



SECOND GENERATION DISTRICT PLAN

Variation 2 Additional Housing Capacity Part 3 – Sites Proposed for Rezoning

S42A Addendum Report on the application of the NPS-HPL

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15 November 2022

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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).

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Introduction

1. This evidence responds to the Panel's Minute 21, dated 7 November 2022
2. On 30 September 2022, the Hearing Panel issued Minute 17¹ which outlined a two-stage process for how it wished to consider matters raised by the National Policy Statement for Highly Productive Land (NPS-HPL). The first stage involved legal submissions from parties on the legal principles to determine which sites should be considered highly productive land (HPL). These submissions were heard on 21 October 2022. Subsequent to this, and in response to Minute 20², several further written legal submissions were received which summarised the verbal submissions made during the reconvened hearing.
3. Following on from this the Panel received independent legal advice prepared by Simpson Grierson. As detailed in Minute 21, the Panel has outlined that they favour the following interpretation of section 3.5(7) of the NPS-HPL, which identifies which land is to be considered HPL in the transitional period until HPL is mapped in the Regional Policy statement:
 - Variation 2 is a 'plan change' as referred to in clause 3.5(7) of the NPS-HPL; and
 - The sites requested for rezoning by way of submissions (that were not proposed for rezoning in the notified version of Variation 2) do not fall within the exception in clause 3.5(7)(b)(ii) of the NPS-HPL.
4. As a result, the Panel has requested a s42A addendum report addressing the relevant considerations in the NPS-HPL for those sites zoned rural and classified as Land Use Capability (LUC) 1, 2 or 3 land, as set out in the Table attached to Mr Morrissey's response to Minute 17. This list of sites is reproduced in Appendix 1.

Background

5. The NPS-HPL became operative on 17 October 2022. It focusses solely on the protection of highly productive land, and has a single objective (2.1), that states:

Highly productive land is protected for use in land-based primary production, both now and for future generations.

6. Highly productive land is to be identified through maps in Regional Policy Statements. Until that is done, transitional provisions determine which land is to be considered HPL. These are outlined in clause 3.5(7). The Panel's decision in Minute 21 identifies that sites that are included through Variation 2 through submissions (i.e. the RS sites), that are currently zoned rural and with LUC 1, 2 or 3 land, are HPL for the purposes of the NPS-HPL. These sites are listed in Appendix 1.
7. I note that the table in Appendix 1 contains a small correction to the site area and percentage column for site RS154 (91 and 103 Formby Street, Outram). Mr Morrissey's response to Minute 17 stated that 93% of RS154 was HPL. However, 96% of RS154 is HPL.

¹ Minute 17, 30 September 2022. [Minute-17-The-new-NPS-HPL.pdf \(dunedin.govt.nz\)](#)

² Minute 20, 21 October 2022. [DCC-Var-2-Minute-20-.pdf \(dunedin.govt.nz\)](#)

8. Policy 5 of the NPS-HPL is:

The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.

9. This is implemented through clause 3.6, which states that Tier 1 and 2 territorial authorities may allow urban rezoning of HPL only if certain tests are met. Dunedin is a Tier 2 territorial authority. The requirements to be met to allow rezoning are³:

(1) Tier 1 and 2 territorial authorities may allow urban rezoning of highly productive land only if:

(a) the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020; and

(b) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and

(c) the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.

(2) In order to meet the requirements of subclause (1)(b), the territorial authority must consider a range of reasonably practicable options for providing the required development capacity, including:

(a) greater intensification in existing urban areas; and

(b) rezoning of land that is not highly productive land as urban; and

(c) rezoning different highly productive land that has a relatively lower productive capacity.

(3) In subclause (1)(b), development capacity is within the same locality and market if it:

(a) is in or close to a location where a demand for additional development capacity has been identified through a Housing and Business Assessment (or some equivalent document) in accordance with the National Policy Statement on Urban Development 2020; and

(b) is for a market for the types of dwelling or business land that is in demand (as determined by a Housing and Business Assessment in accordance with the National Policy Statement on Urban Development 2020).

(4) ...

(5) Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the

³ Clause 3.6(1)

required development capacity while achieving a well-functioning urban environment.

10. This evidence addresses whether these tests are met for any of the sites listed in Appendix 1. Note that clauses 1 a, b and c must all be met to allow rezoning to occur.

Clause 3.6(1)(a) – rezoning is required to provide sufficient development capacity

11. Clause 3.6(1)(a) is that the zoning is required to provide sufficient development capacity to meet demand and give effect to the National Policy Statement for Urban Development (2022) (the NPS-UD).
12. The NPS-UD requires that development capacity identified has been assessed as plan enabled, infrastructure-ready, feasible and reasonably expected to be realised, and meets the expected demand plus the required competitiveness margin.
13. Mr Stocker’s memo⁴, attached to this evidence, outlines his assessment of Dunedin’s development capacity over the short medium and long term, based on a recent update (19 October 2022) to the 2021 Housing Capacity Assessment. The assessment is consistent with that required under the NPS-UD. This latest assessment incorporates 2GP rezoning appeals that have been resolved since the update outlined in section 2.2.2 the section 42A report⁵ and discussed at the Variation 2 hearing in August.
14. The assessment shows that there is already sufficient development capacity over the short, medium, and long term to meet the requirements of the NPS-UD. There is therefore no requirement to rezone these sites in order to provide sufficient development capacity considering the city as a whole.
15. Mr Stocker’s analysis also identifies various housing ‘catchments’ within the city and identifies the capacity within each one. The map accompanying Mr Stocker’s evidence shows the Variation 2 rezoning sites within their respective housing catchments. Appendix 1 lists the housing catchment for the HPL land within each of the sites. All the HPL falls into either the ‘outer urban area’ or ‘outer suburbs’ catchment.
16. Mr Stocker’s memo shows that it is expected that all of these catchments will have a surplus of development capacity over the short, medium and long term.
17. Consequently, considering capacity both across the city and within individual catchments, clause 3.6(1)(a) is not met and therefore the rezoning cannot pass clause 3.6. However, for the sake of completeness, I have also considered whether the other clauses can be met.

⁴ Residential Development Capacity for NPS-HPL Assessment, 27 October 2022.

⁵ Section 42A Report, 15 July 2022. [Variation-2-Hearing-4-Greenfield-Rezoning-Section-42A-Report.pdf \(dunedin.govt.nz\)](https://dunedin.govt.nz/variation-2-hearing-4-greenfield-rezoning-section-42a-report.pdf)

Clause 3.6(1)(b) – other reasonably practicable and feasible options within the same locality and market

18. Clause (b) is that there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment.
19. Subclause (3) identifies the meaning of ‘within the same locality and market’. This is capacity that is:
 - in or close to a location where a demand for additional capacity has been identified through a Housing and Business Assessment; and
 - for a market for the types of dwelling that is in demand (as determined through a Housing and Business Assessment).
20. Capacity has been assessed at a catchment level in the housing capacity assessment. The reasons for this were outlined in Mr Stocker’s evidence to the Variation 2 hearing in August⁶. The housing capacity assessment (July 2021) also considered demand and capacity by housing type (standalone dwellings or attached dwellings). That assessment identified that future capacity in the ‘outer urban catchment’ should be provided exclusively through standalone houses. Whereas, additional capacity in the ‘outer suburbs’ should be provided through a mix of standalone houses and attached dwellings.
21. To meet the requirements of clause 1(b), the Panel must consider a range of reasonably practicable options for providing the required capacity, including through greater intensification of existing urban areas, rezoning land that is not HPL, and rezoning different HPL that has a relatively lower productive capacity.
22. As discussed in the Reporting Officer’s Reply⁷, Variation 2 is a series of a series of proposed changes to provide additional residential capacity in identified locations. The analysis for Variation 2 did not include a full assessment of all potential sites across the city. Given the time available to prepare this response, a full assessment of all potential sites within each catchment is not possible.
23. However, given the size of the outer urban catchment, I consider it highly likely that there are other reasonably practicable and feasible options for providing additional development capacity that achieve a well-functioning urban environment (should additional capacity be required), than the RS sites in question.
24. Several of the criteria for being a well-functioning environment in Policy 1 of the NPS-UD overlap with the 2GP strategic direction criteria, including:
 - (c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport;
 - (e) support reductions in greenhouse gas emissions; and

⁶ Variation 2 Residential Development Capacity Memo, 31 August 2022. [Memo on expected V2 yields \(dunedin.govt.nz\)](https://www.dunedin.govt.nz/variation-2-residential-development-capacity-memo)

⁷ Variation 2 Reporting Officer’s Reply, 6 September 2022.

(f) are resilient to the likely current and future effects of climate change.

25. These matters were assessed in the s42A and Reply Report by Mr Morrissey who did not recommend the rezoning of several of the sites in question due to concerns about conflict with the compact and accessible city objective, distance from centres, facilities and public transportation, and/or hazards issues (which are anticipated to get worse due to the effects of climate change)
26. Only a very small area of HPL within the requested sites falls within the 'outer suburbs' catchment (45 McMeakin Road, part of site RS014). Again, given the size of the outer suburbs catchment, the potential for further intensification of existing residential land and the relative lack of LUC 1-3 land within this catchment, it is inconceivable that there are no other reasonably practicable and feasible options for providing additional development capacity.
27. In my view, clause 3.6.(1)(b) cannot be met.

Clause 3.6(1)(c) – the benefits outweigh the costs

28. Clause 1(c) requires that the benefits of rezoning the sites outweighs the costs associated with the loss of HPL.
29. As discussed in the section 42A report⁸, a high level cost benefit analysis⁹ was undertaken for a number of sites considered for inclusion in Variation 2. Most of the sites that are the subject of this evidence were not considered in that analysis as they were rejected at an earlier screening stage. However, the general conclusions reached and assumptions made in the analysis are likely to also apply to these sites. These include that:
- Only sites with single ownership over 4 hectares are expected to have any significant productive value, unless specifically recognised.
 - The productive potential value of sites increases as the overall size increases (thus loss of partial blocks may impact the remaining sites).
 - Per site, low density development scores relatively lower for land use efficiency, generally resulting in a lower economic value.
30. As outlined in the Property Economics/Beca analysis, the benefits and costs associated with allowing urban expansion to occur on highly productive land are numerous, but can be broken down into the following categories:
- Economic benefits and costs.
 - Social benefits and costs:
 - Economy and jobs
 - Transportation

⁸ See section 4.6

⁹ Dunedin Productive Land Cost Benefit Analysis, November 2020. Property Economics and Beca. Page 226 of [Section-32-Supporting-Documents.pdf \(dunedin.govt.nz\)](#).

- Housing supply
 - Social cohesion (both urban and rural)
 - Cultural benefits and costs:
 - Housing and development
 - Archaeological and heritage sites
 - Water quality and biodiversity
 - Food gathering and other traditions
 - Social
 - Environmental benefits and costs:
 - Water quality and quantity
 - Biodiversity
 - Climate change
 - Amenity values
31. I note that an economic assessment was supplied for site RS212 by Property Economics¹⁰ during the course of the hearing. However, the assessment focusses on the economic considerations and does not address the environmental, social and cultural costs as required by clause 3.6(1)(c).
32. No cost benefit analysis for the sites in question is possible within the timeframe specified. However, I note the following points:
- In his Reply, Mr Morrissey did not recommend the rezoning of any of the sites in question. This was due to a range of concerns including conflict with the compact and accessible city objective, distance from centres, facilities and public transportation, transportation/access issues, 3 Waters servicing issues, and hazard concerns amongst others. These matters reduce any benefits of rezoning identified by submitters. They are also many of the same reasons why the sites do not support a well-functioning urban environment.
 - There will be some cost associated with the loss of productive potential for all sites.
 - For small or multi-owner sites, these may be relatively small following the Property Economic / Beca methodology; however, this must also be considered against the proposed density of development, which is low for a number of sites.
33. Overall, without more detailed information and analysis beyond the evidence provided to date, it is not possible to conclude that the benefits of rezoning outweigh the costs. Clause 3.6(1)(c) is also not met.

¹⁰ 170 Riccarton Road West Mosgiel Productive Land Cost Benefit Analysis, August 2022. [DATE> \(dunedin.govt.nz\)](https://www.dunedin.govt.nz)

Other matters – sites that are partially HPL

34. Several of the sites have a mixture of both HPL and non-HPL land. Appendix 2 shows the HPL on each site.
35. The NPS-HPL Policy 5 is clear that zoning HPL is avoided, except where it meets the exceptions outlined and discussed above. In my opinion, that means that any HPL land should not be zoned residential. A decision must then be made as to whether it is appropriate to rezone the remainder (i.e., non-HPL part) of each site. I consider each site below.
36. Sites RS154 and RS175, Formby Street, Outram, are effectively 100% HPL, as the small areas not HPL are already zoned residential.
37. Site RS195, 774 Allanton-Waiholā Road, has a small area that is not HPL. If rezoned this would be disconnected from any residential land and rezoning it would not make good planning sense. I also note Mr Morrissey's recommendation not to rezone for other reasons.
38. Site RS14, Abbotsford, also has only a small area identified as HPL. This area adjoins the existing residential area at the end of North Taieri Road. However, the submitter's proposed structure plan (refer Appendix 1a of Ms Peters' evidence¹¹) indicates that this area is geotechnically "unlikely to support residential land use". Mr Morrissey's recommendation was not to rezone this site.
39. Site RS153, Chain Hills, 20% of the area is assessed as being HPL. This consists of two areas, one to the north of the site adjacent to the existing residential zone, and the other to the west of the site towards the motorway. The non-HPL area is a significant part of the site and adjoins the existing residential land above Irwin Logan Drive. If rezoned, it would connect to that residential land. However, I note that Mr Morrissey in his Reply (and again in his Response to Minute 15, 16, and 17 from the Panel) recommended that the site is not rezoned for other reasons.
40. Site RS160, 155 Scroggs Hill Road, 0.2% of the area is assessed as being HPL. It would be possible to rezone the site and exclude this small area of land. However, I note that Mr Morrissey in his Reply recommended the site is not rezoned for other reasons.
41. Site RS200, 489 East Taieri-Allanton Road, 82% of the area is assessed as being HPL. The area not covered by HPL is located on the uphill slopes, and consists of two small areas that are disconnected from each other and the existing Township and Settlement zoning. I do not recommend rezoning these areas in isolation due to this disconnection. I also note that Mr Morrissey recommended in his Reply that the entire site is not rezoned for other reasons.
42. The remaining two sites, RS109 and RS212 are 100% HPL.

¹¹ [RS14 Wendy-Campbell S228,-FS251-Evidence-of-Emma-Peters.pdf \(dunedin.govt.nz\)](#)

Conclusion

43. The Panel must give effect to the NPS-HPL in making their decisions on the Variation 2 greenfield rezoning topic.
44. The Panel has interpreted the NPS-HPL as applying to the sites outlined in the Table attached to Mr Morrissey's response to Minute 15, 16, and 17, and included here at Appendix 1.
45. Clause 3.6 provides an exception whereby HPL may be rezoned to residential land. As outlined above, it is my view that rezoning any of these sites (or the part of sites covered by HPL) would not meet the criteria in clause 3.6(1), which must **all** be met in order to support rezoning. In particular, the sites do not meet either clause 3.6(1)(a) or 3.6(1)(b). In the absence of any detailed cost-benefit analysis, I also cannot conclude rezoning meets clause 3.6(1)(c).
46. In light of this analysis, I consider that zoning any of the HPL parts of the sites listed in Appendix 1 to be contrary to the NPS-HPL.

Appendix 1 - Variation 2 Requested Sites with LUC 1-3 land

Address	Site ID	Site Area (m ²)	LUC 1-3 land (m ²)	Proportion of site with LUC 1-3	LUC Class	Catchment of the HPL land
Freeman Cl, Lambert St, Abbotsford	RS14	545,850	537,427	98%	3	Outer urban area /outer suburbs
119 Riccarton Road West	RS109	17,924	17,924	100%	1	Outer urban area
RS153: 77, 121 Chain Hills Road, part 100 Irwin Logan Drive, 3-20 Jocelyn Way, 38 and 40-43 Irwin Logan Drive, 25-27 Pinfold Place	RS153	653,000	127,553	20%	3	Outer urban area (a small part of RS153 falls within the Mosgiel catchment; however, the part of this area that is LUC 3 land is already zoned residential and therefore not HPL)
91 and 103 Formby Street, Outram	RS154	42,798	40,977	96%	1	Outer urban area
155 Scroggs Hill Road	RS160	640,968	1,586	0.2%	3	Outer urban area
85 Formby Street, Outram	RS175	59,965	58,996	98%	1	Outer urban area
774 Allanton-Waiholā Road	RS195	551,874	539,213	98%	1	Outer urban area

489 East Taieri-Allanton Road, Allanton	RS200	86,102	70,722	82%	1	Outer urban area
170 Riccarton Road West	RS212	83,477	83,477	100%	1	Outer urban area

Appendix 2 – Maps of the Variation 2 Requested Sites with LUC 1-3 land















