

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	FBG DEVELOPMENTS LIMITED
	Appellant
And	DUNEDIN CITY COUNCIL
	Respondent

NOTICE OF APPEAL ON BEHALF OF FBG DEVELOPMENTS LIMITED



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NOTICE OF APPEAL ON BEHALF OF FBG DEVELOPMENTS LIMITED

To: The Registrar

Environment Court

Christchurch Registry

1. FBG Developments Limited (**FBG**), appeals a decision of the Dunedin City Council on a decision of the 2GP – Variation 2 regarding the zoning of a site at 35 Watts Road, 37 Watts Road, 43 Watts Road and 309 North Road (**Decision**).
2. FBG made a submission regarding the Decision.
3. FBG is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. FBG received notice of the decision on 8th February 2023.
5. The decision was made by Dunedin City Council.
6. The decision FBG is appealing is Variation 2 Hearing Panels Report section 2.3.11.7 which refused to rezone property at 35 Watts Road, 37 Watts Road, 43 Watts Road and 309 North Road (**Site**) to a mix of residential zoning.
7. The reasons for FBG's appeal are:
 - (a) The Site is presently zoned a mixture of General Residential 1, Rural Hill Slopes and Rural Residential 2. The Site is surrounded by General Residential 1 and General Residential 2 zones. The Site is broken up into 5 areas, Area A, B, C, D and E, which are identified in the Variation 2 Hearing 4 Greenfield Rezoning Section 42A Report (**Section 42A Report**).
 - (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 failed to place appropriate weight on the ability to provide additional medium-term greenfield housing development capacity.
- (d) 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.
- (e) The Original Submission is consistent with Strategic Objective 2.6.2 of the 2GP in maintaining a compact city, as the site is adjacent to residential areas and developments. Developing the Site is a logical and compact extension of the North East Valley (**NEV**) and is close in proximity to key amenities and services (school and public transport).
- (f) The Decision overlooks Policy 2 in NPSUD and places insufficient weight on market demand for new development capacity the NEV suburb.
- (g) The Decision wrongly rejected the submitter's evidence that Significant Natural Landscape (**SNL**) values would be maintained by accepted the submission.
- (h) The Decision was wrong in its interpretation of 'generally avoiding the application of residential zoning in SNLs' in Policy 2.6.2.1.d.iv of the 2GP.
- (i) The Decision was wrong to consider the Natural Hazards 'not manageable' as matters relating to hazards are readily capable of being managed.
- (j) The Decision failed to accept expert evidence that access and road upgrades necessary to serve development of the site in accordance with the proposed zoning are feasible.

- (k) The Decision ignored or misunderstood FBG's expert evidence on the feasibility of upgrades required for 3 Waters infrastructure to service the proposed development.
- (l) The decision failed to give sufficient weight to the biodiversity and landscape positive effects that may be achieved by accepting the submission.
- (m) Rezoning as sought is the most appropriate means to give effect to Objective 2.6.1, 2.6.2, and policy 2.6.2.1 of the Proposed District Plan.

8. FBG seeks the following relief:

- (a) Rezone the Site in accordance with the Appellant's submission, as amended by the evidence presented to the Council at the hearing.
- (b) Any further, other, or consequential relief to give effect to the Original Submission or the grounds raised in this Notice.

9. I attach the following documents to this notice:

- (a) A copy of my original submission.
- (b) A copy of the Decision and
- (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 17 March 2023

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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
Mary Carney		mecarney@kinect.co.nz
Claire Cross (Open Valley Urban Ecosanctuary)		openvue@northeastvalley.org
The Glass Gallery Limited		theglassgalleryltd@gmail.com
Otago Regional Council		warren.hanley@orc.govt.nz
Wendy and Steve Trip		wendy@servantsasia.org

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)

- the Lindsay Creek esplanade reserve mapped area and a Hazard 2 (flood) Overlay Zone runs along the southern boundary of RS77 and RS206a.
1153. Mr Morrissey noted that the combined site has an estimated feasible capacity of 240 dwellings under the proposed rezoning. Part of the site is subject to an appeal (ENV-2018-CHC-222) in relation to residential zoning and this is currently on hold pending the outcome of Variation 2.
1154. In the section 32 report, two areas were assessed: 43 Watts Road (RS206) and part of 309 North Road (RS77). RS206 was recorded as a rejected site as a large part of it was identified as SNL and it was considered inappropriate for residential development due to the significance of the landscape values. The site was also rejected as it was considered that development would exacerbate downstream wastewater overflows. For RS77, the site was originally rejected as development would exacerbate downstream wastewater overflows and the site is also very steep which would make it difficult to achieve a standard density of development.
1155. We note that the different areas of the site have been described differently in various submissions and in evidence. We use the terminology in the section 42A report and if further clarity is sought we direct readers to the map on page 326 of the section 42A report which shows these various areas.

2.3.11.7.1 Submissions received

1156. *Fletcher Glass (S123.001, S123.002, S123.003, S123.004)* submitted to rezone the site to a mix of residential zones. A further submission from *Mr Glass* provided clarity on the exact areas and zoning being sought.
1157. We note that two of these submission points from *Mr Glass*, S123.001 and S123.003, were covered in our decision on scope¹², and both the extensions to these sites were considered within scope.
1158. Further submissions from *Mary Carney (FS166.1, FS166.2, FS166.3)*, *The Glass Gallery Limited (FS237.1, FS237.2, FS237.3)*, *Claire Cross (Open Valley Urban Ecosanctuary (VUE)) (FS55.1, FS55.4)*, *Otago Regional Council (FS184.14)*, and *Wendy and Steve Trip (FS250.1)* opposed the rezoning. Concerns raised by the further submitters included impacts to the SNL, loss of rural land, loss of the green corridor, hazards, stormwater management, inadequate road access, impacts to biodiversity, loss of amenity and recreational space and loss of high class soils.
1159. None of the further submitters spoke at the hearing.

2.3.11.7.2 Submitters' response to the section 42A report

1160. At the hearing, Mr Phil Page, counsel for Mr Glass, provided a legal submission and outlined a revised proposal. Most notably, he proposed that part of the site (RS206a) consisting of the worked 'face' of the former quarry be zoned Recreation rather than Residential.
1161. Mr Conrad Anderson, consulting planner for Mr Glass, spoke at the hearing and noted that while the majority of the site is zoned rural, it does not have any rural productivity purposes

¹² Variation 2 Out of Scope Decision Report, 31 May 2021. Paragraph 66 – 68. [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)

and the landowner is unable to utilise the site under that zoning. Our consideration of arguments about lack of acceptable economic gain from rural land are addressed in section 2.1.5.

2.3.11.7.3 *Landscape and rural character*

1162. An SNL covers an area (part of RS206) that is proposed to be rezoned Large Lot Residential.
1163. Mr Tony Milne, Landscape Architect for Mr Glass, provided a masterplan for the proposed development, and provided his assessment of the proposal. His conclusion with regards to the area proposed for Large Lot Residential (RS206) that is covered by the SNL overlay is that the proposed development would maintain the landscape values of Mt Cargill's SNL. With respect to the wider rezoning, Mr Milne considered that the changes to the landscape attributes that would result from future development within the site would have little impact on the landscape values of Mt Cargill. He considered that these changes may, at most, result in a slight loss to the overall rural character and the amenity it affords, however development would not be discordant with the existing and anticipated development patterns within the north-western side of the North East Valley.
1164. Mr Page highlighted that there is no request to remove the SNL from the site, as the presence of the SNL in the proposed Large Lot Residential zoning will ensure that the design controls in the 2GP continue to apply. He outlined that, based on the evidence of Mr Milne, the landscape values in this area can be maintained through structure plan provisions that require additional vegetation screening planting, minimising accessways, and implementing controls on built form. Overall Mr Page submitted that rezoning to Large Lot Residential with a structure plan provides for maintenance of the identified SNL values.
1165. This view was not supported by Mr McKinlay, DCC Landscape Architect. In his opinion, residential development within the area of SNL (RS206) is inappropriate as the site is an important component of the wider rural setting and contributes significantly to the visual amenity of the surrounding area. Development would contrast with the largely natural character of this uppermost part of the site and nearby hillslopes.
1166. In terms of the development proposed for the lower parts of RS206a, Mr McKinlay acknowledged that residential zoning in this area would have less effect on visual amenity and rural character values than higher parts of the site, however planting would be required. Regarding Area E (RS77), he considered that rezoning would lead to an erosion of the natural and rural character values from these slopes.

2.3.11.7.4 *On-site residential amenity*

1167. Mr McKinlay noted concern about the ability of houses in RS77 (Area E) to receive appropriate levels of sunlight.
1168. This issue was discussed as relevant to Policy 2.6.2.3.d (which outlines criteria relevant for medium density zoning), noting some of the site is proposed for General Residential 2 zoning (RS206a, RS77). Mr Milne's evidence for RS77 referred to the Auckland Design Manual recommendation that "at least 70% of living rooms and private outdoor spaces in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter". The shading diagrams attached to his evidence show that much of RS77 will receive little to no sun during the day between 21 May and 21 July. Mr McKinlay

concurred with the assessment reached by Mr Milne, that there would be extensive shading issues due to south-west orientation in this area.

2.3.11.7.5 Hazards

1169. The site was assessed by Stantec as having a high level hazard based on slope instability. The assessment noted that whilst some of the site is within typical stability limits (for example, there is a small flat area on RS206/43 Watts Road), the majority of the land has significant areas of potential instability.
1170. In his evidence, Mr Anderson noted that matters relating to hazards are regularly managed via the 2GP, as evidenced by SUB-2019-138/LUC-2019-578 which relates to a 14-lot subdivision of the residential area adjacent to Watts Road. Mr Anderson considered that limited, if any, weight should be placed on the risk of natural hazards, and that these can be managed at the resource consent stage.
1171. Mr Morrissey disagreed with Mr Anderson and emphasised in his reply that the site had been assessed by Stantec as having high level hazards, with the majority of the land having significant areas of possible instability. He noted no expert information was provided by the submitter in relation to natural hazards. He advised that Policy 2.6.2.1.d.viii states “*the potential risk from natural hazards, and from the potential effects of climate change on natural hazards, is no more than low, in the short to long term (Objective 11.2.1)*” and, in the absence of any submitter information to the contrary, he considered rezoning would have a fundamental conflict with this Policy.

2.3.11.7.6 Stormwater and flood hazard risk

1172. DCC 3 Waters provided an assessment of the site as part of the section 42A report. They advised that Lindsay Creek is downstream of the site and any increase in the peak flow of stormwater run-off from the site could potentially have a negative impact on the ORC’s level of service for flood protection associated with the Water of Leith. Stormwater attenuation would be necessary, however DCC 3 Waters expressed concerns about the affordability of this infrastructure. DCC did not support rezoning of the site for this and other reasons.
1173. Mr Kurt Bowen, consulting surveyor for *Mr Glass*, provided a response to the various 3 waters issues raised in the section 42A report. Mr Bowen agreed that stormwater attenuation would be necessary and proposed that, for the sites created within RS206 and the northern part of RS206a, the most suitable method of detention would likely be individual on-site storage tanks. For the sites in RS77 and part of RS206a, he advised that the most suitable method of stormwater detention would likely be one or possibly two community stormwater ponds. Mr Bowen supported application of a new development mapped area to manage stormwater, and overall considered that there are available methods and resources to ensure appropriate stormwater management across the site.
1174. In their response, Mr Oliver and Mr Saunders from DCC 3 Waters raised concerns about the use of individual on-site storage tanks, and noted these cannot be relied on for long-term performance and the potential impact on stormwater flows can be significant. They also raised a concern about the location of the proposed stormwater detention ponds and if these would be located below the level of Lindsay Creek. They noted that, provided the new development mapped area requirements are applied, the site may be considered developable, however they continue to have concerns about the affordability of the required stormwater infrastructure and are overall not supportive of rezoning.

2.3.11.7.7 *Water supply*

- 1175. For potable water supply, DCC 3 Waters advised a minor network extension would be required, but with significant upstream upgrades.
- 1176. Regarding potable water supply, Mr Bowen noted nearby connection points to the existing network and outlined that this area is considered to have “high” water pressure. He anticipated there are likely solutions available to overcome the upstream upgrades required.
- 1177. In their response, Mr Oliver and Mr Saunders agreed with Mr Bowen’s comments regarding the existing infrastructure, and his interpretation that there are solutions available for the significant upstream upgrades required.

2.3.11.7.8 *Wastewater*

- 1178. DCC 3 Waters advised that in the wastewater network immediately downstream of the site wastewater enters a constrained area and there are existing wastewater overflows in wet weather. DCC 3 Waters advised that additional flows would exacerbate this problem, and a medium – long term timeframe is anticipated to resolve these issues, therefore rezoning of the site was not supported.
- 1179. Mr Bowen agreed that wastewater detention may be required in order to avoid exacerbating downstream wastewater issues. He noted that sites within R206 (proposed Large Lot Residential zone) would have on-site wastewater disposal. For sites within the northern part of RS206a, he did not consider that the addition of 12 new sites would have a noticeable effect on the downstream wastewater network. However, if this were of a concern to DCC, he said an alternative solution would be to pump wastewater into a communal facility. Mr Bowen then outlined a proposal for a large community detention tank to service the remainder of the site, with a telemetry link to the Musselburgh Pumping Station. While he acknowledged the high cost of the detention tank, he considered this affordable when spread over the likely number of sites.
- 1180. In their response, Mr Oliver and Mr Saunders continued to raise concerns about the proposed wastewater servicing. They disagreed with Mr Bowen’s statement that 12 new sites would not have a noticeable effect on the downstream wastewater network. They considered that any additional flows would exacerbate the existing problems, and also advised that they do not support individual pump systems. In commenting on the submitter’s proposal for a communal wastewater detention tank they advised that such systems are more expensive to build and operative compared to gravity sewer networks, and such an approach is generally only supported when there is a strong need for additional zoned land to provide development capacity.

2.3.11.7.9 *Funding of infrastructure upgrades required*

- 1181. Mr Phil Page, counsel for Mr Glass, responded to the concerns raised in the section 42A report about the feasibility of providing appropriate infrastructure. Mr Page submitted that the viability of funding infrastructure requirements is a business decision for the developer, and not a basis to refrain from rezoning the site.
- 1182. Mr Michael Garbett, Legal Counsel for DCC, provided a legal submission responding to this matter. Mr Garbett considered that the potential long-term cost to the public of public infrastructure is clearly a relevant matter for consideration at the time of making decisions with respect to any rezoning of land.

2.3.11.7.10 DCC 3 Waters response to evidence at hearing

1183. In their response to submitter evidence, Mr Oliver and Mr Saunders confirmed that their initial comments stand and rezoning is not able to be supported from a 3 Waters perspective. The primary reasons for this are wastewater issues (existing wastewater overflows occurring and communal onsite wastewater detention may be challenging) and stormwater management issues (concern over the number of individual on-site stormwater tanks proposed plus the potential impacts on Lindsay Creek). Further detail was also provided on the nature of the upstream potable water upgrades that are required for this area.

2.3.11.7.11 Transport

1184. The site will be accessed from Watts Road, for a small number of sites (Mr Bowen estimates a maximum of 22 additional dwellings), with the majority of the areas proposed to be accessed from North Road, via a bridge over Lindsay Creek. Mr Bowen provided an assessment of the appropriateness of Watts Road to service the additional traffic from the proposed development and considered that upgrades are required but are feasible. These include construction of a footpath on the south side of Watts Road.
1185. Regarding access from North Road, Mr Bowen understood that the submitter has an existing agreement with the ORC that requires the construction of a new bridge in exchange for taking ownership of a portion of land along the banks of Lindsay Creek. He noted the possibilities of providing a secondary access point to the subdivision. The first option considered was construction of an additional bridge over the Lindsay Creek to North Road, and the second option is to provide an emergency access connection through the site to Watts Road. He noted this would need to be restricted to use by emergency vehicles only (to avoid compromising Watts Road), but is likely to be manageable. Overall, he considered that the costs of meeting key transportation outcomes, while not insignificant, would be feasible due to the large-scale nature of the development opportunity that the requested rezoning would provide.
1186. In his response to submitter evidence, Mr Watson of DCC Transport noted that the information provided by the submitter is helpful to demonstrate that there are potential solutions to resolve identified transport issues. However, Mr Watson considered that an Integrated Transport Assessment should be provided prior to rezoning. This would need to demonstrate the ability to provide for an additional site access to the main part of the site, potentially via a second bridge. It would also need to demonstrate the mechanisms for delivering the various infrastructure improvements which would be delivered at the time of subdivision.

2.3.11.7.12 Biodiversity

1187. Mr Morrissey outlined in the section 42A report that, despite efforts having been made, access to the site was not able to be secured in time to conduct a full on-site biodiversity assessment. Therefore observations of biodiversity were undertaken, by Wildland Consultants, from public roads adjacent to the property. In his report for Wildlands, Mr Kelvin Lloyd noted that, given the lack of access, it was difficult to assess whether the area is ecologically significant. Some areas of vegetation around the perimeter appear to be indigenous-dominant and contain a reasonable diversity of species, but this may not be reflective of the vegetation across the site. It is possible that the sites may meet the 2GP ecological significance criteria in regards to ecological context. He considered that some

Large Lot Residential zoning may be acceptable but this is uncertain in the absence of a detailed assessment.

1188. General comments were also provided by Mr Lloyd regarding the North East Valley, and these highlighted concerns regarding fragmentation of existing indigenous vegetation, increase in predation by pets such as cats, and adverse effects through increased runoff on the stream system, in this case Lindsay Creek. We have discussed these broader topics in section 2.1.7 above.
1189. In his evidence, Mr Anderson noted that there are no biodiversity related overlays on the site, and he therefore considered that concerns around significant indigenous biodiversity have limited relevance. In terms of non-significant indigenous biodiversity, he noted that the 2GP provides guidance on areas of importance (around waterways, wetlands etc) while providing for the removal of some biodiversity as a permitted activity.
1190. Mr Milne, in Appendix 2 of his landscape assessment, provided information regarding the vegetation present on the site. He noted that there is extensive vegetation present, consisting of predominantly exotic with some areas of regenerating native species. Much of the site has remnants of the original indigenous vegetation which would have consisted of mainly podocarp forest in the form of Matai, Totara and Rimu, with Mahoe, Lacebark and some Miro on coastal hills, while vegetation within the mid-altitudes consisted of Mahoe and Broadleaf, with Kaikawaka, Hall's Totara. Mr Milne also identified a number of design principles and design strategies regarding the management of vegetation on the site.
1191. In his legal submission, Mr Page also discussed indigenous biodiversity and commented that the existing Rural Zone provisions are not a tool to protect vegetation and biodiversity values and do not impart significant existing protection.
1192. In her Reply, Ms Christmas disagreed with Mr Page's statement and commented that rural zones not only have a purpose related to biodiversity, but they also have rules specific to managing indigenous vegetation clearance within them (albeit not as strictly as the rules that apply to an Area of Significant Biodiversity Value). She outlined the various rules in the Plan that restrict indigenous vegetation clearance in rural zoned land.

2.3.11.7.13 Other issues

1193. Concerns were also raised by further submitters in relation to loss of the area for amenity and recreational uses, and loss of high class soils.
1194. Mr Morrisey noted that, while the area is currently open to the general public for recreational uses, the land is privately owned, and the landowner has a right to prevent public access regardless of the underlying zoning. He acknowledged there is a small area of high class soils over 43 Watts Road, but commented that due to its small size and relatively inaccessible location, the overall rural productivity potential of the site is likely low.

2.3.11.7.14 Reporting Officer's recommendation

1195. Mr Morrisey's recommendation was to reject the submissions seeking rezoning and that there should be no rezoning of any part of the site. He advised that zoning would conflict with several aspects of Policy 2.6.2.1, including rezoning the SNL to residential, impacts on rural character and visual amenity, the high hazard risk, impact on the wastewater network, unresolved issues with water supply, issues with stormwater disposal and uncertainty about the indigenous biodiversity values that may be present within the area that may require

protection. He also provided comment that rezoning RS77 to General Residential 2 would appear inconsistent with Policy 2.6.2.3, which identifies access to reasonable levels of sunlight as a relevant zoning consideration.

2.3.11.7.15 Decision and reasons

1196. We reject the submission from *Fletcher Glass* (S123.001, S123.002, S123.003, S123.004) seeking to rezone the site.
1197. We adopt the evidence of Mr McKinlay that residential zoning within the SNL will not appropriately protect its landscape values. This is consistent with our general approach to residential development in SNLs, outlined in section 2.1.3. We acknowledge that Mr Milne's evidence provided details of how the adverse effects on landscape values might be able to be managed through built form and vegetation planting. However, overall we prefer Mr McKinlay's evidence that development at Large Lot Residential density is incompatible with the SNL overlay and would contrast with the largely natural character of this uppermost part of the site and nearby hillslopes.
1198. In relation RS77, we accept Mr McKinlay's evidence that residential zoning will impact on the natural character and visual amenity, albeit to a lesser extent than for RS206. This area is currently heavily bushed. Mr Milne also noted in his evidence that future development provided for by General Residential 2 zoning (if rezoned) would impact the landscape attributes and in particular the sensory landscape values at this location. We are also concerned that Mr Milne's evidence shows a relatively high degree of shading that the proposed development in this area will experience during winter, and he confirmed this in answer to a question from us. Mr Morrissey's evidence is that this was inconsistent with Policy 2.6.2.3, which identifies reasonable levels of sunlight as a relevant zoning consideration. We agree.
1199. We adopt the evidence from Stantec which concludes that the entire site has a high level of natural hazard relating to slope instability. No evidence was received from *Mr Glass* to counter this and, in the absence of any contrary evidence, we do not consider rezoning a site with high level hazards for residential use is appropriate and is not consistent with Policy 2.6.2.1.d.viii. We note that this is consistent with our decisions on other sites where the uncontested evidence is there are high level natural hazards.
1200. We agree with the evidence of Mr Watson that additional information and assessment would be required in relation to transport links and the feasibility of these before any rezoning occurs. This is due to the concerns raised by Mr Watson about the ability to provide for a second bridge for site access and mechanisms for the various transportation improvements to be delivered at the time of subdivision. Mr Bowen acknowledged that further work would be needed to determine an appropriate second access from North Road, but this work had not yet been done. Consequently, we consider it would be inappropriate to rezone Area E. We also consider that there is not sufficient detailed evidence provided regarding the feasibility of conducting the upgrades to Watts Road. We note Mr Page's comments that the affordability of infrastructure upgrades are a matter for the developer rather than issues relevant for rezoning. However, access to a large site proposed for rezoning in our view is a fundamental consideration at the time of rezoning, and we must be reasonably confident that new access and upgrades to the network are all possible, practical, viable, and able to be properly assessed in order for rezoning to comply with Policy 2.6.2.1.b. We are not confident that this is the case.

1201. We adopt the evidence of Mr Oliver and Mr Saunders regarding 3 waters servicing. We agree with their position that rezoning to a General Residential 1 or 2 density is not acceptable due to concerns about wastewater servicing and stormwater disposal. We also note that significant upstream upgrades will be required with respect to potable water supply. We do not consider that sufficient evidence has been provided by the submitter to demonstrate that stormwater management is feasible for the site. We note that whilst communal wastewater management proposed by the submitter may be feasible, Mr Oliver and Mr Saunders' evidence was that such systems are more expensive to build and operate than gravity sewer networks and we agree with their view that such an approach should only proceed if there is a strong need for development in this area and wider city.
1202. As we have previously discussed in relation to Mr Stocker's evidence, we are of the view that there is generally sufficient development capacity provided. Therefore rezoning sites with significant issues or infrastructure requirements that have yet to be resolved is not consistent with the purpose of Variation 2.
1203. We note Ms Christmas' evidence regarding the purpose of rural zoning with respect to indigenous biodiversity protection. We agree that, without a formal biodiversity assessment of the site, a precautionary approach is appropriate with respect to protecting indigenous biodiversity values.
1204. Overall, we acknowledge the submitter has called on a substantial amount of expertise, evidence, and legal submissions to support the rezoning of this land. However, based on the evidence called by DCC, we are not satisfied that several key considerations in the policy framework for rezoning sites are able to be met. In the context of Variation 2, and its purpose for rezoning land in 'easy wins' situations to meet an identified shortfall in development capacity, we do not consider that rezoning any of this land, to residential, as requested, is appropriate or consistent with Policy 2.6.2.1.

2.3.12 Outram

2.3.12.1 85 Formby Street, Outram (RS175), and 91 and 103 Formby Street, Outram (RS154)

1205. This section addresses the submissions covered in section 5.4.15 of the section 42A report.
1206. RS175 and RS154 are located in Outram, on the edge of the Taieri Plain. They have a combined area of approximately 10ha and are zoned Rural Taieri Plain. They are located adjacent to land in the Township and Settlement Zone. The 2GP map shows a number of overlays are present, including a high class soils mapped area, and a Hazard 2 (flood) Overlay Zone. A small part of 85 Formby Street is subject to a swale mapped area. There is a critical electricity infrastructure corridor mapped area on the southern boundary of the site.
1207. Mr Morrissey noted that the sites are distant from the nearest town centre. The nearest principal centre (Mosgiel) with a broad range of services is located approximately 12km away. We note that it is relatively close (less than a kilometre) from the Outram rural centre, which has some limited services including a tavern, café and superette.
1208. In the section 32 report, the sites were originally rejected due to high-class soil and potential flooding issues. In addition, the report noted that Outram township does not have a shortage of residential capacity and there is no immediate need for rezoning.

SUBMITTER: FLETCHER GLASS

1. This is a Further Submission in support of OS123¹ also filed by Mr Glass.
2. This Submission is also filed in conjunction with a Waiver Application pursuant to section 37 Resource Management Act 1991.

Reason for Submission

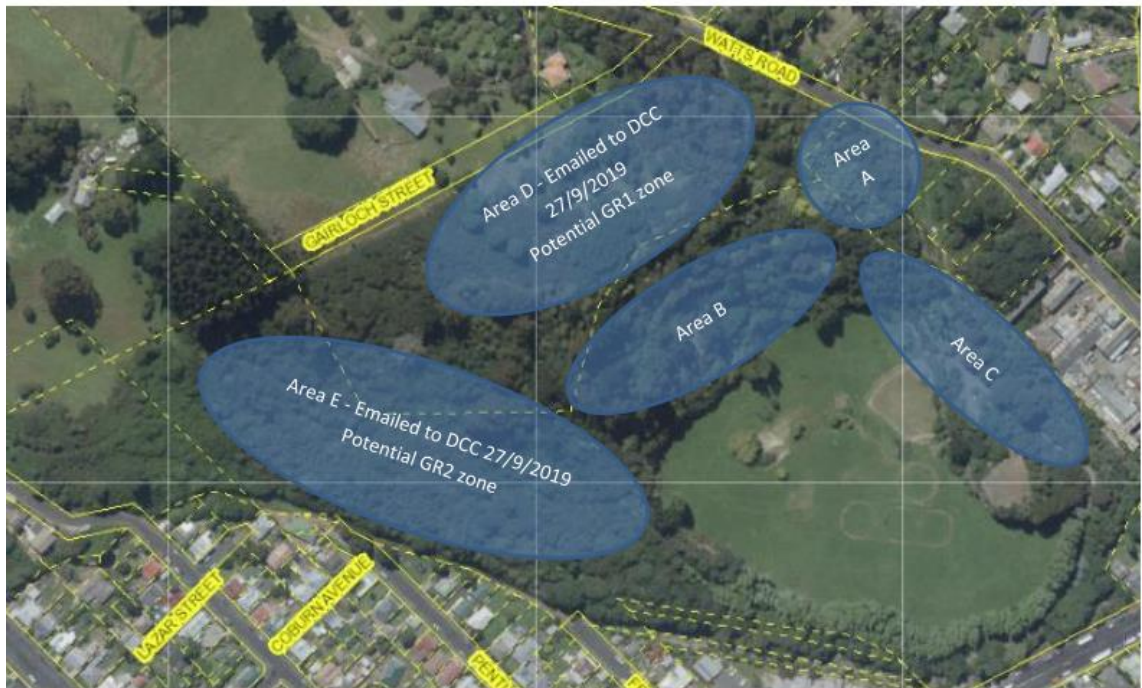
3. We support OS123, but seek the following amendments:
 - (a) Amendments to ensure consistency with relief sought within the original submission OS123; and
 - (b) Minor zoning boundary adjustments to ensure there are no impractical zoning outcomes (i.e. isolated pockets of rural land).
4. OS123 was prepared by Mr Glass, as a lay person, and the areas identified for rezoning were intended to identify general areas, rather than a literal spatial limitation. We do acknowledge that initial consultation in 2019 was undertaken through Anderson & Co, planning consultants.
5. We consider that the relief above can be resolved by way of further submission rather than a late submission application. Without prejudicing this position, this submission has also been filed in conjunction with a waiver for filing of a late submission, therefore can be treated as a 'late submission' if necessary.

RELIEF SOUGHT

Relief Sought – Area E

6. OS123 sought the following relief:

¹ Being zoning extents of submissions points 123.001 – 123.004



7. The Council Maps – updated on Wednesday 2 June 2021 identifies the following areas as being within scope:



Relief Sought - Areas D & E

8. We note that RS77 has not extended to the western corner as identified within the Map appended to OS123. We seek that RS77 be extended over the full extent of the western corner of the site.
9. We also note that OS123 sought Area E to extend further into Area D. Area E was not defined by the boundary between Lot 1 & Lot 2 DP 505233, Freehold Title 782300. Area D is to follow the contours of the SNL line. The SNL overlay is the reason why we seek a lower density zoning (Large Lot Residential Zoning) within Area D.
10. Council maps have also retained a portion of rural land to south-east of RS77. Again, the circular areas identified within OS123 was intended to identify general areas for development rather than strict spatial limitation. Mr Glass seeks rezoning of this land as a natural extension of RS77 and to prevent isolated pockets of rural land on the site.

Relief Sought – Area A

11. Council has identified Area A as RS206a. The Area identified by Council includes the entirety of Lot 3 DP 505233, held in Freehold Title 782301.
12. We seek a mapping adjustment to include Part Lot 3 DP 1390, Freehold Title OT2D/517 to be contained within Area A.
13. We acknowledge that this area was not sought within OS123, however submit that fits within the *Clearwater* ‘incidental or consequential’ exemption², as recently applied in *Tussock Rise*³ and *well Smart Investments*⁴. This area forms a natural extension, as it includes GR1 land otherwise straddled by the proposed GR2 zoning.

Isolated Pockets of Rural Land

14. Council’s strict interpretation of OS123 has also resulted in isolated pockets of rural land between Areas B, D and E (RS206a, RS206 and RS77 respectively). That was not the purpose of OS123 and may result in the impractical retention of rural zoned land.

² *Clearwater Resort Limited v CCC* (HC) Christchurch AP 34/02 at [66]

³ *Tussock Rise Limited v QLDC* [2019] NZEnvC 111

⁴ *Well Smart Investments Limited (NZQN) v QLDC*

Summary

15. To resolve inconsistencies and interpretation issues from the original submission, we attach a map as **Appendix A** identifying the complete relief sought on the site. We summarise as follows:

- (a) Areas A, B, C, E to be rezoned General Residential 2;
- (b) Area D to be rezoned Large Lot Residential; and
- (c) Any consequential amendments.

Or

- (d) Any alternative zonings that achieve the same or lesser residential density.



Dates this 17 day of June 2020

Derek McLachlan

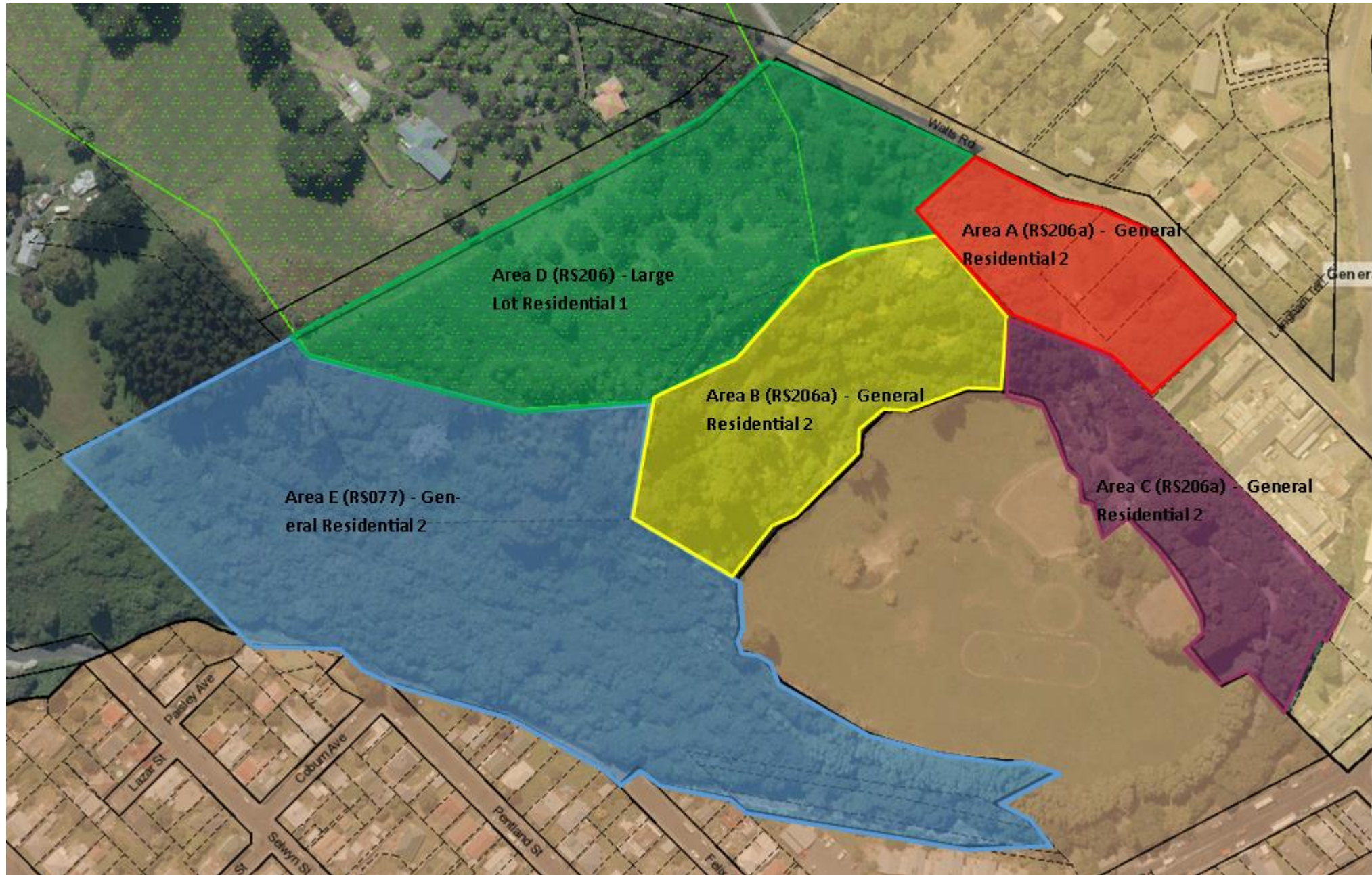
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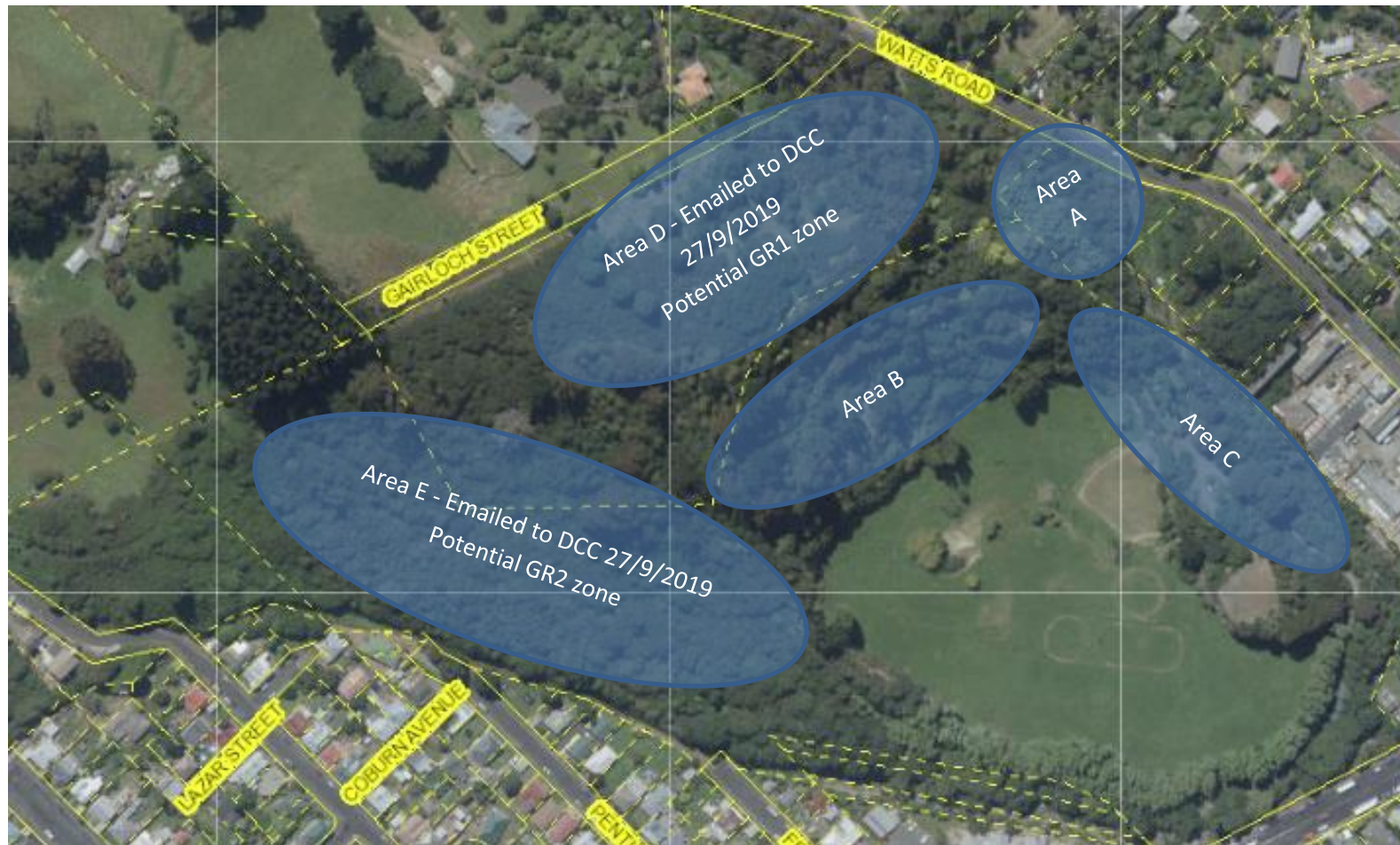
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Appendix 'A'



309 North Road / 43 Watts Road Dunedin



Submission on Variation 2 of Dunedin City Council 2GP

Submission by Fletcher Glass

Relating to the property at 309 North Road and 43 Watts Road, NEV.

Submission:

This submission seeks to reject the s32 report rejection of the land within 309 North Road and 43 Watts Road for rezoning to various residential zones.

Five areas within the subject site have been raised with Council. These areas are referred to as A, B, C, D and E. Refer attached diagram.

Areas A, B and C were suggested to DCC staff via email on 2/8/2019.

Areas D and E were suggested to DCC staff via email on 2/8/2019.

General comments:

Landscape – Areas A, B, C and E (but not D) are not within a SNL overlay, therefore landscape matters are not relevant to those areas.

Waste water - A significant proportion of NEV is zoned GR1 (without an infrastructure constraint), and Variation 2 seeks to provide for increased density in the GR1 zone within NEV – the impact of additional development has been reviewed by Council/Council consultants (refer 232 report appendix 4), which concludes that in NEV the most likely development scenario under the Variation 2 rule changes is a lower network demand than the maximum possible development scenario modelled using the 2GP rules. These means Council is expecting some capacity to remain available in the network.

Benefits of the subject areas – the benefits include:

- Close to public transportation
- Close to schools
- No flooding overlays

Area Specific Comments:

Area A – This is a relatively small area of approx. 3,000m², with street frontage to Watts Road. The area is adjacent to and opposite to residential zoning, and is within the water services mapped area. Sewer would need to be extended about 100m.

Area B – This area is essentially the stepped rock face of the former quarry, which could be suitable for a stepped multi-unit development, such as apartment or an aged care facility. Any likely development is likely to be of sufficient size to allow for on-site wastewater detention system (which is consistent with the recommended site at 87 Selwyn St). The area is within the water services mapped area.

Area C – This area sits between the GR1 zone to the north-east and the GR2 zone to the south-west. The existing overhead powerlines are anticipated by the land owner to be placed underground.

Area D – This is the only areas within a landscape overlay. It is noted that the 2GP does anticipated some new residential zoning in the SNL overlays, as Policy 2.6.2.1.d.iv only seeks to “generally” avoid, rather than a more directive “avoid” policy position. Hence, rejecting this area solely due to the SNL, without proper consideration is inappropriate. Any change to a residential zoning will still require future dwellings to obtain a resource consent due to the SNL, which assist in terms of landscape matters. Having further considered this area, the submitter wishes to suggest an alternative zoning of LLR1. Such a zoning will result in onsite management of stormwater and waste water (which is consistent with the recommended site at 233 Signal Hill Rd). The area has road frontage and a buildable area largely clear of bush, and is within the water services area.

Area E – While this area is sloping, initial site reviews by the owners surveyor has not discounted the development potential of the area. The proposed GR2 zoning will allow for multi-unit development on the sloping area, which is anticipated to be sufficient large to allow for on-site wastewater detention system (which is consistent with the recommended site at 87 Selwyn St).

Finally, subject to the above, the submitter wishes to note he is in support of Variation 2 in principle and in particular GR1 zone rules relating to site size and development intensity.