

Under the Resource Management Act 1981 (**RMA**)

In the matter of Hearing 4 in relation to submissions on Variation 2 to the
Dunedin City Council 2GP

**Submission of Counsel for Dunedin City Council relating to NDMA overlay -
Jurisdiction**

12 August 2022

Dunedin City Council's solicitors:

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May it please the Commissioners:

- 1 This legal submission address the jurisdiction the Hearing Panel has to add new development mapped areas ("NDMA's") to greenfield sites that have been rezoned as part of resolving appeals on the 2GP.
- 2 It is submitted that the Hearing Panel has jurisdiction and is able to consider and add NDMA's as overlays with the associated provisions to sites that have been zoned for greenfield residential use at the date of the Panel's decision. This was directly sought by DCC in it's submission. Issues of natural justice are directly addressed in the RMA by the statutory procedure that allows further submissions, and for Submitters to participate in this hearing. There are also a number of submissions that seek the complete removal of NDMA's, which Submitters have asked to be considered too. Those Submitters interest in this issue is addressed by their primary submission on this issue if they have not lodged a further submission.
- 3 Overall adding NDMA's to rezoned sites was fairly raised by DCC and is within the scope of the Panel's power to decide on. The Panel is fully entitled to consider the merits of that submission and the evidence of various parties to decide whether extending NDMA's is appropriate and should be done.

Reasons

- 4 Jurisdiction to consider submissions on Variation 2 arises under Schedule 1, RMA. Clause 6, Schedule 1, enables the local authority to make a submission. Provided a submission is "on" Variation 2, then the Hearing Panel's function is to consider the merits of that submission.
- 5 The jurisdiction to consider submissions is set out in clause 10, Schedule 1 RMA. This requires a decision on the provisions and matters raised in submissions.
- 6 Provided the matter is raised in a submission, and is "on" Variation 2, it is for the Hearing Panel to consider and make a decision on the submission point.

Natural justice

- 7 The RMA addresses the procedure that must be followed expressly in Schedule 1. This Schedule codifies all the procedural requirements that must be followed. There is no discretion, or other "implicit" procedural obligations.

- 8 Once submissions are made, those are publicly notified and further submissions are invited. Clause 8, Schedule 1 enables any person to make a further submission either in support or opposition to a primary submission. This procedure entitles the public to participate if they choose to do so. This process addresses the principles of natural justice in the context of a public plan making process such as Variation 2. This process has been followed here with various further submissions having been made. The ORC chose to oppose the submission point made by DCC in a further submission.
- 9 It is also noteworthy that there are a number of other Submitters who seek the complete removal of NDMA's. Some of those Submitters may have not opposed the DCC submission because their interests are advanced by seeking the complete removal of the NDMA provisions in their primary submission anyway. This side of the debate is fully advocated by other Submitters.
- 10 It is therefore submitted that the DCC submission needs to be considered and a decision made by the Panel on the merits of it.

The DCC submission on NDMA's

- 11 The DCC submission seeks extension of the NDMA's to sites rezoned as part of resolution of appeals. The text of the submission provides:

Change D1 – NDMA general changes

Accept the change with amendments outlined.

Consider applying the new development mapped area (NDMA) and associated provisions to any greenfield residential rezoning sites added to the 2GP since notification of Variation 2 through the resolution of rezoning appeals. For clarity, this may include any sites that are subject to appeal seeking rezoning to any residential zone in Section 15 of the Plan. These are identified on the 2GP planning map.

- 12 This submission seeks a decision that "applies" the NDMA mapped area and provisions to any greenfield residential rezoning sites that have been added to the 2GP since notification of Variation 2.
- 13 The meaning of this is to expressly seek application of the NDMA provisions to these greenfield sites. While sites were not specifically identified by name or address, the submission made it clear the category of sites that it applied to. This is the sites approved by the Environment Court through the statutory process. This is a small number of identifiable sites. These have been identified by the section 42A report writer in his report.

- 14 It is submitted that it is objectively clear to the public and the Panel which sites the submission asks to have made subject to the NDMA overlay and provisions.
- 15 In terms of jurisdiction, it is submitted that it is appropriate and valid to consider the merits of this submission point by DCC, and the Hearing Panel should do so.

Future residential zoned properties

- 16 It is recorded that from a legal point of view the Panel should not decide that the overlay is to also apply to properties that may be added to residential zones in the future by resolution of Environment Court appeals. To do that is considered speculative, and is submitted to be beyond the power of the Hearing Panel. Provided the Panel is able to identify which sites the NDMA is to apply to at the date of its decision, then it is proper to consider the merits of doing so.

Dated this 12th day of August 2022

A handwritten signature in black ink, appearing to read 'm. garbett'.

Michael Garbett
Counsel for the Dunedin City Council