

**BEFORE THE COMMISSIONERS APPOINTED BY  
THE DUNEDIN CITY COUNCIL**

**IN THE MATTER**

Of a submission pursuant to  
clause 5, Schedule 1 of the  
Resource Management Act  
1991 (the Act)

**AND**

Variation 2 to the Dunedin  
City Council Second  
Generation District Plan  
(Variation 2)

**BETWEEN**

Lex Anderson  
Original Submission 36  
Further Submission 150

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**EVIDENCE OF ALLAN CUBITT  
ON BEHALF OF LEX ANDERSON**

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## **INTRODUCTION**

1. My name is Peter Allan Cubitt. I hold Bachelor of Arts and Law Degrees from the University of Otago. I am an affiliate member of the New Zealand Planning Institute and have been involved in resource management matters since 1989. During this time, I have been involved in many aspects of planning and resource management throughout the South Island. I was the principal author of three District Plans prepared under the Resource Management Act, being the Southland, Clutha and Central Otago District Plans. I have also participated in the review of numerous District and Regional Plans throughout the South Island for a large range of private clients.
2. I am the Principal of Cubitt Consulting Limited that practices as planning and resource management consultants throughout the South Island, providing advice to a range of local authorities, corporate and private clients. This involves both resource consent processing (subdivision and land use) and District Plan review work. More importantly for this hearing, a significant portion of my work involves the Dunedin City Council District Plan.
3. I am also a Certified Hearings Commissioner having completed the RMA: Making Good Decisions programme. I have conducted numerous hearings on resource consent applications, designations and plan changes for the Dunedin City Council, the Southland District Council, the Timaru District Council, the Waitaki District Council, the Hurunui District Council, the Grey District Council, the West Coast Regional Council, the Otago Regional Council, and the Southland Regional Council.
4. I was also the Chair of Environment Southland's Regional Policy Statement Hearing Panel and the Chair of the Hurunui District Council Hearing Panel on the proposed Hurunui District Plan.
5. While acknowledging this is not an Environment Court hearing, I have prepared this evidence in accordance with, and agree to comply with the Environment Court's Code of Conduct for Expert Witnesses. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions I express. Unless I state otherwise, this evidence is within the scope of my expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

## **SCOPE OF MY EVIDENCE**

6. This evidence addresses the submission and further submission of Mr Lex Anderson in relation to the rezoning of his property at 761 Aramoana Road, Te Ngaru. Mr Andersons submission seeks the rezoning of part of this property from 'Coastal Rural' to 'Township and Settlement zone' to align with the adjoining properties in the Te Ngaru settlement, which are zoned 'Township and Settlement zone'.

7. My evidence is reasonably brief as I have attached the current subdivision proposal for the site which addresses many of the issues raised in the s42A report.

## **THE SITE**

8. The subject property is located at 761 Aramoana Road in the small coastal township of Te Ngaru. Te Ngaru is a small, well-established settlement located approximately 3 kilometres before Aramoana, on Aramoana Road. The settlement comprises a strip of approximately 30 residential size allotments between the road and the cliff that rises directly up behind the settlement. The vast majority of independent titles at the settlement have been built on, with around 27 dwellings making up the settlement.
9. The site has a total area of 7.3641 hectares and is legally described as Lot 1 DP 17304 and Lot 1 DP 386904 (CFR 376663). A dwelling is located within Lot 1 DP 17304 (which has an area of 1683m<sup>2</sup>) and this part of the property is zoned 'Township and Settlement zone'. The remainder of property is zoned 'Coastal Rural' although the rezoning submission only relates to the area of land that fronts the road (around 3600m<sup>2</sup>) in the south west corner. This is shown as Lots 1 to 3 on the scheme plan attached as Appendix 1 to the subdivision application. This land is relatively flat, with a few low dunes.
10. The balance of the property sits in behind the Te Ngaru township and comprises the steep, bush clad slope that forms the backdrop to the township. A strip of pasture runs along the top of the cliff. A lower lying flat area of ground is located at the north eastern corner of the title. The 'Township and Settlement' zone is not sought for this part of the land. The property is also affected by an Archaeological Alert layer; Hazard 3 (coastal) Overlay Zone; and a Wāhi Tupuna Mapped Area. The Rural part of the land is also now affected by an SNL.

## **BACKGROUND**

11. In 2011, Mr Anderson sought a subdivision consent for a four-lot development that would have created three residential sites on the land subject to this rezoning proposal. Despite being well developed, Te Ngaru was zoned 'Rural' at that time under the operative District Plan 2006. As a consequence, the proposed subdivision was non-complying and initially refused by Council, mainly due concerns around sea level rise. However, a reduced proposal was negotiated with Council and was consented through the Consent Order process in the Environment Court on 8 May 2013. Due to a number of circumstances, mainly involving family matters, the applicant did not give effect to the consent order in time.
12. The Proposed Dunedin City District Plan (2GP) rezoned the Te Ngaru township 'Township and Settlement' but rather strangely, the undeveloped Aramoana Road frontage of the applicant's

property was not included in that zoning despite being at the same contour and Council having already agreed to a limited amount of development on the property.

13. Mr Anderson considered this inequitable given the land is not useable under the current Rural Coastal zoning. As a consequence, he reactivated the subdivision proposal for the site, as attached to this evidence.
14. After lodging this application, consultation was undertaken with the planning staff in relation to the process to be followed. A senior Council policy planner at the time, Ms Jane MacLeod, was at this meeting and she suggested the best approach was to lodge a submission on Variation 2 seeking the proposed zone change. In her view, there was a very high likelihood the property would be rezoned given the environmental context, and the subdivision proposal could then progress on a non-notified basis.
15. This advice was followed, culminating in our attendance at this hearing today.

#### **THE S42A REPORT**

16. The primary s42Report author, Mr Bede Morrissey, recommends that the site not be rezoned as requested although he makes a number of useful recommendations, which are accepted by the applicant, if the Commission is of a mind to accept the submission. I am a little unsure of the specific reason Mr Morrissey has recommended 'not to rezone', as he acknowledges the expert evidence is generally supportive.<sup>1</sup> It is accepted by the experts that landscape, biodiversity and transport effects are either not significant or can be addressed in a positive way.<sup>2</sup> The comments of DCC 3 Waters in relation to servicing, in particular wastewater management, have been made in isolation of the previous work done for the subdivision. These matters can be dealt on site, and can be designed to address the potential for sea level rise, storm surge and other potential hazards.
17. It would appear that Mr Morrissey's concern generally centres around hazard matters and the distance to services, which results some inconsistency with Policy 2.6.2.1.
18. This position is at odds with the nature of the surrounding development. What makes this site any different to the rest of Te Ngaru? The answer to that is nothing. The issues identified in the s42A report have previously been dealt with in the subdivision applications and the hazard and servicing issues can be addressed through conditions. This will lead to any development of this site being more resilient to the natural hazards that affect this area than any of the existing sites.

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<sup>1</sup> S42A report, 6<sup>th</sup> paragraph, page 319.

<sup>2</sup> Ibid, pages 318 and 319.

19. In relation to the broader issue of sea level rise, this was addressed by a Marine and Coastal Engineer, Mr Maurice Davis, at the 2011 hearing. His evidence (attached as Appendix 4 to the original subdivision application) discusses the physical and hydrological features of Otago Harbour and the effects they have on conditions at the site, along with sea level rise at Te Ngaru. I acknowledge that this report is possibly now outdated, however the reality is that this site is no more vulnerable to sea level rise than the surrounding properties and any future development will be designed to better cope with these issues than the existing development within the township.
20. Of note in relation to this issue is that under the Consent Memorandum for the subdivision, Mr Anderson agreed to enter into a deed acknowledging the hazard issues at the site and not to complain about hazards or sue the DCC because of them. Mr Anderson has agreed to again offer this during the current consent process.
21. Turning to Policy 2.6.2.1, Mr Morrissey was concerned with consistency in relation to subsections c, d.viii and dxi. These provisions are as follows:

***Policy 2.6.2.1***

*Identify areas for new residential zoning based on the following criteria:*

...

*(c) the area is suitable for residential development by having all or a majority of the following characteristics:*

- i. a topography that is not too steep;*
- ii. being close to the main urban area or townships that have a shortage of capacity;*
- iii. currently serviced, or likely to be easily serviced, by frequent public transport services;*
- iv. close to centres; and*
- v. close to other existing community facilities such as schools, public green space and recreational facilities, health services, and libraries or other community centres;*

*(d) considering the zoning, rules, and potential level of development provided for, the zoning is the most appropriate in terms of the objectives of the Plan, in particular:*

...

- (viii) the potential risk from natural hazards, and from the potential effects of climate change on natural hazards, is no more than low, in the short to long term ([Objective 11.2.1](#));*
- (xi) Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations ([Objective 2.2.4](#)).*

22. On the face of it, I can understand Mr Morrissey's concern in regard to these provisions. However, it would appear to me that this policy is not concerned with what is proposed here. This is a small 'infill' rezoning within an existing settlement. The concern with these provisions would also apply to the existing settlement but the operative word is 'existing'. While there might be a degree of inconsistency here, the policy is not particularly relevant to a proposal of this nature. It is aimed at large, greenfield developments as opposed to a small infill development within an already zoned residential area.

## **THE SUBMITTERS**

23. Mr Morrissey's report summarises the submissions received on the proposal. The vast majority of them actually support the rezoning as requested. The initial submission wasn't particularly clear on which part of the property the zone change was sought but this was communicated to the submitters and a further submission from Mr Anderson was lodged to clarify this.
24. The submission of Mr Abernethy requests the zoning exclude hillside areas and is a safe distance from rockfall. The zoning request does not include the hillside part of the property and Mr Anderson would in fact like this area to be taken over by Council as reserve. The rockfall issue has been assessed previously and can be addressed by conditions of the subdivision consent.
25. The submissions of Stephen Atfield (786 Aramoana Road), Claire Carey and Ron Fogel oppose the rezoning. No reasons appear to be given for this. Mr Atfield owns 786 Aramoana Road (according to the DCC rates map) which is some from this site (10 houses away) so this proposal will have no direct effect on him.
26. I do not know what property Mr Fogel owns but Ms Carey owns 753 Aramoana Road, so is the neighbour to the south west. Ms Carey is in fact the only neighbour. She is likely to be concerned with amenity effects but I note that her house is some 15m from the boundary of this site and that there is existing planting on the boundary of her property. Hence, those effects are well within her control and are not enough to warrant this rezoning to be declined.

## **CONCLUSION**

27. It is against the principle of natural justice that Mr Anderson's property is the only property not zoned 'Township and Settlement' within Te Ngaru, which is a well-developed and long-standing settlement. His property is not suitable for use as a rural property. No adverse environmental effects will result from the proposed residential zoning (which is acknowledged by the s42A report) while the effects of natural hazards on the property can be managed through conditions. Once developed, the site will be more resilient to these effects than any other property in the township.

28. The Act is an enabling statute. Its sole purpose (section 5) is to enable people and communities to “*provide for their social, economic and cultural wellbeing and for their health and safety*” without compromising the “*life-supporting capacity of air, water, soil and ecosystems*” and appropriately avoiding, remedying or mitigating any adverse effects. The Act’s purpose is achieved here so in my opinion the submission should be accepted.

A handwritten signature in black ink, appearing to read 'Allan Cubitt', is centered within a light gray rectangular box.

**Allan Cubitt**

5 August 2022