

**Before a Panel Appointed by the
Dunedin City Council**

In the Matter of the Resource Management Act 1991 (**RMA**)

And

In the Matter of Proposed Variation 2 of the Second Generation
Dunedin District Plan – Appeals Version (**2GP**)

**Brief of Evidence of Emma Rayner Peters
on behalf of Ross McLeary, COF Limited
& Scroggs Hill Farm Limited
(Submission 249 – GF01)**

Dated 5th 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 submissions and Variation 2 of the Dunedin City Second Generation District Plan Appeals Version including Council's 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.

Notification of Variation 2

4. GFO1 which contains part of land located at 155 Scroggs Hill, Brighton was notified as being rezoned from *Rural Residential 1* to *Large Lot Residential 1* pursuant to Variation 2 of the 2GP – see Figure 1 below. GF01 contains approximately 10.3 hectares.



Figure 1: GFO1 as Notified¹.

¹ Source: s42a report page 47.

Submission 249 from Ross McLeary, COF Limited & Scroggs Hill Farm Ltd

5. A submission was made on behalf of Ross McLeary, COF Limited and Scroggs Hill Farm Limited, collectively referred to as the 'submitters', supporting rezoning of change area GF01 from *Rural Residential 1* to *Large Lot Residential 1* with the submitters seeking to amend GF01 so that it contained a mixture of *Township and Settlement* and *Large Lot Residential 1* zones pursuant to a structure plan. The submitters own/control the land contained in GF01.
6. The submitters now seek to retain GF01 as notified, that is rezone GF01 from *Rural Residential 1* to *Large Lot Residential 1* pursuant to a structure plan and apply a *New Development Mapped Area* and apply a *No DCC Reticulated Wastewater Mapped Area*.

S42a Report

7. The reporting planner recommends in the s42a report at page 52 that:

"I acknowledge that GF01 has been proposed for rezoning by the DCC in the section 32 report. However, the more in-depth assessment conducted for this section 42A report indicates potential issues with rezoning. Most notably, significant issues in relation to the need to upgrade both Scroggs Hill Road and Seaview Road. I consider this likely represents a conflict with Policy 2.6.2.1.d.ix and Policy 2.6.2.1.d.x.

3 Waters are unable to service the site for potable water and wastewater...Large Lot Residential 1 Zone (minimum site size 2,000m²) was assessed for self-servicing potable water, and found to be only 75% reliable. A smaller lot size provides, in general, for a reduced roof area, from which to collect water. In addition, stormwater management, while possible, may not be affordable.

Overall, to rezone the site, the Panel will need to be satisfied that necessary upgrades to transport infrastructure can feasibly be achieved. If this is the case, I recommend that the site is zoned Large Lot Residential 1 to minimise adverse effects on visual amenity values and allow self-servicing for 3 waters.

Consequently, I also recommend that the no reticulated wastewater mapped area is retained over the site...As discussed earlier, if the Panel considers that the mitigation conditions proposed by both Mr McKinlay and by Hugh Forsyth are appropriate, further advice can be provided as to how these could be included in a structure plan for the site."

8. The reporting planner continues at page 54 stating: *"If the Panel chooses to rezone GF01 as notified:*
- *Rezone GF01 from Rural Residential 1 Zone to Large Lot Residential 1 Zone.*
 - *Retain the 'no DCC reticulated wastewater mapped area'.*
 - *Retain 'new development mapped area'.*
 - *Add structure plan mapped area rules requiring urban design controls to manage effects on landscape character and visual amenity."*
9. The s42a details the further submissions received in relation to submission 249.

Council Site Assessment of GF01

10. Council undertook a site assessment of GF01 against rezoning criteria which determined that the site rated reasonably well for rezoning to *Large Lot Residential 1* with any issues arising being 'manageable'².

Structure Plan Performance Standards

11. Council notified the site as being rezoned from *Rural Residential 1* to *Large Lot Residential 1*. The site assessment appended to the s42a report states that any issues are 'manageable'. Therefore, the most appropriate way to deal with the concerns raised in further submissions and in the s42a report is to apply a structure plan when rezoning GF01 *Large Lot Residential 1* and attach performance standards:
- requiring, prior to subdivision resulting in residential development, provision of: (a) an integrated traffic assessment; (b) a stormwater management; and (c) geotechnical investigations of GF01 including sub-surface; and
 - which control built form and provide for the other mitigation measures relating to GF01 such as indigenous planting of the gully and landscape treatment in relation to the boundary with Scroggs Hill Road.
12. Upgrades by the developer of local transport infrastructure required as a result of the integrated traffic assessment and on-site stormwater measures required by the stormwater management plan are then governed through the subdivision process, particularly the s224(c) process.

Short and Medium Term Demand

13. The s42a report includes an update of the Housing Capacity Assessment. That purports to show a supposed surplus of zoned capacity for 1,280 dwellings in the

² See Appendix C.1 of the s42a report – copy appended at Appendix 21

short term (2022 – 2025) and a 350 dwellings in the medium term (2022 – 2032). However, it appears that these figures do not take into account the impact of the Panel's decision that pre-1940s buildings required some level of protection and resource consent is now required to demolish buildings built prior to 1 January 1940 in the General Residential 1 and Township and Settlement (with Council reticulated wastewater) zones as well as Variation 2 Mapped Areas³.

14. This rule will operate so that at least some of pre 1940's buildings will now have to be retained meaning that the number of dwellings resulting from infill development in these zones and mapped areas will now not be as high as originally anticipated in the Housing Capacity Assessment.
15. It became apparent during 2GP mediation that there were issues in the modelling producing the Housing Capacity Assessment data. A finer grained analysis of the land with moderate to high zoned capacity (that is, zoned capacity for 6 or more residential units) showed that there were issues with the modelled zoned capacity including things such as historic rubbish tips, slopes of more than 25 degrees, insufficient lot size on slope terrain, access, encumbrances and the like.
16. Despite repeated requests by Sweep Consultancy Limited (to Council and to the Panel) and by Property Economics (to Council) Council has not released the zoned capacity data for double checking by professionals engaged by submitters. This raises real issues of natural justice particularly if the Panel places weight on the Housing Capacity Assessment Report in any decisions not to rezone requested sites residential.
17. There is also an accepted difference between 'zoned capacity' which is what the Housing Capacity Assessment Report assesses and 'market availability' of that zoned capacity. Seeking a residential rezone of your land is a clear indication that such landowners intend to make the zoned capacity resulting from such a rezone available to the market.
18. The reporting planner states⁴: *“Despite a projected sufficiency of supply in the short and long term, the decisions on Variation 2 to date do not enable any additional greenfield zoning. Providing for greenfield development opportunities provides choice for Dunedin's residents, in terms of type, price and location of households. Sufficient projected capacity should not be a reason not to rezone*

³ This part of the Panel's decision has been appealed by Paterson Pitts Limited Partnership – see ENV-2022-CHC-035.

⁴ S42a Report, paragraph 23.

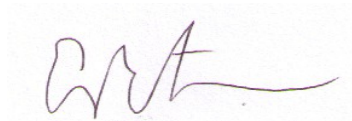
any new greenfield land. However, in my view, there is not a pressing demand for additional development capacity that could be used to justify zoning greenfield land that is not well aligned with the objectives and policies of the 2GP."

19. Rezoning GF01 *Large Lot Residential 1* is well aligned with the rezoning criteria of Policy 2.6.2.1. There is a clear demand for more residential zoned capacity to be made available in this locale.

Conclusion


20. GF01 meets the rezone criteria for *Large Lot Residential 1* given that the assessment states that any issues are 'manageable'. Dwellings in *Large Lot Residential* zones can be self-serviced with respect to potable water and wastewater.
21. Utilising a structure plan with site-specific requirements in relation to an integrated traffic assessment, stormwater management plan and geotechnical investigations being required prior to subdivision resulting in residential development, seems in the circumstances a very sensible approach. The structure plan performance standards will also control built form and landscaping measures.
22. Brighton is a township with experienced lack of residential zoned capacity available to the market. Retaining GF01 as notified will provide residential zoned capacity that will become available to the market.
23. There are no impediments to GF01 being zoned *Large Lot Residential 1*.

Dated this 5th day of August 2022



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

Appendix 1: s42a Report Appendix C.1 Rezoning Assessment Sheet – GF01.

APPENDIX C.1 Rezoning Assessment Sheet – Part 155 Scroggs Hill Road (GF01)		
SITE DETAILS		
Change Number	GF01	
Site outline image	 <p>Legend:</p> <ul style="list-style-type: none"> Rezoning sites (dashed yellow line) Variation Two (red hatched area) <p>Zoning:</p> <ul style="list-style-type: none"> Township and Settlement (pink) Rural Residential 1 (green) Recreation (light green) Coastal (light blue) 	
Site Address	Part 155 Scroggs Hill Road	
Full area assessed	As shown in map above	
Site Area	10.3 hectares	
Current zoning	Rural Residential 1	
PROPOSAL DETAILS		
2GP Zone assessed	Large Lot Residential 1	
ASSESSMENT CRITERIA		
Slope	Moderate issues	The site is generally flat or gently sloping, but includes steep gullies
Aspect - Solar access	Good	Variable. Final area considered for rezoning generally slopes gently to the east
Accessibility – Public Transportation	Poor	The nearest bus stop is approximately 1.6km away

Accessibility - Centres	Poor	<p>Mosgiel principal centre is approximately 9,000m away.</p> <p>Brighton neighbourhood centre is approximately 2,000m away.</p>
Accessibility – Schools	Good	Big Rock Primary School is the closest primary and intermediate school to the site at approximately 2.3km away.
Rural character/visual amenity	No issues	<p>The site was assessed by DCC's Landscape Architect (see Appendix 7 of s32 report) for potential large lot scale development. The full site covers a series of broad ridges and gullies northwest of Brighton. In general, the proposed area is hidden from view from many of the more established urban parts of Brighton near the centre of the settlement and the south-eastern facing hillslopes near the coastal edge. Broader views into the site are available from immediate surrounding locations on Scroggs Hill Road, and the hillslopes to the west, east and north. The site has an open character, which means that residential development will change the existing rural / rural residential character. Denser development could appear as a distinct settlement area, surrounded by rural residential land. Siting the development on the lower, less prominent part of the site would lessen this effect.</p> <p>As a result of this assessment only part of the site is proposed to be rezoned.</p> <p>(Updated 2022 comments): The existing assessment for GF01 stands, development should be limited to the GF01 area and capped at Large Lot Residential Density.</p>
Impacts on productive rural land	Moderate issues	The areas assessed is significantly larger than the area ultimately proposed for rezoning. Approximately 25% of the full area, including all the area proposed to be rezoned, is LUC Class 3. This area scored poorly compared to other sites, given the size of the site assessed, the relatively low density of housing considered (large lot residential), and the distance from services (which reduces the economic value attached to housing). However, given the reduced area proposed for zoning, impacts are considered to be moderate, rather than significant.
Reverse sensitivity	No issues	
Significant indigenous biodiversity	No issues	The landowner identified areas of vegetation in gullies on the site that would be excluded from development. DCC's biodiversity officer did not identify any areas in the final area proposed to be rezoned (through inspection of aerial photography) that were considered necessary to formally protect.
Natural landscapes and natural coastal character	No issues	

Access to the coast and water bodies	No issues	
Significant Trees, heritage items, important vistas or viewshafts, important green or open spaces	No issues	
Natural Hazards	Some issues (manageable)	The site is assessed as having a medium level hazard associated with slope instability, particularly on the steeper parts of the site. Geotechnical investigation will be required prior to development.
Potable water supply	Significant issues (manageable)	<p>The site elevation varies from approximately 116m to 6m. The site location is outside the area that is currently serviced by DCC. However, the Brighton Reservoir is within the site location at an elevation of approximately 86m. This is fed by Southern WTP, elevation approximately 114m.</p> <p>The existing infrastructure is adequate to service a portion of the proposed development at lower elevations. The topography of the site suggests that an additional reservoir would be required to service higher elevation areas of the site (to the north of the site) up to an approximate elevation of 84m (therefore the RS220 site but no further). Booster pumps and pressure reducing valves would be required to service any areas at higher elevation than approximately 84m. Dunedin's water supply is fortunate in many areas to not require pumping. 3 Waters prefers gravity to pumping where possible due to lower operating and maintenance costs and supporting DCC's Zero Carbon policy. 3 Waters do not support servicing water supply for development above 84m elevation. It may be possible to consider development up to 84m pending further detailed analysis to investigate the feasibility of the proposed reservoir. Some major upstream network upgrades would be required in the future.</p> <p>At this stage the proposal is not supported from a water supply perspective. Further investigation and assessment is required.</p>
Wastewater supply	Significant issues (manageable)	<p>There is existing infrastructure within Scroggs Hill Road. Small extension required, however many areas of the site are at lower elevation to the adjacent road. For these areas, wastewater pumping may be required. 3 Waters prefers gravity to pumping where possible due to lower operating and maintenance costs and supporting DCC's Zero Carbon policy. While servicing by gravity would be possible for areas of the site with elevation similar to adjacent Scroggs Hill Road, 3 Waters do not support servicing for wastewater for areas of the site that would require pumping. Significant downstream network upgrades would also be required.</p> <p>At this stage the proposal is not supported from a wastewater servicing without an understanding of the balance of gravity and pumped reticulation. Further investigation and assessment is required.</p>

Stormwater management	Some issues (manageable)	<p>The proposed development's stormwater runoff contributes to overland flow path which flows down various valleys and gullies, eventually discharges over McIntosh Rd and finally into the river tributary before heading out to sea.</p> <p>The capacity of the gullies and channels are unknown therefore an attenuation assessment is required for the 100 year storm flows.</p> <p>Due to the large site area, onsite attenuation would be required.</p> <p>The campground downstream has had previous flooding issues.</p> <p>Provided the stormwater management rules in GF01 were applied to the whole proposed structure plan area the site may be considered developable, however 3 Waters have concerns over the affordability of the stormwater infrastructure.</p>
Transport effects (local)	Significant issues (not manageable)	<p>The site accesses Scroggs Hill Road which is a high risk rural road. The speed limit on this road is proposed to be reduced. Improvements will be required to Scroggs Hill Road, which may include increased signage and road markings, and potentially crash barriers, particularly at relevant intersections.</p> <p>(Updated 2022 comments): Rezoning GF01 to a residential zone would necessitate installation of urbanised transport infrastructure along Scroggs Road to link up with existing infrastructure at 50 Scroggs Hill Road. The speed limit on Scroggs Hill Road would need to be reduced. The site is located distant from public transport. Safety improvements may be required in the area. The southern extent of Scroggs Hill Road would require significant and substantial upgrades. The intersection with Brighton Road is also poorly aligned which makes the left turn in and right turn out movements extremely difficult, if not impossible. It is considered that with the additional development traffic that the intersection and hairpin curve would need to be improved. This would require substantial earthworks which have not been investigated at this stage. Further safety improvements need to be investigated on Seaview Road / McIntosh Road at the same time.</p>
Transport effects (wider network)	Some issues (manageable)	(Updated 2022 comments): Safety upgrades and improvements would need to be investigated. Likewise, intersection upgrades would need to be investigated (e.g. Scroggs Hill Road / Brighton Road intersection).
Compact city – proximity to existing residential areas	Significant issues	The site is located approximately 380m from existing residential zoned properties.
Compact city - ability to develop land efficiently	Poor	Estimated feasible capacity of proposed rezoning area is 45 – 55 dwellings under Large Lot Residential 1 zoning
Effects on	No issues	

Manawhenua values		
<p>Issues for:</p> <ul style="list-style-type: none"> • network utility operators • Southern District Health Board • Ministry for Education • FENZ 	No issues	
Other constraints on development (encumbrances, owner aspirations, appeals)	Some issues (manageable)	The site is subject to easements for right of way, right to convey telecommunications and computer media and convey electricity and transform electricity. These are not expected to significantly affect development of the site.