

**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	ROSS THOMAS MCLEARY Appellant
And	DUNEDIN CITY COUNCIL Respondent

NOTICE OF APPEAL ON BEHALF OF ROSS THOMAS MCLEARY

21 March 2023

Duncan Cotterill

Solicitor acting: Katherine Forward/Derek McLachlan
PO Box 827, Nelson 7040

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Fax +64 3 546 6033
Katherine.Forward@duncancotterill.com
derek.mclachlan@duncancotterill.com

To: The Registrar
Environment Court
Christchurch Registry

1 Ross McLeary (**'the Appellant'**) appeals 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 Appellant filed original submissions on the Dunedin City Council Second Generation Plan (**'2GP'**) seeking rezoning of 155 Scroggs Hill Road, Brighton (**S249**). The Appellant also submitted in support of (S62.001) which sought to rezone 53-127 Scroggs Hill Road.

3 The Appellant 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 the Appellant is appealing are - the Decision of the Variation 2 – Additional Housing Capacity Second Decision Report: Greenfields Rezoning Sites, in particular;

6.1 Section 2.3.4.1 (GF01): The Decision to reject the rezoning of land identified as GF01 as Large Lot Residential 1, or in accordance with a Structure Plan;

6.2 Section 2.3.4.2 (RS160): The Decision to reject the rezoning of land identified as RS160 to be developed in accordance with a Structure Plan; and

6.3 Section 2.3.4.3 (RS220): The Decision to reject the rezoning of land identified as RS220.

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 the 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 insufficient weight on 'resilient townships' such as Brighton;
- 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 townships such as Brighton;
- 7.8 The Decision erred when it found that the rezoning of the sites does not meet the criteria within Policy 2.6.2.1 2GP;
- 7.8.1 The Decision places too much weight on providing detailed roading designs at rezoning phase. The Decisions fails to acknowledge that technical solutions are available and that

an Integrated Transport Assessment would be necessary at the time of subdivision.

- 7.8.2 The Decision placed insufficient weight on the feasibility of providing footpath connection between GF01 and existing township.
- 7.8.3 The Decision was incorrect when it held that mitigation measures would not be sufficient to mitigate the adverse effects on rural character. Such controls can be implemented through a structure plan approach.
- 7.8.4 The Decision failed to recognise that there are technical solutions available in relation to water supply, wastewater, and stormwater.
- 7.8.5 The Decision places too much weight on the potential existence of wetland habitat. Where the site contains wetland habitat and/or indigenous vegetation, this can be protected through the structure plan provisions.
- 7.8.6 The Decision places too much weight on the potential for hazard risk associated with slope instability. The Decision does not recognise that detailed technical assessments would be required at the time of development.
- 7.9 The Decision has 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 was incorrect when it held that there was no scope to pursue Township and Settlement Zoning in relation to GF01.
- 7.11 The Decision does not give effect to the purpose or Part 2 of the Act.

- 8 The Appellant seeks the following relief:
- 8.1 To rezone GF01 to Large Lot Residential 1 zone, and apply a New Development Mapped Area, and apply a No DCC Reticulated Wastewater Mapped Area; or
 - 8.2 To Rezone GF01, RS160 in accordance with the Structure Plan attached as **Appendix A**. The Structure Plan seeks a variety of zonings including Township and Settlement and Large Lot Residential; and
 - 8.3 To Rezone RS220 as Township and Settlement, subject to a structure plan mapped area.
 - 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.
 - 8.5 Costs
- 9 Attached are the following documents to this notice:
- 9.1 A copy of original submission made by:
 - 9.1.1 Ross McLeary, COF Limited and Scroggs Hill Farm Limited (**Appendix B**).
 - 9.2 A copy of the relevant parts of the decision:
 - 9.2.1 Broad Matters raised (**Appendix C1**);
 - 9.2.2 Site specific submissions (**Appendix C2**); and
 - 9.2.3 Interpretation of the NPS-HPL (**Appendix C3**).
 - 9.3 A list of names and addresses of persons to be served with a copy of this notice (**Appendix D**).

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.

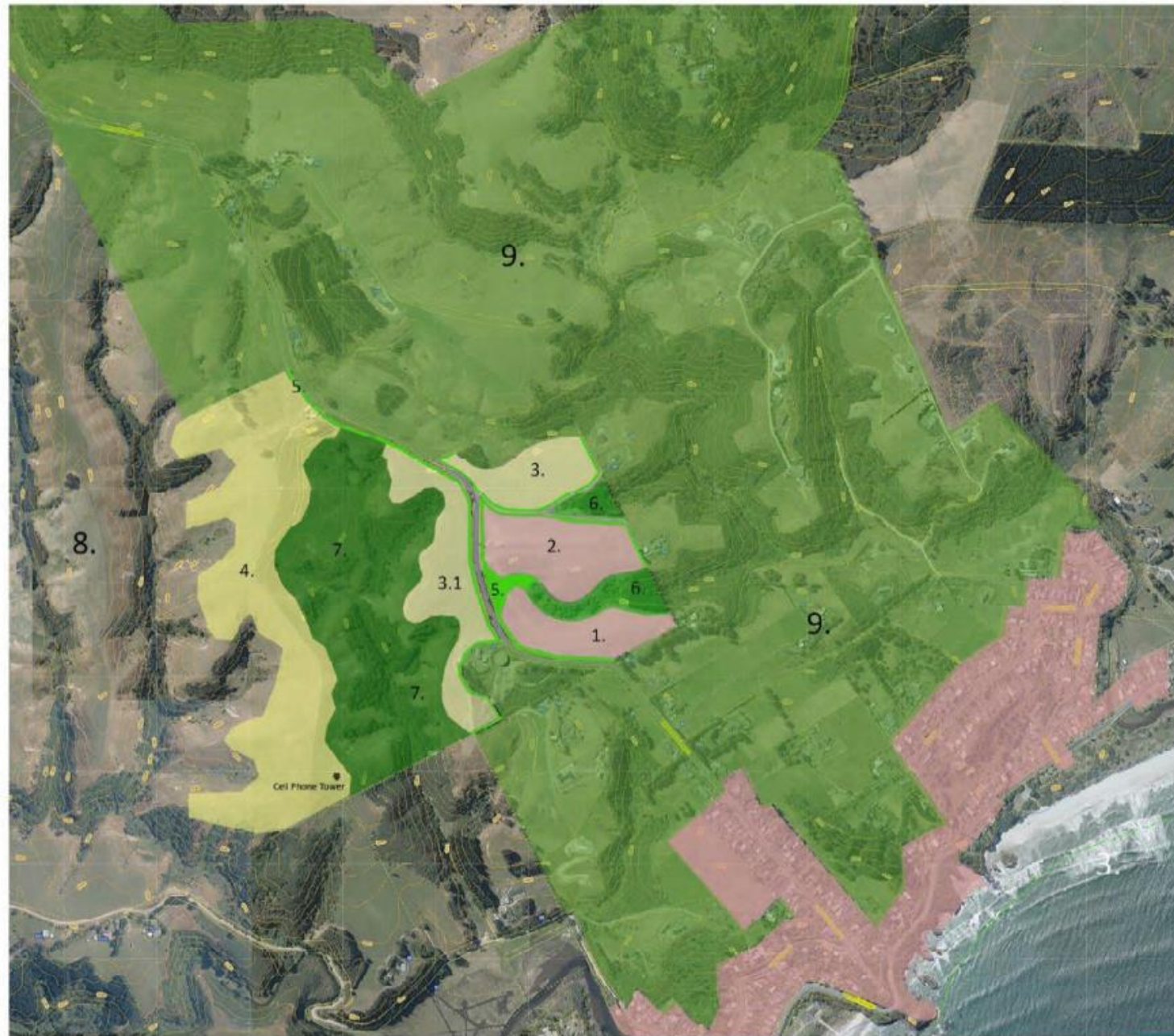
You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

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.

APPENDIX A – STRUCTURE PLAN



legend

1. Township & Settlement - 500 - 750m²
2. Township & Settlement - 1000m²
3. Large Lot Residential 1 - 2000m²
- 3.1 Large Lot Residential 1 - 2000m²
4. Large Lot Residential 2 - 3500m²
5. Environmental enhancement 10m setback:
 - external road boundaries
 - Area 2 and Area 3 access road
 - native tree and shrub planting (Scroggs Hill Rd)
 - grass verge, tracks and tree planting (Area 2/3)
 - cycling track (Scroggs Hill Rd - east side)
6. Conservation and biodiversity:
 - preservation and enhancement of existing native vegetation resources - to be vested in Council or placed in QE II trust covenant, or Area of Significant Biodiversity Value.
7. Recreation zone:
 - land to be vested in Council
 - provision for parking
 - walking track link to Otokai Creek (future)
8. Rural Zone
9. Rural Residential 1 (2GP)

0 500m approx.

Roxanne Davies

From: Emma Peters <sweepconsultancy@gmail.com> on behalf of emma <Emma@sweepconsultancy.co.nz>
Sent: Thursday, 4 March 2021 09:21 p.m.
To: District Plan Submissions
Subject: Email 1 of 2: Submission of Ross McLeary, COF Ltd & Scroggs Hill Farm Ltd - 155 and 252 Scroggs Hill Road Residential Rezone
Attachments: Submission Form 5 - Ross McLeary, COF Ltd & Scroggs Hill Farm Ltd - 155 and 252 Scroggs Hill Road.PDF; Variation 2 Submission Notes - Ross McLeary, COF Ltd & Scroggs Hill Farm Ltd - 155 and 252 Scroggs Hill Road.PDF; Variation 2 Submission Notes - Ross McLeary, COF Ltd & Scroggs Hill Farm Ltd - Table 1.pdf; Structure Plan.pdf
Follow Up Flag: Follow up
Flag Status: Flagged
Categories: Michaela Doing

Hi,

Please find attached the following documents forming the submission of Ross McLeary, COF Ltd & Scroggs Hill Farm Ltd in relation to the residential rezone of 155 and 252 Scroggs Hill Road

- Completed Form 5;
- Submission Notes;
- Table 1;
- Structure Plan;
- Landscape Figures and Report.

I will send the Landscape Figures and Report in email 2.

Please confirm receipt of both emails.

Cheers,

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

Roxanne Davies

From: Emma Peters <sweepconsultancy@gmail.com> on behalf of emma
<Emma@sweepconsultancy.co.nz>
Sent: Thursday, 4 March 2021 09:22 p.m.
To: District Plan Submissions
Subject: Email 2 of 2: Submission of Ross McLeary, COF Ltd & Scroggs Hill Farm Ltd - 155 and 252
Scroggs Hill Road Residential Rezone
Attachments: Attachment 1_Scroggs Hill Farm_rev c.pdf; Scroggs Hill Farm _Variation Two Zoning Proposal_rev
d.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Michaela Doing

Attached: Landscape Figures and Report

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

CLAUSE 6 OF FIRST SCHEDULE, RESOURCE MANAGEMENT ACT 1991



SECOND
GENERATION
DISTRICT PLAN

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: Ross J of Limited J Scruggs Hill Farm Limited

Last name: McLeary

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: 9054

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)

155 & 252 Scroggs Hill Rd, GFO1, NOMA, 'no DCC reticulated
For example: D2 waste water mapped area'.

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

All relevant provisions relating to New Development Mapped Area
For example: Rule 15.5.2 Density or zoning of 123 street name.

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

☒ Accept the change

☒ Accept the change with amendments outlined below

☒ Reject the change

☒ If the change is not rejected, amend as outlined below

see attached submission notes.

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 Consultancy Ltd

Date:

4/3/21

Table 1: NDMA Issues and Potential Mechanisms For Solutions

Notified Policy / Rule	Issue	Potential Solutions
CHANGE D4 Policy 2.3.3.1.X <u>Support community and leisure activity, sport and recreation, and essential community facilities in Dunedin through:</u> ... <u>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}</u> 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: <u>{Change D1}</u> a. facilities and spaces that support social and cultural well-being. <u>{Objective 2.3.3}; {Change D4}</u> 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. <u>{Change D4}</u> 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 NDMAs.

5. In a new development mapped area: All subdivision activities (Change D1)	c. Provision of recreation spaces (Change D4). Relevant objectives and policies: i. Objective 12.2 X ii. The subdivision provides or otherwise ensures good access to outdoor recreation opportunities (including playgrounds) and, where possible, opportunities for offroad 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: iii. Location, size and shape of recreation reserves, including a minimum length of road frontage. iv. A requirement to vest recreation spaces in DCC as DCC reserve. v. Public amenities to be included in a recreation reserve. vi. A requirement for the recreation space to be developed prior to vesting in DCC. (Change D4)		
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)	c. Provision of recreation spaces (Change D4)	See Rule 12 X (Change D4)	

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 D1} <u>Future residential growth areas are developed in a way that achieves the Plan's strategic directions for. {Change D1}</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 12.X.2 Assessment of restricted discretionary activities in a Transition Overlay Zone or mapped area <table border="1"> <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> <i>{Change D1}</i> Future residential growth areas are developed in a way that achieves the Plan's strategic directions for. <i>{Change D1}</i> ... b. <u>Indigenous biodiversity</u> (Objective 2.2.3). <i>{Change D6}</i> ... <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. <i>{Change D6}</i> 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> d. Whether subdivision design maintains or enhances areas with significant natural environment values <i>{Change D6}</i>. </td><td> Relevant objectives and policies: i. <u>Objective 12.2.X</u> 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). <i>{Change D6}</i>. Conditions that may be imposed include: iii. A requirement to protect areas through reserve status or other legal mechanisms. iv. A requirement to undertake conservation activity. <i>{Change D6}</i>. </td><td></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 <i>{Change D6}</i>.	Relevant objectives and policies: i. <u>Objective 12.2.X</u> 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). <i>{Change D6}</i>. Conditions that may be imposed include: iii. A requirement to protect areas through reserve status or other legal mechanisms. iv. A requirement to undertake conservation activity. <i>{Change D6}</i>.		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 <i>{Change D6}</i>.	Relevant objectives and policies: i. <u>Objective 12.2.X</u> 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). <i>{Change D6}</i>. Conditions that may be imposed include: iii. A requirement to protect areas through reserve status or other legal mechanisms. iv. A requirement to undertake conservation activity. <i>{Change D6}</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	
...			
Y In a new development mapped area. All subdivision activities (Change D1 & Change F2-2)	d. Whether subdivision design maintains or enhances areas with significant natural environment values (Change D6)	See Rule 12.Y (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} {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"> <thead> <tr> <th>Activity</th><th>Matters of discretion</th><th>Guidance on the assessment of resource consents</th></tr> </thead> <tbody> <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 i. Objective 12.2.X ii. 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: iii. Requirements for street tree and other subdivision amenity planting. <i>{Change D1}</i>. </td></tr> </tbody> </table> ... 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 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></td><td></td></tr> </tbody> </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 i. Objective 12.2.X ii. 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: iii. Requirements for street tree and other subdivision amenity planting. <i>{Change D1}</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 i. Objective 12.2.X ii. 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: iii. Requirements for street tree and other subdivision amenity planting. <i>{Change D1}</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.X (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} Future residential growth areas are developed in a way that achieves the Plan's strategic directions for: <i>{Change D1}</i> ... e. <u>a compact and accessible city {Objective 2.2.4}, and {Change D8}</u> f. <u>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: i. Objective 12.2.X ii. 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: iii. Council will generally require subdivision in a NDMA to enable the maximum development capacity allowed under the rules and as can be achieved while still achieving the other objectives and policies of the Plan (e.g. as many sites suitable for residential development as practicable or through other means of maximising development capacity). (Change D8). iv. Where a subdivision proposes a residential yield 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				
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)	e. 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> 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> 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> a. <u>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> b. <u>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> 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>	1. Potential difficulties with NDMA being in multiple ownership – for example, if there is a reluctant or recalcitrant 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. 3. Limiting the extent of Rule 9.5.3.Z.	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. 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'. 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:
 - i. connect 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.A4) (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. <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 (Policy 9.2.1.X). (Change F2-2)</u> <u>General assessment guidance</u> iv. <u>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 9.9.X). (Change F2-2)</u> <u>Conditions that may be imposed include:</u> v. <u>A requirement for assessments, covenants, consent notices or bonds to ensure future development will be in accordance with a stormwater management plan.</u> vi. <u>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)</u>
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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): 1. Objective 9.2.1 ii. 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	9.9.X Stormwater management plans	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 - be prepared by a chartered engineer or other suitably qualified person; - 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) - 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 applicant/s; (Change F2-2) - assess pre-development flows and post-development flows, generally based on the following rainfall events: - 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 - 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; - 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 carparks. 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). *(Change F2-2 & Change F2-3)*

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) Y. Service connections – stormwater (in a new development mapped area) <i>(Change F2-2)</i>
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Rule 15.6.X

15.6.X Service Connections - Stormwater - to be added *(Change F2-2)*

In a new development mapped area, all development that creates an impermeable surface must comply with Rule 9.3.7.A.A. *(Change F2-2)*

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
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...

<u>Y</u> In a new development mapped area Service connections - stormwater {Change F2-2}	a Effectiveness and efficiency of stormwater management and effects of stormwater from future development	See Rule 9.5. {Change F2-2}	
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 {Change D1 & Change F2-2}	f. Effectiveness and efficiency of stormwater management and effects of stormwater from future development {Change F2-2}	See Rule 9.6 {Change F2-2}	

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: ... 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)	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.			
Policy 9.2.1.1.BB 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)		AND Provide a mechanism whereby the DCC can compulsorily acquire easements in NDMA for new infrastructure.			
Note 9.3.7.ZA General Advice ...					
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) ... Rule 9.6.2.Y					
9.6.2 Assessment of restricted discretionary activities <table border="1"> <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		
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, (Change F3-2) • Kalkorai Valley Road (Change IW07) • Selwyn Street (Change RT22) • Wattle Fox Lane (Change RT21) a. Effectiveness and efficiency of wastewater management and effects of wastewater from future development	Relevant objectives and policies (in addition to those outlined in 9.6.2.2 and 9.6.2.3 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). (Change F3-2) General assessment guidance 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). (Change F3-2) Conditions that may be imposed 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. (Change F3-2)
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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 Supervisory 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 applicant/s. (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		
...				
10 Maximum building site coverage and impermeable surfaces	c. Effects on efficiency and affordability of infrastructure (stormwater) <i>{Change F2-3}</i> d. Effects of stormwater from future development <i>{Change F2-3}</i>	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: <i>{Change F3-2}</i>	- Kaikorai Valley Road <i>{Change IN07}</i> - Selwyn Street <i>{Change RTZ2}</i> - Wattie Fox Lane <i>{Change RTZ4}</i>	See Rule 9.6 <i>{Change F3-2}</i>		

Notified Policy / Rule	Issue	Potential Solutions						
CHANGE F2-6 Policy 9.2.1.1.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)</u> 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 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'.						
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> 2. In a new development mapped area Service connections - stormwater (Rule 9.3.7.AA) (Change F2-2) </td><td> a. Effectiveness and efficiency of stormwater management and effects of stormwater from future development </td><td> iii. <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. (Policy) 9.2.1.AA. (Change F2-6)</u> </td></tr> </tbody> </table> Rule 9.6.2.X	Performance standard	Matters of discretion	Guidance on the assessment of resource consents	2. In a new development mapped area Service connections - stormwater (Rule 9.3.7.AA) (Change F2-2)	a. Effectiveness and efficiency of stormwater management and effects of stormwater from future development	iii. <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. (Policy) 9.2.1.AA. (Change F2-6)</u>		
Performance standard	Matters of discretion	Guidance on the assessment of resource consents						
2. In a new development mapped area Service connections - stormwater (Rule 9.3.7.AA) (Change F2-2)	a. Effectiveness and efficiency of stormwater management and effects of stormwater from future development	iii. <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. (Policy) 9.2.1.AA. (Change F2-6)</u>						
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> X. In a new development mapped area All subdivision activities (Change F2-2) </td><td> a. Effectiveness and efficiency of stormwater management and effects of stormwater from future development </td><td> ii. <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. (Policy) 9.2.1.AA. (Change F2-6)</u> </td></tr> </tbody> </table> ...	Activity	Matters of discretion	Guidance for the assessment of resource consents	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	ii. <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. (Policy) 9.2.1.AA. (Change F2-6)</u>		
Activity	Matters of discretion	Guidance for the assessment of resource consents						
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	ii. <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. (Policy) 9.2.1.AA. (Change F2-6)</u>						

Variation 2 Submission Notes – Ross McLeary and Scroggs Hill Farm – 155 and 252 Scroggs Hill Road – GF01

Figure 1: Extent of GF01 – Rezone from Rural Residential 1 to Large Lot Residential 1:



Notes:

- The extent of the New Development Mapped Area in Relation to GF01 is the same as the extent of GF01 itself.
- The area assessed by Council in coming to GF01 is shown in Figure 2.

Figure 2: Extent of Area of Site Assessed by Dunedin City Council in Arriving at GF01



Note:

- The extent shown in Figure 2 is the extent of the Structure Plan for the site (see Figure 3 but including the gully west of D672 as Recreation / Reserve – see area 7 on the Structure Plan in Figure 3).

Figure 3: Structure Plan for Site



Scroggs Hill Farm - Proposal

29 Jan 2021 **4.**

Note:

- Areas 1, 2, 3, 3.1, 4, 5, 6 and 7 form the Structure Plan for the Site.
- The structure plan mapped area is supported by controls on built elements which will become performance standards attached to the SMPA – see Figure 4 and has also been assessed by a registered landscape architect – copy of landscape assessment report attached.

Figure 3: Proximity of 3 Waters Infrastructure to the Site.



Notes:

- Site is adjacent to Council potable water supply including Designation 672 being the Brighton Reservoir - Treated Water Reservoir.
- The site is approximately 375m from the 3 waters wastewater current terminal point in Scroggs Hill Road.
- The extension of the wastewater line from its current terminal point in Scroggs Hill Road to the site will be paid for by the site developer.
- Planned, budgeted upgrades in the 10 Year Plan will sort the downstream wastewater issues¹.

¹ Source: S32 Report Appendix 6.1.

Figure 4: Controls on Built Environment within Structure Plan Mapped Area

Table Two: Proposed conditions Key: ● applies / allowed ● does not apply / precluded

Condition	Area 1	Area 2	Area 3	Area 3.1	Area 4
Building platform: maximum size ¹	45%	300m ²	300m ²	350m ²	400m ²
100 m ² maximum accessory building FA ²			●	●	●
60 m ² maximum accessory building FA	●	●			
Maximum building height of 5.5m from existing or modified ground level	●	●		●	
Maximum building height of 6m from existing ground level				●	●
Front elevation - max. 20 m length	●	●	●		
External materials: Wood & natural stone	●	●	●	●	●
Concrete	●	●	●	●	●
Block	●	●	●	●	●
Plaster	●	●	●	●	●
Brick	●	●	●	●	●
Stainless steel (exposed) and mirror glass	●	●	●	●	●
Impermeable area – hard standing areas -12%	●	●	●		
Impermeable area – hard standing areas -5%				●	●
Concrete paving: Tint to 50% LRV ³	●	●	●	●	●
External wall colours: 35% max. LRV	●	●	●	●	●
Roof colours 5% below LRV of walls	●	●	●	●	●
Retaining walls: 1.5 m max. above existing or modified ground level. Colour - 40% or less LRV	●	●	●	●	●
Retaining: 2 m max. from house on all sides	●	●	●	●	●
Retaining: 4 m max. from house on all sides	●	●		●	
Water tanks: 40% LRV max – locate behind house	●	●	●	●	●
Tree planting from approved native species list – shrub planting up to 3m exempt	●	●	●	●	●
Subdivision conditions					
Installation & maintenance of boundary planting for minimum of 5 years.	●	●	●	●	●
Setting aside and management of existing native vegetation for conservation purposes	●	●		●	●

1. Building platform – 'percentage' refers to full lot area – metres² refers to discrete area
2. FA means Floor Area. Maximum floor area for residential units excludes attached garages
3. LRV refers to light reflectivity values – Resene Colour Chart BS5252

Submission:

1. Accept Change GF01 but Amend it in Accordance with the Structure Plan

Reasons:

- 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 land in accordance with the structure plan Taieri Plains to GR1 helps Council meet its obligations pursuant to *NPS-UD 2020*.
- Rezone meets rezoning criteria specified in 2GP (see 2.6.2.1) – in particular, it provides a logical extension of residential zones over an area which is close to infrastructure, services and public amenities. The proposal has landscape support – see attached landscape figures and report.
- Provides for flexibility of development in this locale for which there is experienced high demand for more residential capacity. Brighton can only grow towards this site This represents an opportunity to provide for future capacity needs in Brighton
- Provides an opportunity to provide a residential community with recreation and conservation / ecological gains.
- The scale of this proposal provides the ability to tackle some of the infrastructure issues via agreement between Council and the developer.

In the alternative, accept the residential rezone of areas 3, 3.1 and 4 and GF01 to Large Lot Residential.

In the alternative, accept GF01 in its entirety.

2. Reject Change NDMA over Change Area GF01 and Instead use a Structure Plan Mapped Area

Reasons:

- Provision of infrastructure is adequately governed by existing subdivision and land use performance standards in the 2GP and the subdivision and development process.
- 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 to change area GF01.
- The NDMA provisions will, in this case, act as an impediment to development.

In the alternative, the submitter requests 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 submitter states that their submission relates to *"All provisions relating to the New Development Mapped Area"*. In the event that Table 1 is not a complete list of all such provisions, the submitter reserves the right to make comment in evidence on any other NDMA related provisions which are found to be missing from Table 1.

3. Reject the Application of a 'no DCC Reticulated Wastewater Mapped Area'

Reasons:

- No need to apply the DCC Reticulated Wastewater Mapped Area as the necessary downstream upgrades are already planned and budgeted for in the 10 Year Plan.
- The extension of the wastewater line from its current terminal point in Scroggs Hill Road to the site will be paid for by the site developer.
- There are solutions to any infrastructure capacity issues, for example, on site engineered solutions (paid for by the site developer) and / or staging the development so that the areas of Large Lot Residential (see areas 4 and 3 on the structure plan) are developed first. There is the potential to place engineered solutions paid for by the site developer within D672 so that the engineered solution can be easily vested in and controlled by Council making removal when no longer required an easy process. There is sufficient scale within areas 1 and 2, which are to be zoned Township and Settlement in structure plan, for such engineered solutions (including the laying of the pipe to extend the wastewater infrastructure up Scroggs Hill Road to connect with the site), to be economically feasible for the site developer.

In the alternative ensure there is a mechanism whereby the 'no DCC Reticulated Wastewater Mapped Area' can be removed from the site once the planned downstream upgrades in the 10 Year Plan are completed.

4. Rezone Residential 53-100 Scroggs Hill Road

Reasons:

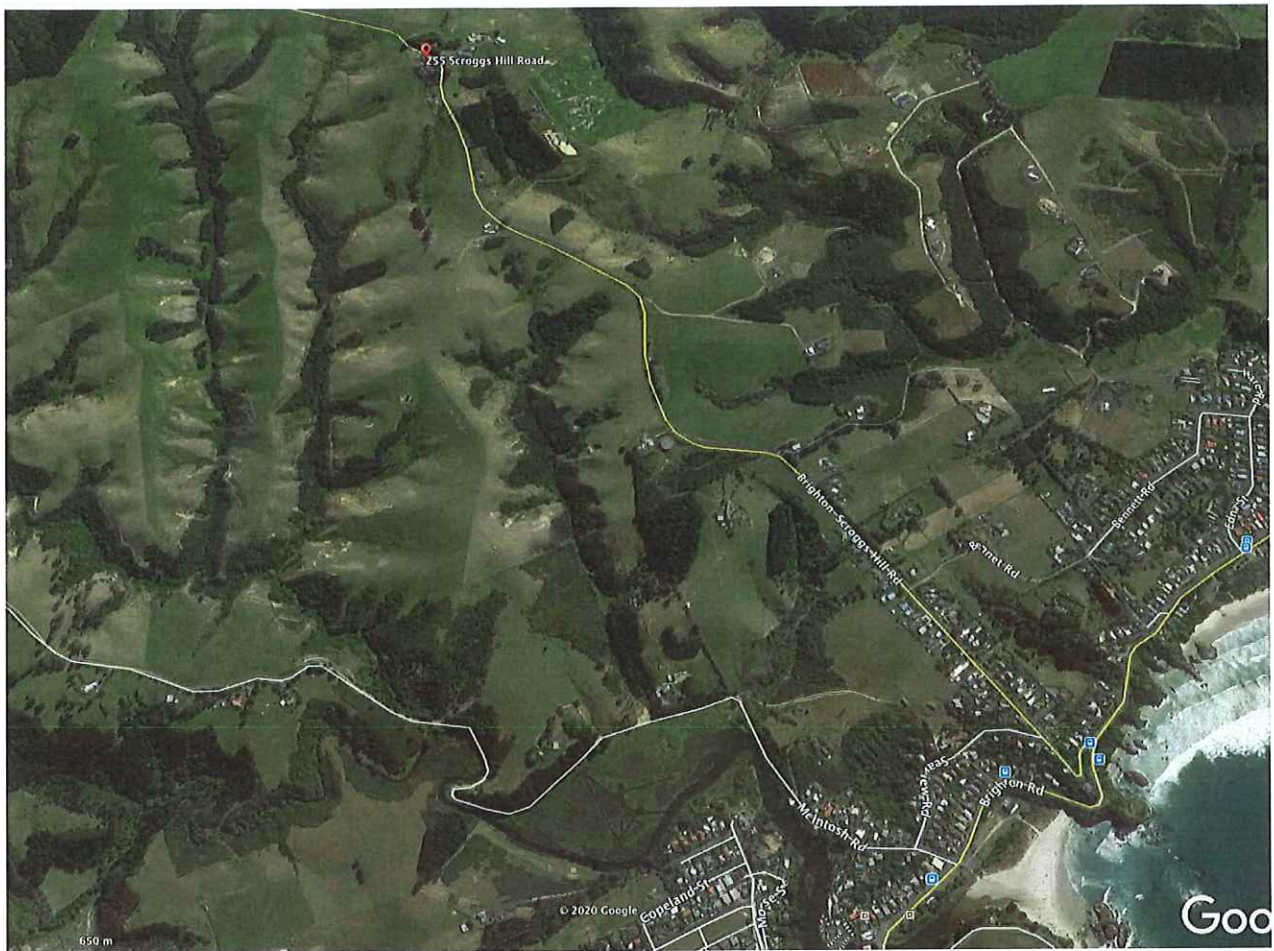
- Provides additional residential capacity for Brighton and helps Dunedin City Council meet its obligations pursuant to the NPS-UD 2020.
- 'Links' Brighton and the site covered by the structure plan.



legend

1. Township & Settlement - 500 - 750m²
2. Township & Settlement - 1000m²
3. Large Lot Residential 1 - 2000m²
- 3.1 Large Lot Residential 1 - 2000m²
4. Large Lot Residential 2 - 3500m²
5. Environmental enhancement 10m setback:
 - external road boundaries
 - Area 2 and Area 3 access road
 - native tree and shrub planting (Scroggs Hill Rd)
 - grass verge, tracks and tree planting (Area 2/3)
 - cycling track (Scroggs Hill Rd - east side)
6. Conservation and biodiversity:
 - preservation and enhancement of existing native vegetation resources - to be vested in Council or placed in QE II trust covenant, or Area of Significant Biodiversity Value.
7. Recreation zone:
 - land to be vested in Council
 - provision for parking
 - walking track link to Orokai Creek (future)
8. Rural Zone
9. Rural Residential 1 (2GP)

0 500m approx.



Scroggs Hill Farm
Proposed Rezoning and Residential Development
255 SCROGGS HILL ROAD, BRIGHTON

29 January 2021

Figure list

Context

1. Context plan and proposed areas
2. Site Area + 2GP Overlays
3. Landscape structure and viewsheds
4. Proposal
5. Site viewpoints

Site Structure and Visual Catchments

6. Vpt.1: 53 Highland Road – view north from southern end of Otokai Creek catchment valley
7. Vpt.2: 2 Hunt Street - west site ridge and cell phone tower
8. Vpt.3: Brighton Domain – View north to coastal settlement and southern site ridge
9. Vpt.4: Upper Scroggs Hill Road – View south over coastal ridge and gully pattern
10. Vpt.5: View south over proposed rural residential ridge and lower eastern slopes
11. Vpt.6: View east over lower Scroggs Hill ridge to Scurr Road ridge
12. Vpt.7: 25 Kayforce Road – view to eastern Scroggs Hill Road slopes
13. Vpt.8: 7 Bennet Road – view north/west to coastal end of Kayforce Road ridge
14. Vpt.9: 103 Scroggs Hill Road (opposite) – view northeast across field area 1 to Scurr Road ridge
15. Vpt.10: 166 Scroggs Hill Road – View east to Kayforce Road ridge and south/east to the seacoast

Proposed Development areas

16. Vpt.11 Area 1 – view southwards over Area 1 field to rural residential boundary – 500 – 750m² lots
17. Vpt.12 Area 2 – view eastwards over the field area existing rural residential - 1000m² lots
18. Vpt.13 Area 3 – view eastwards over 170 Scroggs Hill and Kayforce Rd rural residential
19. Vpt.14 Area 5 - 33 Kayforce Road – view south/west to proposed rural residential ridge and slopes
20. Vpt.15. Area 3.1/Area 4 – view to the coast between Scroggs Hill Road and the southern ridgeline

1. Introduction

- 1.1 This landscape report has been commissioned by Ms. Emma Peters, Sweep Consultancy Ltd, on behalf of Mr. Ross McLeary, owner of Scroggs Hill Farm. This follows an overview report provided by Luke McKinley, landscape architect, Dunedin City Council (dated 30 January 2020, and provided 12/11/20) and provides a more detailed assessment of potential landscape and visual effect of the same areas and a reassessment of their capacity.
- 1.2 Mr. McLeary is seeking to amend the zoning on part of his farm from Rural Residential 1 to Township and Settlement and Large Lot Residential 1 and 2. This proposal provides for a higher density level for site areas on the eastern side of Scroggs Hill Road and for areas of native vegetation to be set aside via overlay of Areas of Significant Biodiversity Value. A further area is to be vested in Council as Recreation land (Figure 1).
- 1.3 The report contains the following sections:
- The proposal;
 - Site context;
 - Development areas;
 - Visual catchment;
 - Landscape and visual assessment; and
 - Discussion and conclusions

2. Methodology and Scope

- 2.1 A site visit was made to the areas proposed for residential development with Mr. McLeary on December 15th, 2020. Subsequent visits to the site boundaries and other areas were undertaken to assess the structure of the surrounding landscape and potential visual catchments. The proposed land areas were then assessed for suitability on the basis of slope, aspect, access, adjacent development, and visual catchment. The New Zealand Landscape Architects seven-point scale is used where an assessment of effect is made: 'negligible/ very low/ low/moderate/ high/ very high/ extreme'.
- 2.2 A detailed assessment against the policies and objective of the 'Proposed Second-Generation Dunedin City District Plan' ('2GP') is not included and will be undertaken as is required by subsequent process.

3.0 Summary of Findings

- 3.1 The beginning point of this assessment is the overview landscape report undertaken by Mr. Luke McKinley, landscape architect, Dunedin City Council in early 2020. Mr. McKinley's conclusions about areas suitable for development are generally agreed, but the western side of Scroggs Road is supported for large lot residential development associated with preservation and enabling of existing native vegetation and the provision of future recreation land to be vested with the City.
- 3.2 Five potential development areas are identified that include an approximate land area of 29.95 ha and an expected yield of 157 lots. Eighty five are on the eastern side of the road and seventy two are located on the western side.

4.0 Site and Landscape Context

- 4.1 The subject site is part of a 470ha pastoral farm that extends either side of the main inland coastal ridge (Figure 2). The farm is one of the last large-scale sheep farming operations on this part of the coastline and is distinctive in size, location, and land cover. Most other inland slopes that lie south of Brighton have been converted to forestry. This is a permitted land use for the site area also.
- 4.2 The proposal is centred on the lower part of the farm block that is located either side of Scroggs Hill Road above Brighton, and separate western and eastern catchments. Scroggs Hill (355m asl) is one of three local promontories that include Jaffrey Hill (420m asl) and Saddle Hill (473m asl) and provide the inland backdrop to this coastal area and the eastern parts of the proposal (Figure 3).
- 4.3 The road descends from Scroggs Hill along the path of a broad and shallow ridgeline that contains small promontories and several side ridges. The ridge spreads out into a series of small sub spurs near the coastline and ends in rocky headland that separates Brighton and Ocean Beach settlements.
- 4.4 The western catchment contains several broad sub ridges that descend due south or south/west from Scroggs Hill Road, a series of small coastal hills and inland valley areas and the path of Otokai Creek as it runs west to east and outfalls at Brighton Beach.
- 4.5 The land use is pastoral in the areas occupied by Scroggs Hill Farm and then progressively forestry in upland areas. Lifestyle farms occupy the coastal margin and hills to the south of Brighton. A strip of residential housing follows a slightly inland coastal ridge at the base of the farm boundary.
- 4.6 The eastern catchment is smaller and contained by ridgelines in close proximity to Scroggs Hill Road or within the upper catchment slopes. These descend from a continuous ridge that is marked by small hilltops and more noticeable rises such as Scroggs Hill. Saddle Hill Road runs along the top of this inner coastal ridge (Figure 3).
- 4.7 Three ridges provide the majority of the landscape structure of the eastern catchment and frame the physical and visual catchment for the proposal area. They include a ridge that descends from south/east from Scroggs Hill and parallel to Scroggs Hill Road for approximately 2.2km, a ridge that is marked by Scurr Road to the east, and secondary ridges that extend side by side from the bottom of Scurr Road ridge. Kayforce Road is located on both of these two lower ridges.
- 4.8 The other notable landscape feature is the route of Taylors Stream. This has three small head water streams and cuts a small but steep gorge path in the lower eastern slopes below Scroggs Hill Farm. Native vegetation marks its route and is physically and visually prominent and also extends up two small gullies into the proposed site area.
- 4.9 Pastoral land use remains the present land use on the slopes, ridges, and gully areas of the eastern farm catchment. Other land cover includes several areas of exotic shelter planting and small to medium pine blocks.
- 4.10 Off and on site there are many areas of emerging native vegetation and some lower areas of gorse scrubland. The native vegetation is prominent on a ridge that descends directly from Scroggs Hill and parallel to the eastern side of Scroggs Hill Road. Patches of kanuka and areas of pine shelter planting and other exotic trees mark the western boundaries of rural residential development on Scurr Road and are a landscape feature from the eastern proposal areas.

5.0 The Proposal

- 5.1 The proposal builds on a scheme plan that was developed by Mr. McLeary, Emma Peters, and Mr. Craig Horne, Registered Surveyor, and submitted to Council in October 2019 (Appendix A). The current proposal modifies parts of this plan and a new survey plan will be undertaken, subject to the zone changes sought being granted.
- 5.2 Mr. McLeary seeks residential zonings on the lower southern parts of his farm that abut the eastern and western sides of Scroggs Hill Road and the rural residential development that forms the present Brighton northern urban boundary.
- 5.3 To offset the change in landscape character that will result in this part of the farm Mr. McLeary is proposing to overlay existing and proposed areas of native gully vegetation as Areas of Significant Biodiversity Value. A broad gully area on the western side of Scroggs Hill Road is also proposed as recreation zone under the 2GP and would provide vehicle and parking access as well as potential pedestrian link to Otokai Creek.
- 5.4 The proposal is outlined in Figure 1 and Figure 4 and include the following areas:
- Eastern roadside slopes (Areas 1 – 3);
 - Lower western roadside slopes (Area 3.1); and
 - The western ridge that extends from Scroggs Hill Road approximately 0.95km above the present urban boundary (Area 4).
- 5.5 The areas included in the revised proposal are less than in the October 2019 scheme with the reductions due to the extension of gully planting, a general 10m boundary off set, and less of the slope areas included in areas 3 and 3.1. Area 3.1 provides for road access for a future recreation reserve at the top of gully in this location.
- 5.6 Other reductions in area arise from an increase in set aside area that can be used for pocket park planting within the development in areas 1 – 3.1. Area 4 includes development for the full area at a uniform lot size of 3500m². Surrounding rural residential areas indicate that extensive planting will be undertaken by future residents, due to prevailing winds, and this is taken into account.
- 5.7 A comparison of the two proposals, by land area and lot yield is set out in Table one. This indicates that the land included in the different development areas is approximately 38.85ha in the 2019 plan and 33.72ha in the present proposal. These figures are provisional and will need confirmation or refinement by technical survey.
- 5.8 The land proposed for development within the present proposal is 29.95ha and reflects a 'float' of 3.77ha over all areas for utilisation as green space which may be utilised by the final subdivision design. Figure 4 provides the structure plan for rezoning. It is envisaged that at the time subdivision consent is sought, a subdivision scheme plan will make provision for residential amenity, connectivity, pedestrian access, and relationship to surrounding areas.
- 5.9 Areas 1 -3 include the slopes that descend due east from the eastern side of Scroggs Hill Road (Figure 2, 3, and Figure 11). Two small gullies extend between these slopes and divide them into three general areas. Seven existing rural residential lots are located at the base of these slopes but are not

part of Scroggs Hill Farm but were given access over the farm in order to allow for establishment. This access is currently identified by the letter boxes for Numbers 160, 166, and 170 Scroggs Hill Road.

Table One

2019 Proposal					Revised proposal			
Block	Ha	Lot m ²	Yield	Total area	Ha	Lot m ²	Yield	Total area
1	9.45	2000	14		3.31	500	30	
						750	10	2.25 ha
2		2500	5	9.45 ha	4.41	1000	35	3.5 ha
3	3.0	2500	12	3.0 ha	2.3	2000	10	2.0 ha
3.1	7.5	3000	25	7.5 ha	5.48	2000	20	4.0 ha
4	18.9	3500 - 4000	63	18.9 ha	18.22	3500	52	18.2 ha
Totals	38.85		119	38.85 ha	33.72		157	29.95 ha

- 5.10 **Area 1** has an aspect due north and runs east/west along the path of the first section of Scroggs Hill Road, as it leaves the present northern (rural residential) Brighton urban boundary. The site area falls away at a grade of approximately 15.4% in the eastern section and a more gradual underlying grade of 10.5% (Figure 14).
- 5.11 The lower and southern section extends along the boundary to 100 Scroggs Hill Road and is contained by the top of a small vegetated gully to the north. A pine block is located in the top of the gully and is proposed for removal and replacement with native species (Figure 16).
- 5.12 The proposed zoning is Township and Settlement with a minimum site size of 500m² and 750m². The larger lots are proposed across the steeper north/west part of the area and the smaller lots are proposed for the lower south/east area. The anticipated yield is 10 lots @ 750m² and 30 lots @ 500m². Building platform area restrictions apply: 500m² lots - 40% and 750m² – 35%.
- 5.13 **Area 2** extends down a broad ridge that bounds the ROW to Number 160 – 170 to the north, Number 160 Scroggs Hill Road to the east, and the tip of the vegetated gully to the west, and Area 1 (Figure 17). The underlying grade down the centre is approximately 9% and 330m deep, with a width of approximately 155m. The width includes the extension of the gully planting towards the eastern boundary and a boundary planting offset of 10m on all sides.
- 5.14 The proposed zoning is Township and Settlement with a minimum site size of 1000m² and development conditions. Building platform area restrictions apply: 1000m² lots - 30%. The yield is anticipated to be 35 lots.
- 5.15 **Area 3** is a narrower ridge that drops away to the north as well as following the general west to east slope of Area 1 and Area 2 (Figure 18). Numbers 166 and 170 Scroggs Hill Road form the lower eastern boundary of Area 3. This area is proposed as 'large lot residential 1' with a minimum site size

of 2000m². The yield is anticipated to be 10 lots. Building platform area restrictions apply: 2000m² lots – 300m².

- 5.16 **Area 3.1** includes the narrow shelf that extends along the western road boundary of Scroggs Hill Road and then extends south past the water tank to end at the southern site boundary and overlooking Otokai Creek (Figure 20). The western boundaries of this land area fall away to a broad gully that rises upwards from the lower creek catchment to end near the boundary of Scroggs Hill Road (Figure 7 and Figure 9).
- 5.17 This area is proposed as 'large lot residential 1' with a minimum site size of 2000m². The yield is anticipated to be 10 lots. 2000m² lots – 300m². The yield is anticipated to be 35 lots. This area is slightly reduced from the 2019 proposal to provide for future public access to the top of the western gully area, proposed as 'recreation zone' (2GP).
- 5.18 **Area 4** includes western sub ridge that descends from Scroggs Hill Road approximately 1km north of the urban boundary (Figure 3 and 4). The proposed ridge descends in a general due south direction from the road for approximately 0.83km until it reaches a small promontory above Otokai Creek estuary – a descent of approximately 48m elevation and an underlying grade of approximately 5.2%. This promontory is marked by a cell phone tower.
- 5.19 The full area is slightly reduced from the 2019 proposal and the minimum site size has been reduced to a uniform 3500m², instead of a mixed yield of 3500m² and 4000m². A yield of 65 lots @ 3000m² is anticipated. The present cell phone tower will prevent this development from extending to the lower southern boundary of the farm, although this could be included in the future if the tower were to be removed.

6.0 Development Conditions

- 6.1 Development conditions are proposed as performance standards for the Scroggs Hill Farm rezoned areas to provide an overall environmental framework for the proposal (Table Two). It is intended that the site wide design measures are supported by low impact residential development by individual owners

6.3 The following recommendations apply site wide:

- Clear site stripping is to be avoided, excepting for road formation and services;
- Boundary set-backs to the outside of each block area;
- Foot paths/parking on one side of access roads and swale drainages apply as practical; and
- Night sky street lighting strategy and limited street poles and furniture to be encouraged.

6.4 The following general recommendations apply to individual lots:

- Boundary fencing - post and wire boundary fencing and hedges allowed;
- Monumental stone, concrete, steel gate ways, and close boarded fences excluded;
- Water tanks required for primary roof runoff, located away from property frontages; and
- Night sky external site lighting.

Table Two: Proposed conditions Key: ● applies / allowed ● does not apply / precluded

Condition	Area 1	Area 2	Area 3	Area 3.1	Area 4
Building platform: maximum size ¹	45%	300m ²	300m ²	350m ²	400m ²
100 m ² maximum accessory building FA ²			●	●	●
60 m ² maximum accessory building FA	●	●			
Maximum building height of 5.5m from existing or modified ground level	●	●		●	
Maximum building height of 6m from existing ground level				●	●
Front elevation - max. 20 m length	●	●	●		
External materials: Wood & natural stone	●	●	●	●	●
Concrete	●	●	●	●	●
Block	●	●	●	●	●
Plaster	●	●	●	●	●
Brick	●	●	●	●	●
Stainless steel (exposed) and mirror glass	●	●	●	●	●
Impermeable area – hard standing areas -12%	●	●	●		
Impermeable area – hard standing areas -5%				●	●
Concrete paving: Tint to 50% LRV ³	●	●	●	●	●
External wall colours: 35% max. LRV	●	●	●	●	●
Roof colours 5% below LRV of walls	●	●	●	●	●
Retaining walls: 1.5 m max. above existing or modified ground level. Colour - 40% or less LRV	●	●	●	●	●
Retaining: 2 m max. from house on all sides	●	●	●	●	●
Retaining: 4 m max. from house on all sides					
Water tanks: 40% LRV max – locate behind house	●	●	●	●	●
Tree planting from approved native species list – shrub planting up to 3m exempt	●	●	●	●	●
Subdivision conditions					
Installation & maintenance of boundary planting for minimum of 5 years.	●	●	●	●	●
Setting aside and management of existing native vegetation for conservation purposes	●	●		●	●

1. Building platform – ‘percentage’ refers to full lot area – metres² refers to discrete area
2. FA means Floor Area. Maximum floor area for residential units excludes attached garages
3. LRV refers to light reflectivity values – Resene Colour Chart BS5252

7.0 Potential Landscape and Visual Effects

- 7.1 The assessment of potential landscape and visual effects is set out and assessed by the view sheds established by site visit (Figure 3). A summary of the landscape and visual effects assessed is set out in Table Three.
- 7.2 These catchment areas include:
1. Western Hill Slopes - Highland Road to the upper western slopes of Scroggs Hill Road;
 2. Brighton Coastal Housing - residential areas to the south of proposed Area 3.1 and Area 4,
 3. Scroggs Hill Road – ascending and descending views to Area 1, 2, 3, 3.1 and Area 4; and
 4. Eastern Valley Catchment.
- 7.3 Some general landscape change will result from the proposal in all of these view sheds and will be related to short and longer-term change. The short-term changes are expected to include earthworks, site delivery vehicles and machinery movement, and construction. The long-term change will reflect the transition from rural to residential land use, to greater or lesser extent, residential, boundary, and mitigation planting, night lighting effects, and, in some cases, additional vehicle movement.
- 7.4 A detailed assessment of the potential landscape and visual effects is provided in Appendix 2.

Table Three

Viewshed/landscape area	Landscape effects	Visual effects
West Hill Slopes	Moderate-low	Low
Brighton Coastal Housing	Moderate-high	Moderate-low
Scroggs Hill Road	Moderate-high	Moderate-high
Eastern Valley Catchment	High	High

8.0 Discussion and Conclusion

- 8.1 The proposal seeks to provide for several residential communities that have points of difference on the basis of location, aspect and proximity to existing development, within a structure of environmental measures. These include planted boundary setbacks, protection of existing vegetation, enhancement and extension of native vegetation and the provision of a broad scale recreation area.
- 8.2 Other benefits are expected to be an increase in wildlife corridors and the potential to link both sides of the road to pedestrian trails to both catchment coastlines. The initiative is presented as part of the present search for further residential land in the perimeter areas of Dunedin City and within the City boundaries.
- 8.3 At present an overlay of rural residential 1 zone applies to 135ha of the present farm area. At 2ha per lot this provides for approximately 67 lots. Uplifting this development right may lead to extensive access and platform earth works and the location of house sites in elevated locations. In contrast the proposal increases this yield by three times but defines the area of development, and its size, form, and character.

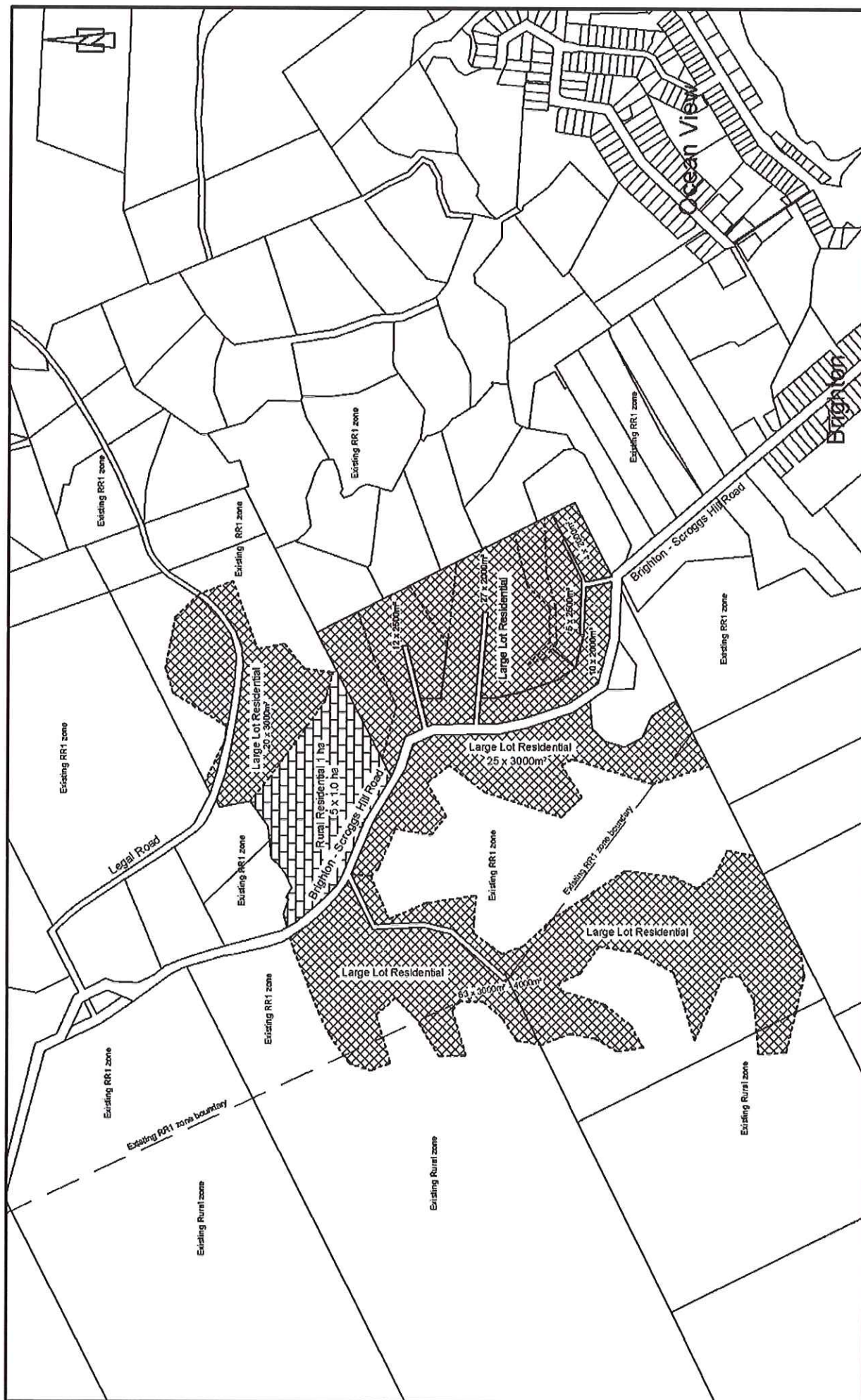
- 8.4 The proposal is also based on the premise that Council is seeking further land for residential development. It considers the proposed sites offer a more sustainable use of land than other land areas with potential horticultural value. In this case the land is not high-quality farmland.
- 8.5 The assessment of landscape and visual effects indicates several factors. In all cases the potential landscape change is relatively high and reflects a change from pastoral to residential land use. However, earthworks and land stripping will not be significant factors in any of the proposed land areas, either due to existing topography and accessibility, or by consent condition.
- 8.6 This will lower the potential impact of these works and enable a quicker recovery and integration of these land areas into the new character of residential areas. The character will include cells of development within a planted framework and dividing Area 1 and Area 2 and Area 3.1 and Area 4.
- 8.7 The potential level of visual change is assessed as lower than landscape change. This assessment takes into account the future visual character of the areas and the existing rural residential development. A number of these existing dwellings are both quite large, exposed, and prominent - particularly from coastal viewpoint. This will not be the case with the proposed coastal areas, e.g. 3.1 and 4.
- 8.8 These areas are set further back from the coastline and will be finished in recessive colours and with boundary planting between their southern aspect and potential views. The houses will still be apparent but the increase in the gully vegetation in the proposed recreation area is expected to result in a strong landscape and visual feature that will provide the context for this development – and a new landscape structure.
- 8.9 The proposed density increase in Area 1 and Area 2 is driven by this assessment and takes into account the potential development effects, the accessibility of the site areas and existing landscape and visual values. The proposed areas are accessible, serviced in part, and contain land features and existing vegetation that can be incorporated into a structure plan approach to the sites.
- 8.10 Areas 2 – 3 provide an extension to the existing urban boundary on accessible land that is concealed from outside view, apart from a low number of viewers who will retain wider coastal views. Area 3.1 and 4 will be visible to a limited degree from the roadside and some parts of the Brighton urban area. These two areas will form a network of large lot residential development in a bush setting and will have minimal impact on the rural back drop to Brighton and no effect on most views to Scroggs Hill.
- 8.10 The development proposal is supported by this landscape scoping assessment and it is recommended that approval to rezone be given subject to:
- Final performance standards being developed
 - A commitment to a structure plan approach that the subsequent developer can utilise, whilst still providing flexibility
 - The development of a walkway associated with the proposed recreation zone and with the intention of linking across the development site to Taylors Stream

Hugh Forsyth
Landscape architect

29 January 2021

Appendix One

Scheme plan - October 2019



CRAIG HORNE

Registered Surveyor

5 MAIN SOUTH ROAD EAST TAIERI
P.O. BOX 56 MOSGIEL

Proposed Large Lot Residential Rezoning **155 & 252 Scroggs Hill Road, Brighton**

Ref. Mcleary

1

PH (03) 4847008
FAX (03) 4847009

A3 SCALE

Checked
28 Aug 2019

Traced
1:7000

Appendix Two

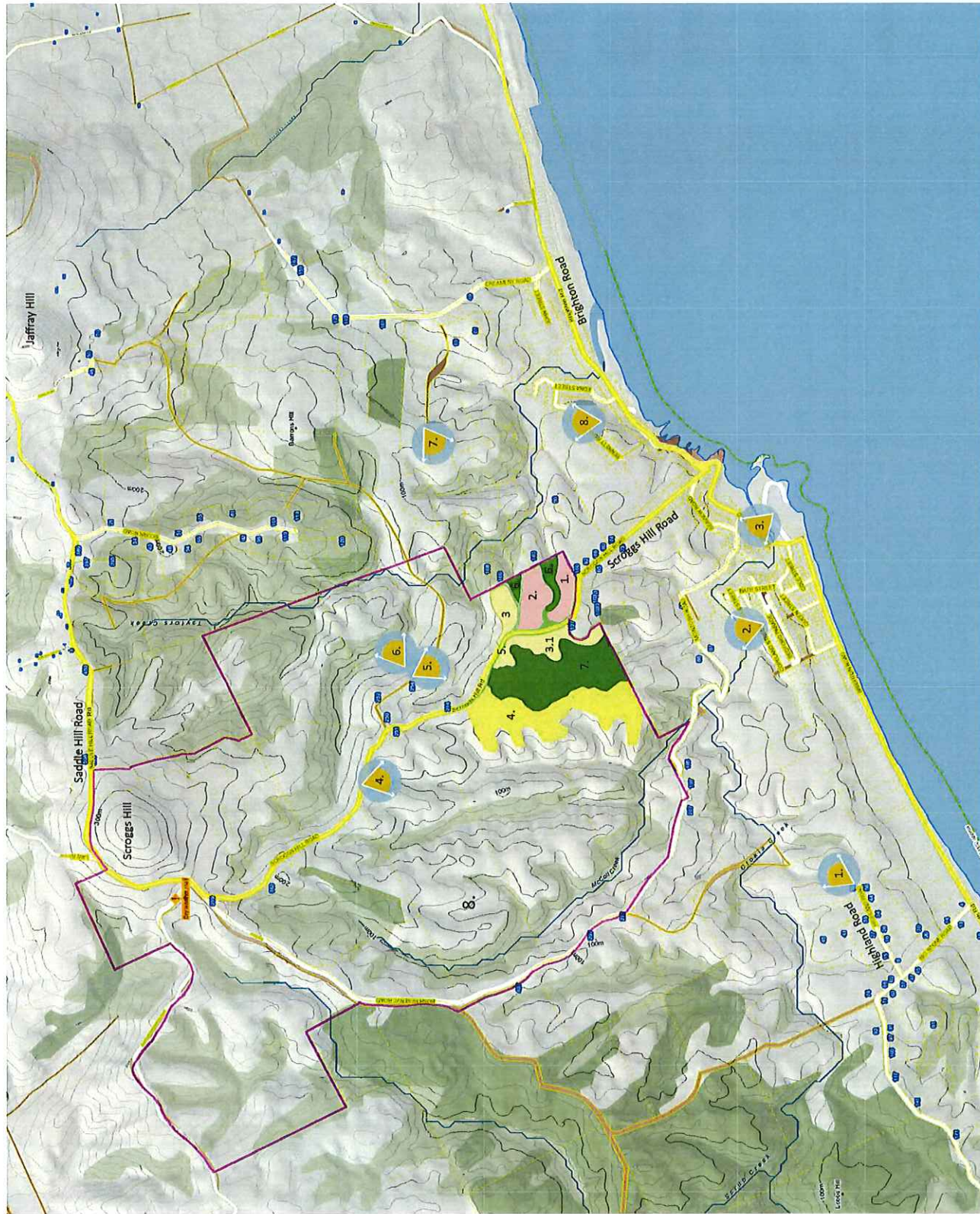
Assessment of Landscape and Visual Effects

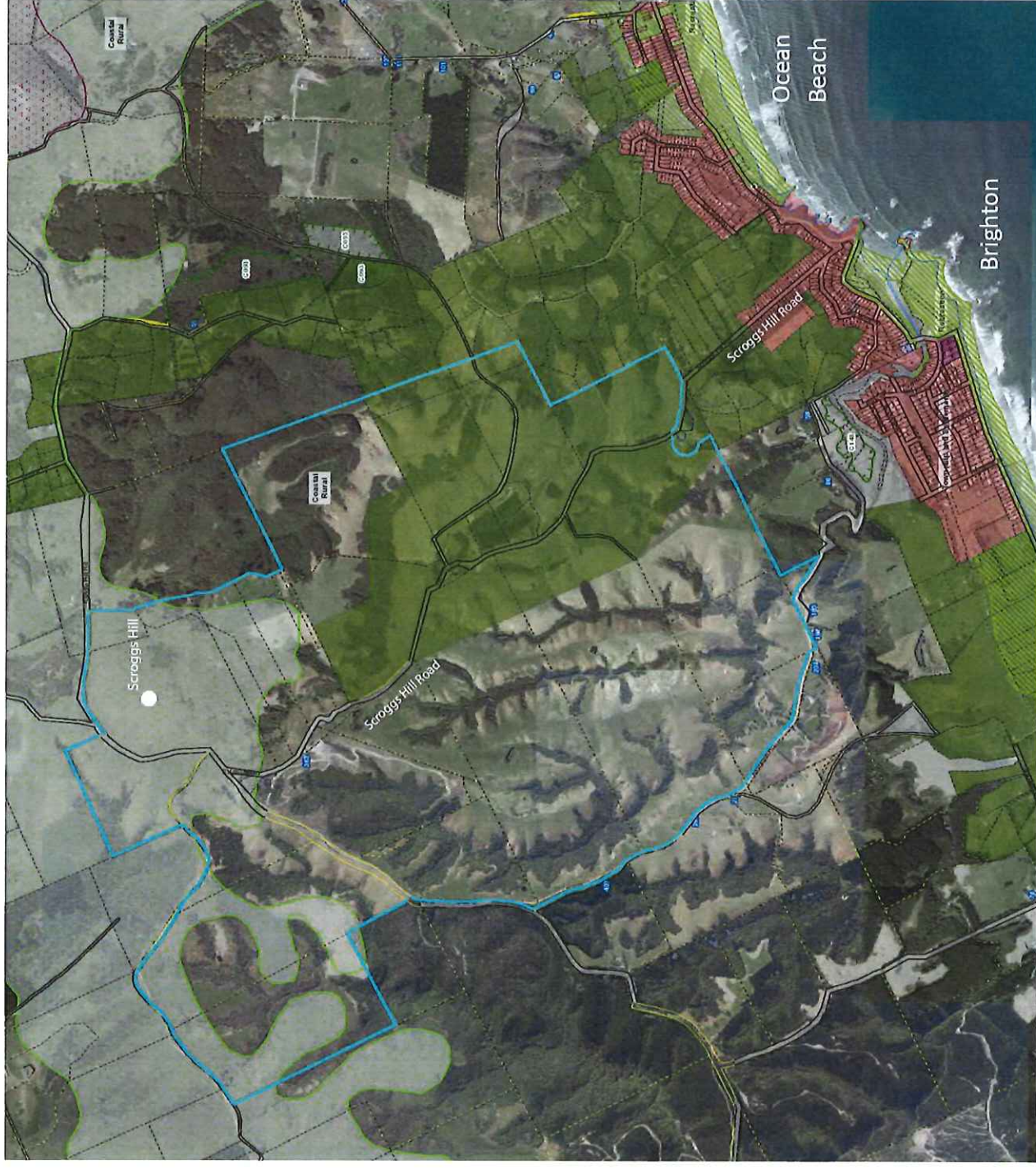
- 9.1 **‘West Hill Slopes’** catchment includes the western slopes of Scroggs Hill Road and the low rolling hill and valley landscape that meets the lower stream boundaries of Otokai Creek. Shelter belts, small pine blocks, and gully vegetation that follow the topography of intervening ridges in the lower catchment area.
- 9.2 The western site ridge is visible from two residential dwellings on Highland Road and a brief glimpse from the route of Big Stone Road above. All of these views include a distance of approximately 1.6km+ to the cell phone tower at the base of Scroggs Hill Road. Several houses and the cell phone tower are visible in camera view but not easily seen by unassisted human eyesight at this distance.
- 9.3 Housing is proposed along the lower boundary of the western ridge and will be visible within this viewshed. The housing is subject to building platform, height and colour requirements that preclude two storey building.
- 9.4 The potential of this landscape to absorb change is considered to be moderate to high and the assessment of potential **landscape effects** is assessed as **‘moderate-low’**. The assessment of potential **visual effects** is considered to be **‘low’**.
- 9.5 **‘Brighton Coastal Housing’** includes the twin street layout of Bedford Parade and several streets that are located on the northern side of the small ridge that underlies this boundary of Otokai Creek estuary. There are approximately thirty houses that are orientated in this direction and a further four rural residential dwellings that are located further to the west.
- 9.6 The pasture covered toe of the western ridge spreading across mid view, with Scroggs Hill rising in the distance. The gully between the western ridge and Scroggs Hill Road contains gorse and native shrubland that extends up towards the road and is directly visible to residents on the northern side of Bedford Parade and the streets below.
- 9.7 Built structures also feature in this viewshed. The cell phone tower is located approximately 0.8km from the closest houses (Figure 7 and 8). Rural residential housing extends across the slopes to the east of this view and is prominent from some of these streets.
- 9.8 The proposal includes large lot rural residential housing to the north of the cell phone tower and extending up the ridgeline to Scroggs Hill Road – Area 4 (Figure 1 and 5). Most of this will be screened by the small promontory that lies just behind the cell phone tower, but this development could extend into this view if the cell phone tower were to be removed.
- 9.10 Further housing is proposed on the upper slopes of the eastern side of the gully that also appear in the foreground - Area 3.1. This development will be in direct line of site from some of these houses and full screening cannot not be achieved, although planting conditions apply to the boundaries.
- 9.11 Mitigating factors for the housing include the large lot size, single level dwellings, and recessive external colour conditions. In general, this housing will have a rural residential settlement character and probably more so than those houses already established on the scarps to the east.
- 9.12 Wider mitigation measures include the fencing off of the lower gully area from stock and its vesting in Council as a recreation reserve. It is expected that native vegetation will extend across the full gully area and that landscape and wildlife values will be enhanced.

- 9.13 The assessment of potential **landscape effects** is assessed as '**moderate-low**'. The assessment of **potential adverse visual effects** is assessed as '**moderate-low**'.
- 9.14 '**Scroggs Hill Road**' describes the viewshed that is available to users of the road as they travel along the cut on the broad ridge top that marks the road route. The topography rises in a north/west curve, flattens and falls slightly, and then rises due north towards the proposed entrance of Area 4, approximately 0.9km from the Brighton urban boundary.
- 9.15 The eastern slopes rise to the road edge in a regular form while the western slopes form a narrow roadside terrace and then fall more rapidly into the gully area that is visible from houses across the southern side of Otokai Creek. Housing is proposed along both sides of this road section until the mid-point, where Area 3.1 ends.
- 9.16 The viewshed is greater for vehicles on descent and includes all the upper parts of Area 1 and 2, to the east, and the upper part of Area 3.1 and lower part of Area 4, to the west. These views begin as the road descends from Area 4 entrance and initially include panoramic views over the pine shelter belt and fields, to the south/east and to the seacoast, and direct to the south/west coastline. The views close-in as the mid-section of the road is reached and then curves due south/east to the existing housing.
- 9.17 Direct views are available across the rear of Area 1 and over the valley towards the north/east and over the rear of Area 2 and Area 3, when travelling up-hill. These views are broken by the mid-section rise in the road and a short pine shelter belt. Occasional views are available to the west in the lower section and then open to direct views to the mid-section of the western ridge.
- 9.18 The ridgeline offers the most strategic direct views of the proposed housing areas, although views are infrequent to the west. The proposal includes a 10m set back on all road boundaries. It is recommended that rules require planting of small groups of native tree species over a ground storey of native shrub or grass species to a height of 1 – 1.5m, e.g. kowhai and cabbage trees over an understorey of flax and hebe or sedge species.
- 9.19 This planting would filter some of the potential views to future residences while allowing sunlight to the houses on the eastern side of the road. A break is provided at the head of the gully and will preserve some of the most accessible western views from this section of the road.
- 9.20 The main landscape change will be from a rural land use to residential and including regulation 20m width street access from Scroggs Hill Road in several locations. The overall change will result in the urban boundary moving physically northwards by approximately 0.6km on the both sides. However, the land falls away from the road in both directions and a 10m set back applies on top of the 20m road boundaries, each side.
- 9.21 The potential **landscape effect** of this change is assessed as '**moderate-high**' and the potential visual effect is assessed as '**moderate-high**'. This assessment takes into account the change of land use and extension of the urban boundary northwards from Brighton, the variable visual experience experienced at present, and the substantial change that will occur.
- 9.22 The regularity of the proposed roadside set back planting will create a new visual and landscape element in itself, but the boundaries of the potential view shed will be narrower in the lower road section. The number of potential users is intermittent and may include a limited population who live

in the upper area or use the road as a connection to the Taieri. Considerable change could also occur on this road as a result of exercising current rural residential development rights.

- 9.23 The **Eastern Valley Catchment** includes the eastern slopes of Scroggs Hill Road, rural residential housing on Kayforce Road, to the east, the lower section of rural residential housing on Scurr Road ridge, and the northern urban boundary. The vegetated route of Taylors Stream and associated gullies form a landscape feature that divides the two main sides of this catchment (Figure 12 and 17). The distance between the upper section of Kayforce Road and Scroggs Hill Road varies around 0.7km at mid lower point.
- 9.24 Development in Areas 1 -3 will bring about a fundamental change from pasture to residential development and involve earth works and construction. The period of construction and consolidation will depend on whether all areas are released at once.
- 9.25 Landscape effects will involve the formation of roads, some in a linear west to east direction and directly visible to the east, and placement of up to 85 dwellings across approximately 0.8km of side slope. Other effects will be a significant area of boundary planting, approximately 2.5km in length when considering the existing access to Lots 160 – 170 Scroggs Hill Road and the extension of the gully planting that presently separates Area 1 and Area 2.
- 9.26 Some new building will be noticeable along the ridge top but with time this is expected to recede into associated planting. This will include on-site planting and native planting that has already been undertaken along the upper roadside boundaries. The proposed conditions restrict the density of housing to site area at a maximum of 45% site coverage and provide a range of 225m² to 350m² house footprints over site sizes of 500m² to 2,000m².
- 9.27 Coupled with other design measures of height restriction to one level and recessive colour requirements, the potential impact of this housing is expected to be much lower than other subdivision areas in Dunedin. This will be appreciated by the low number of potentially affected viewers, 4 – 6, who are located on the Kayforce Road ridge and the one dwelling that has a direct view of these lower slopes from Scurr Road.
- 9.28 The potential **landscape effect** of this change is assessed as '**high**' and the potential visual effect is assessed as '**high**'. This assessment takes into account the change of land use and extension of the urban boundary northwards from Brighton, the change in land use from pastoral to residential. This is a further area where considerable change could occur on this road as a result of exercising current rural residential development rights.





Legend



1. Coastal Rural zone - 2GP



2. Rural residential 1 - 2GP



3. Town and Settlement - 2GP



4. Significant natural area - 2GP

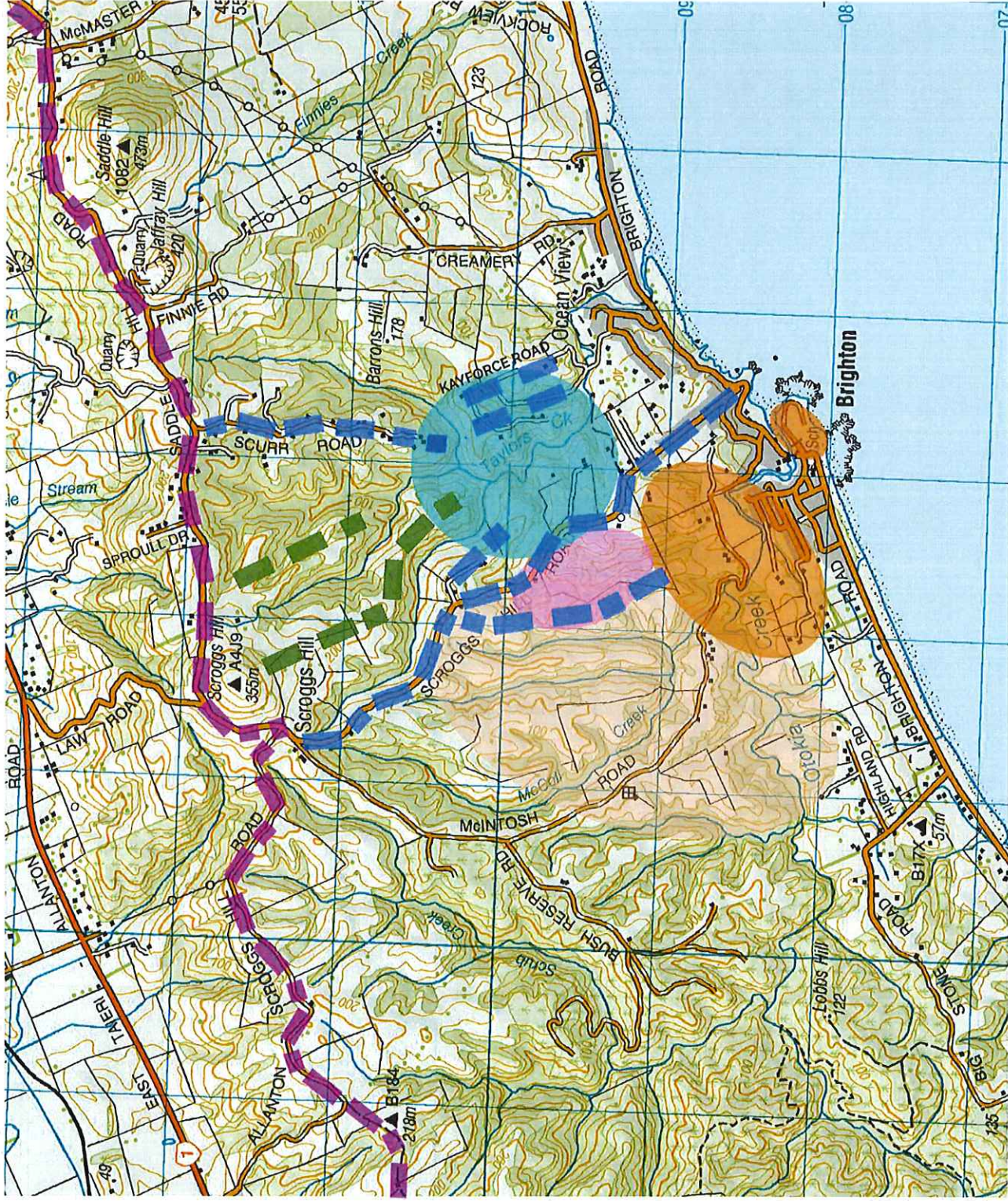


5. Coastal character - 2GP



6. Site boundaries - Scroggs Hill Farm
(717.40 ha)

0 1km



legend

ridge lines

Primary Coastal Ridge
(Saddle Hill Road route)

Road and Development
Sub ridges

Scroggs Hill Sub ridges

views

Western Hill Slopes

Brighton Coastal Housing

Scroggs Hill Road

East Valley Catchment

Scroggs Hill Farm - Landscape Structure and Views



legend

1. Township & Settlement - 500 - 750m²
2. Township & Settlement - 1000m²
3. Large Lot Residential 1 - 2000m²
- 3.1 Large Lot Residential 1 - 2000m²
4. Large Lot Residential 2 - 3500m²
5. Environmental enhancement 10m setback:
 - external road boundaries
 - Area 2 and Area 3 access road
 - native tree and shrub planting (Scroggs Hill Rd)
 - grass verge, tracks and tree planting (Area 2/3)
 - cycling track (Scroggs Hill Rd - east side)
6. Conservation and biodiversity:
 - preservation and enhancement of existing native vegetation resources - to be vested in Council or placed in QE II trust covenant, or Area of Significant Biodiversity Value.
7. Recreation zone:
 - land to be vested in Council
 - provision for parking
 - walking track link to Otokai Creek (future)
8. Rural Zone
9. Rural Residential 1 (2GP)

0 500m approx.



252 Scroggs Hill Road

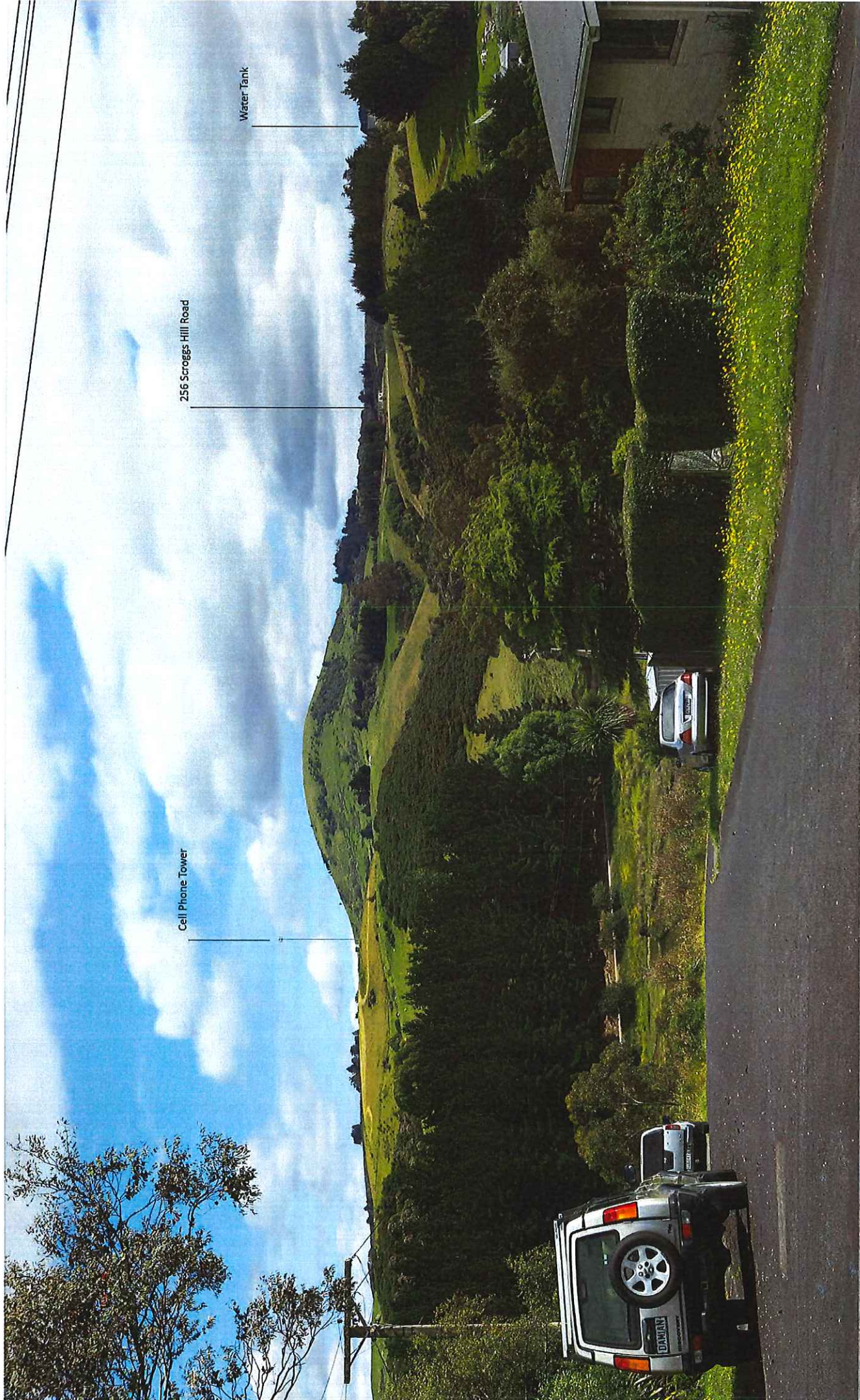
Jaffray Hill

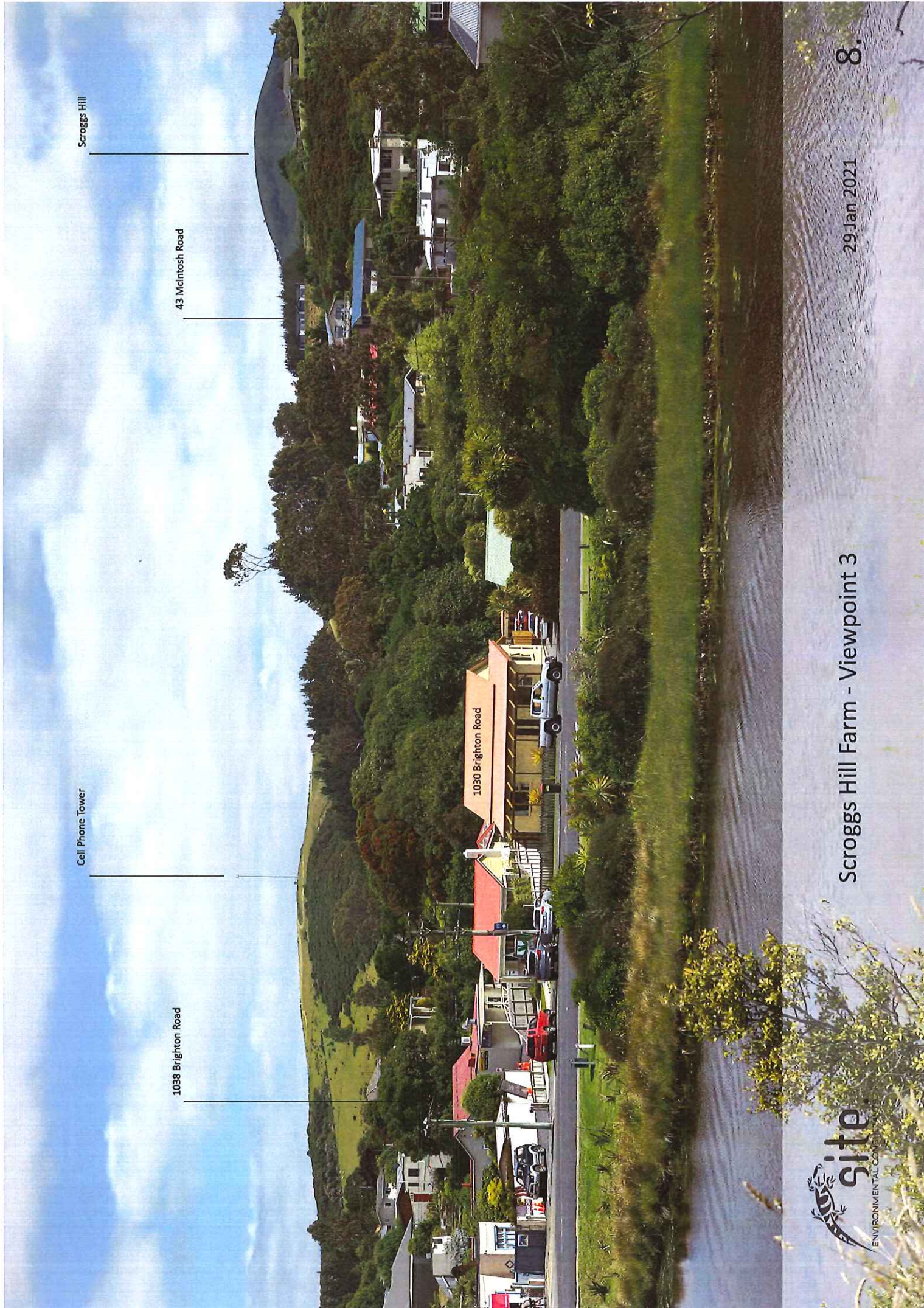
Saddle Hill

Cell Phone Tower

103d Scroggs Hill Road









43a Bedford Parade

Future Conservation and
Biodiversity

Area 4

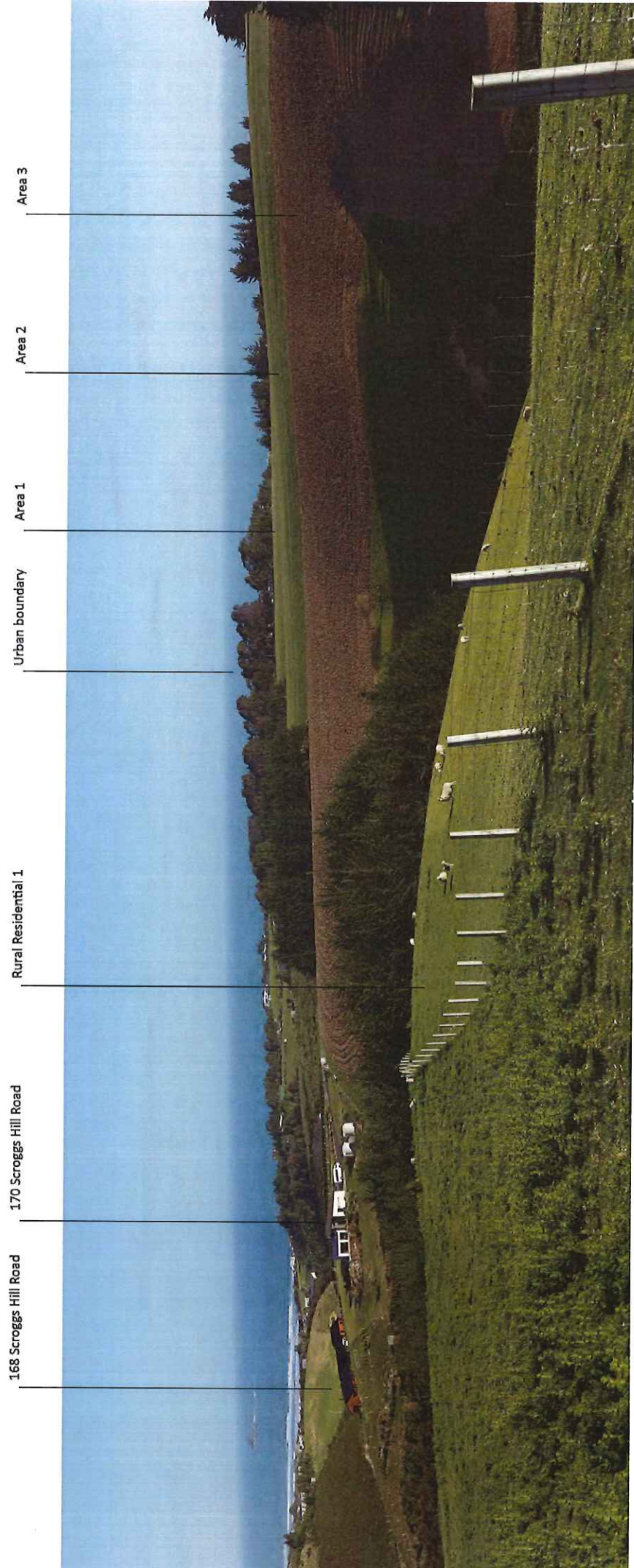


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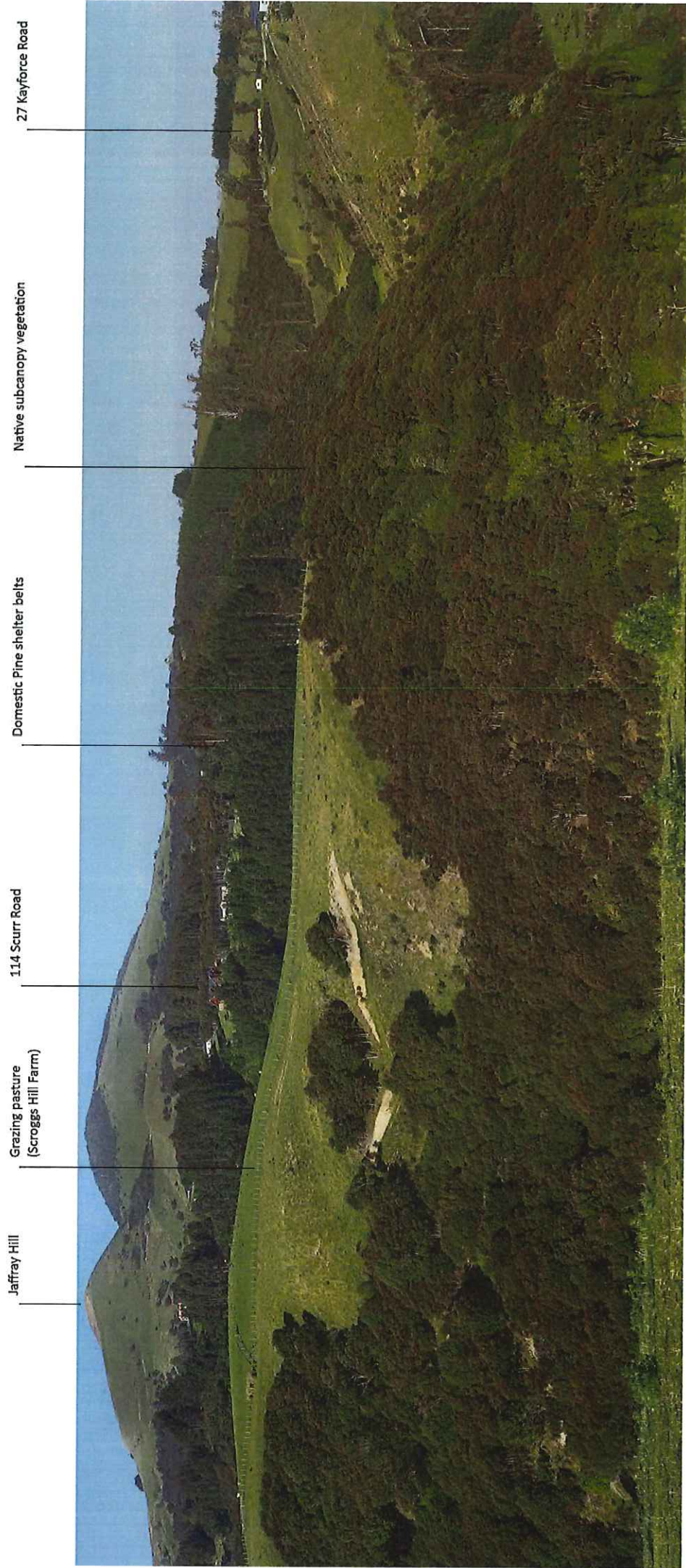
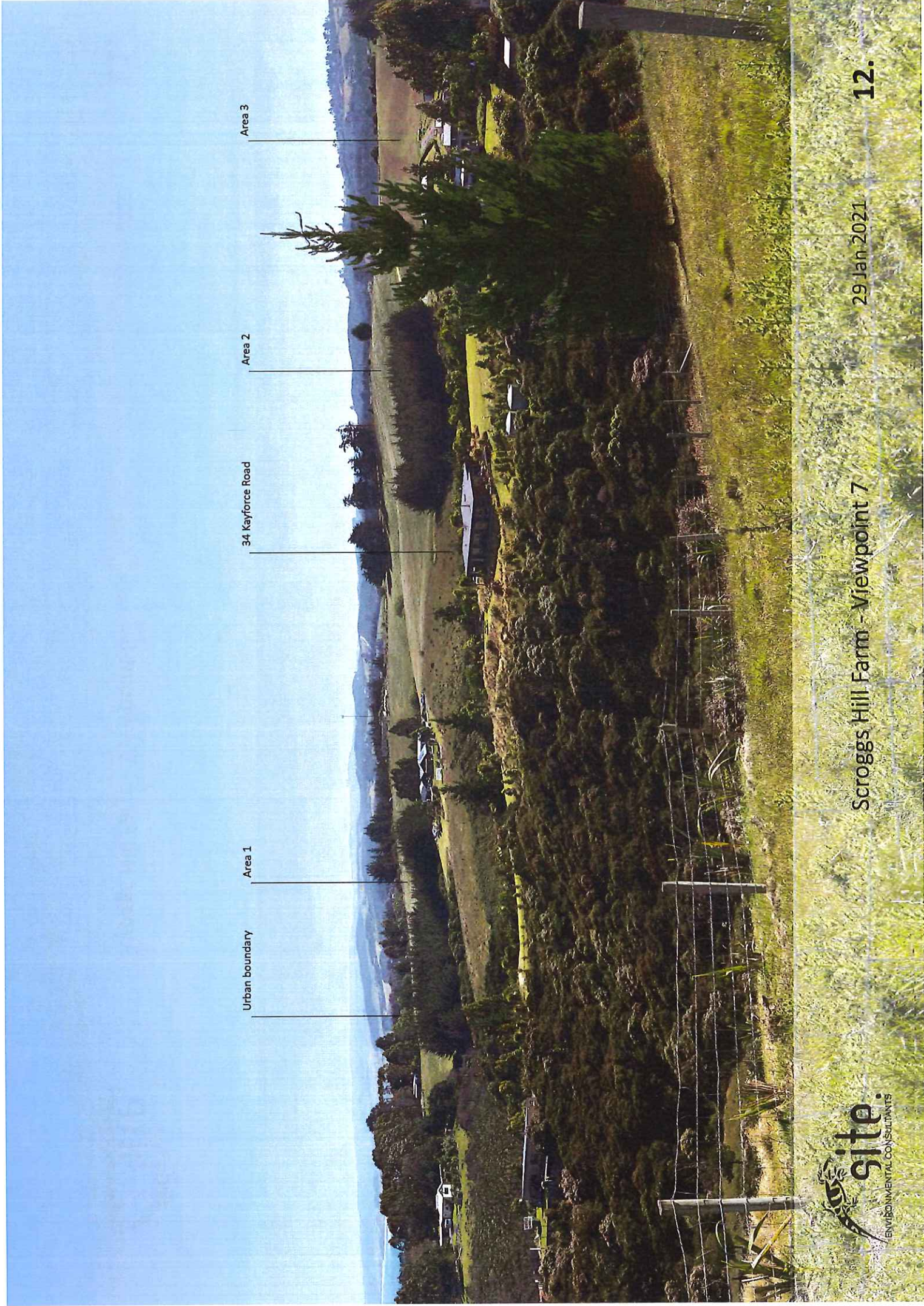


Image stitched from several photographs - 28mm focal length equivalent



Scroggs Hill Farm - Viewpoint 7

29 Jan 2021

19 Kayforce Road

1 Bennett Road

Scroggs Hill Farm - Viewpoint 8

29 Jan 2021

13.



Area 2

Area 1

120 Scurr Road

31 Kayforce Road

Jaffray Hill

170 Scroggs Hill Road

25 Kayforce Road

19 Kayforce Road

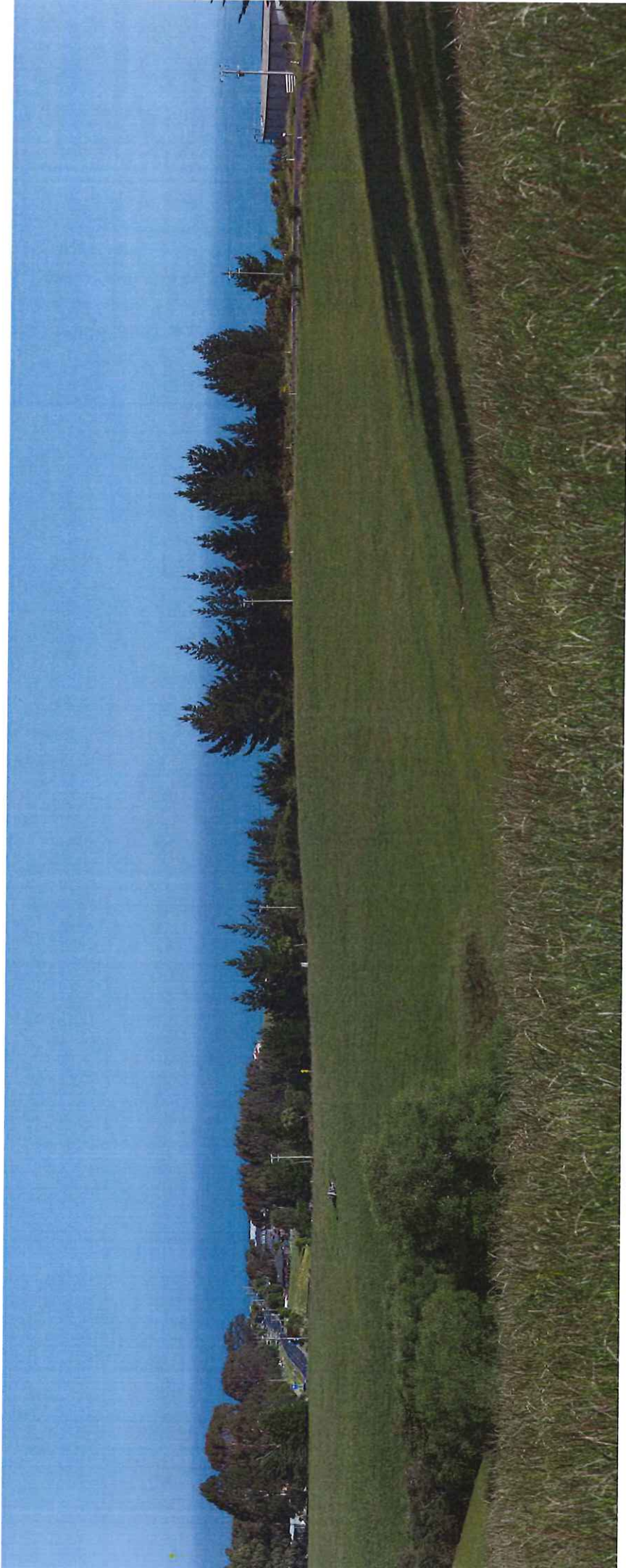


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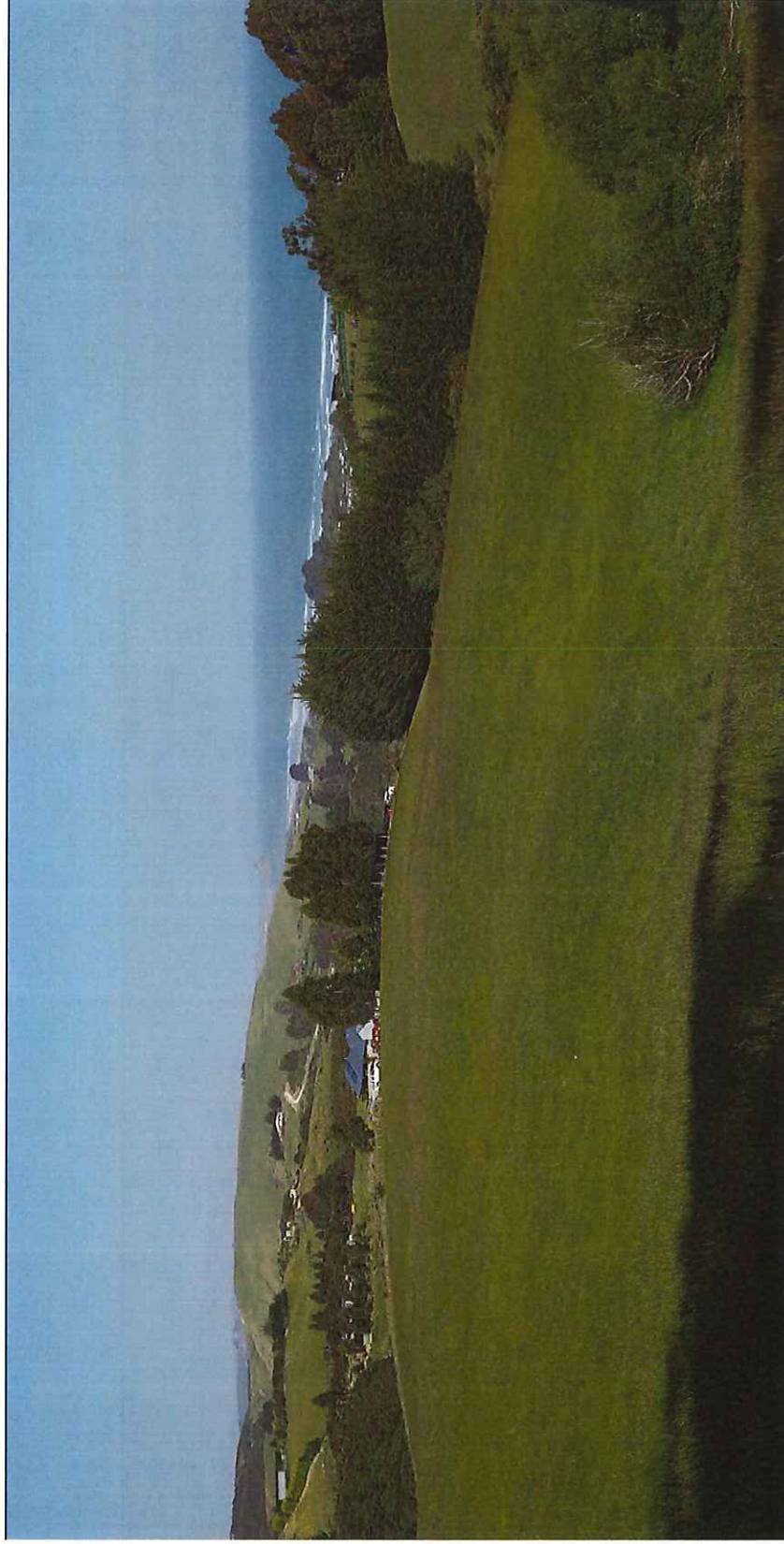


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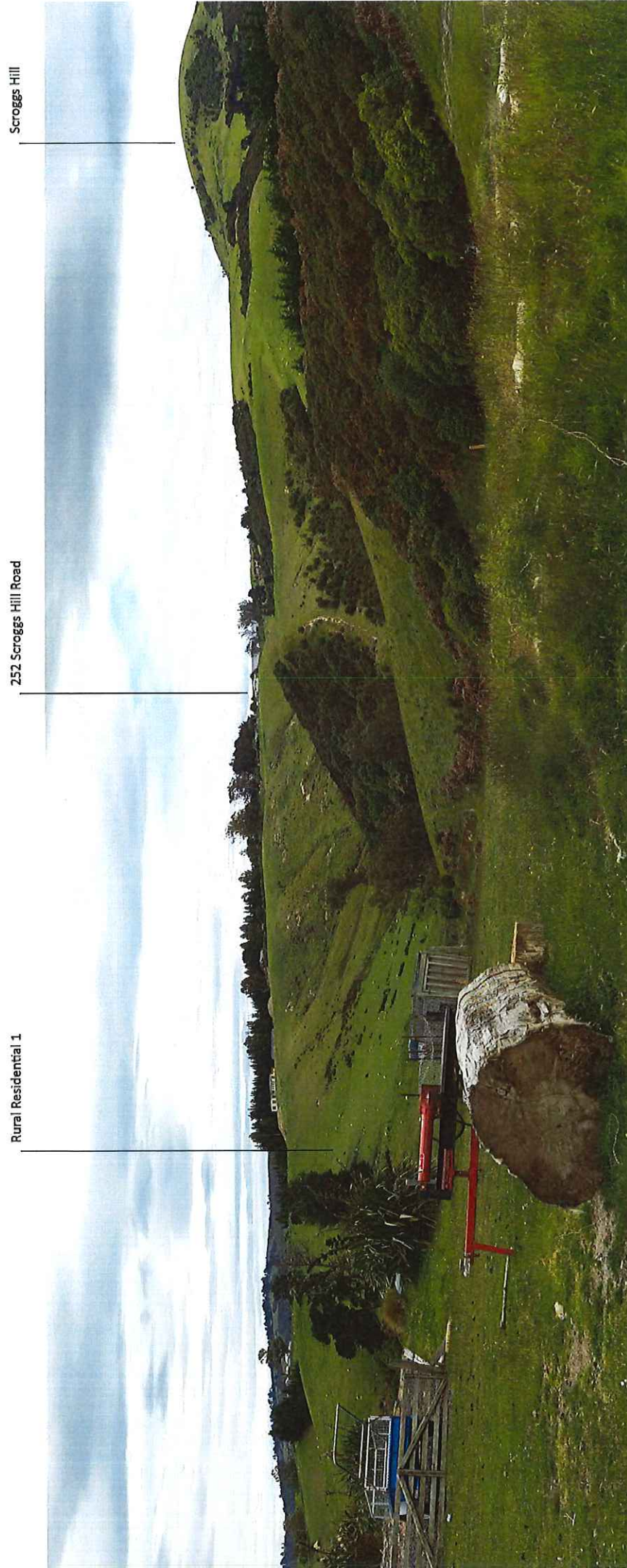


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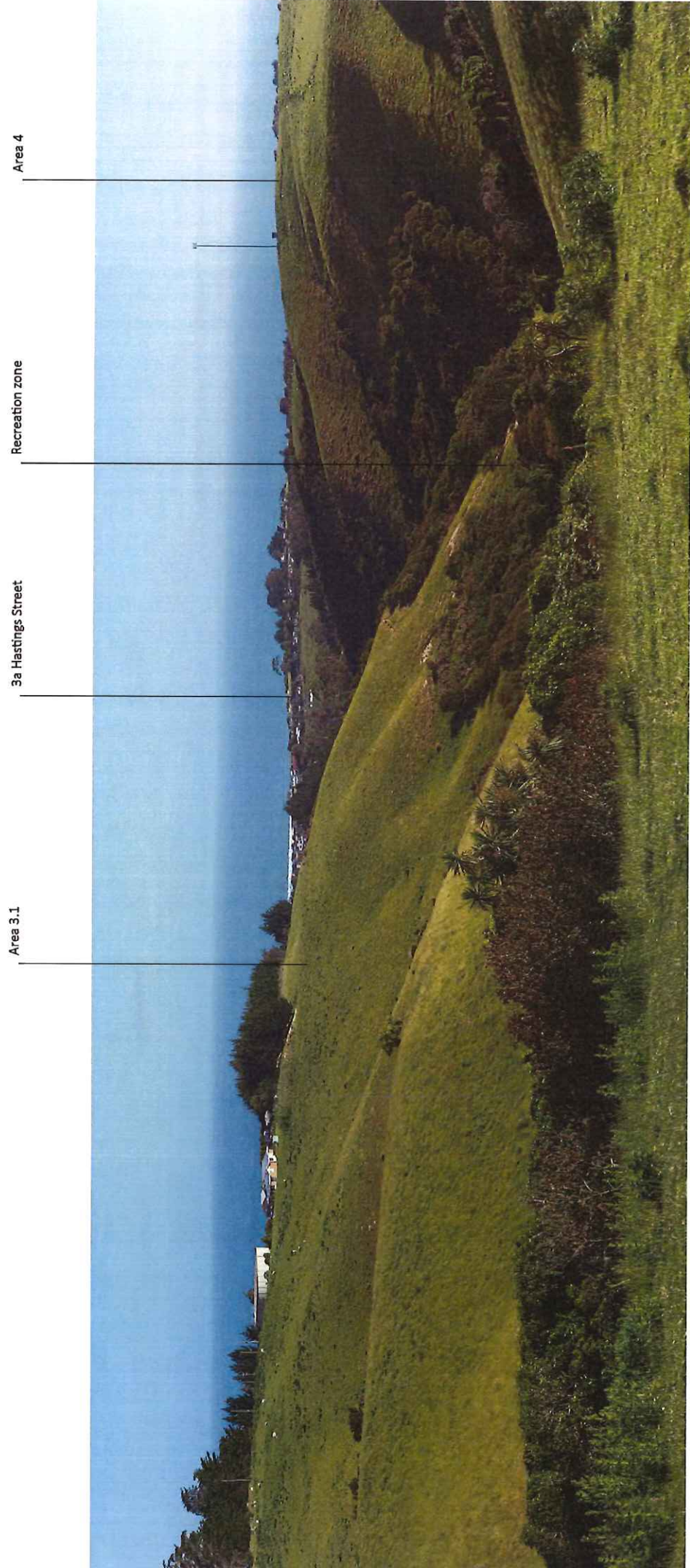


Image stitched from several photographs - 28mm focal length equivalent

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 within 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, Middelmarsh, 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 Meakin 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.

required to be relocatable, under 2GP rules. This will ensure that future development will be more resilient to natural hazards and climate change than existing dwellings in the area. Another key factor is that there is very limited potential for redevelopment on the site to be rezoned.

383. We acknowledge that Ms Carey's concerns on privacy and amenity were not pursued at the hearing, and we consider that three potential additional dwellings will not affect the amenity values in any meaningful way given the existing development in the area.
384. Overall, having considered the costs and benefits of zoning in accordance with section 32AA, we consider that there is a low risk of providing for a very limited increase in residential development in this particular location and that any infrastructural constraints can be managed at the subdivision and development stage.
385. We consider that it is appropriate to amend the Careys Bay to Te Ngaru Significant Natural Landscape Overlay to exclude the area covered by RS205 as a consequential change to the rezoning. We note Mr McKinlay supported this approach in the section 42A report as it would provide consistency with the SNL Overlay Zone boundary with the lots adjacent either side of RS205, which appear to be drawn to match the boundary of the township and settlement zone. While not specifically sought through the submission we believe there would be negligible natural justice issues in adopting this view as the key impact on landscape was raised through the requested rezoning, which we note was also traversed through the original hearings on the 2GP, and enabled further submitters to raise concerns about landscape values.

2.3.4 Brighton

2.3.4.1 Parts 155 Scroggs Hill Road, Brighton (GF01)

386. This section addresses the submissions covered in section 5.2.1 of the section 42A report.
387. Variation 2 proposed to rezone GF01 from Rural Residential 1 zone to Large Lot Residential 1 zone.
388. In the section 42A report, Mr Morrissey described the site as follows. GF01 is approximately 11.2ha in area and is part of a rural residential zoned property immediately to the north of Brighton. The site is currently farmed and is adjoined by proposed rezoning sites RS160 and RS220. Mr Morrissey noted that the site is 2km from Brighton neighbourhood centre and 1.6km from the nearest bus route. Big Rock Primary School is 2.3km away. While the site is not adjacent to residential zoned land, existing rural-residential development along Scroggs Hill Road between the site and the residential zoned area gives the impression of connection to the township.
389. He noted that the proposed zoning in Variation 2 is Large Lot Residential 1 rather than more intensive residential zoning. This was primarily due to the difficulties in servicing the site for wastewater and water supply, and to manage effects on rural character and visual amenity. Under this zoning, the estimated capacity of the site is 45 – 55 dwellings. There are no areas of the site that contain indigenous biodiversity. Mr Morrissey noted that Stantec had previously assessed the site as having a medium level hazard and that a geotechnical investigation would be required prior to development.

2.3.4.1.1 Submissions received

390. *Ross McLeary & COF Ltd & Scroggs Hill Farm Ltd (S249.002 and others)*, the owners of the land at GF01, supported rezoning but sought amendments to rezoning to Township and Settlement Zone at two different densities over part of the site and Large Lot Residential 1 Zone over the remainder. They also sought removal of the new development mapped area and the no DCC reticulated wastewater mapped area.
391. Ms Peters appeared at the hearing and stated that *Ross McLeary & COF Ltd & Scroggs Hill Farm Ltd* are now supportive of GF01 as notified (rezoning to Large Lot Residential 1, application of a new development mapped area, and a no DCC reticulated wastewater mapped area).
392. The *Saddle Hill Community Board (S56.007)* supported the change providing that the developments do not put pressure on existing infrastructure.
393. The *ORC (S271.032; FS184.98 and others)* opposed the proposed zoning, as well as the submission to amend Change GF01 to the zones shown in the submitter's proposed structure plan. The submission said an increase in development in this area would require significant infrastructure planning, including high quality on-site wastewater management. It noted the site is located within the Otokia Creek catchment, which features an intermittently opening and closing lagoon and is sensitive in terms of meeting contact recreation standards. The *ORC* sought a lower density of development (exact zoning not stated) or that a significantly higher quality on-site wastewater treatment solution be provided.

2.3.4.1.2 Landscape and rural character

394. Mr McKinlay, DCC's Landscape Architect, had assessed the proposal as requiring a suite of mitigation measures (including restrictions on building height, light reflectance values, requiring planted buffers, restrictions on fencing and entrance features, and tree planting requirements) to limit the extent of adverse effects on visual amenity and landscape effects.
395. *Ross McLeary & COF Ltd & Scroggs Hill Farm Ltd* provided a landscape assessment which covered both GF01 and RS160 as part of their submission. This included a number of proposed development conditions that would apply to the various sub-areas of GF01 and RS160. Mr Morrissey confirmed that in his view these conditions, if they could be appropriately implemented, addressed all of the mitigation measures outlined above. However, he was concerned about the implementation of urban design controls.
396. In presenting his evidence for this submitter, Mr Hugh Forsyth, Landscape Architect, agreed that design controls are needed to manage the effects of residential development on rural landscape values. He recommended a range of mitigation measures including planting along gullies to break up development, a 10m offset from Scroggs Hill Rd and planting either side of the access road.
397. In the section 42A report Mr Morrissey advised that, if the Panel decides to rezone the site and considered that these mitigation measures are critical, there is currently no policy support in the plan for urban design controls to manage the effects of residential development on rural landscape values. He considered a new policy would need to be drafted, against which an assessment of any contravention of these standards could be assessed.

398. Ms Peters, in evidence for *Ross McLeary & COF Ltd & Scroggs Hill Farm Ltd* considered that implementation of design controls could be managed through a structure plan.
399. Ms Christmas also addressed this matter, as one of a number of broad matters, in her Reply Report. She considered that bespoke localised urban design controls that are primarily concerned with maintaining amenity for local residents are generally not evaluated favourably due to the costs (which are partly publicly funded) exceeding the benefits (which are often private or localised). She also noted that the need to apply urban design controls to support rezoning in some urban areas, but not in others, for specific local benefit is not a consistent approach and is generally not appropriate.

2.3.4.1.3 Transport

400. Mr Watson highlighted some significant concerns with respect to transportation and roading, as follows. Scroggs Hill Road has a hairpin curve and steep gradient from Brighton Road and a narrow carriageway formation. It is a high-risk rural road with a speed limit of 80km/h and as a result increased signage and road markings, and potentially crash barriers at affected intersections, may be required. The intersection with Brighton Road is poorly aligned which makes the left turn in and right turn out extremely difficult. Additional traffic as a result of rezoning this land would require substantial improvements which have not been investigated at this stage, including on Seaview Road / McIntosh Road where the Saddle Hill Community Board has requested safety improvements. There is parking along the road and an informal footpath (no kerb and channel), resulting in vehicles driving on the pedestrian area, which is an obvious potential safety issue which would be amplified by additional traffic.
401. Mr Watson noted that there are limitations on improvements to Scroggs Hill Road due to the topography necessitating substantial earthworks and potentially a need for land acquisition. He considered that additional development would not be appropriate, without road upgrades to alleviate these issues, as well as footpaths and kerb and channel being required on the site frontage and south of the site, to link with existing infrastructure at 50 Scroggs Hill Road. This work is unprogrammed and unfunded. He also considered that should rezoning proceed, the speed limit on Scroggs Hill Road would need to be reduced to mitigate the potential for crashes associated with new vehicle accesses and intersections, and that the nearest bus stop, on Brighton Road, is over 1km away from the southern boundary of the site with little prospect of expanding the public transport network here due to the narrow and winding alignment of Seaview Road and Scroggs Hill Road.
402. In her planning evidence for *Ross McLeary & COF Ltd & Scroggs Hill Farm Ltd*, Ms Peters considered that a footpath connection between GF01 and the existing Township and Settlement zoning would be feasible and could be dealt with at the time of subdivision. In her view, the other transport issues raised in the section 42A report related to further development in the area, such as RS160 (see section 2.3.4.2 of this decision), rather than being required in order to rezone GF01 in isolation.
403. In his Response to Submitters' Evidence, Mr Watson confirmed his original assessment, and noted that no expert transport evidence was provided by the submitter to support that substantial upgrades will not be required.
404. At the hearing, we asked if there is further information about the percentage of Brighton residents who commute into the city for work or study. In his Response to Submitters Evidence, Mr Stocker, DCC Research and Monitoring, advised that the commuter data used

in carbon emissions analysis includes where people live and where they work/study, to a Statistical Area 2 (SA2) level. He noted that a visual representation of the commute data used in the carbon emissions analysis is available on the Commuter Waka webpage⁶. The website shows that Dunedin Central is the most common destination for work or school outside of Brighton, with 159 departures (21%). To travel to work or school, people in Brighton most often drive a private car, truck or van (51%).

2.3.4.1.4 3 waters

- 405. In the section 42A report, Mr Morrissey noted that DCC 3 Waters had provided an updated and more detailed assessment on GF01 in response to the zoning proposed in the submitters structure plan. They considered that providing potable water would require a new reservoir, which could service elevations up to 84m, and above that altitude booster pumps would be required.
- 406. The advice of DCC 3 Waters was that pumping is not supported due to higher operation and maintenance costs and the need to reduce carbon emissions. Major upstream network upgrades would also be required. Wastewater servicing is not supported for any sites that are lower than Scroggs Hill Road, as these would require wastewater pumping and significant downstream network upgrades would also be required. Contrary to the statement in the section 32 report, DCC 3 Waters clarified that no funding to service the site for wastewater had been budgeted in the 10 year plan. In addition, 3 Waters noted that on-site stormwater attenuation would be required, to ensure that there is no increase in the peak discharge rate from the site, and they raised concerns about the affordability of appropriate stormwater management.
- 407. Ms Peters said that drinking water would be supplied by rainwater collection, and wastewater would be serviced on-site with a secondary treatment system and dispersal field, and further that the no DCC reticulated wastewater mapped area should be retained.
- 408. In their Response to Submitter Evidence, Mr Oliver and Mr Saunders of DCC 3 Waters reiterated that they do not support any proposed Township and Settlement zoning for either GF01, or the adjacent RS160 and RS220, as under this zoning there would be an expectation of 3 waters servicing which is problematic to provide. At the time of the section 32 assessment, DCC 3 Waters had advised that self-servicing of GF01 at Large Lot Residential 1 density would be feasible.

2.3.4.1.5 Demand for residential zoned land in Brighton

- 409. Mr McLeary, the owner of GF01, commented there is currently demand in Brighton for large lot residential lots, as there are few zoned sites available for development. In her evidence, Ms Peters also argued that there is clear demand for more residential zoned capacity to be made available in this location, however she did not provide any specific evidence on this.
- 410. Ms Peters raised a number of broad issues with the Council's housing capacity assessment and on the impact of the new pre-1940s demolition rule, which we have discussed in section 2.1.1 of the decision. As noted, we are satisfied that the housing capacity assessment has

⁶ [Commuter - Waka](#)

been undertaken appropriately and that we can rely on its findings, and that the pre-1940s rule has been removed from Variation 2⁷.

2.3.4.1.6 Reporting Officer's recommendation

411. Mr Morrissey stated that GF01 was notified as Large Lot Residential 1 zoning, and he did not consider there is scope to rezone it to Township and Settlement. With respect to Large Lot Residential 1 zoning, he acknowledged that while GF01 is part of Variation 2 as notified, the more in-depth assessment conducted following submissions (as recorded in the section 42A report) highlighted significant concerns with rezoning this land, including the need to upgrade both Scroggs Hill Road and Seaview Road. While Large Lot Residential 1 zoning could self-service for 3 waters, he noted that if Township and Settlement zoning were implemented there would also be issues with potable water and wastewater.
412. In his Reply Report, Mr Morrissey noted that DCC Transport's position is that GF01 on its own would require significant roading improvements that make development in this area unfeasible and inappropriate. He recommended that the proposed rezoning of the land be removed.

2.3.4.1.7 Decision and reasons

413. The evidence we heard from Council reporting officers highlighted significant concerns in relation to transport infrastructure and the feasibility of conducting upgrades. We adopt the evidence of Mr Watson that rezoning GF01 would require significant roading improvements at the southern extent of Scroggs Hill Road. There was no expert counter evidence on this aspect. We agree with the reporting officer's recommendation that the site is not suitable for rezoning due to the requirement for roading upgrades that are unplanned and unfunded and may not be feasible. Overall, having considered the costs and benefits of zoning in accordance with section 32AA, we consider that in this case the costs associated with rezoning GF01 would outweigh the benefits.
414. We also note the *Saddle Hill Community Board's* submission (*S56.007*) which supported rezoning providing the development does not put pressure on existing infrastructure. As outlined, we consider that the transportation infrastructure at this location is inadequate to support rezoning.
415. We reject the submission of *Ross McLeary & COF Ltd & Scroggs Hill Farm Ltd* (*S249.002*) submission to rezone part of the site to Township and Settlement Zone and the remainder to Large Lot Residential 1 zoning. We accept Mr Morrissey's evidence that GF01 was notified as Large Lot Residential 1 zoning, and that there is no scope to rezone it to Township and Settlement.
416. We also agree with the ORC submission and evidence from the DCC 3 Waters that intensifying the zoned capacity on parts of the site is not appropriate due to constraints on infrastructure. Accordingly, we accept the ORC's submission (*S271.032*) which opposed the notified zoning.

⁷ We note that the decision of the Environment Court, No. [2022] NZEnvC 234, removed this rule due to the original submission being considered outside the scope of Variation 2.

417. Consequentially, our decision is to remove the proposed Large Lot Residential 1 zoning new development mapped area, and no DCC reticulated wastewater mapped area as notified for this land. This means the previous Rural Residential zoning is re-instated.

2.3.4.2 155 Scroggs Hill Road (in part) (RS160)

418. This section addresses the submissions covered in section 5.2.2 of the section 42A report.
419. RS160 is located on Scroggs Hill in Brighton, immediately adjacent to GF01 and RS220. The site is approximately 40ha in size and is currently zoned a mixture of Rural Residential 1 and Rural Coastal. There is a small area of high class soils in the southernmost corner of the site. The site is located 450m from the nearest residentially zoned area (Township and Settlement). The site is 2km from Brighton neighbourhood centre, 1.4km from the nearest bus route and Big Rock Primary School is 2.1km away.
420. We note that RS160 adjoins GF01, and that *Ross McLeary & COF Ltd & Scroggs Hill Farm Ltd's* original submission and structure plan covered both sites. While we have considered the sites separately, the issues affecting the two sites are very similar. We also note that, in contrast to GF01, the submitter did not present evidence in support of RS160 at the hearing.

2.3.4.2.1 Submissions received

421. *Ross McLeary & COF Ltd & Scroggs Hill Farm Ltd (S249.001)* sought to extend Change GF01 to include further areas within the same general area, including RS160. This submission was opposed by the *Otago Regional Council (FS184.63)* and *Scott and Justin Weatherall (FS217.1)*.
422. *Ross McLeary & COF Ltd & Scroggs Hill Farm Ltd (S249.003)* sought to rezone part of 155 Scroggs Hill Road to a range of zones (shown in the submitter's proposed structure plan). In the structure plan, setbacks of 10m are proposed from external roads and some access roads to provide for native tree and shrub planting, grass verges and a cycling track along Scroggs Hill Road. The structure plan provided for a total of 157 lots across both GF01 and RS160. This submission was opposed by the *Otago Regional Council (FS184.529)* and *Scott and Justine Weatherall (FS217.2)*.

2.3.4.2.2 Submitter's response to section 42A report recommendation

423. Ms Peters appeared at the hearing on behalf of *Ross McLeary & COF Ltd & Scroggs Hill Farm Ltd*. While the focus of the presentation was on GF01, Ms Peters noted that information had been put forward in the submission on RS160 indicating that RS160 is suitable for residential development. In addition, Ms Peters proposed that an RTZ overlay could be applied to RS160 until transport constraints can be addressed.

2.3.4.2.3 Landscape character, visual amenity and biodiversity

424. Mr McKinlay, the DCC's Landscape Architect, advised us that he had previously assessed some of the area covered by RS160 at the time of the section 32 assessment. Out of the wider area he assessed, he considered certain areas of RS160 as being the least suitable for rezoning, from a landscape and visual amenity perspective, as it is more visually prominent, further from Brighton centre, and closer to existing rural residential development. Mr McKinlay also provided, as part of the section 42A report, a more recent assessment of the submitters proposed structure plan. He concluded that any development in the area should

generally be restricted to the GF01 area, and capped at large lot residential density. He did note that if potential adverse effects of earthworks can be managed, a small extension (which is located within RS160) to the west and south of the water reservoir could be supported.

425. The section 42A report was informed by an assessment of indigenous biodiversity values prepared by Kelvin Lloyd of Wildland Consultants provided on behalf of the Dunedin City Council. He considered that the vegetation to the east of Scroggs Hill Road is not ecologically significant. However, it noted that to the west of the road, the gully contains wetland habitat and indigenous forest and there is an area of wetland at the far west of the proposed rezoning area, both of which meet the 2GP criteria for significant indigenous vegetation. Wildlands recommended that this vegetation be protected if the site is rezoned.

2.3.4.2.4 Hazards

426. Mr Paterson from Stantec provided evidence that the site has medium level hazard risk associated with slope instability. He stated that a geotechnical assessment will be required to confirm the stability of any proposed lots. Provided the site is found to be stable, some specific earthworks and stormwater management requirements would be required for lots on the site. He considered that it is likely that removal of trees from the gully areas will exacerbate instability. The ridgelines and flatter areas appear to be suitable for building platforms.

2.3.4.2.5 Transport

427. Mr Watson from DCC Transportation outlined the same concerns as for adjoining site GF01, which we have discussed earlier in this decision. In brief, Scroggs Hill Road has a hairpin curve and steep gradient from Brighton Road, along with a narrow carriageway formation. The intersection with Brighton Road is poorly aligned and makes turning extremely difficult. There are limitations on carrying out improvements to Scroggs Hill Road due to the topography, necessitating substantial earthworks and potentially necessitating land acquisition.

2.3.4.2.6 3 waters

428. As part of the section 42A report, DCC 3 Waters advised that providing potable water to this site would require pumping due to the elevation, which is not supported due to higher operation and maintenance costs and carbon emissions. In addition, they considered that major upstream network upgrades would also be required.
429. DCC 3 Waters did not support extending wastewater servicing to any sites within the area that are lower in elevation than Scroggs Hill Road, as these would require wastewater pumping. In addition, significant downstream networks upgrades would be required to the wastewater network and no funding to service the site for wastewater has been budgeted in the 10 Year Plan 2021-31. It noted that onsite stormwater attenuation would be required to ensure that there is no increase in the peak stormwater discharge rate from the site, and they raised concerns about the affordability of appropriate stormwater management for development of this land.

2.3.4.2.7 Rural productivity

430. 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 Minute 15, 16, 17 from the Panel dated 6 October 2022, advised that 0.2% of this site meets the interim classification of LUC 1-3 criteria for Highly Productive Land.

431. Due to the timing of the NPS-HPL, and for the sake of clarity, we have chosen to undertake an overall analysis of the sites requested by submitters for rezoning in terms of the NPS as a separate part of our decision, and to focus on whether the consideration of it changes any of our conclusions and decisions. This analysis is given 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.

2.3.4.2.8 Reporting Officer's recommendation

432. Mr Morrissey's overall view was that that this site did not meet the criteria for rezoning under Variation 2, the main concerns being transportation and 3 waters issues, and to a lesser extent the majority of RS160 had adverse landscape effects. The proposal was also considered contrary to the relevant policy matters.

2.3.4.2.9 Decision and reasons

433. We reject *Ross McLeary & COF Ltd & Scroggs Hill Farm Ltd's (S249.001)* submission which initially sought to extend Change GF01 to include further areas within these properties including RS160, and their subsequent proposal (*S249.003*) for less dense development.
434. Based on the evidence of Mr Morrissey and Mr Watson, we do not consider that rezoning RS160 to residential is consistent with Policy 2.6.2.1, given the transportation issues for developing this site. We adopt the evidence of Mr Watson that rezoning RS160 would require significant roading improvements at the southern extent of Scroggs Hill Road, and highlight that no evidence was presented to counter the view that the transportation upgrades outlined in the section 42A report are necessary.
435. We also agree with the evidence from Mr Oliver and Mr Saunders that providing 3 waters servicing to this site is problematic and is not supported. Overall the weight of evidence overwhelmingly did not support the rezoning of this site.
436. We accept the submissions from the *Otago Regional Council (FS184.63)* and others who opposed rezoning RS160 due to a range of concerns.

2.3.4.3 53 - 127 Scroggs Hill Road (RS220)

437. This section addresses the submissions covered in section 5.2.3 of the section 42A report.
438. This group of sites collectively numbered RS220 are located on the lower slopes of Scroggs Hill, Brighton, immediately north of the existing residentially-zoned area and immediately to the south of sites GF01 and RS160. The 25ha area is currently zoned Rural Residential 1 and appears to be fully developed. There are no overlays identified on the planning maps, but the area does include a Designation (D672) relating to the Brighton Reservoir – Treated Water Reservoir.
439. The section 32 report stated that the site was originally rejected as the area was identified too late to undertake an assessment of the site or discuss any potential rezoning with landowners.

440. Mr Morrissey noted that the site is generally south facing and has a moderate to significant slope. In his view, access to public transport is reasonable, (with the nearest bus stop approximately 750m away) and reasonably close to Big Rock primary school. However, it scored poorly in relation to accessibility to centres with the nearest principal centre (Green Island) approximately 10km away and Brighton neighbourhood centre approximately 1.3km away. The site has an approximate feasible capacity of 340 dwellings at Township and Settlement zoning and approximately 88 dwellings at Large Lot Residential 1 zoning. He noted that the site ranked poorly in relation to likely carbon emissions derived from commuting. He also noted that the site has been assessed by Stantec as having a medium hazard level associated with slope instability.

2.3.4.3.1 Submissions received

441. *Richard and Rosalind Mains (S62.001)* sought to rezone the area to Residential, noting that a large proportion of the area is flat land or of a suitable gradient for building, and is in fact located closer to Ocean View and Brighton than notified site GF01.
442. *Ross McLeary & COF Ltd & Scroggs Hill Farm Ltd (S249.007)* sought to rezone the area to Township and Settlement Zone to provide additional residential capacity, and to provide a 'link' from Brighton to sites GF01 and RS160.
443. Three further submitters (*Isak Gunnarsson, Paul Anderson, Ross McLeary*) supported the submissions promoting rezoning.
444. Seven further submitters (Otago Regional Council, Scott and Justine Weatherall, Deborah & Kevin MacLeod, Kaye Wilson, Dean Edmonds, Frances Edmonds, David Edmonds) opposed the rezoning, citing a number of concerns including stormwater management, inadequate transportation infrastructure, 3 water infrastructure capacity, insufficient power supply to the area, access issues, and that the land is overall unsuitable for residential development. Two of the further submitters also noted that 103A Scroggs Hill Road, part of RS220, is subject to covenants which limit the number of dwellings and any further subdivision.
445. We did not hear from any submitters on this site.

2.3.4.3.2 Landscape character / visual amenity

446. Mr Luke McKinlay, DCC Landscape Architect, assessed the site for zoning to both Large Lot Residential 1, and Township and Settlement Zone. He commented that, from a rural character/visual amenity perspective, Large Lot Residential zoning would be likely to result in significant visual amenity effects for existing residents, particularly on the eastern side of the road. The sites on the eastern side are approximately 2ha in area, and so could each accommodate up to 10 lots at Large Lot Residential 1 density, which would dramatically reduce the open spatial character of these sections and enclose views to the wider landscape. However, at a broader landscape scale, rezoning from Rural Residential 1 to Large Lot Residential 1 would not represent as great a change in existing landscape character as would occur within, for example, GF01, based on current development patterns. He noted that design controls would help limit the potential adverse effects on surrounding rural character values.
447. Mr McKinlay considered that Township and Settlement density in this location would create too strong a contrast with nearby or adjoining rural and rural residential areas. As viewed from existing rural residential areas on the hillslopes above Ocean View, this area would be

viewed as a broad swath of urban scale development, inconsistent with the low-key character of this small coastal settlement.

2.3.4.3.3 Biodiversity

448. An assessment of biodiversity values by Mr Kelvin Lloyd from Wildland Consultants (engaged by DCC) identified some areas of vegetation that provide a good habitat for indigenous forest birds, however they do not meet the 2GP criteria for ecological significance. However, it was considered that protecting these areas would help to provide connectivity between the remnants of indigenous vegetation in the adjacent landscape. Mr Lloyd concluded that rezoning to Township and Settlement zoning could result in adverse effects on indigenous biodiversity unless areas of existing vegetation were excluded from the rezoning or were otherwise protected. He also noted that the gully on the western side of the road should be protected from residential development and enhanced by indigenous planting.

2.3.4.3.4 Transportation

449. Mr Watson from DCC Transport provided evidence regarding transportation concerns in relation to Scroggs Hill Road. These are the same concerns as outlined for adjoining site GF01, which we have discussed earlier in this decision. In brief, Scroggs Hill Road has a hairpin curve and steep gradient from Brighton Road, along with a narrow carriageway formation. The intersection with Brighton Road is poorly aligned and makes turning extremely difficult. There are limitations on undertaking improvements to Scroggs Hill Road due to the topography, which would necessitate substantial earthworks and potentially land acquisition. The view of DCC Transport is that the significance of this transportation constraint makes rezoning and additional residential development on Scroggs Hill Road inappropriate.

2.3.4.3.5 3 waters

450. DCC 3 Waters advised that providing potable water to this site would require pumping due to the elevation, which is not supported due to higher operation and maintenance costs and carbon emissions. In addition, 3 Waters considered that major upstream network upgrades would also be required.
451. DCC 3 Waters also did not support extending wastewater servicing to any sites that are lower in elevation than Scroggs Hill Road (on either side), as these would require wastewater pumping. This is particularly problematic on the southwest side of the road. In addition, significant downstream networks upgrades would be required to the wastewater network and no funding to service the site for wastewater has been budgeted in the 10 Year Plan 2021-31.
452. Onsite stormwater attenuation would be required to ensure that there is no increase in the peak stormwater discharge rate from the site and 3 Waters raised concerns about the affordability of this.

2.3.4.3.6 Reporting Officer's recommendation

453. Mr Morrissey considered that rezoning this site would be inappropriate due to transportation and, if servicing were required, 3 waters issues. He did not recommend rezoning this site unless we were satisfied that the necessary roading upgrades were feasible. He also noted that, if rezoning were to proceed, protection of existing vegetation would be required in the area to the west of Scroggs Hill Road. He further considered that

any rezoning should be limited to Large Lot Residential 1 density which would allow for self-servicing of 3 waters and would also help lessen effects on visual amenity.

2.3.4.3.7 Decision and reasons

- 454. We reject the submissions seeking to rezone RS220.
- 455. Based on the evidence of Mr Morrissey and Mr Watson, we do not consider that rezoning RS220 to residential is consistent with Policy 2.6.2.1, given the transportation issues that exist for this site. We adopt the evidence of Mr Watson that rezoning RS160 would require significant roading improvements at the southern extent of Scroggs Hill Road, and highlight that no evidence was presented to address how this issue could be feasibly resolved.
- 456. We also acknowledge the issues with 3 waters. We understand that, at Large Lot Residential 1 density, the sites could be self-serviced for water and wastewater; however, stormwater management may still pose an issue and we also note that the feasibility or effectiveness of self-servicing has not been assessed. We further note the opposition of the ORC to this rezoning request and their tabled evidence that supported the officer's recommendation to reject the submissions seeking rezoning.
- 457. Overall, the only evidence before us does not support the rezoning request.

2.3.4.4 16 Hare Road and 7 Kayforce Road, Ocean View (GF03)

- 458. This section addresses the submissions covered in section 5.2.5 of the section 42A report.
- 459. Variation 2 proposed to rezone GF03 from Rural Residential 1 zone to Township and Settlement zone.
- 460. The section 42A report notes that the site is 3.5ha in area and is a flat, reasonably sunny, site located on the edge of Brighton. Taylors Creek passes through the site. The site has an approximate feasible capacity of 38 – 48 dwellings. The reasons for rezoning summarised in the section 42A report included that the site scored well across most of the rezoning criteria. There is access to public transport and to the nearest primary school (Big Rock). Significant issues were identified in relation to the wider transport network, as well as some 3 waters issues, but these were all considered manageable.

2.3.4.4.1 Submissions received

- 461. The *Campbell Family Trust (S192.001)* supported the proposed rezoning and for reasons such as the property has good slope, good transport connections and a pleasant outlook. The area is increasingly popular, the infrastructure in Hare Road was designed to support further residential development, and the site is suitable for much needed residential capacity.
- 462. The *Saddle Hill Community Board (S56.006)* supported the rezoning, provided that development does not put pressure on the infrastructure of existing residential dwellings and surroundings. A further submission from *Stewart Campbell (Campbell Family Trust) (FS231.2)* opposed this submission and stated that the impacts on infrastructure can be managed.
- 463. *Mike Ind (S42.001)* opposed rezoning due to issues around infrastructure upgrades, the risk of flooding from Taylors Creek, a potential increase in noise levels, loss of rural views and rural character, an increase in traffic volume and pressure on local intersections and roading.

A further submission from *Stewart Campbell (Campbell Family Trust) (FS231.2)* opposed this as it considered the issues raised by the submitter can be adequately managed. Mr Ind did not appear at the hearing.

2.3.4.4.2 3 waters

464. The DCC 3 Waters evidence was that some major upstream network upgrades may be required for potable water in the future but are not anticipated within the next 10 years. A minor network extension is required for wastewater and significant downstream upgrades are required to the wastewater network. The 10 year plan includes funding for all costs associated with extending 3 waters servicing to the site, where this is necessary. The 10 year plan also includes the majority of funding required for existing network upgrades across the city. Local connections to the 3 waters networks would be funded by the developer.

2.3.4.4.3 Hazards

465. Hazard risk was assessed by Stantec who were engaged by the Council. Stantec's advice, as outlined in the section 42A report, was that the site has medium level hazards associated with stormwater and flooding from Taylors Creek. It noted that flood hazard assessments would be required to identify the suitability (or not) of the site for higher density development, to confirm the extent and impacts of flooding, especially in relation to potential landslides impeding Taylor Creek. Hazard mitigation would likely require extensive earthworks to develop the lower lying land within this site, in order to appropriately mitigate the risk from stormwater and flooding hazards.
466. The section 42A report also noted that an NDMA is proposed to be applied to the site. This would require appropriate stormwater management, including that there is to be no increase in the pre-development peak stormwater discharge rate into any public or private stormwater system. Where this is not practicable, any adverse effects from an increase in the discharge on any public or private stormwater system are required to be no more than minor.
467. Mr Neil Johnstone, of Flood Sense Limited, attended the hearing on behalf of the submitters and presented evidence on the flood risk and effects of climate change. He concluded there was no significant flood risk and that relatively straightforward engineering solutions exist to improve the performance of the existing watercourse and to decrease the risk of stormwater related hazards. He did not consider there was a need for extensive earthworks to mitigate the low risk associated with stormwater.
468. Mr Campbell, the owner of 16 Hare Road, also tabled a statement noting that there is no history of flooding on this property.
469. In his response, Mr Paterson of Stantec considered that the assessment from Flood Sense Limited had properly addressed the flood risk for the site. He noted that a stormwater assessment and flood mitigation design will likely be required at the time of resource consent/development, but that overall the evidence provided is validation that the site is suitable for rezoning.

2.3.4.4.4 Effect on rural character and amenity

470. In response to Mr Ind's submission, Mr McKinlay's (DCC Landscape Architect) provided evidence in the section 42A report to the effect that the proposed rezoning would result in localised adverse effects on existing views from some neighbouring properties. His evidence

was that the views of the land would be replaced by a more urban outlook, however, overall, development would have limited effects on the character and amenity of the wider surrounding area.

2.3.4.4.5 *Impacts on traffic and road safety*

- 471. Mr Watson, DCC Transport, assessed that localised transport upgrades would be likely to be required, with footpaths linking to the existing footpath at the Kayforce Road/Hare Road/Edna Street intersection, as well as improvements to the intersection.
- 472. He considered an integrated transport assessment would be required at the time of subdivision to ensure transport effects are adequately considered in the final design, including any necessary improvements to the Kayforce Road/Hare Road/Edna Street intersection and the Edna Street layout. Mr Watson considered that any upgrades required would be undertaken by the developer.
- 473. Mr Watson also noted that it may be possible to link through to Kayforce Road across the land at 8 Kayforce Road and that potential road linkages between the current development site and 8 Kayforce Road should be preserved. This could be addressed at the time of subdivision.

2.3.4.4.6 *Reporting Officer's recommendation*

- 474. Mr Morrissey recommended retaining GF03 as notified subject to a new development mapped area. He considered that rezoning the site to Township and Settlement was consistent with Policy 2.6.2.1, and any matters could be appropriately addressed at the time of subdivision consent.

2.3.4.4.7 *Decision and reasons*

- 475. We accept the evidence of Mr Johnstone in relation to the potential flood hazard of the site, and the evidence of the DCC experts that the site is suitable for rezoning and any issues, including on the road network, can be managed at the time of subdivision. We agree with the Reporting Officer that application of a new development mapped area will mitigate the risk from stormwater flooding.
- 476. The evidence received for this site indicates that rezoning is able to be supported from a 3 waters, hazards, landscape, and transportation perspective. We also note the only expert planning advice we received was in support of the rezoning.
- 477. Accordingly, we reject the submission by *Mike Ind (S42.001)* opposing the rezoning. We note the submission by the *Saddle Hill Community Board (S56.006)* supporting the change provided that development does not put pressure on the infrastructure of existing residential dwellings. We accept the evidence from DCC 3 Waters that the upgrades are manageable.
- 478. We therefore retain Change GF03 as notified. As a consequential change under clause 16, we have added this site to the list of NDMA's in Appendix 12C of the Plan.

(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-Waihola 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 D – Table of Submitters		
Further Submission reference	Name	Contact
FS184	Otago Regional Council	warren.hanley@orc.govt.nz
S271	Otago Regional Council	warren.hanley@orc.govt.nz
S56	Saddle Hill Community Board	stensmith@xtra.co.nz
FS217	Scott and Justine Weatherall	Scott.weatherall@xtra.co.nz
S62	Richard and Rosalind Mains	mains_mcq@xtra.co.nz
FS111	Isak Gunnarsson	isakgunnarsson@gmail.com
FS135	Kaye Wilson	kaye.wilson@otago.ac.nz
FS188	Paul Anderson	zeepaul@outlook.com
FS70	David Edmonds	24B Scroggs Hill Road Brighton
FS72	Dean Edmonds	195 Moturata Road, Taieri Mouth
FS75	Deborah and Keven MacLeod	kev.debmac@xtra.co.nz
FS92	Frances Edmonds	24B Scroggs Hill Road Brighton