2GP VARIATION 2 OUT OF SCOPE
HEARINGS COMMITTEE AGENDA

WEDNESDAY 27 OCTOBER AND THURSDAY 28 OCTOBER, 9.00 AM
OTARU ROOM, 2ND FLOOR, CIVIC CENTRE

MEMBERSHIP: Commissioner Paul Rodgers

IN ATTENDANCE: Jennifer Lapham (Governance Support Officer)

PART A (Commissioner has the power to decide these matters):

1 **Determination on Out of Scope submissions lodged in relation to proposed Variation 2 to the Second General Dunedin City District Plan (2GP)**

Introduction

Procedural Issues
Any procedural matters to be raised.

Objections

Refer to pages 3 - 29

Pre-circulated Evidence

Refer to pages 30 - 166

Speaking Schedule

Refer to pages 167 -168

PLEASE NOTE: The **only** section of the hearing which is not open to the public is the Commissioner's final consideration of its decision, which is undertaken in private. Following completion of submissions by the applicant, submitters and the applicant's right of reply, the Commissioner will make the following resolution to exclude the public. All those present at the hearing will be asked to leave the meeting at this point.

RESOLUTION TO EXCLUDE THE PUBLIC

To be moved:

"That the public be excluded from the following parts of the proceedings of this meeting, namely, Item 1.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48 (1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

	General subject of each matter to be considered.	Reason for passing this resolution in relation to each matter.	Ground(s) under section 48 for the passing of this resolution.
1	**Determination on Out of Scope submissions lodged in relation to proposed Variation 2 to the Second General Dunedin City District Plan (2GP)**	**That a right of appeal lies to any Court or Tribunal against the Dunedin City Council in these proceedings.**	**Section 48(1)(d)**

DUNEDIN CITY COUNCIL HEARING PANEL

UNDER	the Resource Management Act 1991 (the Act)
IN THE MATTER	of Variation 2 to the Second Generation Dunedin City District Plan
BETWEEN	**BEN AND RAEWYN WALLER**
	Intending Submitters/Objectors
AND	**DUNEDIN CITY COUNCIL**

NOTICE OF OBJECTION TO STRIKE OUT SUBMISSION 236.001

Section 357, Resource Management Act 1991

Dated 23 June 2021

ROSS DOWLING MARQUET GRIFFIN SOLICITORS
DUNEDIN

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Solicitor: A J Logan

NOTICE OF OBJECTION

Introduction

1 On 4 March 2021 Ben and Raewyn Waller ("the submitters") made a submission on Variation 2 – Additional Housing Capacity to the Second Generation Dunedin City District Plan ("Variation 2").

2 The submitters sought to rezone land at 457 Purakaunui Road, Purakaunui as Township and Settlement with development being subject to a Structure Plan.

3 The Hearing Panel struck out the submission as being out of scope, giving the following reasons:

> "***(b) rezoning that is not contiguous with areas assessed***
>
> *60. The submissions in this category have been assessed as being for land in new areas which are not contiguous with the areas included in Variation 2. For the most part the land requested to be rezoned is well separated from areas assessed in Variation 2, and in many cases the land is also of large area meaning the section 32 assessment that was carried for the variation does not apply. There are also issues regarding the principles of natural justice, as set out in our earlier discussion on that point.*
>
> *61. We accept Ms McEwan's recommendations that all of the submission points in this category are clearly outside of, and are not on, Variation 2.*"

Objection

4 The Submitters object to the decision striking out their submission (236.001).

Grounds for Objection

5 Variation 2 was proposed to give effect to the requirements of the National Policy Statement on Urban Development 2020 ("NPS-UD") and to address Dunedin's housing capacity shortfall, identified during the analysis and monitoring required by the NPS-UD.[1]

[1] Section 32 Report, Page 5 at paragraph 3

6 Dunedin has a shortfall of housing capacity over the short, medium and long term[2].

7 A range of different house types in different areas is required to meet the different needs and demands of Dunedin people.

8 Variation 2 is intended to respond to housing demand and provide housing choices.

9 457 Purakaunui Road was not rezoned by Variation 2.

10 Purakaunui, Osborne and Long Beach Catchment has a severe shortage of housing capacity and has experienced high demand for residential housing.

11 The submission is within the ambit of the plan change as the area submitted on is capable of providing additional housing capacity and housing choices in accordance with the purpose of Variation 2. Therefore, the submission is in scope.

12 The Submitters also adopt with any necessary changes the arguments in the "Joint Submissions" in particular the memorandum dated 3 May 2021 from Gallaway Cook Allan. A copy is provided with this Objection.

13 The hearing was conducted in breach of the principles of natural justice and fairness.

……

A J Logan/T M Sefton

Solicitor for Ben and Raewyn Waller

Date: 23 June 2021

[2] Section 32 Report, Page 7 at paragraph 13

The Intended Submitter/Objectors' address for service of any documents or notices in connection with this objection is –

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MEMO

TO: Paterson Pitts Group

FROM: Derek McLachlan

SUBJECT: VARIATION 2 - SCOPE

MATTER NO: 989622-2

DATE: 3 May 2021

EXECUTIVE SUMMARY

The question of scope is not as 'clear cut' as suggested by the Dunedin City Council Scope Report or within Minute 1 of the Panel. We have identified the following factors that form part of an assessment of whether a submission is 'on' a plan change. The Panel should give due consideration to these matters when they make a determination under section 41D Resource Management Act 1991 ('**RMA**').

1. While producing Variation 2, the Council initially assessed the possibility of a wider range of sites around Dunedin. The following consultation procedures form part of Variation 2 process:

   (a) The two Reports[1] discussed within the Section 32 Report have no spatial limitation. It is unclear how the decision to restrict these areas was made;

   (b) The Council consulted with various planning consultants, requesting sites that should form part of Variation 2. There was no clear process or timeline to provide these sites to Council, and given changes in timelines during development of the Variation, it was not clear when the 'cut-off' date for lodging submissions was. This has potentially caused prejudice to parties who wished to have their sites assessed under Variation 2;

   (c) Letters were distributed to the general public which identified whether Council was going to include those sites as part of Variation 2 or not. These Letters must have been predicated by a substantive assessment of whether the site was appropriate or not. These assessments should have formed part of the section 32 Report. We are concerned that the 32 Report does not accurately record the full scope of sites assessed by Council;

2. Within Minute 1, the Panel have identified that they do not have recourse to assess Council's decision to limit the scope of Variation 2. We agree that the two limbs of the *Clearwater* test are the appropriate starting point, but we also consider that a consent authority can question whether a Council should have assessed alternative sites. Recent case law has discussed the principle that Council should not benefit from an incomplete section 32 assessment. This requires the Panel to assess the purpose of the Variation and whether it is the most appropriate way to achieve the Objectives of the Plan;[2]

[1] Dunedin City Council Housing Framework Predictions: The Housing We'd Choose (Research First, December 2019; Planning for Housing Survey Report, Dunedin City, February 2020

[2] Resource Management Act 1991, section 32(1)(b)

3. Council's description of the 'purpose' of the plan change is inaccurate. The purpose of the Variation is to give effect to the NPS-UD 2020. Council's description of the proposal, and failure to assess alternatives result in an incomplete section 32 Assessment; and

4. Any prejudice to third parties can be alleviated through the further submission process. Given that Variation 2 is still within preliminary stages, the prejudice warned of within Clearwater and *Motor Machinists* has not yet materialised.

Relief Recommended

5. In light of these considerations, we consider the following approach to be an appropriate solution for submitters seeking rezoning outside of the areas identified within Appendix 4:

   (a) The Panel do not exercise their authority to strike out submissions pursuant to section 41D; and

   (b) Sites that have sought residential zoning through original submissions (but not identified within Appendix 4) are to be publicly notified and subject the further submission process.

   (c) Given the scale of scope concerns, the Panel provides submitters with an opportunity to be heard directly through this process (as opposed to progressing 'on the papers').

Processes

6. Under section 41D RMA, the Panel may direct that a submission be struck out in whole or part. If the Panel <u>does not</u> make such a direction, then the Council will be required, pursuant to Clause 7, Schedule 1, to prepare Summary of Decisions requested. The Summary of Decisions must include submission that seek additional zonings. The public then has an opportunity to study the submissions and oppose/support if they wish.

7. Alternatively, the parties could progress through the section 357 Objection process, and further appeal to the Environment Court. The Environment Court has jurisdiction powers under section 293 to direct local authority prepare changes to a proposed Plan. This is the process discussed in *Tussock Rise.*

SCOPE OF VARIATION 2

8. Council have rejected a large proportion of sites requested for rezoning through submissions on the basis that they are not a submission 'on' the plan change. We outline the aspects of the 32A Report (and corresponding appendices) that provide guidance on the scope of Variation 2.

Public Notice

9. The DCC website clarifies the scope of the Variation as being limited to the detail within the Section 32 Report and Summary of Changes Report:[3]

> *The variation is subject to the RMA Schedule 1 process for making submissions, further submissions and the ability to appeal decisions. However, the variation is limited in scope and it is not proposed to re-open it to submissions and decisions on aspects of the 2GP that are beyond the scope of the variation summaries listed in the Section 32 Report.*
>
> *Those wishing to make submissions on aspects of this variation should restrict their submission to the scope of the variation as detailed in the Section 32 Report and Summary of Changes documents.*

10. The Summary of Changes documents provides an introduction as follows:[4]

> *Variation 2 to the Second Generation Dunedin City District Plan (2GP) is not a full plan review, but a focussed suite of changes to enable additional housing capacity through specific rule and policy changes and through rezoning specific sites.*
>
> *A full review of all the residential zone provisions and residential zoning across the entire city was not undertaken as this was recently done through the development of the 2GP. The 2GP is still in the appeal phase and re-opening large parts of the plan to a new variation will slow the progress towards making the plan fully operative. Until the 2GP is operative, parts of the 2006 District Plan continue to apply along with the 2GP provisions, which increases the complexity and costs of processing consents. The changes proposed in Variation 2 are therefore as focussed as possible, and scope has been deliberately limited to avoid re-consideration of a wide range of provisions.*
>
> *The scope of each proposal is identified in the 'purpose of proposal and scope of change' for each proposed change. Submissions may be made on matters encompassed by these scope statements. Submissions are encouraged to improve and fine-tune the changes proposed, or to suggest alternative methods of achieving the purpose of the proposal, so long as these suggestions are within the limits of the scope statement.*
>
> *For each change, a limited number of alternatives has been considered. In some cases, the only alternative considered is the status quo. This reflects the narrow scope of these proposed changes, which has naturally limited the number of reasonably practicable alternatives.*

11. The Summary of Changes identifies the following higher order provisions:

[3] https://www.dunedin.govt.nz/council/district-plan/2nd-generation-district-plan/plan-change-dis-2021-1-variation-2

[4] Variation 2 – Additional Housing Capacity Summary of Changes, February 2021 at p 2

H1	Capacity and demand criteria in Policy 2.6.2.1.a	The purpose of this proposal is to review the description of the residential rezoning criteria related to housing development capacity and demand that are in Policy 2.6.2.1.a and align them with the National Policy Statement for Urban Development 2020 (NPS-UD). The scope does not include a review of other aspects of Policy 2.6.2.1 as these criteria for zoning have recently been through a review process as part of the 2GP and have been settled. It also does not include a review of Objective 2.6.2 (other than to clarify the matter identified).	Amend Objective 2.6.2 to clarify that capacity must be provided to "at least" meet the demand over the medium term and amend 2.6.2.1.a to simplify the explanation of the criteria related to demand and capacity to just refer to needing to meet the demand over the short and medium term.	• Amend Objective 2.6.2 • Amend Policy 2.6.2.1.a

12. The purpose of the proposal is to ensure alignment with the residential rezoning criteria within the NPD-UD 2020. Summary of Changes Report describes the mapping changes as:[5]

> *"In the context of needing to identify additional housing capacity, the purpose of the proposal is to assess the appropriateness of rezoning several identified sites.*
>
> *The sites that were assessed as part of this proposal include the sites that are proposed for rezoning outlined in the Variation 2 – Section 32 Report, and those that were assessed but are not being proposed for rezoning in Variation 2, which are listed in Appendix 4 of the same report. The sites that were assessed but are not proposed for rezoning in Variation 2 do not meet relevant policy assessment criteria (or there is insufficient information to be confident that they would likely meet these criteria).*
>
> *Variation 2 does not include a full review of zoning in the city, but instead only a limited review of the zoning of some sites. The scope of the proposals to rezone land includes the need for specific plan provisions (for example, overlays or site-specific rules) to manage adverse effects of development of the sites being rezoned."*

13. The Section 32A Report provides some further clarity on the scope of changes proposed:[6]

> *"Variation 2 is not a full plan review, but a focussed suite of changes to enable additional housing capacity through specific rule and policy changes and through rezoning specific sites. A full review of all the residential zone provisions and residential zoning across the entire city was not undertaken as this was recently done through the development of the Second Generation Dunedin City District Plan (2GP). The 2GP is still in the appeal phase and reopening large parts of the plan to a new variation will slow the progress towards making the plan fully operative. Until the 2GP is operative, parts of the 2006 District Plan continue to apply along with the 2GP provisions, which increases the complexity and costs of processing consents. The changes proposed in Variation 2 are therefore as focussed as possible, and scope has been deliberately limited to avoid re-consideration of a wide range of provisions.*
>
> *The scope of each proposal is identified in the 'purpose of proposal and scope of change' section for each proposed change. Submissions may be made on matters encompassed by these scope statements. Submissions are encouraged to improve and fine-tune the changes proposed, or to suggest alternative methods of achieving the purpose of the proposal, so long as these suggestions are within the limits of the scope statement."*
>
> *For each change, a limited number of alternatives has been considered. In some cases, the only alternative considered is the status quo. This reflects the narrow scope of these proposed changes, which has naturally limited the number of reasonably practicable alternatives.*

[5] Variation 2 – Additional Housing Capacity Summary of Changes, February 2021 at p 20
[6] Section 32 Report at [9]-[10]

14. The Section 32 report re-iterates the Council's position that the scope is to be limited to the 'purpose of proposal and scope of change'.

15. We note that the purpose of the proposal is described 'in the context of needing to identify additional housing capacity'. This is a necessary component of the purpose statement because the Variation also proposes to amend the higher order provisions relating to residential zoning (particularly Objective 2.6.2 and Policy 2.6.2.1.a). To fully understand the 'context of additional housing capacity' we must refer to the documents contained within the Section 32 Report itself.

The 'context of additional housing capacity'

16. The need for additional housing capacity is discussed in various Reports appended to the Section 32 Report. These include:

(a) Dunedin City Council Housing Framework Predictions: The Housing We'd Choose (Research First, December 2019); The Scope of this report is summarised as:[7]

> *This study 'Dunedin Housing We'd Choose' surveyed 770 Dunedin residents, with the aim of estimating the level of demand for different types of dwellings in different locations….*
>
> *The study divided the city into six 'catchments': inner city (Central Business District Zone (CBD) and adjoining commercial zones), inner suburbs, outer suburbs, South Dunedin, Mosgiel and outer areas (Figure 4). For this report, South Dunedin has been incorporated into the inner suburbs due to its small size relative to the other catchments.*

Figure 4: Housing catchments

(b) Planning for Housing Survey Report, Dunedin City, February 2020[8]

[7] Section 32A report at p 10

This consultation, the Planning for Housing Survey, provided the wider community with an opportunity to share their views on the provision of housing capacity in Dunedin, to inform changes to the 2GP and development of wider, housing-related strategic policy. This survey was self-selected, so is not statistically representative, and was part of the community consultation to develop Variation 2, that also included discussions with key stakeholders. It used an online questionnaire that included questions about which areas of the city should be rezoned to residential to provide for the development of new houses (greenfield development) and where more homes, such as apartments and townhouses, could be built in existing urban areas (intensification).

(c) The purpose of the Housing Survey Report is identified within section 1.2 of the Housing Survey Report:

The DCC conducted an online 'Planning for Housing Survey' in October 2019, to provide the wider Dunedin community an opportunity to share their views on how planning for housing in Dunedin should be approached. This included questions on which areas of the city should be rezoned for new houses (greenfield development) and where more homes, such as apartments and townhouses, could be built in existing urban areas (intensification). A copy of the survey questionnaire is included in Appendix A. Results from the Planning for Housing Survey will contribute to the approach Council takes in responding to housing-related issues, including through Variation 2 to the 2GP and future plan changes and policy development.

(d) The Housing Survey Report was not spatially limited, and the results of the survey were provided in Figure 1 of that Report:[9]

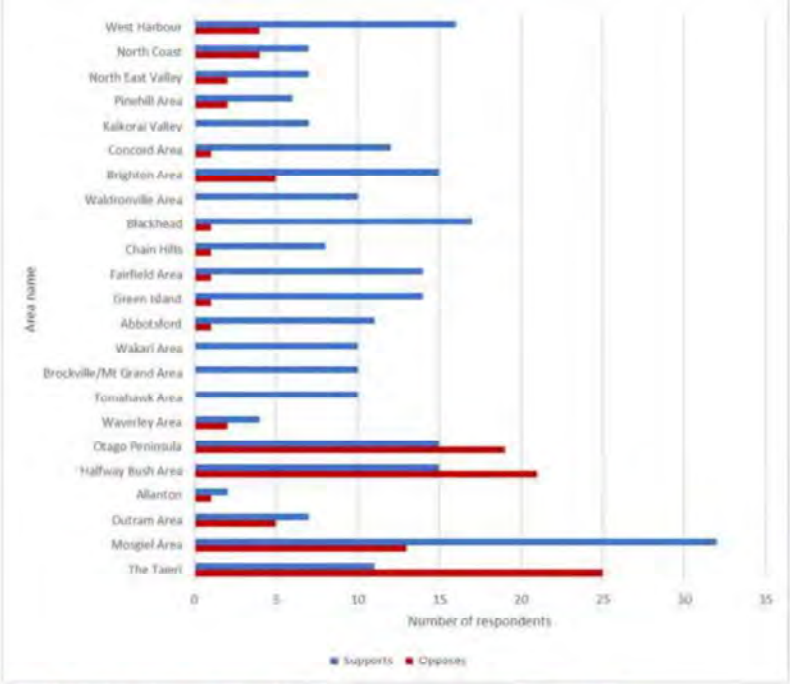

Figure 1: Views on the suitability of specified locations for greenfield rezoning

(e) A summation of results for Greenfield Zoning is identified at section 3.1.3:[10]

[8] Planning for Housing Survey Report, Dunedin City, February 2020 at p 5
[9] Ibid at p 8

> *Overall, the results show general support for greenfield rezoning around the urban fringes of Dunedin, especially closer to the central city and where connection to existing or upgraded infrastructure is easiest (3-Waters and transport). The main exception is at Halfway Bush, a proportion of the local community is opposed to urban growth proposals, leading to some divergence in the results for this area.*

17. The Reports that inform the need for 'additional housing capacity' have no spatial limitation. At this point in Council's process, there was no clear limitation on sites for consideration.[11] It is not explained in the Section 32 Report how the greenfield sites as described in section 3.1.3 above were subsequently narrowed down. Such assessments must have been undertaken through the development of Variation 2.

18. We also understand that prior to notification of Variation 2, Letters were sent to landowners who were being considered for Variation 2. The rejected landowners are not identified within the Section 32 report. The 'preliminary' processes confirm that the selection of sites for assessment within Variation 2 was not arbitrary, although again, the selection methodology is not discussed in the Section 32 Report.

19. Further to this, consultation occurred with various consultants within the District, and sites were requested for assessment. We have been advised that due to various amendments to consultation timelines, as well as lack of communication on the relevant timelines, high quality sites were not put forward for assessment (and the general public simply not being aware that there was an opportunity to put their site forward for assessment). As discussed in case analysis below, there is guidance that the scale of initial assessments and consultation with the public form part of the assessment of whether a submission is 'on' a plan change.

20. The section 32 Report is not clear on the consultation process or relevant timelines. We note that there are some inconsistencies in the sites elected for consideration, for instance, where 53-100 Scroggs Hill road has not been assessed but included within the section 32 Report (due to lack of time). Such an approach could be similarly be applied to sites now requested for rezoning within original submissions.

21. We also understand that various submissions were put forward to Council within the internal timelines set by planning staff, however these have not always been included within the Council's assessment of scope. We understand one example of this to be Ms Campbell (Rows #59 & #90).

22. While the 'purpose statement' suggests that the Variation has been limited to specified sites, in reality, Variation 2 has been a substantially larger project. We do not consider the 'purpose statement' to be consistent with the actual purpose of the plan change, which is to give effect to the NPS-UD 2020 through identifying appropriate sites to provide additional housing capacity.

23. In other situations in may be appropriate for Council to restrict a Plan Change to identified sites, however this plan change involves issues of broader compliance with the NPS-UD 2020. Policy 2 of the NPS-UD 2020 requires that the Council provide 'at least' sufficient development capacity. There is no prescribed maximum that Council are restrict to. The interrelated nature of amendments to Strategic Objectives and Policies must be considered in conjunction to re-zoning considerations. The Summary of Changes does not address this relationship.

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[10] Ibid at p 12

[11] As discussed in *Well Smart and Calcutta* below, initial assessments are an important factor when considering scope of an assessment.

CASE LAW – "ON" A PLAN CHANGE

Overarching Principles

24. When determining whether a submission is "on" a Plan Change, the leading case is *Clearwater Resort Limited v CCC*[12] which applies a two-step test:

    1. *A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.*

    2. *But if the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly "on" the variation.*

25. *PNCC v Motor Machinists Limited* elaborated and provided an exemption as follows:[13]

    "One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource (such as a particular lot) is altered by the plan change. If it is not then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change. That is one of the lessons from the Halswater decision. Yet the Clearwater approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further s 32 analysis is required to inform affected persons of the comparative merits of that change. Such consequential modifications are permitted to be made by decision makers under schedule 1, clause 10(2). Logically they may also be the subject of submission."

26. We acknowledge that Council has implemented this 'consequential' exemption, and has accepted various sites where they are adjoining, or part of a site, that was originally identified within Appendix 4.[14] However, we do not agree that these principles are restricted to 'consequential' amendments only.

Application of Principles

27. These principles have recently been applied in the context of QLDC through *Well Smart* [15] *and Tussock Rise Limited v QLDC.*[16] We have also identified other cases that provide guidance such as *Bluehaven*[17] and *Calcutta*[18] which we also discuss below.

Well Smart

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[12] *Clearwater Resort Limited v CCC* (HC) Christchurch AP 34/02 at [66]
[13] *PNCC v Motor Machinists Limited* [2013] NZHC1290; [2014] NZRMA 519
[14] Out of Scope Submissions Report, Table 1 Methodology
[15] *Well Smart Investments Limited (NZQN) v QLDC*
[16] *Tussock Rise Limited v QLDC* [2019] NZEnvC 111
[17] *Bluehaven Management Limited v WBOPDC* [2016] NZEnvC 191
[18] *Calcutta Farms Limited v Matamata-Piako District Council* [2018] NZEnvC 187

28. In *Well Smart*, the Court assessed whether submitters outside of the PC50 area could submit to be included within PC50. A significant aspect of the factual context was that earlier documents identified a broader area for potential zoning, while the section 32 restricted the assessment of alternative uses assessment to the sites with proposed PC50 only.[19]

> *However, it is clear from Appendix A to the Section 32 Evaluation that the appellant's land was considered potentially suitable for rezoning to QTCZ early on. Curiously, at that stage the Council's Lakeview site was not included in the evaluation.*

29. The Court held the following:

(a) The Court rejected the proposition that because the land was outside the area identified within PC50 that it was automatically beyond scope. The Court applied the exception within *Motor Machinist* that incidental or consequential extensions are appropriate provided no substantial section 32 assessments are required to inform potentially affected persons.[20]

(b) Applying the second limb of the *Clearwater* test above, the Court was concerned with whether allowing the submission would result in a 'sidewind' where potentially affected parties were not given fair opportunity to assess the proposal.[21]

> *I find (if barely) that the potential submitters on the appellants' submissions were not given sufficient notice by the combination of the Section 32 Evaluation, and the Council's summary of submissions.*

(c) The Court was also concerned with the concept of 'fair play' during the production of a plan change:[22]

> *A section 32 evaluation is usually prepared by the proposer of the plan change so it has an interest in confining the plan change to the boundaries (and issues) it wants dealt with. Despite that it must comply with section 32(1) RMA. Indeed, if a section 32 evaluation fails to consider the consequences of some flexibility in the boundary location (because that flexibility might more appropriately achieve the relevant objectives) then that may be a failure in the section 32 evaluation. A sense of fair play suggests it should not lead to jurisdictional consequences for a submitter who claims to have located a better boundary.*

(d) Ultimately, the Court found that the appellant's submission to extend PC50 did not fit within the exemption of *Motor Machinists* above. In short, the fact that potential third parties were not given fair notice of the extension of PC50 was determinative for the Court.

24. We note that the processes in *Well Smart* can be distinguished from Variation 2, because the 'Summary of Submissions' have yet to be produced, and the general public can still submit through the further submission process. Unlike PC50 which was at the latter stages when scope had to be considered by the Court, 'sufficient notice' can still be provided to potential submitters.

Tussock Rise

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[19] *Calcutta Farms Limited v Matamata-Piako District Council* [2018] NZEnvC 187 at [5]
[20] *PNCC v Motor Machinists Limited* [2013] NZHC1290; [2014] NZRMA 519 at [81]
[21] *Well Smart Investments Limited (NZQN) v QLDC* at [39]
[22] *Well Smart Investments Limited (NZQN) v QLDC* at [23]

25. The Court in *Tussock Rise* applied the *Clearwater* principles to reach a different outcome. The significant factor for the Court was that the site was adjoining a proposed residential zone subject to appeal. The risk of prejudice to other submitters could be remedied in this circumstance:[23]

> *I hold that TRL can bring itself within the exception to some extent because its land is immediately adjacent to the proposed Low Density Residential zone. On the other hand, the Industrial B zone is not discussed in the section 32 analysis….*
>
> *For present purposes I consider that the site, because it is adjacent to the proposed zone, comes within the consequential exemption contemplated by Kos J*.

26. The Court in *Tussock Rise* held that the 'Note' appended to the Council's legend is subject to an implicit proviso that a submission may seek to amend boundaries of the proposed zone in the PDP (being consistent with the exemption provided by *Motor Machinists).*

27. *Tussock Rise* only had to address a 'consequential amendment' but discussed a potential situation where this strict exemption did not apply. The Court discussed the remedies available in a situation where it was held that a submission was 'on' a plan change, but there was inadequate opportunity for potential submitters to engage. The solutions included:[24]

    (i) *Promote a variation under clause 16A Schedule 1 RMA (to including the site) so both neighbours and public are notified of the submission.*

    (ii) *If the matter proceeds to Environment Court and the Court finds that third parties would have been prejudiced, then the court can adjourn the final decision about the site until the plan addresses the specific zoning of this site.*

    (iii) *The Court can direct consultation (and/or notification) under section 293 RMA.*

Bluehaven

28. *Bluehaven* takes a much broader interpretation to the *Motor Machinist exemption* and adopts an additional criterion of whether the s 32 evaluation report <u>should</u> have covered the issue raised in the submission. Otherwise, the Court reasoned, a Council would be able to ignore potential options for addressing the matter that is the subject of the plan change and prevent submitters from validly raising those options in their submissions.[25]

> *Our understanding of the assessment to be made under the first limb of the test is that it is an inquiry as to what matters should have been included in the s 32 evaluation report and whether the issue raised in the submission addresses one of those matters. The inquiry cannot simply be whether the s 32 evaluation report did or did not address the issue raised in the submission. <u>Such an approach would enable a planning authority to ignore a relevant matter and thus avoid the fundamentals of an appropriately thorough analysis of the effects of a proposal with robust, notified and informed public participation</u>.*

29. *Tussock Rise* criticised the approach in *Bluehaven* on the basis that the approach still has the potential to undermine fairness to persons who might have wished to lodge submissions (i.e third parties).[26]

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[23] *Tussock Rise Limited v QLDC* [2019] NZEnvC 111 at [67]-[69]
[24] *Tussock Rise Limited v QLDC* [2019] NZEnvC 111 at [83]-[87]
[25] *Bluehaven Management Limited v WBOPDC* [2016] NZEnvC 191 at [39]
[26] *Tussock Rise Limited v QLDC* [2019] NZEnvC 111 at [60];

> *While Bluehaven raises similar concerns of injustice to submitters as mentioned in Well Smart (thus raising questions whether a plan change (or variation) that is tightly confined by a limited section 32 report may lead to an inefficient use of resources) it does not deal with Kos J's fundamental point in Motor Machinists which is that if the section 32 report omits discussion of the alternative resources that the submitter wishes to refer to, then other potential submitters may be prejudiced because they will neither be aware of the alternative resources, nor of the evaluation of their use compared with that in the plan change (and section 32 report). Bluehaven appears not to deal with the question of fairness to persons who might have wished to lodge submissions (or on appeal give* evidence to the court).

30. While *Tussock Rise* expresses some concern for the approach taken in *Bluehaven*, it does identify potential solutions for submitters in such situations:[27]

> *In passing I note that one potential answer (in the Environment Court) to the unfairness to submitters of a limited section 32 report would, in principle, be to declare that section 32 has not been complied with. However, any such course is (probably) precluded by section 32A which states that any challenge to a section 32 report may only be made in a submission. This suggests that it might be a useful precaution, in most submissions on a plan change, to allege that section 32 has not been properly complied with because it has not identified other reasonably practicable options for achieving the objectives.*

31. We note that various submissions filed by Paterson Pitts[28] have challenged the completeness of the section 32 report, which is consistent with the recommendation made by Judge Jackson in *Tussock Rise* above.[29] The question of whether a complete 32 assessment has been undertaken is a live issue, and now needs to be considered against all submissions received.

32. Both *Tussock Rise* and *Bluehaven* are concerned with the completeness of a section 32 Report and ensuring all relevant options are available for consideration. This is then balanced with the need to ensure there is adequate public participation, although they provide slightly different solutions.

33. We note that *Bluehaven* addresses the scope of rules within a plan change area (and whether the proposed rule changes are within scope of a plan change as opposed to zoning boundaries), so it is useful to see this applied in the context of zoning as well (as is discussed in *Calcutta).*

Calcutta

34. Council have referred to *Calcutta* within their scope report[30], although they have not addressed the Court's comments on the importance of a complete section 32 Assessment.[31] We do note that *Bluehaven* was followed in *Calcutta* which adopted their reasoning to a residential zoning proposal:[32]

> *"[78] In Bluehaven, the Court held that, in the context of the facts of that case, the submission had raised matters that should have been (and, at least to some extent, were) addressed in the s 32 report. The problem in this case is that the s 32 report, whilst referring to alternatives, did not outline what those alternatives were to any great degree. It*

[27] *Tussock Rise Limited v QLDC* [2019] NZEnvC 111 at [61]
[28] Submission of Wilpark Trust, 26 Camp Street, but carried over through other submissions.
[29] *Tussock Rise Limited v QLDC* [2019] NZEnvC 111 at [60];
[30] Out of Scope Submissions Report at [21]
[31] *Calcutta Farms Limited v Matamata-Piako District Council* [2018] NZEnvC 187 at [77]-[81]
[32] *Calcutta Farms Limited v Matamata-Piako District Council* [2018] NZEnvC 187 at [87]-[88]

certainly did not refer to Banks Road as an area for future residential development, even though this had actively been considered and favoured as an option previously…

[81] In my view, PC47 did involve changes to the management regime for residential activity and areas to be designated as future residential activity areas, so that it was open to Calcutta Farms to lodge a submission seeking an alternative position on the areas proposed in PC47 to either be Residential Zones or Future Residential Policy Areas, which is what it did. It did therefore address in its submission the extent to which PC47 changes the existing status quo…

[87] Whilst the scale and degree of a proposal can assist in determining whether a submission is "on a plan change", I do not read the Option 5 decision as indicating that it is determinative. Much will depend on the nature of the plan change which can assist to determine its scope, (whether it is a review or a variation for example) and what the purpose of it is. In this case, the purpose of the plan change is to review the future need for residential areas in Matamata, and to identify areas next to urban areas where future residential activity is proposed to occur. The method by which the latter is proposed to occur in PC47 is by the application of the Future Residential Policy Area notation. Underpinning the need for the size and scale of both new Residential Zones and the Future Residential Policy Area are the population predictions, which Calcutta Farms' submission directly sought to challenge. I agree with Mr Lang that the District Plan review process should be such that differing views on the appropriate scale of such policy areas can be considered, rather than assuming that the Council's nominated scale of policy areas represents the uppermost limit for future planning. I therefore agree with Mr Lang that the difference and scale and degree of what is proposed by Calcutta Farms is a matter going to the merits of the submission rather than to its validity.

[88] For the above reasons, I consider that Calcutta Farms' submission does address the extent to which PC47 changes the existing status quo.[33]

35. *Calcutta* also discusses the fact that an assessment of whether there would be prejudice to the public should be considered '*in the round*' of the factual scenario.

[92] When considering these matters in the round, I am of the view that any prejudice is only likely to occur if those who may have submitted wish to oppose Calcutta Farms' position. Given that there are only a few parties directly affected, their position is likely to be met by the Council and Ingham's case opposing the appeal, and if they are willing to do so, they may be called as witness to support either the Council or Ingham's cases.

[93] I am satisfied that there is no risk that a potentially affected party would not have the opportunity to participate if I found the submission to be "on" the plan change. This is not a situation akin to the Option 5 position, where there were a large number of people potentially affected, who would not have had an opportunity to be heard. Nor is it akin to the Motor Machinists case where what was proposed was considered by the Court to "come from left field".

36. Variation 2 draws a lot of comparisons to the situation described in *Calcutta*, particularly where the Court finds that Council's nominated areas are not determinative. The Court has balanced the potential prejudice to submitters, which remains important, however when considering the Variation 2 factual scenario, there remains opportunity for parties to engage through the further submission process. The issue of natural justice can be readily resolved.

Summary of Judicial Approaches

[33] Status quo is referring to first limb of Clearwater.

37. In applying the High Court Principles on whether a submission is 'on' a plan change, there are two distinct lines of reasoning since the original *Clearwater* decision:

(a) Judge Jackson (*Tussock Rise & Well Smart)* applied the *Motors Machinist* exemption strictly to alleviate prejudice to potential third parties. Predominant consideration was given to those who were not before the Court. Judge Jackson then introduced remedies to ensure that Council does not benefit from inadequate section 32 assessments and to cure any prejudice in relation to non-notification of interested parties.

(b) Judge Smith, Judge Kirkpatrick (*Bluehaven)* and Judge Harland (*Calcutta*) prefer a broader interpretation and to assess the submission against the purpose of the Plan Change or Variation. Considerations include the appropriate scale and location of policy areas (i.e should an area be included within Council's assessment).

38. The broader approach is preferable for submitters seeking inclusion of their site within Variation 2. However, even under Judge Jackson's more restricted approach, if a section 32 is defective, then there are remedies identified to ensure all relevant options are available for consideration.

Application to Variation 2

39. Under both approaches to the *Clearwater* principles, the Panel is required to consider whether Council have accurately described the purpose of the Plan Change, and whether the Section 32 has assessed appropriate alternatives. We consider the Panel's prefacing sentence to the limbs of the *Clearwater* test oversimplify their duties. [34]

> *Finally, on the scope aspect, I wish to point out that it is not for the Panel to assess the reasons for DCC having limited the scope of Variation 2 as it has done. The decision on what to include in a plan change or variation is up to the DCC. What the Panel needs to concern itself with is whether there are submissions that are outside the scope of the variation. Our decision will need to consider:*
>
> *(a) Whether the submission addresses the changes to the pre-existing status quo advanced by the plan variation (is the management regime being varied in the plan); and*
>
> *(b) Whether there is a real risk that people affected by the plan variation (if modified in response to the submission), would be denied an effective opportunity to participate in the plan variation process*

40. To be consistent with the approach outlined in *Clearwater* (as applied in *Bluehaven* , *Calcutta, and Tussock Rise and Well Haven*), the Panel should turn their mind to the completeness of the 32 Report, in particular, whether all alternatives have been assessed which are the most appropriate way to give effect to the Objectives of the plan.

41. The Court must consider the methods available remedy that prejudice. This is what Judge Jackson had done in *Tussock Rise* and why we consider it to be appropriate for sites seeking re-zoning (but not identified in Appendix 4 of the 32 Report), to be clearly identified and notified within the further submission process.

[34] Minute 1 of the Panel at [16]

42. In this situation, the Panel can decide not to utilise their authority pursuant to section 41D RMA, and rely on Council's obligation under Clause 7, Schedule 1 to notify the sites within the Summary of Decisions requested. This ensures the public have an opportunity to engage with the submissions before any substantive hearing.

PATERSONPITTSGROUP
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0800 PPGROUP

2 June 2021

Our Ref: 17615

City Planning
Dunedin City Council
PO Box 5045
Dunedin

Dear Sir / Madam

VARIATION 2
OUT-OF-SCOPE OBJECTION
GRANDVIEW 2011 LTD
231 SGNAL HILL ROAD

Please accept this notice as an objection under section 357 of the RMA.

This matter relates to Council's determination that the Variation 2 submission made by Grandview 2011 Limited is out of scope.

The submitter disagrees with Council's determination, for the following reasons-

1. The property lies adjacent to several properties that are subject to 2GP rezoning processes. Furthermore, one of these properties (at 233 Signal Hill Road) contains land that is proposed to become residential land under Variation 2.
2. The submission site is located in an area that is close to the central city, certainly much closer than many of the sites that Variation 2 has proposed to be rezoned.
3. Due to the small area of the submission property, it is better suited to residential land use than use as a rural parcel of land.
4. Council has received Variation 2 submissions from many of the surrounding property owners that also seek rezoning of the submission site to a residential zone format.

I trust that Council is able to receive this objection and refer the matter to the independent Panel. The submitter will anticipate an opportunity to attend a hearing in late July 2021.

Yours faithfully
PATERSON PITTS LIMITED PARTNERSHIP

Kurt Bowen
Registered Professional Surveyor

PATERSONPITTSGROUP
Your Land Professionals
www.ppgroup.co.nz
0800 PPGROUP

2 June 2021

Our Ref: 17615

City Planning
Dunedin City Council
PO Box 5045
Dunedin

Dear Sir / Madam

VARIATION 2
OUT-OF-SCOPE OBJECTION
JUSTINE RAGG
810 BRIGHTON ROAD

Please accept this notice as an objection under section 357 of the RMA.

This matter relates to Council's determination that the Variation 2 submission made by Justine Ragg is out of scope.

The submitter disagrees with Council's determination, for the following reasons-

1. The site identification and s32 evaluation processes applied by Council in determining the scope of Variation 2 were flawed as these processes relied on informal discussions with selective members of the public. Many submitters were not aware of the opportunity to suggest methods for Dunedin to increase its residential capacity within the timeframes allowed. The s32 evaluation should have taken a broader look at the opportunities for additional greenfields rezoning sites, rather than restricting its assessment to only those sites that were identified through informal discussions.
2. Due to the size of the submission property and its proximity to good access and services, the land is better suited to residential use than in support of a rural activity.
3. There are several greenfields sites proposed by Variation 2 that are located relatively close to the submission land (GF01 and GF03). These sites are slightly further from Dunedin City than the submission land. If the two proposed rezoning sites are considered by Council to be suitable for residential use, then it stands to reason that the submission sites should be assessed for the same purpose.

I trust that Council is able to receive this objection and refer the matter to the independent Panel. The submitter will anticipate an opportunity to attend a hearing in late July 2021.

Yours faithfully
PATERSON PITTS LIMITED PARTNERSHIP

Kurt Bowen
Registered Professional Surveyor

PATERSONPITTSGROUP
Your Land Professionals
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0800 PPGROUP

2 June 2021

Our Ref: 17615

City Planning
Dunedin City Council
PO Box 5045
Dunedin

Dear Sir / Madam

VARIATION 2
OUT-OF-SCOPE OBJECTION
MEGHAN MILLS
29 JOHN STREET, OCEAN VIEW

Please accept this notice as an objection under section 357 of the RMA.

This matter relates to Council's determination that the Variation 2 submission made by Meghan Mills is out of scope.

The submitter disagrees with Council's determination, for the following reasons-

1. The site identification and s32 evaluation processes applied by Council in determining the scope of Variation 2 were flawed as these processes relied on informal discussions with selective members of the public. Many submitters were not aware of the opportunity to suggest methods for Dunedin to increase its residential capacity within the timeframes allowed. The s32 evaluation should have taken a broader look at the opportunities for additional greenfields rezoning sites, rather than restricting its assessment to only those sites that were identified through informal discussions.
2. Due to the size of the submission property and its proximity to good access and services, the land is better suited to residential use than in support of a rural activity.
3. There are several greenfields sites proposed by Variation 2 that are located relatively close to the submission land (GF01 and GF03). These sites are slightly further from Dunedin City than the submission land. If the two proposed rezoning sites are considered by Council to be suitable for residential use, then it stands to reason that the submission sites should be assessed for the same purpose.

I trust that Council is able to receive this objection and refer the matter to the independent Panel. The submitter will anticipate an opportunity to attend a hearing in late July 2021.

Yours faithfully
PATERSON PITTS LIMITED PARTNERSHIP

Kurt Bowen
Registered Professional Surveyor

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2 June 2021

Our Ref: 17615

City Planning
Dunedin City Council
PO Box 5045
Dunedin

Dear Sir / Madam

VARIATION 2
OUT-OF-SCOPE OBJECTION
MICHAEL BYCK AND NICOLA O'BRIEN
23 JOHN STREET, OCEAN VIEW

Please accept this notice as an objection under section 357 of the RMA.

This matter relates to Council's determination that the Variation 2 submission made by Michael Byck and Nicola O'Brien is out of scope.

The submitter disagrees with Council's determination, for the following reasons-

1. The site identification and s32 evaluation processes applied by Council in determining the scope of Variation 2 were flawed as these processes relied on informal discussions with selective members of the public. Many submitters were not aware of the opportunity to suggest methods for Dunedin to increase its residential capacity within the timeframes allowed. The s32 evaluation should have taken a broader look at the opportunities for additional greenfields rezoning sites, rather than restricting its assessment to only those sites that were identified through informal discussions.
2. Due to the size of the submission property and its proximity to good access and services, the land is better suited to residential use than in support of a rural activity.
3. There are several greenfields sites proposed by Variation 2 that are located relatively close to the submission land (GF01 and GF03). These sites are slightly further from Dunedin City than the submission land. If the two proposed rezoning sites are considered by Council to be suitable for residential use, then it stands to reason that the submission sites should be assessed for the same purpose.

I trust that Council is able to receive this objection and refer the matter to the independent Panel. The submitter will anticipate an opportunity to attend a hearing in late July 2021.

Yours faithfully
PATERSON PITTS LIMITED PARTNERSHIP

Kurt Bowen
Registered Professional Surveyor

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2 June 2021

Our Ref: 17615

City Planning
Dunedin City Council
PO Box 5045
Dunedin

Dear Sir / Madam

VARIATION 2
OUT-OF-SCOPE OBJECTION
SIMON ROBERTS
808A BRIGHTON ROAD

Please accept this notice as an objection under section 357 of the RMA.

This matter relates to Council's determination that the Variation 2 submission made by Simon Roberts is out of scope.

The submitter disagrees with Council's determination, for the following reasons-

1. The site identification and s32 evaluation processes applied by Council in determining the scope of Variation 2 were flawed as these processes relied on informal discussions with selective members of the public. Many submitters were not aware of the opportunity to suggest methods for Dunedin to increase its residential capacity within the timeframes allowed. The s32 evaluation should have taken a broader look at the opportunities for additional greenfields rezoning sites, rather than restricting its assessment to only those sites that were identified through informal discussions.
2. Due to the size of the submission property and its proximity to good access and services, the land is better suited to residential use than in support of a rural activity.
3. There are several greenfields sites proposed by Variation 2 that are located relatively close to the submission land (GF01 and GF03). These sites are slightly further from Dunedin City than the submission land. If the two proposed rezoning sites are considered by Council to be suitable for residential use, then it stands to reason that the submission sites should be assessed for the same purpose.

I trust that Council is able to receive this objection and refer the matter to the independent Panel. The submitter will anticipate an opportunity to attend a hearing in late July 2021.

Yours faithfully
PATERSON PITTS LIMITED PARTNERSHIP

Kurt Bowen
Registered Professional Surveyor

Speaking Schedule

Hearing of Section 357 Objections

2GP Variation 2

Wednesday 18 August	**Represented by**	**Submitter**	**Address**	
9.00 am	Derek McLachlan, Gallaway Cook Allan.co.nz	Richard Muir	Bush Road, Mosgiel	
		Alec Cassie	Bush Road, Mosgiel	
		Roger and Janine Southerby	Bush Road, Mosgiel	
		Tony McAuliffe	Camp Street, Broad Bay	
		Murray Wilson & Paula Parker	Camp Street, Broad Bay	
		Brendan Murray	Centre Road, Tomahawk	
		Gladstone Family Trust	Gladstone Road North, Mosgiel	
		Invermark Investment Ltd	Huntly Road Outram	
		Wendy Campbell	Taieri Road, Abbotsford	
		Willowcroft Ltd	Huntly Road, Outram	
	Conrad Anderson	Custom Investments	Stevenson Road, Concord	
		Paddy Bleach		
Lunch Break				
1.30 pm	Kurt Bowen	Justine Ragg	810 Brighton Road	
		Michael Byck and Nicola O'Brien	23 John Street	
		Grandview 2011 Ltd	231 Signal Hill Road	
		Simon Roberts	808A Brighton Road	
		Meghan Mills	29 John Street, Ocean View	
2.45 pm	Emma Peters	Ben and Raewyn Waller	457 Purakaunui Road,	
Break				
** 3.30 pm	Dunedin City Council			

** **Note:** Hearing will continue at 9.00 am on Thursday 19 August.

**At conclusion of presentation by Dunedin City Council	Objectors Right of Reply			

** **Note:** Hearing will continue at 9.00 am on Thursday 19 August.

BEFORE THE INDEPENDENT COMMISSION
ON BEHALF OF THE DUNEDIN CITY COUNCIL

Under	the Resource Management Act 1991
In the Matter	of an Objection Notice pursuant to section 357

LEGAL SUBMISSIONS

GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN

Solicitor on record: Derek McLachlan
Solicitor to contact: Derek McLachlan
PO Box 143, Dunedin 9054
Ph: (03) 477 7312
Fax: (03) 477 5564
Email: derek.mclachlan@gallawaycookallan.co.nz

MEMORANDUM OF COUNSEL

May it please the Commission:

1. The Variation 2 Panel (The '**Panel'**) in its decision dated 31 May 2021 ('**The Decision'**) determined the following submitters submissions to be out of scope of Variation 2 (or The '**Variation'**):

    (a) Bush Road, Mosgiel

        (i) Richard Muir (156.001, Row 88)

        (ii) Alec Cassie (168.001, Row 20)

        (iii) Roger and Janine Southby (191.001, Row 89)

    (b) Camp Street, Broad Bay

        (i) Tony McAuliffe (50.001, Row 10)

        (ii) Murray Wilson & Paula Parker—Wilpark Trust (31.001, Row 13)

    (c) Centre Road, Tomahawk

        (i) Brendan Murray (251.001,Row 58 and 251.002, Row 102)

    (d) Gladstone Road North, Mosgiel

        (i) Gladstone Family Trust (219,001, Row 101)

    (e) Gladstone Road South, Mosgiel

        (i) Invermark Investments Limited (240.001, Row 68)

    (f) Huntly Road, Outram

        (i) Willowcroft Limited (238.001, Row 91)

    (g) North Taieri Road, Abbotsford

        (i) Wendy Campbell (228.002, Row 59 and 228.001, Row 90)

    (h) Stevenson Road, Concord

        (i) Custom Investments Limited (132.001, Row 71)

        (ii) Paddy Bleach (89.001, Row 72)

        (together the **Submitters**)

2. The Submitters adopted a legal opinion prepared by Gallaway Cook Allan for Paterson Pitts Group Limited referred to by the Panel as the '**Joint Submission'** in the Decision.

Reasons for Objection

3. The reasons for this Objection are:

    (a) Council have undertaken an inadequate section 32 assessment. The following factors are relevant to the consideration of this assessment:

        (i) The Section 32 Report inaccurately describes the purpose of Variation 2;

        (ii) The Section 32 Assessment does not accurately report on the consultation undertaken prior to the notification of Variation 2;

        (iii) The spatial limitations within the notified version of Variation 2 are not reflective of the consultation procedures undertaken prior to notification;

        (iv) Variation 2, as notified, is an incomplete mechanism to achieve compliance with NPS-UD 2020. This being the true purpose of Variation 2;

        (v) Council have notified amendments to the Residential Strategic Provisions of the Plan. When assessing the appropriateness of amendments to Strategic Provisions, Council should not predetermine the outcome (particularly spatially) of any subsequent zonings or rules;

        (vi) It is inappropriate to treat the proposed amendments of individual provisions as being confined to their specific 'purpose statement.' This is counter-intuitive to a holistic planning framework. A variation should recognise the interconnected nature of planning provisions. A purpose

summary should reflect the effects of an amendment rather than the Council's desired outcome.

(b) Any prejudice to third parties can be alleviated through the further submission process.

(i) Council have incorrectly categorised the relevant forms of prejudice. Prejudice to a third party is relevant where there is a 'potential affect' resulting from the relief sought. It does not extend to third parties who may have made a similar submission on the district plan. Any procedural prejudice is a result of Council's own processes, rather than this objection.

(ii) This objection does not seek re-notification of the entire district. Rather it provides specific sites that we submit <u>should</u> have been assessed as part of Variation 2.

4. A supplementary process is mandatory because:

(a) A submitter is entitled to seek alternative relief rather than that proposed by Council, this includes proposed alternate boundaries to those proposed policy or rezoning areas.

(b) As reasonable alternatives, the sites identified 'should' have been assessed through the section 32 Assessment, and are therefore submissions 'on a plan change' that should not be struck out pursuant to section 41D of the Act.

5. Whether Council 'should' have assessed these sites is also a factual question, which requires consideration of whether the sites are appropriate for re-zoning or not. To assist the panel, the respective consultants have prepared Appendix 5 assessments, which largely reflect the assessment process undertaken by Council staff within Appendix 6 of the section 32 Report. This also assists to creating a comparison to those existing Appendix 6 assessments.

The Panel's Decision-Making Process

6. The Panel records the most efficient decision-making process to be[1]:

   (a) Consider arguments by all parties on the papers; and

   (b) Question the reporting officer.

7. Only once the decision had been made were other parties able to object to the decision.

8. While expedient in theory, it is submitted this process resulted in an unsound Decision based on fundamental errors about the:

   (a) legal test of 'on' a plan change,

   (b) scheme of the Act disclosed by the meanings of 'variation', 'change' and 'proposal', and

   (c) purpose of Variation 2.

9. Additionally, Counsel submits, this approach led the Panel to adopt and, in some instances, perpetuate Council's inconsistent process in relation to the Submitters.

10. Despite progressing an 'expedient' approach, it now appears that the desired efficiency gains are unlikely to eventuate given the nearly 1000 further submissions have been received.[2] The number of original and further submissions made on Variation 2 provide a true representation of the scale and degree of Variation 2. The ranging relief within all those submissions, now forms part of the Variation 2.

11. It is our submission that the Council has taken a significant risk in attempting to confine the Variation to discrete proposals. We submit that this is inconsistent with the requirements of Schedule 1 and Section 32.

12. Whether the submitters submissions are within scope need to be viewed in the entire context of Variation 2, not just the limited purpose statements. Submitters, as well as any decision maker, are entitled to

[1] Out of Scope Decision Report dated 31 May 2021 (**Decision**) at para 14.
[2] Minute 3 dated 19 July 2021 at 3.

assess the scope of Variation 2 themselves, not just rely on the purpose statements provided by the Council.

13. The Panel identifies that for a submission to be 'on' a variation, and therefore within scope, a submission must:

    (a) *"Address the extent to which the variation changes the plan;*

    (b) *Not be coming out of 'left field';*

    (c) *Reasonably be said to fall within the ambit of the variation, with incremental or consequent extensions to zoning changes requiring no additional section 32 analysis; and*

    (d) *Not carry a risk that people affected by the variation (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.*[3]*"*

14. We understand this to be the Panel's interpretation of the *Clearwater test.* For completeness, we outline the *Clearwater test* below:[4]

    (a) A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.

    (b) But if the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly "on" the variation.

15. The *Clearwater test* has been subject to considerable discussion and case law. That history has been outlined in more detail within Appendix A of the Notice of Objection. These submission focus on the main points of disparity raised by Counsel for the City Council.

---

[3] Decision at para 11.
[4] *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP 34-02, 14 March 2003 at [66]

16. We submit that this situation is akin to the factual scenario discussed in *Calcutta*[5] where the Court had to consider whether sites outside the notified version of the proposal could be considered within scope of a plan change. *Calcutta* does not depart from *Clearwater* but provides an application in the context of rezoning. We acknowledge Council's legal submissions on *Calcutta* which discuss the scope of a plan change, however we don't consider it provides a full analysis on how the *Calcutta* treats scope.[6]

17. We identify the following paragraphs of *Calcutta* that raise very similar issues to those now raised by submitters in Variation 2:[7]

> *[32] Despite this, Mr Lang submitted that the s 32 analysis includes specific reference to the Council's consideration of the options of additional or different locations and scales of the Residential Zones and Future Residential Policy Areas for Matamata, which he said confirms that the intent of PC47 was not only to consider the locations proposed in PC47, but also potential alternative locations and the extents of the Residential Zones and Future Residential Policy Areas.*
>
> *[33]* ***Mr Lang submitted that any person reading PC47 and the s 32 analysis would have, or at least should have, appreciated that the resettlement of Residential Zones and the addition of Future Residential Policy Areas may be more extensive and/or in different locations to the new zones and policy areas included in the notified version of PC47****. He submitted that the status of PC47 as a part of the District Plan review made the potential for that type of outcome even more obvious. There is force to this argument."….*
>
> *[37] Of the 60 submissions received, seven (one of which was Calcutta Farms) lodged submissions requesting that land they owned in the Banks Road area be either re-zoned Residential or included in the Future Residential Policy Area.* ***Mr Lang submitted this was relevant, because if these submitters could recognize that they could challenge PC47, others who chose not to make a submission could also have recognized this.***

---

[5] *Calcutta Farms Limited v Matamata-Piako District Council* [2018] NZEnvC 187
[6] Submissions of Counsel for DCC at [6]
[7] *Calcutta Farms Limited v Matamata-Piako District Council* [2018] NZEnvC 187 at [32]-[37]

18. In Addition to the paragraphs identified by Council[8], *Calcutta* also says:

> *"[78] In Bluehaven, the Court held that, in the context of the facts of that case, the submission had raised matters that should have been (and, at least to some extent, were) addressed in the s 32 report. The problem in this case is that the s 32 report, whilst referring to alternatives, did not outline what those alternatives were to any great degree.* ***It certainly did not refer to Banks Road as an area for future residential development, even though this had actively been considered and favoured as an option previously…***
>
> *[81] In my view, PC47 did involve changes to the management regime for residential activity and areas to be designated as future residential activity areas, so that it was open to Calcutta Farms to lodge a submission seeking an alternative position on the areas proposed in PC47 to either be Residential Zones or Future Residential Policy Areas, which is what it did. It did therefore address in its submission the extent to which PC47 changes the existing status quo…*
>
> *[87] Whilst the scale and degree of a proposal can assist in determining whether a submission is "on a plan change", I do not read the Option 5 decision as indicating that it is determinative. Much will depend on the nature of the plan change which can assist to determine its scope, (whether it is a review or a variation for example) and what the purpose of it is. In this case, the purpose of the plan change is to review the future need for residential areas in Matamata, and to identify areas next to urban areas where future residential activity is proposed to occur. The method by which the latter is proposed to occur in PC47 is by the application of the Future Residential Policy Area notation. Underpinning the need for the size and scale of both new Residential Zones and the Future Residential Policy Area are the population predictions, which Calcutta Farms' submission directly sought to challenge****. I agree with Mr Lang that the District Plan review process should be such that differing views on the appropriate scale of such policy areas can be considered, rather than assuming that the Council's nominated scale of policy areas represents the uppermost limit for future planning. I therefore agree with Mr Lang that the difference and scale and degree of what is proposed by Calcutta Farms is a matter going to the merits of the submission rather than to its validity.***
>
> ***[88] For the above reasons, I consider that Calcutta Farms' submission does address the extent to which PC47 changes the existing status quo.***

IS A SUBMISSION 'ON' A PLAN CHANGE

LIMB 1 – CLEARWATER

[8] Submissions of Counsel for DCC at [6]

19. A central question remains as to what is the 'context of a plan change'. We submit that the scale and degree of Variation is determined by assessing all of the Variation 2 provisions as a whole.

Meaning of Proposal, Variation and Change in the RMA

20. It is useful to consider the purpose of Variation 2 in terms of the Act.

21. Council's position is that the scope of each proposal is identified in the purpose statement for each proposed change. Further limitations imposed by Council include:[9]

    (a) Submissions may be made on matters encompassed by these scope statements only.

    (b) Submissions were encouraged to improve and fine-tune the changes proposed, or to suggest alternative methods of achieving the purpose of the proposal, so long as these suggestions are within the limits of the scope statement.

22. The Section 32 report characterises a variation as a '*set of proposed amendments*'[10], however we submit that these proposed amendments have an overall purpose, which is accurately defined in the introduction to the Section 32 Report[11]:

    "Variation 2 is being proposed primarily to give effect to the requirements of the National Policy Statement on Urban Development 2020 (NPS-UD). *Under Section 55(2B) of the RMA, a local authority must make amendments to a proposed plan to give effect to provisions within a national policy statement. These amendments must be undertaken using the process in Schedule 1 of the RMA. Analysis and monitoring required by the NPS-UD has identified that Dunedin has a shortfall in housing capacity over the short, medium and long terms. Variation 2 addresses the requirement to provide sufficient development capacity for the short and medium term (up to 10 years)."*

23. Counsel acknowledges the Summary of Changes documents provide[12]:

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[9] Variation 2 – Additional Housing Capacity Section 32 Report dated February 2021 (**Section 32 Report**) at [9]-[11].
[10] Ibid at [2].
[11] Ibid at [3].
[12] Ibid at p 2.

"The scope of each proposal is identified in the 'purpose of proposal and scope of change' for each proposed change. Submissions may be made on matters encompassed by these scope statements."

24. The Revised Recommending report clarifies[13]:

"For the avoidance of doubt, Variation 2 is a collection of defined individual proposals, rather than one overarching proposal, and each proposal has its own purpose. I rely on Section 32(6) of the RMA for the meaning of 'proposal' and consider the purpose of proposal and scope of change statements to meet the definition of 'objective' for each proposal."

25. The Decision identifies the rezoning goal to be[14]:

"In the context of needing to identify additional residential capacity, the purpose of the proposal is to assess the appropriateness of rezoning a number of identified sites."[15]

26. Though novel, this 'collection of individual proposals' approach misunderstands 'proposal' as defined in section 32(6) of the RMA:

proposal *means a proposed standard, statement, national planning standard, regulation, plan, or change for which an evaluation report must be prepared under this Act*

27. Under the Act, we submit a 'proposal' captures changes to planning documents like:

(a) proposed Otago Regional Policy Statement – policy statement

(b) National Planning Standards 2019 – national planning standard

(c) Resource Management (National Environmental Standards for Freshwater) Regulations 2020 – regulation ;

(d) a plan such as the 2GP itself; or

(e) a variation 2 – Variation.

28. Each is a complete planning document that comprises many individual components including stated objectives[16], and individual policies

[13] Revised Recommending Report at [8].
[14] Decision at [22].
[15] Section 32 Report at para 657.
[16] Section 32(6) RMA.

methods, and rules that implement a proposal defined by the Act as provisions[17].

29. 'Amending proposal' is also defined in relation to complete planning instruments as a proposal that "*will amend a standard, statement, national planning standard, regulation, plan, or change that is already proposed or that already exists*."[18]

30. Clause 16A(2) of Schedule 1 of the Act requires a variation to be treated as a 'change'. We submit that treating variation 2 as a '*set of proposed amendments'* is inconsistent with this approach. In this context, variation and change both mean a change proposed by a local authority to a plan[19].

31. Simply because this is a 'variation' as opposed to a 'plan change' provides no reason to dilute the requirements within section 32. Therefore, we submit that Variation 2 is an 'amending proposal' that must meet the requirements of section 32(3). This includes an examination of:

    (a) The provision and objectives of the amending proposal; and

    (b) The Objectives of the existing proposal to the extent that those objectives; and

        (i) Are relevant to the objectives of the amending proposal; and

        (ii) Would remain if the amending proposal were to take effect.

32. Counsel submits that categorising Variation 2 as collection of refined proposals is an incorrect application of the Act. Quite simply, if each amendment is its own independent 'proposal' then the exercise within section 32(3) is not possible to achieve.

Variation must be vertically and horizontally integrated into the plan

[17] Section 32(6) RMA.
[18] Section 32(3) RMA.
[19] Section 43AA RMA.

33. The panel were satisfied that Variation 2 is a series of distinct and separate variations.[20] We submit that planning provisions should not be treated with such distinction. If the scope of each change is restricted to Council's 'purpose of proposal' then there is no method available to consider whether the provisions are the 'most appropriate' way to give effect to the Objectives of the Plan, or to achieve section 32(3).

34. In *Campbell v Christchurch City Council*[21] Judge Jackson reasoned[22]:

> *"It appears that changes to a plan (at least at objective and policy level) work in two dimensions. First an amendment can be anywhere on the line between the proposed plan and the submission. Secondly, consequential changes can flow downwards from whatever point on the first line is chosen. This arises because a submission may be on any provision of a proposed plan."*

35. This approach was approved in *Tussock Rise v Queenstown Lakes District Council*[23] where Judge Jackson considered vertical and horizontal integration were relevant issues to a plan change[24].

> *It is beyond the Council's powers under the scheme of its plan, and under section 79(1) to (3) RMA to decide what subordinate (industrial) objectives and policies will remain in place until it has decided what the strategic objectives and policies are to be changed, and what are to remain. This, of course, has direct relevance to TRL's position, since it is concerned about the industrial zoning of its land.*

36. Statements of scope or purpose associated with provision groupings like rezoning, must vertically integrate with Variation 2's higher order changes, and cannot limit the scope of that change in the way recommended by the reporting officer and accepted by the Panel.

'Downwards'

37. Once Council decided to notify amendments to the Strategic Objectives and Policies of the Plan, a submission can be made anywhere

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[20] Decision at [27]
[21] [2002] NZRMA 332.
[22] *Campbell v Christchurch City Council* [2002] NZRMA 332 at [20]
[23] [2019] NZRMA 509.
[24] *Tussock Rise v Queenstown Lakes District Council* [2019] NZRMA 509 at [48]-[49].

'downwards' from that point. To limit the lower order provisions as proposed by the section 32 Report effectively dictates how the higher order provision is to be implemented. That is inconsistent with the holistic approach outlined within section 32(3).

38. An example of 'downward' integration is provided by Change H1 which seeks amendments to Policy 6.3.2.1. The purpose of this change is described as:[25]

"Amend Objective 2.6.2 to clarify that capacity must be provided to "at least" meet the demand over the medium term and amend 2.6.2.1.a to simplify the explanation of the criteria related to demand and capacity to just refer to needing to meet the demand over the short and medium term.

And

The purpose of this proposal is to review the description of the residential rezoning criteria related to housing development capacity and demand that are in Policy 2.6.2.1.a and align them with the National Policy Statement for Urban Development 2020 (NPS-UD). The scope does not include a review of other aspects of Policy 2.6.2.1 as these criteria for zoning have recently been through a review process as part of the 2GP and have been settled. It also does not include a review of Objective 2.6.2 (other than to clarify the matter identified)."

39. This 'purpose statement' understates the effect of this amendment. The Panel then placed too much weight on the description of the provision change rather than making their own determination on what was the purpose of the amendment. We maintain our position that the purpose of the amendment is achieve compliance the NPS-UD 2020, in particular to meet short and medium term capacity requirements.[26]

40. If we take Council's 'purpose summary' at face value, then the amendments to Policy 2.6.2.1 are not substantive, and will have no impact on the assessment of the individual sites. We submit that this cannot be accurate, as the need for residential capacity is the only

[25] Section 32, summary of changes, table 1, H1
[26] Decision at [33]

change the residential zoning criteria (since previous zoning decisions on these sites were made under the 2GP process).

41. If this change is not substantive, then it makes no sense for the Variation 2 zoning assessments to reach a different conclusion on site specific rezoning than the original 2GP decisions.

42. The original 2GP decisions were predicated on the basis that housing capacity in the short and medium term housing requirement had been met. This provided one of the core reasons why Council declined a lot of proposed residential zonings. By including the words 'at least', one of the major hurdles of rezoning has been removed. In this context, the change is not insignificant at all.

43. Given the introduction of the words 'at least', that is what Variation 2 must achieve, and submitters should be entitled to ensure that compliance with this standard is achieved. The methodology to achieve that is through zoning and rules.

44. The complexity of achieving compliance with the NPS-US is identified within the section 32 documents:[27]

"If no rezonings were made in Variation 2, the capacity added by the rule changes alone would fall just short of meeting medium-term demand. Relying on rule changes to meet demand would require the average annual number of units provided within brownfield developments to double. Many developers in Dunedin focus solely on greenfield developments, which may impact on the ability for the development industry to deliver such a significant increase in brownfield developments. For this reason, Variation 2 includes new greenfield development opportunities in addition to the capacity provided through rule changes. This also contributes to meeting clause 3.2(1) of the NPS-UD, namely, to provide sufficient capacity in both brownfield and greenfield areas"

45. This paragraph briefly explains one of the difficulties of achieving compliance with the NPS-UD, as a balance between brownfield and greenfield development must be achieved, as well as ensuring that development is feasible. This is why we should be careful not to

[27] Section 32 Report at [1066]

artificially distinguish the different components of Variation 2, as inevitably they need to talk to each other to achieve compliance with the NPS-UD.

Change H1 – Now Operative

46. We also note that the section 32 documents also include findings on residential capacity and demand.[28] Being documents contained within section 32 of Variation 2, it should be open for a submitter to challenge the findings of those reports and to ensure capacity requirements within NPS-UD are satisfied. Submitters are being asked to blindly accept Council's residential capacity and demand findings, despite the sensitive nature of such modelling.

47. As Ms McEwan states in her Evidence[29], no submissions were filed on change H1. Therefore, they are no longer subject to change. Whether or not the provisions are deemed operative has no bearing on the scope of a plan change. In fact, it may have the opposite effect, as submitters are now entitled to hold Council accountable to ensure that 'at least' short and medium capacity requirements are met.

48. Whether capacity requirements have actually been met is a substantive question to be assessed in conjunction with consideration of re-zonings. It would be an unsatisfactory outcome for the operative provisions of the plan to say that at least short and medium term capacity is required, but then not implement that objective.

Is the section 32 determinative of the scope of a plan-change

49. Counsel accepts the Section 32 Report is "*an integral part of Variation 2*"[30]. Although the section 32 Report is not determinative on scope. This is eloquently articulated in *Bluehaven* and subsequently adopted by *Calcutta at [77]*.

> *Understanding of the assessment to be made under the first limb of the test is that it is an enquiry as to what matters should have been included in the s 32*

[28] Section 32 at 12] – [44]
[29] Evidence of Ms McEwan at [16](c)
[30] Decision at para 23.

evaluation report and whether the issue raised in the submission addresses one of those matters. ***The enquiry cannot simply be whether the s 32 evaluation report did or did not address the issue raised in the submission****. Such an approach would enable a planning authority to ignore a relevant matter, and thus avoid the fundamentals of an appropriately thorough analysis of the effects of a proposal with robust, notified and informed public participation.*

50. In *Well Smart* The Court was also concerned with the concept of 'fair play' during the production of a plan change:[31]

> *A section 32 evaluation is usually prepared by the proposer of the plan change so it has an interest in confining the plan change to the boundaries (and issues) it wants dealt with. Despite that it must comply with section 32(1) RMA. Indeed, if a section 32 evaluation fails to consider the consequences of some flexibility in the boundary location (because that flexibility might more appropriately achieve the relevant objectives) then that may be a failure in the section 32 evaluation.* ***A sense of fair play suggests it should not lead to jurisdictional consequences for a submitter who claims to have located a better boundary.***

51. In light of this, we submit that we should not simply accept Council's 32 report on its face. It is submitted the Panel accepted a flawed understanding of what a variation is, and as a result failed to correctly define the purpose of Variation 2.[32]

52. Therefore, when determining whether a submission meets limb one of the *Clearwater test*, the Commissioner is entitled to make their own assessment of scope, just as the submitters have done. Challenging Council's articulation of the purpose of Variation 2 forms an important aspect of making a decision on Limb 1 of the *Clearwater tes*t.

Reference To Background Reports and Assessments

53. Background documents included within the section 32 Report must form part of scope of Variation 2. We submit that it is not open to Council to 'pick and choose' the aspects of the documents on which they wish to rely.

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[31] *Well Smart Investments Limited (NZQN) v QLDC* at [23]
[32] Decision from para 22-24.

54. We maintain our submission that the documents that inform Variation 2 are broader than the specific sites.[33] While these documents may also be used in processes such as the Future Development Strategy however, as far as these documents apply to the ensuring that Dunedin meets their short and medium capacity requirements through Variation 2, the documents must form part of the scope of the assessment.

55. We do acknowledge Ms McEwan's Evidence that all sites that received Letters prior to notification of Variation 2, were included as 'rejected sites' within Appendix 4.

56. Reference to Background Reports remain important when assessing whether Council 'should' have considered assessment of sites that were not originally notified. Where the Reports identify areas that are appropriate or consistent with public feedback (but are subsequently not included within Variation 2) then a substantive decision has been made to exclude those areas.

57. The Panel's finding that background reports do not form part of 'scope' is also inconsistent with the discussion of the Court in *Wellsmart* and *Calcutta.*[34]

LIMB 2 - CLEARWATER

Relevant Prejudice

58. In our submission, prejudice to external third parties who chose not to submit on Variation 2 at all, is not the prejudice contemplated by Young J in the *Clearwater Resort Ltd v Christchurch City Council*[35] test[36]:

> *2 . But if the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by thoTheyse potentially affected, this is a*

[33] Appendix A of Notice of Objection at [16] – [17]
[34] *Calcutta Farms Limited v Matamata-Piako District Council* [2018] NZEnvC 187; *Well Smart Investments Limited (NZQN) v QLDC*
[35] 14/03/2003 NZHC Unreported AP 34-02
[36] *Clearwater Resort Ltd v Christchurch City Council* (***Clearwater***) 14/03/2003 NZHC Unreported AP 34-02 at [66].

powerful consideration against any argument that the submission is truly "on" the variation.

59. Young J further explains that the second limb is concerned with "*all those likely to be affected by or interested in the alternative method*".[37]

60. Limb 2 of the *Clearwater* test identified parties who are affected by a specific submission and whether that submission may potentially affect them. It does not discuss whether other people in the district could have made a similar submission if they had thought of doing so.

61. Ms McEwan is primarily concerned with this kind of prejudice within her Evidence:[38]

    (a) *It would not enable others to make a new site suggestion in the same way the objectors seek to, which would be unfair to those who chose not to submit on Variation 2 with similar suggestions because they understood and accepted the scope limitations. I am still of this view despite the comments at paragraphs 24 to 26 of the notice of objection; and*

    (b) *The addition of rezoning sites, such as those requested by the objectors, could not have been anticipated by members of the public given how clearly the scope limitations for Variation 2 were set out in accompanying documentation. The proposed notification of directly affected persons to allow for further submissions does not address the prejudice to the wider community, especially where the effects of a rezoning may extend some distance from a rezoning site. This was addressed in my assessment of out-of-scope submissions and was one factor that guided my recommendations (see Section 2.4 and my recommendations in the first report).*

62. The Panel also place weight on prejudice to third parties who may have otherwise made submissions. [39]

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[37] *Clearwater* at [69].
[38] Evidence of Ms McEwan at [15[(h)
[39]Decisions at [18]

We submit this misunderstands the prejudice identified by the Court. In *Palmerston North City Council v Motor Machinists Ltd*[40] Kós J traces the importance of directly affected persons chance to participate through *Halswater Holdings Ltd v Selwyn District Council*[41], *Clearwater*[42], and *Option 5 Inc v Marlborough District Council*[43] concluding that the second limb of the *Clearwater* test protects against the mischief of a plan changing such that[44]:

> *"…a person not directly affected at one stage (so as not to have received notification initially under clause 5(1A)) might then find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified as it would have been had it been included in the original instrument."* [emphasis added]

63. Having traversed the authorities Kós J considered the second limb assessment to be[45]:

> "*whether there is a real risk that persons directly or potentially directly affected by the additional changes proposed in the submission have been denied an effective response to those additional changes in the plan change process*." [emphasis added]

64. This question sets the boundaries of the 'reasonable interests' of people and communities which are not to be overridden.[46]

65. *Motor Machinists* provides a detailed explanation on why the further submission process may not always be an appropriate mechanism to cure prejudice to third parties.[47] The key component is that pursuant to Schedule 1, Clause 5A, the Council is not required to directly serve the summary of decisions requested on potentially affected parties.[48] If potentially affected parties do not review Council's summary of submissions received, then they engage with the process.

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[40] [2014] NZRMA 519; [2013] NZHC 1290; BC201363846.
[41] (1999) 5 ELRNZ 192 (EnvC) cited in *Motor Machinists* at [62].
[42] *Clearwater* cited in *Motor Machinists* at [55].
[43] HC Blenheim CIV 2009-406-144, 28 September 2009 cited in *Motor Machinists* at [68]
[44] *Motor Machinists* at [77].
[45] *Motor Machinists* at [82].
[46] *Motor Machinists* at [82].
[47] *Motor Machinists* at [74]-[83]
[48] Resource Management Act 1991, schedule , 1 clause 5A and clause 7

66. We acknowledge that such a situation could occur, but stress that this has not yet eventuated in this circumstance. We also emphasise the potential remedies are available to cure prejudice to such directly affected parties:[49]

> *"Plainly, there is less risk of offending the second limb in the event that the further zoning change is merely consequential or incidental, and adequately assessed in the existing s 32 analysis.* ***Nor if the submitter takes the initiative and ensures the direct notification of those directly affected by further changes submitted.***

67. Again, Kos J's is concerned explicitly with the prejudice to directly affected parties, and turns their mind to what processes are available to alleviate this prejudice if it arises.

68. This focus on 'directly affected persons' persists in more recent authorities on the second limb:

    (a) In *Bluehaven Management Ltd v Western Bay of Plenty District Council*[50] the test continued to be limited to participation by those potentially affected[51].

    > *The issue of potential distributional effects having been raised in the s 32 evaluation report, any potentially interested persons (including all landowners at Rangiuru) were effectively on notice that the location and extent of the CSA, and the range of activities that might occur within it, might be the subject of submissions. They could therefore make their own decisions about whether to become involved in the process by lodging submissions, or by reviewing the notified summary of submissions and then deciding whether to join the process by lodging further submissions.*

[49] Motor Machinists at [83]
[50] [2016] NZEnvC 191; BC201662615.
[51] *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191; BC201662615 at [61]

(b) In *Calcutta Farms Ltd v Matamata-Piako District Council*[52] the test remained the opportunity to participate of directly affected parties.[53]

When considering these matters in the round, I am of the view that any prejudice is only likely to occur if those who may have submitted wish to oppose Calcutta Farms' position. Given that there are only a few parties directly affected, their position is likely to be met by the Council and Ingham's case opposing the appeal, and if they are willing to do so, they may be called as witness to support either the Council or Ingham's cases.

69. The relevant authorities show the relevant prejudice is to persons 'directly affected or likely to be directly affected' by the change submitted, not whether third parties could have made the same submission. We submit that it is a fundamental misunderstanding of the *Clearwater test* to extend this to the general public.

'Effect' and 'Affected Person' in the RMA

70. To understand the term 'potentially affected' we can take guidance from other parts of the Act that use the same terminology.

71. The RMA defines 'Affected person' and 'effect'.

72. An affected person is a person who suffers adverse effects of an activity to a minor or more than minor degree.[54] To be directly affected requires both an activity and an effect and there is a causal relationship between the two.

73. The Act defines 'effect' broadly with no limit to scale, intensity, duration, or frequency and to both potential and cumulative effects. However, *Dye v Auckland Regional Council*[55] established that a Council's desire to treat like applications alike is not an 'effect' on the environment in RMA terms[56].

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[52] [2018] NZEnvC 187.
[53] *Calcutta Farms Ltd v Matamata-Piako District Council* [2018] NZEnvC 187 at [92].
[54] Section 95E RMA.
[55] [2002] 1 NZLR 337.
[56] *Dye v Auckland Regional Council* [2002] 1 NZLR 337 at [32].

74. Counsel submits the Panel erred by placing considerable weight on '*natural justice issues*'[57] its term for treating third parties who '*followed the rules*' like submitters. This is not an 'effect' under the Act.

75. Whether or not someone is an 'affected person' hinges on adverse effect. Without an RMA 'effect', it is submitted, external third parties cannot be affected, much less directly affected. Consequently, they are not protected by the *Clearwater* second limb.

Appropriate Relief

76. It is unclear why re-notification of these sites will create an untenable delay to the Variation 2 process (particularly in light of the expected timeline to hear site specific submissions).[58] This objection does not seek re-notification of the entire district. Rather it provides a specific list of sites that should be subject to an additional notification process.

77. The panel also accepted Ms McEwan's position that accepting any 'out of scope' submission would require assessments of all submissions of a similar nature. We disagree with that proposition, as prejudice to those third parties (not directly affected by this submission) are not relevant with the *Clearwater* tests, nor is it within the scope of the Commissioner's discretion to make a determination on any such prejudice at this hearing. The Commissioner is being asked to decide whether to strike out these submissions, not to cure prejudice to the entire district.

78. The panel identifies that notification of these submissions would be impractical.[59] We submit that this is exactly the process that is being undertaken in relation to sites rejected within Appendix 4. If a process is readily available for affected parties to be notified, we see no reason why these sites cannot progress under the same methodology. It would be inconsistent with Council's own processes to say that notification of these specific sites not possible.

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[57] Decision at paras 18, 45, 60, 63, 66, 76.
[58] We understand that site specific zonings have no timeline to progress at this stage.
[59] Decision at [18]

79. This Objection relates to specific sites, and seeks a confined supplementary notification process (in conjunction with a broader public notice) which alleviates the prejudices raised by Limb 2 of clearwater. As noted in *Motor Machinists,* this notification process can be undertaken at the initiative of either the Council or the Submitter.

80. Ms McEwan raised the issue that if this Objection is successful, then parts of Variation 2 will need to be withdrawn.[60] If Council decide to do that, then that is a unilateral decision for them. It is not something the Commissioner should concern themselves with as part of this hearing. If Council withdraw part or all of Variation 2, then it is an acknowledgment of flawed process, not as an effect of this submission. For clarity, we submit it is not necessary and there is an appropriate solution available for these specific sites.

Comments on Case Law identified by Council

81. Council has outlined some details on case law described within Appendix A of the Notice of Objection.[61] We don't necessarily disagree with Council's summation of the facts, but we make some additional comments:

*Well Smart Investments Limited (NZQN) v Queenstown Lakes District Council (**Well Smart**)*

(a) The Court places significant weight on the fact that PC50 was very restricted Central Queenstown (as identified in the maps appended to the Decision). The only additional submitters were those on the fringes of the Central Queenstown Township. The Court promptly recognised that because the submitters site was identified in preliminary assessments that it satisfied limb 1 of the *Clearwater test.* [62] The question was whether prejudice occurred in relation to neighbouring properties who may have submitted in opposition. In the Variation 2 situation, this prejudice has not yet

[60] Evidence of Ms McEwan at [16](a)
[61] Council legal submissions at [46]
[62] At [24]-[25]

arisen, because the opportunity to file further submissions has not passed. It was the combination of both the insufficient notice within the section 32 Report and Council's summary of submissions, that persuaded the Court (albeit barely) that submission was not 'on' the plan change.

Bluehaven Management Limited v Waikato Bay of Plenty District Council

(b) *Bluehaven* addresses a situation where the changes sought address rules within a limited spatial area. The boundaries of the area were not in question. We agree that this is a distinguishing factor from Variation 2. Nonetheless, *Bluehaven* raises the conceptual concern that Council should not benefit from an inadequate section 32 assessment. This concept is then built upon by *Calcutta,* which does address the spatial extent of a proposal.

Tussock Rise Limited v Queenstown Lakes District Council

(c) We agree with Council's assessment that *Tussock Rise* gave rise to a unique situation, whereby the circumstances where the content of plan change may have mislead potential submitters/cross-submitters. In this regard the Court was highly critical of the Queenstown Lakes District Council's methodology

(d) We disagree with Council's submission that the findings within *Tussock Rise* are not relevant. We find ourselves in a similar position where Council's methodology may have subverted public participation as is inappropriately limiting relief available to submitters. A decision maker needs to be alive to these concerns and assess the appropriate mechanisms to rectify such prejudice.

Inconsistent Site Assessment Process

82. The Council advised that its site suggestion process comprised[63]:

[63] Out of Scope Submissions Revised Recommendations 7 May 2021 at 19.

(a) An email sent on 5 April 2019 to people in the City Development database without a deadline for feedback.

(b) People sent in suggestions (which we infer were processed) until 3 Waters infrastructure work was too far gone to include further suggestions.

(c) People were advised from June 2020 that they were too late for Variation 2.

(d) Consultants continued to send suggestions.

83. The Council also relies on the public consultation process in the *Planning for Housing Survey* to suggest specific areas for rezoning. This process did have deadlines.

84. In any event, the Panel considered a deadline unnecessary because:[64]

> *"…we expect that over the course of a such a long period there was ample opportunity for those parties to participate (and we note that parties to the joint statement did participate), and also to be able to contact the DCC to seek clarification as to when any deadline might be imposed."*

85. The Panel appears to fault parties for not finding out if the Council might have a deadline. However, a lack of a deadline can also indicate an open ended, rolling process which we submit is a more accurate description of what has actually occurred.

86. Supporting this view is the fact that the 'deadline' has been attributed to work by a 3 Waters Consultant being "*too far advanced to include new sites"*. The Council, we infer, did not know when this point and therefore its 'deadline' would occur.

87. Counsel submits this reason is arbitrary in that it is completely unrelated to either the rezoning purpose, the wider purpose of Variation 2, or the information sent to the database.

[64] Decision at [37]

88. It is difficult to see how parties could be expected to understand that the process was concluding; or for anyone outside of Council to understand why that was occurring.

89. Our consultants advise us that Council has rejecting sites due to the passing of an internal ‘deadline’, while also accepting others that have been filed later. If Council is still accepting sites to be included within variation 2, then all sites requested prior to that date should also be included.

90. Counsel submits that the Panel erred in putting little weight on the Council’s failure to provide a deadline, the arbitrary nature of the one Council did apply and the procedural unfairness of implementing a deadline without notice.

ADDITIONAL SITE-SPECIFIC COMMENTS

91. Respective consultants have provided Evidence in accordance with Appendix 5 of Section 32. This serves several purposes:

    (a) To demonstrate that these sites are reasonably feasible sites for development, and if a comprehensive section 32 assessment is undertaken, will likely result in high quality residential capacity for the district. This goes to whether Council 'should' have assessed these sites.

    (b) When Council rejected a site at an early stage in the process, they did not proceed with a substantive section 32 Assessment. The Appendix 5 assessment assist in filling the gaps of Council's planning assessments; and

    (c) The assessment provides a comparison to existing section 32 Assessments on adjoining sites. This provides guidance on whether additional section 32 assessment are required in accordance with the first limb of the Clearwater test

92. To assist the Panel in understanding some site specific dynamics, we provide some specific commentary below.

Bush Road

93. This area covers submissions made by:

    (a) Richard Muir (156.001, Row 88):

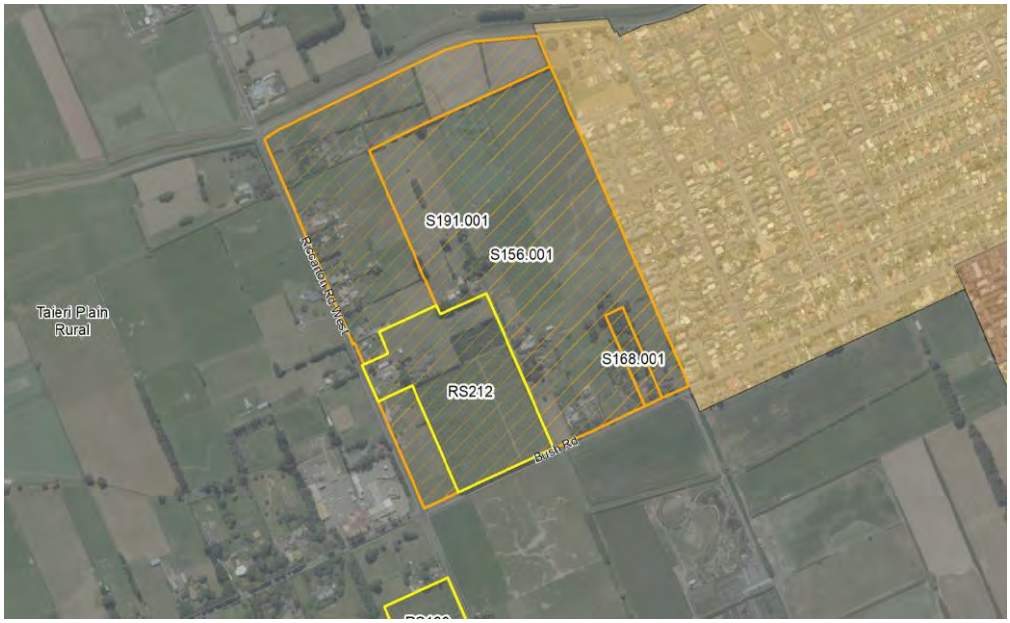
        (i) 124,130,134,142,144,150,152 and 154 Bush Road

        (ii) 164 Riccarton Road West

    (b) Alec Cassie (168.001, Row 20)133 Bush Road:

    (c) Roger and Janine Southby (191.001, Row 89) Properties between Silverstream to the north, Riccarton road west to the west, and Bush Road to the south. (Sweep)

94. The site is identified at page 4 of 'Maps of Objection Rezoning Sites' appended to Ms McEwan's Evidence.



95. The submission area contains RS212, which was a rejected site due to disconnection from existing residential areas.[65] Because this was a rejected site, Council did not undertake a substantial section 32 Assessment. Ms Peters has filed an Appendix 5 assessment to provide the Commissioner additional detail on the site.

96. We reiterate our legal submission above that Council should not benefit from an inadequate section 32 Assessment. We submit that if a comprehensive section 32 assessment was undertaken for RS212, then the findings of that assessment would equally apply to the sites now being sought through these submissions.

97. The revised recommendations of Ms McEwan identified that:[66]

Two options are presented to the Panel for consideration, either: Retain the original recommendation to consider these points out of scope a matters relevant to determine if the submission is in scope are unchanged; or Discuss with the submitters the possibility of reducing the size of the rezoning extension they are seeking so that the tests that must be passed to be considered in scope can be met and extend this opportunity to all similarly affected submitters (228.001 Wendy Campbell). Consequential changes to the assessment for 168.001 (Alec Cassie) may be needed depending on the

[65] Section 32, Appendix 4 at
[66] Revised recommendation at p 14

outcome of this process, so a decision on his submission would need to be deferred. Defer the decision on these submission points."

98. The Evidence filed by Ms Peters now identifies a refined proposal acceptable to the submitters.

99. We therefore submit that the relief sought by the submitters forms a natural extension to RS212, as well a logical urban extension to the Mosgiel township. We also note that the principle concern that resulted RS212 being rejected due to connectivity to urban boundary of Mosgiel has now been rectified by the amended submission.

Gladstone Road South

100. This submission covers area covers submissions made by:

(a) Invermark Investments Limited (240.001, Row 68).

101. The site is identified at page 8 of 'Maps of Objection Rezoning Sites' appended to Ms McEwan's Evidence.

102. There are two important aspects to this submission, notably that:

(a) GF02 is a proposed Greenfield zoning site with a comprehensive section 32 Assessment; and

(b) The panel found that another submission extending GF02 in accordance with S30.001 and S99.001 was within scope.[67]

103. The Revised Recommendation of Council also noted that in response to the 'joint response' the following recommendation was made:[68]

"*Discuss with the submitters the possibility of reducing the size of the rezoning extension they are seeking so that the tests that must be passed to be considered in scope can be met. Extend this opportunity to all similarly affected submitters (147.001 Tony Purvis, 166.001 Malcolm Owens). Defer the decision on affected submission points*."

104. The Submitters have considered whether they are able to refine the proposal in accordance with Council's suggestion. They are unable to

[67] Decision at [62]-[64]
[68] Revised Recommendation at page 12.

do so at this point in time.[69] The submitters rely on the legal submissions above that the entire submission fits within the scope of Variation 2.

105. Council have rejected this site upon reliance of the first limb of the *Clearwater test* and relied on the finding that additional section 32 assessments are required to be undertaken. [70] We disagree with this assessment in relation to this site, as the findings within the section 32 Assessment for GF02 are largely applicable to the adjoining land as well.[71] These findings are reflected in the Appendix 5 assessment within Ms Peter's Evidence.

106. We therefore submit that despite the spatial increase in comparison to GF02, that only small aspects of the existing Section 32 assessment required updating.

107. We acknowledge that submission site would result in additional parties being affects ,and therefore direct notification would be appropriate. We submit that these parties can be notified at the same time of publicly releasing the summary of submission received. This cures any prejudice to those parties, as they will have an opportunity to support/oppose the relief sought.

North Taieri Road

108. This area covers submissions made by:

    (a) Wendy Campbell (228.002, Row 59 and 228.001, Row 90)

        (i) 188 NorthTaieri Road

        (ii) 45 McMeakin Road

109. The site is identified at page 10 of 'Maps of Objection Rezoning Sites' appended to Ms McEwan's Evidence.

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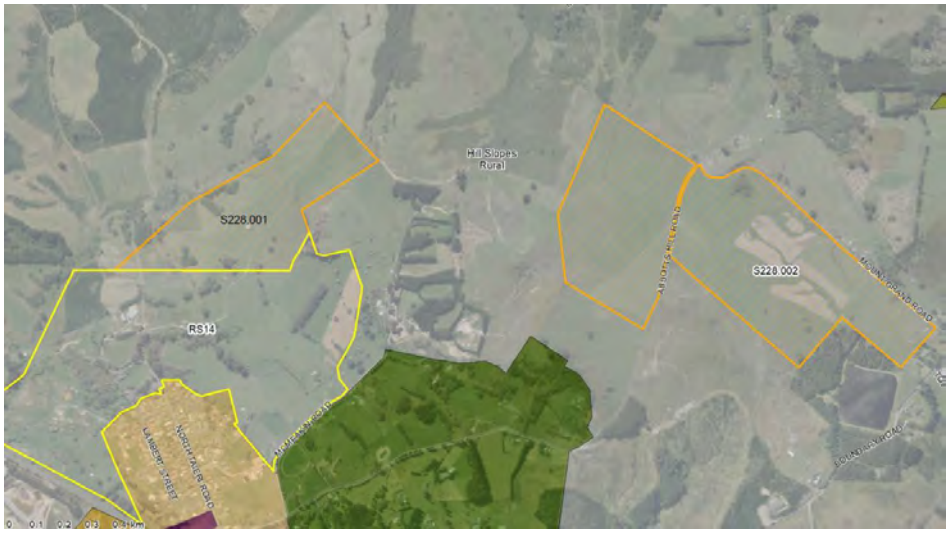
[69] The submitters is considering a reduction of the submission site to include part of 225 Gladstone Road South, and drop 100 Main South Road. We will be in a position to confirm at the hearing.
[70] Section 32, Appendix 6.2
[71] Section 32, Appendix 6.2



110. This site was proposed by Sweep Consultancy as part of the Council's consultation process. Despite the site being put forward for consideration, Council have unilaterally decided to limit the scale of the recommendation to RS14.

111. Council say that this was because the site was too large, and the Panel accepted Council's evidence that it had not received any maps relating to two smaller proposed areas within the site.[72] Ms McEwan's clarification to the panel provides an example of Council using a criteria that sits outside Appendix 5 to justify the rejection of a site. If anything, the criterion for Appendix 5 promotes large sites being considered for re-zoning.[73]

112. We submit that the appropriate process (and consistent with how Council has process other rejected sites) should have been:

    (a) Acknowledge receipt of request to rezone 188 North Taieri Road;

    (b) Assess the site in accordance Appendix 5. It may be that given the size of the site and lack of information available, that Council decide to reject the site;

    (c) Because the site is rejected at the preliminary process, a comprehensive section 32 Assessment is not undertaken;

[72] Out of Scope Decision Report 31 May 2021 at [41].
[73] Section 32 Report at [675]

(d) The site is identified as a rejected site within Appendix 4, but acknowledged as being within scope; and

(e) The submitter then decides whether they want to submit on the rejected of the site.

113. Our fundamental concern with Council's approach is that there have been unilateral decisions which have amended the scope of the consultant's request. This process ultimately prejudices the submitter.

114. We also submit that if Council had undertaken a comprehensive section 32 assessment of the site, then it would have understood that the best development land is now excluded from the scope of the submissions. Ms Peter's Evidence provides a scheme plan on where housing could be appropriately located on the site.

Stevenson Road

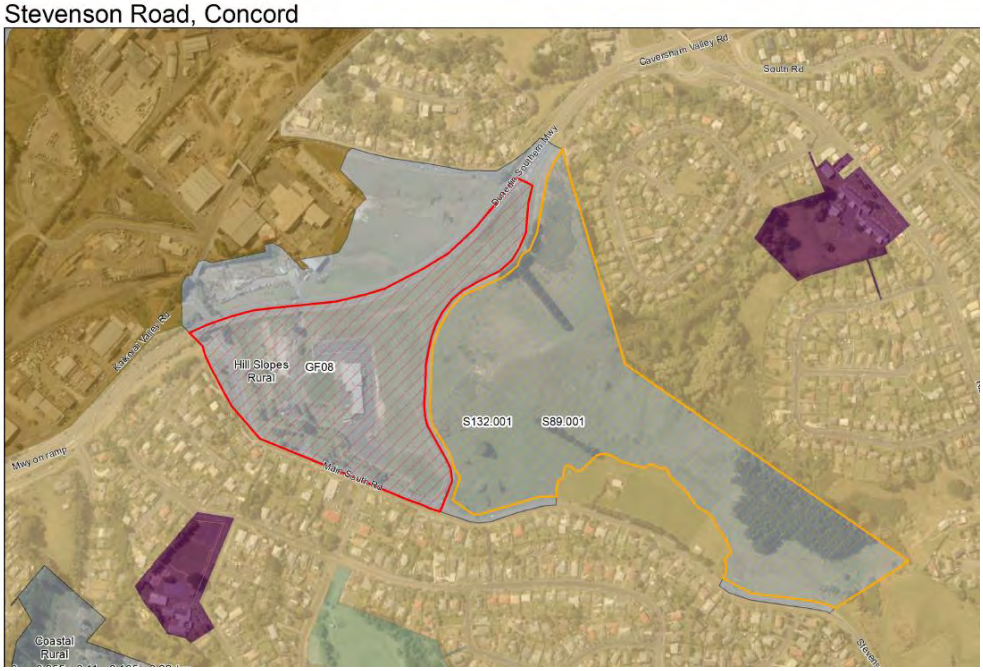
115. This area covers submissions made by:

(a) Custom Investments Limited (132.001, Row 71)

(b) Paddy Bleach (89.001, Row 72)

116. The site is identified at page 11 of 'Maps of Objection Rezoning Sites' appended to Ms McEwan's Evidence.

Stevenson Road, Concord



117. This submission relates to land that is contiguous with change GF08 and IN04. We therefore have to proximate section 32 Assessments that can provide guidance on whether the site is appropriate for rezoning.

118. The panel rejected the site as they found that due to the size of the site further section 32 assessments would be required, and would give rise to natural justice concerns. [74] We disagree with both components of this decision.

119. This site is adjoining to area subject to comprehensive section 32 assessments. Mr Anderson has now assessed the site against the criteria within Appendix 5. This demonstrates the similarity to the existing assessment within Appendix 6.8.

120. The panel have simply relied on the spatial extent of the submission, rather than assessing the effects of expansion against the information already held by Council.

121. We acknowledge that submission site would result in additional parties to be notified. We submit that these parties can be notified at the time

[74] Decision at [63]

of publicly releasing the summary of submission received. This cures any prejudice to those parties, as they will have an opportunity to support/oppose the relief sought.

122. This situation is very similar to that outlined in relation to Gladstone Road South Above.

Date: 13 August 2021

Derek McLachlan

Counsel for ‘The Submitters’

Before the Independent Commissioner

on Behalf of Dunedin City Council

In the Matter of the Resource Management Act 1991 (**RMA**)

And

In the Matter of of an Objection Notice pursuant to section 357

Brief of Evidence of **Emma Rayner Peters** on behalf of Ben and Raewyn Waller

Dated 13th August 2021

Background:

1. My name is Emma Rayner Peters. I hold a BA and LLB both from the University of Otago and a First Class Honours degree and MA with Distinction, both from the University of Canterbury. I have worked as a solicitor in the areas of commercial and environmental law. I have been the principal of Sweep Consultancy Limited since 2003 providing resource management advice predominantly in the Dunedin City, Clutha, Waitaki, Queenstown Lakes and Central Otago districts.

2. I have prepared this evidence based upon my investigations and knowledge of the site, submission and Variation 2 of the Dunedin City Second Generation District Plan Appeals Version. I acknowledge that my expertise does not extend to natural hazards, landscape, or infrastructure.

3. I acknowledge we are not before the Environment Court. However, I have read the Code of Conduct for Expert Witnesses within the Environment Court Consolidated Practice Note 2014 and I agree to comply with that Code. This evidence is within my area of expertise, except where I state that I am relying on the evidence of another person. To the best of my knowledge, I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed in this evidence.

Background to Submission/Objection:

4. Ben and Raewyn Waller made a submission on Variation 2 seeking to rezone residential part of 457 Purakanui Road, Pūrākaunui subject to a structure plan yet to be prepared. The Variation 2 Panel in a decision dated 31 May 2021 (**Decision**) determined that Ben's and Raewyn's submission was out of scope of Variation 2.

5. Ben and Raewyn adopted a legal opinion prepared by Gallaway Cook Allan for Paterson Pitts Group Limited referred to by the Variation 2 Panel as the 'Joint Submission' in the Decision.

6. Ben and Raewyn continue to rely on that legal opinion and any subsequent development of the legal arguments contained therein as applicable to their case.

Legal Test:

7. In essence, based on the legal test developed in *Clearwater*[1] and endorsed in *Motor Machinists*[2], for a submission to be 'within scope', you must be satisifed that:

   a) The submission is 'on point'; and

   b) Does not 'create prejudice'.

'On Point':

8. At paragraph [80] of *Motor Machinists*, Kós J states: "*For a submission to be on a plan change, therefore, it must address the proposed plan change itself. That is, to the alteration of the status quo brought about by that change. The first limb in Clearwater serves as a filter, based on direct connection between the submission and the degree of notified change proposed to the extant plan. It is the dominant consideration. It involves itself two aspects: the breadth of alteration to the status quo entailed in the proposed plan change, and whether the submission then addresses that alteration*."

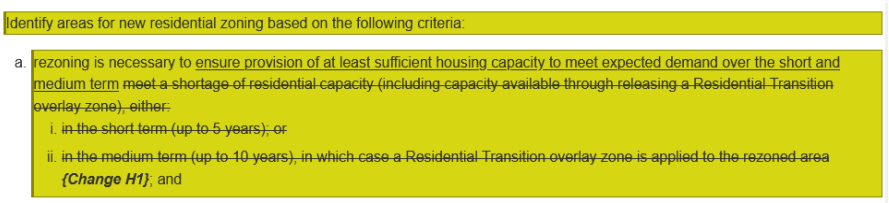
9. The provision of urban land supply in Dunedin is governed by the Strategic Direction policy framework of the 2GP and, in particular, by *Strategic Direction 2.6 Dunedin has Quality Housing Choices and Adequate Urban Land Supply*.

10. Context is provided for the meaning of 'adequate' by *Strategic Objective 2.6.2* aptly titled '*Adequate Urban Land Supply*'. Varaition 2 proposed a change to this fundamental objective for urban land supply. This change[3] required the insertion of the words 'at least' into Objective 2.6.2 and deletion of a 'the' so that it read:

    "*Dunedin provides sufficient, feasible, development capacity (as intensification opportunities and zoned urban land) in the most appropriate locations to <u>at least</u> meet ~~the~~ demand over the medium term (up to 10 years), while sustainably managing urban expansion in a way that maintains a compact city with resilient townships as outlined in Objective 2.2.4 and policies 2.2.4.1 to 2.2.4.3*."

1 *Clearwater Resort Ltd v Christchurch City Council* [2003] HC Christchurch AP 34-02, 14 March 2003.
2 *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, [2014] NZRMA 519.
3 Variation 2 Change H1.

11. The change to Objective 2.6.2 also resulted in a substantive, consequential change to Policy 2.6.2.1.a which Variation 2 proposed as follows[4]:


Identify areas for new residential zoning based on the following criteria:

a. rezoning is necessary to ensure provision of at least sufficient housing capacity to meet expected demand over the short and medium term ~~meet a shortage of residential capacity (including capacity available through releasing a Residential Transition overlay zone), either:~~
   i. ~~in the short term (up to 5 years); or~~
   ii. ~~in the medium term (up to 10 years), in which case a Residential Transition overlay zone is applied to the rezoned area~~ ***{Change H1}***; and

12. These changes came about as a result of the 2GP Wyber appeal. As part of an agreement to withdraw part of that appeal, Council agreed to include the words 'at least' in Objective 2.6.2 and Policy 2.6.2.1.a via Variation 2. This change was also made in order to recognise Council's obligations pursuant to the National Policy Statement on Urban Development 2020 (**NPS-UD**) to provide adequate urban land supply in Dunedin.

13. Indeed the s32 report states at paragraphs 610 and 611 in relation to the purpose of Change H1 that:

"610. The purpose of this proposal is to review the description of the residential rezoning criteria related to housing development capacity and demand that are in Policy 2.6.2.1.a and align them with the National Policy Statement for Urban Development 2020 (NPS-UD).

611. Related to this a minor change to the wording of Objective 2.6.2 to clarify the need to provide sufficient, feasible development capacity to 'at least' meet the demand over the medium term."

14. Council's planning evidence states[5] that: *"...the changes made to Objective 2.6.2 as part of Variation 2 constitute a clarification and are not substantive. While the changes made to Policy 2.6.2.1(a) are more substantive in nature, they relate to the wider context of when additional housing capacity should be added via rezoning, rather than the merits of any given rezoning site over another."*

15. In fact, the change to Objective 2.6.2 is <u>substantive</u> due to the effect the addition of the words 'at least' has on the obligations of Council to ensure adequate supply of urban land pursuant to that objective. That is, Council's obligations pursuant to the NPS-UD with respect to Objective 2.6.2 arguably would have been met without the addition of the words 'at

4 Source: Dunedin City Council 2GP Appeals Version Showing Variation 2 Notified Changes.
5 See Council Planning Evidence paragraph 15(f).

least'. Now rather than just meeting demand, which includes the competitiveness margin built into that demand by clause 3.2 of the NPS-UD, the onus now upon Council is to at least meet demand which implies a positive action whereby Council can provide for additional supply over and above the minimum level required by the NPS-UD.

16. The changes to Objective 2.6.2 and Policy 2.6.2.1.a made via Variation 2 are now deemed operative via operation of s86F(1)(a) of the RMA as no submissions were received on Change H1[6].

17. It is clear that any submissions received by Council during the submission period for Variation 2, which sought to rezone land residential, are in fact, seeking to achieve the proposed, now operative, Objective 2.6.2 and Policy 2.6.2.1.a. Such submissions, including that by Ben and Raewyn Waller, therefore, fall within the ambit of Variation 2 and are 'on point'.

'Prejudice'

18. At paragraph [82] of *Motor Machinists*, Kós J states: "*But that is subject then to the second limb of the Clearwater test: whether there is a real risk that persons directly or potentially directly affected by the additional changes proposed in the submission have been denied an effective response to those additional changes in the plan change process*."

19. Assessing whether there is likely to be any prejudice comes down to an investigation of the factual circumstances and context of the particular submission.

20. In the case of the Waller submission, the questions to be asked with respect to prejudice are whether there is a real risk that:

    a) There are landowners with land zoned *Rural – Coastal* abutting Pūrākaunui who would have made a submission seeking to rezone their land *Township and Settlement* if they had understood that they could do so; and

    b) There are people who have been denied an effective response to the Waller submission.

21. Notifying the Waller submission and providing an opportunity for further

6 See Council Planning Evidence paragraph 16(c).

submissions overcomes the potential prejudice described in 20.b) above.

22. With respect to 20.a) above, mitigating any perceived risk simply involves a slight widening of the notification for residential rezone of any *Rural – Coastal* land immediately adjacent to the *Township and Settlement* zone of Pūrākaunui which meets the rezoning criteria.

23. In this case there are only six landholdings of which one drops out of consideration due to falling entirely within an *Outstanding Natural Landscape* overlay zone[7] and almost the entirity of another[8] for the same reason. A third[9], falls out of consideration as it is owned by Council and also contains a cemetry. Leaving three land holdings, including land owned by the Wallers, in consideration as well as very small part of one other. The location of these is shown in Figure 1 below.

Figure 1: Potential Area to be Included in Residential Rezone.

24. The parcel of land notated with an '**x**' is the Council owned land containing the cemetry. The parcel of land notated with a '**1**' is an approximately 2,500m^2 area of 10 Hill Street, which could accommodate 1 – 2 dwellings with clever design and placement due to slope. '**2**' is land forming part of 457 Purakaunui Road owned by the submitters, Ben and Raewyn Waller. The parcel of land notated '**3**' is located at 36c Bay Road owned by Anthony Ritchie and Sandra Garner. Lastly, the parcels of land notated '**4**' are three individual titles located at 15 Boundary Street (contains an existing dwelling), 3 Waipai Street and 36d Bay Road owned by the Bar and Grills Family Trust[10].

7 120 Bay Road owned by Michael Foster and Rosemay Jackson-Hunter.
8 10 Hill Street owned by the Williamson Family Trust.
9 1 Boundary Street owned by the Dunedin City Council Cemetery and Crematorium Unit.
10 All address and ownership information derived from the Dunedin City Council Rating Information Database and Webmap.

25. A site assessment has been undertaken for the land owned by Ben and Raewyen Waller[11]. Although no weighting or scoring scale is included in the s32 report, the site assessment for the Waller submission demonstrates that the site is a likely candidate for residential rezone which can be considered on its merits at the variation 2 site specific hearing.

26. Site assessments for landholdings 1, 3 and 4 are likely to be very similar and relatively easy to undertake given that there are no reticulated 3 water services available within Pūrākaunui.

Other Points Raised in Council's Planning Evidence:

27. "*That Variation 2 is not intended to be a complete mechanism to achieve compliance with the NPS-UD. In particular, the NPS-UD includes a requirement for the preparation of a Future Development Strategy (FDS) in conjunction with the Otago Regional Council and broadening the scope of Variation 2 to include a wider selection of rezoning sites or other changes would inappropriately preempt the development of the FDS*."[12]

28. This confuses the required timeframes for supply of adequate urban supply dictated by the different planning instruments.

29. The NPS-UD states (emphasis added) that: "*The purpose of an Future Development Strategy is to promote **long term strategic planning** by setting out how a local authority intends to: provide at least sufficient development capacity...over the **next 30 years** to meet expected demand*."[13]

30. By definition, an FDS is a long-term strategic planning document.

31. In contrast, Objective 2.6.2 requires the provision of (emphasis added) "*...sufficient, feasible, development capacity...in the most appropriate locations to at least meet demand over the **medium term (up to 10 years)**, while sustainably managing urban expansion...*"

32. Objective 2.6.2 requires that Council, via Variation 2, provides additional zoned capacity to meet current demand in areas where required in the short to medium term. Objective 2.6.2 and related policies provides a complete mechanism for determining if any particular site needs to be

11 See Attachment 1.
12 Council Planning Evidence, paragraph 15(e).
13 NPS-UD, Clause 3.13(1)(a)(ii).

rezoned in the short to medium term. The 2GP was initially premised on Dunedin being a 'low growth centre'. Dunedin was recategorised to a 'medium growth centre' in 2020. Variation 2 is a direct response by Council to this change and the political heat generated by soraing prices and lack of supply.

33. The s32 report does not provide a breakdown of where capacity is required within the City. Council has no information on either demand or zoned capacity for Pūrākaunui, Osborne or Long Beach[14].

34. The submission of Ben and Raewyn proposes a residential rezone of land abutting the *Township and Settlement* zone of Pūrākaunui. There are relatively few houses sold in Pūrākaunui in any given year. This year there have been two sales to date, 88 Bay Road on 31 March 2021 and 54 Hill Street on 6 May 2021[15], and there is only one house currently for sale within Pūrākaunui being 15 Hill Street[16].

35. This lack of sales is not to be confused with lack of demand – rather it is an indication of lack of supply available to the market. The real estate agent for 15 Hill Street informed that the property sold as of today, after approximately 60 interested parties went through the property with the steep driveway being the issue of concern most cited by parties.

36. A simple desktop analysis finds that there is currently a zoned capacity for approximately 73 dwellings in the *Township and Settlement* zone of Pūrākaunui by way of either vacant lots or lots of sufficient size to accommodate another dwelling. However, when a closer look is taken at such lots there are issues constraining development including:

- Undersized residential allotments for which all other performance standards must be met;
- Placement of existing houses including wastewater treatment and dispersal systems;
- Location of existing accesses to existing dwellings;
- Slope values of 3 (15 – 20 degrees), 4 (20 – 26 degrees), 5 (26 – 35

14 See email from Council dated 14 July 2021 attached at Attachment 2.
15 Source: Trademe Property Insights.
16 Sources: realestate.co.nz and Trademe, information received from Jim Packer, REA, Harcourts.

degrees) and on the odd occasion 6 (greater than 35 degrees); and

- Extensive vegetation including indigenous.

37. These constraints on development mean that the feasible zoned capacity is far less than the zoned capacity with perhaps between 20 – 50 sites being feasible for development **if** owners were willing[17]. For example, 15 Hill Street is currently the only property within Pūrākaunui listed for sale on the realestate.co.nz website. This property technically has a zoned capacity for another dwelling in addition to the existing dwelling, however, the slopes, vegetation, access to the existing dwelling all combine to make further development difficult[18].

38. With most of the 'spare zoned capacity' not being able to be accessed by the market due to either: (a) medium to long term landholdings; and/or development for a single lot being hindered by positioning of existing houses including watewater treatement and dispersal systems, access, slope and existing vegetation including indigenous which is of high value to the local community, Pūrākaunui has insufficient zoned capacity to meet demand in the short and medium term.

39. Although, Variation 2 provides for intensification opportunities within *Township and Settlement* zones, it does so only for those *Township and Settlement* zones which have Council reticulated wastewater service. There is no Council reticulated wastewater service for Pūrākaunui and there are no Council plans to provide a reticulated service to this part of the City. The only way Council has to meet demand in this part of the City and, therefore discharge its obligations pursuant to Objective 2.6.2, is to provide additional zoned capacity via the rezoning of adjacent land provided such land can meet, on the merits, relevant criteria provided in Policy 2.6.2.1.a.

40. *That Variation 2 will have to be withdrawn, all or in part, if out of scope objections are successful.*[19]

41. This appears to be an extreme position to adopt particulalry given that Council states at least one fundamental aspect of Variation 2 is now

17 See Attachment 3 for the desk top analysis of zoned capacity in Pūrākaunui.
18 See Attachment 4 for photos of this property.
19 See Council's Planning Evidence paragraph 16(a).

operative. There would be no need to withdraw any part of Variation 2 if Ben's and Raewyn's objection is successful.

42. "*Variation 2 is a 'quick wins' plan variation to address a set of immediate issues of concern and is not a comprehensive or strategic review of all urban zoning or residential provisions*."[20]

43. As set out earlier, a stated purpose of Variation 2 was to amend Objective 2.6.2 and Policy 2.6.2.1.a. Objective 2.6.2 bestows the obligation upon Council to ensure the supply of adequate zoned capacity whilst Policy 2.6.2.1.a and the remainder of Policy 2.6.2.1 telling Council how to do so. Ben's and Raewyn's submission represents a potential 'quick win' to add zoned capacity via a willing and able landowner in a residential zoned area of Dunedin City currently lacking sufficient zoned capacity.

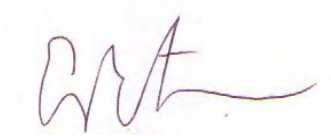
Conclusion:

44. The submission by Ben and Raewyn Waller is on point. It speaks directly to how, in this location, Council can discharge its obligations pursuant to Objective 2.6.2 which itself was amended via Variation 2.

45. Any prejudice can be easily overcome via the inclusion of several other small areas, as identified, of *Rural – Coastal* zoned land adjoining Pūrākaunui but not within the *Outstanding Natural Landscape*; and then by the notification of these areas for residential rezone.

46. Ben and Raewyn Waller made a submission in good faith on Variation 2 anticipating that the meirts of whether their submission would meet the criteria set out in Policy 2.6.2.1 would be determined at a Variation 2 site specific hearing.

Dated this 13th day of August 2021



Emma Rayner Peters (BA (First Class Honours), MA (Distinction), LLB)

20 See Council's Planning Evidence paragraph 19(a).

Attachment 1: s32 Appendix 5 Site Criteria Assessment for Submission Site.

Appendix 5 – Site Criteria Assessment – Potential Pūrākaunui Residential Rezone Area

Criteria	Site Assessment
Slope Objective 2.6.2, policies 2.6.2.1.c.i & 2.6.2.3.d.	No Issues (flat or gently sloping) to Some Issues (slope likely to reduce yield).
Aspect – Solar Access	Good to Very Good. North and west facing site.
Accessibility – Public Transport Objective 2.2.2, policies 2.6.2.1.c.iii & 2.6.2.3.c.ii	Poor. There is no public transport available to/from Pūrākaunui. The nearest public transport bus stop is at the corner of Borlases and Blueskin Roads on Bus Route 14 – Port Chalmers – City. Bus Route 14 is a frequent bus route. This bus stop is appoximately 9.5km from the site.
Accesibility – Centres Objective 2.2.2, policies 2.6.2.1.c.ii & 2.6.2.3.ii.	Poor. Site is approximately 10km from site to the *Principle Centre* zone at Port Chalmers and approximately 12.5km from site to the *Rural Centre* zone at Waitati.
Accessibility – Schools Objective 2.2.2, policies 2.6.2.1.c.v & 2.6.2.3.c.ii	Good. Approximately 2.2km from site to Pūrākaunui School.
Rural Character / Visual Amenity Policy 2.6.21.d.ii, Objective 2.4.6	Some Issues. Some local impacts but overall minor effects at a broader scale. Environmental enhancement and mitigation planting proffered via structure plan.
Impacts on Productive Rural Land Policy 2.6.2.1.d.i, Objective 2.3.1, policy 2.3.1.2	No Issues. No highly productive land. No mapped high class soils.
Reverse Sensitivity Policy 2.6.2.1.d.i, Objective 2.3.1	No Issues.
Signigificant Indigenous Biodiversity Policy 2.6.2.1.d.iii, Objective 2.2.3, policy 2.2.3.5	No Issues to Some Issues (Manageable). Several very small areas of indigenous vegetation – structure plan with protection and enhancement of these areas by indigenous planting.
Natural Landscapes & Natural Coastal Character Policies 2.6.2.1.d.iv & v; objectives 2.4.4 & 2.2.5	Significant Issues (Not Manageable) Entire rezone area is within significant landscape overlay zone. Structure plan approach which will involve protection of existing indigenous vegetation, ecological enhancement via further planting of indigenous vegetation and limiting residential activity to certain parts of the site.
Access to the Coast and Water Bodies Policy 2.6.2.1.d.vi, objective 10.2.4	No Issues. Rezone site is not immediately adjacent to the coast.

Criteria	Site Assessment
Significant Trees, Heritage Items, Important Vistas or Viewshafts, Important Green or Open Spaces	No Issues.
Residential Character and Amenity	Not Applicable as applies to potential medium density sites only.
Natural Hazards Policy 2.6.2.1.d.vii, objective 11.2.1	No Issues. Site is not shown as a HAIL site on ORC database. No 2GP mapped hazard for site.
Potable Water Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	Some Issues (Manageable). Site is outside Council potable water supply service area. Feasible to self-service.
Wastewater Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. A 'No DCC reticulated wastewater mapped area' will be applied the same as the existing Township and Settlement zone at Pūrākaunui. Residential activity within the rezone site will be self-serviced with respect to waste water.
Stormwater Management Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues No management required other than standard performance standards already contained in 2GP rules.
Transport Effects (Local) Objective 2.7.1, policy 2.7.1.1, objective 2.7.2	Some Issues (Manageable) Purakaunui Road is a local road which feeds on Blueskin Road which is classified as an arterial road in the 2GP roading hierarchy. Potentially minor upgrades required or issues to be considered at time of subdivision.
Transport Effects (Wider Network) Policy 2.6.2.1.d.x, objective 2.7.1, polic 2.7.1.1, objective 2.7.2	No Issues. Unlikely that upgrades to the wider transport network will be required as a result of the rezone.
Compact City – Proximity to Existing Residential Areas Policies 2.6.2.1.d.xi, 2.6.2.1.d.vii.6 & 2.6.2.3.c.iii.6, objective 2.2.4	No Issues. Site is adjacent to existing *Township and Settlement* zone at Pūrākaunui.
Compact City – Ability to Develop Land Efficiently Policies 2.6.2.1.d.xi, 2.6.2.3.c.iii.6, objective 2.2.4	Poor in that the site cannot be developed at GR1 or GR2 denisty **BUT** very good feasible capacity for 50+ sites of no wastewater reticulation *Township and Settlement* density.
Effects on Manawhenua Values Objective 2.5.1, policy 2.5.1.2	No Issues Site does not overlap with a *Wāhi Tupuna Mapped Area*.
Issues for Network Utility Operators, SDHB, Ministry for Education, FENZ, Kiwirail NPS-UD	No Issues. Likely that any issues are manageable. At time of subdivision, residential activity will need to meet firefighting requirements in 2GP performance standards.

Criteria	Site Assessment
Other constraints on Development Objective 2.6.2	No Issues. Landowner is willing to develop. No encumbrances on title to west of Purakaunui Road (see SUB-2021-107). The relevant titles to the east of Purakaunui Road, 263/128 and 352/32, have no encumbrances etc which will impede development. NB. SUB-2021-107 provides for the removal of covenant from 263/128.
Feasibility for Medium Density Development – Lower Quality Housing Stock more likely to be Developed	Not Applicable.
Feasibility for Medium Density Development – Market Desirability	Not Applicable.

Structure Plan:

Legend

A. Proposed Ecological Enhancement area. Approximately 3.56ha.

A1. Forestry to be removed at maturity and replanted with native coastal vegetation. Approximately 1.5ha.

B. Land Area One: Proposed Township and Settlement zone - approximately 4.53ha.

Proposed 19 lots @ 1000m2.

Remainder of zone area to be re-established with native coastal vegetetation. Approximately 2.85 ha (excluding road access).

C. Land Area Two: Proposed Township and Settlement zone.

Approximately 8.23 ha. Final yield - determined by survey.

C1. Proposed housing area - 280m x 80m. Potential yield - 14 lots. 20m wide x 50m deep.

Coastal forest remnants to be protected and reinforced with additional planting within a 10m wide protected strip to the east of the lots.

Access via a low impact road in the 20m strip to east of coastal forest and new planting.

D. Proposed Ecological Enhancement Area - approximately 6.87 ha.

7. Viewpoints

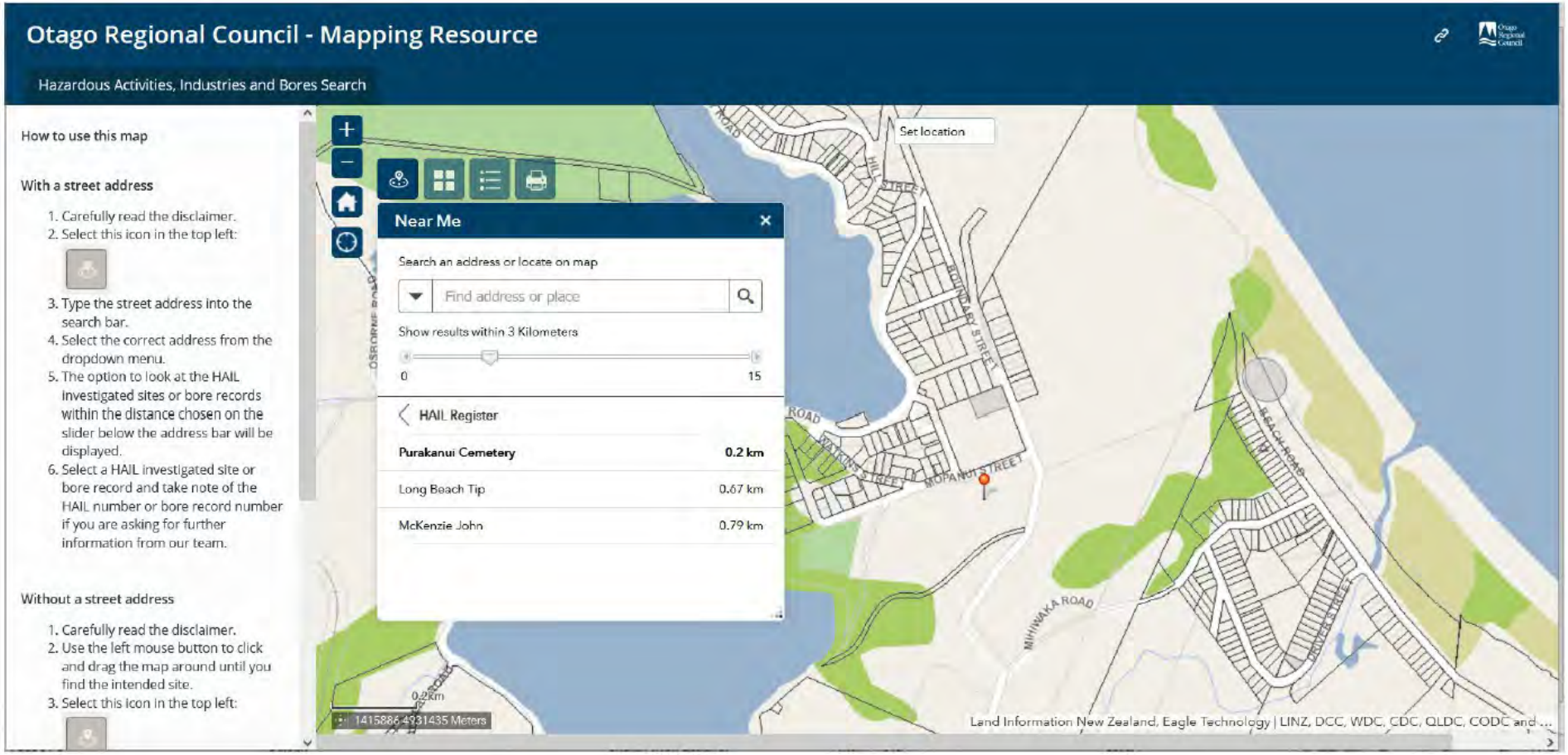
site. ENVIRONMENTAL CONSULTANTS

503 Purakaunui Road - Proposed Zone Areas & Viewpoints

May 2021

1.

ORC HAIL DATABASE:



Closest HAIL sites are:

- Pūrākaunui Cemetry – HAIL.01127.01 – located at 1 Boundary Street, Pūrākaunui.
- Long Beach Tip – HAIL.00667.01 – located at 25 Beach Road, Long Beach.
- McKenzie John - HAIL.00104.01 – located at 47 Driver Street Long Beach.

Attachment 2: Email from Council Stating no Demand or Zoned Capacity Data Available for Pūrākaunui,Osborne or Long Beach

From Nathan Stocker <Nathan.Stocker@dcc.govt.nz>

Subject **RE: Longbeach, Purakaunui & Osborne**

To Me

Reply | Forward | Archive | Junk | Delete | More

14/07/2021, 8:19 am

Hi Emma,

We don't have any demand or capacity figures for those settlements at the moment sorry.

Cheers
Nathan

Nathan Stocker
Team Leader Research and Monitoring
City Development
Dunedin City Council

Working hours: 7.40 - 4.30 Mon/Thur/Fri and 7.40 - 2.30 Tue/Wed

P 03 477 4000 | **DD** 03 474 3732 | nathan.stocker@dcc.govt.nz

Dunedin City Council, 50 The Octagon, Dunedin
PO Box 5045, Dunedin 9054
New Zealand
www.dunedin.govt.nz

DUNEDIN CITY COUNCIL | kaunihera a-rohe o Ōtepoti

From: Emma Peters <sweepconsultancy@gmail.com> **On Behalf Of** emma
Sent: Tuesday, 13 July 2021 6:19 AM
To: Nathan Stocker <Nathan.Stocker@dcc.govt.nz>
Subject: Longbeach, Purakaunui & Osborne

Hi Nathan,

What are the demand (if available) and capacity figures that DCC has for these settlements please?

Cheers,

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

Attachment 3: Pūrākaunui Zoned Capacity Desktop Analysis – Pictorial and Tabled.


Dunedin City Council Rates
Find address or place
Bennett
DCC
Taylor
DCC GIS


Dunedin City Council Rates
Find address or place
Chisholm & Worth
Wright & Gibson
Pierce
DCC GIS

Zoned Capacity Information for Pūrākaunui – Vacant Lots Zoned Township & Settlement[1]

Address	Owner	Area (m^2)	Potential Zoned Capacity (Number of Dwellings)	Constraints on Development	Likely Development Potential (Number of Dwellings)
2A Bay Road	Mark Bolland & Suzanne Wilks (Live at 2 Bay Road)	2023	2	• Slope value of 5: 26 – 35 degrees. • Extensive vegetation including indigenous.	1
8 Bay Road	P W Laing Family Trust	4186	4	• Slope value of 5: 26 – 35 degrees. • Extensive vegetation including indigenous.	2
33 Mopanui Street	Andrew Johnson, Barbara Johnson & Richard Sim	4046	4	• Approximately half of the site is steeper with slopes between 20 – 35 degrees. • This part of the site has extensive vegetation including indigenous.	2
5 Grave Street	Andrew Johnson, Barbara Johnson & Richard Sim	2023	2	• Approximately half of the site is steeper with slopes between 20 – 35 degrees. • This part of the site has extensive vegetation including indigenous.	1
2 Grave Street	Andrew Johnson, Barbara Johnson & Richard Sim	668	1*	• Slopes of 15 – 20 degrees will cause some design issues on this small site.	1*
7 Grave Street	P W Laing Family Trust	2023	2	• Approximately half of the site is steeper with slopes between 20 – 35 degrees. • Extensive vegetation including indigenous.	1
9 Grave Street	P W Laing Family Trust	2023	2	• Majority of the site contains slopes between 20 – 35 degrees. • Extensive vegetation including indigenous.	1

1 Desktop Analysis only. Information sourced from Dunedin City Council Web Map, Rating Information Database and Data Map.

* Provided that all relevant performance standards, other than density, are met.

Address	Owner	Area (m^2)	Potential Zoned Capacity (Number of Dwellings)	Constraints on Development	Likely Development Potential (Number of Dwellings)
13 Grave Street	P W Laing Family Trust	2039	2	• Majority of the site contains slopes between 20 – 35 degrees with lower portion exceeding 35 degrees. • Extensive vegetation including indigenous.	Maybe 1
15 Grave Street	P W Laing Family Trust	1568	1	• Approximately half of the site has a slope value of 6: greater than 35 degrees; balance of the site has a slope value of 5: 26 – 35 degrees. • Extensive vegetation including indigenous.	Maybe 1
17 Grave Street	P W Laing Family Trust	819	1*	• Approximately half of the site has a slope value of 5: 26 – 35 degrees; balance has a slope value of 4 (20 – 26 degrees) or 3 (15 – 20 degrees). • Extensive vegetation including indigenous.	1*
19 Watkins Street	P W Laing Family Trust	809	1*	• Driveway for 21 Watkins Street bisects site. • Approximately half of the site has a slope value of 5 (26 – 35 degrees); balance has a slope value of 4 (20 – 26 degrees). • Extensive vegetation including indigenous.	1*
17 Watkins Street	P W Laing Family Trust	809	1*	• Slope value of 5: 26 – 35 degrees. • Extensive vegetation including indigenous.	1*
15 Watkins Street	P W Laing Family Trust	1239	1	• Marjority of the site has a slope value of 4 (20 – 26 degrees). • Extensive vegetation including indigenous.	1

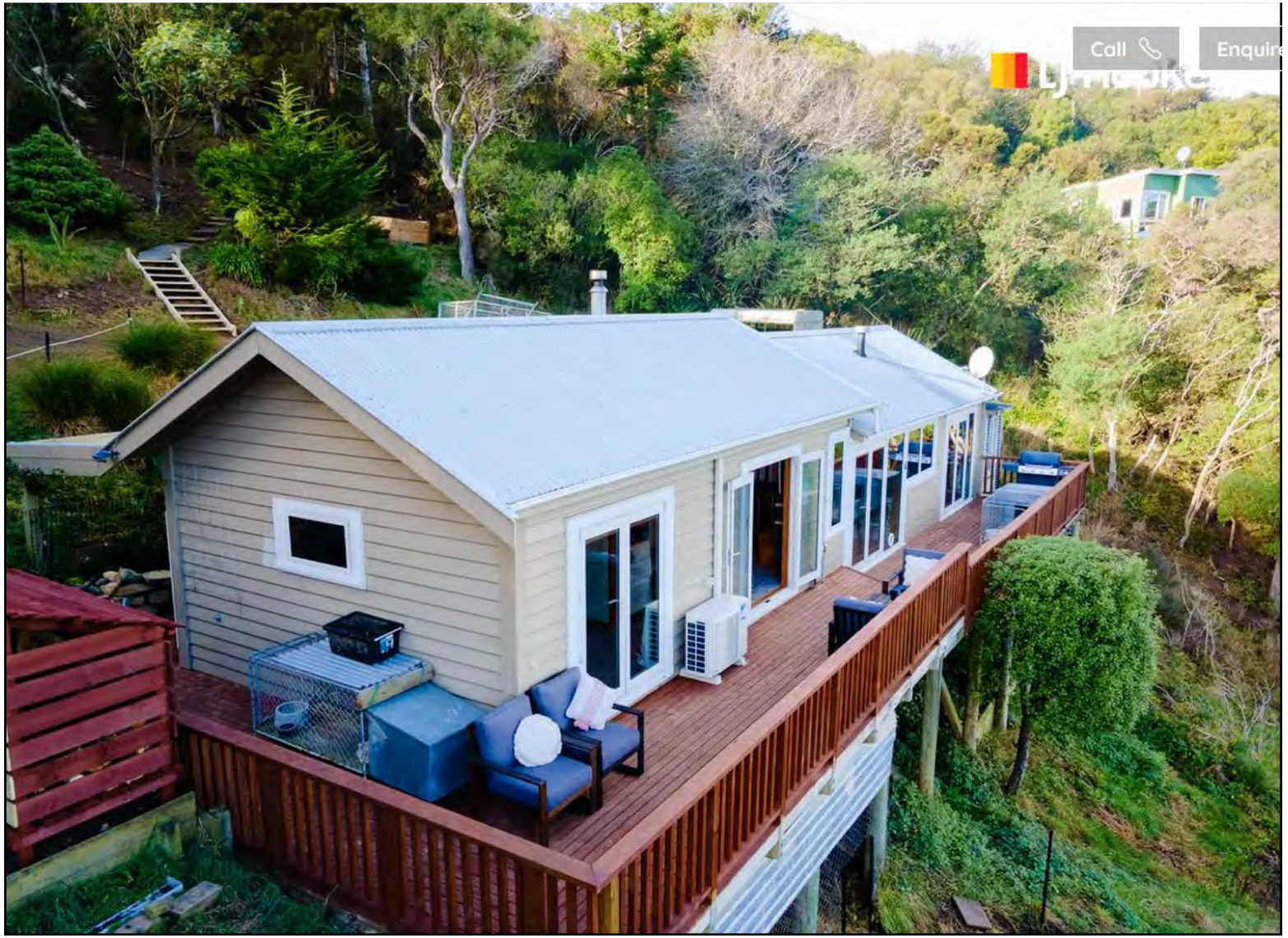
Address	Owner	Area (m^2)	Potential Zoned Capacity (Number of Dwellings)	Constraints on Development	Likely Development Potential (Number of Dwellings)
13 Watkins Street	P W Laing Family Trust	1497	1	• Majority of the site has a slope value of 3 (15 – 20 degrees) or 4 (20 – 26 degrees). • Extensive vegetation including indigenous.	1
11 Watkins Street	P W Laing Family Trust	809	1*	• Slope values of 4 (20 – 26 degrees) to 5 (26 – 35 degrees). • Extensive vegetation including indigenous.	Maybe 1
9 Watkins Street	P W Laing Family Trust	809	1*	• Slope value 4: 20 – 26 degrees.	Maybe 1
7 Watkins Street	Denis & Gillian Campbell	1156	1	• Two-thirds of site has slope value of 4: 20 – 26 degrees. • Some vegetation including indigenous.	1
18 Bay Road	Denis & Gillian Campbell	1153	1	• Two-thirds of site has slope value of 4 (20 – 26 degrees) and 5 (26 – 35 degrees). • Extensive vegetation including indigenous.	1
30 Watkins Street	Denis & Gillian Campbell	1062	1		1
24 Bay Road	John & Susan Irvine, David Brent	885	1*	• Site bisected by driveway to 26 Bay Road.	1*
28 Bay Road	John Howes	1083	1	• Slope value of 3 (15 – 20 degrees).	1
12 Watkins Street	John Howes	2004	1 (Existing house)	• Existing house on site. • Majority of site has a slope value of 3 (15 -20 degrees).	1
12A Watkins Street	John Howes	425	1*	• Slope between 12 – 20 degrees. • Vegetation including indigenous.	1*
30A Bay Road	Francis & Jennifer Whitaker, Allan MacKersy	809	1*	• Slope value of 3 (15 – 20 degrees) and 4 (20 – 26 degrees). Some vegetation including indigenous.	1*

Address	Owner	Area (m^2)	Potential Zoned Capacity (Number of Dwellings)	Constraints on Development	Likely Development Potential (Number of Dwellings)
30C Bay Road	Francis & Jennifer Whitaker, Allan MacKersy	1368	1	• Majority of the site has a slope value of 4 (20 – 26 degrees). • Some vegetation including indigenous.	1
30B Bay Road	Francis & Jennifer Whitaker, Allan MacKersy	2024	2	• Slope values of 3 (15 – 20 degrees) and 4 (20 – 26 degrees). • Extensive vegetation including indigenous.	2
5 Derdan Street	Leonard Cook	2284	1 (Existing house)	• Existing house. • Slope value of 3 (15 – 20 degrees).	1
36B Bay Road	Anthony Ritchie & Sandra Garner	2226	2	• Slope values of 3 (15 – 20 degrees) and 4 (20 – 26 degrees). • Extensive vegetation including indigenous.	2
2 Boundary Street	Peggy Johnson	812	1*		1*
4 Boundary Street	Peggy Johnson	812	1*	• Some vegetation including indigenous and slope.	1*
8 Boundary Street	Peggy Johnson	1624	1	• Approximately two-thirds of site has a slope value of 3 (15 – 20 degrees). • Vegetation including indigenous.	1
17A Boundary Street	Dian Squires	4047	4	• Majority of the site has a slope value of 3 (15 – 20 degrees). • Extensive vegetation including indigenous.	2
30 Boundary Street	Kelvin & Karen Marks	2340	1 (Existing house)	• Existing house. • Slope Values of 3 (15 – 20 degrees) and 4 (20 – 26 degrees).	1
11 Ridge Street	Reece Nicol	2186	1 (Existing house)	• Existing house.	1

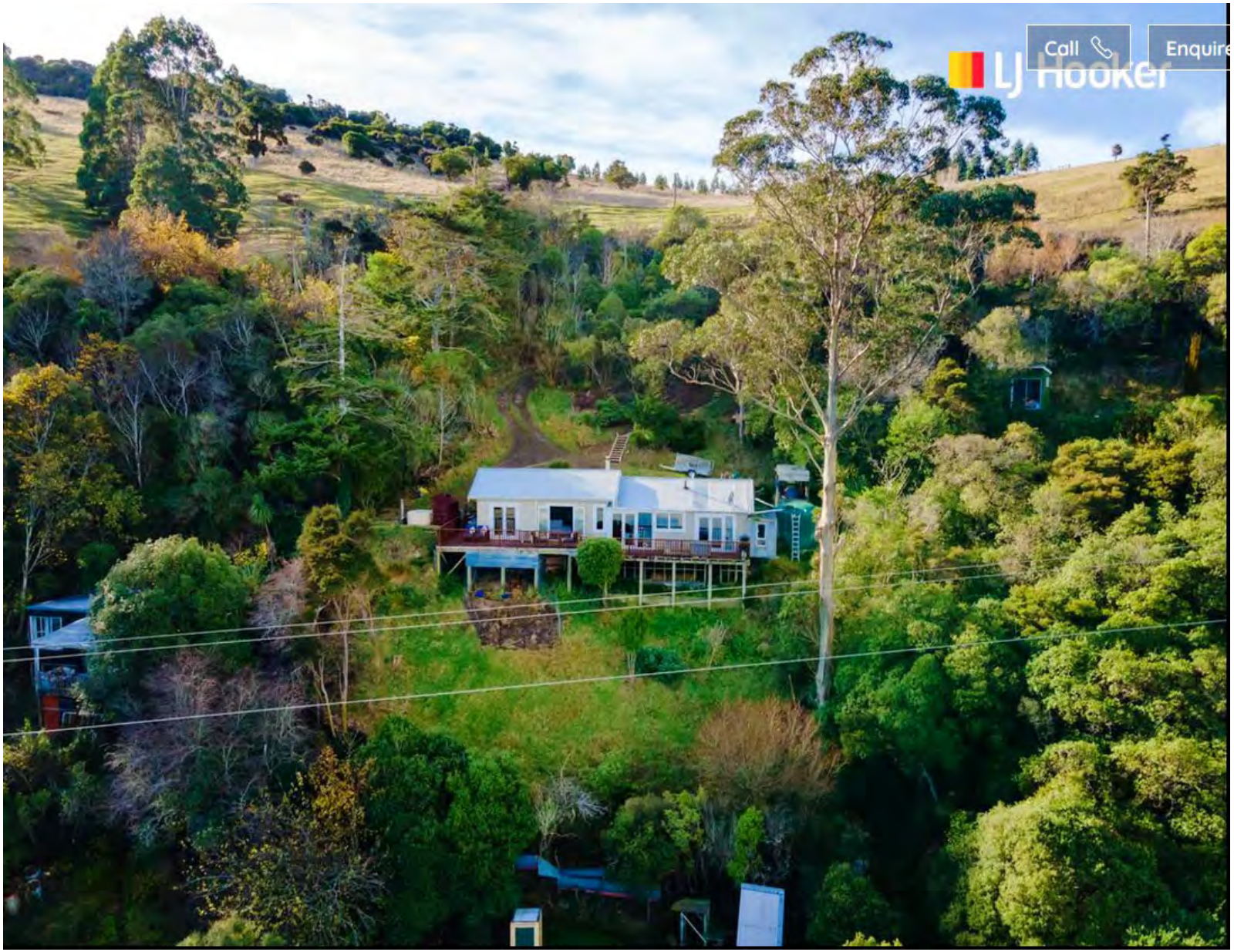
Address	Owner	Area (m^2)	Potential Zoned Capacity (Number of Dwellings)	Constraints on Development	Likely Development Potential (Number of Dwellings)
9 Ridge Street	Nicola Taylor	2023	1 (Existing house)	• Existing house. • Extensive vegetation including indigenous.	1
10 Ridge Street	Helen & Leon Everitt	713	1*	• Slope value 3 (15 – 20 degrees).	1*
13 Crescent Street	Ralph & Brenda Hore	660	1*	• Slope value 3 (15 – 20 degrees).	1*
5 Crescent Street	Andrew & Bronwyn McLeod	2023	1 (Existing house)	• Existing house, some vegetation including indigenous. • Slope values predominatly 3 (15 – 20 degrees) to 4 (20 – 26 degrees).	1
29A Boundary Street	Andrew & Bronwyn McLeod	1012	1	• Slope value 4 (20 – 26 degrees). • Extensive vegetation including indigenous.	1
27 Boundary Street	Michael Foster	1012	1	• Slope value 4 (20 – 26 degrees). • Extensive vegetation including indigenous.	1
66 Boundary Street	John Bosworth	1029	1	• Slope values of 3 (15 – 20 degrees) to 4 (20 – 26 degrees).	1
8A Crescent Street	John Bosworth	1012	1	• Approximately two-thirds of site has slope value 3 (15 – 20 degrees).	1
6A Crescent Street	Lester & Peter Barrett	1550	1	• Ancillary residential building on slope 2 land. • Slope value of 3 (15 – 20 degrees).	1
7 Cross Street	Lester & Peter Barrett	857	1*	• Slope values of 4 (20 – 26 degrees) and 5 (26 – 35 degrees). • Extensive vegetation including indigenous.	1*

Address	Owner	Area (m^2)	Potential Zoned Capacity (Number of Dwellings)	Constraints on Development	Likely Development Potential (Number of Dwellings)
7A Cross Street	Lester & Peter Barrett	936	1*	• Slope values of 4 (20 – 26 degrees) and 5 (26 – 35 degrees). • Extensive vegetation including indigenous.	1*
1 Hill Street	Purakanui Properties Limited	1500	1	• Small watercourse. • Slope values of 3 (15 – 20 degrees) to 4 (20 – 26 degrees). • Vegetation including indigenous.	1
3 Hill Street	Amira Dabaliz	1358	1	• Approximately two-thirds of site with slope values of 3 (15 – 20 degrees) to 4 (20 – 26 degrees).	1
15 Hill Street	Darrell Piere	2083	1 (Existing house)	• Existing house and access to that house. • Slope value of 4 (20 – 26 degrees). • Extensive vegetation including indigenous.	Maybe 1
21 Hill Street	Rosemary Watson & Richard Rogers	746	1*	• Neighbouring house at 19 Hill Street appears to encroah on land. • Slope value of 4 (20 – 26 degrees). • Extensive vegetation including indigenous.	1*
102A Bay Road	Penelope Wright & Duncan Gibson	506	1*	• Slope values of 3 (15 – 20 degrees) and 4 (20 – 26 degrees). • Extensive vegetation including indigenous.	1*
44 Hill Street	Laurie Chisholm & Gillian Worth	1012	1	• Neighbouring house at 42 Hill Street appears to encroach on land. • Slope value of 3 (15 – 20 degrees). • Extensive vegetation including indigenous.	1

Attachment 4: Photos of 15 Hill Street[21]



21 Source: realestate.co.nz/4017281/residential/sale/15-hill-street-purakaunui


Call
Enquire
LJ Hooker

BEFORE THE INDEPENDENT COMMISSION
ON BEHALF OF THE DUNEDIN CITY COUNCIL

Under	The Resource Management Act 1991
In the Matter	of an Objection Notice pursuant to section 357

BRIEF OF EVIDENCE OF KURT BOWEN

GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN

Solicitor on record: Derek McLachlan
Solicitor to contact: Derek McLachlan
P O Box 143, Dunedin 9054
Ph: (03) 477 7312
Fax: (03) 477 5564
Email: derek.mclachlan@gallawaycookallan.co.nz

BRIEF OF EVIDENCE OF KURT BOWEN

1. My full name is Kurt Alistair Bowen. I am a surveyor and director of Paterson Pitts Management Limited.

2. I have been given a copy of the Environment Courts code of conduct for expert witnesses. I have reviewed that document and confirm that this evidence has been prepared in accordance with it and that all opinions that I offer in this evidence are within my expertise. I acknowledge that my expertise does not extend to natural hazards and landscape. I have not omitted to refer to any relevant document or evidence except as expressly stated. I agree to comply with the code and in particular to assist the Commissions in resolving matters that are within my expertise.

3. I have been asked to provide this brief of evidence in relation to a notice of objection to the Panel's decision dated 31 May 2021 striking out the submissions of:

   (a) Tony McAuliffe

   (b) Murray Wilson & Paula Parker – Wilpark Trust

   (c) Brendan Murray and

   (d) Gladstone Family Trust.

4. I have assessed the following sites against the criteria set out in Appendix 5 of the Council's Section 32 Report:

   (a) Camp Street

   (b) Centre Road and

   (c) Gladstone Road North.

5. Appended to this brief and marked "**A**", "**B**", and "**C**" respectively are copies of my assessments which form my evidence.

Date: 13 August 2021

Kurt Bowen

A

8 and 26 Camp Street, Broad Bay

Submitters: Tony McAuliffe (#8) and Murray A Wilson, Paula A Parker and Wilpark Trust (#26)

Appendix 5 Planning Assessment

Summary:

Overall, these two sites are considered to be generally well aligned with the Appendix 5 parameters, due to being situated adjacent to an existing region of residential-zoned land (Township and Settlement Zone). The subject sites are contiguous, and collectively offer a land area of approx. 3.2Ha that might be utilised for additional housing capacity. Residential development is presently occurring within the adjacent residential zone, and as a consequence of this there will be improved infrastructure shortly available. Broad Bay is becoming a desirable place to live, with Portobello Road being recently upgraded to a high standard to better support access via different travel modes. The site is of sufficient size to manage (if required) matters associated with slope, natural hazards and stormwater.

Part of the land at 26 Camp Street is subject to the North West Peninsula Significant Natural Landscape (SNL) Overlay Zone. While this is certainly a relevant consideration, there remains a good-sized block of land within #26 that is not encumbered by this feature. It is envisaged that the implications of the SNL feature could be fully considered once this site is accepted as 'in-scope'.

Matters such as reserve sensitivity and indigenous vegetation are not of particular relevance at this location.

The table below assesses the submission site(s) against DCC's Variation 2 Appendix 5 criteria.

Criteria	Comment	Options to manage	Scoring	Can manage issues
Slope	Objective 2.6.2 – not directly relevant to slope. But… requires the provision of development capacity in the 'most appropriate locations'… At least one proposed Variation 2 rezoning site is located further down the Peninsula (refer GF15). Other sites, for instance GF01 which is entirely enclosed by existing rural-residential land, are arguably much less appropriate for development capacity than the submission site.	Due to the site size, the future development layout (established at resource consent stage) can assist with managing slope.	Few issues	Yes

	Policy 2.6.2.1.c.i – requires topography that is "not too steep". While the site is sloping, it is not considered too steep. This is evidenced by the ongoing adjacent residential development (which is occurring on similarly sloping land). Policy 2.6.2.3.d – again, requires land that is "not too steep".			
Aspect – Solar Access	N/a; relates to medium density (MD) only. Township and Settlement Zone anticipated.		n/a	
Accessibility – public transport	Objective 2.2.2 – in terms of accessibility, Objective 2.2.2 seeks reduced reliance on private motor cars for transportation. Refer below. Policy 2.6.2.1.c.iii – The Broad Bay neighbourhood is currently serviced by frequent public transport services. Policy 2.6.2.3.c.ii – public transport as above. In terms of community facilities, the Broad Bay Yacht Club, school and riparian reserve are available within a short walk from the submission land.		Very good	
Accessibility - Centres	Objective 2.2.2 in terms of accessibility, Objective 2.2.2 seeks reduced reliance on private motor cars for transportation. Refer below. Policy 2.6.2.1.c.ii, v – seeks residential development being close to main urban areas. The site is approx. 5.5km from the Macandrew Bay centre and approx. 3.3km from the Portobello centre. A pedestrian path is available between Broad Bay and Macandrew Bay. Policy 2.6.2.3.c.ii – refer above.	The distance to an urban area is offset by: • accessibility to a bus route • some local community facilities in Broad Bay itself • The relatively flat commute to Macandrew Bay	Moderate	No
Accessibility – Schools	A school is located between 600m and 800km from the site.		Very good	
Rural character/visual amenity	Policy 2.6.2.1.d.ii – seeks to protect productive rural land Objective 2.4.6 – The character and visual amenity of Dunedin's rural environment is maintained or enhanced. The site is made up of two properties 1.3Ha and 1.9Ha. These sites are too small, and the land is of insufficient quality, to support effective standalone rural activities.	Could potentially be managed via building controls (e.g. natural materials) and landscape plantings, etc.	Some issues	Partially

Impacts on productive rural land	Due to the size of the site, it has limited rural productivity. There are no High Class Soils on the land.		Minor issues	No
Reverse sensitivity	The site currently surrounded by few existing houses. Residential development is occurring on the opposite side of Camp Street, and as such local environment is already in a state of change. The Camp Street formation and other local infrastructure is in the process of being upgraded. Overall, unacceptable reserve sensitivity issues are not anticipated to arise.		No issues	
Significant indigenous biodiversity	The site is not associated with any significant indigenous biodiversity.		No issues	
Natural landscapes and natural coastal character	Part of the land is subject to the North West Peninsula Significant Natural Landscape (SNL) Overlay Zone. Residential development within this SNL region can be controlled to avoid unacceptable landscape effects. Exclusion of the SNL area from future residential development would still leave a large block of land within the site that could be developed.	Could potentially be managed via building controls (e.g. natural materials) and landscape plantings, etc.	No issues	Yes
Access to the coast and water bodies	The site lies within close proximity to the coastline. Access to the coast is available via the existing road network.		Very good	
Significant trees, heritage items, important vistas or viewshafts, important green or open spaces	Policy 2.6.2.1.d.vii seek to protect and enhance the elements of the environment that contribute to residents' and visitors' aesthetic appreciation for, and enjoyment of, the city. These include: 1. important green and other open spaces, including green breaks between coastal settlements. 2. trees that make a significant contribution to the visual landscape and history of neighbourhoods. 3. built heritage, including nationally recognised built heritage.		No issues	

	4. important visual landscapes and vistas. 5. The amenity and aesthetic coherence of different environments. 6. the compact and accessible form of Dunedin. The site is not an important green space. The site does not include any trees of significance. The site does not include any recognised built heritage. Part of the site is contained within a landscape zone. However, the site is not believed to include any important vistas. Landscape issues can be managed as discussed above. The site lies adjacent to an existing Township and Settlement Zone – the land, if rezoned, will appear coherent with this. The land, if rezoned, will appear contiguous with the adjacent residential zone, and accordingly the City will remain compact and accessible. Objective 2.4.1 – as above. Policy 2.4.1.7 Maintain a compact city with a high degree of legibility based on clear centres, edges and connections through rules that: a) manage the expansion of urban areas. b) require new large subdivisions to provide a concept or structure plan that demonstrates how the subdivision will provide for good connectivity to existing or potential future urban areas for pedestrians, cyclists and motor vehicles. The land, if rezoned, will form a practical 'mirror' of the existing residential zone that lies on the east side of Camp Street. This will enable efficient management to be made of the existing infrastructure within Camp Street.			
Residential character and	N/a; relates to medium density only. Township and Settlement Zone anticipated.		n/a	

amenity				
Natural Hazards	The 2GP map does not show any natural hazards within the submission site.		No issues	
Potable water supply	The site can be readily serviced for potable water from existing DCC infrastructure within Camp Street.		Very good	
Wastewater supply	The site can be readily serviced for wastewater drainage using existing DCC infrastructure within Camp Street and new infrastructure that has been approved for construction as part of the ongoing adjacent development.		Very good	
Stormwater management	Due to the size of the submission site, stormwater can be managed on site.	Onsite management if required.	No issues	Yes
Transport effects (local)	Camp Street is currently being upgraded as part of the adjacent residential development that is presently occurring. This upgrade includes the intersection of Camp Street with Portobello Road. The new road formation is expected to be suitable to provide acceptable access to the submission land should it be rezoned.		No issues	
Transport effects (wider network)	Portobello Road is expected to adequately accommodate the traffic that would be generated from residential development of the submission land.		Very good	
Compact city – proximity to existing residential areas	The site borders onto the existing Township and Settlement Zone.		Very good	
Compact city - ability to develop land efficiently	At 3.2Ha, the land has a capacity for up to 54 houses if rezoned to Township and Settlement Zone (allowing for 15% of the site used for roading). This number could decrease if the portion of the land that is subject to the SNL overlay is managed via a different approach to residential density. This size of development enables efficient design and implementation processes to be achieved.		Very good	
Effects on	No known implications.		No issues	

Manawhenua values				
Issues for various services providers.	No specific investigation has been undertaken with service providers. However, the residential development that is presently occurring on land adjacent to the submission site has not encountered any issues in regard to services, which suggests that sufficient capacity most likely exists in this community.		No issues	
Other constraints on development	No other issues – matters such as slope identified above.		No issues	
Feasibility for MD development	Medium density development at this location would likely present an undesirable contrast with the adjacent Town and Settlement Zone. A MD zoning format has not been promoted or considered by the submitter.		n/a	
Feasibility for MD development - market desirability	As above.		n/a	

B

14 and 18 Centre Road, Tomahawk

Submitter: Brendan Murray

Appendix 5 Planning Assessment

Summary:

Overall, these two sites are considered to be well aligned with the Appendix 5 parameters, due to being situated adjacent to an existing region of residential-zoned land (General Residential 1 Zone). The subject sites are contiguous, and collectively offer a land area of approx. 2.6Ha that might be utilised for additional housing capacity. Infrastructure facilities are available for this land. The Tomahawk neighbourhood is relatively close to the City centre, and the region has seen a recent surge in residential development within its existing residential zones. The site is of sufficient size to manage (if required) matters associated with slope, natural hazards and stormwater.

Part of the submission land is subject to the Peninsula Coast Outstanding Natural Landscape (ONL) Overlay Zone. While this is certainly a relevant consideration, there remains a good-sized area of the site that is not encumbered by this feature. It is envisaged that the implications of the ONL feature could be fully considered once this site is accepted as 'in-scope'.

Matters such as reserve sensitivity and indigenous vegetation are not of particular relevance at this location.

The table below assesses the submission site(s) against DCC's Variation 2 Appendix 5 criteria.

Criteria	Comment	Options to manage	Scoring	Can manage issues
Slope	Objective 2.6.2 – not directly relevant to slope. But… requires the provision of development capacity in the 'most appropriate locations'… A number of proposed Variation 2 rezoning sites are located at similar (or greater) distances down the Peninsula (refer GF14 and GF15). Other sites, for instance GF01 which is entirely enclosed by existing rural-residential land, are arguably much less appropriate for development capacity than the submission site.	Due to the site size, the future development layout (established at resource consent stage) can assist with managing slope.	Few issues	Yes

	Policy 2.6.2.1.c.i – requires topography that is "not too steep". While the site is sloping, it is not considered too steep. This is evidenced by the ongoing adjacent residential development (which is occurring on similarly graded land). Policy 2.6.2.3.d – again, requires land that is "not too steep".			
Aspect – Solar Access	N/a; relates to medium density (MD) only. GR1 Zone anticipated.		n/a	
Accessibility – public transport	Objective 2.2.2 – in terms of accessibility, Objective 2.2.2 seeks reduced reliance on private motor cars for transportation. Refer below. Policy 2.6.2.1.c.iii – The Ocean Grove neighbourhood is currently serviced by frequent public transport services. Policy 2.6.2.3.c.ii – public transport as above. In terms of community facilities, the Grants Braes Football Club, Tomahawk Lagoon reserve, Tomahawk Beach and the Tomahawk Gun Emplacements are available within a short walk from the submission land.		Very good	
Accessibility - Centres	Objective 2.2.2 in terms of accessibility, Objective 2.2.2 seeks reduced reliance on private motor cars for transportation. Refer below. Policy 2.6.2.1.c.ii, v – seeks residential development being close to main urban areas. The site is approx.2.9km from the Andersons Bay centre. A pedestrian path is available between Tomahawk and Andersons Bay. Policy 2.6.2.3.c.ii – refer above.	The distance to an urban centre is offset by: • accessibility to a bus route • some local community facilities in Tomahawk itself	Moderate	No
Accessibility – Schools	The nearest schools are located in Andersons Bay and Tainui, approx. 2.9km from the submission site.		Moderate	No
Rural character/visual amenity	Policy 2.6.2.1.d.ii – seeks to protect productive rural land Objective 2.4.6 – The character and visual amenity of Dunedin's rural environment is maintained or enhanced. The site is made up of two properties of 0.6Ha and 2.0Ha. These sites are too small, and the land is of insufficient quality, to support effective standalone rural activities.	Could potentially be managed via building controls (e.g. natural materials) and landscape plantings, etc.	Some issues	Partially

Impacts on productive rural land	Due to the size of the site, it has limited rural productivity. There are no High Class Soils on the land.		Minor issues	No
Reverse sensitivity	The site currently exists within a local environment that appears to be dominated by residential land use activities. New residential development is presently occurring on the opposite side of Centre Road, and as such the local environment is already in a state of change. Overall, unacceptable reserve sensitivity issues are not anticipated to arise.		No issues	
Significant indigenous biodiversity	The site is not associated with any significant indigenous biodiversity.		No issues	
Natural landscapes and natural coastal character	Part of the land is subject to the Peninsula Coast Outstanding Natural Landscape (ONL) Overlay Zone. Residential development within this ONL region can be controlled to avoid unacceptable landscape effects. Exclusion of the ONL area from future residential development would still leave a moderate-sized block of land within the site that could be developed.	Could potentially be managed via building controls (e.g. natural materials) and landscape plantings, etc.	No issues	Yes
Access to the coast and water bodies	The site lies within close proximity to the coastline. Access to the coast is available vis the existing road network.		Very good	
Significant trees, heritage items, important vistas or viewshafts, important green or open spaces	Policy 2.6.2.1.d.vii seeks to protect and enhance the elements of the environment that contribute to residents' and visitors' aesthetic appreciation for, and enjoyment of, the City. These include: 1. important green and other open spaces, including green breaks between coastal settlements. 2. trees that make a significant contribution to the visual landscape and history of neighbourhoods. 3. built heritage, including nationally recognised built heritage.	The only issues related to this matter that might be encountered are visual issues. These may be able to be adequately managed through building controls (e.g. natural materials) and landscape plantings, etc.	Few issues	Potentially

	4. important visual landscapes and vistas. 5. The amenity and aesthetic coherence of different environments. 6. the compact and accessible form of Dunedin. The site is not an important green space. The site does not include any trees of significance. The site does not include any recognised built heritage. Part of the site is contained within a landscape zone. Development within this area can be managed in such a way as to mitigate and/or reduce the potential for adverse environmental effects. Alternatively, development could be excluded from this area altogether. The site lies adjacent to an existing GR1 – the land, if rezoned, will appear coherent with this. The land, if rezoned, will appear contiguous with the adjacent residential zone, and accordingly the City will remain compact and accessible. Objective 2.4.1 – as above. Policy 2.4.1.7 Maintain a compact city with a high degree of legibility based on clear centres, edges and connections through rules that: a) manage the expansion of urban areas. b) require new large subdivisions to provide a concept or structure plan that demonstrates how the subdivision will provide for good connectivity to existing or potential future urban areas for pedestrians, cyclists and motor vehicles. The land, if rezoned, will form a practical 'mirror' of the existing residential zone that lies on the west side of Centre Road. This will enable efficient management to be made of the existing infrastructure within Centre Road and Tomahawk Road.			

Residential character and amenity	N/a; relates to medium density only. GR1 Zone anticipated.		n/a	
Natural Hazards	The 2GP map does not show any natural hazards within the submission site.		No issues	
Potable water supply	The site can be readily serviced for potable water from existing DCC infrastructure within Centre Road.		Very good	
Wastewater supply	The site can be readily serviced for wastewater drainage using existing DCC infrastructure within Tomahawk Road.		Very good	
Stormwater management	Due to the size of the submission site, the sandy soils that exists at this location, and the proximity of the site to the coast, stormwater can be managed via a number of options.	On-site management, if required.	No issues	Yes
Transport effects (local)	Centre Road is currently formed to a standard that is expected to be able to support rezoning of the submission land. If necessary, improvements to the road network can be required as part of any future resource consent process.	Yes, if necessary, transport effects can be managed through the resource consent process.	No issues	
Transport effects (wider network)	The local road network (including Centre Road, Tomahawk Road and Highcliff Road) is expected to adequately accommodate the traffic that would be generated from residential development of the submission land.		Very good	
Compact city – proximity to existing residential areas	The site borders onto the existing GR1 Zone.		Very good	
Compact city - ability to develop land efficiently	At 2.6Ha, the land has a capacity for up to 44 houses if rezoned to GR1 Zone (allowing for 15% of the site used for roading). This number could decrease if the portion of the land that is subject to the ONL overlay is managed via a different approach to residential density. If no development is enabled within the ONL region, the maximum number of sites would reduce to approx. 15 sites. This size of development, and its proximity to good access and service		Very good	

	infrastructure, enables efficient design and implementation processes to be achieved.			
Effects on Manawhenua values	No known implications.		No issues	
Issues for various services providers.	No specific investigation has been undertaken with service providers. However, the residential development that is presently occurring on land adjacent to the submission site has not encountered any issues in regard to services, which suggests that sufficient capacity most likely exists in this community.		No issues	
Other constraints on development	No other issues – matters such as slope identified above.		No issues	
Feasibility for MD development	Medium density development at this location would likely present an undesirable contrast with the adjacent Town and Settlement Zone. A MD zoning format has not been promoted or considered by the submitter.		n/a	
Feasibility for MD development - market desirability	As above.		n/a	

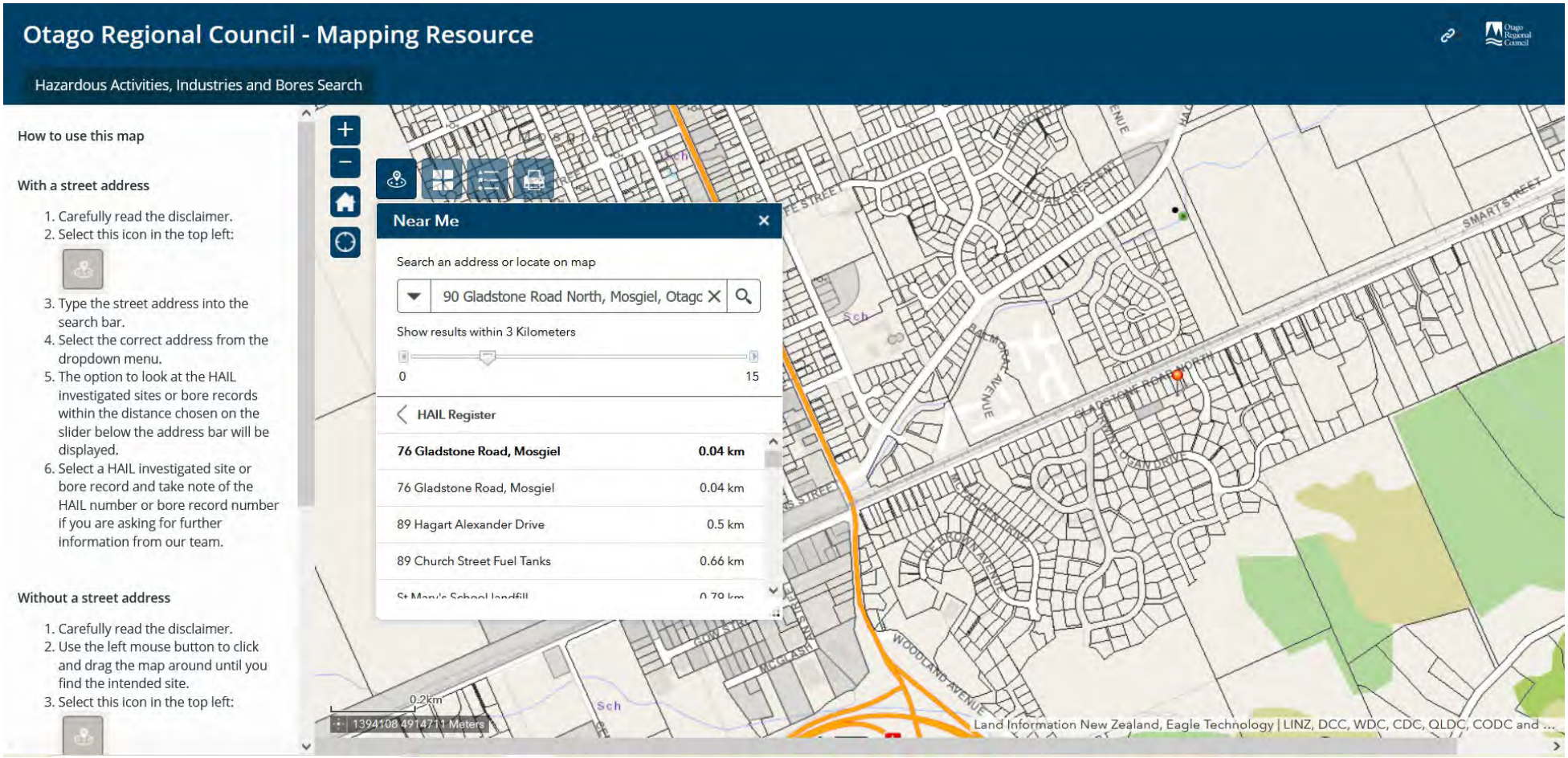
Appendix 5 – Site Criteria Assessment – Potential Residential Rezone Area: 90, 98 and 100 Gladstone Road North

Criteria	Site Assessment
Slope Objective 2.6.2, policies 2.6.2.1.c.i & 2.6.2.3.d.	No Issues. Majority of the site is slope category 1 (flat or gently sloping).
Aspect – Solar Access	Very Good. Flat, north facing site.
Accessibility – Public Transport Objective 2.2.2, policies 2.6.2.1.c.iii & 2.6.2.3.c.ii	Ok. Bus Route 77 (Mosgiel, Fairfield, Green Island – City) – bus stop located outside 1 Quarry Road is approximately 900m from the closest point of the submission site.
Accesibility – Centres Objective 2.2.2, policies 2.6.2.1.c.ii & 2.6.2.3.ii.	Poor. Site is approximately 900m, at the closest point, from the *Neighbourhood Convenience Centre* zone on Gordon Road; and approximately 1.6km, at the closest point, from the *Principle Centre* zone at Mosgiel.
Accessibility – Schools Objective 2.2.2, policies 2.6.2.1.c.v & 2.6.2.3.c.ii	Very Good. Approximately 1.4km from site, closest point, to St Mary's School; and 1.4km, closest point, to East Taieri School.
Rural Character / Visual Amenity Policy 2.6.21.d.ii, Objective 2.4.6	Not Applicable. Site already zoned residential.
Impacts on Productive Rural Land Policy 2.6.2.1.d.i, Objective 2.3.1, policy 2.3.1.2	Not Applicable. Site already zoned residential.
Reverse Sensitivity Policy 2.6.2.1.d.i, Objective 2.3.1	No Issues. Site is already zoned residential. Transrail designation for Main South Railway line is located across Gladstone Road North.
Signigificant Indigenous Biodiversity Policy 2.6.2.1.d.iii, Objective 2.2.3, policy 2.2.3.5	No Issues. Currently no biodiversity values associated with the site. Structure plan will provide for planting of indigenous species suitable for a residential environment.
Natural Landscapes & Natural Coastal Character Policies 2.6.2.1.d.iv & v; objectives 2.4.4 & 2.2.5	No Issues. The site does not overlap with these mapped areas.
Access to the Coast and Water Bodies Policy 2.6.2.1.d.vi, objective 10.2.4	No Issues. Rezone site is not immediately adjacent to a waterbody.
Significant Trees, Heritage Items...	No Issues. No relevant features.

Criteria	Site Assessment
Residential Character and Amenity (Applies to potential medium density sites only)	Not Applicable. Structure plan governs the location of the townhouses including ground footprint. Rules included with the structure plan will govern exterior materials, height and landscaping with indigenous plants suitable for an urban environment.
Natural Hazards Policy 2.6.2.1.d.vii, objective 11.2.1	No Issues. Site is not shown as a HAIL site on ORC database. HAIL status will be verified at time of subdivision consent. Site included in *Hazard 3 (Alluvial Fan) Overlay Zone* being *Area 22 – Alluvial Fans From Coastal Hills* which has a **low** level of risk.
Potable Water Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Anticipated that site can be readily serviced by Council reticulated water supply given existing connection and residential zoning.
Wastewater Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. It is anticipated that servicing of the site by reticluated wastewater supply will be capable of being achieved given existing connection and residential zoning.
Stormwater Management Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. It is anticipated that servicing of the site by reticluated stormwater supply will be capable of being achieved given existing connection and residential zoning.
Transport Effects (Local) Objective 2.7.1, policy 2.7.1.1, objective 2.7.2	No Issues. Gladstone Road North is classified as a *Collector Road* in the 2GP road hierarchy and feeds onto Gordon Road (SH87) which is classified as an *Urban High Density Corridor* and Quarry Road (SH87) which is classified as a *Strategic Road*.
Transport Effects (Wider Network) Policy 2.6.2.1.d.x, objective 2.7.1, polic 2.7.1.1, objective 2.7.2	No Issues. Unlikely that upgrades to the wider transport network will be required as a result of the rezone.
Compact City – Proximity to Existing Residential Areas Policies 2.6.2.1.d.xi, 2.6.2.1.d.vii.6 & 2.6.2.3.c.iii.6, objective 2.2.4	No Issues. Site is within a residential zone.
Compact City – Ability to Develop Land Efficiently Policies 2.6.2.1.d.xi, 2.6.2.3.c.iii.6, objective 2.2.4	Ok.
Effects on Manawhenua Values Objective 2.5.1, policy 2.5.1.2	No Issues.

Criteria	Site Assessment
Issues for Network Utility Operators, SDHB, Ministry for Education, FENZ, Kiwirail NPS-UD	No Issues. Likely that any issues are manageable.
Other constraints on Development Objective 2.6.2	No Issues. Landowner is willing to develop. Any encumbrances on title can be dealt with at time of subdvision consent.
Feasibility for Medium Density Development – Lower Quality Housing Stock more likely to be Developed	Good. 90 and 100 Gladstone Road North are vacant sites. House on 98 Gladstone Road North was built in approximately 1951.
Feasibility for Medium Density Development – Market Desirability	Good.

ORC HAIL DATABASE:



Closest HAIL sites to S228.001 are:

- 76 Gladstone Road North – HAIL.01996.01.
- 89 Hagart-Alexander Drive – HAIL.00801.01.
- 89 Church Street Fuel Tanks – HAIL.01963.01.

3 Water Services:

NB:

- Site already has connections to all of 3 waters services.

BEFORE THE INDEPENDENT COMMISSION
ON BEHALF OF THE DUNEDIN CITY COUNCIL

Under	The Resource Management Act 1991
In the Matter	of an Objection Notice pursuant to section 357

BRIEF OF EVIDENCE OF CONRAD ANDERSON

GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN

Solicitor on record: Derek McLachlan
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BRIEF OF EVIDENCE OF CONRAD ANDERSON

1. My full name is Conrad Stewart Anderson. I am a Director of Anderson & Co Resource Management and since mid 2012 I have been employed as a resource management planner with Anderson & Co Resource Management.

2. I hold a Master of Planning from the University of Otago and am a full member of the New Zealand Planning Institute.

3. I have been given a copy of the Environment Courts code of conduct for expert witnesses. I have reviewed that document and confirm that this evidence has been prepared in accordance with it and that all opinions that I offer in this evidence are within my expertise. I acknowledge that my expertise does not extend to natural hazards, landscape, or infrastructure.

4. I have not omitted to refer to any relevant document or evidence except as expressly stated. I agree to comply with the code and in particular to assist the Commissions in resolving matters that are within my expertise.

5. I have been asked to provide this brief of evidence in relation to a notice of objection to the Panel's decision dated 31 May 2021 striking out the submissions of Paddy Bleach and Custom Investments Limited.

6. I have assessed 50 Stevenson Road against the criteria set out in Appendix 5 of the Council's Section 32 Report. Appended to this brief and marked "**A**" is a copy of my assessment which forms my evidence.

Date: 13 August 2021

Conrad Anderson

A

50 Stevenson Road, Concord

Appendix 5 Summary

V1.1 final

Summary:

Overall the site is considered to be well aligned with the Appendix 5 parameters, due to being almost entirely surrounded by GR1 land, with good transportation options, north facing and adjacent to both a small commercial hub and a local school. Further, the site is of sufficient size to manage (if required) matters associated with slope, natural hazards and stormwater. In addition, the site size provides for the opportunity to manage visual amenity matters via boundary planting and/or planting areas internal to site (which most likely would be in conjunction with matters associated with natural hazards and stormwater) and/or design constrains.

Matters such as reserve sensitivity, significant indigenous biodiversity and landscape are not relevant.

Criteria	Comment	Options to manage	Scoring	Can manage issues
Slope	Objective 2.6.2 – not directly relevant to slope. Policy 2.6.2.1.c.i – requires topography that is "not too steep". While the site is sloping, it would not be considered too steep. The site has a complex slope setting. The main NW-SE slope is estimated to be 3.5 degrees, with the slope near the motorway off ramp is estimated to be 7 degrees. Cross slopes will be steeper. Policy 2.6.2.3.d – not directly relevant to slope.	Due to the site size, the layout can assist with managing slope.	Some issues	Yes
Aspect – Solar Access	N/a relates to medium density only. GR1 anticipated.		n/a	
Accessibility – public transport	Objective 2.2.2 – in terms of accessibility, Objective 2.2.2 seeks reduced reliance on private motor cars for transportation. Refer below. Policy 2.6.2.1.c.iii – Yes, the site is currently serviced by frequent public transport services;		Very good	

	Policy 2.6.2.3.c.ii – public transport as above. In terms of community facilities, the Concord facilities are within a short walk, and include a school, sports grounds and two parks, and the small commercial hub on the corner of Stevenson Road and Emerson St.			
Accessibility - Centres	Objective 2.2.2 in terms of accessibility, Objective 2.2.2 seeks reduced reliance on private motor cars for transportation. Refer below. Policy 2.6.2.1.c.ii, v – seeks residential development being close to main urban areas. The site is approx 1.2km from Caversham shopping area and 2km from the Green Island shopping centre. As per above, the site is on a bus route, and close to community facilities. Policy 2.6.2.3.c.ii – refer above.	The distance to an urban area is offset by: • accessibility to a bus route • the small local commercial area • The relatively flat commute to Green Island.	Poor	No – but partly offset.
Accessibility – Schools	A school is located between 500m and 1km from the site.		Very good	
Rural character/visual amenity	Policy 2.6.2.1.d.ii – seeks to protect productive rural land Objective 2.4.6 - The character and visual amenity of Dunedin's rural environment is maintained or enhanced. The subject area is disconnected from the bulk of the rural zoned by either significant residential areas or a combination of a motorway, rail line and industrial activity. The site is too small to be a standalone rural site.	Some local impacts but overall minor effects at a broader scale. Could manage via reserves, boundary plantings etc	Some issues	Yes
Impacts on productive rural land	Due to the site size and disconnection from other rural land, it has limited rural productivity. The area of High class soils is limited to approximately 1ha, or 6% of the site		Minor issues	No
Reverse sensitivity	The site is largely surrounded by residential activity and some distance from the State Highway. Its closest non-residential neighbour is a church and a small commercial area.		No issues	
Significant	The site is not associated with any significant indigenous		No issues	

indigenous biodiversity	biodiversity			
Natural landscapes and natural coastal character	No overlap with landscape or coastal character area		No issues	
Access to the coast and water bodies	Not by coast or water body		No issues	
Significant Trees, heritage items, important vistas or viewshafts, important green or open spaces	Policy 2.6.2.1.d.vii - the elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected or enhanced. These include: • important green and other open spaces, including green breaks between coastal settlements – but the site is not an important green space. • trees that make a significant contribution to the visual landscape and history of neighbourhoods – but no trees of significance. • built heritage, including nationally recognised built heritage – but no built heritage. • important visual landscapes and vistas –The site is not in a landscape overlay. • The amenity and aesthetic coherence of different environments - The subject site is largely surrounding by GR1 land at a higher elevation, there are likely to be limited concerns in this regard. • the compact and accessible form of Dunedin - The site is almost entirely surrounding by GR1, and on a bus route, therefore, assists in terms of a compact city. Objective 2.4.1 – as above.		No issues	

	Policy 2.4.1.7 Maintain a compact city with a high degree of legibility based on clear centres, edges and connections through rules that: a) manage the expansion of urban areas - The site is not at an urban edge. b) require new large subdivisions to provide a concept or structure plan that demonstrates how the subdivision will provide for good connectivity to existing or potential future urban areas for pedestrians, cyclists and motor vehicles - In terms of 2.4.1.7.b a concept or structure plan could be used. But it is noted that Variation 2 seeks to delete this.			
Residential character and amenity	N/a relates to medium density only. GR1 anticipated.		n/a	
Natural Hazards	The 2GP map shoes a small (approx. 3,500m2) area associated with land instability. This is about 2% of the site.	Could be designed around	Some issues (manageable)	Yes
Potable water supply	The site is either within or surrounding by differing water zones. Site should be readily serviced.		No issues	
Wastewater supply	A 150mm main runs down Stevenson Road, and increases to 375mm. Site should be readily serviced.		No issues	
Stormwater management	Due to the combination of site size and slope, stormwater can be partially managed on site	Onsite management as required.	Some issues?	Yes
Transport effects (local)	Stevenson Road is a collector road, which has easy links to the Motorway.	No upgrades required	No issues	
Transport effects (wider network)	As above.	No upgrades required	No issues	
Compact city – proximity to existing residential	The site is largely surrounded by GR1 land.		No issues	

areas				
Compact city - ability to develop land efficiently	Feasible capacity 50 sites or more GR1 density.		Very good	
Effects on Manawhenua values	No known implications.		No issues	
Issues for various services providers.	Network utility operators - tbc Southern District Health Board - tbc Ministry for Education - tbc Fire and Emergency New Zealand – no issues, the future design can accommodate their requirements (accessibility/hydrants etc) KiwiRail - no issues due to setback.		tbc	
Other constraints on development	No other issues – matters such as slope identified above.		No issues	
Feasibility for MD development	N/a relates to medium density only. GR1 anticipated.		n/a	
Feasibility for MD development - market desirability	N/a relates to medium density only. GR1 anticipated.		n/a	

BEFORE THE INDEPENDENT COMMISSION
ON BEHALF OF THE DUNEDIN CITY COUNCIL

Under	The Resource Management Act 1991
In the Matter	of an Objection Notice pursuant to section 357

BRIEF OF EVIDENCE OF EMMA PETERS

GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN

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BRIEF OF EVIDENCE OF EMMA PETERS

1. My name is Emma Rayner Peters. I hold a BA and LLB both from the University of Otago and a First-Class Honours degree and MA with Distinction, both from the University of Canterbury. I have worked as a solicitor in the areas of commercial and environmental law. I have been the principal of Sweep Consultancy Limited since 2003 providing resource management advice predominantly in the Dunedin City, Clutha, Waitaki, Queenstown Lakes and Central Otago districts.

2. I have been given a copy of the Environment Courts code of conduct for expert witnesses. I have reviewed that document and confirm that this evidence has been prepared in accordance with it and that all opinions that I offer in this evidence are within my expertise. I acknowledge that my expertise does not extend to natural hazards, landscape, or infrastructure.

3. I have not omitted to refer to any relevant document or evidence except as expressly stated. I agree to comply with the code and in particular to assist the Commissions in resolving matters that are within my expertise.

4. I have been asked to provide this brief of evidence in relation to a notice of objection to the Panel's decision dated 31 May 2021 striking out the submissions of:

   (a) Richard Muir

   (b) Alec Cassie

   (c) Roger and Janine Southby

   (d) Invermark Investments Limited

   (e) WIllowcroft Limited

   (f) Wendy Campbell and

   (g) Gladstone Family Trust.

5. I have assessed the following sites against the criteria set out in Appendix 5 of the Council's Section 32 Report:

   (a) Bush Road

   (b) Huntly Road

   (c) Gladstone Road South

   (d) North Taieri Road and

   (e) Gladstone Road North.

6. Appended to this brief and marked "**A**", "**B**", "**C**", "**D**", "**E**" respectively are copies of my assessments which form my evidence.

Date: 13 August 2021

Emma Peters

Appendix 5 – Site Criteria Assessment – Potential Bush Road Residential Rezone Area

Criteria	Site Assessment
Slope Objective 2.6.2, policies 2.6.2.1.c.i & 2.6.2.3.d.	No Issues. Flat or gently sloping.
Aspect – Solar Access	Very Good. Flat and north facing site.
Accessibility – Public Transport Objective 2.2.2, policies 2.6.2.1.c.iii & 2.6.2.3.c.ii	Ok. The site is located, at its closest point, approximately 480m from the Bus Stop located outside 70 Bush Road on Bus Route 81 (Mosgiel West Circuit).
Accesibility – Centres Objective 2.2.2, policies 2.6.2.1.c.ii & 2.6.2.3.ii.	Ok. Site is approximately 1km, closest point of site, from the *Principal Centre* zone in Mosgiel.
Accessibility – Schools Objective 2.2.2, policies 2.6.2.1.c.v & 2.6.2.3.c.ii	Very Good. Approximately 1.4km from site, closest point, to Elmgrove School.
Rural Character / Visual Amenity Policy 2.6.21.d.ii, Objective 2.4.6	Some Issues. Some local impacts but overall minor effects at a broader scale. Landscaping with indigenous planting will form part of the structure plan public spaces.
Impacts on Productive Rural Land Policy 2.6.2.1.d.i, Objective 2.3.1, policy 2.3.1.2	Some Issues. Site categorised as *Land Use Capability Class 1*. Most of the site, excluding 78 Riccarton Road West and a small part of 164 Riccarton Road West, is mapped as an area of *High Class Soils*. However, all of the properties involved in the site are small 'lifestyle blocks' ranging in size from 2579m^2 to 1.2141 hectares. Benefits of housing gains likely outweigh relatively small loss of primary productive capacity.
Reverse Sensitivity Policy 2.6.2.1.d.i, Objective 2.3.1	No Issues.
Signigificant Indigenous Biodiversity Policy 2.6.2.1.d.iii, Objective 2.2.3, policy 2.2.3.5	No Issues. Currently no to low biodiversity values associated with the site. Landscaping with indigenous planting will form part of the structure plan public spaces.
Natural Landscapes & Natural Coastal Character Policies 2.6.2.1.d.iv & v; objectives 2.4.4 & 2.2.5	No Issues. The site does not overlap with these mapped areas.
Access to the Coast and Water Bodies Policy 2.6.2.1.d.vi, objective 10.2.4	No issues. Rezone site is not immediately adjacent to a waterbody.

Criteria	Site Assessment
Significant Trees, Heritage Items...	No Issues. No relevant features.
Residential Character and Amenity (Applies to potential medium density sites only)	Not Applicable.
Natural Hazards Policy 2.6.2.1.d.vii, objective 11.2.1	No Issues. Site is not shown as a HAIL site on ORC database. Site is included in a *Hazard 3 (Flood) Overlay Zone* being *Flood Hazard Area 19 – East of Lower Pond* which has a **low** flood level risk.
Potable Water Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Majority of the submission site lies within Council water zone boundary. Anticipated that balance of submission site can be readily serviced by Council reticulated water supply.
Wastewater Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Several of the properties included in the site are already connected to the Council wastewater service currently located outside 107 Bush Road. It is likley that there will be sufficient capacity for the site and, if there are any issues, that these are likely to be manageable. The site is in close proximity to the Mosgiel wastewater treatment plant.
Stormwater Management Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No to some issues (manageable). Likely that no management required other than standard performance standards already contained in 2GP rules (e.g. on-site attenuation).
Transport Effects (Local) Objective 2.7.1, policy 2.7.1.1, objective 2.7.2	No Issues. Bush Road is classified as a *Collector Road* in the 2GP road hierarchy. Riccarton Road West is classified as a *Strategic Road* in the 2GP road hierarchy.
Transport Effects (Wider Network) Policy 2.6.2.1.d.x, objective 2.7.1, polic 2.7.1.1, objective 2.7.2	No Issues. Unlikely that upgrades to the wider transport network will be required as a result of the rezone.
Compact City – Proximity to Existing Residential Areas Policies 2.6.2.1.d.xi, 2.6.2.1.d.vii.6 & 2.6.2.3.c.iii.6, objective 2.2.4	No Issues. Site is adjacent to existing GR1 zone at Mosgiel.
Compact City – Ability to Develop Land Efficiently Policies 2.6.2.1.d.xi, 2.6.2.3.c.iii.6, objective 2.2.4	Very Good. There is feasible capacity for 50 sites or more at GR1 density.

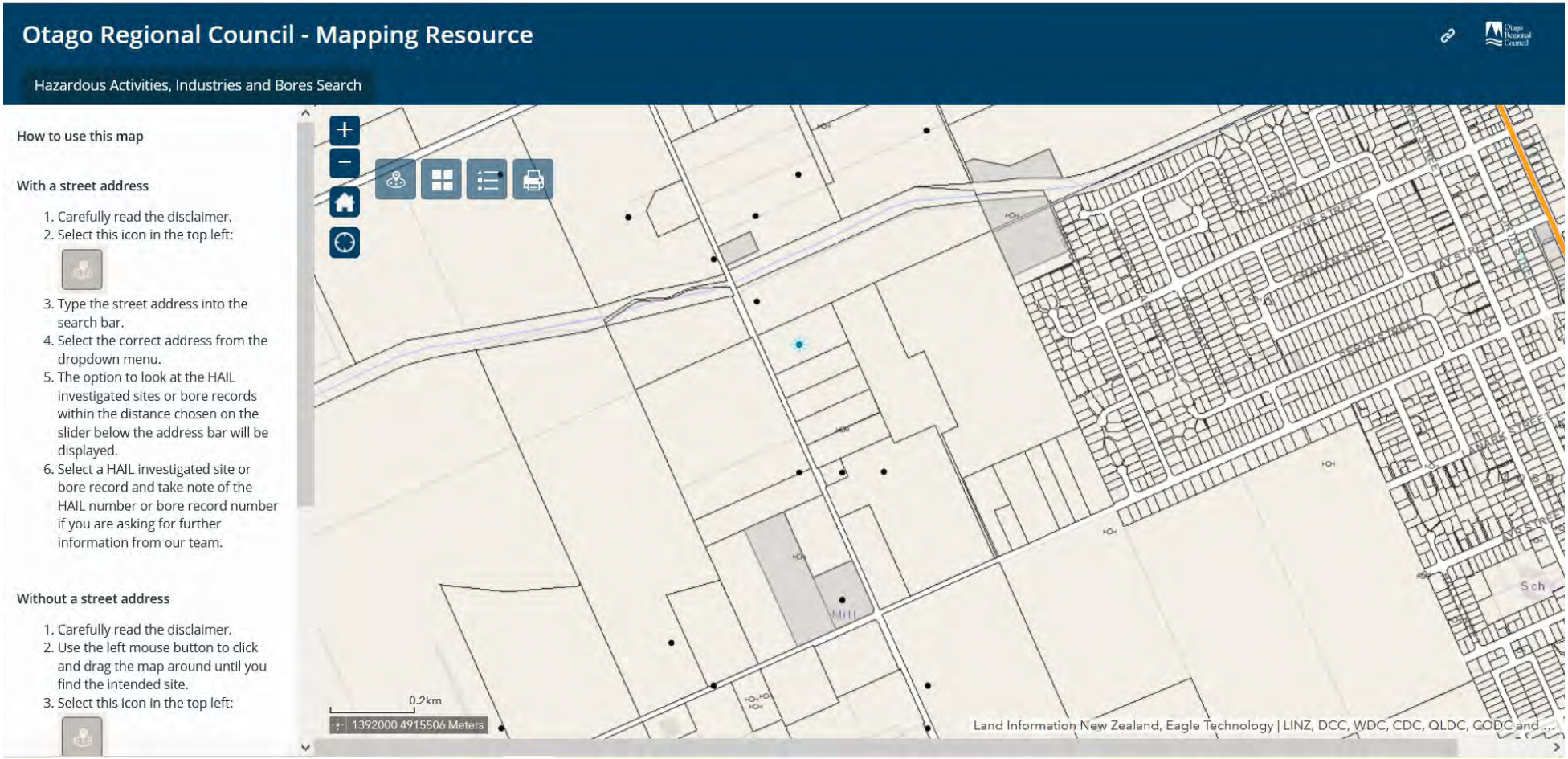
Criteria	Site Assessment
Effects on Manawhenua Values Objective 2.5.1, policy 2.5.1.2	Some Issues (Manageable). Site overlaps with a *Wāhi Tupuna Mapped Area* being ID 56 – *Kokika o Te Matamata (Area Surrounding Mosgiel)*.
Issues for Network Utility Operators, SDHB, Ministry for Education, FENZ, Kiwirail NPS-UD	No Issues. Likely that any issues are manageable.
Other constraints on Development Objective 2.6.2	No Issues. Landowners are willing to develop. Any encumbrances on title can be dealt with at time of subdvision consent.
Feasibility for Medium Density Development – Lower Quality Housing Stock more likely to be Developed	Not Applicable.
Feasibility for Medium Density Development – Market Desirability	Not Applicable.

Submission Area:

NB.

- Black hatched area is Site ID 212 which is within scope for Variation 2.
- Submission area is combination of submissions of Roger and Janine Southby, Richard Muir and Alec Cassie.

ORC HAIL DATABASE:



Closest HAIL sites are:

- Otago Lumber site – HAIL.00621.01 – located at 202 Bush Road on opposite side of Riccarton Road West.
- ORC Taieri Depot Riccarton Road – HAIL.00183.01 – located at 234 Riccarton Road West.
- Mosgiel Wastewater Treatment Plant – HAIL.01463.01 – located at 80 Carlyle Road.

Potable Water Services Boundary:

Notes:

- 170 Riccarton Road West (acqua boundaries) is Site ID 212 which is within scope for Variation 2.
- Blue hatched lines around majority of submission site is the reticulated water zone boundary.
- Properties within submission site with black ticks are outside the reticulated water zone boundary.
- Yellow line into site is private line for wastewater services connecting to Council wastewater services outside 107 Bush Road.

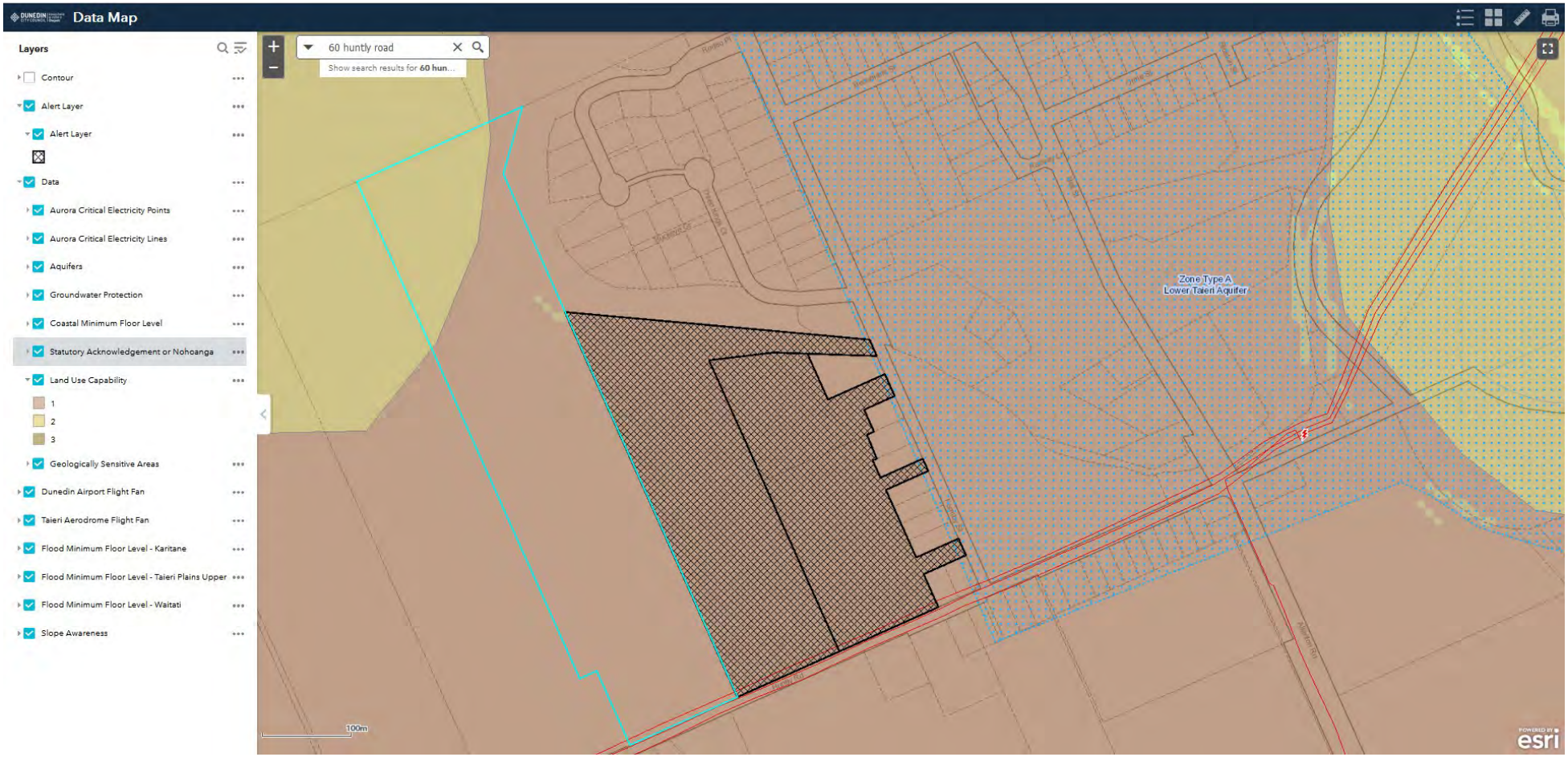
Appendix 5 – Site Criteria Assessment – Potential Residential Rezone Area: 60 Huntly Road, Outram

Criteria	Site Assessment
Slope Objective 2.6.2, policies 2.6.2.1.c.i & 2.6.2.3.d.	No Issues. Flat or gently sloping.
Aspect – Solar Access	Very Good. Flat and north facing site.
Accessibility – Public Transport Objective 2.2.2, policies 2.6.2.1.c.iii & 2.6.2.3.c.ii	Poor. There is no public transport available from Outram although there are school bus services. Currently, the closest public bus transport service is from Mosgiel.
Accesibility – Centres Objective 2.2.2, policies 2.6.2.1.c.ii & 2.6.2.3.ii.	Poor. Site is approximately 1.4km from closest point of site to the *Rural Centre* zone at Outram and approximately 12km to the *Principal Centre* zone in Mosgiel.
Accessibility – Schools Objective 2.2.2, policies 2.6.2.1.c.v & 2.6.2.3.c.ii	Very Good. Approximately 1km from site, closest point, to Outram School.
Rural Character / Visual Amenity Policy 2.6.21.d.ii, Objective 2.4.6	Some Issues. Some local impacts but overall minor effects at a broader scale. Landscaping with indigenous planting will form part of the structure plan – public spaces.
Impacts on Productive Rural Land Policy 2.6.2.1.d.i, Objective 2.3.1, policy 2.3.1.2	Some Issues. Site categorised as *Land Use Capability Class 1*. Majority of the site mapped as an area of *High Class Soils*. However, benefits of housing gains likely to outweigh relatively small loss of primary productive capacity.
Reverse Sensitivity Policy 2.6.2.1.d.i, Objective 2.3.1	No Issues.
Signigificant Indigenous Biodiversity Policy 2.6.2.1.d.iii, Objective 2.2.3, policy 2.2.3.5	No Issues. Currently no to low biodiversity values associated with the site. Landscaping with indigenous planting will form part of the structure plan public spaces.
Natural Landscapes & Natural Coastal Character Policies 2.6.2.1.d.iv & v; objectives 2.4.4 & 2.2.5	No Issues. The site does not overlap with these mapped areas.
Access to the Coast and Water Bodies Policy 2.6.2.1.d.vi, objective 10.2.4	No Issues. Rezone site is not immediately adjacent to a waterbody.
Significant Trees, Heritage Items...	No Issues. No relevant features.

Criteria	Site Assessment
Residential Character and Amenity (Applies to potential medium density sites only)	Not Applicable.
Natural Hazards Policy 2.6.2.1.d.vii, objective 11.2.1	Some Issues (Manageable). Site is not shown as a HAIL site on ORC database. Site is included in a *Hazard 2 (Flood) Overlay Zone* being *Area 1B – West Taieri Plain Above High Tide Level* which has a **moderate** flood level risk.
Potable Water Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Anticipated that submission site can be readily serviced by Council reticulated water supply given approximately a third of the submission site is included within the potable water supply zone boundary.
Wastewater Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. The site will be included in a '*No DCC Reticulated Wastewater Mapped Area*' like the rest of the Township and Settlement Zone of Outram.
Stormwater Management Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Likely that no management required other than standard performance standards already contained in 2GP rules (e.g. on-site attenuation).
Transport Effects (Local) Objective 2.7.1, policy 2.7.1.1, objective 2.7.2	No Issues. Huntly Road is classified as a *Collector Road* in the 2GP road hierarchy. Huntly Road feeds on to Allanton Road which is classified as an *Arteiral Road* in the 2GP road hierarchy.
Transport Effects (Wider Network) Policy 2.6.2.1.d.x, objective 2.7.1, polic 2.7.1.1, objective 2.7.2	No Issues. Unlikely that upgrades to the wider transport network will be required as a result of the rezone.
Compact City – Proximity to Existing Residential Areas Policies 2.6.2.1.d.xi, 2.6.2.1.d.vii.6 & 2.6.2.3.c.iii.6, objective 2.2.4	No Issues. Site is adjacent to existing *Township & Settlement* zone at Outram.
Compact City – Ability to Develop Land Efficiently Policies 2.6.2.1.d.xi, 2.6.2.3.c.iii.6, objective 2.2.4	Very Good. There is feasible capacity for 50 sites or more at T&S density and has the potential for GR1 densitities via provision of developer funded reticualted wastewater system for the site.
Effects on Manawhenua Values Objective 2.5.1, policy 2.5.1.2	No Issues.

Criteria	Site Assessment
Issues for Network Utility Operators, SDHB, Ministry for Education, FENZ, Kiwirail NPS-UD	No Issues. Likely that any issues are manageable.
Other constraints on Development Objective 2.6.2	No Issues. Landowner is willing to develop. Any encumbrances on title can be dealt with at time of subdvision consent.
Feasibility for Medium Density Development – Lower Quality Housing Stock more likely to be Developed	Not Applicable.
Feasibility for Medium Density Development – Market Desirability	Not Applicable.

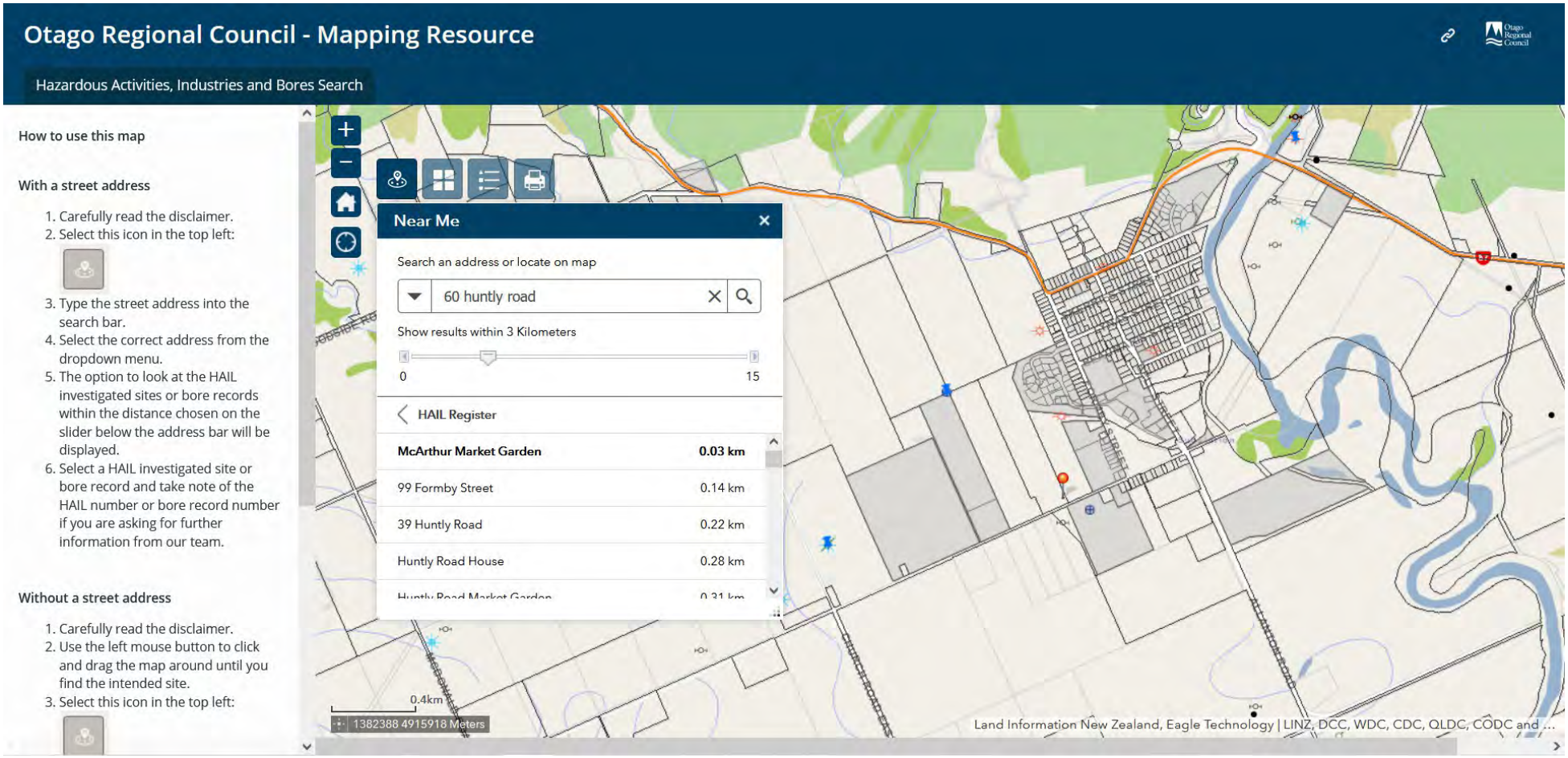
Land Use Capability:



NB:

- Black hatched area is Site IDs 154 and 175 which are both within scope for Variation 2.
- Submission site is well outside the *Groundwater Protection Zone A – Lower Taieri Acquifer* – blue dotted area.

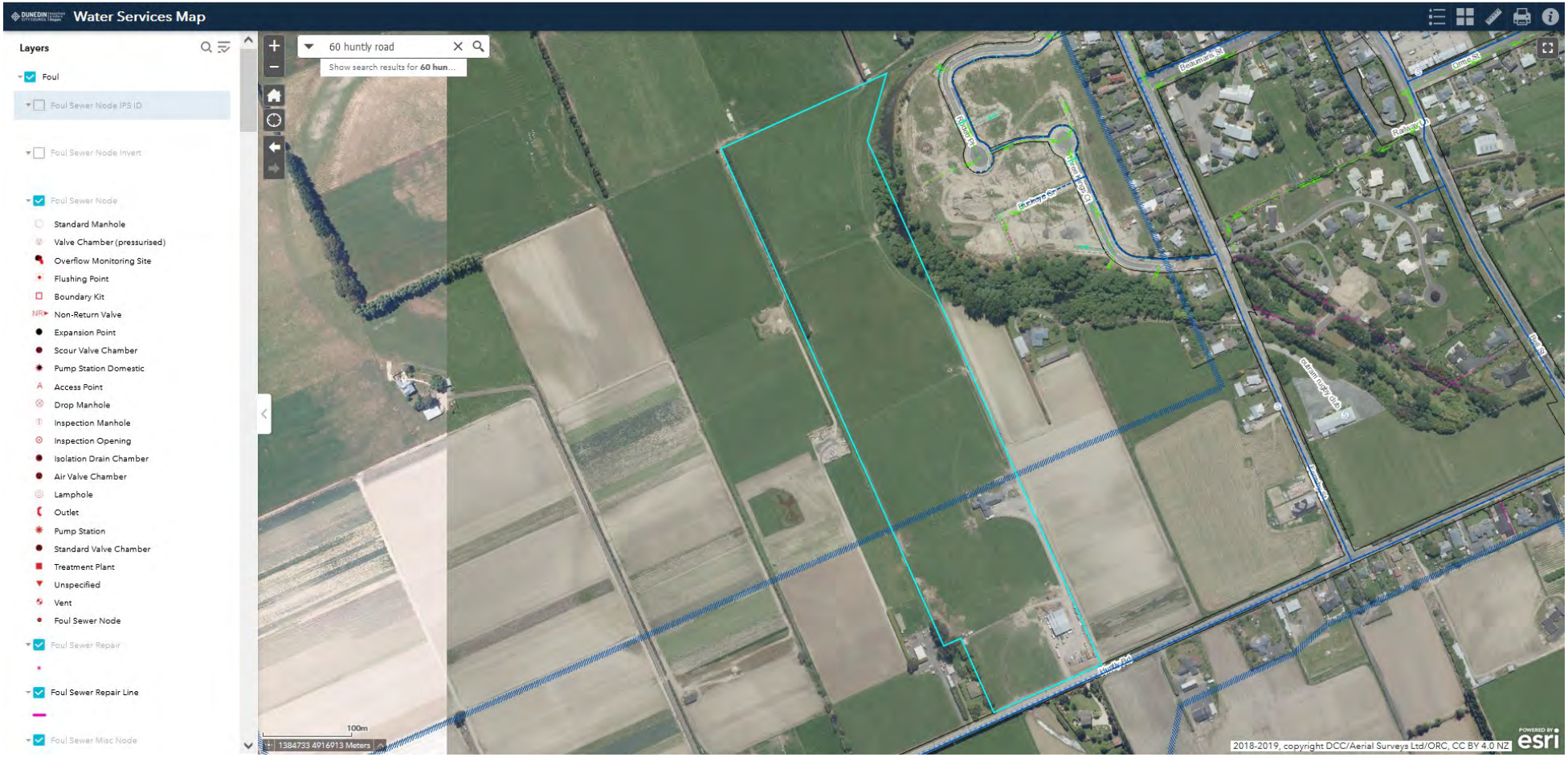
ORC HAIL DATABASE:



Closest HAIL sites are:

- McArthur Market Garden – HAIL.01412.01 – located at 53 Huntly Road.
- 91 and 103 Formby Street – HAIL.01100.01.
- 39 Huntly Road – HAIL.01668.01.

Potable Water Services Boundary:



Note:

- Approximately third of submission site is included within the potable water supply zone boundary.

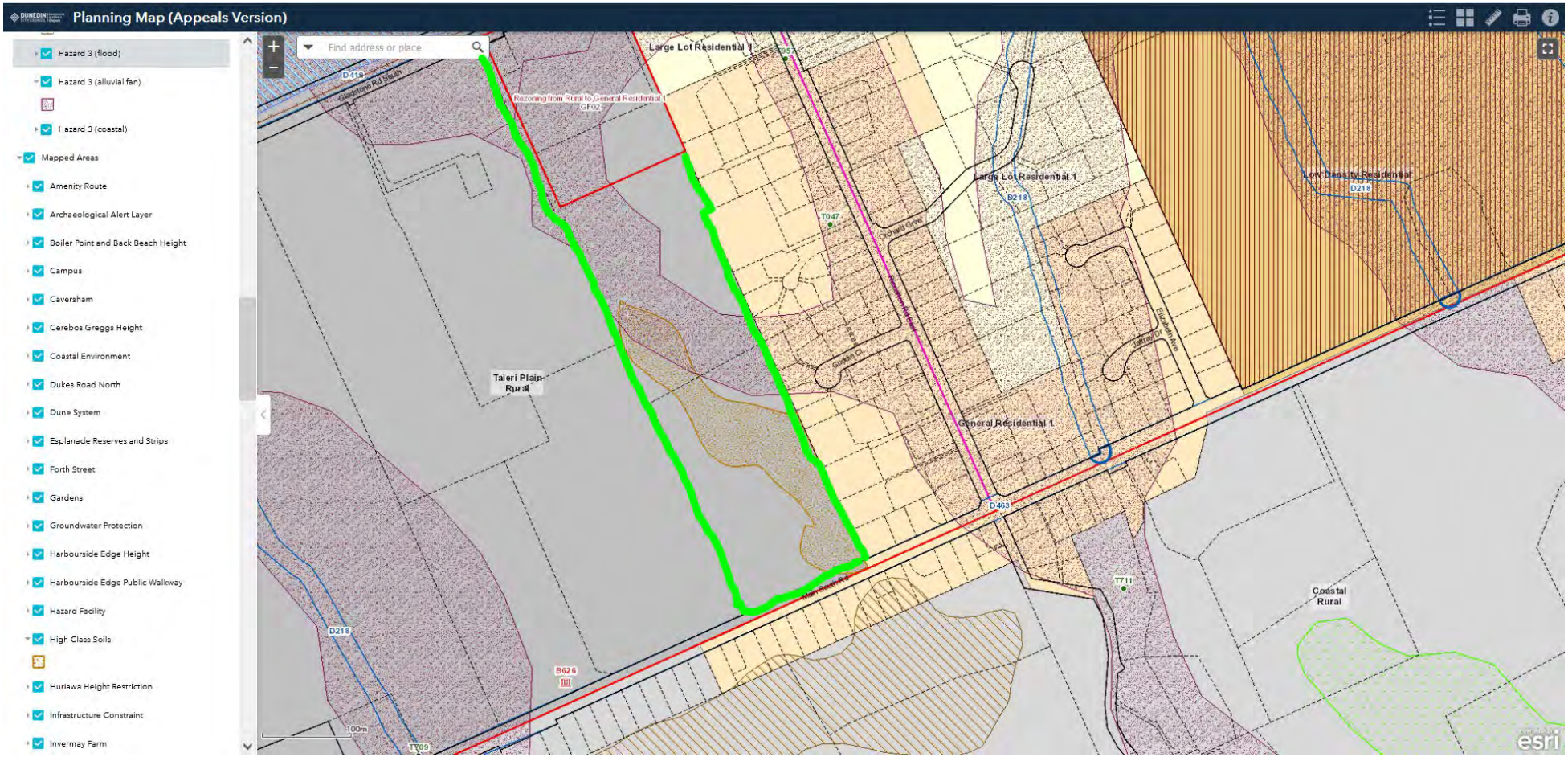
Appendix 5 – Site Criteria Assessment – Potential Residential Rezone Area: 100 Main South Road and Part of 225 Gladstone Road South

Criteria	Site Assessment
Slope Objective 2.6.2, policies 2.6.2.1.c.i & 2.6.2.3.d.	No Issues. Flat or gently sloping.
Aspect – Solar Access	Very Good. Flat and north facing site.
Accessibility – Public Transport Objective 2.2.2, policies 2.6.2.1.c.iii & 2.6.2.3.c.ii	Poor. The site is located, at its closest point, approximately 1.9km from bus stops on Bus Route 77 (Mosgiel, Fairfield, Green Island – City) located either opposite Z Petrol Station on Gordon Road or outside 108/111 Quarry Road.
Accesibility – Centres Objective 2.2.2, policies 2.6.2.1.c.ii & 2.6.2.3.ii.	Poor. Site is approximately 2km from closest point of site to the *Neighbourhood Convenience Centre* zone on Gordon Road and approximately 2.8km to the *Principal Centre* zone in Mosgiel.
Accessibility – Schools Objective 2.2.2, policies 2.6.2.1.c.v & 2.6.2.3.c.ii	Very Good. Approximately 1.4km from site, closest point, to East Taieri School.
Rural Character / Visual Amenity Policy 2.6.21.d.ii, Objective 2.4.6	Some Issues. Some local impacts but overall minor effects at a broader scale. Landscaping with indigenous planting will form part of the structure plan public spaces.
Impacts on Productive Rural Land Policy 2.6.2.1.d.i, Objective 2.3.1, policy 2.3.1.2	Some Issues. Site categorised as *Land Use Capability Class 1*. Part of the site mapped as an area of *High Class Soils*. However, benefits of housing gains likely to outweigh relatively small loss of primary productive capacity.
Reverse Sensitivity Policy 2.6.2.1.d.i, Objective 2.3.1	No Issues to Some Issues (Manageabe). Site is adjacent to SH1. Structure plan will involve indigenous planting on boundary with SH1 and will provide access to SH1 only if access location approved by NZTA. Subdivision design (checked via resource consenting process) and building standards (checked via building consent process) will manage reverse sensitivity issues with respect to SH1, such as noise, via meeting acoustic insulation standards.
Signigificant Indigenous Biodiversity Policy 2.6.2.1.d.iii, Objective 2.2.3, policy 2.2.3.5	No Issues. Currently no to low biodiversity values associated with the site. Landscaping with indigenous planting will form part of the structure plan public spaces and along boundary with SH1.
Natural Landscapes & Natural Coastal Character Policies 2.6.2.1.d.iv & v; objectives 2.4.4 & 2.2.5	No Issues. The site does not overlap with these mapped areas.
Access to the Coast and Water Bodies Policy 2.6.2.1.d.vi, objective 10.2.4	No Issues. Rezone site is not immediately adjacent to a waterbody.

Criteria	Site Assessment
Significant Trees, Heritage Items...	No Issues. No relevant features.
Residential Character and Amenity (Applies to potential medium density sites only)	Not Applicable.
Natural Hazards Policy 2.6.2.1.d.vii, objective 11.2.1	No Issues. Site is not shown as a HAIL site on ORC database. Site is included in a *Hazard 3 (Alluvial Fan) Overlay Zone* being *Area 23 – Jaffray Stream Alluvial Fan* which has a **low** level of risk.
Potable Water Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Anticipated that submission site can be readily serviced by Council reticulated water supply.
Wastewater Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Anticipated that submission site can be readily serviced by Council reticulated wastewater supply or that, if there are any issues, that these will be manageable as only minor or moderate upgrades will be required. There is ability to connect via an adjoining subdivision which has made provision for 'future subdivision' via the laying of a private drain.
Stormwater Management Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Likely that no management required other than standard performance standards already contained in 2GP rules (e.g. on-site attenuation).
Transport Effects (Local) Objective 2.7.1, policy 2.7.1.1, objective 2.7.2	No Issues. Main South Road is also SH1 and is classified as a *Strategic Road* in the 2GP road hierarchy. Gladstone Road South immediately adjacent to the submission site is classified as a *Local Road* in the 2GP road hierarchy, although Gladstone Road South is classified as a *Collector Road* in the 2GP road hierarchy from the intersection with Riccarton Road West to Gordon Road/Quarry Road intersection. Riccarton Road both East and West are classified as a *Strategic Road*.
Transport Effects (Wider Network) Policy 2.6.2.1.d.x, objective 2.7.1, polic 2.7.1.1, objective 2.7.2	No Issues. Unlikely that upgrades to the wider transport network will be required as a result of the rezone.
Compact City – Proximity to Existing Residential Areas Policies 2.6.2.1.d.xi, 2.6.2.1.d.vii.6 & 2.6.2.3.c.iii.6, objective 2.2.4	No Issues. Site is adjacent to existing GR1 zone at East Taieri.
Compact City – Ability to Develop Land Efficiently Policies 2.6.2.1.d.xi, 2.6.2.3.c.iii.6, objective 2.2.4	Very Good. There is feasible capacity for 50 sites or more at GR1 density.

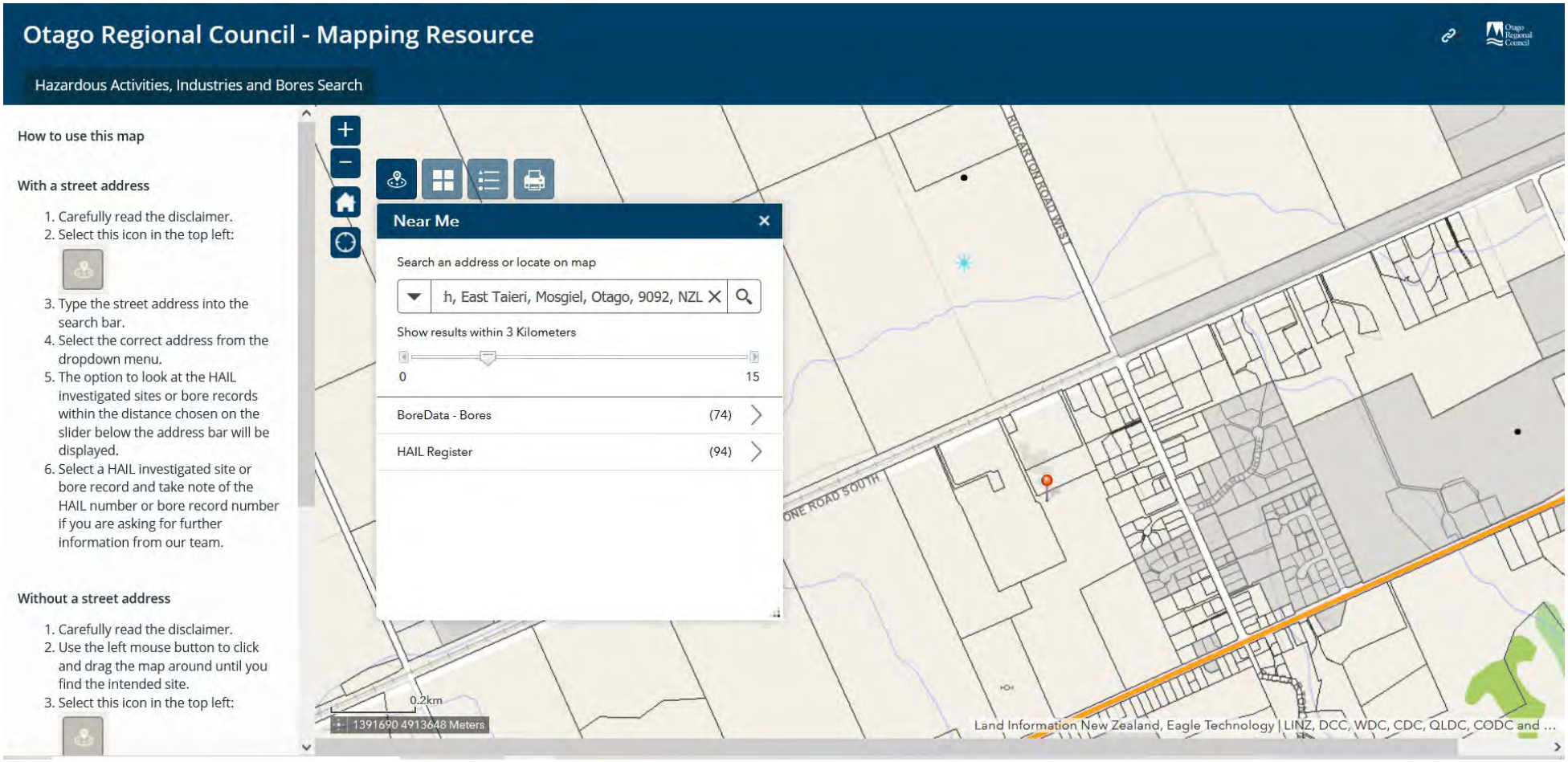
Criteria	Site Assessment
Effects on Manawhenua Values Objective 2.5.1, policy 2.5.1.2	No Issues.
Issues for Network Utility Operators, SDHB, Ministry for Education, FENZ, Kiwirail NPS-UD	No Issues. Likely that any issues are manageable.
Other constraints on Development Objective 2.6.2	No Issues. Landowners are willing to develop. Any encumbrances on title can be dealt with at time of subdvision consent.
Feasibility for Medium Density Development – Lower Quality Housing Stock more likely to be Developed	Not Applicable.
Feasibility for Medium Density Development – Market Desirability	Not Applicable.

High Class Soil Mapped Area and Hazard 3 (Alluvial Fan) Overlay Zone:



NB: Submission site extent shown in green lines.

ORC HAIL DATABASE:



Closest HAIL sites are:

- David Alexander's Market Garden – HAIL.00621.01 – located off Riccarton Road East – now subdivided and used for residential activity.
- Orchard Grove Subdivision – HAIL.00546.02 – located off Riccarton Road East – now subdivided and used for residential activity (Cuddie Close).
- 51 Riccarton Road East – HAIL..00546.09.

Potable Water Services Boundary & 3 Waters Services:

Notes:

- 100 Main South Road has a connection to potable water supply.
- Provision has been made for future foul sewer conntection via Cuddie Close – Private Drain F below:


(10 of 10)
Foul Drain Pipe
pipe type Private Drain F
FROM_ID
TO_ID FSM02942
symbol 208
R_SHEET
NOTES Pipe for future subdivision
PLAN_REF 10671
INSTALL_DATE 3 Aug 2018
material uPVC
diam_width 150
height
up invert level
Zoom to
225mm
150mm
100mm
Cudde Ct
14
16
10
11
7
6

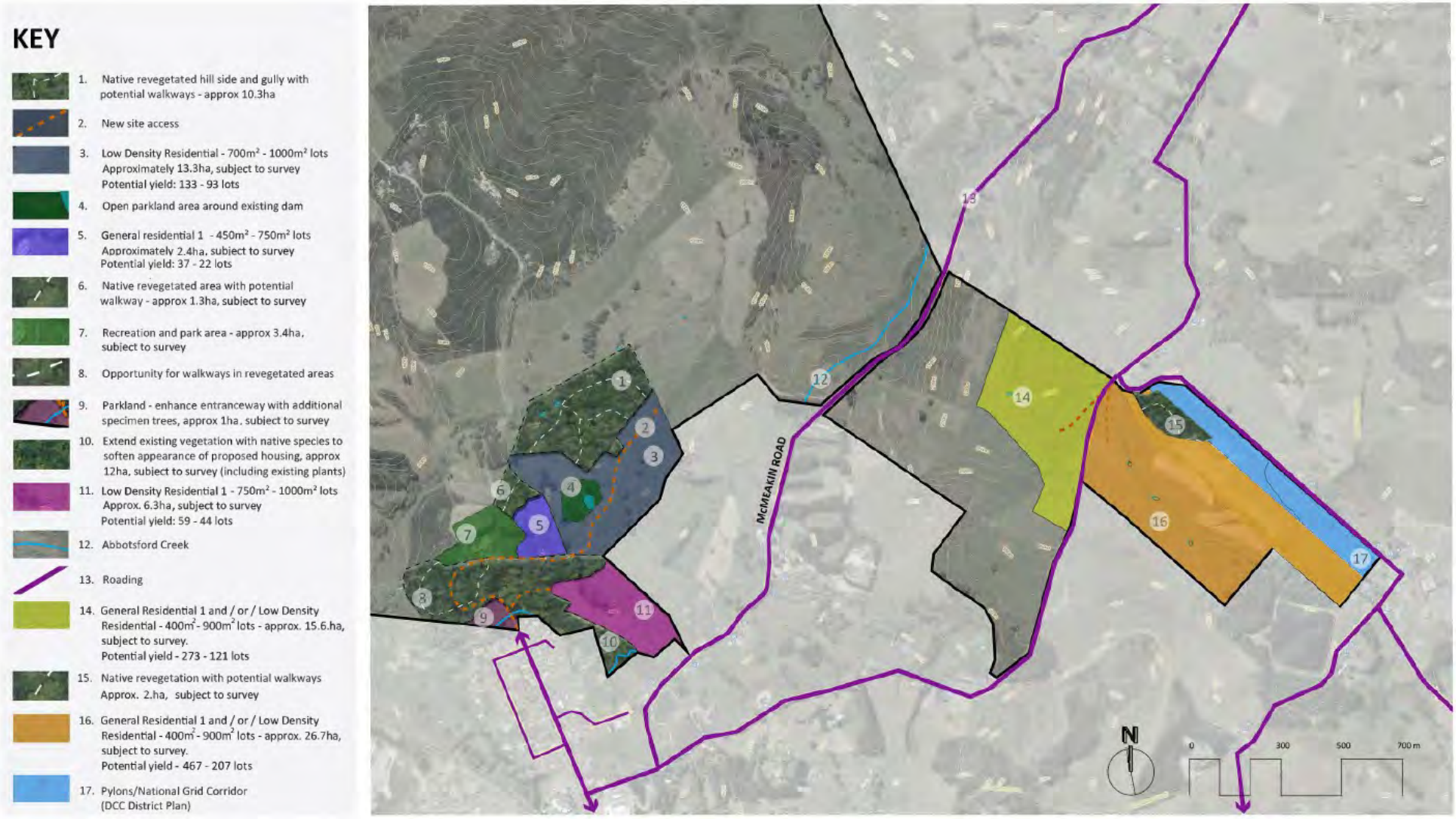
Appendix 5 – Site Criteria Assessment – Potential Residential Rezone Area: 188 Taieri Road North

Criteria	Site Assessment
Slope Objective 2.6.2, policies 2.6.2.1.c.i & 2.6.2.3.d.	No Issues. Majority of the site is slope category 1 (flat or gently sloping) there are a few areas where slope may reduce yield; however, the landscape plan provides for these areas to be used for biodiversity, ecological enhancement or open spaces.
Aspect – Solar Access	Very Good to Good. Flat or generally north facing site to generally east or west facing slopes.
Accessibility – Public Transport Objective 2.2.2, policies 2.6.2.1.c.iii & 2.6.2.3.c.ii	Very Good (S228.001). Bus Route 70 (Brighton - Abbotsford and Green Island) – bus stop 131 located outside 131 North Taieri Road is approximately 120m from the closest point of the submission site. Poor (S228.002). Bus Route 61 (Kenmure – City) – bus stop 504/513 located outside 504 and 513 Kaikorai Valley Road is approximately 1.9km from the closest point of the submission site.
Accesibility – Centres Objective 2.2.2, policies 2.6.2.1.c.ii & 2.6.2.3.ii.	Poor (S228.001). Site is approximately 1.8km, at the closest point, from the *Principle Centre* zone at Green Island. Poor (S228.002). Site is approximately 2.5km, at the closest point, from the *Neighbourhood Centre* zone at Brickville; 3.3km, at the closest point, from the *Surburban Centre* at Mornington; and 4.9km, at the closest point, from the *Surburban Centre* zone at Caversham.
Accessibility – Schools Objective 2.2.2, policies 2.6.2.1.c.v & 2.6.2.3.c.ii	Very Good (S228.001). Approximately 1km from site, closest point, to Abbotsford School. Good (S228.002). Approximately 2.3km from site, closest point, to Balaclava School and approximately 2.7km, closest point, to Brockville School.
Rural Character / Visual Amenity Policy 2.6.21.d.ii, Objective 2.4.6	Some Issues. Some local impacts but overall minor effects at a broader scale. Landscaping with indigenous planting will form part of the structure plan – public spaces. Structure plan will also provide for protection of existing areas of indigenous vegetation.
Impacts on Productive Rural Land Policy 2.6.2.1.d.i, Objective 2.3.1, policy 2.3.1.2	Some Issues. Site categorised as *Land Use Capability Class 3*. No mapped areas of *High Class* Soils within submission site areas. Benefits of housing gains likely to outweigh relatively small loss of primary productive capacity.
Reverse Sensitivity Policy 2.6.2.1.d.i, Objective 2.3.1	No Issues.
Signigificant Indigenous Biodiversity Policy 2.6.2.1.d.iii, Objective 2.2.3, policy 2.2.3.5	No Issues. Currently no to low biodiversity values associated with the site. Structure plan will provide for the protection of existing areas of indigenous vegetation and will provide for landscaping with indigenous planting of public spaces within structure plan area.

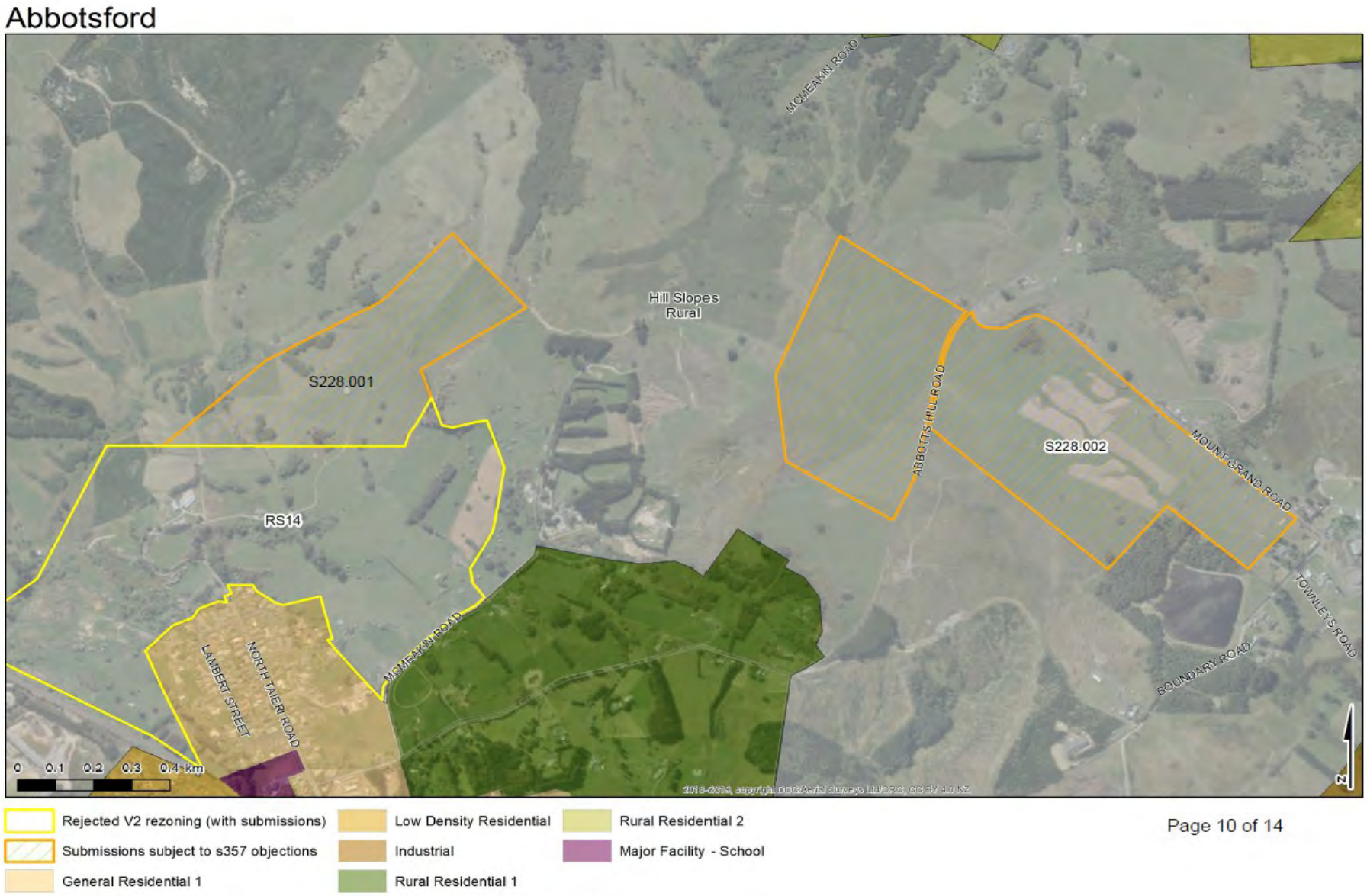
Criteria	Site Assessment
Natural Landscapes & Natural Coastal Character Policies 2.6.2.1.d.iv & v; objectives 2.4.4 & 2.2.5	No Issues. The site does not overlap with these mapped areas.
Access to the Coast and Water Bodies Policy 2.6.2.1.d.vi, objective 10.2.4	No Issues. Rezone site is not immediately adjacent to a waterbody.
Significant Trees, Heritage Items...	No Issues. No relevant features.
Residential Character and Amenity (Applies to potential medium density sites only)	Not Applicable.
Natural Hazards Policy 2.6.2.1.d.vii, objective 11.2.1	No Issues. Site is not shown as a HAIL site on ORC database. HAIL status will be verified at time of subdivision consent. A geotechnical report was for the submission site was included when the submission was lodged – structure plan located residential activity in accordance with the findings of the geotechnical report.
Potable Water Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Anticipated that submission site can be readily serviced by Council reticulated water supply given both submission site areas abut the potable water supply zone boundary.
Wastewater Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	Some Issues (Manageable). It is anticipated that servicing of the site by reticluated wastewater supply will be capable of being acheived.
Stormwater Management Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Likely that no management required other than standard performance standards already contained in 2GP rules (e.g. on-site attenuation).
Transport Effects (Local) Objective 2.7.1, policy 2.7.1.1, objective 2.7.2	No Issues. Area S228.001: North Taieri Road is classified as a *Collector Road* in the 2GP road hierarchy and ultimately feeds onto the Dunedin Southern Motorway (SH1) which is a *Strategic Road* in the 2GP road hierarchy. Area S228.002: Mount Grand Road and Townleys Road are both classified as a *Local Road* in the 2GP road hierarchy. Townleys Road feeds to Kaikorai Valley Road which is classified as a *Strategic Road*.
Transport Effects (Wider Network) Policy 2.6.2.1.d.x, objective 2.7.1, polic 2.7.1.1, objective 2.7.2	No Issues. Unlikely that upgrades to the wider transport network will be required as a result of the rezone.
Compact City – Proximity to Existing Residential Areas Policies 2.6.2.1.d.xi, 2.6.2.1.d.vii.6 & 2.6.2.3.c.iii.6, objective 2.2.4	No Issues. Area S228.001 is adjacent to existing GR1 zone at Abbotsford via part of RS14 which is also included in structure plan. Area S228.003 is currently not contiguous to an existing residential zoned area but provides opportunity for large area for lower cost, affordable housing close to Kaikorai Valley.

Criteria	Site Assessment
Compact City – Ability to Develop Land Efficiently Policies 2.6.2.1.d.xi, 2.6.2.3.c.iii.6, objective 2.2.4	Very Good. There is feasible capacity for 50 sites or more at GR1 density.
Effects on Manawhenua Values Objective 2.5.1, policy 2.5.1.2	No Issues.
Issues for Network Utility Operators, SDHB, Ministry for Education, FENZ, Kiwirail NPS-UD	No Issues. Likely that any issues are manageable.
Other constraints on Development Objective 2.6.2	No Issues. Landowner is willing to develop. Any encumbrances on title can be dealt with at time of subdvision consent.
Feasibility for Medium Density Development – Lower Quality Housing Stock more likely to be Developed	Not Applicable.
Feasibility for Medium Density Development – Market Desirability	Not Applicable.

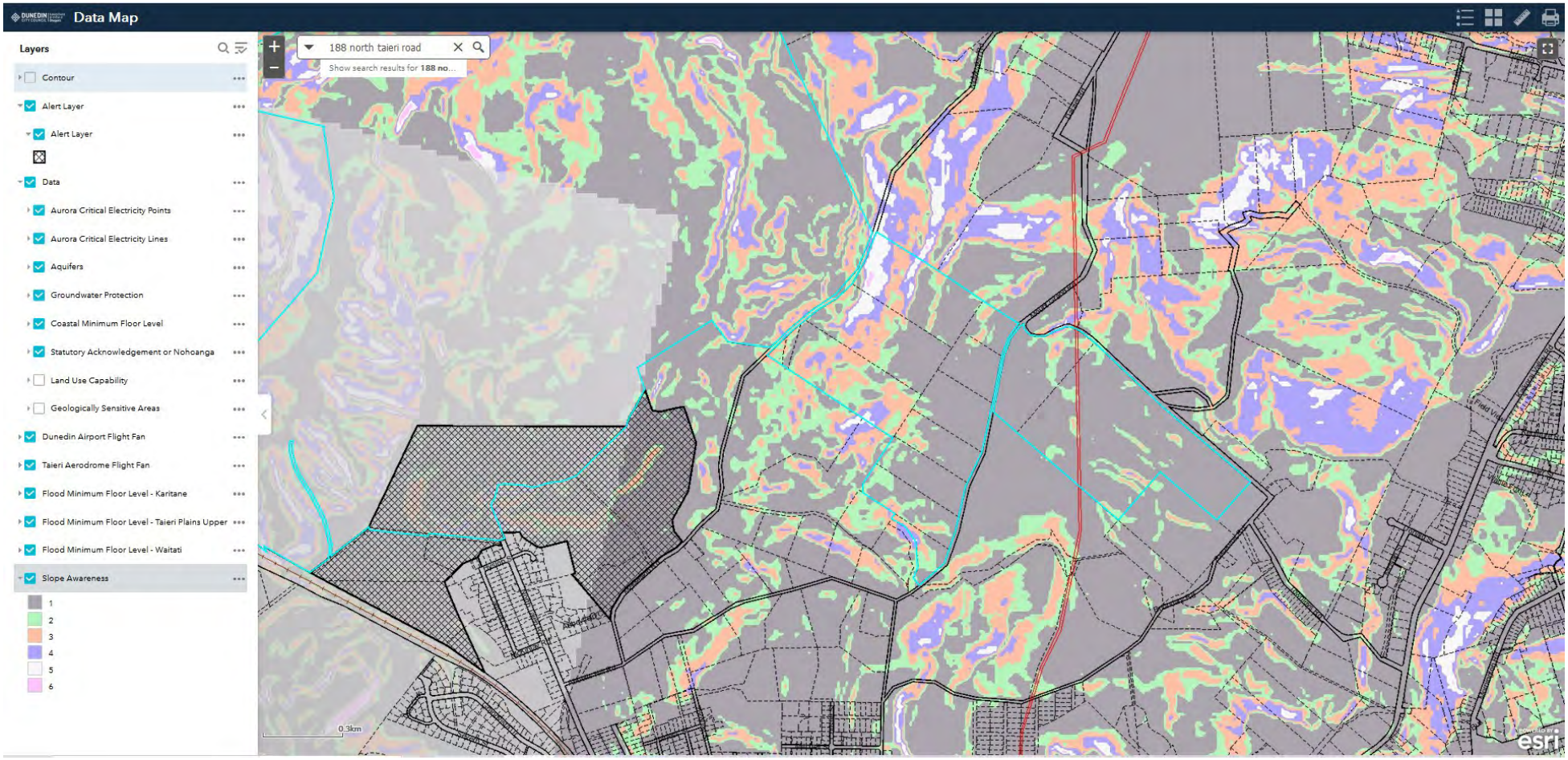
Structure Plan:



Submission Site Areas:



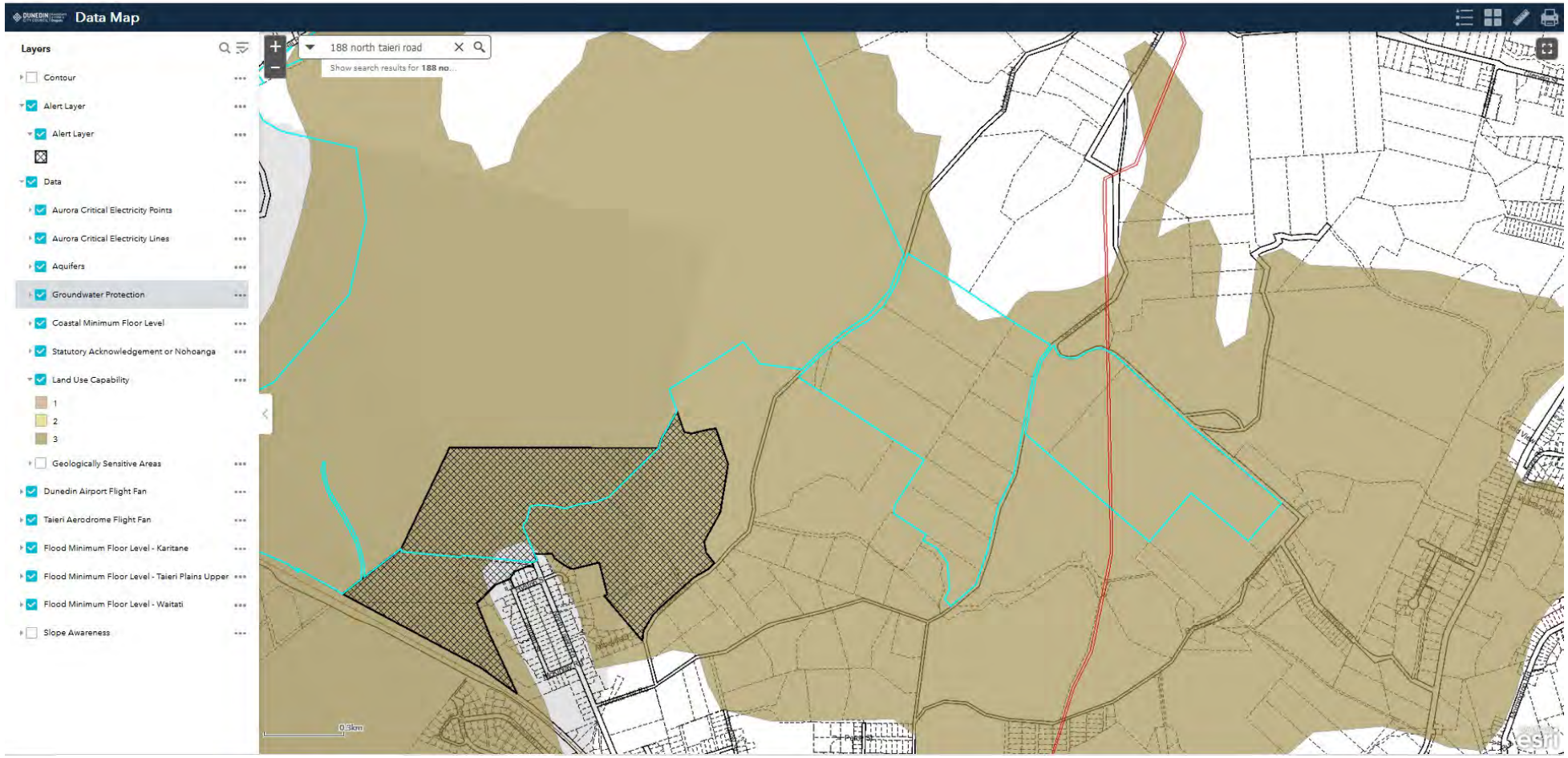
Slope Value:



NB:

- Gray = slope value 1 (less than 12 degrees).
- Green = slope value 2 (12 – 15 degrees).
- Orange = slope value 3 (15 – 20 degrees).
- Purple = slope value 4 (20 – 26 degrees).

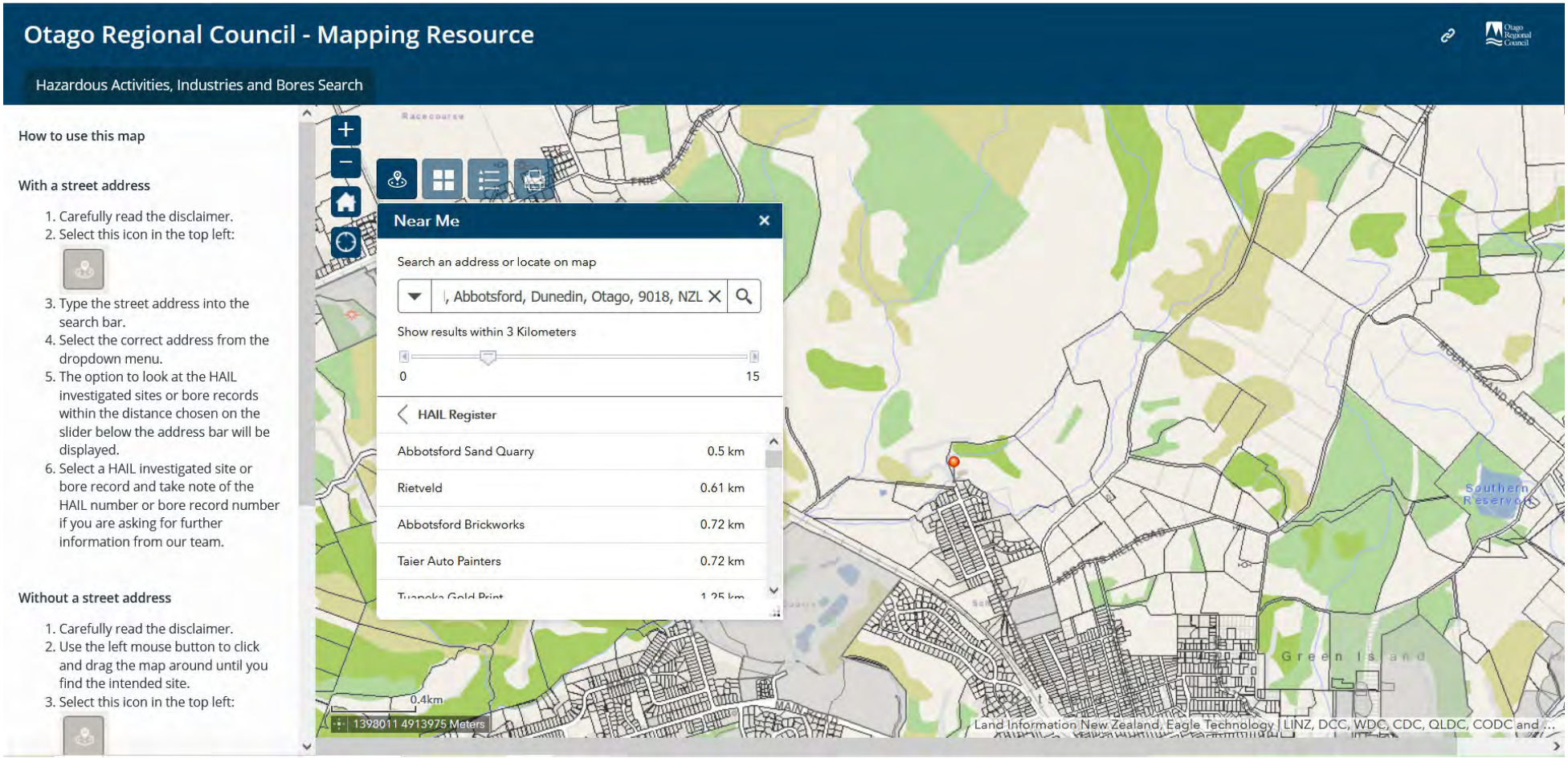
Land Use Capability:



NB:

- Blacked hatched area is Site ID 14 which is within scope for Variation 2 – only part of Site ID 14 is within 188 North Taieri Road.
- There is a degree of overlap between the submission site and Site ID 14.

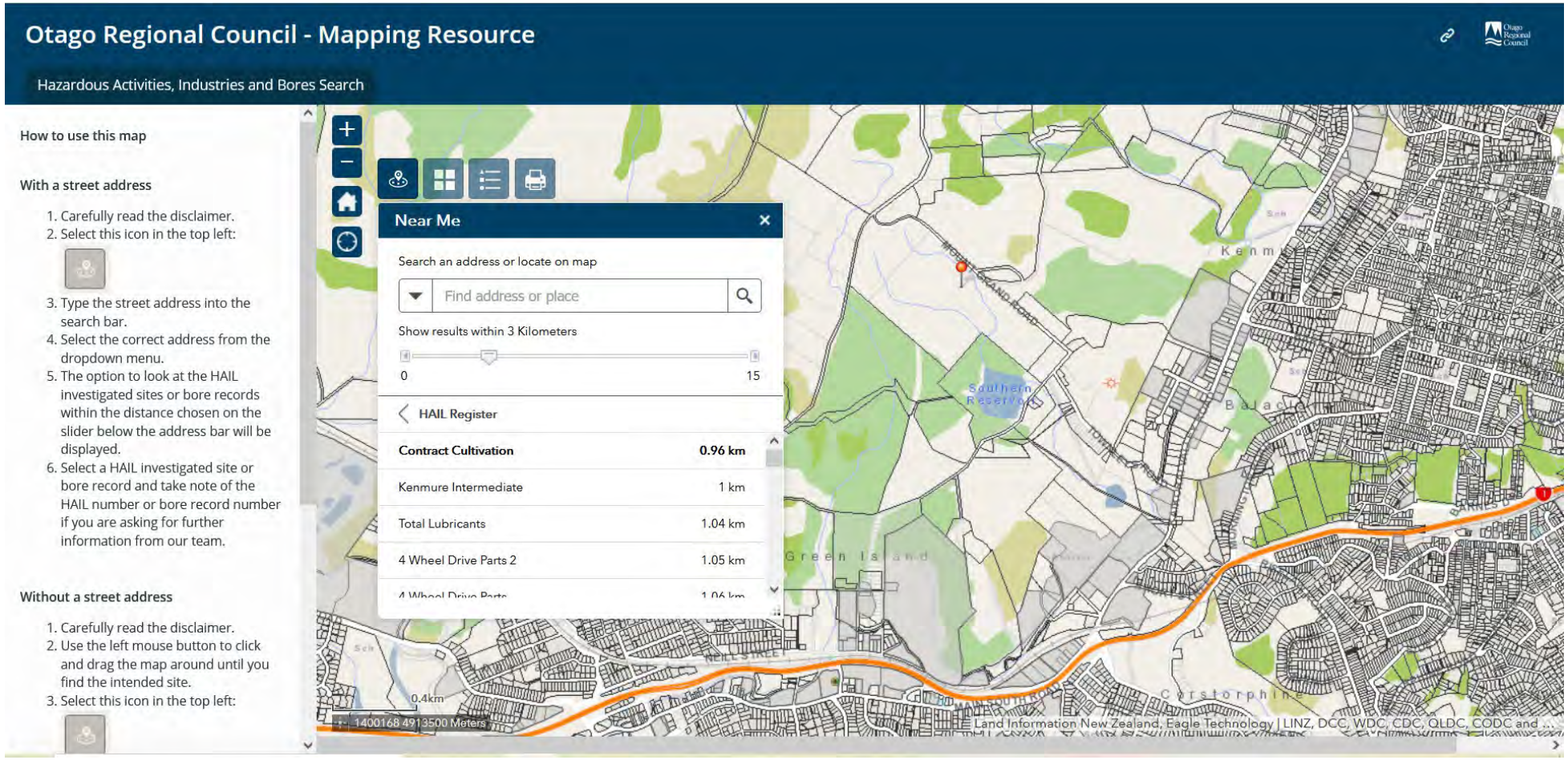
ORC HAIL DATABASE:
S228.001:



Closest HAIL sites to S228.001 are:

- Abbotsford Sand Quarry – HAIL.01421.01 – located at 377 Main South Road Green Island.
- Rietveld – HAIL.00926.01 – located at 63 North Taieri Road.
- Abbotsford Brickworks – HAIL.00683.01 – located at 61 North Taieri Road.

ORC HAIL DATABASE:
S228.002:



Closest HAIL sites to S228.002 are:

- Contract Cultivation – HAIL.00556.01 – located at 21 Donald Street.
- Kenmure Intermediate – HAIL.01522.01 – located at 506 Kaikorai Valley Road – now used as an industrial site.
- Total Lubricants – HAIL.00998.01 – located at 20 McNab Street.

Potable Water Services Boundary:

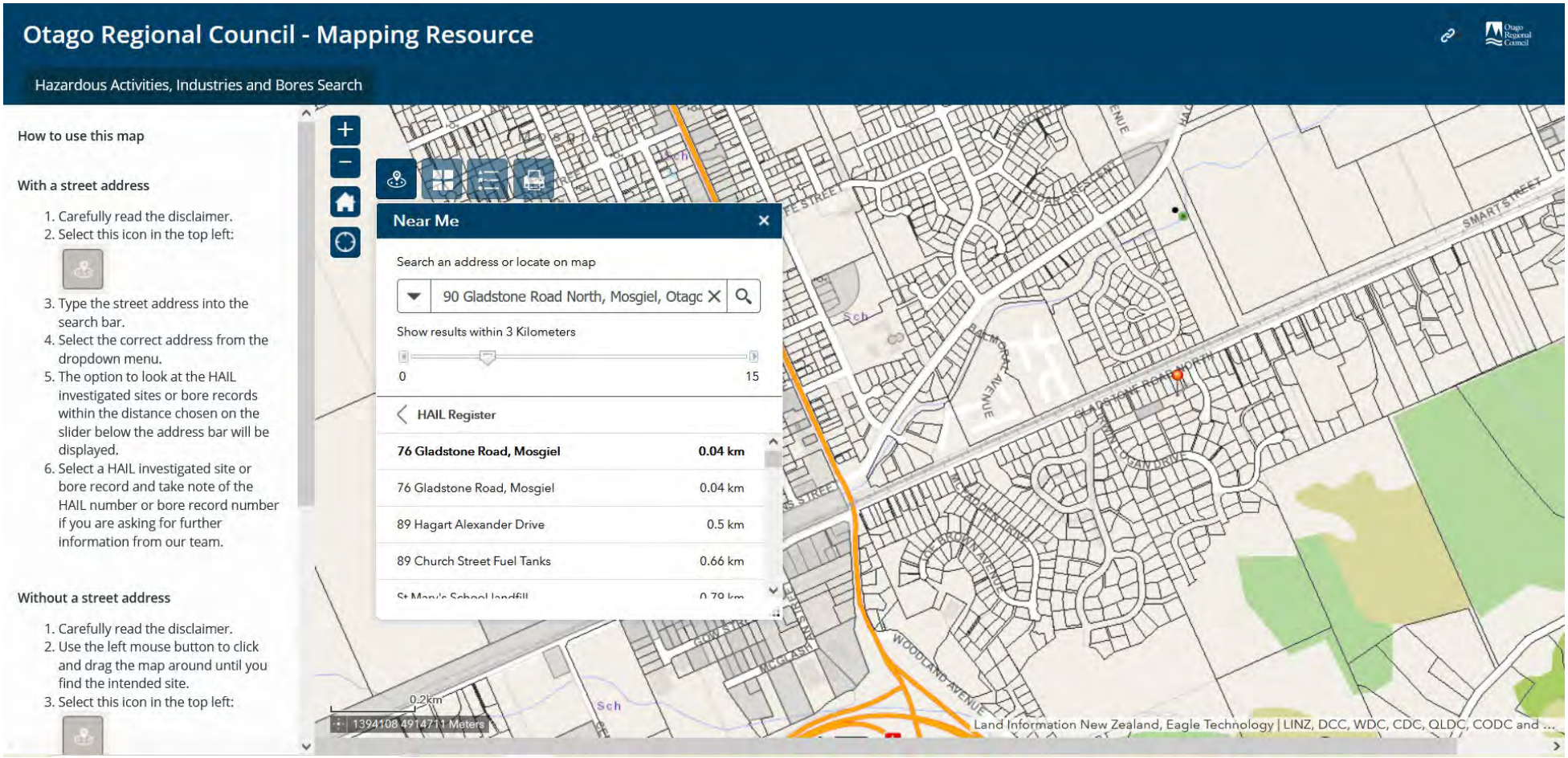
Appendix 5 – Site Criteria Assessment – Potential Residential Rezone Area: 90, 98 and 100 Gladstone Road North

Criteria	Site Assessment
Slope Objective 2.6.2, policies 2.6.2.1.c.i & 2.6.2.3.d.	No Issues. Majority of the site is slope category 1 (flat or gently sloping).
Aspect – Solar Access	Very Good. Flat, north facing site.
Accessibility – Public Transport Objective 2.2.2, policies 2.6.2.1.c.iii & 2.6.2.3.c.ii	Ok. Bus Route 77 (Mosgiel, Fairfield, Green Island – City) – bus stop located outside 1 Quarry Road is approximately 900m from the closest point of the submission site.
Accesibility – Centres Objective 2.2.2, policies 2.6.2.1.c.ii & 2.6.2.3.ii.	Poor. Site is approximately 900m, at the closest point, from the *Neighbourhood Convenience Centre* zone on Gordon Road; and approximately 1.6km, at the closest point, from the *Principle Centre* zone at Mosgiel.
Accessibility – Schools Objective 2.2.2, policies 2.6.2.1.c.v & 2.6.2.3.c.ii	Very Good. Approximately 1.4km from site, closest point, to St Mary's School; and 1.4km, closest point, to East Taieri School.
Rural Character / Visual Amenity Policy 2.6.21.d.ii, Objective 2.4.6	Not Applicable. Site already zoned residential.
Impacts on Productive Rural Land Policy 2.6.2.1.d.i, Objective 2.3.1, policy 2.3.1.2	Not Applicable. Site already zoned residential.
Reverse Sensitivity Policy 2.6.2.1.d.i, Objective 2.3.1	No Issues. Site is already zoned residential. Transrail designation for Main South Railway line is located across Gladstone Road North.
Signigificant Indigenous Biodiversity Policy 2.6.2.1.d.iii, Objective 2.2.3, policy 2.2.3.5	No Issues. Currently no biodiversity values associated with the site. Structure plan will provide for planting of indigenous species suitable for a residential environment.
Natural Landscapes & Natural Coastal Character Policies 2.6.2.1.d.iv & v; objectives 2.4.4 & 2.2.5	No Issues. The site does not overlap with these mapped areas.
Access to the Coast and Water Bodies Policy 2.6.2.1.d.vi, objective 10.2.4	No Issues. Rezone site is not immediately adjacent to a waterbody.
Significant Trees, Heritage Items...	No Issues. No relevant features.

Criteria	Site Assessment
Residential Character and Amenity (Applies to potential medium density sites only)	Not Applicable. Structure plan governs the location of the townhouses including ground footprint. Rules included with the structure plan will govern exterior materials, height and landscaping with indigenous plants suitable for an urban environment.
Natural Hazards Policy 2.6.2.1.d.vii, objective 11.2.1	No Issues. Site is not shown as a HAIL site on ORC database. HAIL status will be verified at time of subdivision consent. Site included in *Hazard 3 (Alluvial Fan) Overlay Zone* being *Area 22 – Alluvial Fans From Coastal Hills* which has a **low** level of risk.
Potable Water Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. Anticipated that site can be readily serviced by Council reticulated water supply given existing connection and residential zoning.
Wastewater Supply Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. It is anticipated that servicing of the site by reticluated wastewater supply will be capable of being achieved given existing connection and residential zoning.
Stormwater Management Policy 2.6.2.1.d.ix, objective 2.7.1, policy 2.7.1.1	No Issues. It is anticipated that servicing of the site by reticluated stormwater supply will be capable of being achieved given existing connection and residential zoning.
Transport Effects (Local) Objective 2.7.1, policy 2.7.1.1, objective 2.7.2	No Issues. Gladstone Road North is classified as a *Collector Road* in the 2GP road hierarchy and feeds onto Gordon Road (SH87) which is classified as an *Urban High Density Corridor* and Quarry Road (SH87) which is classified as a *Strategic Road*.
Transport Effects (Wider Network) Policy 2.6.2.1.d.x, objective 2.7.1, polic 2.7.1.1, objective 2.7.2	No Issues. Unlikely that upgrades to the wider transport network will be required as a result of the rezone.
Compact City – Proximity to Existing Residential Areas Policies 2.6.2.1.d.xi, 2.6.2.1.d.vii.6 & 2.6.2.3.c.iii.6, objective 2.2.4	No Issues. Site is within a residential zone.
Compact City – Ability to Develop Land Efficiently Policies 2.6.2.1.d.xi, 2.6.2.3.c.iii.6, objective 2.2.4	Ok.
Effects on Manawhenua Values Objective 2.5.1, policy 2.5.1.2	No Issues.

Criteria	Site Assessment
Issues for Network Utility Operators, SDHB, Ministry for Education, FENZ, Kiwirail NPS-UD	No Issues. Likely that any issues are manageable.
Other constraints on Development Objective 2.6.2	No Issues. Landowner is willing to develop. Any encumbrances on title can be dealt with at time of subdvision consent.
Feasibility for Medium Density Development – Lower Quality Housing Stock more likely to be Developed	Good. 90 and 100 Gladstone Road North are vacant sites. House on 98 Gladstone Road North was built in approximately 1951.
Feasibility for Medium Density Development – Market Desirability	Good.

ORC HAIL DATABASE:



Closest HAIL sites to S228.001 are:

- 76 Gladstone Road North – HAIL.01996.01.
- 89 Hagart-Alexander Drive – HAIL.00801.01.
- 89 Church Street Fuel Tanks – HAIL.01963.01.

3 Water Services:

NB:

- Site already has connections to all of 3 waters services.

23 and 29 John Street, and 808A and 810 Brighton Road, Ocean View

Submitters: Michael David Byck and Nicola Andrea O'Brien (#23 John Street), Meghan Mills (#29 John Street), Simon Roberts (#808A Brighton Road) and Justine Ragg (#810 Brighton Road).

Appendix 5 Planning Assessment

Summary:

Overall, these four sites are considered to be well aligned with the Appendix 5 parameters, due to being situated adjacent to an existing region of residential-zoned land (Township and Settlement Zone). The subject sites are contiguous, and collectively offer a land area of approx. 6.9Ha that might be utilised for additional housing capacity. Opportunities for access into the land is excellent, infrastructure is readily available and ground topography is generally supportive of residential development processes. The site is of sufficient size to manage (if required) matters associated with slope, natural hazards and stormwater.

Parts of the submission land are subject to the Ocean View Coastal Character Overlay Zone and the Hazard 2 (Land Instability) Overlay Zone. While these matters are certainly relevant considerations, there remains a large region of the land that is not encumbered by these features. It is envisaged that the implications of the Coastal Character and Hazard 2 features could be fully considered once this site is accepted as 'in-scope'.

Matters such as reserve sensitivity and indigenous vegetation are not of particular relevance at this location.

The table below assesses the submission site(s) against DCC's Variation 2 Appendix 5 criteria.

Criteria	Comment	Options to manage	Scoring	Can manage issues
Slope	Objective 2.6.2 – not directly relevant to slope. But… requires the provision of development capacity in the 'most appropriate locations'… Several one proposed Variation 2 rezoning sites are located within the Brighton community, at a greater distance from the City (refer GF01 and GF03). Furthermore, GF01 which is entirely enclosed by existing rural-residential land, is arguably much less appropriate for development capacity than the submission site.	Due to the site size, the future development layout (established at resource consent stage) can assist with managing slope.	Good	

	Policy 2.6.2.1.c.i – requires topography that is "not too steep". While the site is sloping, it would not be considered too steep. Some parts of the submission land are essentially flat, while other parts of the land are moderately steep at around 14°. Overall, the majority of the land exhibits a modest slope that can readily support residential development. Policy 2.6.2.3.d – again, requires land that is "not too steep".			
Aspect – Solar Access	N/a; relates to medium density (MD) only. Township and Settlement Zone anticipated.		n/a	
Accessibility – public transport	Objective 2.2.2 – in terms of accessibility, Objective 2.2.2 seeks reduced reliance on private motor cars for transportation. Refer below. Policy 2.6.2.1.c.iii – The Ocean View neighbourhood is currently serviced by frequent public transport services. Policy 2.6.2.3.c.ii – public transport as above. In terms of community facilities, the Brighton coastline (and associated reserves), Brighton Surf Club, and the Brighton convenience shop are all available within a relatively short walk from the submission land.		Good	
Accessibility - Centres	Objective 2.2.2 in terms of accessibility, Objective 2.2.2 seeks reduced reliance on private motor cars for transportation. Refer below. Policy 2.6.2.1.c.ii, v – seeks residential development being close to main urban areas. The site is approx. 1.8km from the Brighton centre. A pedestrian path is available between Ocean View and Brighton. Policy 2.6.2.3.c.ii – refer above.	The distance to an urban area is offset by: • accessibility to a bus route • The relatively flat commute to Brighton	Good	No
Accessibility – Schools	Big Rock Primary School is located at a distance of approx. 1.9km from the submission land.		Good	

Rural character/visual amenity	Policy 2.6.2.1.d.ii – seeks to protect productive rural land Objective 2.4.6 – The character and visual amenity of Dunedin's rural environment is maintained or enhanced. The site is made up of four properties, with a combined area of approx. 6.9Ha. The four individual submission sites are too small, and the land is of insufficient quality, to support effective standalone rural activities. Part of the land is located in the Ocean View Coastal Character (CC) Overlay Zone, and it may be appropriate to manage potential adverse effects to visual amenity via mitigation requirements. The need for, and manner of, any such controls can be assessed once the submission land has been determined to be 'in-scope'.	Could potentially be managed via building controls (e.g. natural materials) and landscape plantings, etc.	Some issues	Partially
Impacts on productive rural land	Due to the size of the site, and the quality of the soils, it has limited rural productivity. There are no High Class Soils on the land.		Minor issues	No
Reverse sensitivity	The site currently surrounded by a number of existing houses located along the land's southern boundary. These houses are generally separated from the submission land by reasonably large back yards. Few houses exist near to the other external boundaries of the submission land. Overall, unacceptable reserve sensitivity issues are not anticipated to arise.		No issues	
Significant indigenous biodiversity	The site is not associated with any significant indigenous biodiversity.		No issues	
Natural landscapes and natural coastal character	Part of the land is subject to the Ocean View Coastal Character (CC) Overlay Zone. Residential development within this CC region is expected to be able to be controlled to avoid unacceptable landscape effects.	Could potentially be managed via building controls (e.g. natural materials) and landscape plantings, etc.	Issues can be managed or avoided.	Yes
Access to the coast and water bodies	The site lies within close proximity to the coastline. Access to the coast is available vis the existing road network.		Very good	

Significant trees, heritage items, important vistas or viewshafts, important green or open spaces	Policy 2.6.2.1.d.vii seek to protect and enhance the elements of the environment that contribute to residents' and visitors' aesthetic appreciation for, and enjoyment of, the city. These include: 1. important green and other open spaces, including green breaks between coastal settlements. 2. trees that make a significant contribution to the visual landscape and history of neighbourhoods. 3. built heritage, including nationally recognised built heritage. 4. important visual landscapes and vistas. 5. The amenity and aesthetic coherence of different environments. 6. the compact and accessible form of Dunedin. The site is not an important green space. The site does not include any trees of significance. The site does not include any recognised built heritage. Part of the site is contained within a coastal character zone. It may be appropriate to control any future development within this area in a manner that mitigates and/or reduces the potential for adverse environmental effects. The site lies adjacent to an existing Township and Settlement Zone – the land, if rezoned, will appear coherent with this. The land, if rezoned, will appear contiguous with the adjacent residential zone, and accordingly the City will remain compact and accessible. Objective 2.4.1 – as above. Policy 2.4.1.7 Maintain a compact city with a high degree of legibility based on clear centres, edges and connections through rules that: a) manage the expansion of urban areas.	The only issues related to this matter that might be encountered are visual issues. These may be able to be adequately managed through building controls (e.g. natural materials) and landscape plantings, etc.	Few issues	Potentially

	b) require new large subdivisions to provide a concept or structure plan that demonstrates how the subdivision will provide for good connectivity to existing or potential future urban areas for pedestrians, cyclists and motor vehicles. The land, if rezoned, will form a broadening of the existing residential zone that runs along John Street and Brighton Road. This will enable efficient management to be made of the infrastructure that already exists within these legal road corridors.			
Residential character and amenity	N/a; relates to medium density only. Township and Settlement Zone anticipated.		n/a	
Natural Hazards	The 2GP map shows that a very small part of the land at 810 Brighton Road is subject to a Hazard 2 (Land Instability) Overlay Zone. However, this hazard area comprises around 0.1Ha of the site's total land area of 6.9Ha, and as such the hazard presents a fairly negligible obstacle for meaningful residential development.		No issues	
Potable water supply	The site can be readily serviced for potable water from existing DCC infrastructure within John Street and Brighton Road.		Very good	
Wastewater supply	The site can be readily serviced for wastewater drainage using existing DCC infrastructure within John Street and Brighton Road.		Very good	
Stormwater management	Due to the size of the submission site, stormwater can be readily managed on site. If required. Alternatively, a direct delivery system to a discharge point on the coast may offer an effective drainage solution.	Onsite management, if required.	No issues	Yes
Transport effects (local)	The submission site has access options to both John Street and Brighton Road. The local road network is well placed to accommodate the increase in traffic that might be expected to be generated by the proposed rezoning.		No issues	

Transport effects (wider network)	Brighton Road is expected to adequately accommodate the traffic that would be generated from residential development of the submission land.		Very good	
Compact city – proximity to existing residential areas	The site borders onto the existing Township and Settlement Zone.		Very good	
Compact city - ability to develop land efficiently	At 6.9Ha, the land has a capacity for up to 117 houses if rezoned to Township and Settlement Zone (allowing for 15% of the site used for roading). This size of development enables efficient design and implementation processes to be achieved.		Very good	
Effects on Manawhenua values	No known implications.		No issues	
Issues for various services providers.	No specific investigation has been undertaken with service providers. Generally, it is feasible to upgrade network infrastructure to support new residential development in locations where such upgrades are required.		No known issues	Yes, if required.
Other constraints on development	No other issues – matters such as slope identified above.		No issues	
Feasibility for MD development	Medium density development at this location would likely present an undesirable contrast with the adjacent Town and Settlement Zone. A MD zoning format has not been promoted or considered by the submitter.		n/a	
Feasibility for MD development - market desirability	As above.		n/a	

231 Signal Hill Road, Opoho

Submitter: Grandview 2011 Ltd

Appendix 5 Planning Assessment

Summary:

Overall, this site is considered to be compatible with the Appendix 5 parameters, due to being a stand-alone undersized property that is constrained from accommodating a useful rural activity and is located within moderate proximity of an area of land that has been accepted for rezoning under Variation 2 from Rural Hill Slopes Zone to Large Lot Residential 1 Zone (233 Signal Hill Road). The subject site offers a land area of approx. 0.4Ha that might be utilised for additional housing capacity. At the proposed Large Lot 1 Residential zone this area would enable a maximum of two new residential activities to be established. The Opoho neighbourhood is relatively close to the City centre, with good access options for various travel modes. The site is of sufficient size to manage (if required) matters associated with slope, natural hazards and stormwater.

The submission land is subject to the Flagstaff-Mount Cargill Significant Natural Landscape (SNL) Overlay Zone. While this is certainly a relevant consideration, it is envisaged that the implications of the SNL feature could be fully considered once this site is accepted as 'in-scope'.

Matters such as reserve sensitivity and indigenous vegetation are not of particular relevance at this location.

The table below assesses the submission site(s) against DCC's Variation 2 Appendix 5 criteria.

Criteria	Comment	Options to manage	Scoring	Can manage issues
Slope	Objective 2.6.2 – not directly relevant to slope. Policy 2.6.2.1.c.i – requires topography that is "not too steep". While the site is sloping relatively steeply, it Is not inconsistent with the slope gradient of the land elsewhere along the urban parts of Signal Hill Road, which have already been built on. Accordingly, it does not appear that the submission site is 'too steep' to accommodate new residential activity. Policy 2.6.2.3.d – not directly relevant to slope.	Due to the site size (0.4Ha), there is flexibility to manage slope through the design process.	Some issues	Yes

Aspect – Solar Access	N/a; relates to medium density only. LLR1 or LLR2 anticipated.		n/a	
Accessibility – public transport	Objective 2.2.2 – in terms of accessibility, Objective 2.2.2 seeks reduced reliance on private motor cars for transportation. Refer below. Policy 2.6.2.1.c.iii – The local Opoho community is currently serviced by frequent public transport services; Policy 2.6.2.3.c.ii – public transport as above. In terms of community facilities, there are numerous facilities located within Opoho and the surrounding suburbs.		Very good	
Accessibility - Centres	Objective 2.2.2 in terms of accessibility, Objective 2.2.2 seeks reduced reliance on private motor cars for transportation. Refer below. Policy 2.6.2.1.c.ii, v – seeks residential development being close to main urban areas. The site is approx. 2.3km from the Gardens centre area (inc. the New World supermarket) and somewhat closer to various convenience shops that are located along North Road. Policy 2.6.2.3.c.ii – refer above.	The distance to an urban area is offset by its accessibility to a bus route.	Moderate	No
Accessibility – Schools	North East Valley Normal School is located approx. 2.0km from the site.		Moderate	No
Rural character/visual amenity	Policy 2.6.2.1.d.ii – seeks to protect productive rural land Objective 2.4.6 – The character and visual amenity of Dunedin's rural environment is maintained or enhanced. The site is a small standalone property of approx. 0.4Ha. The land is too small, and is of insufficient quality, to support an effective standalone rural activity. Part of the land is located in the Flagstaff-Mount Cargill Significant Natural Landscape (SNL) Overlay Zone, and accordingly any future residential development will need to meet the relevant landscape controls.	Landscape effects can be managed via mitigation controls (e.g. natural materials) and landscape plantings, etc.	Some issues	Partially

Impacts on productive rural land	Due to the size of the site, and the quality of the soils, it has limited rural productivity. There are no High Class Soils on the land.		Minor issues	No
Reverse sensitivity	The site has few immediate neighbours (the closest house is over 100m away). Overall, unacceptable reserve sensitivity issues are not anticipated to arise.		No issues	
Significant indigenous biodiversity	The site is not associated with any significant indigenous biodiversity.		No issues	
Natural landscapes and natural coastal character	The land is subject to the Flagstaff-Mount Cargill Significant Natural Landscape (SNL) Overlay Zone. Residential development within this SNL region is expected to be able to be controlled to avoid unacceptable landscape effects.	Anticipated effects can be managed via building controls (e.g. natural materials) and landscape plantings, etc.	Issues can be largely managed.	Partially
Access to the coast and water bodies	The site is not located nearby to a coast or water body.		No issues	
Significant Trees, heritage items, important vistas or viewshafts, important green or open spaces	Policy 2.6.2.1.d.vii seek to protect and enhance the elements of the environment that contribute to residents' and visitors' aesthetic appreciation for, and enjoyment of, the city. These include: • important green and other open spaces, including green breaks between coastal settlements. • trees that make a significant contribution to the visual landscape and history of neighbourhoods. • built heritage, including nationally recognised built heritage. • important visual landscapes and vistas. • The amenity and aesthetic coherence of different environments. • the compact and accessible form of Dunedin. The site is not an important green space. The site does not include any trees of significance. The site does not include any recognised built heritage.	Visual issues will be able to be adequately managed through building controls (e.g. natural materials) and landscape plantings, etc.	Some issues	Partially

	The site is contained within an SNL zone. Development in the landscape zones will need to be undertaken in accordance with certain building controls so as to mitigate and/or reduce the potential for adverse environmental effects. The site lies does not lie adjacent to an existing residential zone, however as the land is only of sufficient size for one or two new residential activities (depending on whether it is rezoned to LLR1 or LLR2), development will not appear dominant within the existing environment. Objective 2.4.1 – as above. Policy 2.4.1.7 Maintain a compact city with a high degree of legibility based on clear centres, edges and connections through rules that: a) manage the expansion of urban areas. b) require new large subdivisions to provide a concept or structure plan that demonstrates how the subdivision will provide for good connectivity to existing or potential future urban areas for pedestrians, cyclists and motor vehicles. As noted above, the degree of development potential at this location will mean that new residential activities cannot appear dominant within the local environment. This will ensure that the City's legibility will not be undermined.			
Residential character and amenity	N/a; relates to medium density only. LLR1 or LLR2 anticipated.		n/a	
Natural Hazards	The 2GP map does not show any natural hazards applicable to the submission site.		n/a	
Potable water supply	There is a 150mm dia DCC watermain located in Signal Hill Road. A potable water supply can be provided to the submission land from this main.		No issues	

Wastewater supply	Wastewater drainage can be achieved to the existing DCC foul sewer in Signal Hill Road. Alternatively, an on-site wastewater solution mighty be acceptable as the site sizes under the LLR1 and LLR2 zoning will be relatively large.		No issues	
Stormwater management	Due to the size of the submission site, stormwater can be readily managed on site.	On site management, if required.	No issues	Yes
Transport effects (local)	The submission site has a large length of legal frontage to Signal Hill Road. This frontage is well placed to accommodate the one or two new access crossings that will support new residential activities.		No issues	
Transport effects (wider network)	Signal Hill Road is expected to adequately accommodate the traffic that would be generated from residential development of the submission land.		No issues	
Compact city – proximity to existing residential areas	The site lies does not lie adjacent to an existing residential zone, however as the land is only of sufficient size for one or two new residential activities (depending on whether it is rezoned to LLR1 or LLR2), development will not appear dominant within the existing environment.		No issues	
Compact city - ability to develop land efficiently	As the submission land is capable of accommodating only one or two new residential sites, depending on the LLR1 or LLR2 zoning, it is likely that this land can be developed reasonably efficiently.		No issues	
Effects on Manawhenua values	No known implications.		No issues	
Issues for various services providers.	No specific investigation has been undertaken with service providers. Generally, it is feasible to upgrade network infrastructure to support new residential development in locations where such upgrades are required.		No known issues	Yes, if required.
Other constraints on development	No other issues – matters such as slope identified above.		No issues	

Feasibility for MD development	Medium density development at this location would likely present an undesirable fit within the local setting. A MD zoning format has not been promoted or considered by the submitter.		n/a	
Feasibility for MD development - market desirability	As above.		n/a	

Speaking Schedule

Hearing of Section 357 Objections

2GP Variation 2

Wednesday 27 October	**Represented by**	**Submitter**	**Address**	
9.00 am	Phil Page, Gallaway Cook Allan	Richard Muir	Bush Road, Mosgiel	
		Alec Cassie	Bush Road, Mosgiel	
		Roger and Janine Southerby	Bush Road, Mosgiel	
		Tony McAuliffe	Camp Street, Broad Bay	
		Murray Wilson & Paula Parker	Camp Street, Broad Bay	
		Brendan Murray	Centre Road, Tomahawk	
		Gladstone Family Trust	Gladstone Road North, Mosgiel	
		Invermark Investment Ltd	Huntly Road Outram	
		Wendy Campbell	Taieri Road, Abbotsford	
		Willowcroft Ltd	Huntly Road, Outram	
	Conrad Anderson	Custom Investments	Stevenson Road, Concord	
		Paddy Bleach		
Lunch Break				
1.30 pm	Kurt Bowen	Justine Ragg	810 Brighton Road	
		Michael Byck and Nicola O'Brien	23 John Street	
		Grandview 2011 Ltd	231 Signal Hill Road	
		Simon Roberts	808A Brighton Road	
		Meghan Mills	29 John Street, Ocean View	
2.45 pm	Emma Peters	Ben and Raewyn Waller	457 Purakaunui Road,	
Break				
** 3.30 pm	Dunedin City Council			

** **Note:** Hearing will continue at 9.00 am on Thursday 28 October.

**At conclusion of presentation by Dunedin City Council	Objectors Right of Reply			

** **Note:** Hearing will continue at 9.00 am on Thursday 28 October.