

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

|                      |                                                                                                                                  |
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| <b>Under</b>         | The Resource Management Act 1991 (the <b>Act</b> or <b>RMA</b> )                                                                 |
| <b>IN THE MATTER</b> | of proposed Variation 2<br>(Additional Housing Capacity)<br>to the Second-Generation<br>Dunedin District Plan ( <b>2GP</b> )     |
| <b>BY</b>            | <b>Fletcher Glass/ FBG<br/>Developments Limited</b><br><br><b>Submitter (OS123.001,<br/>OS123.002, OS123.003,<br/>OS123.004)</b> |

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**OPENING SUBMISSIONS OF COUNSEL ON BEHALF OF FLETCHER  
GLASS/ FBG DEVELOPMENTS LIMITED  
DATED 2 September 2022**

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## May it please the Panel

### Introduction

1. Fletcher Glass/FBG Developments Limited (**FBG**) seeks to rezone its land at the former Palmers Quarry on North Road. The site forms a peninsula of primarily Rural Hill Slopes zoning surrounded on three sides by residential zoning. It has been heavily modified by its quarry use which is reflected in the variety of zones which apply to the site under the Second-Generation Dunedin District Plan (**2GP**) including General Residential 1 (**GR1**), General Residential 2 (**GR2**), Rural Residential 2 (**RR2**) and Rural Hill Slopes (**Rural**).
2. No change is sought to the GR2 zoned base of the quarry.
3. FBG seeks to rezone:
  - (a) Area A / RS206a –the residentially zoned land facing Watts Road from GR1 to GR2.
  - (b) Area B / RS206a –the worked ‘face’ of the former quarry from Rural to Recreation. This area terraced and already contains walking tracks and replanting.
  - (c) Area C / RS206a –a ridge with areas of relatively easy contours to the east of the base of the former quarry from Rural to GR2 and apply a structure plan to manage constraints.
  - (d) Area D / RS206 – a relatively flat overgrown orchard on the upper plateau behind (north-west) of the former quarry area from RR2 to Large Lot Residential 1 (**LL1**) with a structure plan to maintain significant natural landscape (**SNL**) values.
  - (e) Area E / RS77 – a bush gully on the south-west side of the site from Rural to GR2 with a structure plan to manage effects.
4. Area D is also the subject of a 2GP appeal<sup>1</sup> which has been put on hold to allow this process under Variation 2 to proceed.

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<sup>1</sup> ENV-2018-CHC-222, seeking rezoning of approx. 2.9 Ha to Large Lot Res 1.  
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5. Variation 2 acknowledges that Dunedin is experiencing a housing shortfall and seeks to enable additional housing capacity through, among other changes, rezoning specific sites.<sup>2</sup>
6. Rezoning the FBG land will enable a variety of housing in a well-functioning urban environment because the site:
  - (a) is near a primary and intermediate school, a shopping centre, small industrial areas, and Ross Home, all of which are associated with employment opportunities.
  - (b) is in North East Valley, an area near the University and Polytechnic in demand for students and non-students alike.
  - (c) has good public transport access and active transport options.
  - (d) will enable up to 250+ houses to be constructed, along with a recreation area and areas of native bush regeneration.
  - (e) can be serviced for 3 waters and transport infrastructure<sup>3</sup>.
7. The information in the evidence provided by FBG shows that development is feasible, infrastructure ready and likely to be developed.
8. FBG proposes to rezone area B recreation to protect the walking tracks and other amenity values identified by the expert evidence and submitters feedback. An ownership model for Area B has not yet been determined but if not vested as reserve, other means would enable public access.
9. The master plan shows that rezoning will enhance the landscape and amenity aspects of this unusual site while adding substantial development capacity consistent with the aim of Variation 2.

### **Approach to assessing plan changes/variations**

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<sup>2</sup> Section 32 Report to Variation 2 at paragraph 9.

<sup>3</sup> Statement of Evidence of Kurt Bowen at [29], [35] and [43].  
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1. *Long Bay-Okura Great Park Society Inc v North Shore City Council*<sup>4</sup>

explains the proper approach to plan changes:

**A. General Requirements**

1. A district plan (change) should be designed to accord with<sup>5</sup>, and assist the territorial authority to carry out its functions<sup>6</sup> so as to achieve, the purpose of the Act.<sup>7</sup>

2. When preparing its district plan (change) the territorial authority must give effect to any national policy statement ....<sup>8</sup>

3. When preparing its district plan (change) the territorial authority shall:

(a) have regard to proposed regional policy statement;<sup>9</sup>

(b) [give effect to] to any operative regional policy statement.<sup>10</sup>

...

2. The formal requirement that a district plan (change) must<sup>11</sup> also state its objectives, policies and the rules (if any) and may<sup>12</sup> state other matters.

...

**C. Policies and methods (including rules) [the section 32 test for policies and rules]**

9. The policies are to implement the objectives, and the rules (if any) are to implement the policies;<sup>13</sup>

10. Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives<sup>14</sup> of the district plan taking into account:

(a) the benefits and costs of the proposed policies and methods (including rules); and

(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.<sup>15</sup>

**D. Rules**

11. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.<sup>16</sup>

...

**Plan change must give effect to NPSUD**

3. Providing at least sufficient development capacity has been identified as a matter of national significance through the NPSUD. Dunedin City Council is subject to the NPSUD as it as urban environments within its district. Dunedin is also identified as a Tier 2 local authority

<sup>4</sup> BC200869030, at [34].

<sup>5</sup> Resource Management Act 1991 (RMA), ss 74(1).

<sup>6</sup> RMA, s 31.

<sup>7</sup> RMA, ss 72 and 74(1).

<sup>8</sup> RMA, ss 75(3)(a) and (b).

<sup>9</sup> RMA, s 74(2).

<sup>10</sup> RMA, s 75(3).

<sup>11</sup> RMA, s 75(1).

<sup>12</sup> RMA, s 75(2).

<sup>13</sup> RMA, ss 75(1)(b) and (c).

<sup>14</sup> RMA, ss 32(1) and (2).

<sup>15</sup> RMA, s 32(2)(c).

<sup>16</sup> RMA, s 76(3).

due to the size of the urban environments and the predicted demand for housing and business land<sup>17</sup>.

4. In providing for housing demand the 2GP must give effect to the NPSUD.<sup>18</sup> The first objective of the NPSUD is:  

New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.
5. The introduction to chapter 12 of the 2GP mirrors this first objective.
6. The NPS requires all territorial authorities throughout the country to monitor and plan for urban growth. The faster growing an urban area is, the more directive the requirements.
7. Variation 2 is effectively a response to the housing capacity assessment<sup>19</sup> that identified insufficient capacity available in the city. The NPSUD has also since introduced the need to provide for a 'competitiveness margin' over and above the capacity required to meet identified demand<sup>20</sup>.
8. The strategic directions section of the Plan outlines the objectives and policies that guide when and where urban expansion should occur, in what form, and give effect to the NPS-UD. The Chapter 12 provisions link back to these strategic priorities<sup>21</sup>. The strategic directions are based on the Dunedin Spatial Plan's goal of being a compact city with resilient townships based on sustainably managed urban expansion.<sup>22</sup>
9. It is submitted that the policy framework will tend to favour development within the existing urban fabric and/or located near transport networks and other supporting infrastructure. The proposed site clearly satisfies those criteria.

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<sup>17</sup> NPSUD Appendix Table 2.

<sup>18</sup> RMA, s 75(3).

<sup>19</sup> Housing Capacity Assessment for Dunedin City, July 2021. Table 2.

<sup>20</sup> NPSUD at Clause 3.22. This requires an extra 20% over the short and medium term and 15% in the long term.

<sup>21</sup> 2GP at Objective 12.2.X and associated policies.

<sup>22</sup> 2GP at 12.1. Objective 2.2.4.



### Conclusions on the technical evidence

10. The section 42A report writer does not recommend rezoning for landscape and amenity reasons. Further noting concerns relating to uncertainty relating to:
  - (a) indigenous biodiversity effects
  - (b) geotechnical instability
  - (c) 3 waters and
  - (d) transport infrastructure.
11. In the Section 42A Report issues as to affordability are raised in relation transport and 3 waters. It is submitted that the viability of funding infrastructure requirements is a business decision for the developer not a basis to refrain from rezoning the site.

### *Landscape and Amenity*

12. The Council's position has been throughout that rezoning the site is inappropriate for landscape reasons and these are reiterated in the evidence of Luke McKinlay.
13. The expert evidence of Tony Milne responds to the issues raised by Mr McKinlay and concludes:
  - (a) Effects can be managed through controls on built form and future vegetation planting to maintain landscape values of the SNL through a structure plan in Area D.<sup>23</sup>
  - (b) Given the consented environment in Area A, the existing GR2 zoning on the quarry floor and the policy directive of the NPSUD a higher density of development is appropriate.<sup>24</sup>
  - (c) The effects associated with area B are mitigated by the change proposing a recreation zone over this area.<sup>25</sup>

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<sup>23</sup> Statement of Evidence of Tony Milne at [32] and [44].

<sup>24</sup> Statement of Evidence of Tony Milne at [35]-[38].

<sup>25</sup> Statement of Evidence of Tony Milne at [39]-[40].

- (d) Area C is sandwiched between existing development and future development on the quarry floor resulting in a character of infill development where no net loss of green belt is anticipated.<sup>26</sup>
  - (e) The rezoning proposed in Area E does have the potential to generate effects on landscape attributes, but these effects can also be managed through a structure plan.
14. Mr Milne concludes that the potential slight loss of overall rural character and the amenity it affords, accords with the existing and anticipated development patterns in the area.
  15. It is submitted that this slight loss cannot sensibly outweigh the benefits accruing to rezoning the site as proposed, especially considering the development capacity that such a rezoning represents.

#### *Indigenous Biodiversity*

16. Council's biodiversity evidence concluded:
  - (a) A site visit was not able to be undertaken
  - (b) smaller areas of higher density zoning may be more appropriate for the site than those originally proposed by the submitter.
  - (c) Increased intensive residential development in North East Valley could result in potential clearing of mature indigenous trees or gorse that protects regenerating indigenous trees
17. To the extent that the Council's biodiversity evidence addressed the potential impacts of increase residential development in North East Valley it is submitted that its conclusions are of limited relevance to the Panel's assessment about the appropriateness of rezoning this specific site.

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<sup>26</sup> Statement of Evidence of Tony Milne at [43].  
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18. It is submitted that the controls proposed to increase and manage vegetation for landscape reasons also manage the indigenous biodiversity concerns raised.

#### *Geotechnical Instability*

19. FBG say the instability identified is primarily located on area B which is now proposed to be zoned Recreation. FBG is open to a standard relating to geotechnical assessment at the time of subdivision to provide Council further comfort relating to stability.

#### *3 Waters*

20. DCC 3 waters have raised concerns about the availability and feasibility of stormwater and wastewater management should the site be rezoned.
21. Kurt Bowen in his evidence describes methods available and indicative costs associated with them and concludes that appropriate stormwater and wastewater management can occur.<sup>27</sup>
22. Water supply issues appear to have been misinterpreted in the context of the assessment table in Appendix D to the section 42A report which classifies these issues to be manageable.

#### *Transport*

23. DCC transport concludes that the site is well positioned for active and public transport. We note that these forms of transport are recognised in the NPSUD and the 2GP and to be encouraged. However, DCC Transport raise concerns about roading suitability.
24. Mr Bowen calculates the additional users of Watts Road, and the Watts Road/ North Road intersection associated with the rezone can proceed in a manner that ensures adverse effects on Watts Road are no more than minor.<sup>28</sup>

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<sup>27</sup> Statement of Kurt Bowen at [35] and [43].

<sup>28</sup> Statement of Kurt Bowen at [19].



25. In terms of the effects, on North Road and the Lindsay Creek Bridge Mr Bowen concludes that the changes to the bridge are likely to be required regardless of the rezone.<sup>29</sup> Mr Bowen goes on to conclude that DCC Transports concerns can be readily overcome through design process which are feasible due to the large scale of the rezoning proposed.<sup>30</sup>
26. For these reasons FBG says that rezoning its land as proposed is the most appropriate planning outcome because the site is:
- (a) effectively infill housing<sup>31</sup>
  - (b) generating significant development capacity
  - (c) well placed for public and active transport<sup>32</sup>
  - (d) adjacent to an urban centre with residential demand.
  - (e) in single ownership, making development easier, faster to co-ordinate and more likely to proceed.
  - (f) adding a substantial recreational area alongside indigenous biodiversity planting.
  - (g) the subject of a comprehensive plan with a mix of zoning to provide for a range of in-demand housing options.
  - (h) of a sufficient scale to overcome services constraints.

### **The 2GP's rezoning provisions**

10. The *Long Bay* approach requires the rezoning to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives<sup>33</sup> of the plan.

### ***SNLs in the 2GP***

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<sup>29</sup> Statement of Kurt Bowen at [22].

<sup>30</sup> Statement of Kurt Bowen at [29].

<sup>31</sup> Statement of Conrad Anderson at [20].

<sup>32</sup> Section 42A Report page 329.

<sup>33</sup> RMA, ss 32(1) and (2) and *Long Bay*.

11. Objective 2.4.4 protects Dunedin's significant natural landscapes. Policies 2.4.4.1 and 2.4.4.2 direct SNL values are to be identified, classified, and mapped. Policy 2.4.4.3 sets out how to protect SNL values through:
  - (a) requiring resource consent, and
  - (b) restricting the scale of development and ensuring that development design is appropriate.
12. Objective 10.2.5 protects SNLs from inappropriate development and ensures their values are maintained and enhanced. The policies supporting this objective do not address rezoning. Though, Policy 10.2.5.10 provides some guidance on where development is appropriate since subdivision is only allowed where these values are maintained or enhanced. Policies 10.2.5.11 to 10.2.5.13 require minimisation of adverse effects on landscape values.
13. It is submitted that development is appropriate where it maintains or enhances SNL values and that the 2GP contemplates management of SNL values in relation to development through design controls.
14. The 2GP applies landscape overlays to rural and rural residential zoning not to residential zoning. Yet similar protection can be achieved via a structure plan with site specific controls in residential zones.
15. Area D is within the Flagstaff – Mt Cargill SNL. The values to be protected are identified at A3.3.3.2 with A3.3.2.4 identifying design elements to manage the threat of inappropriate development within the SNL.
16. We understand the concern to be that if Area D is rezoned residential then its landscape values will not be maintained or enhanced since residential zoning is not subject to landscape overlays.
17. The landscape values of Area D are considered in depth by Mr Milne who concludes that given the size and scale of those values in this area they can be maintained through a structure plan that requires:
  - (a) Additional vegetation screening planting

- (b) Minimising accessways, and
- (c) Requiring built form to be dark and recessive.<sup>34</sup>

18. It is submitted that rezoning to LLR1 with a structure plan provides for maintenance of the identified SNL values. Such rezoning also has the benefit of aligning with other key objectives and policies of the plan.

#### *Key Objectives and Policies*

19. Objective 2.6.1 of the 2GP is that there is a range of housing choices in Dunedin that provides for the community's needs and supports social well-being.
20. Policy 2.6.2.1 implements this objective and is the key policy for assessing the appropriateness of land for rezoning. It recognises the criteria for identifying appropriate areas. The site possesses most of the criteria<sup>35</sup> which determine whether the area is suitable for development:
- (a) It is surrounded by areas of existing development and is effectively infill housing, consistent with a compact and accessible city.
  - (b) It is close to the Gardens shopping centre.
  - (c) A recreation area is proposed as part of the rezoning to provide for walking, cycling and a range of recreational opportunities.
  - (d) Necessary infrastructure can be provided without long-term cost burden on the council.
  - (e) The proposed roading design supports active and public transport choices.
  - (f) The proposal will enhance indigenous biodiversity on the site.
21. The evidence of Conrad Anderson discusses the policy context applying to the FBG land and concludes:

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<sup>34</sup> Statement of Evidence of Tony Milne at [23] – [32].

<sup>35</sup> Policy 2.6.2.1(c). Statement of Evidence of Conrad Anderson at [34] and [41].  
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- (a) There is little if any support for rural zoning of the site<sup>36</sup> and
  - (b) The residential zoning proposed better aligns with the with key 2GP objectives and the direction of the NPSUD.<sup>37</sup>
  - (c) The key matters raised by Council in relation to landscape are either outweighed by the NPSUD or can be addressed through the 2GP.
22. It is submitted that the proposal is well aligned with:
- (a) the key objectives and criteria of the 2GP,
  - (b) the purposes of Variation 2 including achieving “quick wins”, and
  - (c) the national direction which the variation seeks to implement.

#### **Matters Raised by Opposing Submitters/Further Submitters**

23. Concerns raised by opposing submitters reflect those which have been the focus of Council’s experts discussed above including effects on landscape, amenity, biodiversity, and infrastructure costs.
24. It is submitted proposal in its current form mitigates these concerns by:
- (a) Seeking to zone area B recreation instead of GR2
  - (b) applying a structure plan to Area E protecting biodiversity, and
  - (c) maintaining SNL values through a structure plan in area D.

#### **Can urban development capacity be realised with Rural Zoning?**

25. If the Panel accepts that the Rural Hill Slopes Zone portion of the site has some potential for urban development, then RHS zoning is inappropriate method to allow that potential to be realised. Put simply, under the 2GP policy settings for the RHS zone, any resource consent application would be a non-complying activity and would not stand realistic prospects for success.<sup>38</sup> Maintain the existing RHS

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<sup>36</sup> Statement of Conrad Anderson at [36].

<sup>37</sup> Statement of Conrad Anderson at [41].

<sup>38</sup> Evidence of Conrad Anderson at 36-41  
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zoning is therefore appropriate only if the Panel is satisfied that there is no possibility of any residential development on that part of the site being appropriate. Anything short of a “no development” finding requires some other zone method to be pursued.

### **Conclusion**

26. It is submitted that rezoning RS206a and RS77 is the most appropriate outcome because it is consistent with:
- (a) the territorial authority’s functions.
  - (b) The objective to provide a well-functioning urban environment, with sufficient development capacity to meet demand under the NPSUD.
  - (c) The location and characteristics of the site provides for housing capacity in a manner consistent with the strategic objectives of the 2GP.
  - (d) the policy direction of the POORPS 2019 and PORPS 2021.
27. All the issues raised by the s 42A report can be resolved and the benefits of rezoning outweigh the costs, with minimal risk.
28. FBG submits that the most appropriate outcome is rezoning the site as proposed.



**Phil Page/ R A Crawford**  
Counsel for Fletcher Glass

Dated: 2 September 2022