (d) *for tier 1 and 2 local authorities only, meet the expected demand plus the appropriate competitiveness margin (see clause 3.22)*

3.10 The expectation of the NPS-UD is that residential capacity is achieved in areas that are 'infrastructure-ready' and 'feasible and reasonably expected to be realised'. The RMA requires identification of the most appropriate options. It is not unreasonable to consider that there might well be any number of parcels of land within the City that have not been evaluated through the Variation 2 process, which may also present an appropriate option to satisfy the residential capacity obligations.

- 3.11 Until a further s32 evaluation process is undertaken (as per s32AA RMA), with a view to assessing the suitability of the submission land to contribute to the City's residential capacity, it is impossible to have confidence that the purpose of the RMA will be best served by Variation 2.

4.0 RELIEF SOUGHT

Our client, K & L Accommodation Limited seeks the following relief:

4.1 Scope

1. The land at 3 Brick Hill Road and 18 Noyna Road may offer an appropriate method to the City to increase its residential capacity as required under Tier 2 cities in the NPS-UD, and
2. The scope of Variation 2 is to provide additional land as required under the NPS-UD.
3. The s32 evaluation undertaken as part of Variation 2 to-date is incomplete as this evaluation has not considered the submission property. A further s32 evaluation is necessary in respect of the submission property, and
4. The submission cannot be considered 'out-of-scope' of Variation 2 as it seeks to provide for an outcome that achieves the City's obligations under the NPS-UD in a manner that is consistent with the purpose of the RMA.

4.2 Infrastructure

We oppose the imposition of network upgrades as a condition of development.

Council has a development contributions policy and a rating program that generates increased income as new residential sites are created. Both of these income sources provide funding that is intended to be spent on City infrastructure (development contributions for network upgrades, rating income for maintenance). While income from these sources is being collected by Council it is inappropriate (and a form of double-dipping) for network infrastructure upgrades to be imposed as conditions of development.

Relief Sought

1. That Council upgrade the network to enable the proposed development permitted under Variation 2, and
2. That infrastructural upgrades are funded by either development contributions and rates, and
3. That network upgrades are not a condition of development.

4.3 Rule 15.4.X The Permitted Baseline

Rule 15.4.X seeks to remove the permitted baseline assessment from Council's consideration of stormwater matters. We accept the permitted baseline is a matter of discretion on a case by case basis, however it provides a clear indication as to the effects arising from a permitted activity which has undergone a Schedule 1 process. It is assumed the effects arising from a permitted activity are less than minor on the receiving environment.

Discounting the permitted baseline is a cynical attempt to dismiss any weight in favour of a development, which seeks to construct a rule in a lower-level regulation to override that of a higher-level regulation. Recent consent decisions have found that the permitted baseline assessment is an appropriate test in respect of stormwater management (in the same way as this applies to the consideration of other effects).

Relief Sought

1. That this provision be rejected.

4.4 Policy 9.2.1.Z

This policy requires development that contravenes the impermeable surfaces rules to demonstrate that the effects of stormwater will be no more than minor. K & L seeks to clarify that subdivision and land use only triggers the policy when they propose to breach the impermeable surfaces rules.

The policy appears to read this way; however, an alternative interpretation might be that the policy applies to multi-unit development, supported living facilities, and subdivision all in general, and only to development that breaches the impermeable surfaces rules. In addition, all stormwater flows off the site will end up as a discharge to the harbour, which if the second part of the policy is read literally, would always trigger the need for an assessment under this part. The submitter does not believe that this is the actual intent of the policy.

Relief sought

1. That the policy is reworded to remove any ambiguity.

4.5 Service connections onsite

Variation 2 proposes new rules relating to service connections on subdivision sites. These provisions are contained in Rule 9.3.7, and particularly Rules 9.3.7.X, 9.3.7.Y, 9.3.7.Z and 9.3.7.AA.

There is insufficient allowance within these service connection provisions for viable alternative supply options. Several examples include:

- Telecommunications using 'off-the-grid' sources (cell phone, radio link, satellite link, etc.).
- Electricity using 'off-the-grid' sources (wind, solar, generator, etc.).
- Water supply by rooftop collection in areas that cannot be efficiently serviced from a reticulated source.
- Foul drainage via septic tank (or secondary-treatment septic tank) in areas that cannot be efficiently serviced from a reticulated sewage system.
- Stormwater to ground in areas where there are subsurface gravel layers that can accommodate site discharge flows.

There are likely to be a number of other forms of alternative solution as well, which are just as capable of providing acceptable servicing outcomes.

Relief sought

1. That the inclusion within Rule 9.3.7 of suitable alternative servicing arrangements, where these are recognised as being acceptable (certainly all of the examples above, plus other forms of servicing that may be appropriate). Some of these options may require the applicant to demonstrate that the alternative solution will achieve a particular standard. Furthermore, it should be recognised that a number of these alternative solutions are better implemented at the time of building (rather than the time of subdivision). Accordingly, the inclusion of a provision that recognises the use of a consent notice to require installation of service connections as part of the building process is also sought by the submitter.

4.6 Transportation Provisions

Variation 2 proposes several new transportation policies and rule adjustments. K & L is concerned about Policy 6.2.3.Y and Rules 6.11.2.7 and 6.11.2.8. There is no justification by Council to impose the expectation that any private access serving more than 12 sites should be designed and vested as a legal road.

K & L considers that private access serving an unlimited number of sites is entirely reasonable, and that a legal road should only be required when the other assessment matters trigger this (e.g., for reasons of network connectivity and/or safe and efficient operation of the transport network). This is particularly relevant for access to 336 Portobello Road.

There are likely to be many situations in which it will be difficult for Council to impose these proposed rules, a common example being infill subdivision that occurs along existing private accessways. The

allowance in the rules for `...unless the location or design of the subdivision lacks certainty as there is no guidance as to how Council's discretion in this regard will be applied.

Should K & L construct a private road and future purchasers choose to buy sites on that basis, this would seem like a perfectly reasonable outcome (and with no risk to Council).

Relief Sought

1. That the transportation provisions are drafted such that they enable (where the outcome will result in a safe and efficient development) are that the Council's discretion is clearly understood rather than on an ad hoc basis.

For Terramark Ltd

A handwritten signature in black ink, appearing to read 'Darryl Sycamore', with a stylized flourish at the end.

Darryl Sycamore
Resource Management Planner