

Roxanne Davies

From: Andrew Robinson <Andrew.Robinson@ppgroup.co.nz>
Sent: Thursday, 4 March 2021 11:58 a.m.
To: District Plan Submissions
Subject: 500A Kaikorai Valley Road
Attachments: Morshius_Lloyd - Submission Form.pdf; Scope Document.pdf; Morshius supporting document.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Roxy

Hi, Please find attached, a submission from Lloyd Morshuis / Morclarke Developments regarding 500A Kaikorai Valley Road. They could not gain a trade advantage as a result of this submission. They would like to speak at a hearing and they would consider a joint submission.

Thanks, Andrew

VARIATION 2 – ADDITIONAL HOUSING CAPACITY

SUBMISSION FORM 5



CLAUSE 6 OF FIRST SCHEDULE, RESOURCE MANAGEMENT ACT 1991

This is a submission on Variation 2 to the Second Generation Dunedin City District Plan (2GP). Your submission must be lodged with the Dunedin City Council by midnight on 4 March 2021. **All parts of the form must be completed.**

Privacy

Please note that submissions are public. Your name, organisation, contact details and submission will be included in papers that are available to the media and the public, including publication on the DCC website, and will be used for processes associated with Variation 2. This information may also be used for statistical and reporting purposes. If you would like a copy of the personal information we hold about you, or to have the information corrected, please contact us at dcc@dcc.govt.nz or 03 477 4000.

Make your submission

Online: www.dunedin.govt.nz/2GP-variation-2 | **Email:** districtplansubmissions@dcc.govt.nz

Post to: Submission on Variation 2, Dunedin City Council, PO Box 5045, Dunedin 9054

Deliver to: Customer Services Agency, Dunedin City Council, Ground Floor, 50 The Octagon, Dunedin

Submitter details (You must supply a postal and/or electronic address for service)

First name:

Last name:

Organisation (if applicable):

Contact person/agent (if different to submitter):

Postal address for service:

Suburb:

City/town:

Postcode:

Email address:

Trade competition

Please note: If you are a person who could gain an advantage in trade competition through your submission, your right to make a submission may be limited by clause 6(4), Schedule 1 of the Resource Management Act.

I could gain an advantage in trade competition through this submission: ☐ Yes ☐ No

If you answered yes, you could gain an advantage in trade competition through this submission, please select an answer:

☐ Yes ☐ No

My submission relates to an effect that I am directly affected by and that:

- adversely affects the environment; and
- does not relate to trade competition or the effects of trade competition.

Submission

Submissions on Variation 2 can only be made on the provisions or mapping which are proposed to change, or alternatives that are clearly within the scope of the 'purpose of the proposals', as stated in the Section 32 report. Submissions on other aspects of the 2GP are not allowed as part of this process.

You must indicate which parts of the variation your submission relates to. You can do this by either:

- making a submission on the Variation Change ID (in which case we will treat your submission as applying to all changes related to that change topic or alternatives within the scope of the purpose of that proposal); **or**
- on specific provisions that are being amended.

The specific aspects of Variation 2 that my submission relates to are:

Variation 2 change ID (please see accompanying Variation 2 – Summary of Changes document or find the list on www.dunedin.govt.nz/2GP-variation-2)

For example: D2

Provision name and number, or address and map layer name (where submitting on a specific proposed amendment):

For example: Rule 15.5.2 Density or zoning of 123 street name.

My submission seeks the following decision from the Council: (Please give precise details, such as what you would like us to retain or remove, or suggest amended wording.)

- ☐ Accept the change
- ☐ Accept the change with amendments outlined below
- ☐ Reject the change
- ☐ If the change is not rejected, amend as outlined below

Reasons for my views (you may attach supporting documents):

If you wish to make multiple submissions, you can use the submission table on page 3 or attach additional pages.

Hearings

Do you wish to speak in support of your submission at a hearing: ☐ Yes ☐ No

If others make a similar submission, would you consider presenting a joint case at a hearing: ☐ Yes ☐ No

Signature:

Date:

Multiple Submissions Table

Variation 2 change ID or provision name and number or address and map layer name	Decision Sought a. Accept the change b. Accept the change with amendments outlined c. Reject the change d. If the change is not rejected, amend as outlined	Reasons for my views

1 Residential Density Policy Provisions

The submitter is supportive of all of the proposed residential policy changes, including an increase to density of the GR1 zone, the provision for duplexes, and the replacement of family flats with ancillary residential units. This support does not extend to NDMA and infrastructure matters, as discussed later in this submission.

The submitter has several suggestions-

1. There should be a requirement that subdivision of duplex developments can only be completed once the new units have been constructed. This will avoid subdivisions being undertaken on empty land, and owners then attempting to seek consent for stand-alone houses on the subsequent sites (which may be as small as 200m²). The submitter suggests that there is a provision inserted into Variation 2 that requires the framing of both duplex units to be complete before the s224c certificate can be issued for an associated subdivision.
2. Duplex developments should be enabled through a suitable planning provision to share foul and stormwater drains (e.g. a drain in common). Without this provision it may be difficult to obtain a building consent for the duplex unit construction (in a duplex pair) while the site is still a single site (i.e. prior to the subdivision being completed). A drain in common between two duplex units is consistent with certain types of subdivision (e.g. Unit Title) and has the benefit of reducing house construction costs. Christchurch City Council allows shared drains for up to 4 residential units, and this seems to operate reasonably well.

The submitter also supports the decision to reject the A1-Alt1, A2-Alt1, A2-Alt2 and A2-Alt3.

2 NDMA/Infrastructure Provisions

This submission relates to land that is affected by a proposed NDMA overlay and/or affected by proposed infrastructure controls. The discussion below is relatively comprehensive and has been separated into various headings depending on how the NDMA and infrastructure provisions should relate to different categories of residential land. The initial section contains general discussion that applies to all NDMA/infrastructure provisions.

2a NDMA/Infrastructure Provisions General

The submitter has a number of concerns relating to NDMA overlay regions and infrastructure controls. In general, these relate to the following-

- (i) Inadequate (incomplete) research has been undertaken by Council's 3-Water departments, particularly in regard to stormwater modelling, resulting in a knowledge gap. It appears that this is being resolved through a precautionary approach that could result in infrastructure being installed where it may not be required.
- (ii) The imposition of these elements of Variation 2 will have a very real detrimental effect on the feasibility, and therefore the rate, of residential development. This is directly contrary to the purpose of Variation 2.

- (iii) The National Policy Statement on Urban Development 2020 requires the provision of adequate infrastructure by the Local Authority to enable residential capacity. Passing the obligation to provide this infrastructure onto landowners and developers (except where the infrastructure is related to new greenfields land) is not appropriate. One of the largest bottlenecks to housing development is the cost of infrastructure, and accordingly if Council wishes to realise a greater level of housing then the City must be prepared to invest in the necessary supporting infrastructure (passing the costs on will not resolve the bottleneck).
- (iv) 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.
- (v) Council has access to funding from national government for infrastructure improvement projects. The Otago Daily Times has recorded (05/08/2020; <https://www.odt.co.nz/news/dunedin/water-reform-south-could-get-more-60m>) that Dunedin City is able to secure \$7.92 million directly (plus a share of the wider \$20.6million regional allocation) for water reforms. It is the submitter's view that this funding source, and others like that this might be available, should be Council's priority method for resolving the existing infrastructure network constraints.
- (vi) The proposed infrastructure provisions are overly complex, without adequate definition and will be problematic to implement (particularly where NDMA regions contain multiple land ownerships). These provisions are likely to delay, if not obstruct altogether, many residential developments from being advanced.
- (vii) Rule 15.4.X. appears to seek to remove the permitted baseline assessment, as provided for in the RMA, from Council's consideration of stormwater matters. This is a fundamentally flawed position, which seeks to construct a rule in a lower-level regulation to override that of a higher-level regulation. Recent consent decisions, made independently and in accordance with the RMA, have clearly 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). This proposed Rule must be rejected.

Proposed Adjustments to Variation 2-

- (i) Reject the proposed infrastructure controls from all new development and subdivision activities, until such time as Council's knowledge in respect of the areas of constraint is complete.
- (ii) Reject the proposed infrastructure controls from all new development and subdivision activities, except where the infrastructure relates to new greenfields land (and i above is satisfied).

- (iii) Reject the proposed infrastructure controls from all new greenfields land regions, until the stormwater management plan provisions can be amended into a workable arrangement.
- (iv) Reject Rule 15.4.X.

2b NDMA/Infrastructure on existing residential land

A number of sites within the City's existing Residential zones have been proposed to have a new NDMA overlay and/or new infrastructure controls applied. These sites do not enjoy any specific rezoning advantage (e.g. GR1 to GR2), although they might benefit from an increase in residential yield as a of the proposed changes to the density policy provisions.

The submitter feels that it is both inappropriate and unreasonable to impose NDMA/infrastructure controls onto any property in which the zoning format is not proposed to be changed to enable a greater yield of development. Reasons for this view include (in addition to the general discussion above)-

- (i) There remains a question over the quality and completeness of Council's infrastructure modelling, with particular regard to the stormwater network. It appears that Council's 3-Waters department has taken a precautionary approach to infrastructure, whereby it is simply easier to require all new developments to meet the new infrastructure standards, despite some of these areas not necessarily being subject to an infrastructure constraint. If this is the case then this will lead to the installation of infrastructure, proposed to occur at the cost of the landowner/developer, that serves no purpose. This is inappropriate and contrary to the outcomes sought by Variation 2. If Council's infrastructure modelling knowledge is incomplete, it is essential that this is resolved before any new infrastructure controls are implemented.
- (ii) The imposition of new development controls, which will inevitably result in additional development costs, where there is little anticipated return in respect of site yield, is directly contrary to the purpose of Variation 2 (which is ultimately to enable development so that houses can be built).
- (iii) The NPS-UD requires Local Authorities to provide the infrastructure necessary to support residential capacity. If there are elements of the public infrastructure network that cannot support development of the City's existing residential land, then the Local Authority is required to upgrade these elements. This is not an obligation that can appropriately be passed on to landowners/developers.
- (iv) The land enjoys a particular set of existing use rights at present. The zoning is not proposed to change, so there will be no beneficial offsetting for the landowner of the negative impact of the new infrastructure requirements.

Proposed Adjustments to Variation 2-

- (i) **PREFERRED:** Reject the NDMA overlay and all proposed infrastructure controls from the submission land.
- (ii) **ALTERNATIVE A:** Insert a provision that exempts any development and/or subdivision within the submission land from the requirements of the NDMA/infrastructure control provisions while the density of the development and/or subdivision is consistent with the current zone density expectations (e.g.

500m² in the GR1 Zone). This would maintain the status quo until such time as a developer proposed a density of residential activity that exceeds the current zone allowance.

- (iii) ALTERNATIVE B: Restructure the NDMA/infrastructure control provisions into a form that recognises that there are existing-use-rights associated with the land and re-design the new controls in such a manner as to minimise development cost increases (for instance, specify nominally-sized rooftop water detention tanks on each developed site – these can be cost effective if implemented by way of a standardised method).
- (iv) ALTERNATIVE C: Rezone the submission land to a residential zone that provides for a greater development density than the current zone, which might then justify the application of an NDMA overlay and/or a greater degree of infrastructure control. Then re-design the stormwater management plan provisions to result in a workable arrangement.

2c NDMA/Infrastructure on existing RTZ land

A number of sites within the City's existing Residential Transition (RTZ) zones have been proposed to have a new NDMA overlay and/or have new infrastructure controls applied. These sites do not enjoy any specific rezoning advantage (i.e. they are not being rezoned to residential as a result of Variation 2), although might (eventually) benefit from an increase in residential yield as a result of the proposed changes to the density policy provisions.

The submitter feels that it is both inappropriate and unreasonable to impose new NDMA/infrastructure controls onto any property in which the zoning format is not proposed to be changed to enable a greater yield of development sites (a number of infrastructure controls already apply within the existing RTZ provisions, and these are not proposed to be removed). Reasons for this view include (in addition to the discussion above)-

- (i) There remains a question over the quality and completeness of Council's infrastructure modelling, with particular regard to the stormwater network. It appears that Council's 3-Waters department has taken a precautionary approach to infrastructure, whereby it is simply easier to require all new developments to meet the new infrastructure standards, despite some of these areas not necessarily being subject to an infrastructure constraint. If this is the case then this will lead to the installation of infrastructure, proposed to occur at the cost of the landowner/developer, that serves no purpose. This is inappropriate and contrary to the outcomes sought by Variation 2. If Council's infrastructure modelling knowledge is incomplete, it is essential that this is resolved before any new infrastructure controls are implemented.
- (ii) The imposition of new development controls, which will inevitably result in additional development costs, where there is little anticipated return in respect of site yield, is directly contrary to the purpose of Variation 2 (which is ultimately to enable development so that houses can be built).
- (iii) The NPS-UD requires Local Authorities to provide the infrastructure necessary to support residential capacity. If there are elements of the public infrastructure network that cannot support development of the City's existing residential land,

then the Local Authority is required to upgrade these elements. This is not an obligation that can appropriately be passed on to landowners/developers.

- (iv) The land enjoys a particular set of existing use rights at present (being residential activity subject to the existing RTZ provisions). The zoning is not proposed to change, so there will be no beneficial offsetting for the landowner of the negative impact of the new infrastructure requirements.
- (v) The existing RTZ infrastructure provisions are seen as adequate to control residential development within the RTZ regions.

Submitter's Position in respect of 'Scope'.

A principal purpose of Variation 2 is to enable Dunedin City Council to meet its residential capacity obligations under the National Policy Statement on Urban Development 2020. 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.

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, 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 2.¹

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).²

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 focussed as possible, and scope has been deliberately limited to avoid re-consideration of a wide range of provisions.³

Whilst the submitter applauds Council desire 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. In this regard, the section 32 report, which assesses only the parcels that have been selectively identified, is considered to be incomplete.

The Resource Management Act 1991 (RMA) sets out the requirements for preparation of a section 32 report (underlined text is author's emphasis)-

¹ https://www.dunedin.govt.nz/data/assets/pdf_file/0007/806182/Variation-2-General-Public-Fact-Sheet.pdf

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

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

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

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.

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.*

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 there are many parcels of land within the City have not had their potential for residential rezoning evaluated. Accordingly, it is the submitter's 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).

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)*

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.

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.

The submitter concludes the following-

1. The property referred to in the associated submission may offer an appropriate method to the City to increase its residential capacity.
2. 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.
3. 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.