



SECOND GENERATION DISTRICT PLAN

Variation 2

Additional Housing Capacity

Part 1 – Provisions

(Except 3 Waters Provisions)

Reply to the Panel's Pre-Hearing Questions

10 September 2021

Primary Author

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Experience: I have approximately three years of planning experience, including preparing and processing resource consent applications and developing policy. I have been employed by the Dunedin City Council as a Policy Planner since May 2019.

Code of Conduct

I confirm that I have read, and agree to comply with, the Environment Court Code of Conduct for Expert Witnesses (Practice Note 2014).

Role in Variation 2 Preparation

I have been the primary planner for Variation 2 changes to Plan provisions, including all changes addressed in this Section 42A Report.

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Introduction

1. This report is prepared under the provisions of section 42A of the Resource Management Act 1991 (RMA) to answer questions raised by the Hearing Panel on selected topics in preparation for the hearing. These answers will provide both the Hearing Panel and submitters with information about the context for Variation 2 and how submissions have been evaluated and recommendations made.
2. The answers presented in this report are based on the information available prior to the hearing, including information contained in submissions. Note that answers to any follow-up questions will be provided at the hearing so interested parties should also view the hearing or check final right-of-reply reporting to understand how the line of questioning develops.
3. In preparing this report I have relied on advice from experts as appropriate and this is noted as relevant.
4. The answers to the Panel's questions are set out below, grouped by question type and topic.

1.0 Broad Planning Questions

Question 1 - RPS

To be in a position to accept your recommendations the Panel will need to be satisfied that due regard has been had to each of these statutory considerations [listed at paragraph 3 of the Section 42A Report]. Can you comment on to what extent have you addressed each of these matters within the body of your assessment tables below? Or have you relied at all on any assessment of these matters contained within the s32 Evaluation Report? If so can you please provide the references to these matters are addressed.

5. Given that Variation 2 does not contain any substantial amendments to the objectives contained in the strategic directions of the Plan, I have only provided broad assessments against the higher order planning documents and provisions listed at paragraph 3 of the Section 42A Report. This is because the strategic objectives have been relatively recently settled through the 2GP process and considered appropriate in terms of higher order planning provisions. The broad assessments are provided in chapters 5 and 6 of the Section 32 Report, with any additional new information provided in chapter 2 of the Section 42A Report.
6. It follows that I have not explicitly set out an assessment of each of the matters listed in paragraph 3 of the Section 42A Report in each of the assessment tables. Rather, I have provided discussion on selected matters where I consider that they are particularly pertinent, for example, because they may be at issue (such as for matters of scope) or because I am recommending changes.
7. I note that where I do not recommend any changes to a proposal in response to submissions, or those recommendations are limited to responding to selected issues, it is because I have not been presented with any information that has changed my assessment (or part of my assessment) already undertaken as part of the section 32 evaluation. Therefore, I rely on the assessments already set out in the Section 32 Report in many instances and have stated so in the Section 42A Report as relevant.
8. Where I recommend changes, I have assessed those recommendations in terms of their effectiveness and efficiency in achieving the relevant strategic objectives of the Plan.
9. Overall, I consider that the assessments presented in the Section 42A Report (and the Section 32 Report where it is relied on) contain a level of detail that corresponds with the scale and significance of the changes proposed and the effects that may arise from them.

Question 3 - RPS

Please advise of any (relevant) areas where the pRPS is significantly different to the operative RPS.

10. As noted in the Section 42A Report, the Otago Regional Council notified its Proposed Otago Regional Policy Statement 2021 (pRPS) on 26 June 2021 after the further submission process for Variation 2 had closed.
11. The structure of the provisions relating to urban growth and development is significantly different in the pRPS compared to the partially operative Regional Policy Statement 2019 (RPS). Of note, the RPS includes only one broad objective (Objective 4.5) on urban growth and development which states:
12. Urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments.
13. By contrast, the pRPS includes five objectives on urban form and development, four of which are relevant to the subject matter of the first Variation 2 hearing, as set out in the Section 42A Report. Each of these objectives contain substantial detail as to the outcomes sought compared to the operative objective in the RPS. However, much of this detail exists in the operative policies of the RPS and seeks similar outcomes. Some additional details are included to reflect the introduction of the NPS-UD, including on urban intensification and climate change.
14. I consider that the proposed provisions, including any amendments recommended in the Section 42A Report, are consistent with the relevant provisions of both the RPS and the pRPS, especially when considered in the context of the other changes being proposed as part of Variation 2, and the upcoming development of Dunedin's Future Development Strategy in accordance with the NPS-UD.

Question 23 – Objectives of the Plan

Is there a separate part of the s42A Report addressing the objectives of the Plan, or are you relying on the section 32 evaluation report?

15. There is not a separate part of the Section 42A Report addressing the objectives of the Plan. I have referred to the relevant objectives as part of my assessments for each change or submission topic. In some cases, I refer to the evaluations set out in the Section 32 Report, especially where I am not recommending any amendments in response to submissions.

Question 4 – 3 Waters Reform

Can you summarise in a few words, and for the benefit of submitters, how the 3 waters review is relevant to our consideration of V2?

16. I have sought comment on this question from Ms Jacinda Baker, DCC Policy Advisor, 3 Waters. Ms Baker has provided the following summary, and further details are provided in **Appendix A**.

The Government has proposed transitioning three waters service delivery functions from councils to four public multi-regional water services entities. Based on information provided by the Government to date, primary accountability for urban and land use planning would remain with local government, and the new water entities would have obligations to support local authority plans. However, there is not currently enough information available to enable detailed assessment of the impacts the reforms might have on the objectives of Variation 2.

Question 12 – Consideration of 3 Waters Infrastructure

***[Regarding Section 4.1.5 of the Section 42A Report on broad submissions on 3 waters and transport infrastructure]
Please clarify to what extent 3 waters provisions are/are not addressed in this report (ref para 7)?
I understood that 3-waters was to be addressed in a subsequent report?***

17. The Section 42A Report does not address changes to the 3 waters provisions of the Plan proposed by Council, or submissions seeking specific changes to 3 waters provisions. However, this does not mean that effects on 3 waters infrastructure are not a relevant consideration for the report.
18. Several of the proposed changes that are addressed (especially to the minimum site size and density performance standards) have the potential to generate adverse effects on 3 waters infrastructure. Therefore, the appropriateness of the proposed changes in achieving Plan objectives for 3 waters infrastructure (such as Objective 2.7.1 Efficient infrastructure) is important.
19. Section 4.1.5 of the Section 42A Report includes submissions that have raised broad concerns about potential adverse effects on 3 waters infrastructure arising from the proposed rule changes. They either seek rejection of, or amendments to, the proposed rule changes because of concern over effects on 3 waters infrastructure (i.e. they do not specifically seek changes to 3 waters provisions).
20. While the DCC recommends that decisions are made at the conclusion of each hearing, if it becomes apparent through the hearing process that amendments to 3 waters provisions themselves are required to address concerns raised regarding the proposed rule changes, I would recommend that decisions on these matters be deferred to the later hearing on 3 waters provisions to ensure they are integrated with other 3 waters provision changes. However, based on the evidence provided to date, it appears unlikely that this will be necessary.

Question 5 – FDS and Housing Capacity

If a surplus [of housing development capacity over the next 10 years] is still predicted, then is there still a need for further plan changes to rezone more land ahead of the longer term Future Development Strategy?

21. As set out in Table 3 in the Section 42A Report, the final results from the Housing Capacity Assessment 2021 show that there is projected to be a surplus in housing capacity for the medium term (to 2030) as a result of all changes proposed as part of Variation 2 if they proceed as notified.
22. The next housing capacity assessment must be completed by July 2024. The Future Development Strategy must be completed in time to inform the 2024 Long Term Plan. If the next housing capacity assessment shows that there is a shortage of housing capacity in the Plan to meet demand in the medium term, changes to the Plan may be required in accordance with Policy 2 and subpart 3.7 of the NPS-UD. At that time the Future Development Strategy would be in place and would inform any changes to the Plan. I also note that rezoning is not the only way to add housing capacity to the Plan.
23. Establishing whether there is a shortage of housing capacity in the Plan is most likely to occur through the production of the housing capacity assessments, which are required under the NPS-UD every three years. However, if information came to hand in the interceding periods which might substantially influence projected housing capacity (e.g. if new demand projections were received or if monitoring showed that any of the modelled assumptions were overly optimistic) Council may wish to update the housing capacity assessment ahead of schedule and it is possible that this may also result in changes to the Plan being progressed to address any identified shortage in housing capacity.
24. It is possible that other changes to the Plan may add further housing capacity between Variation 2 and completion of the Future Development Strategy. This would include any areas that are rezoned as part of the resolution of appeals on the 2GP, or, if the Plan becomes operative, possibly through private plan changes.

25. I note that housing capacity for the short term (within the next 3 years) cannot be officially counted until it is in an operative district plan (beyond appeal). However, housing capacity for the medium term (between 3 and 10 years) which is in a proposed district plan can be counted.¹
26. See also the next answer regarding the Future Development Strategy.

Question 13 – FDS and Variation 2 decision

Will the Panel's decision with respect to Variation 2 form part of/be taken account of in the FDS?

27. Decisions made on Variation 2 will impact the Future Development Strategy (FDS) to the extent that they will affect its 'starting position' in terms of the amount of housing capacity provided for in the Plan.
28. I note that the FDS is not in itself a change to the Plan, but a long-term strategic planning document to be developed under the provisions of the Local Government Act 2002 (using the special consultative procedure). The requirements for an FDS are set out in Subpart 4 of the NPS-UD and mean, amongst other things, that:
- DCC and ORC will need to work together on its development;
 - It will go through its own public consultation and decision-making processes; and
 - It will need to provide at least sufficient development capacity to meet demand for the next 30 years for both housing and business capacity, noting that capacity for demand between 10 and 30 years' time is not required to be included in the District Plan but must be identified in an FDS at a minimum.
29. See also the answer for Question 5 above regarding the FDS.

Question 22 – Alternative proposals still available

Please clarify whether all of the Alternative proposals in V2, which are subject to submissions, are still 'on the table' for the Panel to include as provisions within V2.

30. Submissions have been received which would provide the Panel scope to reintroduce any of the alternative proposals assessed in the Section 32 Report for Variation 2 which are relevant to this hearing (with only one potential limitation as set out in Alternative D1-Alt1 below), being:
- Alternative A2-Alt1 to provide for two standalone residential units per site in the General Residential 1 and Township & Settlement (serviced) zones;
 - Alternative A2-Alt2 to provide a habitable room approach to density in the General Residential 1 and Township & Settlement (serviced) zones (and removal of the 'units per site area' approach);
 - Alternative A2-Alt3 to add controls for infill housing enabled by Change A2 and Change A3 to manage effects on residential character and amenity;
 - Alternative A1-Alt1 to add controls for design of family flats/ancillary residential units to manage effects on residential character and amenity;
 - Alternative D1-Alt1 to use performance standards associated with the new development mapped area (NDMA) method, rather than use policies and assessment rules as proposed (noting that submissions lodged by planning consultant Emma Peters on behalf of her clients generally promote the use of performance standards via the structure plan mapped area method, rather than the NDMA method); and

¹ See Section 3.4 of the NPS-UD on the meaning of 'plan-enabled'

- Alternative D1-Alt2 to apply the proposed policies and assessment rules for the NDMA method to all subdivision instead (and not apply the mapped area).

31. I note that I have not recommended the inclusion of any of these alternatives in response to submissions.

2.0 Telecommunications

Question 6 – Scope to make changes

[Regarding the scope of relief possible to address the first part of the submission point S224.006 from Spark NZ and Vodafone NZ] Could we not also agree to the submitters' relief and change V2?

32. The part of the submission point S224.006 in question is dealt with in Section 4.1.2 of the main Section 42A Report and states:

Amend the provisions such that the following outcomes are achieved: 1. Telecommunications network utility operators including mobile network operators to be consulted with and the outcome of that consultation recorded for any urban growth plan changes to ensure that telecommunications is recognised as essential infrastructure and additional infrastructure required to support well-functioning urban environments under the NPS-UD is properly identified...

33. I consider that granting the relief sought by amending Plan provisions is not within the scope of Variation 2 for the reasons set out below.

34. Chapter 2 of the Section 32 Report states that;

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...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.

35. I have reviewed the 'purpose of proposal and scope of change' statements³ and have not found any that the requested changes could fall within. In addition, Change H1, which proposed changes to Policy 2.6.2.1.a (part of the residential rezoning policy), states that "The scope does not include a review of other aspects of Policy 2.6.2.1...". Similarly, the purpose statement for the proposed greenfield rezoning areas does not provide for the relief sought by the submitter.

36. Despite the above, I am also of the view that there is no need to amend the Plan provisions to grant the relief sought because consultation is already standard practice and is required by Policy 10 of the NPS-UD, as I set out in the Section 42A Report.

3.0 Solid Waste

Question 8 – Scope to make changes

[Regarding the assessment that the scope of Variation 2 provides for changes to address solid waste management issues resulting from the proposed changes] Please clarify whether this advice (i.e. submission is within scope) is consistent with the advice you gave regarding other submissions applying the same criteria for consideration (i.e. addressed in the Out of Scope Submissions s42A Report).

37. Section 4.1.3 of the main Section 42A Report deals with submissions that raised broad concerns regarding how solid waste will be managed as part of intensification or subdivision.

38. I consider that changes to Plan provisions to address these concerns are within the scope of Variation 2 for the reasons set out below, which are consistent with the advice and methodology earlier set out in the Out-of-Scope Submissions Report dated 16 April 2021².
39. As for the answer to Question 6 above, I note that the scope of Variation 2 is limited to matters that fall within the 'purpose of proposal and scope of change' statements for the proposals.
40. The 'purpose of proposal and scope of change' statement for the proposed rule changes to the minimum site size and density standards (which will provide for intensification primarily in the General Residential 1 zone and Township & Settlement Zone (wastewater serviced) but which include some changes which will affect all residential zones) includes the following:
- The purpose extends to making any consequential changes to Plan rules necessary to manage any adverse effects of increased density if existing rules are deemed inadequate to ensure the proposal is the most appropriate way to achieve the objectives of the Plan.*³
41. A similar statement is made for the proposals for intensification rezoning and greenfield rezoning, as follows:
- 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.*
42. As set out in Section 4.1.3 of the main Section 42A Report, I am of the view that the existing Plan rules regarding solid waste management are inadequate to manage the adverse effects that may arise from the changes proposed in Variation 2 which will provide for increased intensification or subdivision.
43. In my view, changes can be made to better manage solid waste disposal and associated adverse effects on the transportation network as part of Variation 2, provided these only apply to residential zoned areas (as these are the areas that may be impacted by the proposed changes included in Variation 2). Such changes do not need to be limited to provisions that are otherwise proposed for change as part of Variation 2.

Question 9 – DCC solid waste solutions

Can DCC provide different solid waste solutions such as aggregated use of bins or larger bins for multi-unit developments?

44. Mr Chris Henderson, DCC Group Manager Waste and Environmental Solutions, has provided the following answer to this question:
1. *This is currently not provided for under existing contract arrangements.*
 2. *Waste solutions could be provided for multi-unit developments under a future contract (to be implemented from 2023/24) under the following circumstances:*
 - a. *As the collection methodology and/or collection frequency would differ from standard kerbside services Council would need to establish a new category of Targeted Rate for communal waste and recycling collection services for multi-unit developments (or similar circumstances such as mixed use developments).*
 - b. *The provision of designated onsite areas for the storage, placement, manoeuvring, and possible loading of waste bins onto waste collection vehicles*
 - c. *Sufficient space at kerbside for safe placement of larger bins for collection, or*
 - d. *Access and manoeuvring for waste collection vehicles must be provided for (width of accessway, truck turning requirements, gradients, ensuring onsite parking and vegetation will not impact truck access, manoeuvring or the loading of waste, weight of waste removal vehicles, direction from which waste will need to be loaded into vehicles).*

² See Section 3.2 of that report for the methodology used.

³ See Table 1 in *Variation 2 – Additional Housing Capacity Summary of Changes* (February 2021)

Question 10 – Scope to make changes

[Regarding the recommendation that a new policy could be added under Objective 6.2.3 on the safety and efficiency of the transport network to enable assessment of solid waste collection effects on the transport network] Please clarify whether this is within the scope of submissions.

45. Please refer to my answer to Question 8 above. I consider that the recommended changes are within the scope of Variation 2.
46. Any submission points regarding transport provisions that have previously been struck out were because they sought relief for a purpose that did not fall within any of the relevant ‘purpose of proposal and scope of change’ statements for Variation 2.

Question 11 – Detail in assessment rules

[Regarding potential details of assessment guidance for effects on the safe and efficient collection of solid waste for all subdivision and multi-unit development in the residential zones] Do you not consider this is an overly fine-grained level of detail/assessment in the context of the purpose of V2?

47. Section 4.1.3 of the main Section 42A Report deals with submissions that raised broad concerns regarding how solid waste will be managed as part of intensification or subdivision.
48. Preliminary drafting for a recommended new matter of discretion for all subdivision and multi-unit development in residential zones is given for ‘effects on the safe and efficient collection of solid waste’. Potential assessment guidance including specific matters that Council will consider as part of assessing consents and details of conditions that may be imposed are set out.
49. While the drafting presented is preliminary and will be reviewed after submitter evidence is considered, I do not consider that it includes too much detail. The aim of providing this guidance is to make it clear to applicants what the key issues are that need to be dealt with (based on the evidence provided from Mr Chris Henderson and points raised in submissions) and what conditions of consent they might expect to be imposed. The detail will enable applicants to consider these matters when developing their proposal and to adequately address them in their applications. The detail is also desirable because the proposed assessment matter is new to the Plan and will provide guidance to the processing planners and their experts for consistency.
50. Similar levels of assessment guidance are provided in many other assessment rules already in the Plan, especially for restricted discretionary activities or performance standard contraventions. For example, look at the details in Rule 15.11.

4.0 Historic Heritage

Question 15 – Existing protection for unlisted heritage items

Are [historic sites, structures, places, and areas] generic terms in the RMA, or are they defined, i.e. how much protection is provided for sites/buildings that are not ‘listed’?

51. Regarding the first part of the question, the RMA does not define these terms, they are only part of the definition provided for ‘historic heritage’ given in section 2.
52. Dr Andrea Farminer, DCC Heritage Advisor, has provided the following response regarding the second part of the question:

In order to answer this question, it is important to first distinguish between the different types of heritage protection currently in place across Dunedin. The 2GP provides the Schedule of Protected Items and Sites that include heritage buildings, structures, sites, character-contributing buildings and archaeological sites. It also provides for Heritage Precincts of which there are nine residential and ten commercial

precincts in the 2GP district plan. All rule provisions for heritage are currently operative under the 2GP provisions.

Schedule protection is sometimes confused with the New Zealand Heritage List/Rārangi Kōrero which identifies historic places of either outstanding or historic significance (Category 1 or 2 respectively). The List does not automatically provide protection per se, but is enabled through recognition in district plans and their heritage provisions. Places that fall outside of these heritage categories do not have 'heritage protection'; this includes archaeological sites of pre-1900 date that are threatened with full demolition or sub-surface disturbance under the Heritage New Zealand Pouhere Taonga Act 2014. The Act only provides for recording prior to or during disturbance of a site, not tangible protection of a place; therefore, it does not provide a 'catch-all' level of protection as an alternative to the district plan provisions.

The provisions for unscheduled buildings within heritage precincts extend to additions and alterations which increase the footprint of the building by 10m² or more; increase the height of the building by more than 2m; or replace a pitched roof with a mono pitch roof. Such activities are a controlled activity under the 2GP provisions. Currently, only the Windle Settlement Residential Heritage Precinct is in a GR1 area and therefore potentially subject to the proposed Variation 2 provisions.

No other heritage protections are available.

Question 16 – Scope to make changes

Would you not consider it beyond the Panel's powers/ and outside of the scope of submissions to introduce a new rule that impacts on owners of pre-1940 dwellings? Could this be an issue of natural justice?

Also, can you comment on whether the Panel has sufficient information to be able to do a s32AA evaluation of introducing a new rule of this kind.

53. I consider that it is possible to introduce new provisions to manage potential adverse effects on historic heritage values arising from the proposed rule changes, within the scope of Mr David Murray's submission. This submission broadly seeks changes to better protect heritage values in suburban residential areas in response to the increased risk of adverse effects on these values from the proposed rule changes (and proposed General Residential 2 rezoning areas). I note that Mr Murray and other interested parties are due to speak at the hearing and I await their further comments in response to my report and questions that are posed by the Panel on this topic.
54. I am also mindful that many submissions have been received in support of the proposed rule changes (seeking no amendments) and most of these submitters have chosen not to speak at the hearing. Although they have all been sent copies of the Section 42A Report, lay submitters in particular may not have ascertained the potential for a rule to manage the demolition of older buildings as a possible outcome in response to another submission. I note that the vast majority of landowners who stand to be affected by changes proposed in Variation 2, or any amendments in response to submissions, have not submitted on it.
55. In terms of natural justice, I do not believe that a submission, such as Mr Murray's, seeking relief to address valid concerns (as established by Dr Farminer) regarding adverse effects on historic heritage (being a matter listed in section 6 of the RMA) should be dismissed because granting relief would impact on other landowners. I consider that decisions are often made through plan changes which impact large numbers of landowners, including those who have not made submissions, and that this can be appropriate where needed to ensure that the objectives of the Plan are achieved and higher order planning provisions are recognised and provided for.
56. Scope is also a consideration in terms of how broadly any new provisions could or should apply. As already noted in my recommendation to further examine the options for new provisions on the demolition of older buildings, it is important that they only apply to areas affected by the proposed rule changes.
57. For example, a new provision would need to be limited to apply only to:

- The General Residential 1 zone and Township & Settlement zone (except within the no DCC reticulated wastewater mapped area) – i.e. the zones most likely to be impacted by the proposed rule changes that provide for an increase in development capacity; and
 - The demolition of dwellings established prior to a set date; and
 - Sites that are over 500m² in size at the date decisions are issued; being the site sizes that are most likely to benefit from an increase in development potential arising from the proposed rule changes.
58. I note that application of a rule to pre-1940s dwellings is not the only option, for example, a different age cut-off could be applied where appropriate to balance the risk of heritage loss with impacts on housing capacity.
59. In terms of the adequacy of information available to undertake a Section 32AA evaluation of new provisions, I consider that the information provided in the Section 42A Report gives a good starting point for a Section 32AA evaluation and can be supplemented as needed through answers to the Panel's questions at the hearing by Dr Andrea Farminer, DCC Heritage Advisor, and obtainment of any other facts that are required.
60. In terms of identifying other reasonably practicable options for achieving the objectives of the Plan, there are unlikely to be other reasonably practicable options than the rule change discussed in the Section 42A Report or the alternative of progressing the rule changes without amendments to manage potential adverse effects on heritage values. This is due to the time and resourcing constraints that must be managed and limits on presenting new evidence at this time.
61. I also refer to the precautionary principle that a lack of full certainty of the potential for significant adverse effects from an activity (in this case adverse effects on heritage values through demolition) should not be used as reasoning for postponing measures to manage those effects.
62. Further changes to the heritage provisions in the Plan may also be possible through later plan change processes, especially once more detailed information is available to support such changes and monitoring of the implementation of any new rule introduced through Variation 2 undertaken.

5.0 Character and Amenity

Question 17 – Effect of NPS-UD Policy 6

[Regarding the assessment that the benefits of providing for additional housing capacity through the proposed rule changes outweigh the potential effects on character and amenity] I understand there may be some support for that approach in the NPS-UD (Policy 6), is that your understanding?

63. Yes, this is my understanding, and my assessment set out in Section 4.1.7 of the Section 42A Report (pages 34-36) is reflective of this, as is the evaluation I earlier presented in the Section 32 Report (pages 48-50).
64. For the benefit of readers, Policy 6 of the NPS-UD states:

When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:

- (a) *the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement*
- (b) *that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:*
 - (i) *may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and*
 - (ii) *are not of themselves, an adverse effect*

- (c) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)
- (d) any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity
- (e) the likely current and future effects of climate change.

6.0 Family Flats (Change A1)

Question 20 – Deletion of clause on natural hazards

[Regarding the deletion of “and areas subject to natural hazards.” from Policy 2.6.1.2.b on family flats] Where is the discussion on this deletion (or were there no submissions on this)?

65. The amendment in question is set out as follows in Section 4.2.2 of the Section 42A Report on Change A1:

Amend Policy 2.6.1.2.b as follows:

Encourage more residential housing suitable for our ageing population and growing number of one and two person households, through:

...

- a. Rules that enable ~~family flats~~ family flats and ancillary residential units, other than in General Residential 2 and Inner City Residential zones ~~and areas subject to natural hazards; and~~

66. The amendment deleting the reference to areas subject to natural hazards was part of the original proposal for Change A1 and was deleted because this part of the policy was retained in error in the decisions version of the 2GP (see page 41 of the Section 32 Report). There are no provisions in the 2GP that implement this part of the policy because they were deleted as part of decisions, but the policy reference was not corrected.

67. No submissions were received specifically addressing this amendment.

68. I note that the drafting set out in the Section 42A Report for Policy 2.6.2.1.b, as repeated above, incorrectly shows the clause as “a.”.

7.0 Duplexes and Subdivision (Change A2)

Question 21 – Link between Change A2 and Change B6

[Regarding the recommendation to amend Change B6 in response to submissions on Change A2] We request that you take us through this explanation step by step.

69. Below I set out the relationship between Change A2 and Change B6, step by step:

- Change A2 provides for a duplex on a site as small as 500m² in the General Residential 1 zone and Township & Settlement zone (except within the no DCC reticulated wastewater mapped area) as part of the density performance standard for standard residential activity in Rule 15.5.2;
- Under the minimum site size performance standard for general subdivision in Rule 15.7.4 for these zones, such a duplex would not be able to be subdivided under the fee simple regime because the minimum site size is proposed to be 400m² and the resultant sites from subdivision of a duplex could be as small as 250m²;
- Without additional changes to the minimum site size performance standard, duplexes would only be able to be subdivided through a cross-lease, company lease or unit title subdivision to which the minimum site size performance standard does not apply in accordance with Rule 15.3.5.1;
- Such types of subdivision for a typical ‘side-by-side’ duplex are generally considered less desirable than fee simple subdivision, including for reasons of ongoing property maintenance and value, and the effects of fee

simple subdivision over other types of subdivision can be considered to be much the same provided the development of the resultant sites has already occurred or is otherwise carefully managed;

- To this end, including to support Change A2, Change B6 proposes to introduce an exception to the minimum site size performance standard at Rule 15.7.4.1.j for when each resultant site will contain at least one lawfully established dwelling;
- Therefore, submissions on Change A2 which relate to the subdivision of duplexes are best addressed through Change B6, alongside similar submissions on that proposal.

8.0 Exception to MSS (Change B6)

Question 24 – Potential creation of very small lots

[Regarding the potential for the proposed exception to the minimum site size performance standard to provide a loophole by which an applicant could undertake a subdivision with significantly undersized lots that could then each be developed with a standalone dwelling] We will ask for you to take us through how this situation might occur in practice.

70. As set out in my answer to Question 21 above, I again note the following:

- The minimum site size performance standard (Rule 15.7.4) only applies to general subdivision (usually fee simple subdivision) but does not apply to cross lease, company lease or unit-title subdivision in accordance with Rule 15.3.5;
- the effects of fee simple subdivision over other types of subdivision can be considered to be much the same provided the development of the resultant sites has already occurred or is otherwise carefully managed.

71. Regarding the last point, this is especially relevant where any exception to the minimum site size performance standard enables creation of a vacant undersized site. This is because the creation of a site also provides the potential for standard residential activity on that site in accordance with the exception to the density performance standard in Rule 15.5.2.1.k.i (which is also proposed for amendment under Change B3), and is proposed to read as follows:

Except in all zones, other than the GR2 and ICR zones: a single residential unit may be erected on a site of any size

72. As such, if the creation of very small vacant sites is enabled (for example, through an unintended loophole in any exception to the rule) it would enable permitted activity that would not achieve the objectives of the Plan, especially cumulatively in terms of Objective 2.7.1 (Efficient public infrastructure) and Objective 2.4.1 (Form and structure of the environment), and would undermine the zone provisions.

73. I note, for example, that the notified wording of the exception to the minimum site size rule at Rule 15.7.4.1.j.X states:

Except the following are exempt from the minimum site size:

...

*a resultant site in any residential zone (except within a **no DCC reticulated wastewater mapped area**):*

1. *that will contain at least one lawfully established habitable residential building...etc.*

74. The fact that this clause states “a resultant site” means that the exception could be applied to only one resultant site in a subdivision, whereas it needs to apply to all resultant sites in a subdivision otherwise a site containing an existing dwelling could be subdivided with the existing dwelling on a very small site to enable the creation of a vacant site that meets the minimum site size (where the averaging rule in Rule 15.7.4.2.a would not otherwise apply) and provide for over-dense activity. This is a loophole I have discovered since writing the Section 42A Report and I recommend that this be corrected.

75. Another example would be if the requirement for a residential building on each resultant site did not stipulate completion of those buildings to a degree that would make demolition of a partially-constructed duplex feasible, enabling an undersized fee simple subdivision to proceed but then each site to be developed with a standalone residential unit. This would undermine the purpose of providing only for duplexes on small sites, being to ensure Objective 2.4.1 on the form and structure of the environment is achieved by managing adverse effects on residential character and amenity.

Question 25 – Drafting of assessment rule

[Regarding the possibility of an amendment to the assessment rule for subdivision (at Rule 15.11.4.1.a) setting out a condition that may be imposed on a consent regarding subdivision which relies on the proposed exception] Please provide some appropriate wording for our consideration and advise us on scope.

76. This can be provided to the Panel should they be of a mind to include such an amendment after hearing from submitters. The wording would likely be similar to whatever is decided for the wording of the exception to the minimum site size performance standard in Rule 15.7.4.1.j.X. I consider that such an amendment would fall within the scope of submissions.

9.0 Social Housing (Change C1)

Question 27 – Limits on social housing providers

Does the unregistered status of the provider preclude their good intent to provide social housing?

77. Not entirely. Providers who do not fall within the proposed definition of social housing can still provide housing that falls within the broader category of ‘standard residential activity’. This would need to meet the density performance standard in Rule 15.5.2, as for other housing. Providers could also undertake ‘supported living facilities activity’, which is a restricted discretionary activity in the residential zones.
78. Furthermore, the proposed definition of social housing does not preclude arrangements between those who are listed in the definition and those who are not because it currently states:

Social Housing

Residential activity where premises are let by or on behalf of the DCC; or by Kainga Ora-Homes and Communities or a registered community housing provider where in accordance with the Public and Community Housing Management Act 1992. [emphasis added]

79. If this wording is not sufficiently clear as to this intent, it could be amended in partial relief of the submissions seeking a broadening of the definition of social housing to extend to other providers.

Question 28 – Consideration of amenity effects

[Regarding managing the risk that a broadening of the social housing provisions could enable their abuse and provide for a higher density of development than anticipated] Are effects on amenity a concern you have here? If so, how does this square with your earlier statement that the effects on amenity of surrounding areas is not a valid consideration?

80. The concern here is primarily to do with cumulative adverse effects on 3 waters infrastructure of providing for an activity to an extent that applications for a restricted discretionary activity might have to be routinely declined, or which would result in pressure for the use of mitigation approaches that DCC 3 Waters is not comfortable with (such as a proliferation of small-scale on-site wastewater detention systems).
81. However, effects on residential character and amenity are also a consideration, especially in terms of cumulative effects and where a rezoning process has not been gone through to provide for a higher density overall.

82. Cumulative effects of all kinds are important to consider at the time of amending the Plan to enable any activity, because they are typically not easy to deal with through a consenting process, especially for a restricted discretionary activity (an activity which the Plan is 'enabling'). Where cumulative effects are likely to be an issue, it is usual for the Plan to apply a non-complying activity status to effectively manage this (as is the case for most contraventions of the density performance standard at present).
83. In providing for an exception to the density performance standard for social housing through a restricted discretionary consent as part of Variation 2, it is important to limit those provisions to an extent that all relevant cumulative effects will be effectively managed. This is what has been proposed and is reiterated through my recommendations.
84. I also refer to my evaluation set out in the Section 32 Report regarding the social housing proposal, where it is assessed against Objective 2.4.1 (Form and structure of the environment) (see page 56). This notes that there are several factors that will limit the proposal's impact on residential character and amenity, including that the social housing definition is limited to identified providers.
85. The comments from the Section 42A Report referred to in the Panel's question relate to assessments of resource consents under the proposed regime, not considerations that should be made at the time of a plan change. My comments state "I note that the proposed provisions will not enable consideration of effects relating to surrounding sites' residential amenity because the proposed activity is standard residential activity and the Council's discretion would be restricted..." (page 81 of the Section 42A Report).
86. It may be helpful to set out that the residential provisions typically use three different types of matters of discretion to manage effects on residential character or amenity at different scales or locations. These are:
- Effects on on-site amenity / Effects on on-site amenity for residents
 - Effects on surrounding sites' residential amenity
 - Effects on streetscape amenity and character / Effects on neighbourhood residential character and amenity
87. The last matter of discretion applies to all multi-unit development (including any which would contain social housing activity) and is principally concerned with effects on the public realm, rather than effects on neighbours. For social housing activity itself, there are no additional matters of discretion to manage any amenity or character effects because these are already managed through the performance standards that apply to all housing.

10.0 NDMA and Social and Recreational Spaces (Change D4)

Question 30 – Structure plans for multiple landowner areas

[Regarding using structure plan rules to address issues with multiple-landowner areas] Would this option for owners be covered by the rules as they stand and/or in your amendments recommended below?

88. The Plan already provides for structure plan mapped areas and associated rules to be applied at the time of rezoning land and such rules can be used to override general provisions that would otherwise apply (e.g. those proposed through the NDMA method) and apply different or more specific requirements as necessary in any particular case. This approach is also proposed to be strengthened through the introduction of Policy 2.6.2.AA under Change E5.
89. At present, wording of any structure plan mapped area provisions to set out requirements for social and recreational spaces have not been proposed by Council or recommended in my Section 42A Report because the relevant rezoning areas and mapping of the extent of the NDMA is not the subject of this hearing and there are constraints on developing the appropriate level of information for specific sites at this time.

90. I note that analysis has been undertaken of the areas where the NDMA is proposed to apply. Of the 31 different mapped areas, 12 have a single landowner, 5 have two landowners, 7 have three landowners and the remaining 7 areas have between four and eleven landowners each. So again, I acknowledge the difficulties that may arise from this situation where investment and provision of assets to vest in Council may be unequal between each landowner, but benefit all to varying degrees.

11.0 NDMA and Efficient use of Land (Change D8)

Question 31 – Effects of inefficient subdivision and land use

What are the long term negative consequences if a development does not achieve the proposed density? This clause seems to seek to prohibit an owner from deliberately developing at a lower density.

91. The long-term negative effects of inefficient subdivision and use of greenfield land are outlined within the proposed assessment guidance in Rule 12.X.5.e.iv. This states:

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:

- 1. How this might affect the affordability and efficient delivery of public infrastructure;*
- 2. How this might affect the ability to provide a reasonable amount of affordable housing in the development; and*
- 3. The potential cumulative effects of inefficient development on loss of rural land.*

92. In terms of 3 waters infrastructure, and the need to achieve Objective 2.7.1 Efficient public infrastructure, I note that when DCC 3 Waters plans for infrastructure upgrades and extensions to service new development areas, they do so based on the maximum development scenario for that area to ensure that the level of activity provided for in the Plan can be adequately serviced. If development then proceeds at a much lower density, this is an inefficient use of the public infrastructure and limits Council's ability to pay for that infrastructure through income from the development area.
93. In terms of providing housing that is relatively affordable, and the need to achieve Objective 2.6.1 Housing choice, development of greenfield areas to lower densities is likely to be associated with higher prices for resultant lots and housing. This would also tend to result in the development of large houses to maximise the return of investing in larger sites. As per the recent Housing Capacity Assessment 2021 and previous research on housing preferences shows, there is a need to provide more smaller and attached residential units to meet expected demand, rather than provide more large standalone homes.
94. In terms of the loss of rural land from productive use and the loss of rural amenity (and associated risks to values such as landscape and biodiversity), and the need to achieve associated Objective 2.3.1 Land and facilities important for economic productivity and social well-being and Objective 2.4.6 Character of Rural environment, the inefficient development of greenfield land can mean that demand for housing is not adequately met, resulting in pressure for rezoning of additional greenfield land for urban use.
95. The proposed provisions do not prohibit development at a lower density than provided for through the Plan rules, rather they are intended to ensure that efficient land use is a consideration at the time of subdivision with a view to encouraging applicants to plan for efficient patterns of development when formulating their proposals. The provisions are also worded to ensure that when there are site characteristics that would make developing to the maximum density undesirable in terms of achieving other objectives of the Plan (for example the area contains areas subject to natural hazards or where land is needed to manage stormwater effects), this can still be done.

Question 32 – Likelihood of inefficient subdivision and land use

[Regarding a developer choosing to develop to a much lower density than provided for] How realistic is this as an outcome with the current and foreseeable market where developers are presumably incentivised to maximise yields. Do you have recent examples of where this has occurred or is likely to occur?

96. Mr Nathan Stocker, DCC Team Leader Research and Monitoring, has provided analysis of residential subdivision consent applications, generally being those processed within the last year.
97. His analysis divided the subdivision areas for each application by the minimum site size for the relevant zone and deducted 30% to account for the provision of roads, stormwater management areas and reserves. This is a widely accepted rule of thumb for calculating the practicable yield of sites from a relatively flat subdivision area. However, it is noted that this is overly conservative for smaller subdivision areas because it is less likely that stormwater management areas or reserves will be required in these instances.
98. The overall analysis shows that subdivision applications for smaller areas are more likely to achieve the anticipated 70% of maximum yield than for larger subdivision areas. This can be shown in **Figure 1** below, noting that this does not factor in the slope of a subdivision area:

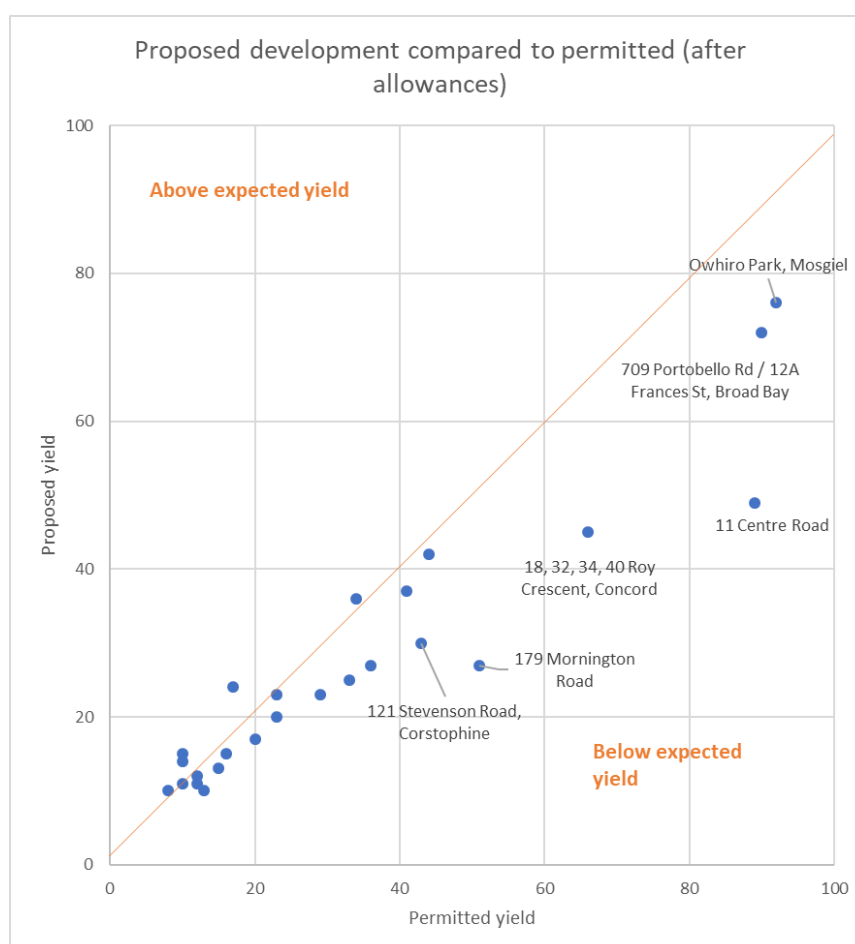


Figure 1: Proposed site yield compared to permitted site yield for residential subdivisions

99. This information can also be shown in terms of the extent to which the subdivision application achieves the anticipated 70% maximum yield, based on property size, as shown in **Figure 2** below.

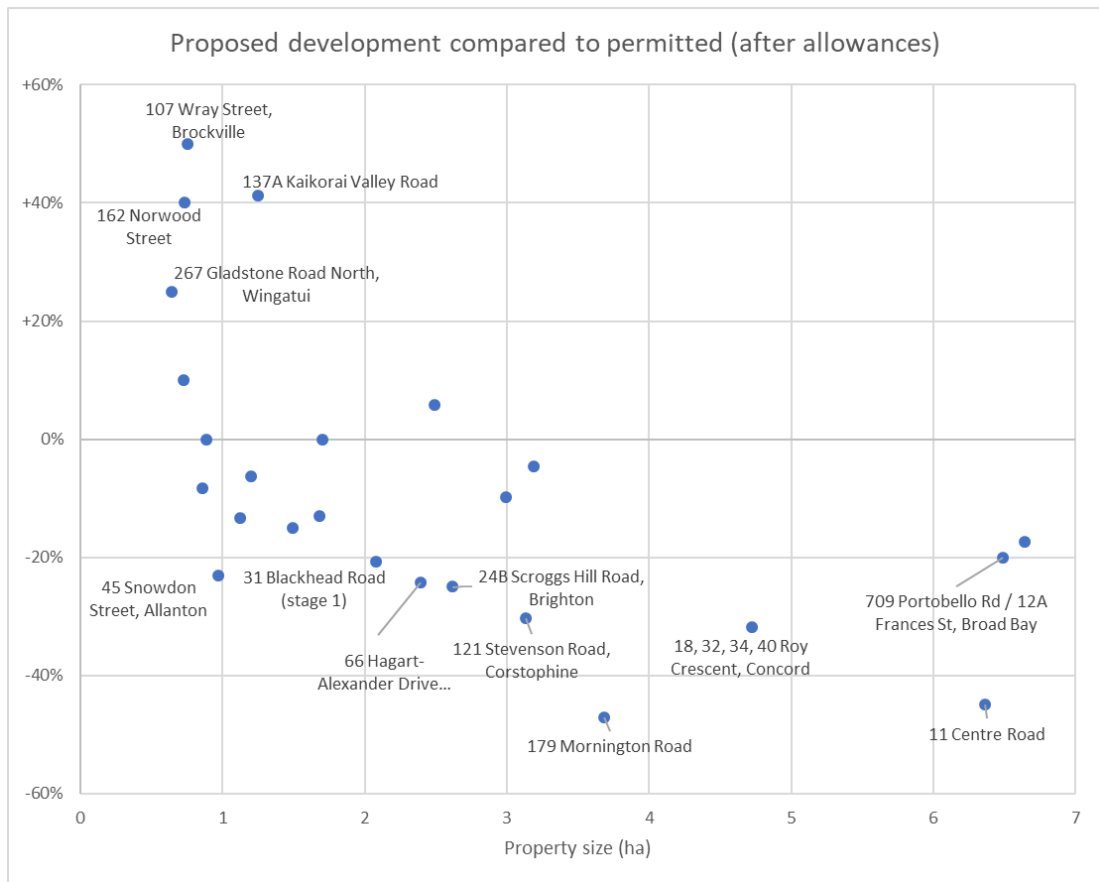


Figure 2: Extent to which subdivision achieve above or below the anticipated 70% maximum yield by property size

100. An analysis of the subdivision areas in terms of slope was also undertaken by Mr Stocker. This showed that yield is generally lower on steeper land, but this is not always the case. See **Figure 3** below with outliers labelled (where yield is higher than expected despite greater slope).

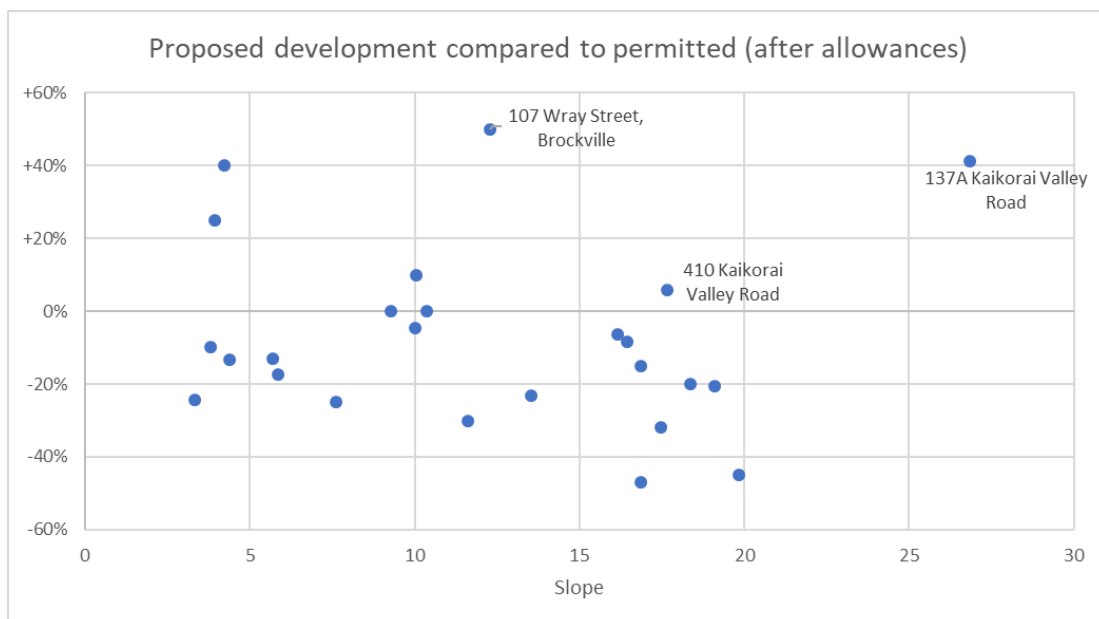


Figure 3: Extent to which subdivisions achieve above or below the anticipated 70% maximum yield by degrees slope

101. Applications which achieved a yield 20% less than anticipated or lower were then looked at to determine whether there were obvious reasons why the site could not be developed to a higher density. There were some cases where the lower yield appeared to be justified by steep slope, natural hazards or presence of overhead transmission lines, while others appeared to have progressed at a lower density by choice and these tended to be larger subdivision areas. However, a detailed analysis of each site has not been undertaken at this time to establish all the relevant factors.
102. Evidence on why developers might choose to develop at a lower density could be obtained if required. However, at a basic economic level, a developer might choose to do this if they perceive that the increased price per section for larger sections (with a lower site yield) would outweigh the lower price per section for smaller sections (with a higher site yield), taking into account the differing development costs that would apply to each scenario (e.g. need for more earthworks or roading to support a higher yield).

12.0 Transport Connections (Change D2)

Question 34/35 – Meaning of ‘potential future urban land’

[Regarding the proposed wording “potential future” urban land or urban growth areas for Policy 2.2.2.4.X and Policy 6.2.3.Y] Please describe how this term can be given meaning when considering applications for development.

103. This terminology is proposed to be expanded on in Policy 6.2.3.12.b.ii, which is proposed to state:
 - b. provide ~~adequate~~ connections to surrounding areas and the wider transport network, particularly for buses, pedestrians, and cyclists, in a way that maximises opportunities for active mode and public transport connections to existing or planned:
 - i. centres, public open spaces, schools, cycleways, walkways, public transport stops, and community facilities in the surrounding environment, and
 - ii. neighbouring urban land, including by providing appropriate connections to undeveloped land, whether zoned for future urban use or not, unless that land is inappropriate for urban development, based on the presence of overlay zones or mapped areas protecting significant values or indicating significant site constraints such as natural hazards; and
104. Similar wording could be considered for inclusion in proposed Policy 6.2.3.Y to ensure there is clarity as to the meaning of “potential future urban growth areas”. Alternatively, this explanation could be provided in guidance within the associated assessment rules.
105. I consider it unnecessary to provide a similar detailed explanation within Policy 2.2.2.4.X because this is a strategic direction and such provisions are intended to be fleshed out and given effect to in the lower-order planning provisions such as those in Section 6 of the Plan.

Appendix A – 3 Waters Reform Details

How is the proposed 3 Waters reform relevant to Variation 2?

Summary

The Government has proposed transitioning three waters service delivery functions from councils to four public multi-regional water services entities. Based on information provided by the Government to date, primary accountability for urban and land use planning would remain with local government, and the new water entities would have obligations to support local authority plans. However, there is not currently enough information available to enable detailed assessment of the impacts the reforms might have on the objectives of Variation 2.

Background

In mid-2021, the Government announced detailed proposals in connection with its Three Waters Reform Programme – a programme established to reform local government three waters service delivery arrangements in a way that improves health and wellbeing outcomes to benefit all communities in New Zealand.

The Government has proposed establishing four public multi-regional water services entities, which would be responsible for delivering drinking water, wastewater and stormwater services to communities. One of the proposed entities would service most of the South Island, including Dunedin. The boundaries of the proposed South Island entity broadly coincide with the Ngāi Tahu takiwā.

The Government has been clear that it intends for council three waters infrastructure and service delivery functions to transfer to the new water services entities. The Government has acknowledged that the transition of stormwater functions to the new entities is likely to be more complex than the transition of drinking water and wastewater functions and technical work on how the stormwater transition will work is still in progress. The Government has previously highlighted the complexities of stormwater management, including the interconnections between stormwater management and other council activities such as land use planning and provision of transport infrastructure.

The Government is expected to announce next steps, including decisions on implementation of the service delivery reform proposals and transition arrangements, after 1 October 2021. These announcements are expected to include information on whether participation in the service delivery reforms remains voluntary or whether the Government will mandate compulsory participation.

In addition to the proposed service delivery reforms, a suite of regulatory reforms is in progress. Draft legislation to establish a new regulatory system for drinking water has been introduced, and a new drinking water regulator – Taumata Arowai – has been established. Greater central government oversight of the infrastructure performance of wastewater and stormwater networks is also proposed.

The new water services entities and the resource management system

Preliminary indications from the Government suggest that local government will continue to have primary accountability for urban and land use planning. According to the Government, the new water service entities will be required to support integrated planning approaches, provide technical and engineering support and advice to councils, and have a reciprocal obligation to:

- Identify and make provision for infrastructure to support growth and development identified in relevant plans, such as the 2GP or Future Development Strategy once that is prepared. This will

enable them to service demand for new strategic capacity, including meeting the three waters needs of all new housing development, and commercial and industrial customers.

- Ensure that those strategic assets are delivered in support of committed development so as to minimise the likelihood of redundant assets. When providing new infrastructure, the entities will need to work with urban and land use planning authorities, and other infrastructure providers, to ensure that the delivery of infrastructure is sequenced.
- In short, local authorities will remain the plan-makers and the entities will be plan-takers.

Timeframes and funding

Under the Government's proposed reform timeline, councils will continue to deliver water services until 2024. Council involvement in transition to the new water entities will be required during 2022 and 2023.

The Government is working towards a 'go live' date of 1 July 2024 for the new water services entities. This would mean the next council LTPs (2024-34) would not include three waters.

The Council has committed \$77 Million in capital funding in the 10-year plan (2021-2031) for three waters new capital and renewals that support growth. Council receives development contributions from developers that contribute toward these costs of development.

The 3 Waters Group will contribute to the preparation of the DCC's Future Development Strategy that is required by the National Policy Statement - Urban Development. Provision of three waters services for growth, even if by a new water services entity, would need to be consistent with this document once operative.

Detail of how the new water services entities will operate is not yet available. It is likely that initially service fees may be similar to current DCC rates charges and that allocated expenditure for new infrastructure or renewals may be carried forward until alternate planning or costs are determined. If this approach is taken by the new water services entity, then DCC continuing to plan for and allocate funding for infrastructure works is important.