

**BEFORE THE COMMISSIONERS  
APPOINTED BY THE DUNEDIN CITY COUNCIL**

**IN THE MATTER**

of the Resource  
Management Act 1991 (the  
**Act**)

**AND**

Variation 2 to the Dunedin  
City Council Second  
Generation District Plan  
(**Variation 2**)

**BETWEEN**

**GTJM PROPERTY  
LIMITED**

**Submitter (OS263)**

**AND**

**DUNEDIN CITY COUNCIL**

**Territorial Authority**

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**SUBMISSIONS OF COUNSEL ON BEHALF OF GTJM PROPERTY  
LIMITED**

**DATED 17 AUGUST 2022**

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## SUBMISSIONS OF COUNSEL ON BEHALF OF GTJM PROPERTY LIMITED

May it please the Commissioners:

### INTRODUCTION

1. GTJM Property Limited (**GTJM**) owns the property at 336 and 336A Portobello Road. The site is zoned Rural Residential 2 in the Dunedin City Second-Generation District Plan (**2GP/ Plan**). The property is partially overlain with the North-West Peninsula Significant Natural Landscape (**SNL**) Overlay.
2. The lower part of the site (outside of the SNL) was identified for rezoning to Township and Settlement Zone through Variation 2. GTJM support the rezoning of the land, subject to the minor boundary realignments to ensure consistency between the new zone boundary and the SNL boundary.
3. The rezoned land was also proposed to be made subject to the NDMA overlay. GTJM seek that the overlay be removed because it is not necessary.

### *The site*

4. The site is a strip of north facing land 'sandwiched' between existing residential development on either side. Its location and orientation mean it can provide a number of sections that will ultimately provide high quality living environments for residents.
5. It is accessed from Weller Street, an existing legal road that exits on to the arterial road, Portobello Road. The existing Weller Street formation is currently in relatively poor condition with a number of deficiencies, including:
  - (a) Narrow width which prevents the likes of emergency vehicles or rubbish trucks accessing up it;
  - (b) No footpath, curb and channel etc;
  - (c) Poor surface standard.

- (d) Acute intersection angle with Portobello Road;
6. Weller Street currently provides access to 11 existing residential dwellings. This will soon be 12, when Joe and Gill complete construction of their new home and will ultimately increase to 20 if the rezoning is allowed and GTJM are able to proceed with their current concept plans.
  7. Due to the site's close proximity to Portobello Road, it is in close to public transport with bus stops near the end of Weller Street. It is also very close to the Harbour cycleway providing ample connection and opportunity for residents to employ alternative transport modes safely.
  8. The land has limited productive value due to a combination of size, constrained access (it is not possible for stock trucks to access the site for example) and its topography. The upper slopes contribute to maintaining the open character Peninsula (within the SNL overlay).
  9. The information provided by GTJM in evidence demonstrates that development of rezoned area in accordance with the Township and Settlement rules is feasible (in the short term), the site is infrastructure ready and likely to be developed. Therefore, the rezoning the site will contribute to the provision of housing capacity with Dunedin.

#### **Approach to assessing plan changes/variations**

10. *Long Bay-Okura Great Park Society Inc v North Shore City Council*<sup>1</sup> explains the proper approach to plan changes:

##### **A. General Requirements**

1. A district plan (change) should be designed to accord with<sup>2</sup>, and assist the territorial authority to carry out its functions<sup>3</sup> so as to achieve, the purpose of the Act.<sup>4</sup>

2. When preparing its district plan (change) the territorial authority must give effect to any national policy statement ...<sup>5</sup>

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<sup>1</sup> BC200869030, at [34].

<sup>2</sup> Resource Management Act 1991 (RMA), ss 74(1).

<sup>3</sup> RMA, s 31.

<sup>4</sup> RMA, ss 72 and 74(1).

<sup>5</sup> RMA, ss 75(3)(a) and (b).

3. When preparing its district plan (change) the territorial authority shall:

- (a) have regard to proposed regional policy statement;<sup>6</sup>
- (b) [give effect to] to any operative regional policy statement.<sup>7</sup>

...

11. The formal requirement that a district plan (change) must<sup>8</sup> also state its objectives, policies and the rules (if any) and may<sup>9</sup> state other matters.

...

#### **C. Policies and methods (including rules) [the section 32 test for policies and rules]**

9. The policies are to implement the objectives, and the rules (if any) are to implement the policies;<sup>10</sup>

10. Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives<sup>11</sup> of the district plan taking into account:

- (a) the benefits and costs of the proposed policies and methods (including rules); and
- (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.<sup>12</sup>

#### **D. Rules**

11. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.<sup>13</sup>

...

#### **The Dunedin City Council's (DCC) functions<sup>14</sup>**

12. The DCC's functions include *inter alia* the establishment, implementation, and review of objectives, policies, and methods to:

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<sup>6</sup> RMA, s 74(2).

<sup>7</sup> RMA, s 75(3).

<sup>8</sup> RMA, s 75(1).

<sup>9</sup> RMA, s 75(2).

<sup>10</sup> RMA, ss 75(1)(b) and (c).

<sup>11</sup> RMA, ss 32(1) and (2).

<sup>12</sup> RMA, s 32(2)(c).

<sup>13</sup> RMA, s 76(3).

<sup>14</sup> RMA, s 31.

- (a) *Achieve integrated management* of the effects of the use, development, or protection of land and associated natural and physical resources of the district; and
- (b) Ensure that there is *sufficient development capacity* in respect of housing and business land to meet the expected demands of the district.
- (c) Control effects of the use or development of land (including subdivision) for the purpose of:
  - (i) Avoidance or mitigation of natural hazards.

### **Plan change must give effect to NPSUD**

13. Providing sufficient development capacity has been identified as a matter of national significance through the NPSUD. Dunedin City Council is subject to the NPSUD as it as urban environments within its district. Dunedin is also identified as a Tier 2 local authority due to the size of the urban environments and the predicted demand for housing and business land<sup>15</sup>.
14. In providing for housing demand the 2GP must give effect to the NPSUD.<sup>16</sup> The first objective of the NPSUD is:
 

New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.
15. The introduction to chapter 12 of the 2GP mirrors this first objective.
16. The NPS requires all territorial authorities throughout the country to monitor and plan for urban growth. The faster growing an urban area is, the more directive the requirements.
17. Variation 2 is effectively a response to the housing capacity assessment<sup>17</sup> that identified a lack of capacity available in the city. The NPSUD has also since introduced the need to provide for a

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<sup>15</sup> NPSUD Appendix Table 2.

<sup>16</sup> RMA, s 75(3).

<sup>17</sup> Housing Capacity Assessment for Dunedin City, July 2021. Table 2.

'competitiveness margin' over and above the capacity required to meet identified demand<sup>18</sup>.

18. The strategic directions section of the Plan outline the objectives and policies that guide when and where urban expansion should occur, in what form, and give effect to the NPS-UD. The Chapter 12 provisions link back to these strategic priorities<sup>19</sup>. The strategic directions are based on the Dunedin Spatial Plan's goal of being a compact city with resilient townships based on sustainably managed urban expansion.<sup>20</sup>
19. It is submitted that it will tend to favour development within the existing urban fabric and/or located in close proximity to transport networks and other supporting infrastructure. The proposed site clearly satisfies those criteria.

**Partially Operative Otago Regional Policy Statement 2019 (POORPS 2019)**

20. The 2GP must give effect to the operative regional policy statement.<sup>21</sup>
21. The proposal is consistent with the POORPS 2019 in providing for:
  - (a) sustainable integrated management;
  - (b) the social and cultural wellbeing and health and safety of Otago's people and communities when undertaking subdivision;<sup>22</sup>
  - (c) protection and enhancement of Otago's significant and highly valued natural resources, in this case an SNL;<sup>23</sup>
  - (d) identification and appropriate management of natural hazards;<sup>24</sup>
  - (e) low impact design techniques in subdivision to reduce demand on stormwater, water and wastewater infrastructure;<sup>25</sup>

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<sup>18</sup> NPSUD at Clause 3.22. This requires an extra 20% over the short and medium term and 15% in the long term.

<sup>19</sup> 2GP at Objective 12.2.X and associated policies.

<sup>20</sup> 2GP at 12.1. Objective 2.2.4.

<sup>21</sup> RMA, s 75(3).

<sup>22</sup> Policy 1.1.2.

<sup>23</sup> Objective 3.2.

<sup>24</sup> Objective 4.1.

<sup>25</sup> Policy 4.5.4.

- (f) the value of the land proposed for subdivision comes from its potential for housing, and preserving the balance of the site to contribute to the SNL values;<sup>26</sup>
  - (g) by subdividing a north facing site the proposal has the potential enable development that can make the most passive solar gain enabling energy efficient development.<sup>27</sup>
22. The proposal will serve the policy direction of the POORPS 2019.

### **Proposed Otago Regional Policy Statement 2021 (PORPS 2021)**

23. Regard must be had to the proposed regionally policy statement.<sup>28</sup> The PORPS 2021 is currently awaiting a hearing and as such has not been tested by any independent decision makers.
24. Therefore, it must be considered, but it is submitted that relatively little weight should be afforded to it.
25. The POORPS 2019 implemented the NPSUDC 2017. The PORPS should encapsulate is the regional council's response to the NPSUD 2020. Given timing, it is submitted that this panel should give greater weight to the provisions of the NPSUD directly given the degree of uncertainty that exists regarding the PORPS2021.
26. Having said that, the direction of travel under the respective regional documents remains much the same – more housing capacity must be provided.
27. It is submitted that there is no fundamental shift in policy between the 2017 NPS and 2021 NPS or the 2019 RPS and 2021 Proposed RPS that requires would justify upweighting the proposed RPS.

### **Conclusions on the technical evidence**

28. The s 42A report raised potential issues with the proposed rezoning in relation to road safety, 3 Waters, and the SNL.

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<sup>26</sup> Policy 5.3.1(e).

<sup>27</sup> Method 9.1.2(b) and 9.1.5(c).

<sup>28</sup> RMA, s 74(2).

wish there would be an opportunity to obtain a water supply that provides a better level of service than they currently obtain.

39. For completeness, the Fluent report also address wastewater and proposes two new foul sewer gravity mains. The combined flow will discharge into the existing foul sewer manhole at the bottom of Weller Street. If required, up sizing the receiving pipeline and manhole will be undertaken to ensure that no pipe size reduction happens.
40. Accordingly, 3 Waters issues can all be addressed.

*Development will not adversely affect SNL values and may enhance them*

41. There were concerns that the development would affect SNL values.
42. GTJM support the realignment of the zone boundary with the new SNL boundary as discussed in the section 42A report. This removes some land from the proposed rezoning area and reduces the likely lot yield from 12 to 9.
43. Assuming the realignment is completed all of the area to be rezoned will be outside of the SNL. As discussed by Mr Morrison, it is intended to manage the balance land in accordance with the recommendations from Vivian and Espie, which would serve to maintain and enhance the SNL values.

### **Township and Settlement Provisions**

44. The site is consistent with the policy framework regarding Town and Settlement zoning, it will:<sup>29</sup>
  - (a) be reserved for residential activities<sup>30</sup>;
  - (b) provide high quality on-site amenity for residents<sup>31</sup>;
  - (c) maintain a good level of amenity on surrounding residential properties and public spaces<sup>32</sup>;

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<sup>29</sup> 15.1.1.7 and Policy 15.2.4.6.

<sup>30</sup> Objective 15.2.1.

<sup>31</sup> Objective 15.2.2.

<sup>32</sup> Objective 15.2.3.



- (d) enhance the amenity of the streetscape and reflect the intended future character of the neighbourhood;<sup>33</sup>
- (e) provide for development to occur without unreasonable earthworks or engineering; and
- (f) provide for quality housing.

### **The 2GP's rezoning provisions**

45. The *Long Bay* approach requires the rezoning to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives<sup>34</sup> of the plan.

### *Key Objectives and Policies*

46. Objective 2.6.1 of the 2GP is that there is a range of housing choices in Dunedin that provides for the community's needs and supports social well-being.
47. Policy 2.6.2.1 implements this objective and is the key policy for assessing the appropriateness of land for rezoning. It recognises the criteria for identifying appropriate areas. The site possesses most of the criteria<sup>35</sup> which determine whether the area is suitable for development:
- (a) It is suitable for the proposed subdivision and natural hazards are manageable.<sup>36</sup>
  - (b) Whilst being somewhat distance from the central city, it is reasonably close to the centres of Macandrew Bay and South Dunedin and is located along an arterial transport route.
  - (c) The site is serviced by public transport and the cycle network providing a range of transport options to residents.

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<sup>33</sup> Objective 15.2.4.

<sup>34</sup> RMA, ss 32(1) and (2) and *Long Bay*.

<sup>35</sup> Policy 2.6.2.1(c).

<sup>36</sup> As per Terramark's Report, authored by James Molloy.

- (d) The peninsula is the home to a range of recreational opportunities.
  - (e) The site is within an area of existing development, consistent with a compact and accessible city.
  - (f) The proposed rezoning area I is located outside of the SNL.
  - (g) Necessary infrastructure can be provided without long-term cost burden on the council.
  - (h) The proposed roading design would improve the functionality of the Weller Street intersection for both existing and new residents.
  - (i) There is no significant indigenous biodiversity on the site.
48. The proposal is consistent with the key rezoning requirements.

#### **Application of NDMA**

49. The first decision in relation to Variation 2 discusses the purpose of the NDMA. In particular it notes that:
- (a) The NDMA provisions were design for larger scale greenfield sites to ensure that they are developed in a way that better meets the objectives of the Plan.<sup>37</sup>
  - (b) The decision was made not to apply the NDMA to all land to be rezoned, particularly smaller-scale infill subdivisions, because it would make them overly complex.<sup>38</sup>
50. The NDMA was recommended in the section 42A report because there are residential dwellings immediately downslope of the proposed site that could be negatively impacted by poor or inadequate stormwater management.<sup>39</sup> With respect, this does not appear to align with the purpose of the NDMA provisions and it is submitted that the evidence provided by GTJM demonstrates that stormwater can be appropriately

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<sup>37</sup> Variation 2 First Decision Provisions and Intensification Rezoning Decision Report at [337]

<sup>38</sup> Ibid at [356]

<sup>39</sup> As per the s 42A report.

managed and will likely enhance stormwater management from the proposed site, relative to the status quo.

51. The proposal is consistent with the NDMA provisions and can be appropriately managed without the imposition of the overlay:
- (a) The proposal is consistent with a compact and accessible city and the design will allow for efficient public infrastructure.<sup>40</sup>
  - (b) Numerous roads and trails running across the peninsula provide public access and recreational opportunities.<sup>41</sup>
  - (c) The proposal is located outside the SNL and adjacent to existing residential development on neighbouring properties.<sup>42</sup>
  - (d) The site provides opportunity for houses to be designed with good solar access to living areas and outdoor living spaces.<sup>43</sup>
  - (e) The existing structures and amenity planting on adjacent properties will provide significant screening.<sup>44</sup>
  - (f) The site provides feasible capacity for 9 dwellings in GTJM's assessment.<sup>45</sup>
  - (g) There are no issues regarding electricity, telecommunications, or heritage values on the site.<sup>46</sup>
52. The Fluent Report and evidence of Mr Molloy provides an adequate evidential basis to demonstrate that the concerns regarding stormwater management do not require an extra layer of consideration via the NDMA provisions. The standard plan provisions relating to stormwater management provide sufficient scope to ensure the matter is addressed through the subdivision consent.

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<sup>40</sup> Objective 2.3.3, 2.7.1 and 12.2.X.

<sup>41</sup> Policy 12.2.X.1.

<sup>42</sup> Policy 12.2.X.2.

<sup>43</sup> Policy 12.2.X.3.

<sup>44</sup> Policy 12.2.X.4.

<sup>45</sup> Policy 12.2.X.5.

<sup>46</sup> Policies 12.2.X.6 and 12.2.X.7.

53. For that reason, it is not necessary to impose the overlay, and leaving it off better achieves the objectives of the NPSUD, and lower order documents, particularly as they relate to provisions of housing capacity.

**Matters Raised by Opposing Submitters/Further Submitters**

54. A number of existing residents of Weller Street, or land adjoining the proposed site have filed submissions in opposition. Many of the submissions have common aspects and generally raise concerns relating to:
- (a) Geotechnical matters.
  - (b) Stormwater management.
  - (c) Concerns about the need for infrastructure upgrades.
  - (d) Concerns about roading issues.
  - (e) Landscape matters.
  - (f) Requirement to limit the Lot numbers to 5.
55. Matters identified in (a) to (e) above have all been addressed by the information and evidence filed by GTJM and discussed earlier in these submissions.
56. In relation to the suggestion that the number of Lots allowable within the zoned area being limited to 5, I submit the following:
- (a) As discuss above the Council has an obligation to ensure that sufficient development capacity is available. This is required in order to give effect to the NPSUD. Therefore, it is submitted that an provision that seeks to limit the Lot yield beyond that anticipated by the chosen zone would need support from an alternative and more directive policy regime. In my view no such direction exists.
  - (b) The suggestion that lot numbers be limited appears to arise from concern about other technical matters such as Geotech and stormwater management. GTJM have provided expert evidence

that demonstrates that these issues can be appropriately addressed and therefore the need to limit the number of lots to something in the order of 50% of what the proposed zone anticipates is not justified.

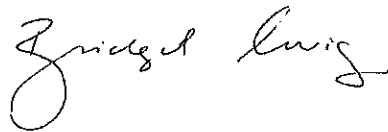
- (c) There is assessment guidance within the 2GP provisions that encourages subdivision to achieve lot sizes as close to the relevant zones minimum lot size as possible. This guidance will be in place to ensure that the capacity that is anticipated to be provided by a rezoned area is realised.
- (d) The evidence provided by GTJM clearly establishes that at least 9 Lots can be feasibly developed at this site. Limiting the Lot numbers to 5 as requested by submitters may well turn a feasible development in to one that is not feasible, particularly given the level of work required on the roading etc. To do this would undermine the ability for the Council to achieve the outcomes sought by the NPSUD and Variation 2.

### **Conclusion**

- 57. Rezoning this area from Rural Residential 2 to Township and Settlement is the most appropriate option because it is consistent with:
  - (a) the territorial authority's functions.
  - (b) The objective to provide a well-functioning urban environment, with sufficient development capacity to meet demand under the NPSUD.
  - (c) The location and characteristics of the site provides for housing capacity in a manner consistent with the strategic objectives of the 2GP.
  - (d) the policy direction of the POORPS 2019 and PORPS 2021.
- 58. All the issues raised by the s 42A report can be resolved and the benefits of rezoning outweigh the costs, with minimal risk.

59. The proposal does not need to be constrained by the NDMA overlay requirements in light of the evidence that all the matters that would be addressed by the overlay, can be.
60. GTJM submits that the most appropriate outcome is rezoning the site at 336 and 336A Portobello Road from Rural Residential 2 to Town and Settlement with no NDMA overlay.

Date: 17 August 2022

A handwritten signature in black ink, appearing to read "Bridget Irving". The signature is written in a cursive style with a large initial 'B'.

B Irving

Counsel for GTJM Property Limited