

Under	the Resource Management Act 1991 (the Act)
In the Matter	of a hearing in relation to Variation 2 to the proposed Second Generation Dunedin City District Plan (2GP)
By	Gladstone Family Trust Applicant

LEGAL SUBMISSIONS ON BEHALF OF GLADSTONE FAMILY TRUST

DATED 13 OCTOBER 2022



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May it please the Hearing Panel:

1. These submissions respond to the Panel's minutes 17 and 18 and the legal submissions of counsel for the Dunedin City Council (**DCC**) dated 6 October 2022.
2. We agree that the relevant clause of the National Policy Statement for Highly Productive Land 2022 (NPS) is clause 3.5(7):
 - (7) Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:
 - (a) is
 - (i) zoned general rural or rural production; and
 - (i) LUC 1, 2, or 3 land; but
 - (b) is not:
 - (i) identified for future urban development; or
 - (ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.
3. It is submitted, that during the transitional period land with rural zoning of LUC classes 1, 2 or 3 is deemed highly productive land unless the criteria in (b) are met.
4. The focus of these submissions is the exemption in Clause 3.5(7)(b)(ii).
5. Clause 3.5(7)(b)(i) refers to land which is identified however clause 3.5(7)(b)(ii) does not refer to land being identified. In our submission the land is not required to be identified by Council to fit within the plan change exception.
6. The land must only be subject to a Council initiated plan change or an adopted, notified plan change to rezone it from rural to residential zoning. It is submitted that this requirement is in the alternative. Either a plan can be council initiated or, it can be a plan adopted and notified

by Council. Private plan changes which have not been adopted and notified are excluded.

7. It is submitted that Variation 2 is a Council initiated plan change to, among other things, rezone Greenfields land from rural to residential zoning.
8. Regardless of whether the land has been identified by DCC or by submitters it is before the Panel because it is in scope of Variation 2.
9. When the NPS comes into effect, the otherwise highly productive land promoted by the submitters continues to be within the ambit of the plan change - that is it is capable of being rezoned by it. Variation 2 can rezone the land from rural to residential.
10. Land which may be rezoned by Variation 2 is, in our submission subject to the variation because the variation can change its zoning.
11. We submit that this approach is consistent with the plan change process under the Act. The Schedule 1 process provides for public notice to be given so that submitters can propose alternative methods to achieve the purposes of the plan change, the plan and ultimately the Act. The Panel then weighs up the options to arrive at the most appropriate method to achieve those purposes.
12. In our submission it would frustrate the process under Schedule 1 to read into the NPS a requirement for the DCCs approval or identification to be necessary for the land to be subject to Variation 2. To do so would have the effect of predetermining the Panel's decision by separating out land promoted by DCC from land promoted by submitters.
13. In practice there is no distinction between the two categories of land in the Panel's assessment of what method is most appropriate to give effect to the purposes of variation 2, the objectives and policies of the 2GP and the purposes of the Act.
14. We submit the meaning of "land subject to the council-initiated plan change" includes all land which can be rezoned by Variation 2 until the

plan change becomes operative. At that point the land is no longer capable of being rezoned by Variation 2 and then, and only then would it be deemed highly productive land provided it met the transitional criteria.

15. In our submission all otherwise highly productive land before the Panel for consideration remains exempt from the NPS deeming it so by virtue of clause 3.5(7)(b)(ii) until it is no longer subject to the variation. The only logical point for that to occur is when that part of Variation 2 to which the land is subject is finally determined and beyond appeal.

Dated 13 October 2022

A handwritten signature in blue ink, appearing to be 'Phil Page' or 'Rebecca Crawford', with a stylized, cursive script.

Phil Page / Rebecca Crawford

Counsel for Gladstone Family Trust