

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

Under	The Resource Management Act 1991 (the Act or RMA)
IN THE MATTER	of proposed Variation 2 (Additional Housing Capacity) to the Second-Generation Dunedin District Plan (2GP)
BY	GLADSTONE FAMILY TRUST
	Original Submitter 219.003

**OPENING SUBMISSIONS OF COUNSEL ON BEHALF OF GLADSTONE
FAMILY TRUST
DATED 2 September 2022**



**GALLAWAY COOK ALLAN LAWYERS
P J Page/ R A Crawford**

P O Box 143
Dunedin 9054
Ph: (03) 477 7312
Fax: (03) 477 5564

Introduction

1. Gladstone Family Trust (**Gladstone**) seeks to rezone approximately 66 hectares of its land at 100 Irwin Logan Drive, 21 Pinfold Place, 21,43,55,65,75,77,79,111 and 121 Chain Hills Road, from the edge of Mosgiel up onto the slopes of the Chain Hills. Under the Second-Generation Dunedin District Plan (**2GP**) these are zoned a combination of Rural Residential 1, Rural – Hill Slopes, and Low Density Residential.
2. Variation 2 acknowledges that Dunedin is experiencing a housing shortfall. This is particularly acute in Mosgiel where demand outstrips supply.
3. While the Gladstone land currently provides a rural backdrop to Mosgiel's urban edge it is not subject to a Significant or Outstanding Natural Landscape Overlay both of which are mechanisms within the 2GP to protect important landscape values.
4. Instead, the protection of these values in relation to the site sits within the Rural zone objectives particularly objective 16.2.3. The challenge with this approach is that if no loss of amenity values can occur then neither can any greenfield rezoning.
5. In our submission this is unacceptable outcome since stasis is not an option under the National Policy Statement on Urban Development 2020 (**NPS**) which acknowledges that amenity, in appropriate circumstances, must yield to providing for demand.¹
6. Rezoning the Gladstone land is such a circumstance since it enables a variety of housing in a well-functioning urban environment. The site:
 - (a) is adjacent to a centre zone with employment opportunities.
 - (b) will enable up to 138 houses to be constructed, along with a recreation area and areas of native bush regeneration.

¹ Policy 6(b) of the NPS UD 2020 makes clear that changes to the amenity values experienced by people as a consequence of a change to the urban form of an area are "not, of themselves, an adverse effect".

- (c) Can be serviced for 3 waters² and transport³ and
 - (d) Increases connectivity of the roading network.
7. The information in the evidence provided by Gladstone shows that development is feasible, infrastructure ready and likely to be developed.
 8. Generally, the landscape experts agree it is appropriate to rezone the lower slopes (areas A, B and N) to residential and area M to Large Lot Residential 2 (together **lower slopes**). In our submission, rezoning this part of the Gladstone land is clearly the most appropriate option to achieve the objectives and policies of the 2GP.
 9. We acknowledge the shared concerns of the landscape architects in relation to landscape effects on the upper slopes but submit that the policy direction is clear that these concerns ought not outweigh the clear benefits of rezoning the balance of the Gladstone Land.

Approach to assessing plan changes/variations

10. Long Bay-Okura Great Park Society Inc v North Shore City Council⁴ explains the proper approach to plan changes:

A. General Requirements

1. A district plan (change) should be designed to accord with⁵, and assist the territorial authority to carry out its functions⁶ so as to achieve, the purpose of the Act.⁷
2. When preparing its district plan (change) the territorial authority must give effect to any national policy statement⁸
3. When preparing its district plan (change) the territorial authority shall:
 - (a) have regard to proposed regional policy statement;⁹
 - (b) [give effect to] to any operative regional policy statement.¹⁰

...

² Statement of Evidence of Melanie Stevenson, Appendix 1 at 6.0 and Appendix 2 at 6.0.

³ Statement of Evidence of Grant Fisher Appendix 1 at 76.

⁴ BC200869030, at [34].

⁵ Resource Management Act 1991 (RMA), ss 74(1).

⁶ RMA, s 31.

⁷ RMA, ss 72 and 74(1).

⁸ RMA, ss 75(3)(a) and (b).

⁹ RMA, s 74(2).

¹⁰ RMA, s 75(3).

The formal requirement that a district plan (change) must¹¹ also state its objectives, policies and the rules (if any) and may¹² 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;¹³

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 objectives¹⁴ 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.¹⁵

D. Rules

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

...

11. The High Court in *Gisborne District Council v Eldamos Investments Ltd*¹⁷ concluded it was not open to local authorities to advance plan changes or variations which are not the optimum planning solution for reasons outside their statutory function.¹⁸
12. Despite changes to the RMA since *Eldamos* it is submitted that the observations are still good law and are particularly relevant to Objective 2.2.4 of the 2GP discussed below.

Plan change must give effect to NPS

1. Providing sufficient development capacity has been identified as a matter of national significance through the NPS. Dunedin City Council is subject to the NPS as it as urban environments within its district. Dunedin is also identified as a Tier 2 local authority due to the size of the urban environments and the predicted demand for housing and business land¹⁹.

¹¹ RMA, s 75(1).

¹² RMA, s 75(2).

¹³ RMA, ss 75(1)(b) and (c).

¹⁴ RMA, ss 32(1) and (2).

¹⁵ RMA, s 32(2)(c).

¹⁶ RMA, s 76(3).

¹⁷ HC Gisborne CIV-2005-485-1241, 26 October 2005 2005 WL 3074161

¹⁸ At [35]

¹⁹ NPS Appendix Table 2.

2. In providing for housing demand the 2GP must give effect to the NPS.²⁰ The first objective of the NPS 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.

3. The introduction to chapter 12 of the 2GP mirrors this first objective.
4. 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.
5. Variation 2 is effectively a response to the housing capacity assessment²¹ that identified a lack of capacity available in the city. The variation proposes to enable higher density of housing and add new 'greenfield' development to give effect to the NPS.²²
6. The NPS has also since introduced the need to provide for a 'competitiveness margin' over and above the capacity required to meet identified demand²³.
7. At the time it was notified, Variation 2 anticipated additional housing capacity would also be provided through the resolution of appeals on the 2GP. We are now nearing the end of that phase and it is unclear whether that capacity has been realised or whether a shortfall persists.
8. Either way, the NPS does not provide for a ceiling on development capacity rather it says Councils must take steps to enable that capacity and sets bottom lines which must be achieved²⁴. The NPS also recognises that opportunities to provide development capacity may arise in a way unanticipated by Councils, but it obliges them to be responsive to opportunities when they arise.²⁵

²⁰ RMA, s 75(3).

²¹ Housing Capacity Assessment for Dunedin City, July 2021. Table 2.

²² 2GP Variation 2 Additional Housing Capacity Section 32 Report at 3.

²³ NPS at Clause 3.22. This requires an extra 20% over the short and medium term and 15% in the long term.

²⁴ NPS clause 3.6.

²⁵ NPS Policy 8.

9. In our submission, rezoning the Gladstone land is such an opportunity.
10. 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 must be read to give effect to the NPS-UD. The Chapter 12 provisions link back to these strategic priorities²⁶. 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.²⁷ A goal which we note predates both the NPS and 2GP.
11. It is submitted that it 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.

Housing demand in a "Compact City"

13. Objective 2 of the NPS directs decision-making to support competitive markets:

Planning decisions improve housing affordability by supporting competitive land and development markets.

14. Objective 3 of the NPS directs district plans to enable people to live in urban environments with high demand for housing:

Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:

- (a) *the area is in or near a centre zone or other area with many employment opportunities*
- (b) *the area is well-served by existing or planned public transport*
- (c) *there is high demand for housing or for business land in the area, relative to other areas within the urban environment.*

²⁶ 2GP at Objective 12.2.X and associated policies.

²⁷ 2GP at 12.1. Objective 2.2.4.

15. Objective 4 notes that amenity values, alongside the urban environments to which they relate must respond over time to the needs of their communities.
16. Conversely, Objective 2.2.4 of the 2GP has been applied to constrain urban expansion to existing boundaries without reference to demand or changing needs:

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.

17. While there is support in the NPS for accessibility and for providing development capacity in a way which takes that into account²⁸ there is no support for 'a compact form' which constrains supply in the NPS or in the Act.
18. Policy 2.6.2.1 introduces this the compact city objective to rezoning criteria relating to adequate housing supply:

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

...

vii. the elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected or enhanced. These include:

- 1. important green and other open spaces, including green breaks between coastal settlements;*
- 2. trees that make a significant contribution to the visual landscape and history of neighbourhoods;*
- 3. built heritage, including nationally recognised built heritage;*
- 4. important visual landscapes and vistas;*
- 5. the amenity and aesthetic coherence of different environments;*
and

²⁸ NPS, Policy 5
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6. *the compact and accessible form of Dunedin ([Objective 2.4.1](#));*

...

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).

19. Under the NPS, the Council's job is to meet demand. Limiting urban expansion by retaining a 'compact city' risks Council overstepping its lawful functions under the RMA by seeking to influence demand by controlling supply in a way inconsistent with the clear enabling direction in the NPS. Urban intensification is only one option. Policy 1 is clear that:

Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

(a) have or enable a variety of homes that:

(i) meet the needs, in terms of type, price, and location, of different households; and...

20. The Council must be satisfied that the supply of housing capacity must include a variety of options. That includes urban expansion as well as intensification. There is no single solution or location that will meet the DCC's obligations.
21. It is submitted that to achieve the objectives of the NPS, the "compact city" objective (2.2.4) and Policies 2.6.2.1.vii, and xi of the 2GP must be read in a way which recognises that changes necessary to achieve the objectives of the NPS may be significant and may detract from amenity values to provide for increased and varied housing density neither of which are of themselves an adverse effect.²⁹

²⁹ Policy 6
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Conclusions on the technical evidence

22. Variation 2 acknowledges that insufficient residential land was zoned in the 2GP to provide sufficient development capacity. Exacerbating this are limits on infrastructure which Council have identified as being of concern in relation to the proposal.
23. Rezoning is not recommended by the Section 42A Report writer because of uncertainties identified in relation to effects on 3 waters and transport infrastructure, and to adverse landscape effects.
24. In the report and in further submissions the areas of infrastructure concern primarily relate to land outside the lower slopes.
25. The transport and 3 waters evidence provided by Gladstone demonstrates that from an infrastructure point of view residential rezoning can be supported. The proposed structure plan shows indicative services layout and access, roading and other services and shows a method by which the infrastructure issues can be managed.
26. On the issue of landscape there is general agreement that residential zoning on the lower slopes is appropriate. Though Mike Moore considers that rezoning can be supported up to the 125 m contour give what development is already provided for on the adjacent spur.³⁰
27. Considering this evidence, rezoning the lower slopes as proposed by Gladstone is reasonably non-contentious.

Landscape effects and Rural Amenity Values of the Upper and mid Slopes

28. The Section 42A Report writer and Mr Moore agree the landscape values of the mid to upper slopes arise as a rural as a backdrop to Mosgiel.³¹ No policy requirement for a rural backdrop to Mosgiel has been identified by either landscape expert. This is exactly the issue that policy 6(b) of the NPS UD is directed at solving.

³⁰ Statement of Evidence of Mike Moore at paragraph 33.

³¹ Page 245

29. To the extent the policies of the 2GP seek to preserve landscapes and vistas for the amenity of Mosgiel residents, it is submitted that the higher order direction in policy 6(b) of the NPS must prevail.
30. Gladstone says that rezoning its land including the upper and mid slopes in the way proposed is the most appropriate planning outcome because the site is:
 - (a) adjacent to Mosgiel an urban centre with a shortage of capacity.
 - (b) in single ownership, making development easier, faster to co-ordinate and more likely to proceed.
 - (c) adding a substantial recreational area alongside indigenous biodiversity planting.
 - (d) the subject of a comprehensive plan with a mix of zoning to provide for a range of in-demand housing options.
 - (e) It has sufficient scale to overcome other services constraints.
31. Both the “compact city” objective and the 2GP strategic and rural policies protecting amenity must be read to give effect to the NPS. It is submitted that the Gladstone proposal achieves that.

The 2GP’s rezoning provisions

12. 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 objectives³² of the plan.

Key Objectives and Policies

13. 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.

³² RMA, ss 32(1) and (2) and *Long Bay*.
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14. 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. It is not realistic to expect all criteria to be met in every site and no hierarchy is set out in the criteria. What is required is a balancing exercise by the Panel.
15. The Gladstone land possesses most of the criteria³³ which determine whether the area is suitable for development:
 - (a) It is immediately adjacent to an area of existing development, consistent with a compact and accessible city.
 - (b) It is near to Mosgiel centre.
 - (c) A recreation area is proposed as part of the rezoning to provide for walking, cycling and a range of recreational opportunities.
 - (d) There are no ONLs, SNLs, or ASBVs overlays on the site.
 - (e) Necessary infrastructure can be provided without long-term cost burden on the council.
 - (f) The proposed roading design would improve the functionality of the roading network.
 - (g) The proposal will enhance indigenous biodiversity on the site.
16. The proposal is consistent with the key rezoning requirements that best align with the NPS.

Matters Raised by Opposing Submitters/Further Submitters

17. Most of the tens of submissions in opposition seek to retain the current zoning on all or part of the Gladstone Land. Opposing submitters raised several concerns about rezoning the Gladstone land including:
 - (a) Loss of lifestyle, semi-rural character, and visual amenity
 - (b) Transport effects in particular:

³³ Policy 2.6.2.1(c). Statement of Evidence of Emma Peters at 40-41.
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- (i) the effects of a link road between Irwin Logan Drive, and Chain Hills Road, and
 - (ii) Effects associated with increased traffic volumes
 - (c) Cost of upgrading stormwater and wastewater infrastructure
 - (d) Effects on property values
 - (e) Geotechnical stability and effects of earthworks
18. In the main, these issues mirror those traversed in the technical evidence and have already been addressed. Property values have not been discussed in expert evidence, however the effect on property values is submitted to be minimal given the mitigation proposed. Further rezoning may in some cases increase the value of the surrounding properties.
19. While we appreciate that the area, and its expansive outlook are part of what people value, it is submitted that this is exactly what makes it an ideal location for rezoning. A desirable, sunny, warm, accessible location close to Mosgiel. Further any Greenfields expansion generating development capacity, is likely to result in some loss of amenity to existing residents, but gains in amenity for new residents. It is submitted that this trade-off is acceptable under policy 6(b) of the NPS.

Can urban development capacity be realised with Rural Zoning?

20. 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. Subdivision and residential activity below the minimum sites size is to be “avoided”.³⁴ The

³⁴ Policies 16.2.1.X, 16.2.1.7.
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minimum site size is 25 Hectares.³⁵ The 2GP has slammed to door shut on undersized lots.

21. Maintaining the existing RHS 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. In the context of Variation 2, that means the LLR method in conjunction with RTZ and NDMA tools offer the best method to control bespoke development.

Conclusion

22. It is submitted that rezoning the areas in Phase 1 and applying an RTZ to the areas in Phase 2 is the most appropriate option 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 NPS.
 - (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.
23. All the issues raised by the s 42A report can be resolved and the benefits of rezoning outweigh the costs, with minimal risk.
24. Gladstone submits that the most appropriate outcome is rezoning the site the lower, middle, and upper slopes as proposed.



Phil Page/ R A Crawford
Counsel for Gladstone Family Trust
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³⁵ Rule 16.7.4.
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