

## Michaela Groenewegen

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**From:** darryl@terramark.co.nz  
**Sent:** Monday, 8 March 2021 11:00 a.m.  
**To:** District Plan Submissions  
**Subject:** Variation 2 submission

**Follow Up Flag:** Follow up  
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### Submission Form Submitted

**Reference number** 808905

**Submitter name**  
Darryl Sycamore

**Organisation**  
Terramark Limited

**Contact person/agent**

**Postal address**  
PO Box 235 Dunedin 9054

**Email**  
darryl@terramark.co.nz

**Contact phone number**  
034774783

**I could gain an advantage in trade competition through this submission**  
No

**If you could gain an advantage in trade competition through this submission please select an answer**

**Variation 2 change ID**

**Provision name and number, or address and map layer name**

**My submission seeks the following decision from the Council**  
Multiple submission points/decisions outlined below

**Details**

**Reasons for my views**

**Supporting documents** (file name/s)  
No file uploaded

**Do you wish to speak in support of your submission at a hearing**  
Yes

## **SUBMISSION ON VARIATION 2 OF THE SECOND GENERATION DISTRICT PLAN**

### **1. INTRODUCTION**

- 1.1 Terramark welcomes the opportunity to submit to the Variation 2 of the 2GP.
- 1.2 Terramark is a proud Otago-based business that has helped shape the City since the early 1980's.
- 1.3 We support the intent of Council with respect to increasing housing supply, including an increase of density provisions to support a more compact and resilient City.
- 1.4 Terramark retains an interest in the entire plan on the basis that each provision does not operate in isolation, where relief in one provision may create implications to another.

### **2.0 SCOPE**

- 2.1 Terramark considers the Council has erred in their approach to assessing land for new residential areas for rezoning. The primary purpose of Variation 2 is to enable Dunedin City Council to meet its residential capacity obligations under the NPS-UD. 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.
- 2.2 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 selective approach, 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.<sup>1</sup>*

- 2.3 Whilst we endorse Council's approach 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 nor the NPS-UD. In this regard, the section 32 report, which assesses only the parcels that have been selectively identified, is considered to be incomplete.
- 2.4 To elaborate, the Resource Management Act 1991 (RMA) sets out the requirements for preparation of a section 32 report (underlined text is author's emphasis)-

*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*

<sup>1</sup> [https://www.dunedin.govt.nz/data/assets/pdf\\_file/0007/806182/Variation-2-General-Public-Fact-Sheet.pdf](https://www.dunedin.govt.nz/data/assets/pdf_file/0007/806182/Variation-2-General-Public-Fact-Sheet.pdf)



- (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.*

2.5 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. This has not been done.

2.6 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.*

2.7 It is Terramark's view 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. Accordingly, it is our 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).

2.8 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)*

2.9 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.

- 2.10 We consider a further s32 evaluation process is required. This should be undertaken as required under s32AA, with a view to assessing the suitability of those sites that other submitters have raised that were not initially assessed. This will allow a proper assessment of land available to contribute to the City's residential capacity.

### **3.0 SPECIFIC RELIEF**

#### **3.1 Infrastructure**

We oppose the imposition of network upgrades as a condition of development.

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.

Relief Sought:

1. That Council upgrade the network to enable the proposed development permitted under Variation 2, and
2. That infrastructural upgrades are funded by either development contributions and rates, and
3. That network upgrades are not a condition of development.

#### **3.2 Rule 15.4.X The Permitted Baseline**

Rule 15.4.X seeks to remove the permitted baseline assessment from Council's consideration of stormwater matters. We accept the permitted baseline is a matter of discretion on a case by case basis, however it provides a useful and clear indication as to the effects arising from a permitted activity which has undergone a Schedule 1 process which are deemed to be an acceptable imposition on the environment and surrounding landholders. It is assumed the effects arising from a permitted activity are less than minor on the receiving environment.

Discounting the permitted baseline is a cynical attempt to dismiss any weight in favour of a development, which seeks to construct a rule in a lower-level regulation to override that of a higher-level regulation. Recent consent decisions held by an independent commissioner has 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).

Relief Sought:

1. That this provision be rejected.

#### **3.3 New Development Mapped Area (NDMA) overlay**

Some sites have been identified as greenfields development sites, within which new residential activities are proposed to take place by virtue of the rezoning. These sites are also subject to a New Development Mapped Area (NDMA) overlay provision which includes greater infrastructure controls.

Terramark considers it is inappropriate to impose new NDMA/infrastructure controls onto a property where these controls might negatively affect development and subdivision activities. This approach is inconsistent with the intent of Variation 2, specifically to enable additional housing supply.

There also 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.

Relief Sought

1. That Council develop at their cost a full understanding of the infrastructural model and constraints, and
2. That the NDMA area is nuanced to reflect the full understanding of infrastructural capacity rather than ad hoc and precautionary.

3.4 Policy 9.2.1.1A

This policy seeks to impose wastewater requirements on land within wastewater service areas. Again, if the network infrastructure is not adequate to support development in accordance with the zone density, the submitter considers that it is Council's responsibility to resolve this either prior to development occurring or in conjunction with the developer.

Relief Sought

1. That the policy is deleted.

3.5 Policy 9.2.1.Z

This policy requires development that contravenes the impermeable surfaces rules to demonstrate that the effects of stormwater will be no more than minor. Terramark seeks to clarify that subdivision and land use only triggers the policy when they propose to breach the impermeable surfaces rules.

The policy appears to read this way; however, an alternative interpretation might be that the policy applies to multi-unit development, supported living facilities, and subdivision all in general, and only to development that breaches the impermeable surfaces rules. In addition, all stormwater flows off the site will end up as a discharge to the sea or harbour, which if the second part of the policy is read literally, would always trigger the need for an assessment under this part. The submitter does not believe that this is the actual intent of the policy.

Relief sought

1. That the policy is reworded to remove any ambiguity.

3.6 Policy 9.2.1.Y

This policy requires all subdivision in a new NDMA area to install an on-site stormwater management system. Terramark has several concerns about this policy. Primarily, there are some fundamental differences between the types of NDMA areas and complex on-site stormwater management systems should only be required where

- i) the land in question is a new greenfields site, and
- ii) Council's stormwater modelling can clearly show that development of the site (without stormwater controls) is likely to lead to unacceptable adverse effects downstream.

Where proposed NDMA regions occur that do not meet both the above criteria, the requirement for stormwater infrastructure should be removed.

Relief sought

1. Re-write this policy to relate only to those sites where both criteria are met.

3.7 Service connections onsite

Variation 2 proposes new rules relating to service connections on subdivision sites. These provisions are contained in Rule 9.3.7, and particularly Rules 9.3.7.X, 9.3.7.Y, 9.3.7.Z and 9.3.7.AA.

There is insufficient allowance within these service connection provisions for viable alternative supply options. Several examples include:

- Telecommunications using 'off-the-grid' sources (cell phone, radio link, satellite link, etc.).
- Electricity using 'off-the-grid' sources (wind, solar, generator, etc.).

- Water supply by rooftop collection in areas that cannot be efficiently serviced from a reticulated source.
- Foul drainage via septic tank (or secondary-treatment septic tank) in areas that cannot be efficiently serviced from a reticulated sewage system.
- Stormwater to ground in areas where there are subsurface gravel layers that can accommodate site discharge flows.

There are likely to be a number of other forms of alternative solution as well, which are just as capable of providing acceptable servicing outcomes.

Relief sought

1. That the inclusion within Rule 9.3.7 of suitable alternative servicing arrangements, where these are recognised as being acceptable (certainly all of the examples above, plus other forms of servicing that may be appropriate). Some of these options may require the applicant to demonstrate that the alternative solution will achieve a particular standard. Furthermore, it should be recognised that a number of these alternative solutions are better implemented at the time of building (rather than the time of subdivision). Accordingly, the inclusion of a provision that recognises the use of a consent notice to require installation of service connections as part of the building process is also sought by the submitter.

### 3.8 Transportation Provisions

Variation 2 proposes several new transportation policies and rule adjustments. Terramark is concerned about Policy 6.2.3.Y and Rules 6.11.2.7 and 6.11.2.8. There is no justification by Council to impose the expectation that any private access serving more than 12 sites should be designed and vested as a legal road.

Terramark considers that private access serving an unlimited number of sites is entirely reasonable, and that a legal road should only be required when the other assessment matters trigger this (e.g., for reasons of network connectivity and/or safe and efficient operation of the transport network).

There are likely to be many situations in which it will be difficult for Council to impose these proposed rules, a common example being infill subdivision that occurs along existing private accessways. The allowance in the rules for '...unless the location or design of the subdivision lacks certainty as there is no guidance as to how Council's discretion in this regard will be applied.

Should a developer construct a private road for a development, and purchasers choose to buy sites on that basis, this would seem like a perfectly reasonable outcome (and with no risk to Council).

Relief Sought

1. That the transportation provisions are drafted such that they enable (where the outcome will result in a safe and efficient development) are that the Council's discretion is clearly understood rather than on an ad hoc basis.

**For Terramark Ltd**



Darryl Sycamore  
Resource Management Planner