

**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 **David Middleton**

Brief of Evidence of **Emma Rayner Peters**
on behalf of:

David Middleton
(Submission 237 – Requested Site 151)

Dated 12th August 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 and evidence from Council staff.
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.

Submission:

4. A submission was made on behalf of David Middleton to rezone part of land he owns located at 147 St Leonards Drive from *Rural – Hill Slopes* to *Large Lot Residential 2* zone and *Area of Significant Biodiversity Value* pursuant to a structure plan¹. A sketch plan illustrating what is sought was included with the submission and copy is appended at Appendix 1. The area of 147 St Leonards Drive to be rezoned *Large Lot Residential 2* is approximately 5.5 hectares and the area to be rezoned as an *Area of Significant Biodiversity Value* is approximately 7.3 hectares. Council identifies the site as RS 151.

Further Submissions:

5. One further submission was received on submission 237. The further submission in support of submission 237 was received from Wirat Mahongchai (FS252).

¹ Original submission 237.

S42a Report:

6. The reporting planner recommends: *“Overall, for the reasons above, I consider that rezoning the site to residential has clear conflicts with Policy 2.6.2.1 and that the site is presently unsuitable for residential rezoning. I therefore recommend that the site remain zoned as Rural Hill Slopes.”*²

Vision for RS 151

7. The submitter has a vision for RS 151 to provide housing choice in a highly desirable area in a way which is sensitive to the landscape and biodiversity values of the site. Residential activity will be nestled within a context of remnant indigenous forest supported by new indigenous structural and ecological planting. Location of residential activity will be restricted to identified landscape building platforms and the built form of the residential activity on those platforms will be controlled via performance standards attaching to the structure plan. Rezoning part of RS 151 provides additional much needed residential capacity available to the market in this locale and also 'unlocks' the capital for a major ecological restoration project within RS 151 including the removal of weed species, removal of pine trees and replanting of approximately 13 hectares of RS 151 to support the approximately 7.3 hectares of remnant indigenous forest to which an *Area of Significant Biodiversity Value* will be applied.
8. The following performance standards are proposed to attach to the structure plan:
- Preparation of an ecological management plan for RS 151 including areas in which weed species or pine trees are to be removed and indigenous species to be planted, planting distances and the like for replanting of these areas.
 - Limiting the location of residential activity to the identified building platforms on the structure plan.³
 - Controlling built form within the identified building platforms by:
 - (a) limiting residential activity within the platform to one residential unit and one garden shed / studio;
 - (b) limiting gross floor area of residential unit to 280m² including garage and 80m² for garden shed /studio
 - (c) limiting the height of all buildings and structures to 5m;
 - (d) restricting the type of exterior to cladding to brick, steel, stone or wood

² S42a Report page 224.

³ The landscape building platforms and accesses will necessarily need to have been found to be geotechnically stable prior to inclusion on the structure plan.

with a maximum light reflectivity value of no greater than 35% for external walls and 30% for roof areas;

- (e) exposed block or timber retaining walls shall not exceed 2m are are to be stained to a tone that will be below 35% reflectivity value or use natural stone materials or dark masonry that will reduce offsite reflection to the same effect;
 - (f) requirement for all water tanks to be located on the building platform and be either buried or screened (by planting) to have minimal visual impact from beyond the lot on which the tank(s) is situated;
 - (g) control on outdoor lighting;
 - (h) requirement that fencing is confined to a standard rural post and wire, post and timber or stone construction – where boundary definition is required, planting rather than fencing is promoted where practicable; and
 - (i) requiring a landscape plan in relation to each lot be approved prior to commencement of earthworks or construction for each lot.
- Requiring a stormwater management plan for the residential development.

Policy 2.6.2.1

9. The primary mechanisms in the 2GP for rezoning land, where medium density is not sought, are Objective 2.6.2 and Policy 2.6.2.1.
10. Objective 2.6.2 *Adequate Urban Land Supply* states: “*Dunedin provides sufficient, feasible, development capacity (as intensification opportunities and zoned urban land) in the most appropriate locations to at least meet demand over the medium term (up to 10 years), while sustainably managing urban expansion in a way that maintains a compact city with resilient townships as outlined in Objective 2.2.4 and policies 2.2.4.1 to 2.2.4.3.*”
11. Policy 2.6.2.1 provides the criteria by which the district plan envisages land will be selected for residential rezoning. The criteria include⁴:
 - necessary to provide at least sufficient housing capacity to meet short and medium term demand;
 - no pressure on unfunded public infrastructure upgrades;
 - area is suitable for rezoning with respect to specified factors;
 - the zoning sought is the most suitable with respect to specified factors;
 - biodiversity effects;
 - effects on outstanding and significant landscapes;
 - effects on natural character of coastal environment;

⁴ See Appendix 2 for a copy of Policy 2.6.2.1.

- access to coasts, rivers and the like;
- effects on residents' and visitors' aesthetic appreciation and enjoyment of the City with respect to specified factors;
- risk from natural hazards;
- effect on the efficiency and effectivity of public infrastructure;
- effects on a multi-modal transport network;
- Dunedin remains a compact and accessible City with resilient townships.

Council's Assessment of the Site Pursuant to Policy 2.6.2.1.

12. In Appendix 4 to the s32 report Council states: *“The following table lists sites that were assessed for rezoning but are not being proposed for rezoning in Variation 2. These sites were rejected as they do not meet (or there is insufficient information to be confident that they would be likely to meet) relevant policy assessment criteria. Having identified that a site was unsuitable for any reason, no further assessment was undertaken. Therefore, the list of reasons for rejection included in Appendix 4 is not necessarily complete, as a full assessment against all policy criteria may not have been undertaken.”*

13. In relation to RS 151 the table includes the following information:

Location	Map number	Current Zone	Requested Zone	Size (ha)	Reasons for rejection
147 St Leonards Drive	2	RR1	LLR1	34.46	Much of the site is subject to a Significant Natural Landscape overlay, and is therefore considered not suitable for residential development, due to the significance of the landscape values and their protection under the 2GP policy framework. The rezoning of the remainder of the site (small areas) is considered inappropriate due to the distance from existing residential zones.

14. Appendix C *Site Criteria Assessment* to the s42a report does not include any further assessment of RS 212 with respect to Policy 2.6.2.1.

Assessment of Site Pursuant to Policy 2.6.2.1

15. An assessment has been made on behalf of the submitter based on *Appendix 5 Site Criteria Table to the s42 a Report* and is appended at Appendix 3.

16. The site rates well in relation to the rezoning criteria except in relation to being in a *Significant Natural Landscape Overlay Zone* and 'closeness to centres'. Each of these is considered below.

Significant Natural Landscape

17. The s42a report states at page 224: *“The 6.5ha area proposed for Large Lot Residential 1 rezoning is fully contained within the Flagstaff-Mt Cargill Significant*

Natural Landscape Overlay Zone. Rezoning this area to residential is inconsistent with Policy 2.6.2.1.d.iv which requires that Dunedin's outstanding and significant natural landscapes and natural features are protected (Objective 2.4.4)."

18. Policy 2.6.2.1.d.iv states (emphasis added): *"Dunedin's...significant natural landscapes...are protected (Objective 2.4.4). Acheiving this includes **generally avoiding** the application of new residential zoning in...SNL overlay zones."*
19. 'Generally avoid' is not a total prohibition instead it implies that in certain, perhaps very limited, circumstances, residential zoning can be applied in an SNL overlay zone.
20. RS 151 is a site for which this applies. The residential zone sought is *Large Lot Residential 2* appropriate to the location. The proposal includes stringent controls on built form and biodiversity gains (*Area of Significant Biodiversity Value*, ecological restoration project over approximately 13 hectares of the site) which make it appropriate for rezoning as the biodiversity/environmental gains outweigh the mitigated adverse effects arising from the proposed *Large Lot Residential 2* residential development.
21. This places RS 151 in the '*Significant Issues – Manageable*' scoring key.

Closeness to Centres

22. Policy 2.6.2.1.c states: *"...the area is suitable for residential development by having all or a majority of the following characteristics: i. a topography that is not too steep; ii. being close to the main urban area or townships that have a shortage of capacity; iii. currently serviced, or likely to be easily serviced, by frequent public transport services; iv. close to centres; and v. close to other existing community facilities such as schools, public green space and recreational facilities, health services, and libraries or other community centres..."*
23. The s42a report states at page 224: *"I also consider rezoning the site to residential has clear conflicts with Policy 2.6.2.1.c and that the site is presently unsuitable for residential rezoning."*
24. Table 1 below contains an assessment of RS 151 against the factors specified in Policy 2.6.2.1.c.

Table 1: Assessment of RS 212 Against Policy 2.6.2.1.c – Desired Site Characteristics.

Desired Characteristic	Assessment of RS 151
Topography 'not too steep'	RS 151 is ideally suited for large lot residential development essentially comprising north facing land with a slope across the majority of the site to be rezoned of less than 15 degrees. RS 151 has this characteristic.
Close to urban area with shortage of capacity	RS 151 is located close to the suburb of St Leonards wherein there is a shortage of zoned capacity <u>available to the market</u> and limited opportunity to provide additional capacity through zoning due to topography. RS 151 has this characteristic.
Public transport services 'currently serviced or likely to be easily serviced'	RS 151 is located between approximately 300m and 900m from the nearest bus stop, dependent on direction of travel. RS 151 has this characteristic.
Close to centres	'Centre' is defined in the district plan as: <i>"Principal, Suburban, Rural, Neighbourhood, Neighbourhood Convenience and Neighbourhood Destination centres zones."</i> The <i>Principle Centre</i> zone at Port Chalmers is approximately 3.6km away. RS 151 does not have this characteristic.
Close to existing community facilities	St Leonards school is located less than 2km away. The closest highschool is located at Logan Park. There is a public green space within St Leonards. There is a public swimming pool at Port Chalmers. There is a GP clinic in Port Chalmers and there is a Port Chalmers Library and Service Centre and various community halls. RS 151 exhibits this characteristic.

25. Policy 2.6.2.1.c states that a site is suitable for rezoning if it has all or the majority of the characteristics therein listed. 'Majority' is typically interpreted to mean: *'a number or percentage equaling more than half of a total'*⁵. The analysis in Table 1 above shows that RS 151 meets four of the five desired characteristics which represents a majority meaning that RS 151 satisfies the criterion of Policy 2.6.2.1.c.
26. With respect to a related criterion, the s42a report states: *"...the site is disconnected from existing residentially zoned land and is surrounded on all sides by either Rural Hill Slopes or Rural Residential 1. Rezoning isolated and disconnected pockets of land will result in conflict with Policy 2.6.2.1.d.xi which requires Dunedin stays a compact and accessible City."*
27. Policy 2.6.2.d.xi states: *"Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations (Objective 2.2.4)..."*.

5 Source: Merriam-Webster online dictionary: <https://www.merriam-webster.com/dictionary/majority>

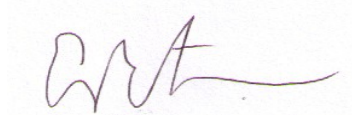
28. Application of this policy must necessarily take into account the context of a particular site. St Leonards is a popular place to live. There is demand for sections on which to build new dwellings but limited zoned capacity available to the market. The topography of St Leonards also means that there are limited areas into which residential activity can expand.
29. The proposed residential zoning for RS 151 means that it will be self-serviced with respect to 3 waters and, therefore, will not require an expansion of these services. There is excellent active transport links with the City and soon with Port Chalmers.
30. There is a shared walking and cycling path from St Leonards (starting just south of St Leonards Drive) to the City via the new Water of Leith walking and cycling bridge and Anzac Avenue cycleway. Council plans to connect the shared path to Port Chalmers. This path provides quick and safe cycling access to the City of only approximately 7-10km depending on destination. Once, complete the path will provide quick and safe cycling access to Port Chalmers of only approximately 3.6km.
31. The proposed form of urban expansion of St Leonards is the most appropriate given the context of the locale and limited opportunity to provide additional residential zoned capacity in St Leonards.
32. This criterion is met.

Conclusion

33. There is no doubt that Policy 2.6.2.1.d.iv entails careful consideration of a potential residential rezone site within a *Significant Natural Landscape Overlay Zone* but the particular wording of the policy does not outright bar such consideration simply because a site is within such an overlay zone.
34. Council did not give due consideration to the proposal and in particular whether the biodiversity gains and ecological enhancement and tight controls on built form inherent in the proposal mean that the rezone site is an exception to the 'generally avoid' requirement of Policy 2.6.2.1.d.iv.
35. Likewise, application of Policy 2.6.2.1.d.xi requires consideration of the particular locale, its characteristics and multi-modal links to the City in order to determine whether the proposal is maintaining the desired compactness and accessibility. The rezone site meets Policy 2.6.2.1.c and, therefore, in the context of its locale

can be considered to meet the desired compactness and accessibility requirement.

Dated this 12th day of August 2022

A handwritten signature in black ink, appearing to read 'ERP', with a long horizontal flourish extending to the right.

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

Appendix 1: Sketch Plan Included with Submission 151.



Notes:

- Lime Green – Native forest area to have an ASBV overlay applied – subject to ecological report.
- Dark Green Hatched – Managed ecological enhancement area.
- Acqua – Area to be rezoned Large Lot Residential 2 – Approx. 5.5 ha subject to survey – yield 8 – 10 lots – subject to landscape report.
- Silver – Area of forestry trees to be removed over time for firewood and replanted with indigenous vegetation – not viable to commercially log.
- Pink Dashed Line – Site access.

Appendix 2: Policy 2.6.2.1.

Identify areas for new residential zoning based on the following criteria:

- a) rezoning is necessary to ensure provision of at least sufficient housing capacity to meet expected demand over the short and medium term; and
- b) rezoning is unlikely to lead to pressure for unfunded public infrastructure upgrades, unless either an agreement between the infrastructure provider and the developer on the method, timing, and funding of any necessary public infrastructure provision is in place, or a Residential Transition overlay zone is applied and a future agreement is considered feasible; and
- c) the area is suitable for residential development by having all or a majority of the following characteristics:
 - i. a topography that is not too steep;
 - ii. being close to the main urban area or townships that have a shortage of capacity;
 - iii. currently serviced, or likely to be easily serviced, by frequent public transport services;
 - iv. close to centres; and
 - v. close to other existing community facilities such as schools, public green space and recreational facilities, health services, and libraries or other community centres;
- d) considering the zoning, rules, and potential level of development provided for, the zoning is the most appropriate in terms of the objectives of the Plan, in particular:
 - i. the character and visual amenity of Dunedin's rural environment is maintained or enhanced (Objective 2.4.6);
 - ii. land, facilities and infrastructure that are important for economic productivity and social well-being, which include industrial areas, major facilities, key transportation routes, network utilities and productive rural land:
 - 1. are protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and
 - 2. in the case of facilities and infrastructure, are able to be operated, maintained, upgraded and, where appropriate, developed efficiently and effectively (Objective 2.3.1).

Achieving this includes generally avoiding areas that are highly productive land or may create conflict with rural water resource requirements;
 - iii. Dunedin's significant indigenous biodiversity is protected or enhanced, and restored; and other indigenous biodiversity is maintained or enhanced, and restored; with all indigenous biodiversity having improved connections and improved resilience (Objective 2.2.3).

Achieving this includes generally avoiding the application of new residential zoning in ASBV and UBMA;

- iv. Dunedin's outstanding and significant natural landscapes and natural features are protected (Objective 2.4.4). Achieving this includes generally avoiding the application of new residential zoning in ONF, ONL and SNL overlay zones;
- v. the natural character of the coastal environment is, preserved or enhanced (Objective 2.4.5). Achieving this includes generally avoiding the application of new residential zoning in ONCC, HNCC and NCC overlay zones;
- vi. subdivision and development activities maintain and enhance access to coastlines, water bodies and other parts of the natural environment, including for the purposes of gathering of food and mahika kai (Objective 10.2.4);
- vii. the elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected or enhanced. These include:
 - 1. important green and other open spaces, including green breaks between coastal settlements;
 - 2. trees that make a significant contribution to the visual landscape and history of neighbourhoods;
 - 3. built heritage, including nationally recognised built heritage;
 - 4. important visual landscapes and vistas;
 - 5. the amenity and aesthetic coherence of different environments; and
 - 6. the compact and accessible form of Dunedin (Objective 2.4.1);
- viii. the potential risk from natural hazards, and from the potential effects of climate change on natural hazards, is no more than low, in the short to long term (Objective 11.2.1);
- ix. public infrastructure networks operate efficiently and effectively and have the least possible long term cost burden on the public (Objective 2.7.1);
- x. the multi-modal land transport network, including connections between land air and sea transport networks, operates safely and efficiently (Objective 2.7.2); and
- xi. Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations (Objective 2.2.4).

Appendix 3: Site Assessment of RS 151 based on s42 a Report Appendix 5 Site Assessment Criteria Table.

Criteria	Site Assessment
Slope Objective 2.6.2, policies 2.6.2.1.c.i & 2.6.2.3.d.	No Issues. Majority of area proposed for residential rezone has slope of less than 15 degrees. Flat or gently sloping.
Aspect – Solar Access	Very Good. North facing site.
Accessibility – Public Transport Objective 2.2.2, policies 2.6.2.1.c.iii & 2.6.2.3.c.ii	Ok – Bus Route 14 (Port Chalmers – Dunedin). The site is located, at its closest point, approximately 600m from the Bus Stop located at Wren Lane to Port Chalmers and approximately 900m from Bus Stop located at Tui Street to Dunedin.
Accessability – Centres Objective 2.2.2, policies 2.6.2.1.c.ii & 2.6.2.3.ii.	Poor. Site is approximately 3.6km, closest point of site, from the <i>Principal Centre</i> zone in Port Chalmers.
Accessibility – Schools Objective 2.2.2, policies 2.6.2.1.c.v & 2.6.2.3.c.ii	Very Good. St Leonards School is within 2km from site, closest point.
Rural Character / Visual Amenity Policy 2.6.21.d.ii, Objective 2.4.6	Some Issues. Some local impacts but overall minor effects at a broader scale. Proposed ecological restoration project and controls on built form mitigate.
Impacts on Productive Rural Land Policy 2.6.2.1.d.i, Objective 2.3.1, policy 2.3.1.2	No Issues. No <i>Land Use Capability Class 1 – 3 or High Class Soils</i> contained within area proposed for residential zoning.
Reverse Sensitivity Policy 2.6.2.1.d.i, Objective 2.3.1	No Issues.
Significant Indigenous Biodiversity Policy 2.6.2.1.d.iii, Objective 2.2.3, policy 2.2.3.5	No Issues. Part of site is to be zoned <i>Area of Significant Biodiversity Value</i> and an ecological enhancement project covering approximately 13 hectares to be undertaken. Performance standard attaching to structure plan will require landscaping with indigenous species within lots in relation to dwellings.
Natural Landscapes & Natural Coastal Character Policies 2.6.2.1.d.iv & v; objectives 2.4.4 & 2.2.5	Significant Issues – Manageable. The site overlaps with a SNL overlay zone.
Access to the Coast and Water Bodies Policy 2.6.2.1.d.vi, objective 10.2.4	No issues. Rezone site is not immediately adjacent to a waterbody.
Significant Trees, Heritage Items...	No Issues. No relevant features.

Criteria	Site Assessment
Residential Character and Amenity (Applies to potential medium density sites only)	Not Applicable.
Natural Hazards Policy 2.6.2.1.d.vii, objective 11.2.1	No Issues. Site is not shown as a HAIL site on ORC database. Site does not have any Hazard Overlay Zones.
Potable Water Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Residential activity to be self-serviced.
Wastewater Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Residential activity to be self-serviced with a minimum of secondary treatment prior to dispersal to effluent field.
Stormwater Management Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Likely that no management required other than standard performance standards already contained in 2GP rules (e.g. on-site attenuation).
Transport Effects (Local) Objective 2.7.1, policy 2.7.1.1, objective 2.7.2	No Issues. St Leonards Drive feeds directly onto SH87 within approximately 150m of the site access.
Transport Effects (Wider Network) Policy 2.6.2.1.d.x, objective 2.7.1, policy 2.7.1.1, objective 2.7.2	No Issues – Some Issues (Manageable). Unlikely that upgrades to the wider transport network will be required or if there are transport issues these can be dealt with at the time of subdivision.
Compact City – Proximity to Existing Residential Areas Policies 2.6.2.1.d.xi, 2.6.2.1.d.vii.6 & 2.6.2.3.c.iii.6, objective 2.2.4	Significant Issues (Manageable). The topography in the locale mean that there are few sites to which St Leonards can expand. The topography of the site where residential development is proposed is suitable for <i>Large Lot Residential 2</i> zoning. This proposed zoning coupled with the proposed ecological restoration project, tight controls on built form and landscaping requirements mean that the resultant residential development will not appear 'isolated' in the context of the landscape of the locale.
Compact City – Ability to Develop Land Efficiently Policies 2.6.2.1.d.xi, 2.6.2.3.c.iii.6, objective 2.2.4	No Issues. The site is proposed to be rezoned Large Lot Residential 2.
Effects on Manawhenua Values Objective 2.5.1, policy 2.5.1.2	No Issues.
Issues for Network Utility Operators, SDHB, Ministry for Education, FENZ, Kiwirail NPS-UD	No Issues. Likely that any issues are manageable.

Criteria	Site Assessment
Other constraints on Development Objective 2.6.2	No Issues. Landowners is willing to develop. Any encumbrances on title can be dealt with at time of subdivision consent.
Feasibility for Medium Density Development – Lower Quality Housing Stock more likely to be Developed	Not Applicable.
Feasibility for Medium Density Development – Market Desirability	Not Applicable.