



SECOND GENERATION DISTRICT PLAN

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

Reporting Officer's Reply on the application of the NPS-HPL

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Qualifications: Master of Science (Zoology), University of Otago; BSc (Hons) Biology, University of Southampton; certified Independent Hearings Commissioner (Chair endorsement); full member of the New Zealand Planning Institute.

Experience: I am employed as Team Leader Policy Planning at Dunedin City Council (DCC). In 2021 I was employed as a Senior Analyst by the Ministry for the Environment, working on the RM Reform programme. I was employed by DCC as a policy planner and senior policy planner for eight years between 2013 and early 2021. I worked on drafting the 2GP, preparing and presenting s42A reports, including on the urban land capacity section, and resolving appeals. I was closely involved in the development of Variation 2. Prior to working for the DCC, I was self-employed as a planner for 10 years, and before that I was Team Leader Consents at Environment Canterbury for five years.

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 evidence provided by Emma Peters in relation to sites RS153, RS195, RS200, RS160, RS212, RS154 and RS175, and by Kurt Bowen in relation to sites RS14 and RS109, all dated 22 November 2022. Ms Peters' and Mr Bowen's evidence deals with the application of the National Policy Statement for Highly Productive Land (NPS-HPL) on these sites.

Criticism of the DCC's Housing Capacity Assessment

2. Ms Peters and Mr Bowen repeat concerns raised earlier in the hearing in relation to the accuracy of the capacity calculations, in particular an inability to review the modelling and to test the sensitivity of the assumption that houses will gain in price over the long-term and this is required to provide sufficient housing capacity¹.
3. Mr Stocker has addressed previously these matters in evidence^{2,3} and will speak to these issues at the reconvened hearing.

Use of catchments

4. All submissions criticise my use of the catchments from the housing capacity assessment (HCA) in considering whether there are other options for providing for additional capacity 'in the same locality and market' (clause 3.6(1)(b)).
5. Firstly, I note that 3.6((1)(b) need only be considered if clause 3.6(1)(a) is met, i.e. additional capacity is required to meet demand to give effect to the NPS. Mr Stocker's evidence shows this is not the case.
6. Secondly, Clause 3.6(3) identifies that 'in the same locality and market' means in or close to a location where demand has been identified through a Housing and Business Assessment. The housing and business assessment is the HCA (updated by Mr Stocker). This uses catchments to identify where capacity is required.
7. Thirdly, alternative options close to the sites are available where there is a significant surplus of capacity:
 - a. RS109, RS153, RS212 are all close to Mosgiel.
 - b. RS14 and RS153 are close to the outer suburbs.
 - c. RS154, RS175, RS195, RS200: Mosgiel is a feasible alternative, providing a greater range of services and being well located for work or preference to live on the Taieri Plains.

Relevance of clause 3.10 of the NPS-HPL

8. Mr Bowen identifies that clause 3.10 of the NPS-HPL might provide the Panel with the ability to enable 'use' or 'development' of land that would not otherwise we supported by the NPS-HPL. He argues that it is able to be applied at the discretion of the Panel.

¹ Evidence from Ms Peters regarding rezoning sites in Allanton, 22 November 2022. [Emma-Peters-RS-195-and-RS-200.pdf \(dunedin.govt.nz\)](#). Evidence from Mr Bowen regarding RS14, 22 November 2022. [Microsoft Word - 17615 Minute 21 Response - RS14.docx \(dunedin.govt.nz\)](#).

² Memorandum on Residential Development Capacity, 31 August 2022. [Memo on expected V2 yields \(dunedin.govt.nz\)](#).

³ Memorandum on Residential Development Capacity for NPS-HPL Assessment, 27 October 2022.

9. Clause 3.10 is:

Exemption for highly productive land subject to permanent or long-term constraints

1. Territorial authorities may only allow highly productive land to be subdivided, used, or developed for activities not otherwise enabled under clauses 3.7, 3.8, or 3.9 I satisfied that:
 - (a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years; and
 - (b) the subdivision, use, or development:
 - i. avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; and
 - ii. avoids the fragmentation of large and geographically cohesive area of highly productive land; and
 - iii. avoids if possible, or otherwise mitigates, any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; and
 - (c) the environmental, social, cultural and economic benefits of the subdivision, use, or development 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 satisfy a territorial authority as required by subclause (1)(a), an applicant must demonstrate that the permanent or long-term constraints on economic viability cannot be addressed through any reasonably practicable options that would retain the productive capacity of the highly productive land, by evaluating options such as (without limitation):
 - (a) alternate forms of land-based primary production:
 - (b) improved land-management strategies:
 - (c) alternative production strategies:
 - (d) water efficiency or storage methods:
 - (e) reallocation or transfer of water and nutrient allocations:
 - (f) boundary adjustments (including amalgamations):
 - (g) lease arrangements.
3. Any evaluation under subclause (2) of reasonably practicable options:
 - (a) must not take into account the potential economic benefit of using the highly productive land for purposes other than land-based primary production; and
 - (b) must consider the impact that the loss of the highly productive land would have on the landholding in which the highly productive land occurs; and
 - (c) must consider the future productive potential of land-based primary production on the highly productive land, not limited by its past or present uses.

4. The size of a landholding in which the highly productive land occurs is not of itself a determinant of a permanent or long-term constraint.
5. In this clause:
landholding has the meaning in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020
long-term constraint means a constraint that is likely to last for at least 30 years
10. In my view, given the wording of the first clause of 3.10, this section is clearly intended to apply to subdivision, use and development that is not enabled under the listed clauses (3.7, 3.8 and 3.9). Clause 3.10 applies where the considerations under clauses 3.7, 3.8 or 3.9 cannot be met. Clause 3.10 does not refer to 3.6, which has its own self-contained list of relevant matters, which may allow rezoning. I therefore disagree that clause 3.10 is relevant.
11. Mr Bowen provides an analysis of site RS14 against the criteria in 3.10(1)(a)(b) and (c). While I disagree that this clause is relevant, I make the following general observations:
 - a. The evidence presented in terms of constraints is not provided by an agricultural or economics expert, or backed up by technical data or justification, for example soil quality, rainfall data or economic projections.
 - b. There is no assessment of whether the identified constraints will remain constraints over the long-term (30 years), as required by the NPS
 - c. I do not consider that the submitter has fully addressed clause 3.10(2), which requires consideration of alternative options for land management.
 - d. Clause 3.10(4) states that the size of a landholding is not of itself a determinant of a permanent or long-term constraint.

Site specific comments

12. Appendix 1 of this report outlines the Requested Sites (RS) subject to the NPS-HPL. This contains a summary of the key points Ms Peters and Mr Bowen have raised in relation to each site and my comments in response.

Conclusion

13. Overall, I maintain the original recommendation in my evidence on the NPS-HPL, that residential rezoning of any of the HPL parts of the sites listed in Appendix 1 is contrary to the NPS-HPL.

Appendix 1 - Variation 2 Requested Sites (RS) with LUC 1-3 land

Address	Site ID	Area of site with HPL	Key Points made in submitter's evidence	Response
Freeman Cl, Lambert St, Abbotsford	RS14	98%	- Questions accuracy of HCA and conclusion Dunedin has sufficient development capacity. - DCC has not released base data to support this conclusion. - Modelling relies on assumption of long-term gain in house prices. - Any doubts about the HCA assumptions and conclusions must be read in favour of the position that more land is required to give effect to the NPS-HPL.	Refer to Mr Stocker's evidence provided during the hearing⁴ addressing these matters.
			- Notes issues with 'catchment' approach utilised in the HCA when interpreting 'same locality and market'. - RS14 is located in the 'outer urban' catchment. Providing development capacity within Portobello cannot be said to be within the 'same locality and market' as RS14.	- Refer to Mr Stocker's evidence provided during the hearing⁴ addressing the use of catchments. - RS14 is on boundary of outer urban and outer suburbs. There is significant capacity available in the outer suburbs catchment that would provide an alternative to this site⁵. There is also a surplus in the outer urban area catchment.
			Clause 3.10 of the NPS-HPL potentially provides the Panel with the ability to enable zoning, as a type of the 'development' of land.	Clause 3.10 of the NPS-HPL does not apply to the assessment of urban zoning decisions.
			- Provides an assessment of RS14 against Clause 3.10 and concludes that rezoning would meet these criteria. Clause 3.10(1). (a) There are permanent or long term constraints such that primary production is not economically viable for 30+ years. (b)(i) Subdivision, use avoids significant loss of productive capacity as the site is LUC 3 (lowest rating), contains no high class soils mapped area and has low primary production value. (b)(ii) Subdivision etc avoids fragmentation of large area of HPL as RS14 is on edge of residential land. Remaining HPL will still be large. (b)(iii) Subdivision etc avoids or mitigates reverse sensitivity on adjoining productive land, as land is distant from railway line. (c) benefits of subdivision outweigh costs of loss of HPL, relying on Property Economics report, which outlines several benefits.	- No expert evidence provided on potential use of land, or constraints or economic feasibility. Must also consider 3.10(2), including alternatives etc. - Doesn't address the NPS issue of reverse sensitivity relating to rural production activities. - Property Economics report vague in terms of whether benefits outweigh costs. Note that the s42A report outlines various costs associated with rezoning
			The Property Economics report ranks this site relatively well compared to other sites assessed in same report, in terms of the relative economic costs.	Comparison is only with a select few sites, so a small sample size.
			Notes the DCC's previous high-level cost benefit analysis included an assumption that only sites with single ownership over 4 ha are expected to have significant productive value. One land parcel within RS14, 25 McMeakin Road, is 2.66 ha and it is inferred that this site is constrained in its ability for primary production due to small size.	The NPS-HPL does not contain any exemption for small land holdings (e.g. under 4 ha). Clause 3.10(4) specifically notes that "the size of a landholding in which the highly productive land occurs is not of itself a determinant of a permanent or long-term constraint".

⁴ Memorandum on Residential Development Capacity, 31 August 2022. [Memo on expected V2 yields \(dunedin.govt.nz\)](#)

⁵ Residential Development Capacity for NPS-HPL Assessment, 27 October 2022.

119 Riccarton Road West	RS109	100%	- Questions accuracy of HCA and conclusion Dunedin has sufficient development capacity. - DCC has not released base data to support this conclusion. - Modelling relies on assumption of long-term gain in house prices. - Any doubts about the HCA assumptions and conclusions must be read in favour of the position that more land is required to give effect to the NPS-HPL.	Refer to Mr Stocker's evidence provided during the hearing⁴ addressing these matters.
			Notes issues with 'catchment' approach utilised in the HCA when interpreting 'same locality and market'.	Refer to Mr Stocker's evidence provided during the hearing⁴ addressing the use of catchments.
			Notes the DCC's previous high-level cost benefit analysis included an assumption that only sites with single ownership over 4 ha are expected to have significant productive value. Land is 1.74ha and it is inferred that this site is constrained in its ability for primary production due to small size.	
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	20%	Rezoning of non HPL parts is allowable under NPS	Agree. See my evidence dated 15 November on whether it is appropriate.
			Part of LUC land is to be used for pasture, ecological enhancement or public access. These exceptions are provided for in NPS.	Rezoning to Residential is still not permissible under NPS, despite the land's intended use.
			- Questions accuracy of HCA and conclusion Dunedin has sufficient development capacity. - Modelling relies on assumption of long-term gain in house prices. - Any doubts about the HCA assumptions and conclusions must be read in favour of the position that more land is required to give effect to the NPS-HPL.	Refer to Mr Stocker's evidence provided during the hearing⁴ addressing these matters
			- Clause 3.6(1)(b): Catchment does not equal 'same locality and market' - Site is close to Mosgiel, where there is demand for larger sections (ref Housing We'd Choose) - The Gladfield and Heathfield subdivisions form their own market, where people want to live only in these. They want to live on the hills rather than the flat.	- NPS requires that the demand for additional capacity has been identified through a Housing and Business Capacity Assessment (HBA). Dunedin housing capacity assessment uses catchments. - RS153 is located in the Mosgiel and outer urban area catchments. There is a surplus capacity in both these catchments in the short, medium, and long term⁶.
			- Clause 3.6(1)(c): There are existing rights to some residential activity on both titles with HPL. - The titles are both less than 4ha – assumption that production is not economic. - LUC land already lost of primary production. Anything other than grazing sheep or ponies is 'fanciful' due to site's limitations. - Benefits outweigh costs.	
91 and 103 Formby Street, Outram	RS154	96%	- Clause 3.6(1)(a): Questions accuracy of HCA and conclusion Dunedin has sufficient development capacity. - Modelling relies on assumption of long-term gain in house prices. - Any doubts about the HCA assumptions and conclusions must be read in favour of the position that more land is required to give effect to the NPS-HPL.	Refer to Mr Stocker's evidence provided during the hearing⁴ addressing these matters
85 Formby Street, Outram	RS175	98%		

⁶ Residential Development Capacity for NPS-HPL Assessment, 27 October 2022.

			• Clause 3.6(1)(b): Catchment does not equal ‘same locality and market’ • There is demand within Outram. • These sites represent only reasonably practicable and feasible option to provide capacity in Outram to meet demand.	• Development capacity “within the same locality and market” is defined as being in or close to a location where demand had been identified through a Housing Capacity Assessment in accordance with the NPS-UD. The DCC HCA uses catchments. • Significant capacity available in Mosgiel as an alternative. • Data collected through the Housing We’d Choose study shows significant flexibility in preferred location of Outram residents (only 5 out of 19 Outram respondents listed ‘outer urban’ as their preferred location).
			• Clause 3.6(1)(c): All sites have existing rights to some residential activity. Sites therefore already lost to productive use – effectively Rural Residential, an outcome NPS seeks to avoid. • Benefits outweigh long term costs, as long term productive use already lost.	• This argument may be relevant to the 2 smallest sites, but one site is 6ha with one dwelling. Evidence has not been provided that there is no productive potential.
155 Scroggs Hill Road	RS160	0.2%	• Only an extremely small portion of RS160 is LUC 1-3. • Ms Peters’ proposes that, if RS160 is rezoned, the small area subject to HPL will be included in a record of title with an identified building platform situated outside of the HPL area, to ensure no residential activity occurs on the LUC 3 land.	• The NPS-UD contains clear direction about the residential rezoning of HPL. Residential rezoning of this land is to be avoided unless the exemptions are met (Clause 3.6(1)). • If the Panel’s decision is to residentially rezone RS160, the area of HPL should not be included in that rezoning.
774 Allanton-Waiholā Road 489 East Taieri-Allanton Road, Allanton	RS195	98%	• Rezoning can occur though either Clause 3.6(1) or potentially Clause 3.10.	• Clause 3.10 does not apply.
	RS200	82%	• Clause 3.6(1)(a): Questions accuracy of HCA and conclusion Dunedin has sufficient development capacity. ◦ Modelling relies on assumption of long-term gain in house prices. • Any doubts about the HCA assumptions and conclusions must be read in favour of the position that more land is required to give effect to the NPS-HPL.	• Refer to Mr Stocker’s evidence provided during the hearing⁴ addressing these matters
			• Clause 3.6(1)(b): Catchment does not equal ‘same locality and market’ • There is demand within Allanton.	• Development capacity “within the same locality and market” is defined as being in or close to a location where demand had been identified through a Housing Capacity Assessment in accordance with the NPS-UD. The DCC HCA uses catchments. • Significant capacity is available in Mosgiel as an alternative.
			• Clause 3.6(1)(c): There are limitations on using both RS195 and RS200 for primary production, including topography for use of machinery, proximity to SH1 and Allanton, inability to irrigate, gradient for winter crops and proximity of waterways including the Taieri River.	• There is no expert evidence on potential primary production uses or economic productivity in relation to the alleged limitations. • No cost benefit analysis undertaken.
			• Effect of rezoning RS195 and RS200 on HPL is negligible, given both sites are zoned LUC 3 (lowest class of LUC) and the volume of LUC1-3 soils on the Taieri Plain Rural zone.	• There is no exemption in the NPS-HPL to allow rezoning if the effects are “negligible”.
170 Riccarton Road West	RS212	100%	• Clause 3.6(1)(a): Questions accuracy of HCA and conclusion Dunedin has sufficient development capacity. ◦ Modelling relies on assumption of long-term gain in house prices.	• Refer to Mr Stocker’s evidence provided during the hearing⁴ addressing these matters

			Any doubts about the HCA assumptions and conclusions must be read in favour of the position that more land is required to give effect to the NPS-HPL.	
			Clause 3.6(1)(b): There are no other reasonably feasible options for providing capacity in Mosgiel.	Disagree. Mosgiel has significant excess capacity both through intensification options and new greenfield land zoned through appeals.
			Site is close to Mosgiel, where there is demand for larger sections (ref Housing We'd Choose)	Significant new greenfield land zoned in Mosgiel.
			- Clause 3.6(1)(c): There are limitations on using the site for productive purposes. - Affidavit for the Ayr Street structure plan rezoning would have taken a cost-benefit analysis of the loss of HPL, same analysis would be applicable to RS212. Clause 3.6(1)(c) is satisfied.	Ayr Street – site-specific evidence was provided that soils were not high class. The NPS-HPL was not in effect at that time.