



**SECOND
GENERATION
DISTRICT PLAN**

**Variation 2
Additional Housing Capacity
Part 2b – 3 Waters Provisions**

**Reporting Officer's Opening
Statement**

Emily McEwan

8 December 2021

1.0 Introduction

1. My name is Emily McEwan, and I am employed by Dunedin City Council as a Policy Planner.
2. I am a co-reporting officer for this Variation 2 hearing alongside Mr Paul Freeland. I have provided evidence relating to all proposals being considered at this hearing except regarding the 'Wastewater Package' and the question of infrastructure funding (which Mr Freeland has addressed).
3. I have been heavily involved in the development of Variation 2 over the last two-and-a-half years, including the development of the proposals that are the subject of this hearing.
4. I have tabled printed copies of this statement, and a digital copy will be made available on the Variation 2 hearing webpage.

2.0 Key Points on Variation 2

2.1 Scope of changes

5. Variation 2 contains a range of proposals for changes to the 2GP that are relevant to residential activity. Each proposal has its own specific purpose, as set out in the 'purpose of proposal and scope of change' statements in the Section 32 Report and the supporting Summary of Changes document (February 2021).
6. Only submissions which fall within the ambit of these statements are 'on' Variation 2.
7. Most submissions which have been identified as outside the scope of Variation 2 have previously been reviewed by the Panel and struck out from further consideration in accordance with Section 41D of the RMA (on 31 May 2021). Any points previously struck out have not been addressed in my Section 42A Report and will not be considered as part of this hearing.
8. There are some submissions remaining, which the Panel has not previously reviewed, where the scope of the request is at issue and these have been addressed in the relevant parts of my Section 42A Report.
9. When considering matters of scope, I have applied the same approach used in my previous evidence¹ on out-of-scope submissions. This approach was informed by legal advice and has since been supported in the decision of Commissioner Paul Rogers on objections to the striking out of out-of-scope submissions² (26 November 2021).
10. I note that Aurora Energy Ltd have provided legal submissions on the matter of scope. However, I retain my position stated in the Section 42A report regarding their submission points which I consider to be out-of-scope. DCC will not be making further legal submissions on this matter but its legal counsel can be made available to answer any questions the Panel has.

2.2 Changes to be considered at this hearing

11. The proposals contained in Variation 2 have been split into four groups and only the third group will be considered at this hearing. This group contains all the changes identified in Table 1 of the Section 42A Report.
12. Substantive changes under consideration include:

¹ Out-of-Scope Submissions Report (16 April 2021)

² https://www.dunedin.govt.nz/_data/assets/pdf_file/0012/848397/Decision-on-Section-357-Objections-to-an-Out-of-Scope-Decision-of-the-Variation-2-Independent-Hearings-Panel.pdf

- Proposals which collectively restructure most Section 9 policies on public infrastructure for water supply, wastewater and stormwater, setting clearer outcome statements and providing for consideration of mitigation measures and unplanned extensions and upgrades to public infrastructure;
- Proposals which clarify and strengthen the existing approach to stormwater management to ensure the relevant objectives of the Plan are more effectively and efficiently achieved;
- A range of minor changes and improvements to various public infrastructure provisions.

13. Areas for greenfield rezoning will be considered at a fourth hearing next year.

2.3 Experts available

14. I have relied on the evidence of experts from the DCC 3 Waters team in making my recommendations to date. These experts (Mr Jared Oliver and Ms Jacinda Baker) will also provide a brief statement at the opening of the hearing and will be in attendance throughout the hearing.
15. Mr Tom Lucas, Director and Principal Advisor at Rationale Ltd, will be available during Wednesday morning should the Panel have any factual questions regarding infrastructure funding at DCC. Rationale Ltd provide advisory services to DCC regarding its development contributions policy.
16. Mr Michael Garbett, Partner, Anderson Lloyd, will be available on request during Thursday morning should the Panel have any legal questions regarding matters of scope.

2.4 Errors to note

17. I note one error for correction in the recommended amendments for Change F2-2 in the Section 42A Report. This is an error in Note 9.3.7.AAA (page 52). The recommended addition to clause (a) of this note refers to Rule 9.3.X. However, this should refer to Rule 9.3.7.AA (Stormwater for development).

2.5 Answers to pre-hearing questions

18. The Panel provided me with a list of questions ahead of the hearing, for which I (and my colleagues) provided written answers on Friday 3 December 2021. These are available in a separate document on the Variation 2 Hearing website³. I thank the Panel for the advance notice of these questions, and I can address my answers verbally as required.

3.0 The Section 42A Report

3.1 Key Matters Raised by Submitters

19. I draw the Panel's attention to the following key matters raised by submitters for consideration at this hearing:
- Concern regarding the funding and provision of 3 waters infrastructure to service growth, despite the 2GP not addressing infrastructure funding mechanisms or work programmes;
 - Concerns regarding the application of the new development mapped area (and associated stormwater management provisions) to land which was already zoned residential or identified in a Residential Transition Overlay Zone (RTZ) prior to Variation 2; and

³ https://www.dunedin.govt.nz/data/assets/pdf_file/0006/849507/Staff-responses-to-Panel-questions-for-Reporting-Officer.pdf

- Concerns regarding how stormwater should be managed outside identified large greenfield residential areas, with Otago Regional Council broadly seeking a more stringent approach than recommended and other submitters seeking an alternative method to that recommended.

20. To assist the Panel, I have provided a summary of the evidence lodged by submitters at **Appendix A**. This compares the recommendation made in the Section 42A Report with the submitter's position in evidence.

3.2 Key Recommendations

21. Key recommendations I have made include:

- That it is appropriate to apply the new development mapped area to existing residential zoned or RTZ land primarily because it clarifies and strengthens the existing approach to stormwater management. This will ensure the relevant objectives of the Plan will be more efficiently and effectively achieved;
- That the minimum requirements for stormwater management should differentiate between large greenfield areas and other areas, so as to not impose requirements that are too onerous or costly for smaller developments (while preserving the ability to request detailed assessments in appropriate circumstances);
- That the stormwater management provisions applying outside large greenfield areas refer to practice guidance outside the Plan, enabling DCC 3 Waters to develop guidance on the acceptable use of stormwater detention tanks (tailored to the Dunedin context).

4.0 Conclusion

22. Thank you to all who have submitted and who are coming to speak to their submissions.

23. I will keep an open mind to matters raised throughout the hearing and I am prepared to reconsider my recommendations in reply, as appropriate.

Appendix A – Comparison of s42A Recommendations with Submitter Evidence

Change ID	Recommendation in s42A	Submitter's Evidence
<i>Otago Regional Council – Ms Anita Dawe, Planning Evidence (ORC's technical evidence is not addressed below as it does not seek specific amendments)</i>		
Change F1-6 Change F2-2 Policy 2.2.5.2	Pages 41-42 Retain deletion of Policy 2.2.5.2, particularly as effects on groundwater are managed by the ORC through its own policies and plans.	Pages 13-15 Deletion of Policy 2.2.5.2 leaves a policy vacuum regarding water quality outside NDMA. Water quality is provided for in amended Objective 2.2.2. Retaining an amended policy is consistent with Clause 3.5(4) of NPS-FM. Policy 2.2.5.2 Enable and encourage <u>Only allow</u> on-site stormwater and wastewater management <u>outside of reticulated areas</u>, where this would <u>not endanger avoid, remedy or mitigate adverse effects (including cumulative effects) on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.</u> groundwater and is not in conflict with the efficient use of existing public, wastewater and stormwater infrastructure, through rules that provide for an alternative to connecting to public water supply, <u>wastewater and stormwater infrastructure.</u>
Change F2-3 Definition of Public Infrastructure	Pages 56-57 Remove the word “may” in terms of what the definition includes. Clarify that the definition applies to ORC managed SW drains and other infrastructure.	Pages 16-17 Agree to amendments recommended in s42A with further amendments to refer to land drainage schemes: <i>The public reticulated systems of pipes and associated accessory structures, and in the case of stormwater infrastructure <u>may include</u> drains, <u>flood management schemes, land drainage schemes</u> and open channels owned and managed by the DCC <u>or the Otago Regional Council</u>, that enable the management and distribution of stormwater, wastewater or water supply. This excludes any private stormwater, wastewater or water supply systems or structures; and</i>
Change F2-3 Policy 9.2.1.Z	Pages 57-58 Consequential changes as a result of amendment to definition of Public Infrastructure. Adds reference to “Otago Regional Council stormwater public infrastructure”.	Pages 17- Remove reference to ORC's public infrastructure as “stormwater” public infrastructure. Two options:

Change ID	Recommendation in s42A	Submitter's Evidence
		<p><i>For stormwater generated by the activity(or future development enabled by a subdivision) that will flow through a private, Otago Regional Council, or natural/informal stormwater system, or <u>Otago Regional Council stormwater public infrastructure</u> at any point, that stormwater system has the capacity to absorb the additional stormwater with no more than minor adverse effects on <u>it or on</u> other sites(public or private), including but not limited to, adverse effects from an increase in overland flow or ponding.</i></p> <p>(preferred by Ms Dawe); or</p> <p><i>For stormwater generated by the activity(or future development enabled by a subdivision) that will flow through a private, Otago Regional Council, or natural/informal stormwater system, or <u>Otago Regional Council stormwater flood protection schemes or land drainage public infrastructure</u> at any point, that stormwater system has the capacity to absorb the additional stormwater with no more than minor adverse effects on <u>it or on</u> other sites(public or private), including but not limited to, adverse effects from an increase in overland flow or ponding.</i></p> <p>(preferred by Dr Payan and Ms Mifflin)</p> <p>Any consequential changes required</p>
Change F2-2 Rule 9.9.X (clause 3)	Pages 67-73 Various amendments generally consistent with stormwater management provisions recently agreed to as part of mediation on some 2GP residential rezoning appeals, except: Outcome statements are not included and have instead been added to the relevant assessment rule (Rule 9.6.2.X):	Pages 19-20 The outcome focused statement agreed to in private development agreements for 2GP appeals is missing from Rule 9.9.X.3 and should be inserted into the rule to provide important contextual information for applicants and processing planners (in a way that aligns with 2GP style):

Change ID	Recommendation in s42A	Submitter's Evidence
	<p>Add a clause under the heading 'General assessment guidance' in assessment Rule 9.6.2.X as follows:</p> <p><i>X. In assessing the effectiveness and efficiency of stormwater management, Council will consider any consequential effects that might arise, including, but not limited to:</i></p> <ol style="list-style-type: none"> <i>1. effects on personal safety;</i> <i>2. risks from surface water flooding ;</i> <i>3. risks from property inundation; and</i> <i>4. risks to the ability of Council to meet its consent conditions for public infrastructure, which could lead to effects on aquatic ecology.</i> 	<p><i>The stormwater management plan must ensure that stormwater will be managed in a way that, both within the mapped area and the wider catchment, and for both the current climatic conditions and climate conditions based on climate change predictions:</i></p> <ol style="list-style-type: none"> <i>i. Ensures personal safety;</i> <i>ii. Minimises the risk of surface water flooding to acceptable levels;</i> <i>iii. Protects public and private property from inundation; and</i> <p><i>Minimises adverse effects to the environment, including aquatic ecology, from stormwater runoff.</i></p>
<p>Change F2-3 Rule 9.9.X (clauses 2 & 4)</p>	<p>Page 67-73</p> <p>For outside an NDMA, provide a less onerous information requirement in Rule 9.9.X supported by guidance that sits outside the Plan on acceptable solutions (that DCC 3 Waters can develop).</p>	<p>Page 20</p> <p>Seek application of the same SWMP requirements outside an NDMA as within an NDMA as consider there is significant risk that additional development outside the identified areas could be undertaken without the same integrity for stormwater management. This could result in adverse effects, including on ORC infrastructure, flood risk and water quality.</p> <p>Flexibility should be built into which elements of the stormwater management plan apply, rather than the requirement for a plan.</p>
<p>Change F2-2 Rule 9.6.2.X SW assess. in NDMA</p>	<p>Pages 46, 53</p> <p>Consequential changes to reflect recommended amendments to policies paraphrased in the rule.</p> <p>New guidance in response to ORC:</p> <p><u>X. In assessing the effectiveness and efficiency of stormwater management, Council will consider any consequential effects that might arise, including, but not limited to:</u></p> <ol style="list-style-type: none"> <u>1. effects on personal safety;</u> <u>2. risks from surface water flooding ;</u> <u>3. risks from property inundation; and</u> <u>4. risks to the ability of Council to meet its consent conditions for public infrastructure, which could lead to effects on aquatic ecology.</u> 	<p>Page 21</p> <p>Regarding the proposed general assessment guidance: Amend point 3 to make clear the intent: 3. Risks from property inundation <u>to property from inundation</u></p> <p>Amend point 4 to broaden the consideration: 4. Risks to the ability of Council to meet its consent conditions for public infrastructure, which could lead to effects on aquatic ecology <u>freshwater quality and ecosystem health.</u></p> <p>Add point 5 for the benefit of ORC infrastructure: <u>5. Risks to the integrity and function of existing public infrastructure.</u></p>

Change ID	Recommendation in s42A	Submitter's Evidence
Various	Various	Agrees with recommendations unless otherwise stated.
<i>Aurora Energy Ltd, Ms Joanne Dowd, Planning Evidence</i>		
Change F1-1 Rule 9.3.7	Page 90 The requested amendments are beyond the scope of the purpose of the change. Not recommended for future consideration as changes unnecessary.	Pages 3-7 Requests an amendment to require easements associated with the electricity network (and telecommunication network) to be granted in favour of the relevant network owner. Reasons include that the point of supply (POS), as defined in relevant legislation, means that the POS may be located on private property in some instances (rear lot accessed by ROW). Aurora cannot maintain its infrastructure on private property unless it has an easement in its favour (an easement between the two landowners does not provide for this).
Change F1-1 Note 9.3.7.XA	Page 90 The requested amendments are beyond the scope of the purpose of the change. Not recommended for future consideration as changes unnecessary.	Pages 7-8 Requests the inclusion of an advice note to provide information to plan readers about connections to Aurora Energy's electricity distribution network. It regards the information that may need to be provided to Aurora Energy when ownership of works will effectively be taken over by Aurora.
Change F1-3 Policy 9.2.1.3	Page 92-93 Amend Policy 9.2.1.3 so it does not refer to connections to the National Grid.	Page 2 Supports the recommended amendment to Policy 9.2.1.3 (in response to S217.002 and S217.006).
<i>FENZ, Mr Scott Lanauze, Statement by Email</i>		
Change F1-5 Rule 9.3.3	Pages 95-96 Retain Change F1-5 as notified. Request that FENZ confirm if their position is that the rule is largely consistent with the Code as it stands.	No additional amendments are required in answer to the submission from Dunedin City Council (S187.021) as the [rule] is largely consistent with the [SNZ/PAS 4509:2008 New Zealand Fire Service Firefighting Water Supplies Code of Practice] as it stands.
<i>Spark NZ & Vodafone NZ, Mr Graeme McCarrison and Mr Colin Clune, Statement</i>		
Change F1-1 Rule 9.3.7	Page 90 The request is beyond the purpose of this change. Removal of 'Ultra Fast Broadband' is not required because the rule only requires connections "where available".	Remove reference to UltraFast Broadband from the service connections performance standard. To pursue these matters separately to Variation 2.
Change F1-3 Rule 9.5.3.12	Page 92-93 The submission is not within the scope of Change F1-3.	Add sentence to Policy 9.2.1.3 on telecommunications infrastructure connections. To pursue these matters separately to Variation 2.
<i>Various Submitters, Ms Emma Peters, Mr Mark Geddes, Mr Kurt Bowen, Late Statement of Evidence</i>		
Changes NDMA02-15 Change F2-2	Pages 114-116 Retain the NDMA over existing residential zoned areas as notified.	Para. 5-9 No need for NDMA over these areas given their status as existing residential zones. Should be 'infrastructure ready'. Imposing additional restrictions will impede development.

Change ID	Recommendation in s42A	Submitter's Evidence
F2-Alt2 Infill & Intensification Change IN07 Change F2-3	Pages 61-64 Do not include a performance standard but amend Change F2-3 and Rule 9.9.X to enable stormwater practice guidance to be developed outside the Plan and relied on in future.	Para. 10-16 Apply infrastructure constraint mapped areas to the necessary areas and include performance standards for development regarding attenuation design and/or use of standard size detention tank. Areas of known constraints only, so DCC 3 Waters would need to complete modelling. No other SW management requirements would apply in the mapped areas. The Variation 2 proposed infrastructure provisions should only take effect in areas being developed to a higher density than the existing density limits.
Change F2-2 NDMA SW management	Page 14-18 Infrastructure funding mechanisms sit outside the Plan. A note to plan user is recommended to provide clarity on how funding mechanisms work. Page 67-73 Recommended amendments to Rule 9.9.X generally consistent with those recently agreed to as part of mediation on some 2GP rezoning appeals.	Para. 17-24 The NDMA method is appropriate for regulating provision of infrastructure, where the greenfield site is rezoned pursuant to Variation 2. However, the experts seek: <ul style="list-style-type: none"> - In addition to the recommended advice notes on funding, notes on the compulsory acquisition of land or easements where the development of zoned land is being frustrated by a landowner who will not agree to a SWMP for the whole NDMA. - A mechanism for fair distribution of costs is also required where there is multiple land ownership in an NDMA. A claw back provision is proposed [similar to the CODC financial contributions clauses the Panel referred to in their pre-hearing questions for the reporting officer]. - For SWMP, inclusion of the matters listed in Appendix 2 to the evidence, based on the 2GP appeal mediation process.
Change F2-6 3 Waters connect to adjacent land	Pages 30-31 It is inappropriate to include funding mechanisms for infrastructure as part of the Plan. Page 16 DCC can charge development contributions for projects in the development contributions policy. DCC can also use private development agreements.	Para. 25-26 Submitters are not opposed in principle but need either: <ul style="list-style-type: none"> - A corresponding discount in DCs payable; or - DCC pays for the increase in capacity and claws back the cost as the adjoining area is developed [similar to the CODC provision referred to earlier].