

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

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

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 concerning the Dunedin City Council Second Generation District Plan (2GP) – Variation 2
Between	J M & D R HOMER Appellant
And	DUNEDIN CITY COUNCIL Respondent

NOTICE OF APPEAL ON BEHALF OF J M AND D R HOMER



GALLAWAY COOK ALLAN LAWYERS
Phil Page
phil.page@gallowaycookallan.co.nz

PO Box 143
Dunedin 9054
Ph: +64 (3) 477 7312
Fax: (03) 477 5564

NOTICE OF APPEAL ON BEHALF OF J M AND D R HOMER

To: The Registrar

Environment Court

Christchurch Registry

1. Jodi Maree Homer and Darren Robert Homer (**the applicants**) appeal a decision of the Dunedin City Council on a decision of the 2GP – Variation 2 regarding the zoning of a site at 234 and 290 Malvern Street (**Decision**).
2. The applicants are the successor to a submission regarding the Decision.
3. The applicants are not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. The applicants received notice of the decision on 8th February 2023
5. The decision was made by Dunedin City Council.
6. The decision the Homers are appealing is Variation 2 Hearing Panels Report section 2.3.11.6 which refused to rezone property at 234 and 290 Malvern Street (**Site**) to Large Lot Residential 1 or 2 (**Decision**).
7. The reasons for this appeal are:
 - (a) The Site is currently zoned Rural Residential 2, the Site has General Residential 1 on the opposite side of Malvern Street and has Rural Residential 2 surrounding it.
 - (b) The Decision does not fully realise 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**). Due to this, the Decision unreasonably limits the extent to which Variation 2 can give effect to the NPSUD.

- (c) The Decision does not provide adequate housing choices that will meet the needs of people and communities and future generations of a range of dwelling types and locations.
 - (d) The Decision discounts Policy 2 in NPSUD and places insufficient weight on the market demand for larger sized residential properties on the urban edge of Dunedin. Developing the site is a logical extension of Glenleith suburb.
 - (e) The Decision ignored or misunderstood the submitter's evidence that the two proposed houses would have no effect on 3 waters, transport, biodiversity, landscape, and rural amenity and are at low risk from natural hazards.
 - (f) The Decision was wrong in finding that zoning the Site Large Lot Residential 1 or 2 would fail to uphold plan integrity.
 - (g) The Decision failed to appropriately zone the land and placed too much weight on the perceived "unfairness" of rezoning the site Large Lot Residential 1 or 2.
8. The applicants seek the following relief:
- (a) Accept Appellants Amended Submission to rezone to Large Lot Residential 1 or 2 with a structure plan limiting development to three sites per the plan annexed as annex 1 to the appeal.
 - (b) Any further, other, or consequential relief to give effect to the amended submission or the grounds raised in this Notice.
9. The following documents are attached to this notice:
- (a) A copy of my original submission.
 - (b) A copy of Second Decision Report.
 - (c) A list of names and addresses of persons to be served with a copy of this notice.



Phil Page

Solicitor for the Appellant

Dated 16 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
Email	Phil.Page@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
Ann-Kathrin and Sanjay Schlesselmann and Thakur		sanjay.thakur@gmx.com
Cedric Gerald and Janet Michal Carrington		gerry1896@gmail.com
Ceri and Robert Hurst		cerileigh@gmail.com
Clive Barrow		clivebarrow@gmail.com
Garth Campbell		g.a.campbell821@gmail.com
Harlow Brundell	11A Fred Hollows Way Glenleith Dunedin, 9010	
Ilona Pfeifer		ppfeifer.public@gmail.com
Kaitrin McMullan		mail@kaitrin.co.nz
Karen and Wayne Grant		wkgrant@xtra.co.nz
Karole Caulfield		karolehc@gmail.com
Kirsten Eden- Mann		kirstenjem@gmail.com
Larissa Curzon		curzon06@xtra.co.nz

Lisa and Shaun Blondell		lisa.blondell@forsythbarr.co.nz
Mark Knudson		mark.knudson@xtra.co.nz
Michael and Christine Marshall		umgodi@hotmail.com
Nicholas Darling		nick@darlingrealty.co.nz
Peter Pfeifer		ppfeifer.public@gmail.com
Robert Pfeifer		rpfeifer.public@gmail.com
Sheryl Wallace		sherylwallace@hotmail.com
Shona McDonald		shona@mcdcad.co.nz
Tim Field		field.tim@gmail.com

publicly accessible viewpoints. No specific hazards are mapped against the property, and the site is generally unproductive in terms of primary industry. The submission noted that rezoning the site would provide additional residential capacity to Dunedin. A further submission from *Simon Burrough (FS225.1)* supported the rezoning in part but sought amendments so that only the lower slopes closest to the motorway are rezoned, and to Large Lot Residential rather than General Residential 1.

1112. The *ORC (FS184.86)* opposed rezoning as it would allow for high density development in a rural/semi-rural area, which does not appear to have any planned public infrastructure to support such density.

2.3.11.5.2 Reporting Officer's recommendation

1113. Mr Morrissey considered that rezoning the site to residential has multiple conflicts with Policy 2.6.2.1. The key conflict being the site is with Policy 2.6.2.1.d.iv, as the site is fully covered by the SNL.
1114. Mr Morrissey also noted that the site is disconnected from existing residentially zoned land and this would result in conflict with Policy 2.6.2.1.d.xi, which requires Dunedin stays a compact and accessible city. If additional infrastructure was required, given this disconnection, this would result in inefficient and ineffective public infrastructure (Policy 2.6.2.1.d.ix). He also considered that rezoning would also conflict with Policy 2.6.2.1.c, given the site's distance to public transport, centres, and other community facilities, and the site ranked poorly in relation to likely carbon emissions derived from commuting. These concerns applied in respect of any residential zone type.
1115. We did not hear from any submitters in relation to this site.

2.3.11.5.3 Decision and reasons

1116. We reject the submissions from *Simon Robert and Lisa Jayne Burrough (S299.001)* and *Simon Burrough (FS225.1)* to rezone RS168 to General Residential 1. We accept the further submission from the *ORC (FS184.86)*.
1117. We accept the evidence of Mr Morrissey that rezoning the site is not consistent with Policy 2.6.2.1 for a number of reasons and therefore the site is unsuitable for residential rezoning. We received no evidence to challenge his assessment.

2.3.11.6 234/290 Malvern Street, Leith Valley (RS176)

1118. This section addresses the submissions covered in section 5.4.16 of the section 42A report.
1119. RS176 is located in the Leith Valley and is zoned Rural Residential 2. The total site area is 16.5ha. It is generally surrounded by Rural Residential 2 zoning, though the zoning on the opposite side of Malvern Street is General Residential 1. There are a number of overlays over the site, including the Leith Valley urban biodiversity mapped area (UBMA), a critical electricity infrastructure corridor mapped area, a Hazard 2 (flood) Overlay Zone, and the Water of Leith esplanade reserve mapped area.
1120. The section 32 report states that the site was rejected as access is constrained by the UBMA and there are downstream wastewater network capacity issues. The report also noted that two vehicle access points would be required.

2.3.11.6.1 Submissions received

1121. *Peter Marr & Marja van Loon (S77.001)* sought to rezone the site to either Large Lot Residential 1, Large Lot Residential 2, or Rural Residential 1. Their submission noted that the use of a structure plan to outline any appropriate controls would be supported.
1122. *Nicholas Darling (FS180.1)* and *Karen and Wayne Grant (FS127.1)* supported the submission from *Peter Marr & Marja van Loon (S77.001)*.
1123. *Harlow Brundell (FS100.1)*, *Ilona Pfeifer (FS110.1)*, *Kaitrin McMullan (FS126.1)*, *Karole Caulfield (FS130.1)*, *Kirsten Eden-Mann (FS140.1)*, *Larissa Curzon (FS144.1)*, *Lisa & Shaun Blondell (FS151.1)*, *Mark Knudson (FS162.1)*, *Michael and Christine Marshall (FS174.1)*, *Peter Pfeifer (FS195.1)*, *Ann-Kathrin and Sanjay Schlesselmann and Thakur (FS20.1)*, *Robert Pfeifer (FS204.1)*, *Sheryl Wallace (FS221.1)*, *Shona McDonald (FS224.1)*, *Tim Field (FS240.1)*, *Cedric Gerald and Janet Michal Carrington (FS43.1)*, *Ceri and Robert Hurst (FS44.1)*, *Clive Barrow (FS57.1)*, and *Garth Campbell (FS93.1)* all opposed the submission from *Peter Marr & Marja van Loon (S77.001)*. A wide range of concerns were raised with the proposed rezoning, as addressed below. The further submitters did not appear at the hearing.

2.3.11.6.2 Scope of proposal with respect to Variation 2

1124. *Peter Marr & Marja van Loon (S77.001)* provided additional information regarding their proposal. This included a landscape effects assessment and a draft structure plan. The submitters amended their proposal to suggest a 'Large Lot Residential 2' zoning but subdivision into three lots total (one existing and two new) which would lead to an average site size of around 5ha. That being a lower than normal density for a rural residential zoning.
1125. Speaking on behalf of *Peter Marr & Marja van Loon* at the hearing, Mr Kurt Bowen confirmed that the submitter is now only seeking a total of two additional dwellings. He tabled a letter prepared by Mr Jason Hynes of LJ Hooker that stated that the city has a lack of supply of larger-sized residential properties. He also outlined that in his view, the proposal is compatible with the purpose of Variation 2 and would provide further development capacity. While he acknowledged that the appearance of the proposed rezoning is more akin to the type of properties that are found in Rural Residential zones, in his view such zoning and development is indeed possible through Variation 2. *Peter Marr & Marja van Loon* attended the hearing and outlined their history of site ownership.
1126. We note that, consistent with our decision on the scope¹⁰ of Variation 2, rezoning to Rural Residential 1 is not an outcome that is part of Variation 2. We have assessed this as Large Lot Residential zoning, but note that the anticipated outcome is much more akin to Rural Residential zoning.

2.3.11.6.3 Biodiversity

1127. A number of further submitters raised concerns regarding the potential impacts development could have on biodiversity in the area.
1128. Mr Kelvin Lloyd, of Wildland Consultants, assessed the biodiversity values of the site for the DCC. The assessment identified areas of vegetation to the north and west of the existing house that comprised significant vegetation as they meet the 2GP criteria of rarity and

¹⁰ Variation 2 Out of Scope Decision Report, 31 May 2021. Paragraph 59. [Variation-2-Out-of-Scope-Decision-Report-31-May-2021.pdf \(dunedin.govt.nz\)](https://www.dunedin.govt.nz/assets/Reports-and-Statistics/2021/Variation-2-Out-of-Scope-Decision-Report-31-May-2021.pdf)

ecological context and therefore warrant protection. Mr Morrissey noted the areas identified by Wildland Consultants are almost exactly aligned with the “bush management areas” in the submitter’s proposed structure plan, and that all proposed building platforms are situated in open paddock areas. Mr Morrissey commented that, based on the 3 lot proposal, he was satisfied that the submitter’s proposal would not adversely impact indigenous biodiversity should rezoning proceed.

2.3.11.6.4 Landscape, rural character, amenity

- 1129. A number of further submitters raised concerns relating to loss of rural outlook and rural land, and related issues including loss of rural view, loss of greenspace, adverse impacts on visual amenity, and loss of a rural buffer around the city.
- 1130. A landscape assessment prepared by Mr Mike Moore, consulting landscape architect for the submitter, assessed the effects of the proposed 3-lot subdivision and concluded that adverse effects of the proposal on landscape values would be very low in the short term (associated with an increased in buildings) and would be positive in the long term, primarily associated with enhancement of native bush.
- 1131. Mr McKinlay initially provided an assessment of the proposed rezoning based on the maximum development potential under Large Lot Residential 1. This concluded that the current zoning (Rural Residential 2) is the most appropriate in terms of maintaining and enhancing the character and visual amenity of the surrounding area, and that the site makes a notable contribution to the rural outlook of surrounding residential areas and forms part of a large contiguous area of rural-residential or rural land. Subsequently, he considered the amended proposal for a 3 lot subdivision and agreed with Mr Moore that the adverse effects of this updated proposal would be minor. He considered that the amended proposal would result in a built density that will generally retain the rural residential character of the surrounding area. There would also be positive effects associated with the proposed additional planting, and the proposed management of the existing native bush.
- 1132. With respect to concerns about amenity as raised by several further submitters, Mr Morrissey acknowledged that residential development would have some adverse effects on general amenity, but that two additional dwellings as proposed would be likely to have a negligible effect.

2.3.11.6.5 Transport

- 1133. Several of the further submitters raised concerns relating to access and transportation.
- 1134. Access to the new sites was proposed to be via a right of way from Patmos Avenue rather than Malvern Street. A number of landscape controls were also proposed, aimed at ensuring that development integrates into the existing landscape.
- 1135. DCC Transport initially assessed the site at Large Lot Residential density and noted that an Integrated Transport Assessment would be required. With respect to the proposed 3-lot subdivision, DCC Transport advised that such a proposal would have no noticeable effects on the wider transport network, and that any detailed matters could be addressed as part of a subdivision consent.

2.3.11.6.6 3 waters

- 1136. Further submitters raised concerns relating 3 waters servicing and infrastructure.

1137. DCC 3 Waters initially provided an assessment of servicing the site based on Large Lot Residential density. It concluded that there are issues associated with rezoning this site and that it should be excluded from rezoning, primarily due to stormwater concerns and some wastewater issues. Most notably the stormwater concerns outlined included the potential negative impact on the Otago Regional Council's level of service for flood protection associated with the Water of Leith and concerns about the affordability of such stormwater infrastructure. DCC 3 Waters also noted that there are known wastewater overflows immediately downstream of the site in significant wet weather and some downstream upgrades would be required.
1138. In his hearing evidence Mr Bowen noted that the new sites could self-service for 3 waters, and that he considered it unlikely two new houses would result in any noticeable adverse effects with respect to 3 waters infrastructure.

2.3.11.6.7 Hazards

1139. Several of the further submitters raised concerns relating to hazards and potential for slope instability.
1140. The submitters provided an old geotechnical report for the site (unknown date), prepared by Geolink Land Investigations. This report supported development on the proposed sites.
1141. Stantec had made an assessment at the time of the section 32 report concluding the site had low and medium level hazards. This was reviewed in light of the concerns raised by further submitters, and Mr Paterson advised that there was no change to their assessment. Mr Paterson noted that the Geolink report is consistent with his own assessment of the site and that the evidence provided is sufficient validation that the site is suitable for the proposed rezoning. Mr Morrissey noted that the two new proposed dwellings are within the area identified as low risk by Stantec.

2.3.11.6.8 Other issues

1142. The further submitters raised other concerns including that the site is south facing, that transformer lines run through the property, and the potential loss of productive farmland.
1143. Mr Morrissey responded to these issues in the section 42A report and did not consider any of them significant enough to prevent rezoning.

2.3.11.6.9 Reporting Officer's recommendation

1144. Mr Morrissey acknowledged the proposed 3-lot subdivision would be likely to have low adverse effects; however, he did not recommend rezoning. He considered that rezoning the site as per the amended proposal ('Large Lot Residential 2' with a maximum of three lots) does not reflect the zones used in the 2GP and the proposal was in fact a proposal that better fit as Rural Residential 1 zoning, with a lower density. He stated that Rural Residential zoning is not part of Variation 2, and he did not consider that implementing the new proposal to be in keeping with the purpose of the variation and therefore out of scope of the variation. He suggested that such a proposal should be more appropriately dealt with as part of a future Rural Residential plan change.
1145. In his Reply, Mr Morrissey further considered that rezoning would be unfair to other landowners around the city who may also have wanted a rural residential density development/zoning, but did not submit as this was not within the scope of Variation 2.

1146. Ms Christmas also addressed rural residential type zoning in her Reply. She raised issues of natural justice in allowing the consideration of what is effectively rural residential zoning for this site through a 'back door' approach. She also raised an issue regarding plan integrity that would result in having a set of plan rules that reflect one zone type (Rural Residential zone) but called a different zone name (Large Lot Residential) and she recommended this not be implemented for reasons of plan integrity and clarity. Ms Christmas agreed with Mr Morrissey that the appropriateness of a rural residential scale development is best considered through a future rural residential plan change rather than through Variation 2.

2.3.11.6.10 Decision and reasons

1147. We reject the submission from *Peter Marr & Marja van Loon (S77.001)* seeking to rezone RS176 to Large Lot Residential due to the issues canvassed in the evidence.
1148. There would be adverse effects associated with the original submission for large lot residential in terms of landscape, visual amenity, and stormwater and wastewater. Whilst these effects would be diminished with the proposal presented for 3 lots at the hearing, we are limited in our ability to approve what is essentially a proposal for rural residential development.
1149. With respect to the 3-lot proposal put forward by the submitters, we agree with the reporting officers that in order to maintain plan integrity, this could only be achieved via a rural residential zoning as the underlying zoning with the structure plan rules as an overlay due to the site sizes proposed. We had determined that several other proposals for rural residential zoning were out of scope in our earlier decision¹¹ and for consistency we find this alternative proposal also out of scope. In the Panel's view maintaining consistency in our decisions on scope is important to ensure the process is fair. Accepting this proposal would be unfair to other submitters whose submissions were struck out, and also for other potential submitters who may have made submissions if the scope had been broader.

2.3.11.7 35 Watts Road, 37 Watts Road, 43 Watts Road, Part 309 North Road (RS206, RS206a, RS77)

1150. This section addresses the submissions covered in section 5.4.21 of the section 42A report.
1151. These sites are located in the North East Valley and are adjacent to the site of the former Palmers quarry. The section 42A report considered submissions seeking rezoning of these sites collectively, with the total site area being 9.4ha.
1152. A number of overlays are present:
- the Flagstaff-Mt-Cargill Significant Natural Landscape Overlay Zone (SNL) applies to most of RS206;
 - a small part of RS206 is subject to a high-class soils mapped area;
 - a critical electricity infrastructure corridor mapped area sits over part of RS206a; and

¹¹ Variation 2 Out of Scope Decision Report, 31 May 2021. Paragraph 59. [Variation-2-Out-of-Scope-Decision-Report-31-May-2021.pdf \(dunedin.govt.nz\)](https://www.dunedin.govt.nz/variation-2-out-of-scope-decision-report-31-may-2021.pdf)

VARIATION 2 – ADDITIONAL HOUSING CAPACITY

SUBMISSION FORM 5



SECOND
GENERATION
DISTRICT PLAN

CLAUSE 6 OF FIRST SCHEDULE, RESOURCE MANAGEMENT ACT 1991

This is a submission on Variation 2 to the Second Generation Dunedin City District Plan (2GP). Your submission must be lodged with the Dunedin City Council by midnight on 4 March 2021. All parts of the form must be completed.

Privacy

Please note that submissions are public. Your name, organisation, contact details and submission will be included in papers that are available to the media and the public, including publication on the DCC website, and will be used for processes associated with Variation 2. This information may also be used for statistical and reporting purposes. If you would like a copy of the personal information we hold about you, or to have the information corrected, please contact us at dcc@dcc.govt.nz or 03 477 4000.

Make your submission

Online: www.dunedin.govt.nz/2GP-variation-2 | **Email:** districtplansubmissions@dcc.govt.nz

Post to: Submission on Variation 2, Dunedin City Council, PO Box 5045, Dunedin 9054

Deliver to: Customer Services Agency, Dunedin City Council, Ground Floor, 50 The Octagon, Dunedin

Submitter details (You must supply a postal and/or electronic address for service)

First name: Peter Marr & Marja van Loon

Last name:

Organisation (if applicable):

Contact person/agent (if different to submitter): Kurt Bowen, Paterson Pitts Group

Postal address for service: PO Box 5933

Suburb:

City/town: Dunedin

Postcode: 9058

Email address: kurt.bowen@ppgroup.co.nz

Trade competition

Please note: If you are a person who could gain an advantage in trade competition through your submission, your right to make a submission may be limited by clause 6(4), Schedule 1 of the Resource Management Act.

I could gain an advantage in trade competition through this submission: ☐ Yes ☒ No

If you answered yes, you could gain an advantage in trade competition through this submission, please select an answer:

☐ Yes ☐ No

My submission relates to an effect that I am directly affected by and that:

a. adversely affects the environment; and

b. does not relate to trade competition or the effects of trade competition.

Submission

Submissions on Variation 2 can only be made on the provisions or mapping which are proposed to change, or alternatives that are clearly within the scope of the 'purpose of the proposals', as stated in the Section 32 report. Submissions on other aspects of the 2GP are not allowed as part of this process.

You must indicate which parts of the variation your submission relates to. You can do this by either:

- making a submission on the Variation Change ID (in which case we will treat your submission as applying to all changes related to that change topic or alternatives within the scope of the purpose of that proposal); or
- on specific provisions that are being amended.

The specific aspects of Variation 2 that my submission relates to are:

Variation 2 change ID (please see accompanying Variation 2 – Summary of Changes document or find the list on www.dunedin.govt.nz/2GP-variation-2)

Site assessed and rejected at 234 and 290 Malvern Street. Reject No's 176 & 177.

For example: D2

Provision name and number, or address and map layer name (where submitting on a specific proposed amendment):

A provision name and number for this site presently does not exist.

For example: Rule 15.5.2 Density or zoning of 123 street name.

My submission seeks the following decision from the Council: (Please give precise details, such as what you would like us to retain or remove, or suggest amended wording.)

- ☐ Accept the change
- ☐ Accept the change with amendments outlined below
- ☐ Reject the change
- ☐ If the change is not rejected, amend as outlined below

Reject Council's proposal to reject further consideration of changing the zone of the land located at 234 and 290 Malvern Street.

Reasons for my views (you may attach supporting documents):

If you wish to make multiple submissions, you can use the submission table on page 3 or attach additional pages.

Please refer to the attached page.

Hearings

Do you wish to speak in support of your submission at a hearing: ☒ Yes ☐ No

If others make a similar submission, would you consider presenting a joint case at a hearing: ☒ Yes ☐ No

Signature:



Date:

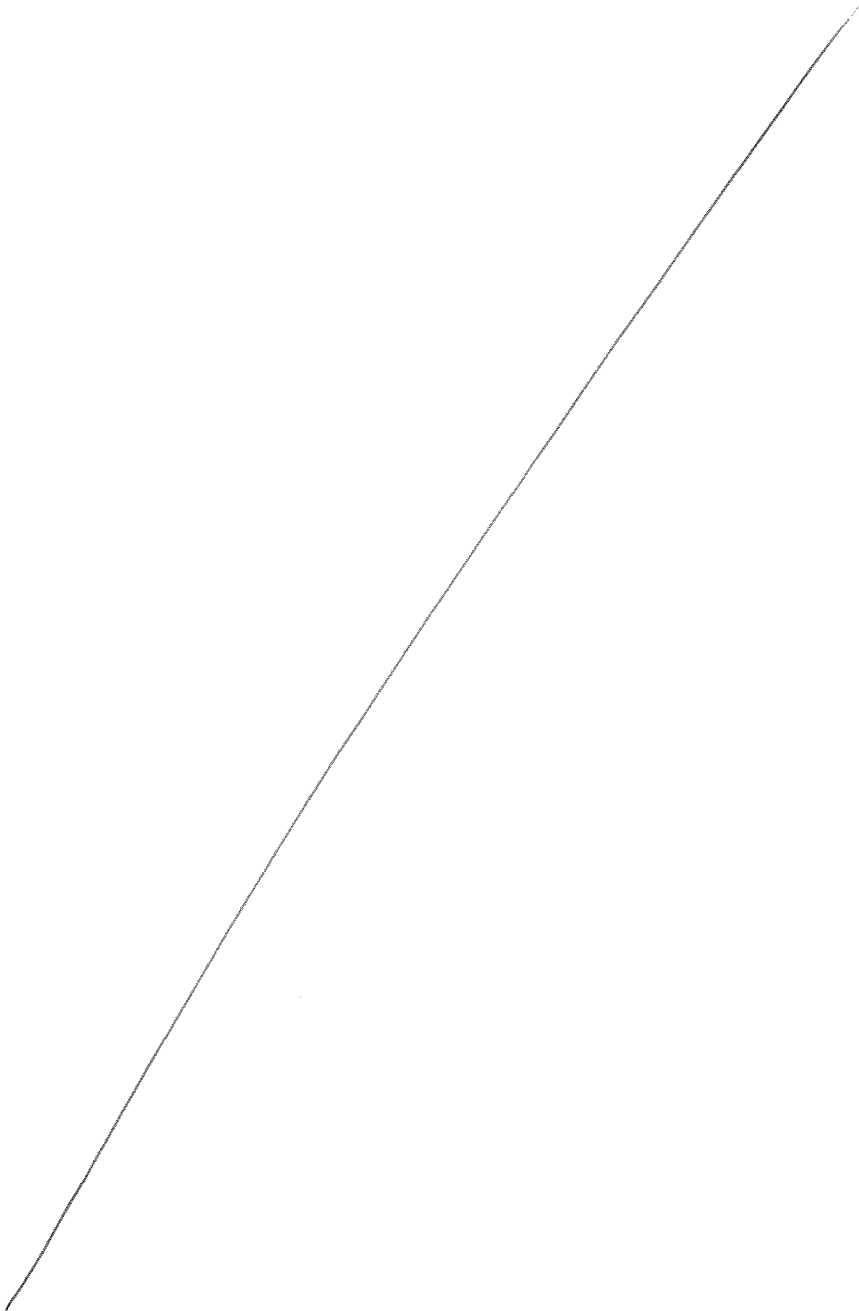
3/03/21

Multiple Submissions Table

Variation 2 change ID
or provision name and
number or address and
map layer name

- Decision Sought
- a. Accept the change
 - b. Accept the change with
amendments outlined
 - c. Reject the change
 - d. If the change is not rejected,
amend as outlined

Reasons for my views



Reasons for my views (you may attach supporting documents):

The land at this location was assessed by Council for possible rezoning from its current Rural-Residential 2 zone into the General Residential 1 zone. The reason for Council's proposed rejection of this site is that i) access into the site is constrained by the UBMA, ii) that two access points would be required, and iii) that there are also downstream wastewater issue

We reject this proposal and seek reconsideration of Council's position in respect of this site. In particular, there are two options for additional residential capacity at this location that should be considered; the first being a rezoning of the land to one of the Large Lot Residential zone (either LLR1 or LLR2), and second a rezoning of the land to Rural-Residential 1. The latter option is considered to be within scope of the Variation (refer attached statement). It is believed that a LLR zoning of the land could be undertaken with only minor detriment to the matters of concern outlined by Council in its proposal to reject the site. Under a RR1 zoning, the matters of concerns could be entirely mitigated. The RR1 zoning would provide an overall residential capacity increase of 7 houses.

We would support the use of a Structure Plan to describe any significant development controls that may be appropriate.

Submitter's Position in respect of 'Scope'.

A principal purpose of Variation 2 is to enable Dunedin City Council to meet its residential capacity obligations under the National Policy Statement on Urban Development 2020. 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.

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, 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 2.¹

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).²

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 focussed as possible, and scope has been deliberately limited to avoid re-consideration of a wide range of provisions.³

Whilst the submitter applauds Council desire 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. In this regard, the section 32 report, which assesses only the parcels that have been selectively identified, is considered to be incomplete.

The Resource Management Act 1991 (RMA) sets out the requirements for preparation of a section 32 report (underlined text is author's emphasis)-

¹ https://www.dunedin.govt.nz/_data/assets/pdf_file/0007/806182/Variation-2-General-Public-Fact-Sheet.pdf

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

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

- 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*
 - (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.*

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.

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.*

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 there are many parcels of land within the City have not had their potential for residential rezoning evaluated. Accordingly, it is the submitter's 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).

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)*

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.

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.

The submitter concludes the following-

1. The property referred to in the associated submission may offer an appropriate method to the City to increase its residential capacity.
2. 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.
3. 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.