

**Before a Panel Appointed by the
Dunedin City Council**

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

And

In the Matter of Proposed Variation 2 of the Second Generation
Dunedin District Plan – Appeals Version (**2GP**)

Brief of Evidence of Emma Rayner Peters
on behalf of Various Submitters
as Listed in Schedule 1 of this Evidence

Dated 3rd September 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 submissions and Variation 2 of the Dunedin City Second Generation District Plan Appeals Version including Council's s42a report and evidence from Council staff.
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. A duplicate submission was made in relation to various provisions relating to *New Development Mapped Areas (NDMA) (duplicate submission)* for each of the submitters listed in Schedule 1 (jointly referred to as “**the submitters**”). Excluding provisions relating to 3 waters infrastructure which are to be dealt with at a separate hearing, the duplicate submission requested amendments to the following provisions:
 - Change D4 (Provision of Social and Recreational Spaces in Large Greenfield Subdivisions);
 - Change D6 (Protection of Natural Environmental Values in Large Greenfield Subdivisions);
 - Change D7 (Amenity Planting and Public Amenities); and
 - Change D8 (Providing for Efficient Use of Land in Large Greenfield

Subdivisions).

Each of these is dealt with in turn in below.

5. Additional submission points on Change C1 (Better Provide for Social Housing) were made by Dunedin City Baptist Church. These are dealt with under the last section of this evidence entitled '*Additional Submission Points Requiring Comment*'.

Change D4 (Provision of Social and Recreational Spaces in Large Greenfield Subdivisions)

6. In essence, the submitters seek inclusion of a performance standard providing a formula for when and how much social and recreational space is required so that there is certainty about the number and size of these spaces required in proportion to the future density of the neighbourhood of any given NDMA. The submitters consider such a performance necessary given: (a) the location and range in total area of various NDMAs, meaning some are more likely than others to require such spaces; and (b) the fact that the land contained in many of the NDMAs comprises multiple ownership.
7. Council's planner recommends rejecting the inclusion of such a performance standard on the basis that:
 - Council's PARS department is not in a position yet to provide such a performance standard(s) due to ongoing planning activities; and
 - That the requirement to provide such space would be subverted by individual applications for subdivision 'below the threshold' which, if to become common practice, would have, presumably, a cumulative effect in the undersupply of such spaces within the City.
8. The second point is not accepted by the submitters. A performance standard would apply to all land within an NDMA and, therefore, any application for subdivision of part of the land in an NDMA would necessarily need to demonstrate how and where social and recreational space was to be provided within that NDMA.
9. In his evidence at paragraph 17, Mr John Brenkley, DCC Planning and Partnerships Manager, Parks and Recreation makes reference to the *New*

Zealand Recreation Association Parks Categories Framework. Council's planner has recommended that Rule 12.X.2.5.c is amended to include:

General assessment guidance:

- iii. In assessing the requirements for recreation spaces, Council will consider the contents of the New Zealand Recreation Association Parks Categories Framework.

The submitters agree to the inclusion of this amendment. The New Zealand Recreation Association Parks Categories Framework provides guidance on the types of recreation spaces¹ which can be considered but does not provide guidance on how much space for each category of 'park' should be provided at the time of greenfield development. To a large extent this document simply provides a framework for how Council should categorise 'park assets' for management and reference in communications purposes.

10. Given that all the submitters on whose behalf this evidence has been prepared also have site specific rezone submission points, the submitters request that the Hearing Panel leave this submission point open until that later hearing on greenfield rezone sites. In light of the recent and ongoing lockdown, doing so will provide opportunity for the submitters to canvass options with Council, this will be particularly valuable for greenfield sites with mixed ownership.

Change D6 (Protection of Natural Environmental Values in Large Greenfield Subdivisions)

11. The submitters seek to amend Policy 12.2.X.2 to provide a definition of 'significant natural environment values' so as to clarify what this term means in Policy 12.2.X.2 in relation to the protection of natural environmental values in large greenfield subdivisions; and such further, alternative, or consequential relief as may be necessary to fully give effect to this submission point.
12. In the s42a report, Council's planner recommends amendments are made to these provisions². The submitters agree with the recommended amendments except that they seek a change in the wording of Rule 12.X.2.5.a.iv so that a proviso is included with respect to vegetation so that plants listed on the 2GP Pest Plant List or Otago Regional Council Regional

¹ See Attachment 1 for copy of the types of 'parks' included in the framework.

² See Attachment 2 for copy of the recommended amendments.

Pest Management Plan are excluded from Council's consideration as examples of *"...aspects of the natural environment which make an important contribution to the sense of place or character of the landscape..."*

13. Provided the above change is made, the submitters consider that the proposed amendments satisfy their concerns in relation to Change D6.

Change D7 (Amenity Planting and Public Amenities)

14. The submitters sought for Change D7 to include a trigger for the provision of amenity planting and public amenities (i.e. number of lots / size of development area) and/or provision of guidance on what constitutes 'adequate' areas of amenity planting and public amenities.
15. In relation to the submission point about what 'adequate' means in this context, Council's planner recommends, on the basis of evidence from Council's Urban Designer, Mr Peter Christos, that Rule 12.X.2.5.b is amended to include the following general assessment guidance:

General assessment guidance:

- iii. In assessing the adequacy of amenity planting and public amenities, some of the key design elements Council will consider are whether:
 1. Street trees support the road hierarchy by distinguishing main thoroughfares from local roads and are spaced at regular intervals of between 10-15 metres;
 2. Street tree species are suitable to the local conditions in terms of shade, leaf fall, longevity, pest and disease resilience and maintenance requirements;
 3. Underground services will be located clear of berm areas for planting with street trees;
 4. At least 20% of berm areas will be planted as garden beds with remaining areas turfed;
 5. Roundabouts, traffic medians and intersections integrate appropriate planting, designed to ensure maintenance can occur safely; and
 6. Public amenities are of robust design and cater to a range of users.

The submitters agree to the inclusion of this general assessment guidance.

16. Council's planner also states the following: *"I note as well that there is a section on Landscape Design and Practice in the DCC Code of Subdivision and Development (2010) but understand that the current content is not particularly helpful to planning staff. There could be an opportunity in future to supplement the guidance in the District Plan with an updated Code of Subdivision and Development with improved guidance (or through other design guide documents). The Hearing Panel could consider*

recommending that the DCC explore these mechanisms to address some of the concerns of the submitters, noting that reference to these documents can be added to the Plan in future via a 'minor improvement' plan change."

17. The submitters agree that such a recommendation from the Hearing Panel to include an updated and supplemented Code of Subdivision and Development via a 'minor improvement' plan change would satisfy the submitters concerns in relation to D7.

Change D8 (Providing for Efficient Use of Land in Large Greenfield Subdivisions)

18. The submitters seek to remove Rule 12.X.2.5.e.iv.3 which states:

i. Where a subdivision proposes a residential yield less than what is allowed by the zoning and where this is not required to achieve other plan objectives or policies, Council will consider:

...

3. the potential cumulative effects of inefficient development on loss of rural land.

19. Council's planner recommends retaining Change D8 as notified on the basis that: (a) once land is rezoned residential, there are no other provisions within the 2GP that require the development to proceed as close to the density provided for as possible; and (b) the 2GP also provides for the use of structure plans and these could, in theory, be used to set minimum yields for a specific greenfield rezoning area wherein the structure plan provisions could replace the need for these matters to be assessed again at the time of subdivision by applying an exemption to the relevant NDMA provisions.
20. The submitters are still of the opinion that there may be market conditions or reasons outside of 2GP policies and provisions leading to a particular density less than that provided by the zoning and, at minimum, Rule 12.X.2.5.e.iv.3 needs to provide for this.
21. The submitters would be willing to accept retention of Rule 12.X.2.5.e.iv.3 if it included recognition of wider considerations or reasons than just 2GP policy and provisions in the subdivision of land to a lesser density than provided for by the zone.

Additional Submission Points Requiring Comment:

Dunedin City Baptist Church (DCBC)

22. DCBC made a submission in relation to Change C1 (Better Provide for

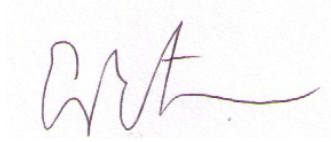
Social Housing), summarised in the s42a report at page 78 as:
"S239.010...Amend the definition of Social Housing to include a category of persons and/or entities who provide social or community housing but who are not a 'registered community housing provider' in accordance with the Public and Community Housing Management Act 1992. Include performance standards to ensure that social and/or community housing meets the desired level of design."

23. Council's planner recommends at page 81 rejecting the amendments sought by DCBC on the basis that: *"I consider that the social housing provisions should not be extended to unregistered providers (as requested by...Dunedin City Baptist Church S239.010)...to assist with managing the risk that the provisions will be subverted to provide for a higher density of development within the relevant zones than anticipated, including to appropriately manage the risk of significant cumulative effects on 3 waters infrastructure and manage the demand for new connections."* Going on to state later that same page: *"I consider that performance standards for design outcomes (as requested by Dunedin City Baptist Church S239.010) are not required, as the performance standards for all standard residential activity will continue to apply to social housing. In addition, the proposal includes an amendment to the multi-unit development rule so that consent will be required for development that meets this definition, with a matter of discretion for effects on streetscape amenity and character. Furthermore, social housing providers have their own guidance regarding well-designed social housing developments to meet the needs of their clients."*
24. DCBC, like other religious affiliates in Dunedin, has undertaken various community and outreach programs within the Dunedin community for many decades. Land owned by DCBC has been notified pursuant to Variation 2 as being rezoned *General Residential 1* and *General Residential 2* pursuant to a structure plan.
25. DCBC is exploring options to use this land, if successfully rezoned, as well as other land it owns, to provide a mixture of accessible, affordable and social housing to those in need within the communities to which it is already providing ministry and community services.

26. There has been media commentary³ of the severe shortage of accessible and social housing in Dunedin with Dunedin's Mayor being particularly vocal on the need for additional social housing in Dunedin. DCBC seeks the change to the definition of social housing so that not for profit organisations who are not a *'registered community housing provider' in accordance with the Public and Community Housing Management Act 1992* can also provide this type of housing stock for those in need.
27. Connections to 3 waters infrastructure require the consent of Council prior to connection being made. However, there are also points of control which can be asserted by Council earlier in the development process. For example, Council can:
- Refuse to accept for processing an application for resource consent which does not include consultation with 3 waters department resulting in a written statement from Council's 3 waters department that there is sufficient 3 waters infrastructure capacity for the proposed development; or
 - Refuse to grant resource consent for the multi-unit development where there is insufficient 3 waters infrastructure capacity and a viable solution cannot be found; or
 - Refuse to issue a building consent for the multi-unit development (which includes application for connection to 3 waters infrastructure) if there is insufficient 3 waters infrastructure capacity and a viable solution cannot be found.
28. In relation to the submission point on inclusion of performance standards to ensure that social and/or community housing meets the desired level of design, DCBC still seeks amendments so that at least the minimum requirements with respect to floor areas and the like meeting Ministry of Housing and Urban Development design standards are met to ensure that adequate amenity is provided for people residing within this type of housing.

³ See, for example, ODT articles: <https://www.odt.co.nz/news/dunedin/dunedins-disabled-communities-detail-housing-struggle> and <https://www.odt.co.nz/news/dunedin/people-are-desperate-housing-pressure-pain-dunedin>

Dated this 3rd day of September 2021

A handwritten signature in purple ink, appearing to read 'ERA', with a long horizontal flourish extending to the right.

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

Schedule 1: List of Submitters on whose behalf this Evidence has been Prepared.

1. CC Otago Limited
2. Cole Bennets
3. DDS Properties Limited
4. Dunedin City Baptist Church
5. Ed Stewardson
6. Gladstone Family Trust
7. Grant Motion
8. Invermark Investments Limited
9. Ken Close
10. Meats of NZ Limited
11. Outram Development Limited
12. Peter Doherty
13. Roger and Janine Southby
14. Ron and Suzanne Balchin
15. Ross McLeary, COF Limited, Scroggs Hill Farm
16. Wendy Campbell
17. Willowcroft Limited

Attachment 1: Types of 'Parks' Included in the New Zealand Recreation Association Parks Categories Framework.

Sports and Recreation	Parks (often quite large areas) set aside and developed for organised sport and recreation activities, recreation facilities and buildings, often multiple use.	• Active • Sports
Neighbourhood	Parks developed and used for informal recreation and sporting activities, play and family based activities, and social and community activities.	• Local • Social Recreation • Community
Public Gardens	Parks and gardens developed to a very high horticultural standard with collections of plants and landscaping for relaxation, contemplation, appreciation, education, events, functions and amenity/intrinsic value.	• Botanic Gardens • Horticultural • Premier
Nature	Parks that offer the experience and/or protection of the natural environment, containing native bush, coastal margins, forestry, farm parks, wetlands, riparian areas and water bodies.	• Conservation • Bushland • Forest • Protected • Environmental
Cultural Heritage	Parks that protect the built cultural and historical environment, and/or provide for heritage conservation, education, commemoration, mourning and remembrance.	• Cemeteries • Cultural • Heritage
Outdoor Adventure	Parks developed and used for recreation and sporting activities and associated built facilities that require a large scale, forested, rural or peri-urban environment.	• Regional • Forest • Farm • All Terrain
Civic	Areas of open space often provided within or adjacent to central business districts, and developed to provide a space for social gatherings, meeting places, relaxation and enjoyment	• Plaza • Community Hub • Town Squares • Streetscape
Recreation and Ecological Linkages	Areas of open space that are often linear in nature that provide pedestrian and cycle linkages, wildlife corridors and access to water margins. May provide for environmental protection, and access to waterways.	• Linear • Walkways • Corridor • Green Corridors • Environmental Corridors • Esplanade • Linkage

Attachment 2: Amendments in Relation to Change D6 Recommended by Council's Planner.

Amend Policy 12.2.X.2 as follows:

Only allow subdivision in a **new development mapped area** where the subdivision is designed to ensure any future land use and development will protect, and where necessary restore, any ~~waterways~~ water bodies, areas of important indigenous vegetation ~~and~~ or habitats of indigenous fauna, or other areas with ~~significant~~ important natural environment values.

Amend Rule 12.X.2.5.d as follows:

12.X.2 Assessment of restricted discretionary activities in a Transition Overlay Zone or mapped area			
<u>Activity</u>		<u>Matters of discretion</u>	<u>Guidance on the assessment of resource consents</u>
...			
5.	<u>In a new development mapped area:</u>	a. <u>Whether subdivision design maintains or enhances areas with</u>	<u>Relevant objectives and policies:</u> i. <u>Objective 12.2.X</u>
	<u>All subdivision activities</u>	significant <u>important</u> <u>natural environment values.</u>	ii. <u>The subdivision is designed to ensure any future land use and development will protect, and where necessary restore, any waterways water bodies, areas of important indigenous vegetation and or habitats of indigenous fauna, or other areas with significant <u>important</u> natural environment values (Policy 12.2.X.2).</u>

PTO for balance of recommendation....

		<u>General assessment guidance:</u> iii. <u>In assessing water bodies, areas of important indigenous vegetation or habitats of indigenous fauna, Council will consider the presence of:</u> <u>1. Individual or groups of mature indigenous trees on the 2GP Important Native Tree List in Appendix 10A.3;</u> <u>2. Individual or groups of exotic trees that meet the criteria in Policy 2.4.1.2 for scheduling as a significant tree (provided they are not on the 2GP Pest Plant List or Otago Regional Council Regional Pest Management Plan);</u> <u>3. Riparian and freshwater values of water bodies listed in Appendix 10C and the temporary or permanent tributaries of those water bodies;</u> <u>4. Areas of vegetation that are part of a network of sites that cumulatively provide important habitat for indigenous biodiversity in the urban environment, or when aggregated make an important contribution to the provision of a particular ecosystem in the urban landscape context; or</u> <u>5. Areas that make an important contribution to the resilience and ecological integrity of surrounding areas, or, if restored, would provide ecological connectivity or buffering for indigenous vegetation or fauna.</u> iv. <u>In assessing other areas with important natural environment values, Council consider the presence of any aspects of the natural environment which make an important contribution to the sense of place or character of the landscape, for example:</u> <u>1. Wind breaks, orchards or established trees;</u> <u>2. Exotic plant communities; or</u> <u>3. Geological features.</u> <u>Conditions that may be imposed include:</u> v. <u>A requirement to protect areas through reserve status or other legal mechanisms.</u> vi. <u>A requirement to undertake conservation activity.</u>
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Amend Rule 15.11.5.Y.d (assessment of restricted discretionary activities in a mapped area) as follows:

d. Whether subdivision design maintains or enhances areas with significant important natural environment values.