

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

Under the Resource Management Act 1991 (**RMA**)

In the Matter of Hearing 4 of the Proposed Variation 2 (Additional
Housing Capacity) of the Second Generation Dunedin
District Plan – Appeals Version (**2GP**)

By The Submitters Listed at Paragraph 4 Herein

**Response to Panel's Minutes 17 & 18
& Council's Legal Submissions
& Reporting Officer's Reply to Minute 17**

on behalf of:

The Submitters Listed at Paragraph 4 Herein

Dated 13th October 2022

1. The Panel has:
 - Issued Minute 17 dated 30 September 2022 and Minute 18 dated 10 October 2022; and
 - Provided copy of: (a) the legal submissions prepared on behalf of Dunedin City Council (**Council**) in relation to Variation 2 greenfield rezone land and the National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**); and (b) the reporting officer's reply on Minute 17 (**reply**) which details the sites Council has assessed as being captured by the NPS-HPL.
2. The Panel has invited responses from submitters in relation to the legal submissions made on behalf of Council and the reporting officer's reply.
3. In their reply, the reporting officer identifies at paragraph 26 various properties, or parts thereof, which they consider to be 'affected' by the NPS-HPL which the reporting officer states at paragraph 26 as meaning: *"...land that meets the criteria identified in clause 3.5(7)(a) of the NPS-HPL, but not the exceptions in clause 3.5(7)(b)."*
4. This response is made in relation to the following properties as listed in paragraph 26 of the planning officer's reply:
 - 170 Riccarton Road West – Submission 191 – Roger & Janine Southby – Site ID RS212.
 - 188 North Taieri Road and 45 McMeakin Road – Submission 228 – Wendy Campbell – Site ID: part of RS14.
 - 85 Formby Street, Outram – Submission 305 – Outram Developments Limited – Site ID: RS175.
 - 774 Allanton-Waiholā Road – Submission 242 – DDS Properties (2008) Limited – Site ID: RS195.
 - 91 and 103 Formby Street, Outram – Submissions 307 & 308 – Peter Doherty, CC Otago Limited – Site ID: RS154.
 - 489 East Taieri-Allanton Road, Allanton – Submission 232 – Meats of NZ Limited – Site ID: RS200.
 - 77, 121 Chain Hills Road, part 100 Irwin Logan Drive, 3-20 Jocelyn Way, 38 and 40-43 Irwin Logan Drive, 25-27 Pinfold Place¹ – Submission 219 – Gladstone Family Trust – Site ID: RS153.
 - 155 Scroggs Hill Road – Submission 249 - C O F Limited – Site ID: RS160.

¹ Please refer to paragraph 9 of this response which details the property addresses already zoned residential from this list and which are, therefore, not subject to the NPS-HPL.

5. The reporting officer also details at paragraph 26 of their reply, the approximate percentage of LUC class 1, 2 or 3 land each property or Site ID contains.
6. All parties appear to agree that the relevant clause of the NPS-HPL is clause 3.5(7) and that the relevant exception is that provided by clause 3.5(7)(b)(ii). Clause 3.5(7) states:

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
 - (ii) 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.

7. The legal submissions prepared and filed by Gallaway Cook Allan on behalf of Gladstone Family Trust² provide legal analysis that the exemption contained in Clause 3.5(7)(b)(ii) applies to rural zoned properties with LUC class 1, 2 or 3 land that are in scope of Variation 2. All of the rural zoned properties listed in paragraph 26 of the reporting officer's reply are in scope of Variation 2.
8. Gladstone Family Trust has provided its permission for those legal submissions to be used when considering other properties detailed at paragraph 26 of the reporting officer's reply.
9. In relation to the property addresses detailed by the reporting officer for RS153, Council's datamap shows LUC class 3 on some of these properties which are already zoned residential and, therefore, are not subject to the NPS-HPL. The property addresses not subject to the NPS-HPL due to being zoned residential and not rural are:
 - 100 Irwin Logan Drive³.
 - 3 – 20 Jocelyn Way.
 - 38 and 40-43 Irwin Logan Drive.

² Please refer to Appendix 1 for copy.

³ A small part of this site is zoned rural. However, the LUC class 3 shown on the data map is in the part of this property address zoned Low Density Residential.

- 25 – 27 Pinfold Place.
10. Part of 77 Chain Hills Road and 121 Chain Hills Road are also zoned residential and those parts of these property addresses are also not subject to the NPS-HPL. 77 Chain Hills Road now has the property address of **19 Rosella Place**.
 11. The Panel has granted an extension of time for filing of legal submissions on behalf of Outram Developments Limited, Peter Doherty and CC Otago Limited in relation to 85, 91 and 103 Formby Street, Outram.
 12. This response does not constitute those legal submissions and these submitters retain the right for their legal counsel to provide legal submissions within the extension period granted by the Panel which will be in addition to this response and the legal submissions provided by Gallaway Cook Allan on behalf of Gadstone Family Trust contained therein.

Dated: 13 October 2022.

Emma Peters on behalf of the submitters listed at paragraph 4 herein.

Appendix 1: Legal Submissions Prepared & Filed by Gallaway Cook Allan on Behalf of Gladstone Family Trust.

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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LEGAL SUBMISSIONS ON BEHALF OF GLADSTONE FAMILY TRUST

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 flourish at the end.

Phil Page / Rebecca Crawford

Counsel for Gladstone Family Trust