

**IN THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

**I MUA I TE KOOTI TAIAO
I ŌTAUTAHU ROHE**

ENV

Under the Resource Management Act 1991

In the matter of an appeal under pursuant to clause 14(1) of the First Schedule
of the Act

Between **ROGER AND JANINE SOUTHBY**
Appellant

And **DUNEDIN CITY COUNCIL**
Respondent

**NOTICE OF APPEAL ON BEHALF OF ROGER AND JANINE
SOUTHBY**

21 March 2023

Duncan Cotterill

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To: The Registrar
Environment Court
Christchurch Registry

1 Roger and Janine Southby (**the Appellants**) appeal against a decision of the Dunedin City Council on the following matter:

1.1 Variation 2 to the Second-Generation Dunedin City District Plan (**'The Decision'**).

2 The Appellants filed original submissions on the Dunedin City Council Second Generation Plan (**'2GP'**) seeking rezoning of 170 Riccarton Road West (**S191**).

3 The Appellants received notice of the decision on 8 February 2023.

4 The decision was made by the Dunedin City Council.

5 The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**'The Act'**).

6 The parts of the Decision that the Appellants are appealing are:

6.1 the Decision of the Variation 2 – Additional Housing Capacity Second Decision Report: Greenfields Rezoning Sites by the Hearings Panel, in particular section 2.3.10.4 which rejects rezoning of 170 Riccarton Road West. Council Officers have identified this submission site as Requested Site 212 (**'RS212'**).

7 The reasons for the appeal are as follows:

7.1 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 – Urban Development, updated May 2022 (**'NPS-UD'**). The Decision unreasonably limits the extent to which Variation 2 can give effect to the NPS-UD, and section 75(3) of the Act;

7.2 The 2GP Decision fails to give effect to the NPS-UD, in particular policy 2 and policy 8 of the NPS-UD;

- 7.3 The Decision places too much weight on Council's Housing Capacity Assessment ('HBA'). The Decision does not acknowledge deficiencies in methodology, assumptions, and accuracy of the HBA;
- 7.4 The Decision places too much weight on supplementary processes such as the Future Development Strategy to give effect to obligations within the NPS-UD;
- 7.5 The Decision is inconsistent with Objective 2.2.4 2GP. The Decision places too much weight on the concept of 'compact city' and fails to recognise that RS212 promotes compact development of Mosgiel Township, with well-established roading connections;
- 7.6 The Decision is inconsistent with Objective 2.6.1 2GP. 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;
- 7.7 The Decision is inconsistent with Objective 2.6.2 2GP. The Decision fails to ensure sufficient, feasible development capacity. The Decision fails to respond to the significant demand for housing (and shortfall of housing capacity available) within the Dunedin and Mosgiel areas;
- 7.8 The Decision erred when it found that the rezoning of the site does not meet the criteria within Policy 2.6.2.1 2GP;
- 7.8.1 The Decision placed too much weight on potential transportation constraints. An Integrated Transportation Assessment would be required at subdivision stage. There are no overriding transportation concerns in relation to this site.
- 7.8.2 The Decision fails to acknowledge the technical solutions available in relation to water supply, wastewater, and stormwater.
- 7.8.3 The Decision fails to acknowledge the benefits of self-servicing and imposes inefficient constraints on land that could appropriately be utilised as Large Lot Residential.

- 7.8.4 The Decision fails to acknowledge that rezoning (particularly Large Lot Residential) would be reflective of surrounding land fragmentation.
- 7.8.5 The Decision places insufficient weight on the measures available to mitigate potential effects on rural landscape values. These mitigation measures can be imposed through a Structure Plan approach.
- 7.8.6 The Decision places insufficient weight on the benefits of providing Transitional Overlays, and practical measures to ensure intensification is available at a later date.
- 7.8.7 The Decision places too much weight on the productive potential of the site. The site represents a fragmented site, that has been uneconomic over a significant period of time. The evidence available demonstrates that the site is not a feasible economic unit.
- 7.8.8 The Decision places too much weight on the Land Use Classification Maps, as opposed to the actual and realised productive potential of the site. The Decision places too much weight on the cumulative loss of productive land.
- 7.8.9 The site does not exhibit any constraints in relation to biodiversity or natural hazards that would restrict development. Detailed assessments would be undertaken at the time of development.
- 7.8.10 The Decision places too much weight on the existence of a Hazard 3 (flood) overlay. Risk from flood hazard and inundation can be managed at the time of detailed design.
- 7.9 The Decision erred in its interpretation and application of the National Policy Statement on Highly Productive Land (**NPS-HPL**);
 - 7.9.1 The Decision was incorrect when it held that the exemptions within clause 3.5(7) NPS-HPL do not apply.

7.9.2 The Decision was incorrect when it held that the site did not meet the criteria within clause 3.6 NPS-HPL.

7.10 The Decision does not give effect to the purpose or Part 2 of the Act.

8 The Appellants seek any combination of the following relief:

8.1 Pursuant to a Structure Plan, the proposed Plan be amended to rezone 170 Riccarton Road West (RS212) as:

8.1.1 Large Lot Residential 1;

8.1.2 Low Density Residential; or

8.1.3 General Residential 1.

8.2 Apply a New Development Mapped Area;

8.3 Apply a Residential Transitional Overlay;

8.4 All other relief required to give effect to the Appellants' original submissions, and any further relief the Court considers appropriate as a consequence of relief granted under this appeal; and

8.5 Costs.

9 Attached are the following documents to this notice:

9.1 A copy of original submission made by Roger and Janine Southby (**Appendix A**);

9.2 A copy of the relevant parts of the decision:

9.2.1 Broad Matters raised (**Appendix B1**);

9.2.2 Site specific submissions (**Appendix B2**); and

9.2.3 Interpretation of the NPS-HPL (**Appendix B3**).

- 9.3 A list of names and addresses of persons to be served with a copy of this notice (**Appendix C**).

Dated 21 March 2023



K Forward / D McLachlan
Solicitor for the appellant

This document is filed by Derek McLachlan and Katherine Forward of Duncan Cotterill, solicitor for the appellant.

The address for service of the appellant is:

Duncan Cotterill
197 Bridge Street
Nelson 7010

Documents for service on the appellant may be:

- Left at the address for service.
- Posted to the solicitor at PO Box 827, Nelson 7040
- Emailed to the solicitor at derek.mclachlan@duncancotterill.com or Katherine.forward@duncancotterill.com

Please direct enquiries to:

Katherine Forward/Derek McLachlan
Duncan Cotterill
Tel +64 3 546 6223
Email Katherine.Forward@duncancotterill.com
derek.mclachlan@duncancotterill.com

ADVICE TO RECIPIENTS OF COPY OF NOTICE OF APPEAL

How to become a party to proceedings

If you wish to be a party to the appeal, you must lodge a notice in form 33 with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

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).

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.

Advice

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

Roxanne Davies

From: Emma Peters <sweepconsultancy@gmail.com> on behalf of emma <Emma@sweepconsultancy.co.nz>
Sent: Wednesday, 3 March 2021 02:32 p.m.
To: District Plan Submissions
Subject: Submission of Roger and Janine Southby - Residential Rezone of 170 Riccarton Road West, Mosgiel and Application of a Structure Plan Mapped Area
Attachments: Submission Form 5 - Roger & Janine Southby - Residential Rezone of 170 Riccarton Road West, Mosgiel.PDF; Variation 2 Submission Notes - Roger and Janine Southby - Residential Rezone of 170 Riccarton Road West.pdf; Variation 2 Submission Notes - Roger and Janine Southby - Table 1.pdf; CLS198-3 Southby Structure Plan GR1.pdf; CLS198-2 Southby Structure Plan LDR.pdf; CLS198-1 Southby Structure Plan LLR1.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Nat

Hi,

Please find attached the following documents forming the submission of Roger and Janine Southby in relation to the residential rezone of 170 Riccarton Road West, Mosgiel and application of a structure plan:

- Completed Form 5;
- Submission Notes;
- Table 1; and
- Structure Plans for GR1, LDR and LLR1.

Please confirm receipt of this email.

Cheers,

Emma Peters Consultant Sweep Consultancy Limited P.O. Box 5724 Dunedin 9054 Phone 0274822214
www.sweepconsultancy.co.nz

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: Roger and Janine

Last name: Southby

Organisation (if applicable):

Contact person/agent (if different to submitter): Emma Peters, Consultant, Sweep Consultancy Ltd

Postal address for service: P.O. Box 5724

Suburb:

City/town: Dunedin

Postcode: 5724

Email address: emma@sweepconsultancy.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)

Residential rezone of 170 Riccarton Rd West, Mosgiel to GR1 #101 LOR 1/60 LUR1
g application of a structure plan mapped area.
For example: D2

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

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 Residential rezone of 170 Riccarton Rd West g application of ssm A.

Accept the change with amendments outlined below

Reject the change

If the change is not rejected, amend as outlined below

See attached submission notes

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.

See attached submission notes

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:

 Emma Peters, consultant, Sweep Consulting Ltd. Date: 3/3/21.

Table 1: NDMA Issues and Potential Mechanisms For Solutions

Notified Policy / Rule	Issue	Potential Solutions
CHANGE D4 Policy 2.3.3.1.X Support community and leisure activity, sport and recreation, and essential community facilities in Dunedin through: ... X. policies and assessment rules for subdivision in a new development mapped area that require consideration of the need for formal and/or informal space for recreation, sporting, social and cultural activities, and community facilities. (Change D4) Delete Policy 2.6.1.6.b Objective 12.2.X Future residential growth areas are developed in a way that achieves the Plan's strategic directions for: (Change D1) a. facilities and spaces that support social and cultural well-being. (Objective 2.3.3); (Change D4) Policy 12.2.X.1 Policy 12.2.X.1 Only allow subdivision in a new development mapped area where it will provide or otherwise ensure good access to outdoor recreation opportunities (including playgrounds) and, where possible, opportunities for off-road cycling and walking tracks within and between different residential developments and connecting to community facilities and services. (Change D4) Rule 12.X.2.5.c 12.X.2 Assessment of restricted discretionary activities in a Transition Overlay Zone or mapped area Activity Matters of discretion Guidance on the assessment of resource consents ...	How will this operate in NDMA where land is in multiple ownership and development is likely to occur over time and potentially without co-operation between landowners? S32 report talks about 'large greenfield areas' [see para 296], however, many of the 'large greenfield areas' in NDMA are in multiple ownership.	A trigger mechanism for requirement of formal and/or informal space for recreation, sporting, social and cultural activities, and community facilities. That is, over so many lots / developed area a greenspace is required. AND / OR Specify what greenspace etc is required as a minimum for which NDMA's.

5. In a new development mapped area. All subdivision activities (Change D1)	c. Provision of recreation spaces. (Change D4) Relevant objectives and policies: - Objective 12.2.X - The subdivision provides or otherwise ensures, good access to outdoor recreation opportunities (including playgrounds) and, where possible, opportunities for off-road cycling and walking tracks within and between different residential developments and connecting to community facilities and services (Policy 12.2.X.1). (Change D4) Conditions that may be imposed include: i. Location, size and shape of recreation reserves, including a minimum length of road frontage. ii. A requirement to vest recreation spaces in DCC as DCC reserve. iii. Public amenities to be included in a recreation reserve. iv. A requirement for the recreation space to be developed prior to vesting in DCC. (Change D4)
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Notified Policy / Rule	Issue	Potential Solutions			
CHANGE D5 Delete Policies 2.2.2.5.b and 2.2.5.3.a and replace with new clause in Policy 2.2.2.X.a Policy 2.2.2.X to be added {Change D5 & Change E4} <u>Encourage improvements to the environmental performance of new housing by. {Change E4}</u> a. <u>use of policies and assessment rules for subdivision, including in new development mapped areas, that encourage subdivisions to be designed to maximise the potential for passive solar design in housing. {Change D5}</u> b. <u>encouraging new medium density housing in parts of the city that have old housing stock that is not protected for its heritage values;</u> c. <u>rules that require outdoor living space to be on the sunny side of buildings, and requiring principal living areas to connect to the outdoor living space, and</u> d. <u>rules that restrict height in relation to boundary to facilitate access to sunlight in outdoor areas. {Change E4}</u> Objective 12.2.X & Policy 12.2.X.3 Objective 12.2.X {Change D4} <u>Future residential growth areas are developed in a way that achieves the Plan's strategic directions for. {Change D4}</u> ... c. <u>environmental performance and energy resilience. {Objective 2.2.2}. {Change D5}</u> ... <u>Policy 12.2.X.3</u> <u>Only allow subdivision in a new development mapped area where the subdivision layout and orientation provides for houses to be designed with good solar access to living areas and outdoor living spaces. {Change D5}</u> Rule 12.X.2.5.a <u>12.X.2 Assessment of restricted discretionary activities in a Transition Overlay Zone or mapped area</u> <table> <tr> <td><u>Activity</u></td><td><u>Matters of discretion</u></td><td><u>Guidance on the assessment of resource consents</u></td></tr> </table> ...	<u>Activity</u>	<u>Matters of discretion</u>	<u>Guidance on the assessment of resource consents</u>	No issues.	N/A
<u>Activity</u>	<u>Matters of discretion</u>	<u>Guidance on the assessment of resource consents</u>			

5. In a new development mapped area: All subdivision activities {Change D1}.	a. Whether subdivision design supports energy-efficient housing {Change D5}.	Relevant objectives and policies: i. Objective 12.2.X ii. The subdivision layout and orientation provides for houses to be designed with good solar access to living areas and outdoor living spaces {Policy 12.2.X.3}. {Change D5}.		
...				
Rule 15.11.5.Y				
15.11.5 Assessment of restricted discretionary activities in an overlay zone, mapped area, heritage precinct or affecting a scheduled heritage item				
Activity		Matters of discretion	Guidance on the assessment of resource consents	
...				
Y. In a new development mapped area: All subdivision activities {Change D1} & Change F2-2}	a. Whether subdivision design supports energy-efficient housing {Change D5}	See Rule 12.X {Change D5}		

Notified Policy / Rule	Issue	Potential Solutions						
CHANGE D6 Objective 12.2.X and Policy 12.2.X.2 <u>Objective 12.2.X</u> {Change D1} Future residential growth areas are developed in a way that achieves the Plan's strategic directions for. {Change D1} ... b. indigenous biodiversity (Objective 2.2.3). {Change D6} ... <u>Policy 12.2.X.2</u> Only allow subdivision in a new development mapped area where the subdivision is designed to ensure any future land use and development will protect, and where necessary restore, any waterways, areas of important indigenous vegetation and habitats of indigenous fauna, or other areas with significant natural environment values. {Change D6} Rule 12.X.2.5.d <u>12.X.2 Assessment of restricted discretionary activities in a Transition Overlay Zone or mapped area</u> <table border="1"> <thead> <tr> <th>Activity</th><th>Matters of discretion</th><th>Guidance on the assessment of resource consents</th></tr> </thead> <tbody> <tr> <td>...</td><td>d. Whether subdivision design maintains or enhances areas with significant natural environment values {Change D6}.</td><td> <u>Relevant objectives and policies:</u> i. Objective 12.2.X ii. The subdivision is designed to ensure any future land use and development will protect, and where necessary restore, any waterways, areas of important indigenous vegetation and habitats of indigenous fauna, or other areas with significant natural environment values. (Policy 12.2.X.2). {Change D6}. <u>Conditions that may be imposed include:</u> iii. A requirement to protect areas through reserve status or other legal mechanisms. iv. A requirement to undertake conservation activity. {Change D6}. </td></tr> </tbody> </table>	Activity	Matters of discretion	Guidance on the assessment of resource consents	...	d. Whether subdivision design maintains or enhances areas with significant natural environment values {Change D6}.	<u>Relevant objectives and policies:</u> i. Objective 12.2.X ii. The subdivision is designed to ensure any future land use and development will protect, and where necessary restore, any waterways, areas of important indigenous vegetation and habitats of indigenous fauna, or other areas with significant natural environment values. (Policy 12.2.X.2). {Change D6}. <u>Conditions that may be imposed include:</u> iii. A requirement to protect areas through reserve status or other legal mechanisms. iv. A requirement to undertake conservation activity. {Change D6}.	What is the threshold for 'significant natural environment values'?	Provide a definition for this term.
Activity	Matters of discretion	Guidance on the assessment of resource consents						
...	d. Whether subdivision design maintains or enhances areas with significant natural environment values {Change D6}.	<u>Relevant objectives and policies:</u> i. Objective 12.2.X ii. The subdivision is designed to ensure any future land use and development will protect, and where necessary restore, any waterways, areas of important indigenous vegetation and habitats of indigenous fauna, or other areas with significant natural environment values. (Policy 12.2.X.2). {Change D6}. <u>Conditions that may be imposed include:</u> iii. A requirement to protect areas through reserve status or other legal mechanisms. iv. A requirement to undertake conservation activity. {Change D6}.						

Rule 15.11.5.Y 15.11.5 Assessment of restricted discretionary activities in an overlay zone, mapped area, heritage precinct or affecting a scheduled heritage item			
Activity	Matters of discretion	Guidance on the assessment of resource consents	
...			
1. In a new development mapped area. All subdivision activities (Change D1 & Change F2.2)	1. Whether subdivision design maintains or enhances areas with significant natural environment values (Change D6)	See Rule 12.X (Change D6)	

Notified Policy / Rule	Issue	Potential Solutions									
CHANGE D7 Objective 12.2.X {Change D1} Future residential growth areas are developed in a way that achieves the Plan's strategic directions for. <i>{Change D1}</i> ... d. form and structure of the environment <i>{Objective 2.4.1}</i>. <i>{Change D7}</i> Policy 12.2.X.4 Only allow subdivision in a new development mapped area where the subdivision will provide adequate areas of amenity planting (including but not limited to street trees) and public amenities to ensure an attractive residential environment. <i>{Change D7}</i> Rule 12.X.2.5.b 12.X.2 Assessment of restricted discretionary activities in a Transition Overlay Zone or mapped area <table border="1"> <tr> <td>Activity</td><td>Matters of discretion</td><td>Guidance on the assessment of resource consents</td></tr> </table> ... <table border="1"> <tr> <td> 5. In a new development mapped area, - All subdivision activities <i>{Change D1}</i>. </td><td> b. Provision for amenity planting and public amenities. <i>{Change D7}</i>. </td><td> Relevant objectives and policies: - Objective 12.2.X - The subdivision provides adequate areas of amenity planting (including but not limited to street trees) and public amenities to ensure an attractive residential environment. <i>{Policy 12.2.X.4}</i>. Conditions that may be imposed include: - Requirements for street tree and other subdivision amenity planting. <i>{Change D7}</i>. </td></tr> </table> Rule 15.11.5.Y 15.11.5 Assessment of restricted discretionary activities in an overlay zone, mapped area, heritage product or affecting a scheduled heritage item <table border="1"> <tr> <td>Activity</td><td>Matters of discretion</td><td>Guidance on the assessment of resource consents</td></tr> </table>	Activity	Matters of discretion	Guidance on the assessment of resource consents	5. In a new development mapped area, All subdivision activities <i>{Change D1}</i>.	b. Provision for amenity planting and public amenities. <i>{Change D7}</i>.	Relevant objectives and policies: - Objective 12.2.X - The subdivision provides adequate areas of amenity planting (including but not limited to street trees) and public amenities to ensure an attractive residential environment. <i>{Policy 12.2.X.4}</i>. Conditions that may be imposed include: - Requirements for street tree and other subdivision amenity planting. <i>{Change D7}</i>.	Activity	Matters of discretion	Guidance on the assessment of resource consents	What is the threshold for the requirement? What constitutes an 'adequate' area?	Include a trigger (i.e. number of lots / size of development area). AND / OR Provide guidance on what constitutes 'adequate' areas of amenity planting and public amenities.
Activity	Matters of discretion	Guidance on the assessment of resource consents									
5. In a new development mapped area, All subdivision activities <i>{Change D1}</i>.	b. Provision for amenity planting and public amenities. <i>{Change D7}</i>.	Relevant objectives and policies: - Objective 12.2.X - The subdivision provides adequate areas of amenity planting (including but not limited to street trees) and public amenities to ensure an attractive residential environment. <i>{Policy 12.2.X.4}</i>. Conditions that may be imposed include: - Requirements for street tree and other subdivision amenity planting. <i>{Change D7}</i>.									
Activity	Matters of discretion	Guidance on the assessment of resource consents									

Y In a new development mapped area: All subdivision activities (Change D1 & Change F2-2)	b. Provision for amenity, planting and public amenities (Change D7)	See Rule 12.2X (Change D7)	
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Notified Policy / Rule	Issue	Potential Solutions
CHANGE D8 Policy 2.7.1.2 Ensure areas of new urban development provide for public infrastructure networks that represent the least possible long term cost to the public through: ... <u>z. policies and assessment rules for new development mapped areas that encourage efficient use of land as a way to maximise the cost effectiveness of public infrastructure delivery. {Change D8}</u> Objective 12.2.X {Change D1} <u>Future residential growth areas are developed in a way that achieves the Plan's strategic directions for: {Change D1}</u> ... <u>e. a compact and accessible city (Objective 2.2.4); and {Change D8}</u> <u>f. efficient public infrastructure (Objective 2.7.1); {Change D8}</u> Policy 12.2.X.5 <u>Only allow subdivision in a new development mapped area where the subdivision design ensures the efficient use of land, while also achieving the other elements of Objective 12.2.X. {Change D8}</u> Rule 12.X.2.5.e <u>12.X.2 Assessment of restricted discretionary activities in a Transition Overlay Zone or mapped area</u>	Rule 12.X.2 – general assessment guidance iv.3 This assessment has already been undertaken in rezoning of the land (including placement of Transition overlay zone or mapped area).	Delete.

5. In a new development mapped area All subdivision activities (Change D1)	9. Whether subdivision design supports efficient use of land (Change D8) Relevant objectives and policies: - Objective 12.2.X - The subdivision design ensures the efficient use of land, while also achieving the other elements of Objective 12.2.X (Policy 12.2.X.5). (Change D8) General assessment guidance: - Council will generally require subdivision in a form that enable the maximum development capacity allowed under the rules and as can be achieved while still achieving the other objectives and values of the Plan (e.g. as many sites suitable for residential development as practicable or through other means of maximising development capacity). (Change D8) - Where a subdivision proposes a residential lot less than what is allowed by the zoning and where this is not required to achieve other plan objectives or policies, Council will consider: - how this might affect the affordability and efficient delivery of public infrastructure; - how this might affect the ability to provide a reasonable amount of affordable housing in the development; and - the potential cumulative effects of inefficient development on loss of rural land. (Change D8)					
Rule 15.11.5.Y 15.11.5 Assessment of restricted discretionary activities in an overlay zone, mapped area, heritage precinct or affecting a scheduled heritage item <table><tr><th>Activity</th><th>Matters of discretion</th><th>Guidance on the assessment of resource consents</th></tr></table> ...				Activity	Matters of discretion	Guidance on the assessment of resource consents
Activity	Matters of discretion	Guidance on the assessment of resource consents				
Y. In a new development mapped area: All subdivision activities (Change D1 & Change F2-Z)		9. Whether subdivision design supports efficient use of land (Change D8) See Rule 12.X (Change D8)				

Notified Policy / Rule	Issue	Potential Solutions
CHANGE F2-2 Policy 2.2.2.Y Policy 2.2.2.Y - to be added (Change F2-2) <u>Enable and encourage on-site low impact design stormwater management through policies and assessment rules that require stormwater management in new development mapped areas. (Change F2-2)</u>	1. Potential difficulties with NDMA being in multiple ownership – for example, if there is a reluctant or recalcitrant	1. Provide a claw-back mechanism whereby when the developer of infrastructure in a NDMA with multiple owners vests that infrastructure in DCC, DCC pays that developer for the infrastructure (less the developer's pro rata share) and DCC claws-back the cost of that infrastructure vis development contributions as the other land within that NDMA comes online.
... Delete Policy 2.2.5.2 Policy 2.7.1.2.X <u>Ensure areas of new urban development provide for public infrastructure networks that represent the least possible long term cost to the public through</u> ... <u>X policies and assessment rules that require on-site stormwater management in the new development mapped area. (Change F2-2)</u>	2. Requirement to install infrastructure prior to obtaining subdivision consent (see Policy 9.2.1.Y and Note 9.3.7.AAA.a). The proper development process is for resource consent to be obtained prior to installation occurring so that all matters can be assessed together. Focus should be on the design of infrastructure at this stage of the consent / development process.	AND Provide a mechanism whereby the DCC can compulsorily acquire easements in NDMA for new infrastructure.
Policy 9.2.1.Y Objective 9.2.1 Land use, development and subdivision activities maintain or enhance the efficiency and affordability of public water supply, wastewater and stormwater infrastructure. ... <u>Policy 9.2.1.Y</u> <u>Only allow subdivision activities in a new development mapped area where</u> <u>a an on-site stormwater management system that is designed for the whole NDMA and is installed in full or in planned stages prior to development will ensure there is no increase in the pre-development peak stormwater discharge rate from the site into the stormwater public infrastructure (at any point) or</u> <u>b where this is not practicable, any adverse effects from an increase in discharge on the stormwater public infrastructure are no more than minor. (Change F2-2)</u>	3. Limiting the extent of Rule 9.5.3.Z.	AND Delete from Rule 9.9.X.3.C the following: ' and be submitted along with the written approval of all owners of land within the new development mapped area unless they are the applicant/s'.
Policy 9.2.1.X <u>Policy 9.2.1.X</u> <u>Require development in a new development mapped area that creates impermeable surfaces to be connected to the integrated communal on-site stormwater management system that meets Policy 9.2.1.Y (Change F2-2)</u>		2. Delete requirement for infrastructure to be installed prior to subdivision consent. 3. Add the words 'within the subject new development

Rule 9.3.7.AA

9.3.7.AA Stormwater (Change F2-2)

- a. In a new development mapped area, all development that creates an impermeable surface must:
- be connected to a communal stormwater management system that services the new development mapped area, except
 1. prior to the communal stormwater management system being installed, any development that creates less than 60m² of impermeable surface is exempt from this standard.
- b. Activities that contravene this performance standard are restricted discretionary activities. (Change F2-2)

Note 9.3.7.AAA

Note 9.3.7.AAA - General advice and other requirements outside of the District Plan (Change F2-2)

- a. In a new development mapped area, Policy 9.2.1.Y requires installation of a communal stormwater management system prior to development as part of the assessment of a subdivision consent. The requirements for stormwater management are set out in the Special Information Requirements - Rule 9.9.X. (Change F2-2)
- b. Clause E1 - Surface Water of the New Zealand Building Code (Building Regulations 1992, Schedule 1) contains requirements regarding buildings and sitework in relation to managing surface water and effects on other property.
- c. Development that will divert surface water may require resource consent under the Otago Regional Plan, Water.
- d. Discharge of stormwater to any Otago Regional Council scheduled drain or overland flow path is managed by the Otago Regional Council Flood Protection Management Bylaw 2012.
- e. If development affects the flow of surface water, this effect is also subject to the common law principle of natural servitude.
- f. Part 4 of the Dunedin Code of Subdivision and Development 2010 (Code of Subdivision) requires that design and construction of stormwater systems be undertaken in accordance with NZS 4404:2004 (now replaced by NZS 4404:2010), except as amended by the Code of Subdivision. This includes a requirement that stormwater systems be provided so that any new development results in an insignificant increase of runoff wherever possible (Clause 4.2.8).
- g. For further information on connections to the public stormwater network and for assistance with design requirements for stormwater management systems, please contact DCC 3 Waters on 03 477 4000 at the earliest opportunity. (Change F2-4)

mapped area' to the end of the sentence at Rule 9.5.3.Z.a.

Rule 9.5.3.Z

9.5.3 Assessment of performance standard contraventions

Performance standard	Matters of discretion	Guidance on the assessment of resource consents
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...

Z In a new development mapped area • Service connections - stormwater (Rule 9.3.7.4A) (Change F2-2)	a Effectiveness and efficiency of stormwater management and effects of stormwater from future development	<u>Relevant objectives and policies</u> i <u>Objective 9.2.1</u> ii Require development in a new development mapped area that creates impermeable surfaces to be connected to the integrated communal on-site stormwater management system that meets Policy 9.2.1.Y (Policy 9.2.1.X) (Change F2-2) <u>General assessment guidance</u> iv Council will consider how stormwater will be managed and may require a stormwater management plan to be submitted with the application (see Special Information Requirement - Rule 9.8.X) (Change F2-2) <u>Conditions that may be imposed include:</u> v A requirement for easements, covenants, consent notices or bonds to ensure future development will be in accordance with a stormwater management plan vi A requirement for on-site stormwater management such as the installation of detention devices in accordance with the approved stormwater management plan (Change F2-2)
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Rule 9.6.2.X

9.6.2 Assessment of restricted discretionary activities

Activity	Matters of discretion	Guidance for the assessment of resource consents
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...

X. In a new development mapped area. • All subdivision activities (Change F2-2)	a. Effectiveness and efficiency of stormwater management and effects of stormwater from future development	Relevant objectives and policies (in addition to those outlined in 9.6.2.2 above). - Objective 9.2.1. - Only allow subdivision activities in a new development mapped area where: - an on-site stormwater management system that is designed for the whole NDMA and is installed in full or in planned stages prior to development will ensure there is no increase in the pre-development peak stormwater discharge rate from the site into the stormwater public infrastructure, at any point; or - where this is not practicable, any adverse effects from an increase in discharge on the stormwater public infrastructure are no more than minor. (Policy 9.2.1.Y), (Change F2-2)
Special Information Requirement Rule 9.9.X <u>9.9.X Stormwater management plans</u> 1. Application for subdivision in a new development mapped area must include a proposed stormwater management plan that demonstrates how Policy 9.2.1.Y will be achieved, unless such a plan has already been approved as part of an earlier subdivision. (Change F2-2)		
... 3. Stormwater management plans must a. be prepared by a chartered engineer or other suitably qualified person; b. be of a level of detail commensurate with the scale of the activity, complexity of stormwater management issues, and potential for adverse effects from stormwater; (Change F2-2 & Change F2-3) c. for a new development mapped area (NDMA), address the whole NDMA area, and be submitted along with the written approval of all owners of land within the new development mapped area unless they are the applicants; (Change F2-2) d. assess pre-development flows and post-development flows, generally based on the following rainfall events: i. for primary infrastructure, a 10% annual exceedance probability (AEP) for the critical storm duration for the NDMA and the critical storm duration and the catchment upstream of the point of discharge; and ii. for secondary flow paths, a 1% AEP for the critical storm duration for the NDMA and the critical storm duration for the catchment upstream of the point of discharge; iii. for the purposes of this requirement, 'critical storm duration' means the duration of rainfall event likely to cause the highest peak flows or water levels;		

- iv. for the purposes of this requirement, 'primary infrastructure' includes both open and closed conduits designed to contain the flows generated by the 10% AEP rainfall event;
- v. for the purposes of this requirement, 'secondary flow paths' means the flow path over which surface water will flow if the primary flow path becomes overloaded or inoperative and consists of overland flow paths with sufficient capacity to transfer the flows generated by rainfall events up to 1% AEP. Secondary flow paths should be aligned with natural flow paths and located on public land where possible. If located in private property, 1% AEP secondary flows should be through primary infrastructure unless protected by an easement;
- e. assess the difference between pre-development flows and post-development flows, taking into account the maximum impermeable surfaces permitted in the underlying zone and any proposed roading or accessways for the subdivision area (or in a new development mapped area, for the entire NDMA);
- f. specify the design and location of any on-site stormwater management systems to accommodate the calculated difference in flows;
- g. where relevant, specify the design and location of secondary flow paths;
- h. specify any upgrades to stormwater public infrastructure, or other infrastructure, that will be used to add capacity where it is required;
- i. the stormwater management system design should allow for stormwater quality treatment to reduce potential contaminants that the site and development may generate;
- j. areas requiring stormwater quality treatment include trafficked areas such as roads, driveways and carparkis. Roof and building areas should not require stormwater quality treatment providing they are constructed with inert building products which avoid exposed metal surfaces;
- k. stormwater quality treatment devices shall target the removal of 75% total suspended solids (TSS) on a long-term average basis and consider the avoidance or minimisation of thermal loading effects;
- l. the stormwater management design should consider the use of low impact design features, for example:
 - i. grassed/landscaped swales and other vegetation areas;
 - ii. infiltration trenches/bioretention systems;
 - iii. storage ponds/wetlands/sediment ponds;
 - iv. rainwater tanks harvesting and reuse;
 - v. rain gardens, green roofs, or
 - vi. porous surface treatments;

m. where low impact design features are inadequate to address stormwater discharge in a way that meets Policy 9.2.1.Y, consider the use of detention tanks; n. for larger subdivisions, the design should incorporate consideration of how stormwater management areas can be integrated into reserves and recreation spaces; o. for larger subdivisions, the design proposal should demonstrate how the integrity of the stormwater mitigation and management measures will not be compromised during and after subdivision (for example, avoiding premature contamination of devices during the construction of houses and ensuring that open drains that form part of the system will not be blocked or altered). <i>(Change F2-2 & Change F2-3)</i>	
Rule 15.3.4.1 Development Activity Status Table	
1. Performance standards that apply to all development activities:	a. Natural Hazards Performance Standards b. Maximum building site coverage and impermeable surfaces c. Setback from scheduled tree d. Structure plan mapped area performance standards (where relevant) <u>Y. Service connections - stormwater (in a new development mapped area)</u> <i>(Change F2-2)</i>
Rule 15.6.X	
15.6.X Service Connections - Stormwater - to be added (Change F2-2)	
<u>In a new development mapped area, all development that creates an impermeable surface must comply with Rule 9.3.7.4.A. (Change F2-2)</u>	
Rule 15.10.4.Y	
15.10.4 Assessment of development performance standard contraventions	
Performance standard	Matters of discretion
...	Guidance on the assessment of resource consents

<u>Y</u> In a new development mapped area Service connections - stormwater <i>(Change F2-2)</i>	a. Effectiveness and efficiency of stormwater management and effects of stormwater from future development	See Rule 9.5. <i>(Change F2-2)</i>	
Rule 15.11.5.Y			
15.11.5 Assessment of restricted discretionary activities in an overlay zone, mapped area, heritage precinct or affecting a scheduled heritage item			
Activity	Matters of discretion	Guidance on the assessment of resource consents	
...			
<u>Y</u> In a new development mapped area All subdivision activities <i>(Change D1 & Change F2-2)</i>	f. Effectiveness and efficiency of stormwater management and effects of stormwater from future development <i>(Change F2-2)</i>	See Rule 9.6. <i>(Change F2-2)</i>	

Notified Policy / Rule	Issue	Potential Solutions			
CHANGE F3-2 Policy 2.7.1.2.Y Ensure areas of new urban development provide for public infrastructure networks that represent the least possible long term cost to the public through: ... <u>Y. policies and assessment rules that require wastewater detention for specified sites in the new development mapped area to allow urban expansion while ensuring any impacts on the wastewater public infrastructure network are no more than minor. (Change F3-2)</u> Policy 9.2.1.BB <u>Require subdivision, multi-unit development or supported living facilities in specified new development mapped areas to provide or connect to a communal wastewater detention system that ensures that all wastewater from the future development of the entire new development mapped area does not exceed the capacity of the wastewater public infrastructure network. (Change F3-2)</u> Note 9.3.7.ZA General Advice ... <u>b. In new development mapped areas specified in Rule 9.6.2.Y, immediate connections to the wastewater public infrastructure network will not be available due to network capacity constraints. In these cases, subdivision consent may be refused even if this standard is met where an on-site communal wastewater detention system that serves 50 or more residential units is yet to be approved as a solution to capacity constraints. (Change F3-2)</u> ... Rule 9.6.2.Y 9.6.2 Assessment of restricted discretionary activities <table> <tr> <td>Activity</td><td>Matters of discretion</td><td>Guidance for the assessment of resource consents.</td></tr> </table> ...	Activity	Matters of discretion	Guidance for the assessment of resource consents.	1. Potential difficulties with NDMA being in multiple ownership – for example, if there is / are reluctant or recalcitrant owner(s) within the NDMA.	1. Provide a claw-back mechanism whereby when the developer of infrastructure in a NDMA with multiple owners vests that infrastructure in DCC, DCC pays that developer for the infrastructure (less the developer's pro rata share) and DCC claws-back the cost of that infrastructure vis development contributions as the other land within that NDMA comes online. AND Provide a mechanism whereby the DCC can compulsorily acquire easements in NDMA for new infrastructure.
Activity	Matters of discretion	Guidance for the assessment of resource consents.			

Y In the following new development mapped areas, all subdivision activities, multi-unit development and supported living facilities: <i>(Change F3-2)</i> • Kalkoral Valley Road <i>(Change IN07)</i> • Selwyn Street <i>(Change RT22)</i> • Wattle Fox Lane <i>(Change RT4)</i>	Relevant objectives and policies (in addition to those outlined in 9.5.2.2 and 9.6.2.X above). i. Objective 9.2.1. ii. Require subdivision, multi-unit development or supported living facilities in specified new development mapped areas to provide or connect to a communal wastewater detention system that ensures that all wastewater from the future development of the entire new development mapped area does not exceed the capacity of the wastewater public infrastructure network. Policy 9.2.1.BB. <i>(Change F3-2)</i> <u>General assessment guidelines:</u> iii. The identified new development mapped areas are serviced for wastewater but new connections to the network will not be allowed and consequently any multi-unit development, supported living facility or subdivision that will lead to development that will require a connection will likely be declined until capacity constraints are resolved or a communal on-site wastewater detention system that is designed for and associated with subdivision and/or development of 50 or more residential units is integrated into the public network and vested in the DCC. After installation of the system, all activities that create wastewater will be required to connect to the system until it is no longer required. iv. In assessing the appropriateness of a proposed communal on-site wastewater detention system, Council will consider the proposed wastewater management plan submitted with the application (see Special Information Requirement – Rule 9.9.Y). <i>(Change F3-2)</i> <u>Conditions that may be imposed:</u> v. A requirement for the communal on-site wastewater detention system to be installed prior to certification of the survey plan pursuant to section 223 of the RMA. vi. A requirement for the communal on-site wastewater detention system to be vested in the DCC, along with a site containing it which is of a minimum 500m² in area and suitable for residential development. vii. A requirement for necessary easements and a fixed maintenance or defect period agreement to be in place prior to vesting the communal on-site wastewater detention system and associated land. <i>(Change F3-2)</i>
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Rule 9.9.Y

9.9.Y Wastewater management plans

1. Any application for subdivision, multi-unit development or supported living facilities in a new development mapped area specified in Rule 9.6.2.Y must include a proposed wastewater management plan that ensures that all wastewater from the future development of the entire new development mapped area does not exceed the capacity of the wastewater public infrastructure network via the use of a communal wastewater detention system, unless such a system has already been approved for the site and will be connected to.
2. The wastewater management plan must be prepared by a chartered engineer and meet the following requirements:
 - a. Specify the design and location of one or more communal wastewater detention systems to detain wastewater from the entire new development mapped area.
 - b. The communal wastewater detention systems must:
 - i. have the capacity to detain wastewater for a 24-hour period, prior to releasing to the wastewater via a connection to the wastewater public infrastructure network. The volume of wastewater to be detained will be calculated with reference to Part 5 of the Dunedin Code of Subdivision and Development 2010 (Code of Subdivision);
 - ii. be compatible with DCC's Supervisor Control and Data Acquisition (SCADA) system;
 - iii. have a minimum 20 year expected life for all electrical / mechanical components and a minimum 50 year expected life for all civil components;
 - iv. where practicable, be located such that all flow goes to one communal wastewater detention system with no pumping;
 - v. have components and materials that comply with the DCC's 3-Waters Approved Product and Manufacturers List and Part 5 of the Dunedin Code of Subdivision and Development 2010 (Code of Subdivision).
3. The wastewater management plan must be submitted along with the written approval of all landowners within the new development mapped area unless they are the applicants. (Change F3-2)

Rule 15.10.4.Y				
15.10.4 Assessment of development performance standard contraventions				
Performance standard	Matters of discretion	Guidance on the assessment of resource consents		
...				
-0 Maximum building site coverage and impermeable surfaces	c. Effects on efficiency and affordability of infrastructure (stormwater) (Change F2-3) d. Effects of stormwater from future development (Change F2-3)	See Rule 9.5.		
Rule 15.11.5.Z				
15.11.5 Assessment of restricted discretionary activities in an overlay zone, mapped area, heritage precinct or affecting a scheduled heritage item				
Activity	Matters of discretion	Guidance on the assessment of resource consents		
...				
Z In the following new development mapped areas, all subdivision activities, multi-unit development, and supported living facilities (Change F3-2)	a. Effectiveness and efficiency of wastewater management and effects of wastewater from future development (Change F3-2) • Kaikorai Valley Road (Change IN07) • Selwyn Street (Change RT22) • Watlie Fox Lane (Change RTZ4)	See Rule 9.6 (Change F3-2)		

Notified Policy / Rule	Issue	Potential Solutions						
CHANGE F2-6 Policy 9.2.1.AA <u>Policy 9.2.1.AA</u> Only allow subdivision in a new development mapped area where any new public or private 3-waters infrastructure is designed to connect to, and provide capacity for, future urban development on adjoining or nearby sites that are zoned for urban development, where necessary. (Change F2-6) Rule 9.5.3.Z	Limit the extent of Policy 9.2.1.AA and related lower order provisions to provision of capacity of infrastructure within the specific new development mapped area.	Delete the words 'on adjoining or nearby sites that are zoned for urban development' and insert the words 'within the subject new development mapped area' before 'where necessary'. AND						
9.5.3 Assessment of performance standard contraventions <table border="1"> <thead> <tr> <th>Performance standard</th><th>Matters of discretion</th><th>Guidance on the assessment of resource consents</th></tr> </thead> <tbody> <tr> <td data-bbox="678 1892 901 2072"> <u>z</u> In a new development mapped area: Service connections - stormwater (Rule 9.3.7.AA) (Change F2-1) </td><td data-bbox="678 1668 901 1881"> a. Effectiveness and efficiency of stormwater management and effects of stormwater from future development </td><td data-bbox="678 840 901 1646"> iii. Only allow subdivision in a new development mapped area where any new public or private 3-waters infrastructure is designed to connect to, and provide capacity for, future urban development on adjoining or nearby sites that are zoned for urban development where necessary. (Policy 9.2.1.AA) (Change F2-6) </td></tr> </tbody> </table> Rule 9.6.2.X	Performance standard	Matters of discretion	Guidance on the assessment of resource consents	<u>z</u> In a new development mapped area: Service connections - stormwater (Rule 9.3.7.AA) (Change F2-1)	a. Effectiveness and efficiency of stormwater management and effects of stormwater from future development	iii. Only allow subdivision in a new development mapped area where any new public or private 3-waters infrastructure is designed to connect to, and provide capacity for, future urban development on adjoining or nearby sites that are zoned for urban development where necessary. (Policy 9.2.1.AA) (Change F2-6)		Similarly in Rule 9.5.3.Z.a.iii delete the words 'on adjoining or nearby sites that are zoned for urban development' and insert the words 'within the subject new development mapped area' before 'where necessary'. AND Similarly in Rule 9.6.2.X.a.iii delete the words 'on adjoining or nearby sites that are zoned for urban development' and insert the words 'within the subject new development mapped area' before 'where necessary'.
Performance standard	Matters of discretion	Guidance on the assessment of resource consents						
<u>z</u> In a new development mapped area: Service connections - stormwater (Rule 9.3.7.AA) (Change F2-1)	a. Effectiveness and efficiency of stormwater management and effects of stormwater from future development	iii. Only allow subdivision in a new development mapped area where any new public or private 3-waters infrastructure is designed to connect to, and provide capacity for, future urban development on adjoining or nearby sites that are zoned for urban development where necessary. (Policy 9.2.1.AA) (Change F2-6)						
9.6.2 Assessment of restricted discretionary activities <table border="1"> <thead> <tr> <th>Activity</th><th>Matters of discretion</th><th>Guidance for the assessment of resource consents</th></tr> </thead> <tbody> <tr> <td data-bbox="1141 1892 1340 2072"> <u>x</u> In a new development mapped area: All subdivision activities (Change F2-2) </td><td data-bbox="1141 1579 1340 1881"> a. Effectiveness and efficiency of stormwater management and effects of stormwater from future development </td><td data-bbox="1141 840 1340 1556"> ii. Only allow subdivision in a new development mapped area where any new public or private 3-waters infrastructure is designed to connect to and provide capacity for, future urban development on adjoining or nearby sites that are zoned for urban development, where necessary (Policy 9.2.1.AA) (Change F2-6) </td></tr> </tbody> </table>	Activity	Matters of discretion	Guidance for the assessment of resource consents	<u>x</u> In a new development mapped area: All subdivision activities (Change F2-2)	a. Effectiveness and efficiency of stormwater management and effects of stormwater from future development	ii. Only allow subdivision in a new development mapped area where any new public or private 3-waters infrastructure is designed to connect to and provide capacity for, future urban development on adjoining or nearby sites that are zoned for urban development, where necessary (Policy 9.2.1.AA) (Change F2-6)		
Activity	Matters of discretion	Guidance for the assessment of resource consents						
<u>x</u> In a new development mapped area: All subdivision activities (Change F2-2)	a. Effectiveness and efficiency of stormwater management and effects of stormwater from future development	ii. Only allow subdivision in a new development mapped area where any new public or private 3-waters infrastructure is designed to connect to and provide capacity for, future urban development on adjoining or nearby sites that are zoned for urban development, where necessary (Policy 9.2.1.AA) (Change F2-6)						

Variation 2 Submission Notes – Roger and Janine Southby – Residential Rezone of 170 Riccarton Road West

Figure 1: Location of 170 Riccarton Road West:



Figure 2: Wider Context



Notes:

- Blues wiggly line is the Silverstream
- Blue boundary area is Designation 633 which contains Mosgiel Waste Water Treatment Plant and Carlyle Road Stormwater Pumping Station.
- Red hatched area shaped like a '7' in the lower, middle part of Figure 1 is the land area under appeal for a residential rezone commonly referred to as the Daisy Link appeal (ENV-2018-CHC-266).
- Area with pink boundaries is the Wals Plant Land not involved in ENV-2018-CHC-266.
- The site abuts Designation 218 – East Taieri Drainage Scheme which runs along Bush Road on the southern boundary of the site.

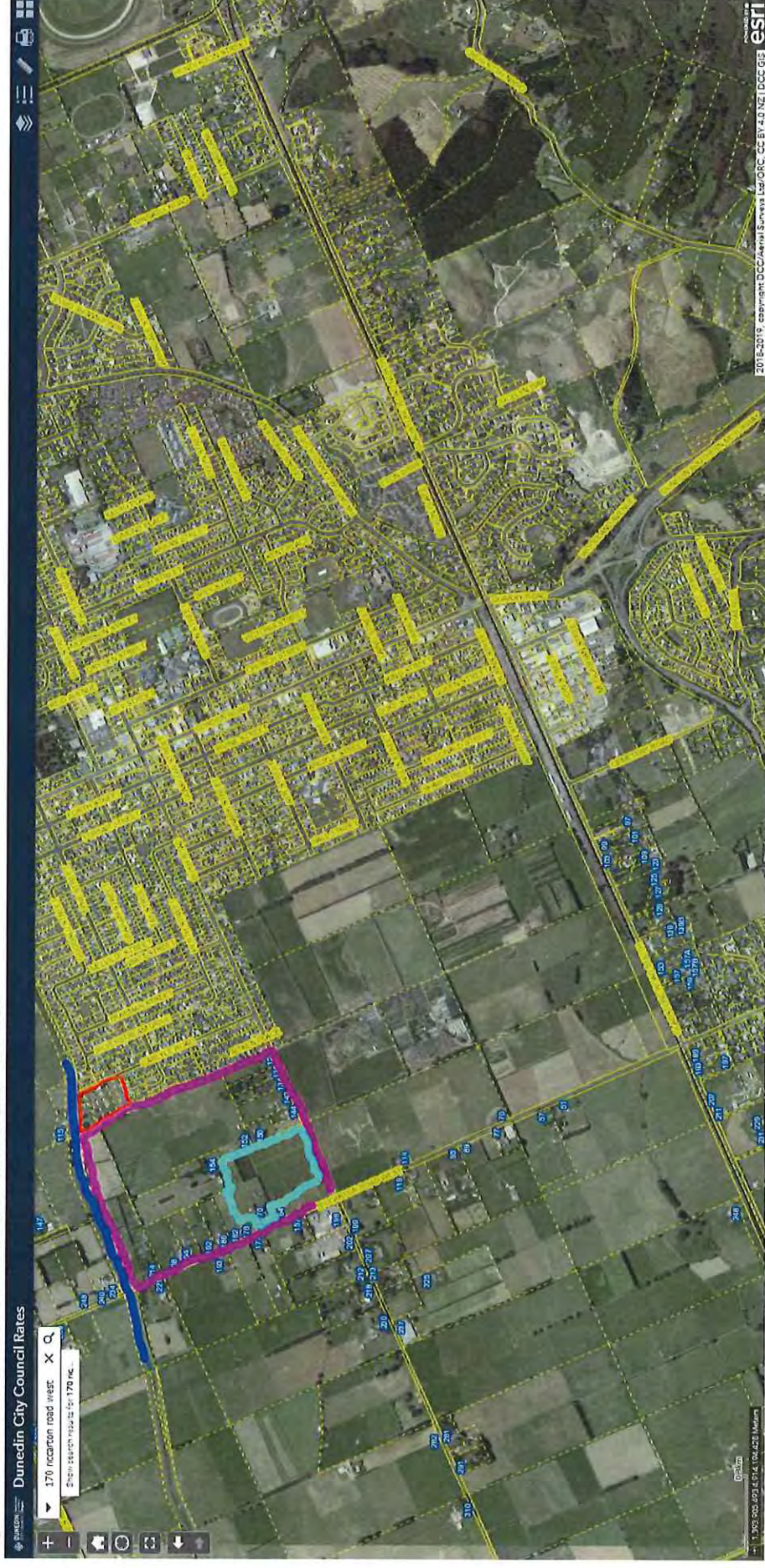
Figure 3: Closeness of Site to 3 Waters Infrastructure



Notes:

- An existing potable water connection is located within the site as shown in Figure 3 above and with the blue potable water infrastructure area line including part of the site.
- The 3 waters foul water current terminal point is located at the driveway to 107 Bush Road approximately 330m from the site.

Figure 4: Wider Area for Potential Residential Rezone



Notes:

- Pink: Larger area for potential residential rezone via Variation 2, or via future variation to the district plan and / or the Future Development Strategy;
- Aqua: 170 Riccarton Road West;
- Red: D633 Mosgiel Waste Water Treatment Plant and Carlyle Road Stormwater Pumping Station; and
- Blue: Siverstream.

Submission:

1. Rezone 170 Riccarton Road West Mosgiel to either Large Lot Residential 1 and/or Low Density Residential, and/or General Residential 1

Refer to attached structure plans for road layout and connection to adjoining properties and yields at the different densities – the submitters' preference is for a rezone to GR1 as this is the most efficient use of the land.

Reasons:

- Dunedin City Council assessed the site for inclusion in notification for Variation 2 but did not shortlist the site for notification due to its “...disconnection from existing residential areas.”¹ However, the site forms part of a larger rural zoned block which, from a planning perspective, could be rezoned residential either via Variation 2 or over time through either future variation to the district plan and / or the *Future Development Strategy* which Council has to prepare pursuant to the *National Policy Statement on Urban Development 2020*. This larger area is shown in Figure 4 above. The site represents approximately 16% (almost 2/5th) of this wider area. The wider area is already in multiple ownership representing a more rural residential use of the land. Any rural productive activities currently taking place within these land holdings do not provide an economic return and in most cases, like the site, operate at a loss. A 'hard edge' to the urban expansion of Mosgiel in this locale is defined by Silverstream to the north and Riccarton Road West to the west and Bush Road to the south.
- The site is within close proximity to the waste water treatment and stormwater pumping infrastructure for Mosgiel (see D633) as well as other services such as schools, medical centre and Mosgiel's town centre.
- Experienced severe shortage of residential capacity in Dunedin, including in this locale, to satisfy short through to long term demand with sufficient capacity to meet Council's obligations pursuant to *NPS-UD 2020*. Therefore, rezoning 170 Riccarton Road West GR1 helps Council meet its obligations pursuant to *NPS-UD 2020*. The inclusion of the wider area outlined in Figure 4 in a rezone, either now or in the future, would further help Council meet its *NPS-UD 2020* obligations.
- Rezone meets rezoning criteria specified in 2GP (see 2.6.2.1) – in particular, it provides a logical extension of residential zones over a limited

¹ See the s32 Report, Appendix 4.

area which is close to infrastructure, services and public amenities and provides for future connections for the residential rezoning of adjoining land.

- Provides for flexibility of development in this locale for which there is experienced high demand for more residential capacity.
- Dunedin City Council does not have the ability to limit the scope of the area assessed for GF02 and to do so may be ultra vires.

2. Apply a Structure Plan Mapped Area to 170 Riccarton Road West and Do Not Apply a New Development Mapped Area.

Reasons:

- Provision of infrastructure is adequately governed by existing subdivision and land use performance standards in the 2GP and any specific performance standards associated with the structure plan mapped area.
- The application of the Structure Plan Mapped Area provides the opportunity for Council to insert performance standards necessary to achieve desired outcomes for this specific site (e.g. attenuation onsite of stormwater and / or wastewater if found to be necessary on assessment of infrastructure capacity at time of subdivision). This is a more appropriate methodology than applying the NDMA.
- The NDMA provisions will, in this case, act as an impediment to development.

In the alternative, if Council chooses to apply an NDMA, the submitters request changes to the NDMA provisions as set out in Table 1 of these submission notes. Table 1 contains the NDMA related provisions, issues and potential solutions.

On the submission form the submitters state that their submission relates to “*All provisions relating to...the NDMA*”. In the event that Table 1 is not a complete list of all such provisions, the submitters reserve the right to make comment in evidence on any other NDMA related provisions which are found to be missing from Table 1.

Structure Plan General Residential 1



General Residential 1 - Structure Plan 170 Riccarton Road West, Mosgiel

PROJECT REF. CLS198	SHEET SIZE A3	SCALE 1:1500
DRAWN DATE 21 FEBRUARY 2021	PLAN REF. CLS198-3	
SHEET NO. SHEET 1 OF 1		

Structure Plan Low Density Residential



Structure Plan Large Lot Residential 1



PROVISIONAL ONLY
LAYOUT OF ROADING &
STORMWATER MANAGEMENT
AREAS ARE INDICATIVE ONLY



PROVISIONAL ONLY
LAYOUT OF ROADING &
STORMWATER MANAGEMENT
AREAS ARE INDICATIVE ONLY



PROVISIONAL ONLY
LAYOUT OF ROADING &
STORMWATER MANAGEMENT
AREAS ARE INDICATIVE ONLY



2 DECISIONS ON SUBMISSIONS

2.1 Broad matters raised in regard to greenfield rezoning

67. We start by discussing several over-arching issues that have relevance to our decisions on rezoning. During the course of Hearing 4 the Panel posed a number of questions of legal counsel and witnesses on these broad issues. Our conclusions on these matters, having considered the legal submissions and expert evidence, provide context to the site-specific decisions outlined later in the decision report.

2.1.1 Relationship between the NPS-UD and Variation 2

2.1.1.1 Is the intent of Variation 2 to achieve compliance with the NPS-UD?

68. We received legal submissions from Mr McLachlan on behalf of *CC Otago Limited* arguing that the purpose of Variation 2 is to achieve compliance with the NPS-UD 2020, in particular to ensure there is at least sufficient housing capacity to meet demand over the short, medium and long terms. This argument was made in the context of disputing the methodology and accuracy of DCC's housing and business capacity assessment (HBA). Mr McLachlan argued that where there is uncertainty or volatility in the capacity provided, we should err on the side of caution and ensure that Variation 2 provides at least sufficient development capacity. Mr Page, for *Gladstone Family Trust*, submitted that Variation 2 is "effectively a response to the housing capacity assessment" and that the NPS-UD Policy 8 obliges councils to take advantage of development opportunities as they arise.
69. As Mr Garbett correctly pointed out in his legal submissions in reply, we had considered the purpose of Variation 2 in our decision on scope². Our conclusion in that decision is that Variation 2 is a series of limited plan review topics and proposals, not all of which are concerned with housing capacity or implementing the NPS-UD. We note that our decision on scope was challenged through a section 357 process but was upheld by an independent Commissioner and was not thereafter appealed by any parties to Variation 2. We therefore maintain our view that Variation 2 does not have an overarching purpose of achieving compliance with the NPS-UD. The NPS-UD requires that a strategic approach is taken to growth planning. Variation 2 will provide some 'easy wins' in terms of additional housing capacity, but it is only part of a wider process, including a Future Development Strategy (FDS), that is necessary to give effect to the NPS-UD.
70. Mr Garbett argued that it is not the responsibility of the Panel to ensure that all capacity requirements are met through the options available through Variation 2. Instead, our role is to assess the appropriateness, or not, of the particular sites put forward (including sites requested through submissions).
71. We agree with Mr Garbett's assessment. In our view, the overall responsibility for compliance with NPS-UD remains with the Council not with this hearings panel which has a narrower mandate. The Variation 2 proposals before us are intended to provide extra housing capacity in identified locations and will contribute to giving effect to the NPS-UD. However, it is not necessary for us to zone sites that we consider do not meet the 2GP's policies (in particular Policy 2.6.2.1) simply to ensure additional capacity is provided.

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

2.1.1.2 Does the purpose of NPS need to be met at a township level?

72. Related to the above, Mr McLachlan for *CC Otago Limited*, argued that there was a demand for additional housing in Outram, and therefore (by implication) Variation 2 should rezone additional capacity within that settlement. Ms Peters, representing submitters in Outram and Allanton, made a similar argument in relation to Policy 2.6.2.1.a, which is that rezoning is necessary to ensure provision of at least sufficient housing capacity to meet expected demand over the short and medium term. She considered that there is demand for housing in both Allanton and Outram, and therefore the criterion in 2.6.2.1.a is met for requested sites in those locations (that is, capacity should be provided to at least meet demand). Similar arguments were advanced by other submitters in relation to sites at Allanton and Brighton.
73. Mr Garbett's view was that the NPS-UD does not require each centre to fully implement the NPS-UD. We understand that to mean that there is no requirement to provide capacity in each individual suburb, settlement or township. Mr Stocker drew our attention to guidance produced by Ministry for the Environment (MfE) on implementing undertaking housing capacity assessments that "local authorities have discretion to choose how locations are identified for clauses 3.24 and 3.25"³. He also noted guidance prepared on implementing the NPS-UD clearly states a preference for analysis at a catchment scale⁴. This guidance notes that:

To ensure the analysis remains manageable, it may make sense to aggregate area units into a more general classification of locations, for example, central business district, inner city suburbs, peripheral suburbs and areas with high amenity (such as beachside property). These general categories may be more useful than individual suburbs, given that households are mobile within urban areas and will accept trade-offs between similar types of suburbs. This will show the revealed preferences of these household sub-groups for different types of housing at different types of locations (such as inner city suburbs or peripheral suburbs), given current market conditions.

74. He also noted the Dunedin's Housing and Business Development Capacity Assessment (HBA) was scored highly, in an independent review commissioned by MfE and undertaken by Principal Economics and Urban Economics, for using "rigorous methods to explore the range of demands for types, locations and price points to the extent relevant in the urban market".
75. We confirm here that we accept and agree with Mr Stocker's evidence on the requirements of the NPS-UD and Mr Garbett's submission on this matter. We find there is no requirement so ensure that the NPS-UD is given effect to at a fine-grained scale. To do so would be impractical. We are satisfied that the various catchments assessed in the HBA are appropriate for the purposes of giving effect to the NPS-UD. This is corroborated by the independent review of the assessment. Consequently, we find that even if we were to accept that there is demand for additional capacity within a specific township, there is (a) no requirement under the NPS-UD to provide capacity in that township, and (b) no requirement to provide it through Variation 2.

³ Guidance on Housing and Business Development Capacity Assessments (HBAs) under the National Policy Statement on Urban Development (Ministry for the Environment, 2020), page 21

⁴ National Policy Statement on Urban Development Capacity: Guide on Evidence and Monitoring (Ministry of Business, Innovation and Employment and the Ministry for the Environment, 2017), page 33

2.1.1.3 Is the methodology for assessing capacity appropriate?

76. As noted above evidence and legal submissions were presented on behalf of submitters seeking rezoning of sites in Outram and Brighton, one aspect being that the HBA was inaccurate. These criticisms are broadly as follows:
- there is no consideration of the impact of the new rule implemented through this Panel's decisions on an earlier hearing regarding demolition of pre-1940s houses;
 - there were issues with the modelled zoned capacity of sites in relation to (for example) historic rubbish tips, steep slopes, access and encumbrances;
 - disagreement over assumptions used to determine feasible capacity; and
 - the method used to assess realisable capacity (that is, capacity that is reasonably expected to be realised), adds volatility and increases the margin of error on the capacity estimates.

2.1.1.4 Impact of demolition rule for 1940s houses

77. Our first decision on Variation 2 (intensification) required that proposals for demolition of pre-1940s houses will require resource consent. An assessment must be made of the building, and if it is found to meet the criteria for scheduling of heritage buildings, the application for demolition must be assessed against Policy 13.2.1.7, which is a directive 'avoid' policy.
78. Ms Peters gave evidence that this will mean some 1940s houses will now have to be retained and that the consequent reduction in development capacity for these sites was not accounted for within the HBA.
79. Since the hearing, the Environment Court has considered an appeal on these provisions that raised the matter of scope. The Court decision is that the submission (and matters raised within) we relied on to add these provisions was beyond the scope of Variation 2 and therefore directed the provisions be removed from the plan. The issue raised by Ms Peters therefore no longer arises, and this will therefore have no impact on the available development capacity.

2.1.1.5 Issues with the modelled zoned capacity of sites in relation to site-specific factors

80. Ms Peters outlined that, during mediation on 2GP appeals to rezone sites to residential, a finer grained analysis of larger sites (that could provide six or more residential units) revealed issues with various site-specific factors. The implication is that the realisable capacity on some or all of these sites would be lower than modelled. Ms Peters stated that repeated requests had been made of Council staff to obtain site specific capacity data for checking by the submitter's experts; however, this had not been provided.
81. Mr Stocker's response was that he had not seen the analysis referred to by Mrs Peters and so couldn't comment on the specific issues raised. He remained confident in the results of the Council's assessment, noting it was supported by the favourable review undertaken on behalf of MfE. As outlined above, the estimate of realisable capacity was described in the review as rigorous, and a 'high' score was given.

82. He advised us that site specific data is not made publicly available as this could provide a commercial benefit to those receiving it, and could also potentially breach privacy requirements. He said that property level outputs are not intended for use individually, but are aggregated into suburb (or larger) scale. These aggregated results are considered accurate.
83. The Panel considers the favourable review given by MfE to the HBA is a relevant consideration. We also accept Mr Stocker's explanation in relation to the accuracy of model results at a property-specific level, compared to a catchment level, which is their primary use. While Ms Peters has previously identified such discrepancies at a specific property-level, this is to be expected and is not of concern in relation to our reliance on the broader level model results.

2.1.1.6 *Disagreement over assumptions used in the 2021 HBA to determine feasible capacity*

84. Mr Osborne, appearing on behalf of *CC Otago Limited*, confirmed he had reviewed the HBA and, while noting that overall the modelling was appropriate and well done, took issue with assumptions used to determine long term housing capacity. In particular, the assumptions made in the 2021 HBA based on Dunedin's long-term projections of annual increases in land values, property improvement values, and construction and development costs significantly increased long-term capacity. Mr Osborne disagreed with the reasoning for making these assumptions, as it relies on house prices increasing in order to increase capacity. This modelling approach is inconsistent with the city's ability to provide for future growth that is both feasible and affordable.
85. Mr Stocker disputed that the predicted increase in long-term capacity in the 2021 HBA was primarily due to the use of long-term economic trends, as he considered other factors are also significant. He said that 77% of the predicted long-term capacity is currently feasible, and does not rely on future economic trends such as house price changes. In addition, long term trends, such as an increase in house prices, were conservative compared to the higher house price increases over recent years (between 1996 and 2019). He further noted that these assumptions are only applied to long-term capacity, which is not required to be provided in the District Plan under the NPS-UD.
86. We accept Mr Stocker's explanation as to the use of long-term projections in determining capacity over the long-term, and importantly, agree that capacity over this period is not required to be provided in the District Plan, and is a more relevant consideration to the development of an FDS. If the assumptions in the HBA are wrong in relation to long-term capacity, this will have no impact on what must be provided. We also note our discussion above, that the purpose of Variation 2 is not to fully implement the NPS-UD, rather it is only one part of its implementation.

2.1.1.7 *Assessment of realisable capacity*

87. Mr Osborne challenged the estimation of feasible capacity in the HBA as it relies on only two years of data. He said that this adds additional volatility into the capacity estimates, and that assuming a take-up rate that is 20% lower than that modelled would result in a feasible capacity of 1800 fewer dwellings over the long term.
88. Mr Stocker emphasised that the 2022 update to the HBA had revised the annual probability for development (i.e. the take up rates). Whilst he acknowledged the uncertainty of using

only two years' worth of data, he also noted that take up rates could increase as well as decrease, and that over the medium term, this is likely to average out. He explained take up will continue to be monitored and used to inform future HBAs.

89. While we acknowledge Mr Osborne's concerns the Panel is satisfied with and accepts Mr Stocker's responses. Overall we consider the assessment of realisable capacity is adequate and can be relied upon for the purpose of determining the planning response in Variation 2.

2.1.2 Assessment against Policy 2.6.2.1

2.1.2.1 A broad judgement or meeting a majority of criteria?

90. Policy 2.6.2.1 outlines the criteria for rezoning sites to residential, against which all residential rezoning are to be assessed.

91. A number of submitters discussed the assessment of sites against Policy 2.6.2.1, and discussion arose in relation to whether all of the criteria within the policy must be met, and whether there was a hierarchy. For example, Mr Page, counsel for Gladstone Family Trust, noted that:

"It is not realistic to expect all criteria to be met in every site and no hierarchy is set out in the criteria. What is required is a balancing exercise by the Panel."

92. A similar view was expressed by Ms Peters. While there appeared to be general agreement that we must consider and weigh up all criteria, we enquired at the hearing whether there were any 'knock-out' criteria that must always be met for zoning to occur.

93. Ms Christmas addressed this matter in her evidence in reply, noting that Policy 2.6.2.1 draws together relevant (usually strategic) objectives that must be considered, and that the policy does not require that 'a majority' of the criteria must be met. The wording of the policy is:

'Identify areas for residential zoning based on the following criteria...'

94. Her evidence was that the various criteria in Policy 2.6.2.1 sit under the over-riding approach outlined in Objective 2.6.1, which is to zone land 'in the most appropriate locations' while 'sustainably managing urban expansion in a way that maintains a compact city with resilient townships'.

95. Ms Christmas considered that the weight given to the various criteria referenced within Policy 2.6.2.1(d) must be considered in the context of the situation. She agreed with Mr Garbett's legal submissions that a relevant consideration is how directive the wording of the objectives and policies that are referenced in Policy 2.6.2.1 is. However, she also considered that some criteria should generally be given strong weight for other reasons. For example, she argued that significant weight should be given to the effective and efficient provision of infrastructure, due to its emphasis in the NPS-UD, which directs that that capacity must be assessed in terms of the degree to which it is infrastructure ready. Furthermore, if 3 waters servicing is not available or managed ineffectively, significant environmental and health and safety issues can result.

96. Ms Christmas also considered management of natural hazards should also be given significant weight due to the implications for health and safety and because most natural hazards are predicted to worsen over time due to climate change.

97. Finally, she considered that compact city and resilient townships criteria are particularly important due the 'overall urban form outcome' in the Spatial Plan, its alignment with Policy 1 clauses (c) and (e) of the NPS-UD, and the overall 'direction of travel' in national direction in terms of intensification of existing urban areas, and the increasing concern and need to reduce carbon emissions and prepare for climate change.
98. Ms Christmas' evidence was that a broad judgement approach should be taken, but there should be an expectation of an overall positive alignment with the Plan's strategic objectives.
99. We agree that a broad judgement approach should be taken. However, we consider that some criteria will in most or many cases be more critical than others, for example the provision of infrastructure. Our finding is that each assessment must consider relevant site factors, and so the specific assessment (in terms of what is given most weight) may vary from site to site. We have reflected this in our individual site conclusions below.

2.1.2.2 Question over whether some criteria should be or have been treated as 'knock-out' criteria?

100. On a related topic, we also observed at the hearing that, for some site assessments carried out by the reporting officers, the initial assessment of some of the rejected sites appeared incomplete and appeared to stop after some 'knock out' criteria were assessed as not being met. We asked the reporting officers to confirm if that was the case.
101. In her Reply Report, Ms Christmas provided some context by explaining the process by which Variation 2 had evolved. The greenfields part of the investigation for Variation 2 involved an initial 'traffic light' assessment of the entire city, where areas were scored at a high level on a range of criteria reflecting the criteria in Policy 2.6.2.1 (for example distance from centres, presence of a significant landscape overlay). However, DCC also sought suggestions for suitable sites from the development community, particularly planners, developers and surveyors.
102. These suggested sites were first subject to a high level 'screening' level of assessment against a few key criteria (for example hazard risk, known infrastructure issues, known significant landscape or biodiversity values). If sites did not pass these screening criteria they were rejected. In addition to the key criteria, a further key consideration was that the site would provide a reasonable return in terms of additional housing capacity (e.g. rural residential proposals were discarded).
103. Ms Christmas noted that use of key criteria to screen a large set of options is a pragmatic approach in order to focus time and resources on sites that are most likely to be appropriate, given the time and cost involved in undertaking a comprehensive assessment. She noted that for many plan changes, options that are rejected at a screening stage are not included as alternative options for the purposes of a section 32 evaluation. However, in the case of Variation 2, even sites that were rejected through the screening stage (and by virtue of that, not subject to a comprehensive assessment) were included in the section 32 report and were therefore open to submissions.
104. We consider that process was appropriate, but re-iterate our conclusions on the previous topic, i.e. that a broad judgement approach should be taken but some criteria will in most or many cases be more critical than others.

2.1.2.3 What factors make a compact city?

105. Policy 2.6.2.1.d.xi, which is concerned with maintaining a compact city and resilient townships, references Objective 2.2.4. This states that:

Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations.

106. Mr Morrissey, in his section 42A report, noted in relation to a number of sites that this policy was not met as they were disconnected from existing residential zoned land. Evidence was provided by Ms Peters in relation to one of these sites (RS212) that disconnection from residentially zoned land does not provide sufficient reason not to rezone a site, as the 'gap' might ultimately be rezoned as residential. We were not convinced by that argument as to the theoretical location of new development in un-zoned areas. We also note that the compact city objective was not addressed properly, or at all, by submitters for the majority of requested sites. The issue also arose in relation to site GF01 (Scroggs Hill), where we questioned whether this site met the compact city objective, and how should that be assessed.
107. In her evidence in reply, Ms Christmas noted that the term 'compact city' comes from the Spatial Plan, which was undertaken, in part, to guide the development of the 2GP. A 'compact and accessible city' is described as one that supports public transport and active transport modes due to its density, diversity and distribution of land use, and the design of its built form. She noted this was consistent with Policy 1(c) of the NPS-UD, which identifies well-functioning urban environments as including (amongst other things) good accessibility between housing, jobs and community services.
108. Ms Christmas considered that a determination of sustainably managed urban expansion involves consideration of the ability to walk and use public transport to access services and amenities. Zoning decisions that achieve this will focus on land close to centres, other community facilities and services and public transport routes, and minimise walking times where possible, and will provide for efficient land development (as outlined in Policy 2.2.4.1). This compact urban form provides multiple benefits, including providing for efficient provision of infrastructure, minimising vehicle use (and therefore reducing traffic and carbon emissions), and can also contribute to reducing loss of productive rural land, rural amenity, biodiversity and significant natural values.
109. While not addressing whether new residentially zoned areas must be connected to existing zoned areas, she did note that in her view a compact city would not be achieved by zoning patches of residential development, and in particular large lot development (as addressed further in section 2.1.4 of this decision report), that are disconnected from existing urban centres. Her evidence was that this development pattern (represented, for example, by sites RS109 and RS212 at Riccarton Road East, and RS157 at Blackhead Road) does not meet this objective.
110. We acknowledge the significance of this policy criterion, given its importance for providing well-functioning urban centres, as outlined in the NPS-UD, and with consideration for climate change and the need to manage carbon emissions.
111. Consequently, we agree that new residential land should provide for efficient land use (as outlined in Policy 2.2.4.1), and provide for walking and cycling transport options. In general,

we are of the view that this necessitates that new zoned land adjoining existing zoning. However, we acknowledge there may be circumstances where a compact city form may be attained without this always being met, if for example an area for growth is identified in a strategic planning document (FDS) and development occurs out of sequence but otherwise can be supported by planned infrastructure.

112. We have taken this approach in our decisions below, in many cases rejecting those sites that do not reflect this outcome, including those proposed for large lot zoning where there is no strong reason for this (noting the criteria in Policy 2.2.4.1), and those isolated and disconnected or with poor access to existing centres.

2.1.2.4 Consideration of resilient townships

113. Submitters in relation to sites at Outram, Allanton and Brighton were critical of the approach taken in assessing sites against Policy 2.6.2.1.d.xi. They argued that a 'Dunedin-centric' approach had been taken and that the 'resilient townships' aspect of the policy had been overlooked. This argument was particularly advanced by Ms Peters, and also in legal submissions by Mr McLachlan for *CC Otago Limited*. Mr McLachlan's submissions focussed on Outram, which he argued is a rural centre as identified on the 2GP planning maps. He argued that housing is encouraged in rural centres under Policy 2.2.4.2. He did note that where development is not proposed in the 'centre' there is a greater policy hurdle to overcome in relation to providing for increased development.
114. Mr McLachlan also addressed the relevance of the Spatial Plan in regard to determining where growth should occur, arguing that this is an outdated document, pre-dating the 2GP and the NPS-UD and that little weight should be placed on it.
115. Ms Peters noted that Dunedin is primarily a rural district, and that rural townships are required to provide housing for those who work in these areas. She said this was supported by the evidence of Mr Osborne on travel trends of those living with the Momona Statistical Area 2 (which includes Outram). This shows that 40% of people living within SA2 stay within it for work or study, and a further 22% commute to Mosgiel. Mr Osborne noted that given the higher proportion of retired residents in Outram relative to the wider Momona area, the travel data may overstate the travel trends for Outram specifically. Almost one third of Outram's workforce travels to Dunedin for employment. In summary, Ms Peters considered that growth must be provided for in townships to support rural areas.
116. With respect to the sites proposed at Outram, Ms Christmas noted that assessment against Objective 2.2.4 reflected the focus on the transport-related aspects of maintaining a compact city (and a 'well-functioning urban environment'). She noted that development in this location is further from the main sources of work and high schools at Dunedin and Mosgiel, and currently cannot access public transport, meaning more housing in this location will result in additional traffic and related carbon emissions.
117. However, she acknowledged that little attention has been given in the assessments to whether resilience of the various townships may be maintained or improved by allowing further development. This was due to the inherent difficulty in demonstrating how change may maintain or improve resilience (except in its meaning in relation to natural hazards).
118. She noted that townships are not defined or identified in the 2GP, however the Introduction to Section 15 – Residential Zones states:

5.1.1.7 Township and Settlement

The Township and Settlement Zone applies to areas beyond the main urban areas of Dunedin and Mosgiel and includes areas that were once independent settlements, such as Port Chalmers and Portobello. It includes larger residential townships supported by a commercial centre and smaller residential settlements that are not attached to a commercial centre. ...

119. The Spatial Plan defines townships as:

Townships – are the outlying residential settlements that have a centre and a range of community facilities and services. Townships include Mosgiel, Waikouaiti, Port Chalmers, Waitati, Middlemarch, Outram, Brighton, and Portobello.

120. On this basis, she concluded that Brighton and Outram (which both have commercial centre zones) are townships, but that Allanton is not a township.
121. She also noted that ‘resilience’ is also not defined in the 2GP, but may include factors such as community and commercial services to support residents, having sufficient business land and activity to provide employment (and services) for residents, and avoiding hazards or having sufficient land available for people to move away from hazards.
122. In her view resilience, and the factors necessary to maintain it, is difficult to determine and an increase in population may not directly lead to an increase in resilience. She noted that no evidence was presented by submitters that additional zoned capacity is required to maintain or achieve resilient townships.
123. Her evidence was that the FDS process is the most appropriate means to determine whether additional housing or business land capacity is needed to maintain or improve resilience.
124. We agree that the resilience of townships is an important aspect of Policy 2.6.2.1.d.xi, but note that we did not receive any substantive evidence that would support, or refute, the need for additional housing capacity to achieve or maintain resilience. In the absence of this, we cannot conclude that this is a reason that should be determinative, or be given significant weight, in providing additional capacity in locations that do not meet other important criteria for assessment. This is reflected in our decisions on individual sites below. We note the evidence that this matter will be further addressed through the FDS process, currently underway.
125. We further agree with Ms Christmas that Allanton is not a township as identified through the relevant planning documents, including in the Spatial Plan. This aspect of 2.6.2.1.d.xi therefore does not apply.

2.1.3 Is residential zoning appropriate in an SNL?

126. Several submitters sought residential zoning for sites that are affected by a mapped Significant Natural Landscape (SNL) or Outstanding Natural Landscape (ONL) overlay zone, including RS161, RS165, RS168, RS206 and an extension to GF11.
127. The appropriateness of zoning these residential was addressed in the section 42A report at 4.3, where Mr Morrissey noted that a key attribute of such areas is naturalness and that urban use is incompatible with this. He highlighted Policy 2.6.2.1.d.iv, which states:

“Achieving [protection of ONLs and SNLs] includes generally avoiding the application of new residential zoning in ONF, ONL and SNL overlay zone.”

128. We heard legal submissions and evidence on this in relation to a number of sites. Mr Page, for *Fletcher Glass*, submitted that the 2GP provisions in Section 10 Natural Environment, and the overriding strategic provision, Objective 2.4.4 and policies 2.4.4.1 and 2.4.4.2, apply in all zones, and they therefore provide protection of these values if a site is zoned residential. He argued that the 2GP contemplates management of SNL values in relation to development through design controls, and that (in the case of the North Road/Watts Road site for example – RS206/RS206a/RS077) effects on the SNL can be managed through controls on built form and vegetation.
129. Ms Peters, in evidence relating to site RS151 (147 St Leonards Drive), noted that in her assessment the term ‘generally avoid’ in Policy 2.6.2.1.d.iv is not a total prohibition on residential zoning in a landscape overlay, instead it implies that in certain, perhaps very limited, circumstances, it can be applied.
130. A similar argument was made by Mr Bowen in relation to site RS161 (210 Signal Hill Road). His view was that carefully considered applications, particularly where there are significant positive effects, may not be contrary to this policy.
131. The Panel acknowledges that the ‘generally avoid’ policy framework means there is not a blanket prohibition on development within areas affected by these overlays. However we consider it sets a very high bar and requires a considerable level of assessment to establish that a particular proposal will not conflict with this fairly strong policy. We also note that some sites had only a small portion affected by an SNL. Mr Morrissey’s evidence was that the SNL overlay could be removed where it overlapped with the proposed residential rezoning. We discuss these situations in relation to those specific sites later in this decision.

2.1.4 When is large lot residential zoning appropriate?

132. Submissions on a number of sites requested that they are zoned to Large Lot Residential, rather than General Residential 1 or Township and Settlement zoning. In addition, in response to issues raised by submitters or in the section 42A report, some landowners sought that their site be zoned to a less dense zoning than originally requested, usually Large Lot Residential 1 or 2 rather than General Residential 1. As we understand the submissions and evidence, this approach was generally to avoid or address concerns on matters raised in the section 42A report such as effects on provision of 3 waters infrastructure, landscape values, rural amenity, neighbouring properties and traffic volumes, by reducing the overall development potential of each site.
133. While we understand the rationale for this approach, this focusses our attention on Policy 2.2.4.1, which is to:

Prioritise the efficient use of existing urban land over urban expansion by: ...

- b. ensuring that land is used efficiently and zoned at a standard or medium density (General Residential 1, General Residential 2, Inner City Residential, Low Density, or Township and Settlement), except if: hazards; slope; the need for on-site stormwater storage; the need to protect important biodiversity, water bodies, landscape or natural character values; or other factors make a standard density of residential development inappropriate; in which case, a*

large lot zoning or a structure plan mapped area should be used as appropriate.

134. Ms Christmas, in her evidence in reply, addressed the use of Large Lot zoning for the purposes of on-site servicing where 3 waters servicing is not available. She noted that the need for on-site servicing is not a reason listed in Policy 2.2.4.1 to make provision for Large Lot zoning. Instead, a Residential Transition Overlay zone could be applied, with residential use at an appropriate density once servicing is available. Ms Christmas also raised the concern that Large Lot zoning is not an efficient use of the land if it can potentially support denser development in the future. Rezoning to Large Lot potentially locks in an inefficient development pattern that prohibits intensification or upzoning in the future.
135. While we address the site-specific issues raised in relation to each site below, our general view is that, through Variation 2, General Residential 1 density is preferred and that strong (on-going) reasons are necessary to justify a less dense zoning. Where GR1 is not possible now but may be possible in the future (for example due to servicing constraints), our view is that Large Lot Residential zoning is not appropriate, as an interim approach. This is due to the difficulties of ensuring that denser zoning occurs in the future. We think there is too much risk that once an area is developed, intensification will be slow or challenging to implement (in terms of upgrading or adding infrastructure that would be needed for the future density). We agree it is far better to design and develop an area at the higher density from the beginning.
136. We note that Ms Christmas recommended that an RTZ overlay could be applied to land that has been assessed as appropriate to zone for residential land but where programmed infrastructure upgrades are not yet available. In general this is preferable to implementing Large Lot Residential zoning as part of Variation 2.

2.1.5 *Is there an expectation that rural-zoned land should be productive?*

137. Several submitters made the case that their rural land was not providing an economic return, and therefore residential zoning was a more appropriate zoning. We note, for the most part, this information was anecdotal and not supported by economic evidence.
138. Ms Christmas addressed this in her Reply Report, advising that the principal functions of the rural environment are both to provide for productive rural activities and to provide ecosystem services. There is no expectation that all rural zoned land will achieve an economic return sufficient to provide a sole income for one or more landowners, and many small rural properties only provide supplementary income.
139. However, these properties may still be important collectively for the overall rural economy, for example by growing feed sources for more intensive farming operations or supporting contractors that service small rural food producers. Some rural land may have no economic return but may provide invaluable ecosystem services or act to protect values important to communities (for example outstanding or significant modified pastoral landscapes).
140. We agree with Ms Christmas' assessment and do not consider that current low productivity or lack of adequate economic return is sufficient reason to rezone a site to residential especially where the evidence is that other key criteria for rezoning are not able to be achieved.

2.1.6 *Are urban design controls appropriate?*

141. We received evidence on several requested sites for residential zoning on the basis that adverse visual and rural character effects could be mitigated by urban design controls, such as height limits, green space and reflectivity of cladding and roofs. Evidence on this basis was received from Mr Forsyth, landscape expert, for a number of submitters and was also addressed by Mr McKinlay for DCC. Urban design controls were also requested by submitters or further submitters, often nearby landowners and residents.
142. This matter was addressed both in the section 42A report and by Ms Christmas in reply. Mr Morrissey noted that the 2GP does not currently provide for additional design controls within residential areas. His view was that in general such controls are not appropriate as they tend to focus on preserving the amenity of a small number of neighbours. He suggested that if zoning is dependent upon these controls to protect wider landscape amenity values, a decision must be made up front as to whether it is appropriate to rezone these areas. He also noted that if we were to include such controls they would need to be supported by additional policy and assessment guidance being added to the Plan provisions and that work had not been done.
143. Ms Christmas agreed with that evidence and further noted that a section 32 assessment must consider the administrative costs of such provisions, including enforcement, compared to the benefits. These administrative costs are partly ratepayer funded. Where the benefit is localised to a small number of neighbours, it is unlikely to exceed the costs, and is an inefficient approach to management.
144. We have reflected on the evidence of the reporting officers, and record that we agree with it in principle. As a general proposition, if an area is to be rezoned for residential development, the effects should be such that bespoke types of urban design controls will not be necessary. We have applied this reasoning when considering individual sites.

2.1.7 *Impacts of urbanisation and pets on wildlife*

145. A number of submitters on various greenfield sites raised concerns that an increase in residential activity would result in an increase in pets (most notably cats), which would have a negative impact on indigenous fauna in the area. Submitters also raised broader concerns relating to the impacts of urbanisation, including loss of green space, impacts to indigenous flora and fauna, and effects development could have on various community groups working to protect and enhance biodiversity. Several of these submitters were focussed on development in Dunedin's North East Valley.
146. We received evidence on this matter from Mr Kelvin Lloyd, Wildland Consultants, as part of the section 42A report. Mr Lloyd's evidence agreed that increased residential development could increase the density of cats, and therefore predation on and disturbance of indigenous fauna. Mr Lloyd recommended that consideration could be given to prohibiting keeping cats on future residences within the sites, or allowing cats only in secure areas that do not allow roaming.
147. In his opening statement, Mr Morrissey discussed this matter further. He noted that while it would be theoretically possible to include rules preventing or managing pets within a residential area, there is no existing policy framework in the 2GP to manage this. He noted that the majority of Council rules relating to pets across the country are implemented by bylaws. He also noted that some new subdivisions around the country have banned cats by

way of a consent notice on titles. Mr Morrissey advised that if we did wish to restrict pet ownership in greenfield areas, we would need to be satisfied that such a measure achieved section 32 of the RMA. Section 32 requires us to assess various options to ensure that the proposal is the most appropriate method to achieve the plan's objectives. The relevant Objective is 2.2.3 - protection of significant biodiversity.

148. After considering the advice received on this matter, we do not consider it appropriate to apply restrictions on pet or cat ownership in any of the greenfield sites through this variation. This would be out of step with management in existing zoned areas, and with no clear reason to have differing management regimes within urbanised parts of the City.
149. If DCC wish to consider restrictions on pet ownership, this is a matter that would best be addressed through a dedicated regulation review (considering both bylaw and plan method options) that involves appropriate community consultation and cost-benefit analysis.

2.2 Broad submissions on greenfield rezoning

150. This section of the report deals with the broad submissions, which are addressed in section 5.1 of the section 42A report for Hearing 4.

2.2.1 Submissions regarding structure plan mapped area vegetation clearance rules

151. This section addresses the submissions covered in section 5.1.1 of the section 42A report.
152. The *Dunedin City Council (S187.029, S187.030, S187.031)* sought to amend Change GF08 (Main South Road), Change GF10 (Honeystone Street) and RT22 (Selwyn Street) to amend the proposed vegetation clearance rules in the following structure plan mapped area performance standards:
 - Rule 15.8.AB for GF08;
 - Rule 15.8.AA for GF10; and
 - Rule 15.8.AC for RT22.
153. The amendments proposed are to remove the exception relating to the maintenance of fences for all three structure plans, and to amend the wording for GF08 and GF10 so that protection applies to all vegetation within 5m of water bodies and not just indigenous vegetation. The changes proposed are to improve clarity, promote consistency with similar provisions in the rest of the plan and correct errors in the proposed drafting.
154. The *ORC (FS184.535)* opposed the *DCC (S187.031)* submission and sought not to amend Change RT22 because it considered that the proposed stormwater management provisions of Variation 2 are not appropriate for the Lindsay Creek catchment.
155. *Tim Hyland (FS241.3)* supported the *DCC (S187.031)* submission as he considered that changes to Rule 15.8.AC would better protect biodiversity.
156. In the section 42A report, Mr Morrissey considered that the amendments proposed by the DCC will result in clearer and more appropriate vegetation clearance rules. He recommended that, if changes GF08, GF10, and RT22 are adopted, the amendments proposed should also be adopted.

2.2.1.1 Decision and reasons

157. For the reasons given by the Reporting Officer, we accept the submissions by the *Dunedin City Council (S187.029, S187.030)* to amend the vegetation clearance rules in the following structure plan mapped area performance standards: Rule 15.8.AB for GF08 and Rule 15.8.AA for GF10. These changes are shown in Appendix 1 with the reference 'Change GF08/S187.029' and Change GF10/S187.030' respectively.
158. We reject the submission by the *Dunedin City Council (S187.031)* to amend the proposed vegetation clearance rules in the structure plan mapped area performance standards for RTZ2 (Rule 15.8.AC), as our decision is not to rezone RTZ2 (see section 2.3.11.2).

2.2.2 General submissions on greenfield rezoning

159. This section addresses the submissions covered in section 5.1.2 and 5.1.3 of the section 42A report.
160. A number of submissions were received in general support of the greenfield rezoning aspects of Variation 2. For example, *Mark Geddes (S128.011)* supported rezoning greenfield areas to General Residential 1, *Waka Kotahi (NZ Transport Agency)* generally submitted in favour of Variation 2 and *Bill Morrison (S13.001)* also generally sought to retain all changes made in Variation 2. We note that the *ORC* opposed in part the majority of these original submissions, unless the amendments sought in the *ORC* submission were made. The *ORC* submission covered a broad range of topics, but in relation to the greenfield rezoning sites generally raised concerns relating to water quality, wastewater management, stormwater management, and hazards.
161. A number of submissions were received that opposed all new greenfield zoning for a variety of reasons. For example, *Ken Barton (S23.001)* submitted to remove all changes which extend residential zoning over greenfield land.
162. Other submissions were received (e.g. *Liz Angelo (S176.001)*) that supported the notified greenfield sites provided a number of criteria are met. We note that the *ORC* supported some of these submissions in part.
163. We note that none of the submitters appeared at the hearing to present evidence specifically on these broad submissions. However, we acknowledge these broad submissions and the arguments made by these submitters, which have been considered in our decisions on individual sites.

2.2.3 Application of NDMAs and associated infrastructure controls

164. This section addresses the submissions covered in section 5.1.4 of the section 42A report.

2.2.3.1 Submissions to remove the NDMA from greenfield rezoning sites

165. *Paterson Pitts Group (S206.013)*, *Terramark Limited (S220.004)*, *Survey & Spatial New Zealand (STSNZ) Coastal Otago Branch (S282.012)*, and *Kurt Bowen (S300.006)* sought that the new development mapped area be removed from all greenfield rezoning sites or, if not removed, amendments are made to require the DCC to undertake a complete infrastructure modelling programme and change the new development mapped area provisions to specifically address identified constraints. These submissions were all opposed in part by the

ORC (FS184) as it considered the relief sought conflicted with the ORC's submission on the stormwater provision changes in Variation 2.

- 166. A large number of submitters sought to remove the infrastructure controls from all new greenfield areas, until the stormwater management plan provisions can be amended into a workable arrangement. These submissions were opposed also by the ORC (FS184).
- 167. A decision on the infrastructure aspects of the new development mapped area provisions with respect to stormwater was covered in Part C.4.4 of our first decision. Additionally, a decision on submission points that sought the removal of new development mapped areas from existing residential land was made in part C.4.9 of our first decision. These requests were rejected as we did not consider that the new development mapped area provisions were a significant hurdle for developers to overcome and were necessary to address potential environmental effects and achieve the 2GP's objectives.

2.2.3.1.1 Decision and reasons

- 168. We accept the reasoning in the section 42A report on this broad matter and accordingly reject the submissions that sought the removal of the new development mapped area requirements from greenfield areas. We agree that the NDMA provisions are appropriate to ensure that design and layout of subdivisions is undertaken appropriately and will achieve the Plan's strategic directions. In particular, the policies and assessment matters in relation to stormwater management that apply in NDMA areas, will ensure that stormwater is appropriately managed. This approach is consistent with our decision in part C.4.9 of our first decision.
- 169. We note that a number of submissions to remove NDMA's from specific sites were also received. Our decisions on those submissions are outlined in the individual site-specific sections of this decision.

2.2.3.2 Submission to add an NDMA to new greenfield residential rezoning sites

- 170. The DCC (S187.017) sought to apply a new development mapped area to any greenfield residential rezoning site added to the 2GP since notification of Variation 2 through the resolution of rezoning appeals.
- 171. The submission sought to ensure that all new greenfield areas are treated in a similar way and appropriate management of effects occurs. Some rezoning appeals were settled prior to us making decisions on the new development mapped area provisions, and so application of a new development mapped area was not possible.
- 172. This submission was opposed by the ORC (FS184.546).
- 173. Mr Morrissey provided a list of sites which had been rezoned since notification of the 2GP in the section 42A report. This was updated in Appendix 2 of his Reply, and consequential changes that may be required to the existing structure plans for some of the appeal sites should the DCC submission be accepted, were noted. These amendments were to delete provisions relating to stormwater management, and were recommended to ensure there is no duplication between the existing structure plan provisions and the new development mapped area provisions.

174. The final list of appeal sites Mr Morrissey recommended a new development mapped area be applied to were:

- 49 and 55A Riccarton Road East, East Taieri;
- 27 Inglis Street and Part 58 Ayr Street, Mosgiel;
- Part 636 North Road, Dunedin;
- 457 Highcliff Road, Dunedin;
- Part 135/145 Doctors Point Road, Waitati; and
- 41 Soper Road and 20-21 Henderson Street.

2.2.3.2.1 Decision and reasons

175. We accept the submission from the DCC (S187.017) and apply an NDMA to the sites above. In making this decision, we note that we were concerned at the broad nature of the DCC submission which taken literally would apply to unspecified sites. We requested prior to the commencement of Hearing 4, as part of Minute 12, that DCC might like to address us on the legal ramifications of that submission. Mr Garbett, counsel for DCC, considered that it is necessary to specify to which sites the submission applies, and we note that Mr Morrissey had since provided a list of sites as set out above. We accept Mr Garbett's advice that in terms of jurisdiction it is appropriate and valid to consider the merits of this submission as it relates to those sites. Consequently, we have applied an NDMA to the sites listed above.

176. We also note that as a consequential change, we have included these sites in Appendix 12C. This lists all sites to which an NDMA applies and was included in the Plan through our first decision on Variation 2.

177. In relation to Mr Morrissey's consequential changes, we are concerned that removing the structure plan provisions from the sites suggested might mean that, should an appeal be received on the application of the NDMA, these sites may have no appropriate rules in place until the appeal is resolved. Therefore, our decision is not to remove this content from the structure plans. We are satisfied that the structure plan rules identified, and the NDMA provisions, are not in conflict. We are therefore satisfied that this will not create any issues when subdivision and development consents are applied for.

178. These changes are shown in Appendix 2 with the reference 'Change NDMA/S187.017'.

2.2.4 3 waters infrastructure availability

179. This section addresses the submission covered in section 5.1.5 of the section 42A report.

180. *Cameron Grindlay (S60.005)* submitted in support of Variation 2, subject to 3 waters infrastructure being adequately funded so that it is able to support existing and new development. This submission was opposed by the *ORC (FS184.101)*.

181. Mr Morrissey recommended accepting the submission from *Mr Grindlay*, as he advised that 3 waters servicing has been considered as part of assessing a site's suitability for rezoning. He also noted that the 10 year plan includes funding for all costs associated with extending 3 waters servicing to the sites notified for rezoning in the section 32 report, and the majority of funding required for existing network upgrades across the city.

2.2.4.1 Decision and reasons

182. We accept in part the submission by *Cameron Grindlay* (S60.005). We acknowledge Mr Morrissey's evidence that 3 waters servicing has been considered as part of assessing a site's suitability for rezoning and that budgetary provision has apparently been made to extend 3 waters servicing the sites notified (with the 'majority' of funding required for existing network upgrades). We do not consider this submission can be wholly accepted because the Panel can make no decisions as to Council funding of public infrastructure.

2.2.5 Public transport and roading network

183. This section addresses the submissions covered in section 5.1.6 of the section 42A report.
184. *Peter Dowden* (S122.004) and the *Bus Users Support Group Otepoti/Te Roopu Tautoko Kaieke Pahi ki Otepoti* (S125.005) sought that new greenfield zoning is only undertaken where new dwellings will be within 800m of a bus stop or 1200m of a high frequency bus stop. Mr Morrissey noted in the section 42A report that if a site can meet these distances it is classified as 'OK' in the site assessment sheets. A further submission from the *ORC* (FS184.479, FS184.482) supported both of these original submissions.
185. *Waka Kotahi (NZ Transport Agency)* (S235.001) supported the approach of 'filling gaps' across a wider area, as it reduces impacts on the roading infrastructure at specific points or locations.

2.2.5.1 Reporting Officer's recommendation

186. Mr Morrissey recommended rejecting the submissions from *Peter Dowden* (S122.004) and the *Bus Users Support Group Otepoti/Te Roopu Tautoko Kaieke Pahi ki Otepoti* (S125.005), commenting that access to public transport is considered alongside the other criteria identified in Policy 2.6.2.1. He noted most, but not all, of the sites recommended for rezoned had 'OK' or better access to public transportation. He also advised that similar submissions were received from both submitters relating to public transport in intensification areas, and were dealt with in Part A.2.8 of our first decision report, where they were rejected.
187. Mr Morrissey recommended accepting the submission from *Waka Kotahi* (S235.001) and noted that a large number of proposed rezoning sites are relatively small areas, located close to, or within, existing residential developed areas.

2.2.5.2 Decision and reasons

188. We reject the submissions from *Peter Dowden* (S122.004) and the *Bus Users Support Group Otepoti/Te Roopu Tautoko Kaieke Pahi ki Otepoti* (S125.005). The reasons for this are the same as outlined in our first decision report, primarily that the DCC does not have direct control over public transport networks in Dunedin and so cannot guarantee how these might change in the future (for the better or worse).
189. We also agree with Mr Morrissey that this is but one factor for consideration in the assessment of rezoning a site and should not be used as a 'knock out blow'.
190. We accept the submission from *Waka Kotahi* (S235.001) for the reasons given in the submission.

Requested Sites he had engaged with Transpower and confirmed that none of the sites are near the National Grid.

2.2.7.2 Decision and reasons

200. We accept in part the submission from *Transpower New Zealand (S28.001)*, and we note their support of the notified rezoning sites.

2.2.8 Provision of green space

201. This section addresses the submission discussed in section 5.1.9 of the section 42A report.
202. *John and Christine Burton (S8.002)* submitted in support of changes to increase the density of housing within Dunedin, including new greenfield zoning, provided green spaces are maintained. A further submission from the *ORC (FS184.75)* opposed this submission on the grounds that it conflicts with their position on stormwater provisions.
203. We also note here the submission made by *Yolanda van Heezik (S82)* in relation to a number of specific sites. This submission sought, broadly, to retain biodiversity areas including gardens and landscaping, within new development. We note that in our first decision we made a number of amendments (see 'Change A2 Alt 3 IN-LANDSCAPE/S82.004 and others') in response to *Ms van Heezik's* submission, including requiring minimum landscaping for new General Residential 2 areas.
204. Mr Morrissey advised in the section 42A report that rezoning sites to General Residential 1 density or lower did not justify the same minimum landscaping requirements as applied General Residential 2 areas. He stated this was because General Residential 1 areas are less built up and more likely to have garden areas and trees relative to the higher density General Residential 2 areas.

2.2.8.1 Decision and reasons

205. We accept in part the submission from *John and Christine Burton (S8.002)* and note that our decision on individual sites is contained within the next section of our decision report.
206. With respect to the submission from *Ms van Heezik*, we agree with the Reporting Officer that sites being rezoned to General Residential 1 have less need for minimum landscaping requirements than for General Residential 2 sites and that it is not necessary or appropriate to apply the minimum landscaping requirements to sites being rezoned to a General Residential 1 or lower density. We therefore reject *Ms Van Heezik's* submission as it relates to these sites, which are GF02, GF06, and GF07. We note that this submission also applies to GF08, but given this site is being rezoned to General Residential 2, we address her submission as it may be applied to that particular site in the individual site section.

2.2.9 Miscellaneous submissions

207. This section addresses the submissions covered in section 5.1.10 of the section 42A report.
208. The *Dunedin City Council (S187.008)* made a general submission to consider the need for additional Plan provisions to better manage any adverse effects identified through submissions. This request was considered by the Panel as appropriate by way of general application for us when considering submissions on proposals in Variation 2.

209. *Michael McQueen (S252.003)* sought to retain the current General Residential 1 zoning of 96 Somerville Street. We note as the zoning of 96 Somerville Street is not being reviewed through Variation 2, this submission is out of scope. In any case no decision on this submission is required as it doesn't seek a change to the existing zoning.

2.3 Sites

210. This section of the report deals with site-specific submissions, which are addressed in sections 5.2 – 5.4 of the section 42A report for Hearing 4. Sites are grouped by geographic area.

2.3.1 Abbotsford

2.3.1.1 Freeman Close and Lambert Street, Abbotsford (RS14)

211. RS14 is located north of Abbotsford, at the end of North Taieri Road. RS14 comprises two discrete parts, a smaller (6.6ha) area to the west (42A Lambert Street) and a larger area (48ha) to the east (consisting of 25 McMeakin Road, 45 Mc McMeakin Road, 55 McMeakin Road, and part 188 North Taieri Road). Both sites are adjacent to existing residentially zoned land, and a small part of the western site lies adjacent to the main railway line. The Dunedin Airport Flight Fan overlays the majority of RS14. If the entirety of RS14 was to be rezoned to General Residential 1, Mr Morrissey advised that the site would have an estimated feasible capacity of 761 dwellings.
212. The section 32 report notes the site was originally rejected for inclusion in Variation 2 as there were significant natural hazard risks identified.

2.3.1.1.1 Submissions received

213. *Bill Hamilton (S298.001)* submitted to rezone 25 McMeakin Road to General Residential 1.
214. *Alan David and David Eric Geeves & Nicola Jane Algie (S302.001)* submitted to rezone 55 McMeakin Road to General Residential 1.
215. *Nash and Ross Ltd (Steve Ross) (S281.001)* submitted to rezone 42 Lambert Street (now 42A Lambert Street) to General Residential 1.
216. *Wendy Campbell (S228.003)* submitted to rezone 45 McMeakin Road and part of 188 North Taieri Road to a mixture of residential zones in accordance with a proposed structure plan.
217. Several further submitters supported one or more of the submissions seeking rezoning. Reasons given by these further submitters included that rezoning would enable more housing, the majority of services are in place, and that the land is well suited for residential use.
218. A large number of further submitters opposed one or more of the submissions seeking rezoning. These further submissions outlined concerns relating to waters, transport and traffic safety, natural hazards, loss of rural character, loss of amenity, impacts to biodiversity, lack of infrastructure and servicing in Abbotsford, the potential for reverse sensitivity, and general concerns regarding additional population growth.

number of further submitters raising concerns about the link road between Chain Hills Road and Irwin Logan Drive, and consider that the Future Development Strategy is the more appropriate process through which to review and consider fairly major changes to the transport network. As we have emphasised throughout our decision report, rezonings enabled through Variation 2 should be relatively “easy wins” if they are to meet the stated purpose of the variation

971. Turning to landscape, we note the broad agreement between Mr Moore and Mr McKinlay, with both landscape architects considering that rezoning the upper slopes will have adverse impacts. We accept the legal submission from Mr Garbett that adverse effects on rural character and amenity are issues that we should take into account and consider as part of our decision making process. We therefore agree with Mr Moore and Mr McKinlay that the rezoning of the upper slopes (i.e. any areas above 90 – 120 metres elevation) is not appropriate from a visual effects perspective.
972. With respect to the proposal to consider applying an RTZ to the upper slopes while the planting matures in this area, we agree with the Reporting Officer that this is not something that an RTZ can be used for, but given that we find the site inappropriate for rezoning for a range of other reasons, this is not a material consideration.

2.3.10.4 170 Riccarton Road West (RS212)

973. This section addresses the submissions covered in section 5.4.22 of the section 42A report.
974. 170 Riccarton Road West is located to the west of Mosgiel and is 8.3ha in area. It is subject to a number of overlays on the 2GP maps, as follows: a high class soils mapped area (the majority of the site), a groundwater protection mapped area, the Kokika o Te Matamata (area surrounding Mosgiel) wāhi tūpuna mapped area, the Hazard 3 (flood) Overlay Zone, and it is within the Dunedin Airport Flight Fan. The site is located just over 300m from the nearest residential zoning. The site was originally rejected in the section 32 report as it was considered unsuitable due to its disconnection from existing residential zoned areas.
975. Evidence from Ms Peters was that the site currently includes a hazelnut orchard.

2.3.10.4.1 Submissions received

976. *Richard Muir (S156.002)* sought to rezone the site to either Low Density Residential or, if it was desirable to retain an element of rural character as it merges with its rural surroundings, Large Lot Residential 1.
977. *Roger and Janine Southby (S191.002)* sought to rezone the site to General Residential 1 and/or Low Density Residential and/or Large Lot Residential 1, subject to a structure plan mapped area rather than a new development mapped area. The submission contained a number of concept plans showing proposed structure plan layouts for the various zonings.
978. *Clive and Linda Wallis (Daisy Link Garden Centres Ltd) (FS56.1, FS56.2)* supported both the submissions above, but noted that they wish to participate in the process to ensure development does not adversely affect the stormwater network’s ability to receive stormwater from residential development at 58 Ayr Street.
979. *Allen Blackie (FS11.2, FS11.3)* opposed rezoning due to concerns about loss of rural land, and the potential for reverse sensitivity issues from the existing surrounding farm operations.

980. The *ORC (FS184.20, FS184.29)* opposed those submissions seeking rezoning, with concerns expressed about stormwater management issues.
981. *Denise Snell (FS77.1)* opposed the submission from *Roger and Janine Southby*, and raised concerns around traffic safety, loss of rural character and lifestyle, potential loss of native birdlife, and lack of infrastructure.
982. None of the further submitters spoke at the hearing.

2.3.10.4.2 Housing demand and capacity

983. In her evidence on behalf of *Roger and Janine Southby*, Ms Peters argued that there is demand for more residential zoned capacity in this location. She also raised a number of broad issues with the Council's housing capacity assessment which we discuss in section 2.1.1 of the decision.
984. Mr Russell Lundy, a local real estate agent, appeared at the hearing for *Roger and Janine Southby*. He considered that there was strong demand for real estate in the area, particularly for flat smaller to medium sized sites such as could be provided by rezoning this land.
985. Mr Nathan Stocker, in his response to Submitter Evidence, addressed the matters outlined in Ms Peters' evidence in relation to the housing capacity assessment. This is further discussed in section 2.1.1.

2.3.10.4.3 Transport

986. Ms Peters said the proposed development would be accessed from Riccarton Road West and Bush Road, which are classified in the 2GP as an Arterial Road and Collector Road respectively. In her opinion, given these classifications, both roads are capable of absorbing additional traffic volume. Ms Peters also anticipated that an Integrated Transport Assessment would be prepared at the time of subdivision, and any roading upgrades required would be paid for by the developer.
987. In his response to submitters, Mr Trevor Watson, DCC Transport, commented that an additional 140 dwellings (should General Residential 1 zoning occur) would be a reasonably significant amount of new development and agreed an Integrated Transport Assessment would be required at the time of subdivision. While Mr Watson considered there are no overriding transport issues in relation to the rezoning of this discrete site, he noted that there are potentially significant cumulative effects from growth proposal in and around Mosgiel.

2.3.10.4.4 3 waters

988. Several submitters raised concerns relating to lack of 3 waters infrastructure and appropriate stormwater management.
989. Ms Peters noted in her evidence that if RS212 were rezoned to Large Lot Residential 1, dwellings could be self-serviced for both potable water and wastewater. If RS212 were rezoned to General Residential 1 or Low Density Residential, then reticulated servicing would be required. Ms Peters noted there are two existing connections to the potable water supply within the site boundary, and a wastewater pipe approximately 330m from the site boundary, which the developer would pay to have extended. Ms Peters noted that

stormwater attenuation would be required, and that all proposed structure plans allocate areas for stormwater attenuation.

- 990. In his section 42A report, Mr Morrissey considered that due to the disconnection of the site from existing serviced areas, provision of 3 waters infrastructure would be inefficient, and therefore contrary to Policy 2.6.2.1.ix.
- 991. Mr Scott Cookson, surveyor, appeared at the hearing in support of *Roger and Janine Southby*, and explained that all the proposed structure plans show indicative areas for stormwater management. Mr Cookson stated he did not anticipate any downstream effects from development.
- 992. In its Response to Submitter evidence, DCC 3 Waters commented that the potable water supply in Mosgiel is constrained during summer, and significant upstream network upgrades are required with a medium term timeframe to resolve. For wastewater, an extension would be required; however, significant downstream upgrades are required to both the network and treatment plant, with a medium to long term timeframe to resolve. Additionally, wastewater pumping would be required as the site is at a lower elevation to the potential wastewater network connection point, which is contrary to DCC's Zero Carbon policy.
- 993. With respect to the options presented for self-servicing where there are problems with servicing, we refer to the overall evidence on this and our broad conclusions on this in section 2.1.4.

2.3.10.4.5 Landscape and visual amenity

- 994. Ms Peters considered that the site does not have a high level of rural amenity that requires protection from a landscape perspective. While she acknowledged that rezoning would create a change to the landscape, amenity planting within public spaces within the site is proposed to help mitigate this. Ms Peters anticipated that a structure plan performance standard would require a certain level of amenity tree planting to be undertaken.

2.3.10.4.6 Economic considerations/rural productivity

- 995. *Allen Blackie (FS11.2, FS11.3)* raised concerns around the loss of rural land and potential for reverse sensitivity issues from surrounding farm operations.
- 996. Ms Peters' view was that a performance standard requiring landscape treatment along the Bush Road boundary between the site and the existing farming activities at 114 Riccarton Road West could be included in the structure plan.
- 997. Ms Peters also noted that there are mapped high class soils covering approximately two-thirds of the site, and LUC class 1 soils over the full site. Ms Peters argued that the land is not, however, highly productive due to its size and proximity to residential activity. While the site is currently run as a hazelnut orchard, and has been since 2020, she noted that the landowners have said this has not been economically viable. Mr Roger Southby appeared at the hearing and elaborated on this. It was also supported by a letter from the submitter's accountant, confirming the business has been operating at a loss.
- 998. Mr Tim Heath from Property Economics appeared in supported of *Roger and Janine Southby*. Property Economics were engaged to undertake a high-level economic assessment on the site to assess the potential economic impacts of rezoning the site, in terms of the loss of

highly productive land, and the economic benefits of additional housing. The costs identified were:

- Current value added, based on the Highly Productive soils is estimated at approximately \$37,700 per annum. A further site has potential for primary production.
- The total expected reduction in output to 2028: \$159,000 (discounted).
- Reverse Sensitivity Risk: Medium due to the surrounding area comprising HPL Class 1 Soil.

999. We note that part way through our deliberations the National Policy Statement for Highly Productive Land (NPS-HPL) was released and came into effect. Mr Morrissey, in his response to a request from us (Minute 17), advised that as the site is LUC 1, it meets the interim definition of HPL, and is therefore subject to the NPS-HPL provisions.

1000. Due to the timing of the release of the NPS-HPL, and for the sake of clarity, we have chosen to undertake an analysis of the effect of the NP-HPL on the sites proposed for rezoning as a separate part of our decision, and to focus on whether it changes any of our decisions on the individual sites affected. This analysis is in section 3 of this decision. We note that the analysis in that section has not materially changed our overall decision on the rezoning of this site.

1001. Finally, we also refer to our discussion in section 2.1.5 which considers if there is an expectation that rural-zoned land should always be productive when considering rezoning requests.

2.3.10.4.7 Biodiversity

1002. Ms Peters stated that there is very little existing indigenous biodiversity within the site. She noted that amenity planting within public spaces is proposed, and that this would provide some indigenous vegetation, and therefore habitat for native birds, on the site.

2.3.10.4.8 Hazards

1003. Ms Peters noted that there is a Hazard 3 (flood) Overlay Zone over the site. She advised that the flood risk associated with this on the 2GP planning maps is low.

1004. Ms Peters also considered that geotechnical investigation of the site would be required prior to subdivision.

2.3.10.4.9 Compact city objective

1005. In his section 42A report, Mr Morrissey considered that rezoning the site to residential would result in conflict with Policy 2.6.2.1.d.xi, which requires Dunedin stay a compact and accessible city.

1006. In her evidence, Ms Peters acknowledged that the site is disconnected from existing residentially zoned land, but stated that this does not provide sufficient reason to reject residential rezoning outright, given how well, in her opinion, the site rates against other assessment criteria. Ms Peters advised that within the “gap” between RS212 and the nearest residentially zoned land, there are a number of other undersized rural properties, and that several of these landowners are interested in rezoning and developing their properties.

2.3.10.4.10 RTZ/LLR

- 1007. Ms Peters suggested applying a Residential Transition Overlay Zone to RS212, which would have a site-specific rule governing release of the land. That is, release would be subject to there being residentially zoned land between RS212 and the existing General Residential 1 zone. Alternatively, Ms Peters suggested that rezoning directly to Large Lot Residential 1 may be appropriate, as that density is more in character with the size of existing properties. Building platforms could be identified on the structure plan to ensure that future intensification is possible.
- 1008. In his Reply Report, Mr Morrissey considered rezoning to Large Lot Residential zoning was not an efficient use of the land. He also recommended against rezoning small, isolated and disconnected sites.
- 1009. Ms Christmas also further discussed the appropriate use of Large Lot Residential zoning in her Reply Report.

2.3.10.4.11 Reporting Officer's recommendation

- 1010. Overall, Mr Morrissey recommended that the site was not appropriate for rezoning due to its poor alignment with Policy 2.6.2.1. He noted the site's disconnection from existing residentially zoned land, the inefficiency associated with infrastructure servicing, and that Large Lot Residential zoning was not appropriate.
- 1011. Mr Morrissey also commented on the proposal to apply a Residential Transition Overlay Zone (RTZ) as an alternative to GR1 or LDR zoning. He advised that the RTZ method is usually used to hold areas for residential use while infrastructure issues are addressed. Using it to identify a site for future residential zoning depending first upon neighbouring rural zoned land being rezoned to urban is not consistent with this approach.

2.3.10.4.12 Decision and reasons

- 1012. For the reasons given by the reporting officer, we reject the submissions from *Richard Muir (\$156.002)* and *Roger and Janine Southby (\$191.002)* to rezone RS212. We accept Mr Morrissey's evidence that rezoning this site is inconsistent with Policy 2.6.2.1.d.xi and Policy 2.6.2.1.d.ix, as it would not meet the compact city objectives of the 2GP and there are issues identified with 3 waters servicing.
- 1013. Even setting aside the NPS-HPL considerations for the moment, we were nevertheless concerned about the cumulative loss of productive rural land, particularly on the Taieri, which was a broad issue raised by Mr Miller and discussed in section 2.2.6. We note the new policy direction in the NPS-HPL requires much greater attention to that issue as is discussed in section 3. With respect to the matters raised about the site not being of a size to provide for an adequate economic return for the landowners, we refer to our discussion on this matter in section 2.1.5.
- 1014. We are mindful of Objective 2.2.4 in particular, that land should be developed efficiently. If this site is to be considered appropriate for urban expansion at any time, we agree with the reporting officers that it should be done so at GR1 or higher density. This is not appropriate in this case due to the distance of the site from existing residential areas, and the difficulties and inefficiency of servicing it. We discuss the application of Large Lot zoning as an interim zone type until services are available in section 2.1.4 above, and conclude that this is generally inappropriate. That conclusion also applies to this site.

1015. We also note that the site lies entirely within a Hazard 3 (flood) Overlay Zone.
1016. Regarding the submitters' proposal to apply a Residential Transition Overlay Zone to the site, we accept Mr Morrissey's evidence that this is not an appropriate use of the Residential Transition Overlay Zone method, nor do we find that this site is appropriate to identify for future residential expansion. We also comment that we received no evidence that the land between this site and the adjacent residential zones can, or should, be rezoned for residential development and can therefore place no weight on that as a factor that might support the use of RTZ at this time.

2.3.11 North East Valley

2.3.11.1 233 Signal Hill Road, Upper Junction (GF12)

1017. This section addresses the submissions covered in section 5.2.14 of the section 42A report.
1018. Variation 2 proposes to rezone GF12 from Rural zone to Large Lot Residential 1 zone.
1019. GF12 covers the northernmost part of 233 Signal Hill Road, outside the Significant Natural Landscape Overlay Zone (SNL), and is located at the end of Birchfield Avenue and Pleasant Place. The part of the site located within the SNL was not assessed for rezoning and is not within the scope of Change GF12.
1020. Mr Morrissey in the section 42A report outlined that Change GF12 includes both rezoning part of 233 Signal Hill Road, and also protecting a separate area of significant vegetation within the property as an Area of Significant Biodiversity Value (ASBV). He noted that the site slopes steeply, which will affect development potential. There is a medium level hazard associated with slope and geotechnical investigations would be required prior to development.
1021. The site is distant from a commercial centre (4km); however, there is a bus route and cycle lanes along North Road. There are 3 waters constraints in relation to development on the site, particularly in relation to capacity downstream in the wastewater network. Self-servicing for both wastewater and potable water would be required, along with stormwater attenuation. The section 42A report advises that access to the site is problematic, with no apparent satisfactory means of accessing the site from North Road, and there are potential problems should Pleasant Place be proposed as the access route.
1022. The notified change includes applying a new development mapped area to the site along with application of a no DCC reticulated wastewater mapped area, scheduling an ASBV, and removal of the high class soils mapped area.

2.3.11.1.1 Submissions received

1023. *Mr Harry Harding*, owner of the site, supported the proposal and spoke at the hearing. Mr Kurt Bowen also provided evidence at the hearing in support of Mr Harding's submission.
1024. A number of other submitters also supported the proposed rezoning.
1025. *Judith Layland (S134.001)* submitted in support of rezoning, but subject to an assessment of the impacts of the proposed development of housing on established properties below the site.

(c) the environmental, social, cultural and economic benefits of rezoning outweigh the environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.

(5) Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.

1497. We note that Dunedin City is currently a Tier 2 territorial authority.

3.3 Interpretation of the NPS-HPL

1498. On 30 September 2022, we issued Minute 17 to all Hearing 4 submitters. In this Minute, we asked the DCC to provide a legal submission to address which sites it assesses as being affected by the NPS-HPL. That was duly provided, and we also received the DCC reporting officer's advice on which of the sites requested for rezoning are affected by the NPS-HPL.

1499. Minute 17 also invited submitters to respond to the DCC's legal submission. The responses are addressed below.

3.3.1 Legal submissions

1500. The legal submissions we received covered a full spectrum of opinions, however the primary legal question on which we received submissions was the interpretation of clause 3.5(7) to the sites in question. The initial legal submissions we received are summarised below.

Dunedin City Council

1501. The DCC's legal opinion was that, firstly, the transitional provisions of the NPS-HPL mean that it applies to land that is zoned Rural and Rural Residential and contains LUC 1, 2 or 3 land. We record that there seemed to be no disagreement from the parties on this.

1502. The DCC legal opinion was that, secondly, the deeming provision does not apply to land identified for "future urban development" or that is subject to a Council initiated plan change to rezone it from general rural to urban or rural lifestyle. In that regard, Dunedin does not yet have a Future Development Strategy in place, and Variation 2 cannot be considered to be strategic planning document based on the relevant definitions.

1503. However, thirdly, the DCC advice went on to say that Variation 2 is exempted by clause 3.5(7)a by virtue of it being a Council initiated plan change. Fourthly, the advice was that the exemption does not extend to land put forward in submissions which Council has not adopted or initiated (i.e. as part of proposed Variation 2 as notified).

1504. The consequence of the DCC legal advice is that where submitters have sought to rezone further areas of rural land that is deemed to be highly productive by the NPS-HPL than the NPS provisions should be considered by the Panel in relation to that land when evaluating whether, in response to submissions, to rezone the land.

Gladstone Family Trust

1505. The legal submissions for Gladstone Family Trust agreed with DCC's submission that Variation 2 is a Council initiated plan change. However, it disagreed with the argument that submitters' sites were not part of the variation. The submission was that, regardless of whether the land has been identified by DCC or by submitters, it is before the Panel because it is in scope of Variation 2. Reasons were provided as to why the submitters' sites could be considered part of the variation including that the variation process, which has been a Schedule 1 RMA process, can change the zoning of that land.

CC Otago Limited, Peter Doherty & Outram Developments Limited

1506. The legal submissions from CC Otago Limited, Peter Doherty & Outram Developments Limited agreed with the DCC submissions that Variation 2 is not a Future Development Strategy or strategic planning document as defined. However, it fundamentally disagreed with the DCC's position arguing that the 'site' advanced for rezoning by these submitters is currently subject to the Variation 2 process which has been initiated by DCC, and that it has been determined that the site is within the scope of Variation 2.
1507. It was also argued that it is artificial to read clause 3.5(7)(b)(ii) to be limited only to sites as identified within the 'notified version' of plan change, whereas the clause does not limit itself in this way. To limit its scope in this way to only the notified version of the plan change would be inconsistent with the treatment of 'notification' as a procedural step within Schedule 1 of the Act. The important factor is said to be that 'at the date of commencement' there were live submissions seeking rezoning of the Site from rural to urban.

Otago Regional Council

1508. The legal submission for Otago Regional Council was that it agrees the NPS-HPL does not apply to land proposed by the DCC in Variation 2 for rezoning, but that it does apply to those parts of the submitters' sites which contain highly productive land as those sites were not promoted by DCC in Variation 2 for rezoning. Further it emphasised there is an obligation to implement the NPS provisions rather than to treat them as relevant, or strong "considerations".
1509. Mr Logan for Otago Regional Council also raised a matter at the reconvened hearing that differed from his written submissions. He essentially questioned whether Variation 2 was a 'plan change' in terms of the NPS. This is further addressed below.

Further legal submissions

1510. Following the hearing reconvened on 21 October 2022, and in response to Minute 20, further legal submissions were received, which are briefly summarised for the following parties as follows:
1511. *Otago Regional Council* – there is no definition in the RMA of 'plan change', and in studying other relevant definitions the argument was made that the 2GP is not a 'plan'; it is not an operative plan approved by DCC under Schedule 1 of the RMA; and Variation 2 is an alteration under Clause 16A of the First Schedule to a proposed plan (the 2GP). Therefore the exception in clause 3.5(7)(b)(ii) does not apply because there is a 'Variation' and not a 'plan change'.
1512. *Gladstone Family Trust* – to emphasise that clause 3.5(7)(b)(iii) sets out alternatives, i.e. that it may be either "a council initiated or an adopted" plan change. In that context, adoption does not relate to a Council resolution in relation to a particular proposal, and instead it

identifies that the plan change must be “Council driven” to qualify. The submission was further that the enquiry is about the status of the land on the NPS commencement date, on 17 October 2022, at which date the submissions had been lodged and were being considered as part of Variation 2.

1513. This further legal submission was also that Variation 2 is a ‘plan change’ for the purposes of the NPS-HPL. It noted that whilst that term is not defined the provisions of the 2GP became operative under section 86F and as such they became part of a single operative plan to satisfy subsection (b) of the definition of ‘district plan’ in the RMA. Further, under Clause 16A a variation is treated as a change in the Schedule 1 process.
1514. *CC Otago Limited, Peter Doherty & Outram Developments Limited* – to emphasise that all sites that are identified within Appendix 4 of the section 32 report are ‘subject’ to Variation 2. In this way there are no ‘rogue sites’ sought by submitters, and any unmeritorious sites have also been addressed through the Commissioners’ decision on scope. This further legal submission also made references to the definition of ‘operative’ and the need to carry out a dynamic assessment of whether the plan has become ‘operative’ or not. In essence, it agreed with the Gladstone Family Trust arguments with respect to Variation 2 being able to be considered as a plan change.
1515. *Dunedin City Council* – the revised legal advice was in essence to agree with ORC’s further legal submissions to the effect that Variation 2 has the status of a variation and is not treated as a plan change as defined. This was based on the NPS identifying that where terms are not defined in the NPS the definitions in the RMA apply unless otherwise specified. In that sense the 2GP has not yet been approved by DCC under clause 17, Schedule 1. It was submitted that all of the sites covered by LUC 1-3 that have a rural zoning need to be assessed against the NPS-HPL (i.e. including the sites notified by DCC in Variation 2).

Independent legal advice to the Panel

1516. The Panel received legal advice from Simpson Grierson, following its review of all the legal submissions and further submissions summarised above.
1517. That advice was as follows:
- (a) The purpose of clause 3.5(7) supports the interpretation that Variation 2 is a ‘plan change’;
 - (b) The Schedule 1 provisions support the interpretation that a variation is part of a plan change; and
 - (c) The exception in clause 3.5(7)(b)(iii) does not apply to land identified in submissions, as submissions do not have any legal effect and they do not (substantively) form part of the plan change initiated by the Council.

3.3.1.1 Determination on legal submissions

1518. We acknowledge there was a wide range of legal advice received and note also that, even during the course of us hearing, some of the counsel changed their views and presented different opinions to us as part of the further submission process. The matter therefore may be considered somewhat complex due in no small part to the NPS provisions being very new and untested at the time of our deliberations.

1519. As advised in our Minute 21, issued on 7 November 2022, having considered all the legal submissions we favoured the advice prepared by Simpson Grierson. Having reconsidered the updated legal submissions, that is still our view. In essence, the Panel favours the advice which applies a broad and holistic approach to determine the purpose of all of the relevant legal provisions and essentially applies what we consider is a common sense approach to it all.
1520. To confirm, our determination is that we favour the following interpretation:
- (a) Variation 2 is a 'plan change' as referred to in clause 3.5(7) of the NPS-HPL, and therefore that clause will apply; and
 - (b) The sites requested for rezoning by way of submissions (that were not proposed for rezoning in the notified version of Variation 2) do not fall within the exception in clause 3.5(7) of the NPS-HPL.
1521. Based on this interpretation, it is our view that the sites in Table 2 below contain highly productive land (HPL), and therefore that the NPS-HPL applies to them. These are the sites identified by Mr Morrissey¹⁸ that contain land that is LUC 1, 2 or 3, are rural-zoned, and were not proposed to be rezoned to residential in the notified Variation 2 (that is, they were proposed for rezoning through submissions).

Table 2 - Sites affected by the NPS-HPL

Address	Site ID	Site Area (m ²)	Area of HPL (m ²)	Percentage of site with HPL
Freeman Cl, Lambert St, Abbotsford	RS14	545,850	537,427	98%
119 Riccarton Road West	RS109	17,924	17,924	100%
RS153: 77, 121 Chain Hills Road, part 100 Irwin Logan Drive, 3-20 Jocelyn Way, 38 and 40-43 Irwin Logan Drive, 25-27 Pinfold Place	RS153	653,000	127,553	20%
91 and 103 Formby Street, Outram	RS154	42,798	40,977	96%
155 Scroggs Hill Road	RS160	640,968	1,586	0.2%
85 Formby Street, Outram	RS175	59,965	58,996	98%
774 Allanton-Waiholā Road	RS195	551,874	539,213	98%
489 East Taieri-Allanton Road, Allanton	RS200	86,102	70,722	82%
170 Riccarton Road West	RS212	83,477	83,477	100%

¹⁸ Reporting Officer's Reply on Minute 15, 16, and 17 from the Panel. 6 October 2022. [Reporting-Officers-Reply-on-Minute-15_16_17.pdf \(dunedin.govt.nz\)](#)

3.3.2 Other submissions received on the NPS-HPL

1522. We note that several other submitters provided responses to Minute 17 which were not legal submissions. While not specifically requested by us, we briefly note those responses here.
1523. *Ms Alice Maley, Mr Christopher Girling, Ms Margaret Henry, and Susan and Donald Broad* all submitted in support of the NPS-HPL, and specifically its relevance to the two RS sites located in Outram (RS175 and RS154). All these submitters considered that the Outram sites should not be rezoned, due to conflict with the new NPS-HPL.
1524. We also note that the tenor of those responses generally reflects evidence provided by the submitters in the September hearing.

3.3.3 Is rezoning of the HPL sites consistent with the NPS?

1525. Ms Christmas provided a section 42A Addendum report on 15 November 2022, addressing the relevant considerations of the NPS-HPL for those affected sites identified in the Table above. She explained that Policy 5 requires that urban rezoning of HPL (that is, zoning land to Residential) must be avoided, unless the NPS-HPL provides otherwise. Clause 3.6 outlines the tests that must be met to allow urban rezoning of HPL. This contains three clauses, a, b and c, which must all be met to allow rezoning to occur. Clause 3.6 is outlined above (in section 3.2 of this Decision Report).
1526. In relation to clause 3.6(1)(a), Ms Christmas stated that there is sufficient housing capacity over the short, medium, and long term, based on evidence provided by Mr Stocker. This showed, based on an update of the modelling undertaken for the Housing Capacity Assessment 2021 (HBA), that there is sufficient housing capacity across the city as a whole for the short, medium and long term, as well as in the individual 'catchments' in which the sites fall (we discuss the use of catchments in the HBA in section 2.1.1 earlier in this report). Consequently, Ms Christmas' opinion was that none of the sites can pass clause 3.6(1)(a).
1527. In relation to clause 3.6(1)(b), Ms Christmas considered it highly likely that there are other reasonably practicable and feasible options for providing additional development capacity that achieves a well-functioning urban environment, rather than needing to rezone the RS sites in question. She noted Mr Morrissey's assessment of the relevant RS sites (as part of the main hearing) and highlighted that he had not recommended any of them for rezoning due to various conflicts with Policy 2.6.2.1, including conflict with the compact and accessible objective, distance from centres, facilities and public transportation, and hazard issues. In her view, clause 3.6(1)(b) is not met for the sites in question.
1528. In relation to clause 3.6(1)(c), Ms Christmas noted that no cost-benefit analysis has been undertaken for most of the sites. We note that an assessment of RS14 was included in the Section 32 Assessment reporting, and an economic cost/benefit assessment was supplied for RS212 during the hearing. Ms Christmas noted that all the other sites have issues (costs) associated with them and were not recommended for rezoning by Mr Morrissey. Without more information and analysis, she did not consider it was possible to conclude that the benefits of rezoning outweigh the costs, and clause 3.6(1)(c) is therefore also unable to be met for any of these sites.
1529. Overall, Ms Christmas concluded that none of the sites met the criteria in 3.6(1) and therefore, as required by the NPS-HPL, rezoning should be avoided.

1530. Ms Christmas also provided additional comment on the sites that partially contain HPL. Her view was that while the NPS-HPL does not preclude rezoning the non-HPL parts of the site, to do so would generally result in a poor planning outcome (e.g. an isolated piece of residential-zoned land) and in all cases, rezoning of the entire site had not been recommended by Mr Morrissey.
1531. The ORC provided a statement¹⁹ that they agreed with and supported the evidence of Ms Christmas.
1532. Mr Kurt Bowen and Ms Emma Peters also provided planning evidence on behalf of a number of submitters. Both repeated concerns raised previously about the accuracy of the HBA. In particular, the inability for the submitters to have been able to review the modelling undertaken and that the model relies on house prices increasing. They stated that any doubts about the HBA assumptions and its conclusions must be read in favour of the view that more land is required to give effect to the NPS-UD. They also disputed the use of catchments as representing the 'same locality and market' in terms of clause 3.6(1)(b). It was noted that some catchments are very large and, for example, that for the 'Outer Urban' catchment, Port Chalmers could not realistically be considered to be in the same locality as Brighton. They also made note that the sites in question represented the only option for providing additional capacity in that particular geographic location, and therefore can satisfy clause 3.6(1)(b).
1533. Mr Bowen identified that clause 3.10 of the NPS-HPL may provide a pathway to enable 'use' or 'development' of the land, outside of clause 3.6. Both Mr Bowen and Ms Peters identified site specific matters, for example property size, existing consents for residential dwelling, flooding risk and slope that in their opinion reduced the primary productivity potential of the sites. Some of this repeated or drew on evidence received in the September hearing.
1534. In her Reply, Ms Christmas called on Mr Stocker to address matters relating to the HBA. Mr Stocker provided an overview of the HBA, and reiterated his earlier statements that there is a surplus of capacity. He also spoke to his earlier evidence which outlined the information that had been provided to the submitters to enable their consultants to understand the model and the reasons for not releasing the requested site specific information to the public. These being matters related to potential privacy breaches, commercial competitiveness advantage and reiterating that site level information may not be accurate as the model works to create accuracy by aggregating data (the 'overs and unders') to be accurate at the aggregate level. He also reiterated that the external peer review of that work had been positive and had commented favourably on the transparency of the model, and the position on release being aligned to that of other councils.
1535. Ms Christmas then discussed the use of catchments. She noted clause 3.6(3) of the NPS identified that "*in the same locality and market*" means in or in close to a location where demand has been identified through a housing and business assessment. Whilst the HBA uses catchments to identify capacity, she acknowledged that we could take a narrower view of locality, provided we had regard to Mr Stocker's comments that demand on a scale smaller than catchment size is very difficult to determine, and there is no requirement in the NPS for Urban Development (NPS-UD) to provide for capacity at a fine-grained scale.
1536. Ms Christmas and Mr Stocker also discussed the results of the DCC's housing demand study which, based on a statistically representative sample, did not indicate people take a narrow

¹⁹ Otago Regional Council, letter dated 22 November 2022. [Otago-Regional-Council.pdf \(dunedin.govt.nz\)](https://www.dunedin.govt.nz/assets/Uploads/Otago-Regional-Council.pdf)

view of where they would choose to live (i.e. down to the individual settlement scale as suggested by Ms Peters) but rather the results indicate people are often flexible in terms of location. Mr Stocker gave the raw results provided from the residents from Outram that were surveyed to illustrate this. They also discussed that affordability rather than location may be a reason why some people choose to live in outer locations such as Allanton.

1537. Finally, Ms Christmas drew our attention to the requirements of clause 3.6(1)(b) and noted it requires that “there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment”. She emphasised that the assessment of alternatives is not limited to those in play through Variation 2 and that this requires an assessment of alternatives in the broader sense, for which there was no evidence provided by submitters.
1538. She also emphasised the need to undertake an assessment against the criteria of a “*well-functioning urban environment*” and drew our attention to Mr Morrissey’s assessment against the 2GP strategic directions which have several overlaps with these criteria. She noted that failure to meet those criteria formed part of the basis for his recommendation to not rezone these rejected sites. Ms Christmas considered it was likely there would be alternatives in the same locality and market (for example in Mosgiel) that better met these criteria if additional capacity was required.
1539. With respect to Mr Bowen’s suggestion about the use of clause 3.10, Ms Christmas stated this clause is not relevant as it explicitly relates to situations where subdivision, use and development is not otherwise enabled under clauses 3.7, 3.8 or 3.9. It does not relate to urban rezoning (i.e. the focus of Hearing 4), which is governed by clause 3.6.

3.4 Evidence in relation to submitters’ sites that have HPL

1540. Ms Peters provided evidence relating to the two sites located in Allanton (RS195 and RS200), Mosgiel (RS212, RS153), and the two Outram sites (RS154 and RS175). In all cases, she considered that each component of clause 3.6(1) can be met. She discussed clause 3.6(1)(a) for all the sites and raised perceived issues with the HBA as outlined above. She considered that clause 3.6(1)(b) is also satisfied for the sites, and there is no other development capacity within the ‘same locality and market’ for the various sites. She also noted the high demand for the various areas, and in some cases limited alternative options for providing capacity in the area. For all sites, she noted they had limited potential for primary production, and that they could also satisfy clause 3.6(1)(c).
1541. Ms Peters also provided evidence relating to RS160 (Scroggs Hill). She highlighted the very small area of HPL within this site and noted that, should the site be rezoned, the small area of HPL would be included in a record of title with an identified building platform situated outside of that small area to ensure that no residential activity occurs on the HPL land.
1542. Mr Bowen provided evidence relating to RS109 (Riccarton Road, Mosgiel). He stated the site is of such a small size (1.74ha) that it is unable to be used effectively in primary production, which should be a relevant consideration under the NPS-HPL. On questioning Mr Bowen explained this site may not meet the other relevant criteria for assessment under the NPS provisions.
1543. Mr Bowen provided evidence relating to RS14 (Abbotsford) and noted this was also provided on behalf of Ms Peters. He also discussed the Property Economics and Beca report, which included an assessment of RS14, and noted that rezoning this site was assessed as having a

‘lower impact’ based on relative economic costs. He lastly noted that one of the component land parcels of RS14 is of a small size (2.66ha), and stated consideration on the application of the NPS-HPL should be given to sites like this, of a limited site area.

1544. In her Reply, Ms Christmas responded directly to a number of the site-specific points made by Mr Bowen and Ms Peters. Overall, she maintained her original recommendations that residential rezoning of any of the NPL parts of the relevant sites is contrary to the NPS-HPL.

3.5 Conclusions on evidence

1545. Overall, we agree with and accept the evidence of Ms Christmas on the application of the relevant provisions of the NPS-HPL to the RS sites in question. We agree with Ms Christmas that the NPS-HPL directs that the residential rezoning of any part of a site that constitutes HPL is to be avoided unless all three criteria in clause 3.6(1) apply. We accept Mr Stocker’s evidence, consistent with our conclusions in section 2.1.1 above, that there is sufficient residential capacity within Dunedin for the short and medium terms considering both the City as a whole, and in relation to the specific catchments into which the HPL sites fall. Consequently, it is our view that 3.6(1)(a) is not met for any of the RS sites.
1546. We consider the concerns expressed from submitters regarding the veracity of the model are unfounded, noting in particular the favourable response from the peer review by Ministry for the Environment. In addition, we acknowledge the large area of some of the catchments, but we accept the evidence of Ms Christmas and Mr Stocker on this, as summarised above.
1547. On this basis, we do not need to consider clauses 3.6(1)(b) and (c). However, for completeness, we also agree with Ms Christmas’ assertion that it is highly likely that there are other reasonably practicable and feasible alternative options for providing housing capacity within the same locality and market. We note there is a surplus in the outer urban, Mosgiel and outer suburbs catchments.
1548. We do not accept Ms Peters’ argument that the Outram and Allanton sites are the only options for providing additional capacity in those localities and markets. We are cognisant of the requirement that our decisions must achieve a well-functioning environment. We consider that Mosgiel provides a reasonably practicable alternative option which better meets the well-functioning environment test, if additional capacity was needed (which from the DCC evidence it is not). Any evidence raised by the submitters to counter that appeared largely anecdotal and not rigorously assessed. Similarly, we consider that the same response could be applied to the other sites on the periphery of Mosgiel (e.g. RS109, RS212, RS153), i.e. Mosgiel itself provides a reasonably practicable alternative option.
1549. We agree that clause 3.10 is not relevant for decisions on residential rezoning, and that it does not provide a valid alternative pathway for the urban rezoning of highly productive land. It may be the case that this clause provides a pathway for subsequent resource consent processes, but we note Ms Christmas advised that it would likely to require a non-complying activity process for developing rural zoned sites. We have therefore not considered Mr Bowen’s assessment of RS14 in terms of clause 3.10 any further.
1550. In relation to sites that are only partially affected by HPL, we have considered whether it is appropriate to rezone the non-HPL parts. For this, we have returned to our original assessment of these sites (see section 2.3 – decisions on individual sites). We have heard

nothing that changes these conclusions - that in all cases, zoning is inconsistent with Policy 2.6.2.1 and is not appropriate.

3.6 Impacts on decisions

- 1551. As outlined previously, our decisions outlined in section 2.3 of this report were made separately without applying any assessment of the NPS-HPL.
- 1552. However, in order to give effect to the NPS-HPL we have outlined in this section how the NPS-HPL affects those decisions already outlined in section 2.3.
- 1553. Firstly, we note that for all of the RS sites affected by the NPS-HPL (RS14, RS109, RS153, RS154, RS160, RS175, RS195, RS200, RS212), our decision in section 2.3 is to reject the submissions seeking rezoning as we do not consider the sites are suitable for residential zoning when assessed against the relevant (non-NPS-HPL) criteria.
- 1554. We have subsequently concluded that rezoning the HPL parts of these sites is also contrary to the NPS-HPL provisions, and to zone them would not be consistent with s75(3), the requirement for a district plan to give effect to any national policy statement.

Appendix C – Table of Submitters		
Further Submission reference	Name	Contact
S156	Richard Muir	the4muirs@xtra.co.nz
FS11	Allen Blackie	114 Riccarton Road West, Mosgiel
FS184	Otago Regional Council	Warren.hanley@orc.govt.nz
FS56	Clive and Linda Wallis (Daisy Link Garden Centres Limited)	phil.page@gallawaycookallan.co.nz
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