

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHU**

ENV-2023-CHC-

Under	The Resource Management Act 1991 (the Act)
In the Matter	of an appeal pursuant to Clause 14 of Schedule 1 of the Act on the Dunedin City Council Second Generation District Plan (2GP) – Variation 2
Between	K & L Accommodation Limited Appellant
And	DUNEDIN CITY COUNCIL Respondent

NOTICE OF APPEAL ON BEHALF OF K & L ACCOMODATION LIMITED

13 MARCH 2023



GALLAWAY COOK ALLAN LAWYERS

Phil Page / Simon Peirce

phil.page@gallowaycookallan.co.nz

simon.peirce@gallowaycookallan.co.nz

PO Box 143

Dunedin 9054

Ph: +64 (3) 477 7312

Fax: (03) 477 5564

NOTICE OF APPEAL ON BEHALF OF K & L ACCOMODATION LIMITED

To: The Registrar, Environment Court

And to: Dunedin City Council

And to: Submitters on the Original Submission

1. K & L Accomodation Limited (**K&L**), appeals a decision of the Dunedin City Council Variation 2 to the 2GP (**Variation 2**)
2. K&L made a submission on Variation 2 (S202) (**Original Submission**).¹
3. K&L is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. K&L received notice of decisions on Variation 2 on 8 February 2023
5. The decision was made by Dunedin City Council.
6. The decision K&L is appealing is Variation 2 Hearing Panels Report section 2.3.14.2.1 which refused to rezone property at 3 Brick Hill Road and 18 Noyna Road (**Site**) to Township and Settlement zone or an appropriate transitional zone (**Decision**).
7. The Site is legally described as Lot 1 DP 7186 and Lot 2 DP 1759 comprised in Record of Title OT352/52 and Lot 2 DP 7186 comprised in Record of Title OT352/50.
8. The reasons for this appeal are:
 - 8.1 The Site comprises approximately half of an isolated rural zone which is otherwise surrounded by residential zoning. The Site

¹ The Original Submission is incorrectly referenced as K and L Accommodation (minor spelling difference) on the DCC Summary of Decisions Requested. For the avoidance of doubt, the Appellant succeeds that submission.

does not contain highly productive land and is close in proximity to key amenities and services and is a logical extension of the existing Sawyers Bay suburb.

- 8.2 The Decision fails to place appropriate weight on the ability to provide additional medium-term greenfield housing development capacity.
- 8.3 The Decision does not give effect to the purpose of Variation 2 which is to enable Dunedin City Council to meet its residential capacity obligations under the National Policy Statement on Urban Development (2020) (Updated May 2022) (**NPSUD**). As a result, the Decision unreasonably limits the extent to which Variation 2 can give effect to the NPSUD.
- 8.4 The Decision does not provide adequate housing choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations.
- 8.5 The decision gave insufficient weight on market demand, particularly with respect to demand for new development capacity in the Sawyers Bay area.
- 8.6 The Decision placed too much weight on the lead-in time for provision of 3Water services to the Site which is a common and expected occurrence in Dunedin City to the detriment of other factors which favoured granting the rezoning, including proximity to amenities, adequate provision for stormwater management and transportation. Accordingly, the Decision:
 - (a) Failed to observe other remedies for wastewater management and places insufficient weight on alternative funding sources (including from the Appellant) to enable service connections; and

- (b) Placed too much weight on water supply constraints with upgrades to provide services expected within 5-8 years; and
- (c) Placed insufficient weight on the application of a Residential Transitional Overlay Zone as a method of indicating appropriate locations for residential development once sufficient wastewater services have been provided.

8.7 The Decision failed to observe that an acceptable solution addressing reverse sensitivity had been reached with Port Otago who operates an industrial activity on the adjoining property.

8.8 Insufficient weight was given to the Parks and Recreation Services (**PARS**) in support of rezoning, subject to a condition (supported by the Appellant) for a public connection through the Site.

8.9 The Decision fails to achieve sustainable management.

9. K&L seek the following relief:

9.1 Overturn the Decision and accept the Appellant's Original Submission,

9.2 Rezone the Site Township and Settlement zone,

9.3 As an alternative form of relief, apply a residential transitional overlay to the site

9.4 Any further, other or consequential relief to give effect to the outcomes sought and reasons raised by the Original Submission and this Notice of Appeal.

10. The following documents are enclosed with this notice:

10.1 A copy of the Original Submission;

10.2 A copy of the Decision (extract of section 2.3.14.2.1 only).

10.3 A list of names and addresses of persons to be served with a copy of this notice.



Phil Page / Simon Peirce

Solicitor for the Appellant

Dated 13 March 2023

Address for service

for Appellant: Gallaway Cook Allan
Lawyers
123 Vogel Street
P O Box 143
Dunedin 9054

Telephone: (03) 477 7312

Fax: (03) 477 5564

Contact Person Phil Page / Simon Peirce

Email Phil.Page@gallawaycookallan.co.nz /
Simon.Peirce@gallawaycookallan.co.nz

Advice to Recipients of Copy of Notice

How to Become a Party to Proceedings

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court, and serve copies on the other parties, within 15 working days after the period for lodging a notice of appeal ends. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to Obtain Copies of Documents Relating to Appeal

The copy of this notice served on you does not attach a copy of the relevant decision. These documents may be obtained, on request, from the Appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.

List of names of persons to be served with this notice

Name	Address	Email Address
Port Otago Limited	15 Beach Street Port Chalmers	rmcgrother@portotago.co.nz
Elizabeth McColl	28 Noyna Rd Sawyers Bay	liz@simplyfamilies.co.nz
Debbie and Aaron Jowsey and Ward	20 Noyna Road Sawyers Bay	Debbie.Jowsey@stantec.com
Dunedin City Council	PO Box 5045 Dunedin 9054	2gpappeals@dcc.govt.nz

summer periods and significant upstream upgrades are required to resolve this, with an expected timeframe of 5-8 years.

- 1427. The section 42A report noted that if the land is rezoned that stormwater would need to be managed in accordance with the new development mapped area requirements.
- 1428. In their response to Mr Rutherford's request for Large Lot Residential zoning with self-servicing, DCC 3 Waters commented that while they would not support this at Township and Settlement density, they could support it at a Large Lot Residential density.
- 1429. Regarding stormwater, DCC 3 Waters noted there would need to be requirements added to require an attenuation assessment for 100-year storm flows at the time of subdivision.

2.3.14.1.5 Reporting Officer's recommendation

- 1430. Mr Morrissey noted that rezoning the site is generally consistent with the criteria in Policy 2.6.2.1, however the significant issues with respect to the wastewater network means that he did not consider enabling further residential zoning in Sawyers Bay appropriate. Until the wastewater issues can be resolved, he recommended that rezoning RS170 is rejected.
- 1431. In his Reply, he responded to *Mr Rutherford's* Large Lot Residential proposal, and considered that this would not be an efficient use of the land, and would be likely to prevent denser zoning in the future once the 3 waters constraints in the area are resolved.

2.3.14.1.6 Decision and reasons

- 1432. We reject the submission from *Andrew Rutherford (S71.001)* seeking residential zoning for RS170. We accept the evidence of Mr Morrissey that, while generally consistent with Policy 2.6.2.1, there are significant 3 waters servicing issues for this site that are not anticipated to be resolved in a suitable timeframe to support rezoning. We also note Ms Christma's evidence that enabling Large Lot Residential zoning ahead of resolving the significant 3 waters servicing constraints is not a valid approach under Policy 2.2.4.1, which directs that efficient use of land is to be prioritised.
- 1433. We note our comments earlier in this decision (see section 2.1.4), in relation to Policy 2.2.4.1, on the efficient use of land, and our overall reasons for rejecting Large Lot zoning as a 'temporary' zoning until infrastructure upgrades are complete. We consider it is more appropriate to wait until those upgrades have been undertaken and then reassess locations such as these if and when further urban expansion is being contemplated.
- 1434. We have also considered the possibility of a Residential Transition Overlay Zone (RTZ), to delay development of the land until the upgrades are complete. However, we are cognisant of evidence provided in relation to the nearby site RS171 (see section 2.3.14.2) that wastewater upgrades in this area are unplanned and may take many years to eventuate. We also accept the evidence from Mr Stocker is there is no long-term capacity shortfall so there is no real urgency or necessity to make provision here for RTZ at this stage.

2.3.14.2 3 Brick Hill Road & 18 Noyna Road, Sawyers Bay (RS171)

- 1435. This section addresses the submissions covered in section 5.4.14 of the section 42A report.
- 1436. RS171 is located adjacent to Sir John Thorn Drive (State Highway 88) on the south-eastern side of Sawyers Bay, West Harbour. The 3.4ha site is zoned Rural Hill Slopes and is

surrounded by Township and Settlement, Rural, Industrial, and Rural Residential 1 zoning. The adjacent industrial zoning is occupied by Port Otago Limited and consists mainly of two large warehouse buildings.

1437. The section 42A report states that the site was originally rejected as part of the screening of sites for Variation 2 as its development would exacerbate downstream wastewater overflows.

2.3.14.2.1 Submissions received

1438. *K and L Accommodation Limited (S202.001)*, the landowners, submitted to rezone 3 Brick Hill Road and 18 Noyna Road to Township and Settlement zoning.
1439. *Port Otago Ltd (FS198.1)* opposed the submission due to concerns about reverse sensitivity effects on the adjoining industrial zoned land they occupy, particularly in relation to noise and lighting emissions from their operation which are likely to lead to complaints if the land is developed for residential activity. Port Otago noted that the land is unsuitable for rezoning due to lack of wastewater capacity. It also commented that 18 Noyna Road is identified as a HAIL site associated with the former tannery land use in this location, similar to land to the north of the Sawyers Bay warehouse site, which is subject to a consent notice preventing any residential use.
1440. *Elizabeth McColl (FS86.1)* opposed the submission seeking rezoning as she considered that the effects of rezoning would be more than minor and opposed the suggestion that infrastructure upgrade costs should be carried by ratepayers. *Ms McColl* also noted that stormwater currently flows from sloping terrain in the area and ponds on neighbouring property and at the entrance to 18 Noyna Road. *Ms McColl* noted concern about additional traffic on Noyna Road, a single lane road that services seven other properties, and the impact of this on safety of the intersection of Noyna Road with State Highway 88.
1441. *Debbie and Aaron Jowsey and Ward (FS73.1)* opposed the submission and raised concerns in relation to traffic on Noyna Road, appropriate management of stormwater and the need for the developer to be responsible for infrastructure upgrades. They also noted that the site may contain contaminated land and are concerned about possible stability issues on 20 Noyna Road. They were concerned that building heights and light pollution will affect their residential amenity and views, and that the development might displace native birds from the area.

2.3.14.2.2 Submitter's response to the section 42A report

1442. In his evidence on behalf of *K and L Accommodation Limited*, Mr Sycamore attended the hearing and provided a concept plan for the site. That showed development of 34 lots along with an area for stormwater attenuation, immediately adjacent to the Port Otago facility. Access would be via Brick Hill Road with a pedestrian linkage through to Noyna Road. Having reviewed the concerns outlined in the section 42A report, Mr Sycamore suggested application of a Residential Transition Overlay Zone to the site, rather than immediate rezoning, because it would allow the site to transition to residential zoning once infrastructure constraints for the site are resolved.

2.3.14.2.3 Hazards

1443. A report by Stantec provided as part of the section 42A report noted that it had assessed the site in late 2020 as having low level hazards associated with alluvial materials on the site,

and with flood hazard/stormwater flow. Stantec commented that active alluvial materials are typically mitigated with engineering design, and this is typically a building control issue that is not a limiting factor for subdivision. Stantec also noted that some stormwater design and management may be required to develop the site. However, overall, it advised that typical engineering design can be applied to the proposed area with some consideration to stormwater flow paths.

2.3.14.2.4 Landscape and biodiversity

- 1444. Mr McKinlay assessed the site and commented that rezoning would have moderate– high adverse visual amenity effects on existing residents within the rural residential area, and from nearby sections of Brick Hill Road. He considered that the effects on wider rural character values would be limited. Mr McKinlay considered that, if rezoning were to proceed, consideration should be given to retaining the poplar shelterbelt along the southern boundary of the site as a form of visual mitigation.
- 1445. The section 42A report stated that no indigenous biodiversity values were identified on the site.

2.3.14.2.5 Transport

- 1446. Mr Watson, DCC Transport, noted that Noyna Road would need to be upgraded to the standards set out in the Dunedin Code of Subdivision 2010 if used for access, including a footpath extension. Waka Kotahi would need to be consulted in relation to the intersection with the state highway. Brick Hill Road joins Stevenson Avenue over a narrow bridge and there is no footpath on Stevenson Avenue east of the bridge. If rezoned, the developer would need to extend the footpath. DCC Transport also noted that traffic distribution from the development would require careful consideration as both Brick Hill Road and Blanket Bay Road are narrow and winding roads. Overall, DCC Transport considered that an Integrated Transport Assessment is required to assess the proposed rezoning further.
- 1447. DCC Parks and Recreation department considered that if the site was rezoned, a connection from Noyna Road through to Brick Hill Road should be part of the subdivision design.
- 1448. In his planning evidence on behalf of *K and L Accommodation Limited*, Mr Sycamore noted that the development is proposed to be accessed via Brick Hill Road and a concept plan was provided demonstrating this. This concept plan includes a pedestrian link from the subdivision through to Noyna Road.
- 1449. On behalf of *K and L Accommodation Limited*, Mr Logan Copland of Abley Limited, considered that the site is appropriate for Township and Settlement zoning from a transportation perspective, however several improvement works to the existing transport network are likely to be required. Mr Copland noted there is a narrow bridge located adjacent to the site on Brick Hill Road, and proposed three possible options to deal with this issue with the preferred option being to retain the bridge at its current width and construct a separate pedestrian facility. Mr Copland considered that application of a Residential Transition Overlay Zone was an appropriate mechanism to ensure delivery of the required infrastructure prior to any development occurring.
- 1450. In his response to submitter evidence, Mr Watson said he broadly agreed with Mr Copland, other than his recommended transport option regarding the bridge upgrade. An Integrated Transport Assessment would be required as part of a future subdivision application. Overall,

Mr Watson considered that application of a Residential Transition Overlay Zone would be appropriate from a transportation perspective.

2.3.14.2.6 3 waters

1451. Mr Oliver and Mr Saunders, DCC 3 Waters, advised that in relation to wastewater there are currently overflows at the downstream Sawyers Bay wastewater pumping station in wet weather, with consequent environmental effects. Significant downstream wastewater upgrades are likely to be required which could take many years to resolve. The local potable water supply infrastructure is adequate to service the site, however the supply is constrained during peak summer periods and significant upstream upgrades are required, with an expected timeframe of 5-8 years. Stormwater would need to be managed in accordance with the new development mapped area requirements and, while this should be possible, they had concerns about the affordability of this.
1452. Mr Sycamore acknowledged the 3 waters issues but said that a Residential Transition Overlay Zone applied to the site would ensure that there is appropriate infrastructure capacity available prior to any development occurring. He said the submitter may be able to contribute financially to these infrastructure upgrades.
1453. In their response to submitter evidence, Mr Oliver and Mr Saunders noted that it is unclear from the information whether the proposed stormwater management would meet the new development mapped area requirements.

2.3.14.2.7 Reverse sensitivity

1454. Mr Sycamore said he agreed that reverse sensitivity is potentially problematic at this site. He suggested that a 'no complaints covenant' should be applied to any future subdivision.
1455. Mr Len Anderson (Legal Counsel), Ms Rebecca McGrouther (Port Otago Environment Manager), and Ms Mary O'Callahan (Consultant Planner) attended the hearing on behalf of *Port Otago Limited*. Together, they outlined significant concerns about reverse sensitivity. In summary, *Port Otago Limited* does not consider a 'no complaints covenant' by itself is sufficient to avoid the potential for reverse sensitivity effects. It also has concerns about the submitter needing to rely on existing use rights on its site should the rezoning proceed. Port Otago noted that, if rezoning were to proceed, either the existing industrial noise limits should be retained for the site, or noise abatement measures (e.g. an acoustic wall) are required to be implemented in order to reduce the noise level at the boundary of RS171. It was also noted that the acoustic standards in the 2GP relate only to indoor living, and therefore outdoor living spaces would still be adversely affected. Concerns around light spill risk were also raised.
1456. Subsequent to *Port Otago Limited* speaking at the hearing, Mr Sycamore provided supplementary evidence proposing a 20m set back buffer area on the site from the Port Otago boundary. Additionally, a no complaints covenant, compliance with Rule 9.3.1.1 (acoustic insulation), and a noise standard consistent with Rule 9.3.6.4 were proposed for the entire site. These would permit a higher noise level than is normally allowed.
1457. Mr Anderson in a written response, advised that the proposed Rule 9.3.6.4 would not fully achieve the proposed noise limit of 60 dB in this location. Instead, if the noise limits in Rule 9.3.6.5 applied (that permits noise level limits of 60 dB at night) then the revised proposal from Mr Sycamore would be acceptable.

2.3.14.2.8 Contaminated soils

- 1458. Several of the further submitters raised concerns about the potential for contamination on the site. In the section 42A report, Mr Morrissey noted that 18 Noyna Road is shown as a Hazardous Activities, Industries and Bores Search (HAIL) site.
- 1459. Mr Sycamore noted that a detailed site investigation was carried out by EC Otago, and this confirmed that soils were impacted by tannery waste within a large area primarily within the land against Brick Hill Road, and a localised area of asbestos was identified which was assumed to be building materials waste. The investigation confirmed the majority of the site was suitable for residential use, and that the balance can be remediated to a suitable standard for residential use.

2.3.14.2.9 Reporting Officer's recommendation

- 1460. Mr Morrissey's recommendation was to not rezone the site. This was based primarily on the reverse sensitivity issues and 3 waters constraints. He raised concern with Mr Sycamore's revised proposal in that it is still likely that future residents will be affected by the neighbouring industrial activity particularly when using spaces outside of the dwellings. He also raised concerns about the potential costs associated with monitoring and compliance, and questioned whether the need for a higher noise limit indicated that residential zoning may not be appropriate in this location. He addressed the submitters proposal of a Residential Transition Overlay Zone, and noted that uncertainty remains about the timing and nature of the required wastewater upgrades. While he did acknowledge that 3 Brick Hill Road may be more appropriate for residential development given its distance from the Port Otago facility, his overall view of RS171 is that it is not well aligned with residential rezoning.
- 1461. Subsequent to his Reply, we asked Mr Morrissey in Minute 16 if the rezoning of only the top portion of the land (i.e. part of the site at Brick Hill Road contiguous with the adjacent residential zoned land) could be supported. In his response, Mr Morrissey reiterated his concerns about the long term timeframe to address 3 waters upgrades, and that the proposed noise mitigations would not address noise experienced outside (e.g. in backyards). Overall, Mr Morrissey confirmed that he did not support rezoning any part of the site.

2.3.14.2.10 Decision and reasons

- 1462. We reject the submission from *K and L Accommodation Limited (S202.001)* seeking to rezone RS171 to Township and Settlement zoning.
- 1463. We do not consider that this site is appropriate for residential zoning, based on the potential for reverse sensitivity in relation to the Port Otago facility, and the 3 waters servicing constraints. While we consider that the upper part of the site (i.e. 3 Brick Hill Road) could be more suitable for residential development given its greater distance from the Port Otago facility, the 3 waters constraints over development of the site remain.
- 1464. We agree with the reporting officer that use of a Residential Transition Overlay Zone is not appropriate when there remains uncertainty about the exact works required and therefore the timeframe within which they will be addressed. As noted by the Reporting Officer, if upgrades may take up to 20 years, and if so, there is little benefit to applying a Residential Transition Overlay Zone.
- 1465. In addition, we are cognisant of the planning evidence of Ms Mary O'Callahan for *Port Otago Limited* where she questioned the need to rezone sites such as this (with constraints

regarding reverse sensitivity and servicing) as part of the very focused Variation 2. We agree, and consider this is far from a straightforward site for rezoning under this particular process.

2.3.15 St Leonards

2.3.15.1 147 St Leonards Drive (RS151)

1466. This section addresses the submissions covered in section 5.4.5 of the section 42A report.
1467. The site is a 6.5ha rural-zoned block located towards the north end of St Leonards in West Harbour. The section 42A report notes that RS151 was originally larger and covered both Rural and Rural Residential 1 zoning, however the submitter for the site is now only requesting a small portion of the original site be rezoned to residential. The site is subject to the Flagstaff-Mt Cargill Significant Natural Landscape Overlay Zone (SNL). There are no other overlays present. The nearest residential zoning is approximately 700m away from the site. The submitter is also proposing other areas of the site (outside the 6.5ha sought to be rezoned) have an Area of Significant Biodiversity Value (ASBV) overlay applied and be a managed ecological enhancement area to be replanted with indigenous vegetation. The site was originally rejected in the section 32 report due to the SNL and the distance from existing residential zones.

2.3.15.1.1 Submissions received

1468. *David Middleton (S237.001)*, the landowner, sought to rezone RS151 to Large Lot Residential 2, with a structure plan mapped area applied, and an Area of Significant Biodiversity Value overlay applied over another part of the site. The submitter anticipated this would yield approximately 8 – 10 lots which would self-service for potable water and wastewater. A variety of other ecological enhancements were also proposed by the submitter.
1469. Rezoning RS151 was supported in a further submission from *Wirat Mahongchai (FS252.1)*.

2.3.15.1.2 Landscape, and ecological enhancement

1470. The section 42A report stated that residential rezoning would be inappropriate as the site is fully contained within the Flagstaff-Mt Cargill SNL and residential rezoning would be inconsistent with Policy 2.6.2.1.d.iv which requires that Dunedin's outstanding and significant natural landscapes and natural features are protected.
1471. Ms Emma Peters, in her evidence on behalf of *David Middleton (S237.001)*, acknowledged the presence of the SNL and outlined the submitter's vision to provide housing choice in a way which is sensitive to the landscape and biodiversity values of the site. Residential activity would be restricted to identified landscape building platforms, and performance standards are proposed to provide for ecological enhancement and control built form.
1472. Ms Peters noted that Policy 2.6.2.1.d.iv states new residential zoning should "generally avoid" Significant Natural Landscapes, but that is not a total prohibition. Ms Peters considered that Large Lot Residential 2 zoning is appropriate for the location.
1473. Mr Hugh Forsyth, consultant Landscape Architect for *David Middleton (S237.001)* also spoke at the hearing. Mr Forsyth supported the proposed rezoning and advised that the area doesn't particularly stand out in the wider landscape. He noted that the SNL is set by a contour and is not site specific. He also noted that he had provided input into the proposed structure plan controls outlined in Ms Peters' evidence.

SUBMISSION ON THE DUNEDIN CITY COUNCIL'S PROPOSED VARIATION 2 OF THE SECOND GENERATION DISTRICT PLAN

Form 5

Submission on publicly notified proposal for policy statement or plan
Clause 6 of First Schedule, Resource Management Act 1991

To: Dunedin City Council
districtplansubmissions@dcc.govt.nz

Name of submitter: K and L Accommodation Limited

Contact Person: Darryl Sycamore

Address for service: Terramark Limited
P.O Box 235
Dunedin 9054

Phone: 03 477 4783
Email: darryl@terramark.co.nz

This is a submission on the following proposed plan change –
Variation 2 of the Second Generation District Plan.

K and L Accommodation could not gain an advantage in trade competition through this submission.

The specific provisions of the proposal that the submission relates to and the decisions we seek from Council are as detailed on the following pages.

K and L Accommodation opposes the plan change in relation to scope.
K and L Accommodation wishes to be heard in support of this submission.

Surveying, Resource Management and Engineering Consultants

DUNEDIN 9054

PO Box 235 - 477 4783
dunedin@terramark.co.nz

MOSGIEL 9053

PO Box 235 - 489 7107
mosgiel@terramark.co.nz

BALCLUTHA 9240

PO Box 178 - 418 0470
balclutha@terramark.co.nz

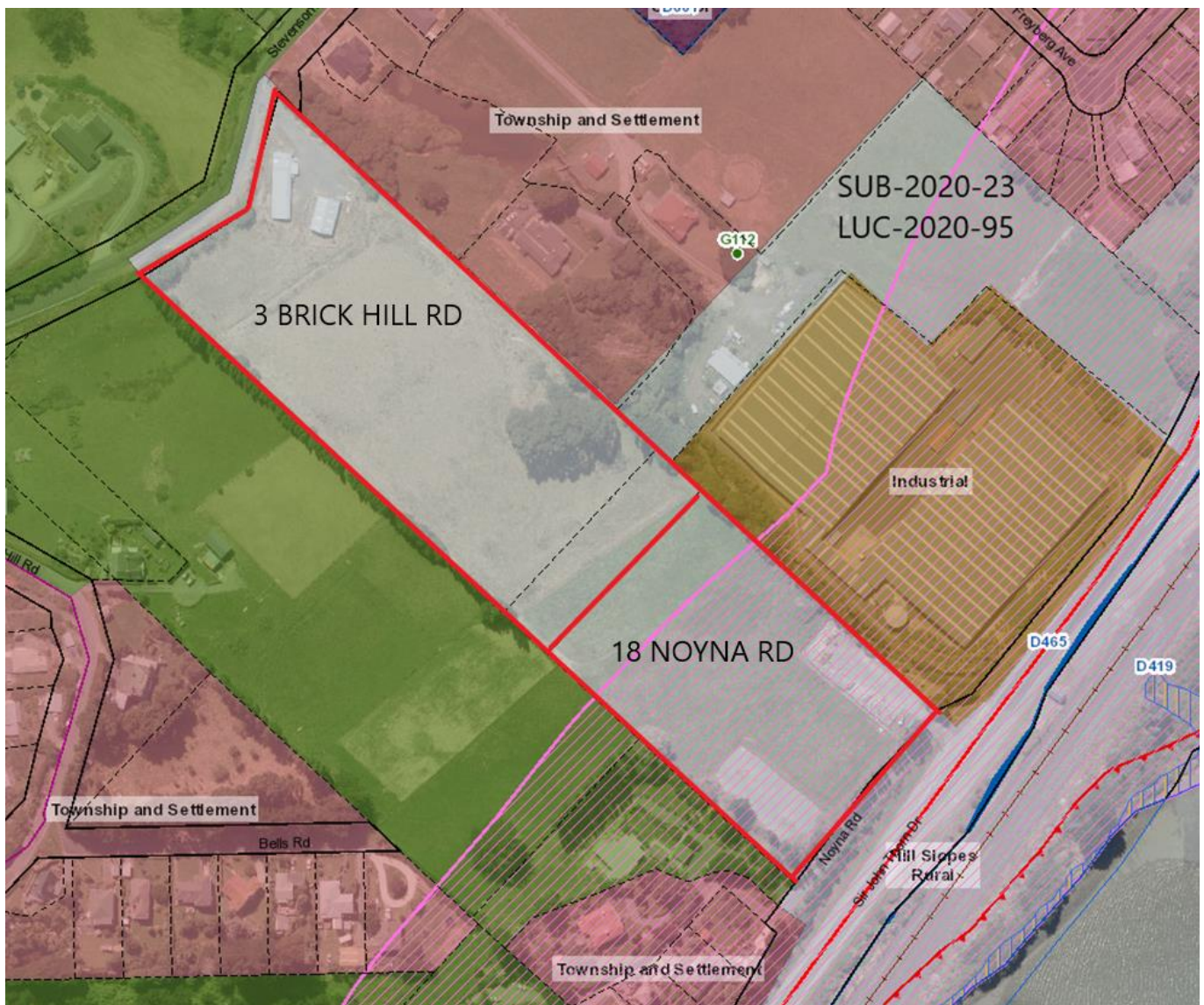
MEMBER OF NZ INSTITUTE OF SURVEYORS (NZIS) AND THE CONSULTING SURVEYORS OF NZ (CSNZ)



SUBMISSION ON VARIATION 2 OF THE SECOND GENERATION DISTRICT PLAN

1. INTRODUCTION

- 1.1 K and L Accommodation Limited welcomes the opportunity to submit to the Variation 2 of the 2GP.
- 1.2 Our clients own the property at 3 Brick Hill Road and 18 Noyna Road, Sawyers Bay. The sites are held in separate Records of Title and are zoned Rural Hills Slope in the 2GP. The lower extent of 18 Noyna Road is within an archaeological alert layer. Together, the land comprises approximately 3.4 hectares.



- 1.3 The submitters also own the adjoining land at 105, 109 and 117 Stevenson Avenue, with interests in 107 Stevenson Avenue. That land comprises the remaining portion of Rural Hills Slope land in this area and also some Township and Settlement zoned land. They have recently secured consent to subdivide this land into 19 residential sites in SUB-2020-23 and LUC-2020-95.
- 1.4 K and L Accommodation are highly motivated to establish additional residential land for the City.

2. SUBMISSION ON VARIATION 2

- 2.1 Variation 2 is a change to the proposed District Plan (2GP) which includes a suite of changes to enable additional housing capacity through specific rule and policy changes and through rezoning specific sites. The National Policy Statement on Urban Development Capacity (NPS-UD) directs the Council to enable greater intensification in areas of high demand and where there is the greatest evidence of benefit
- 2.2 The NPS-UD applies to all urban environments and is informed by population size and growth rates. Dunedin is now considered a Tier 2 urban environment, which includes a number of directive measures for addressing housing supply in the medium term.
- 2.3 In response to the NPS-UD a number of sites have been proposed to be rezoned to alternative residential zones that allow a greater residential density.
- 2.4 This land was put forward to Council as part of the initial evaluation to greenfields sites for inclusion. Our client's land was not selected by Council staff as suitable for rezoning. On this basis, we consider the site is within scope. This interpretation was supported in a discussion with DCC staff¹.
- 2.5 We note Appendix 4, the addendum for "Sites assessed for rezoning but were not included in the final proposal" did not include the site we promoted at the front end of the variation process. By inference, if the site is not excluded from the proposal, then it must be included in the proposal.
- 2.6 This oversight is consistent with the email² that states "this one fell through the cracks somewhere". That email goes on to state

"To confirm what we discussed on the phone:

- *We wouldn't support the site being included in Variation 2 as Rural Residential as it wouldn't support the purpose of the variation.*
- *We do plan to list the sites that were assessed and the reasons for rejection within an appendix to our section 32 report.*
- *Wastewater detention is being considered for some sites, but only where a minimum yield of 50 homes can be achieved."*

- 2.7 Having considered the points above, it is our view that
 - Any additional residential capacity is the primary intention of Variation 2,
 - There was an appendix of sites excluded, but the site owned by K and L Accommodation was not included in that list of exclusions, and
 - The specifics of how wastewater are managed is a fine-grained matter that can be resolved once the site is rezoned.
 - We are aware of greenfield sites that have capacity for approximately 12 residential units that were included for rezoning following Council assessment.
- 2.8 We consider the site is within scope of the Variation and that Council has erred in their assessment.
- 2.9 We consider the site comprising approximately 3.5ha is suitable for rezoning for residential use. This is supported by
 - the surrounding properties zoned Township & Settlement,
 - The 2020 consent decision for the adjacent land for 19 residential sites, and
 - The provision of piped services downslope of the site.

¹ Pers comms between Maaik Duncan of Terramark and Nathan Stocker of DCC City Development

² Nathan Stocker, Urban Development Capacity Planner DCC to Maaik Duncan of Terramark dated 15 Dec 2020

3.0 VARIATION 2 & SCOPE

- 3.1 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.
- 3.2 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 2.³

- 3.3 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).*⁴

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 focused as possible, and scope has been deliberately limited to avoid re-consideration of a wide range of provisions.⁵

- 3.4 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.
- 3.5 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—*

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

⁴ <https://www.dunedin.govt.nz/council/district-plan/2nd-generation-district-plan/plan-change-dis-2021-1-variation-2#doc>

⁵ https://www.dunedin.govt.nz/_data/assets/pdf_file/0007/806182/Variation-2-General-Public-Fact-Sheet.pdf

- (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.*

3.6 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.

3.7 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.*

3.8 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 the land at 3 Brick Hill Road and 18 Noyna Road have not had their potential for residential rezoning evaluated. 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).

3.9 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)

- 3.10 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.
- 3.11 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.

4.0 RELIEF SOUGHT

- 4.1 Our client, K & L Accommodation Limited seeks the following relief
1. The land at 3 Brick Hill Road and 18 Noyana Road may offer an appropriate method to the City to increase its residential capacity as required under Tier 2 cities in the NPS-UD, and
 2. The scope of Variation 2 is to provide additional land as required under the NPS-UD.
 3. 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, and
 4. 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.

For Terramark Ltd



Darryl Sycamore
Resource Management Planner



Tax Invoice

Gallaway Cook Allan
Attention: Stephanie Lau

Receipt: T120636
Invoice Date: 13/03/2023 10:48:16
GST Number: 64-448-536
Payment Reference: 000000074737fdb
User Payment Reference: 199980

Postal address:
National Office
Ministry of Justice
SX10088
Wellington

Item/Description	Qty	Exclusive Amount	GST Amount	Inclusive Amount
Appeal a decision on a plan or policy statement Environment Court, Christchurch Case reference number:	1	\$521.74	\$78.26	\$600.00
Total:	1	\$521.74	\$78.26	\$600.00