

**Before a Panel Appointed by the
Dunedin City Council**

Under the Resource Management Act 1991 (**RMA**)

In the Matter of Hearing 4 of the Proposed Variation 2 (Additional
Housing Capacity) of the Second Generation Dunedin
District Plan – Appeals Version (**2GP**)

By **Gladstone Family Trust**

Response to Section 42A Addendum
on behalf of:

Gladstone Family Trust
(Submission 219 – Requested Site 153)

Dated 22nd November 2022

Background:

1. My name is Emma Rayner Peters. I hold a BA and LLB both from the University of Otago and a First Class Honours degree and MA with Distinction, both from the University of Canterbury. I have worked as a solicitor in the areas of commercial and environmental law. I have been the principal of Sweep Consultancy Limited since 2003 providing resource management advice predominantly in the Dunedin City, Clutha, Waitaki, Queenstown Lakes and Central Otago districts.
2. I have prepared this evidence based upon my investigations and knowledge of the submission, further submissions and Variation 2 of the Dunedin City Second Generation District Plan Appeals Version including Council's s32 report, s42A report including the addendum, evidence from Council staff, minutes issued by the Panel and the National Policy Statement for Highly Productive Land.
3. I acknowledge we are not before the Environment Court. However, I have read the Code of Conduct for Expert Witnesses within the Environment Court Consolidated Practice Note 2014 and I agree to comply with that Code. This evidence is within my area of expertise, except where I state that I am relying on the evidence of another person. To the best of my knowledge, I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed in this evidence.
4. At the request of the Variation 2 Hearing Panel (**Panel**), Dunedin City Council (**Council**) has prepared an addendum to its Section 42A Report (**Addendum**). The Addendum addresses the relevant considerations in the National Policy Statement for Highly Productive Land (**NPS-HPL**) for those sites zoned rural and classified as Land Use Capability (**LUC**) 1, 2 or 3 land, as set out in the table attached to Mr Morrissey's response to Minute 17.

Reservation of Position in Relation to Application of NPS-HPL to RS 153:

5. The submitter reserves their position in relation to whether, at law, the NPS-HPL applies to RS 153. Legal submissions have been submitted to the Panel on behalf of the submitter as to the applicability of the NPS-HPL to their submission. There remains disagreement between legal counsel, including the independent legal opinion provided by Simpson Grierson. The submitter remains of the opinion that the NPS-HPL does not apply to RS 153 for the reasons previously set out by legal Counsel.

6. From a planning perspective, I cannot identify whether the specific Variation 2 process was understood in the Simpson Grierson legal opinion understood, in particular that the sites RS 153 formed part of the original section 32 assessment. The Simpson Grierson opinion identifies a risk that a submitter can seek new sites to be included within Variation 2. The Panel's determination on scope confirmed that Variation 2 is limited to the sites specified within the section 32 Report (and was only extended to consequential submissions). There is no risk that additional sites could have been filed as a means to take advantage of the NPS-HPL exemptions – as those submissions would have been out of scope.

RS153 & HPL:

7. The LUC 3 land is located in two parts of RS 153 as shown in Figure 1 below (blue lines over grey shaded areas – the grey shaded areas being rural zoned).

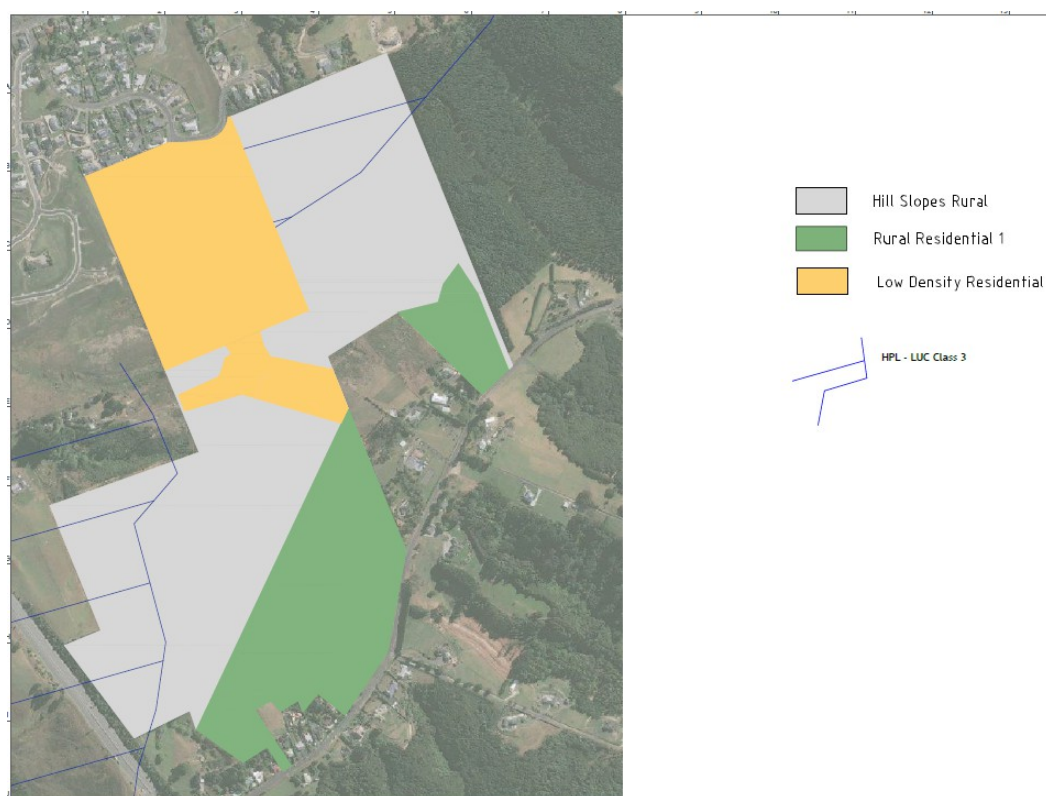


Figure 1: HPL in Relation to RS 153¹.

8. The land forming RS 153 is held in two records of title:
- 997821 – 121 Chain Hills Road; and
 - 1000315 – 19 Rosella Place.
9. The LUC 3 land in the upper portion of Figure 1 is held in record of title 997821.

¹ Full copy appended at Appendix 1.

The LUC 3 land in the lower portion of Figure 1 is held in record of title 1000315.

10. It is important to note that: (i) LUC 3 land on record of title 997821 comes to an end just over the boundary of 997821; and (ii) the LUC 3 land on record of title 1000315 is isolated from other LUC 3 class land, excepting two smaller existing lifestyle blocks, by the motorway (SH1).
11. The submitter seeks rezoning pursuant to a structure plan as provided in the submission and amended in the evidence filed for Hearing 4. However, in fact, the areas of LUC 3 land in relation to the proposed residential development (that is, where dwellings are to be located) are limited as shown in Figure 2 below.

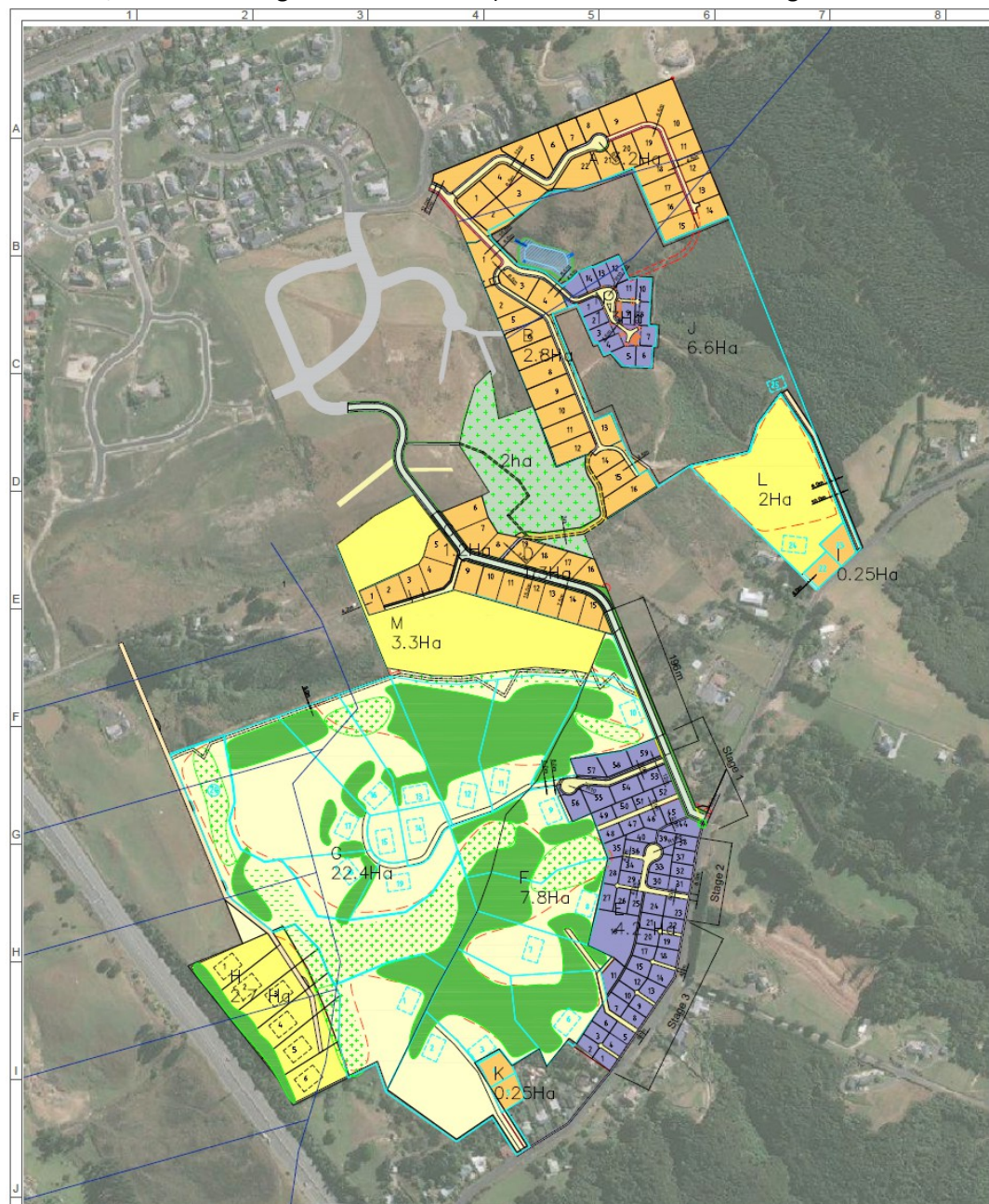


Figure 2: LUC 3 Land in Relation to Proposed Residential Development of RS 153².

12. The LUC 3 land shown in Figure 2 not used for residential activity (dwellings) will continue to be used for pastoral purposes or as part of the ecological restoration project which forms part of the proposed residential development or provision of public access (roading and pedestrian track). Using highly productive land for the purpose of: (i) protecting, maintaining, restoring, or enhancing indigenous biodiversity; and/or (ii) provision of public access; are both exceptions provided for in the NPS-HPL³.
13. Even if the NPS-HPL does apply to RS 153, it remains open to the Panel to rezone those parts of RS 153 without LUC 3 land. However, a pathway exists within the NPS-HPL to rezone those parts of RS 153 with LUC 3 land via Clause 3.6(1); there is also a potential pathway via clause 3.10 depending on the interpretation of 'use' and 'development'.

Clause 3.6(1):

14. Clause 3.6(1) allows the Panel, 'standing in the shoes of' Council, to rezone residential RS 153 if:
 - (a) The rezoning is required to provide sufficient development capacity to meet demand for housing to give effect to the National Policy Statement on Urban Development 2020 (**NPS-UD**); and
 - (b) There are **no other reasonably practicable and feasible options** for providing **at least sufficient development capacity** within the **same locality and market** while achieving a well-functioning urban environment; and
 - (c) The benefits of rezoning outweigh the costs associated with the loss of highly productive land for land-based primary production.
15. The construction of Clause 3.6(1) is that each of the sub-clauses (a), (b) and (c) are connected by an 'and', meaning each component must be met in order for this pathway to residential rezone to be met. The analysis below demonstrates that each component can be met.

Sub-Clause 3.6(1)(a):

16. Sub-clause 3.6(1)(a) states:

³ See sub-clause 3.9(2)(e) and (i).

- (a) the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020; and

17. The Housing Capacity Assessment including its updates (**HCA**) is a high level report addressing development capacity and demand at a City-wide level. The conclusions reached, both within the HCA and by Council evidence relying on the HCA, rests upon the validity of the assumptions used in the model.
18. Evidence was produced by Property Economics on behalf of the submitters for RS 154 and RS 175 which casts doubt on the validity of some of the assumptions on which the HCA relies.
19. In particular, the HCA utilises an assumption that long-term gain in house prices are required to generate the predicted capacity figures. Property Economics was unable to test the sensitivity assumptions to confirm the feasible capacity levels in the event house prices remain flat (or decline) due to Council refusing a LGOIMA request⁴. If the Panel adopts the 'no economic change' model as originally described within Table 11 (2019 HBA), then shortfalls in housing capacity arise.
20. Mr Stocker presented further evidence at the hearing but again did not provide the assumptions or sensitivity analysis to inform the Panel on how the model responds to the flat lining or decline of house prices.
21. Any doubt about the assumptions on which the HCA is based and the conclusions reached in the HCA must be read by the Panel in favour of the position that more land is required for Council to give effect to the National Policy Statement on Urban Development 2020.
22. I consider that Clause 3.6(1)(a) is satisfied.

Sub-Clause 3.6(1)(b):

23. Sub-clause 3.6(1)(b) states:
 - (b) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and
24. Sub-clause 3.6(1)(b) requires consideration of **development capacity within the same locality and market**. Subclause 3.6(1)(b) is informed by sub-clause 3.6(2) which states:

⁴ See Appendix 2 for copy of LGOIMA request and response.

- (2) In order to meet the requirements of subclause (1)(b), the territorial authority must consider a range of reasonably practicable options for providing the required development capacity, including:
- (a) greater intensification in existing urban areas; and
 - (b) rezoning of land that is not highly productive land as urban; and
 - (c) rezoning different highly productive land that has a relatively lower productive capacity.
25. In the Addendum, Ms Christmas appears to rely on the 'catchment' approach utilised in the HCA when interpreting 'same locality and market'. With respect, I do not agree that the two are necessarily the same.
26. Clause 3.6(3) says that development capacity is within the 'same locality and market' if it:
- (a) is in or close to a location where a demand for additional development capacity has been identified through a Housing and Business Assessment (or some equivalent document) in accordance with the National Policy Statement on Urban Development 2020; and
 - (b) is for a market for the types of dwelling or business land that is in demand (as determined by a Housing and Business Assessment in accordance with the National Policy Statement on Urban Development 2020).
27. The key wording is that the site is '**close to a location**' where demand for additional development capacity has been identified (e.g. Mosgiel). As noted above, if the Property Economics critique is correct, then a shortfall of housing has been identified with the HCA.
28. This is particularly so when considering the factors in Clause 3.6(3)(b) in the context of Mosgiel, where there is evidence demonstrating demand for more sections and housing within Mosgiel. In particular, demand for stand-alone housing⁵ on larger sections⁶.
29. The submitter informs that the immediate locale, being the existing low density residential zone to the south of Gladstone Road and in particular the Gladstone development and adjacent Heathfield development have created their own market whereby people seek to live in the Gladstone and Heathfield developments only. The submitter informs this is due to a number of factors including elevation, section size and amenity within these two developments as well as being above the Taieri Plain flooding risk.

⁵ See page 5, paragraph 4 of the Dunedin City Council Housing Framework Predictions *The Housing We'd Choose*.

⁶ See paragraph 27 of my evidence.

30. The intensification provision provided by the 2GP in relation to reducing the minimum site size to 400m² and allowing duplexes in General Residential 1 and Township and Settlement zones do not apply to the existing Gladstone and Heathfield developments as these are zoned low density residential.
31. Whilst the settlement of various 2GP appeals has resulted in the rezoning to General Residential 1 land located at: (i) 27 Inglis Street and 58 Ayers Street (part) – the Ayr Street Structure Plan Mapped Area; and (ii) 40 Soper Road and 20 & 21 Henderson Street – the Henderson Street Structure Plan Mapped Area; this rezoned land is of a different nature to RS 153 which, simply put, is situated 'on the flat' whilst RS 153 is located 'on the hills'. These are perceived as two different locales and markets by purchasers of both sections and homes.
32. The 2GP appeals resulting in the South-west Mosgiel Residential Transitional Overlay Zone cannot be taken into account at this stage with respect to any capacity assessments as this land is technically still zoned Taieri Plain Rural and requires an additional process to be completed prior to releasing to General Residential 1.
33. RS 153, in conjunction with RS 204 represent the only sites available to the Panel/Council for rezoning which are 'reasonably practicable and feasible options' to provide sufficient capacity to meet the evidenced demand for housing on the hills out of harm's way from flooding on the Taieri Plain.
34. Not all of the LUC 3 land within RS 153 will be used for residential activity (dwellings) with some continuing to be used for pastoral purposes and the balance being used for ecological restoration and public access.
35. I consider that Clause 3.6(1)(b) is satisfied.

Sub-Clause 3.6(1)(c):

36. Sub-clause 3.6(1)(c) states:
- (c) the environmental, social, cultural and economic benefits of rezoning 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.
37. 'Land-based primary production' is defined in the NPS-HPL as meaning: *"... production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land."*

38. Evidence has previously been provided to the Panel regarding the history of land use of RS 153 as well as the current use of RS 153 for pastoral purposes and limitations for using this site for land based primary production including pastoral purposes.
39. There are rights to establish residential activity on each of records of title 997821 (121 Chain Hills Road) and 1000315 (19 Rosella Place) pursuant to the 2GP⁷ and in the case of 1000315 via the landowner exercising rights pursuant to LUC-2021-265.
40. Evidence has previously been provided to the Panel demonstrating that there are severe limitations to the use of records of title 997821 and 1000315⁸ for rural productive purposes. Furthermore, the area on each record of title to be used for residential development is less than 4 hectares – 4 hectares being the assumption used in the cost benefit analysis conducted previously for other Variation 2 residential rezone sites⁹.
41. In effect, any LUC 3 land contained in records of title 997821 and 1000315 have, in fact, already been 'lost' to land-based primary production and likely, long-term, will be used as 'rural-residential / lifestyle block' properties if residential rezoning does not go ahead. The use of RS 153 for anything other than grazing a few sheep or ponies is fanciful due to the limitations of RS 153 for more intensive land based primary production.
42. The environmental, social, cultural and economic benefits of rezoning residential RS 153 outweigh the the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production precisely because long-term use of the sites for land-based primary production has already been lost.
43. I consider that Clause 3.6(1)(c) is satisfied.

Additional Comments:

44. On behalf of the submitter it is noted that:
- RS 153 is very well suited to being rezoned residential and any adverse effects on landscape can be mitigated by controls on built form and

⁷ 2GP Rule 16.5.2.1.d.i.

⁸ For example, see paragraph 57 of evidence of Ms Peters.

⁹ See paragraph 29 of the Addendum.

mitigation (indigenous) planting.

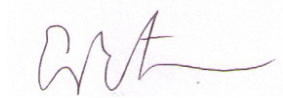
- Rezoning RS 153 provides the opportunity for a comprehensive development which includes a large restoration project to create an indigenous 'town belt' for Mosgiel, recreation reserve and development of several walking tracks (to be formed as part of the subdivision process subsequent to rezoning).
- The effect on LUC 3 land is minimal and the benefits of providing for this residential development outweigh the costs as discussed above.
- The NPS-HPL and flooding/instability constraints in the Dunedin area mean that there is little room for expansion of the City to provide choice in both types and location of housing as well as the necessary supply of housing, particularly in high demand areas such as Mosgiel. The areas of RS 153 to be rezoned residential as identified on the structure plan are unaffected by these constraints.
- Given the long lead times in rezoning land, undertaking development works and constructing houses, it is critical that a very wide margin in terms of supply of residential zoned land is provided via greenfield residential rezonings Hearing 4, Variation 2 decisions. The wording 'at least sufficient' sets a minimum level for supply of development capacity; Council can exceed that level.
- It is not the role of Council to overly control the supply of land for housing. The NPS-UD 2020 sets a minimum level in relation to supply of development capacity and the NPS-HPL does not frustrate that using the same wording – nothing in either of these national policy statements stops Council from providing more development capacity than that minimum level. Truly, supply of residential capacity is the only lever that Council has to bring about affordable housing which is one of the stated objectives of the NPS-UD 2020¹⁰.
- Council has not been overly accurate in its analysis of demand, zoned capacity or required capacity to meet demand in previous iteration. For example, with respect to: (i) the Dunedin City District Plan 2006, the Environment Court imposed residential rezoning of tracts of land

10 See Objective 2.

around Mosgiel; and (ii) with respect to the 2GP – it was only upon the NPS-UD 2020 coming into force that Dunedin City Council 'understood' it needed more residential capacity, hence Variation 2.

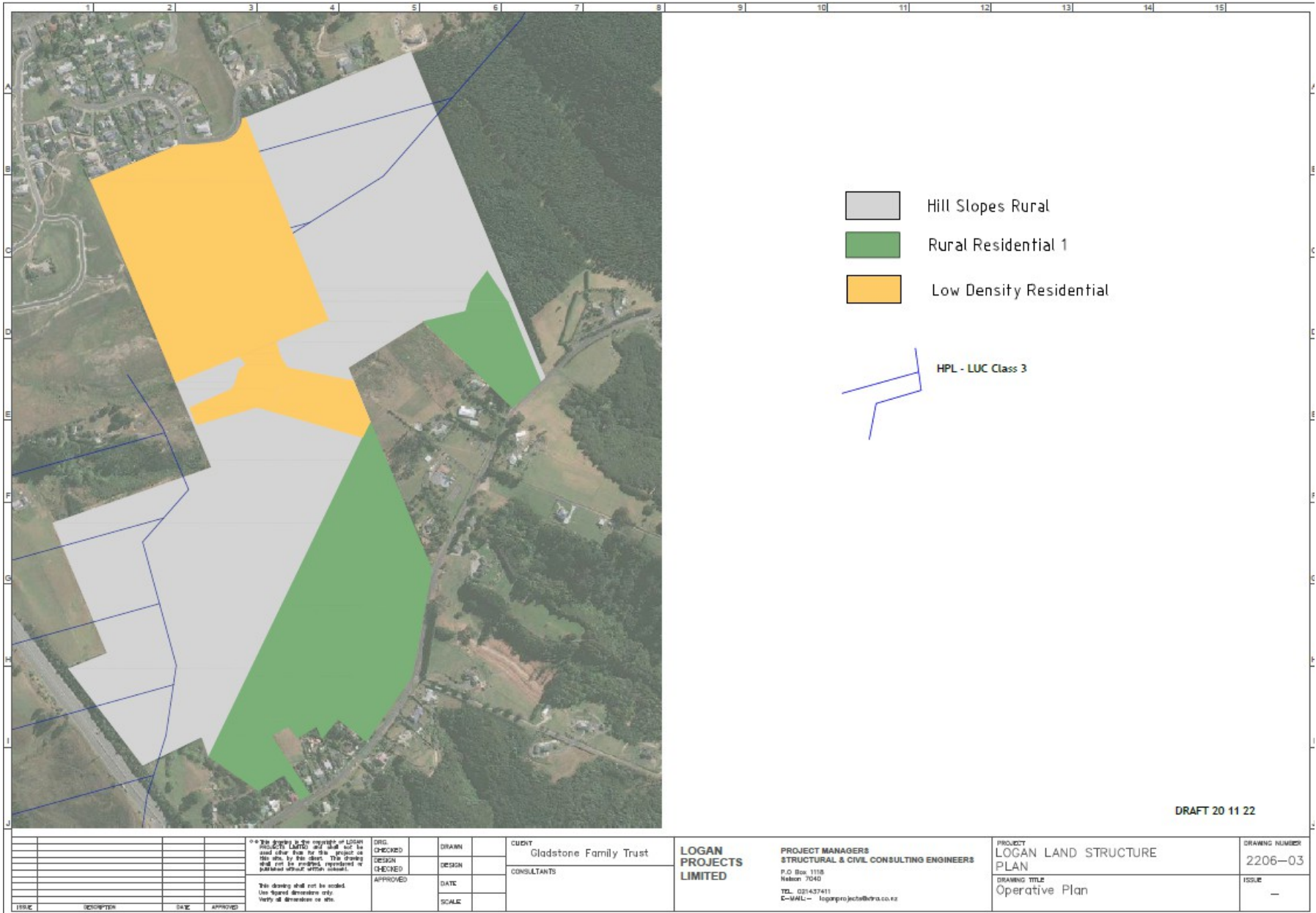
- Any future development strategy promulgated by Council in and of itself does not rezone land residential. The need for: (i) the Otago Regional Council to undertake its mapping and adopt a plan/plan change with respect to highly productive land (3 years); and (ii) Dunedin City Council to undertake its Future Development Strategy (likely 2 to 3 years but could be longer if it is to be informed by the Otago Regional Council's mapping/plan exercise); means that there will be a long lead time between residential rezoning which occurs pursuant to Variation 2 and any Council initiated plan change for further greenfields residential capacity (likely 2 – 5 years after the completion of i and ii). Changes resulting from private plan changes can only be made to an operative plan.

Dated this 22nd day of November 2022.

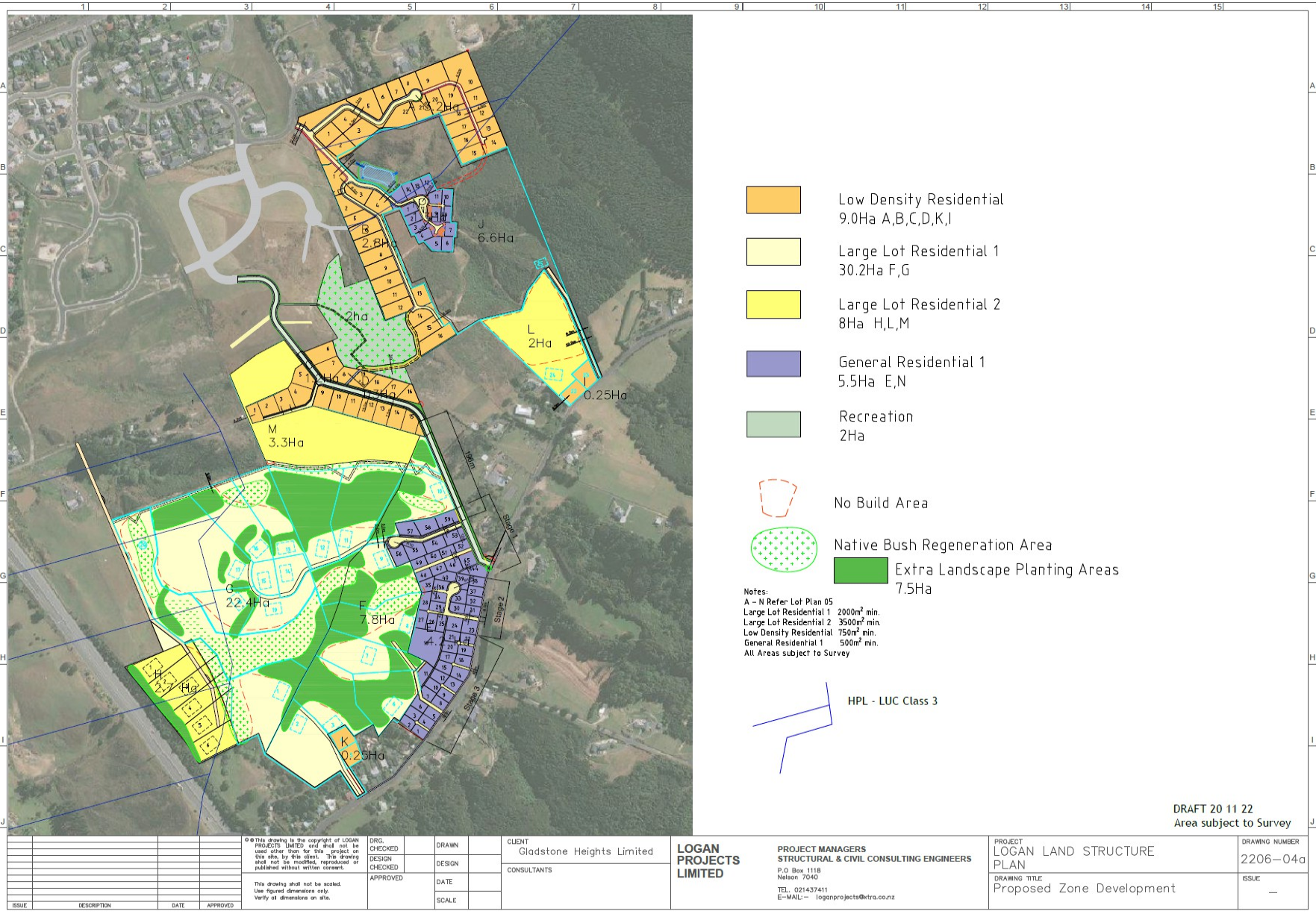
A handwritten signature in purple ink, appearing to read 'ERT', is written over a light blue rectangular background.

Emma Rayner Peters (BA (First Class Honours), MA (Distinction), LLB)

Appendix 1: LUC 3 Land in Relation to RS 153.



Appendix 2: LUC 3 Land in Relation to Proposed Development.



Appendix 2: LGOIMA Request and Response.

Subject: Local Government Official Information and Meetings Act 1987 (LGOIMA) Request - Updated Housing Capacity Assessment Report

From: Jenny Lapham <Jenny.Lapham@dcc.govt.nz>

Date: 14/10/2021, 2:36 pm

To: "sweepconsultancy@gmail.com" <sweepconsultancy@gmail.com>

Kia Ora Emily

I refer to your e-mail below and also your conversations with Nathan Stocker (Team Leader Research and Monitoring). I understand from Nathan that he has provided you with some of the information asked for namely Russell Jones review, Infometrics review and housing preferences survey.

Nathan also spoke to you in regards to the difficulty of providing 'a list of assumptions used in the GIS model' and discussed whether or not this could be refined. You indicated that you did not have a more targeted request. Therefore, pursuant section 17(f) of LGOIMA we are declining to provide this information due to substantial collation.

In regards to your request for an excel spreadsheet with the property-level capacity results I advise that pursuant to section 7(j) of LGOIMA to prevent the disclosure or use of official information for improper gain or improper advantage we decline to provide this information.

As we have declined to provide some information requested you are advised that you have the right to seek a review by the Office of the Ombudsman. <https://www.ombudsman.parliament.nz/what-ombudsman-can-help/complaints-about-government-agencies>

Ngā mihi

Jennifer Lapham

Governance Support Officer

Governance Group

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Requester Details

Name:	Emma Peters
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Email:	emma@sweepconsultancy.co.nz

Hi,

My request is in relation to information forming the basis of the updated Housing Capacity Assessment Report provided to the Planning and Environment Committee for a August 2021 meeting - report available at https://www.dunedin.govt.nz/_data/assets/pdf_file/0009/831744/Housing-capacity-assessment-for-Dunedin-City-2021.pdf

Specifically what I seek is the following:

A copy of the Russell Jones review (Feb 2020); and A copy of the Infometrics review (June 2020); and A copy of the collated Housing Preferences Survey data; and A list of assumptions used in the GIS model; and An excel spreadsheet of updated property addresses with capacity for between 6-19 and 20+ residential units - I had previously been supplied this information in August 2019 but want to double check it as a lot of property development has gone on in the meantime.

The purpose that this information will be used for is in relation to 2GP appeals and Variation 2 residential rezone submissions (both in and out of scope) only.

Please treat this request as urgent as there are upcoming Environment Court mediation dates for 2GP appeals and the Variation 2 hearing for residential rezone sites are likely to be held early 2022.

Cheers,

Emma Peters Consultant Sweep Consultancy Limited P.O. Box 5724 Dunedin 9054 Phone 0274822214
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Rebecca Murray

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