

**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** **Roger and Janine Southby**

**Response to Section 42A Addendum**  
on behalf of:

**Roger & Janine Southby**  
(Submission 191 – Requested Site 212)

Dated 22<sup>nd</sup> 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.

**RS 212 & HPL:**

5. There remains disagreement between legal counsel, including the independent legal opinion provided by Simpson Grierson. From a planning perspective, I cannot identify whether the specific Variation 2 process was understood in the Simpson Grierson legal opinion; in particular, that RS 212 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. As such, the submitters remain of the opinion that the NPS-HPL does not apply to RS 212.

6. Submission 191 requested rezoning RS 212 residential pursuant to one of three structure plans providing for different residential densities being General Residential 1, Low Density Residential or Large Lot Residential – for convenience copy of each of these structure plans are appended at Appendix 1.
7. RS 212 and the LUC 1 land therein is shown in Figure 1 below.

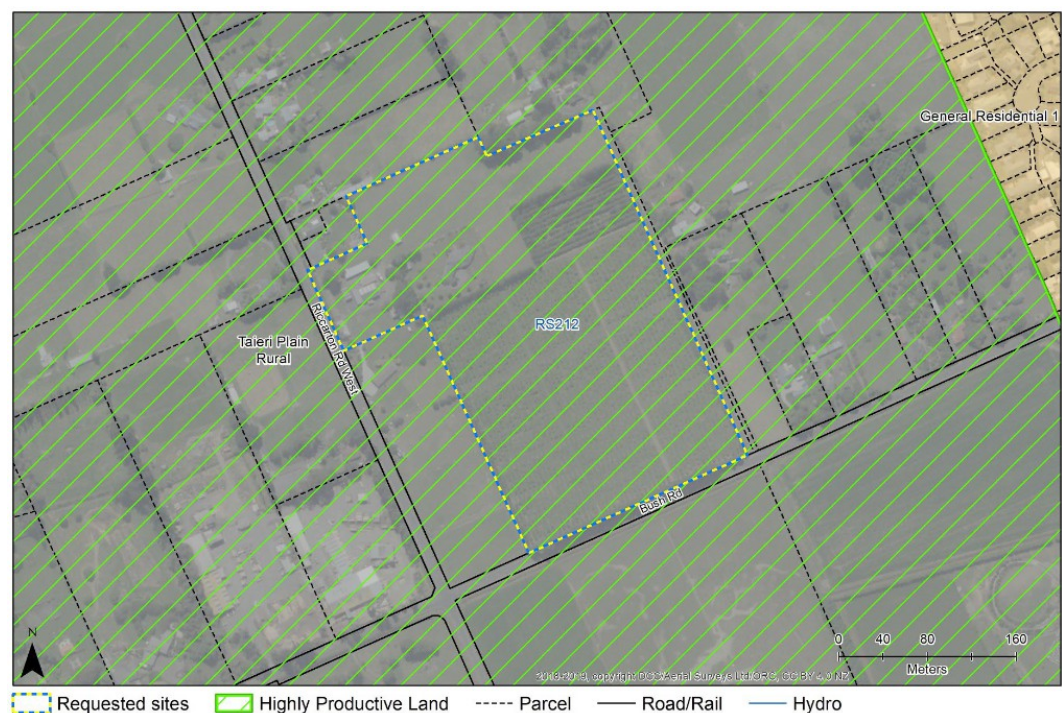


Figure 1: HPL in Relation RS 212<sup>1</sup>.

#### Pathway to Rezone RS 212:

8. A pathway exists within the NPS-HPL to rezone RS 212 via Clause 3.6(1); there is also a potential pathway via clause 3.10 depending on the interpretation of 'use' and 'development'.
9. Clause 3.6(1) allows the Panel, 'standing in the shoes of' Council, to rezone residential RS 212 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

<sup>1</sup> Source: Addendum, Appendix 2.

- (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.
10. 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 rezoning to be met. **The analysis below demonstrates that each component of Clause 3.6(1) can be met.**

**Sub-Clause 3.6(1)(a):**

11. Sub-clause 3.6(1)(a) states:
- (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
12. 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.
13. 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.
14. 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 request<sup>2</sup>. If the Panel adopts the 'no economic change' model as originally described within Table 11 (2019 HBA), then shortfalls in housing capacity arise.
15. 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.
16. 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

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<sup>2</sup> See Appendix 2 for copy of LGOIMA request and response.



land is required for Council to give effect to the National Policy Statement on Urban Development 2020.

17. I consider that Clause 3.6(1)(a) is satisfied.

**Sub-Clause 3.6(1)(b):**

18. 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

*No Other Reasonably Practicable & Feasible Options:*

19. Subclause 3.6(1)(b) is informed by sub-clause 3.6(2) which states:

(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.

20. The operative intensification provision provided by Variation 2 in relation to reducing the minimum site size to 400m<sup>2</sup> and allowing duplexes in General Residential 1 zones applies to Mosgiel<sup>3</sup>.

21. However, Mosgiel has undergone intensification development for the past 10-15 years and in recent times there has been a push back on small dwellings on small sections. The Variation 2 intensification provisions for the General Residential 1 zone may not in fact yield as many dwellings as anticipated by the HCA for Mosgiel, particularly in the context of declining house prices and rising inflation currently being experienced. This is expected to affect zoned capacity available to the market for quite some time.

22. There is no land adjacent to Mosgiel which is not deemed LUC 1, 2 or 3.A 2GP appeal resulted in the residential rezoning of the Ayr Street Structure Plan Mapped Area. This is expected to yeild approximately 350 dwellings. The words 'at least sufficient development capacity' in sub-caluse 3.6(1)(b) set a minimum level for the provision of development capacity with no prohibition on Council exceeding that minimum level. Indeed supply of greenfield zoned capacity via Hearing 4 of

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<sup>3</sup> See for example 2GP Rule 15.5.2.1.a.

Variation 2 is the only lever Council/Panel has to pull with respect to affordability of housing.

Same Locality and Market:

23. Sub-clause 3.6(1)(b) requires consideration of **development capacity within the same locality and market**.
24. 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.
25. 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).
26. 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.
27. 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 housing<sup>4</sup> on larger sections<sup>5</sup>.
28. I consider that Sub-Clause 3.6(1)(b) is satisfied.

**Sub-Clause 3.6(1)(c):**

29. 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.

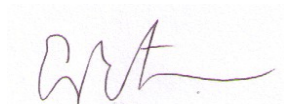
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<sup>4</sup> See page 5, paragraph 4 of the Dunedin City Council Housing Framework Predictions *The Housing We'd Choose*.

<sup>5</sup> See appendix 5 of my evidence.

30. '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."*
31. Evidence has previously been provided to the Panel regarding the limitations of using RS 212 for land based primary production including that the current use for tree cropping is economically unviable.
32. In addition, the affidavit supporting the consent memorandum for ENV-2018-CHC-266 which resulted in the Ayr Street Structure Plan Mapped Area, would necessarily have to have undertaken a cost/benefit analysis of the loss of highly productive land (the site contained high class soil mapped areas) to residential development. It is very likely that that same analysis will be applicable to RS 212.
33. I consider that sub-clause 3.6(1)(c) has been satisfied.

Dated this 22<sup>nd</sup> day of November 2022.

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

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

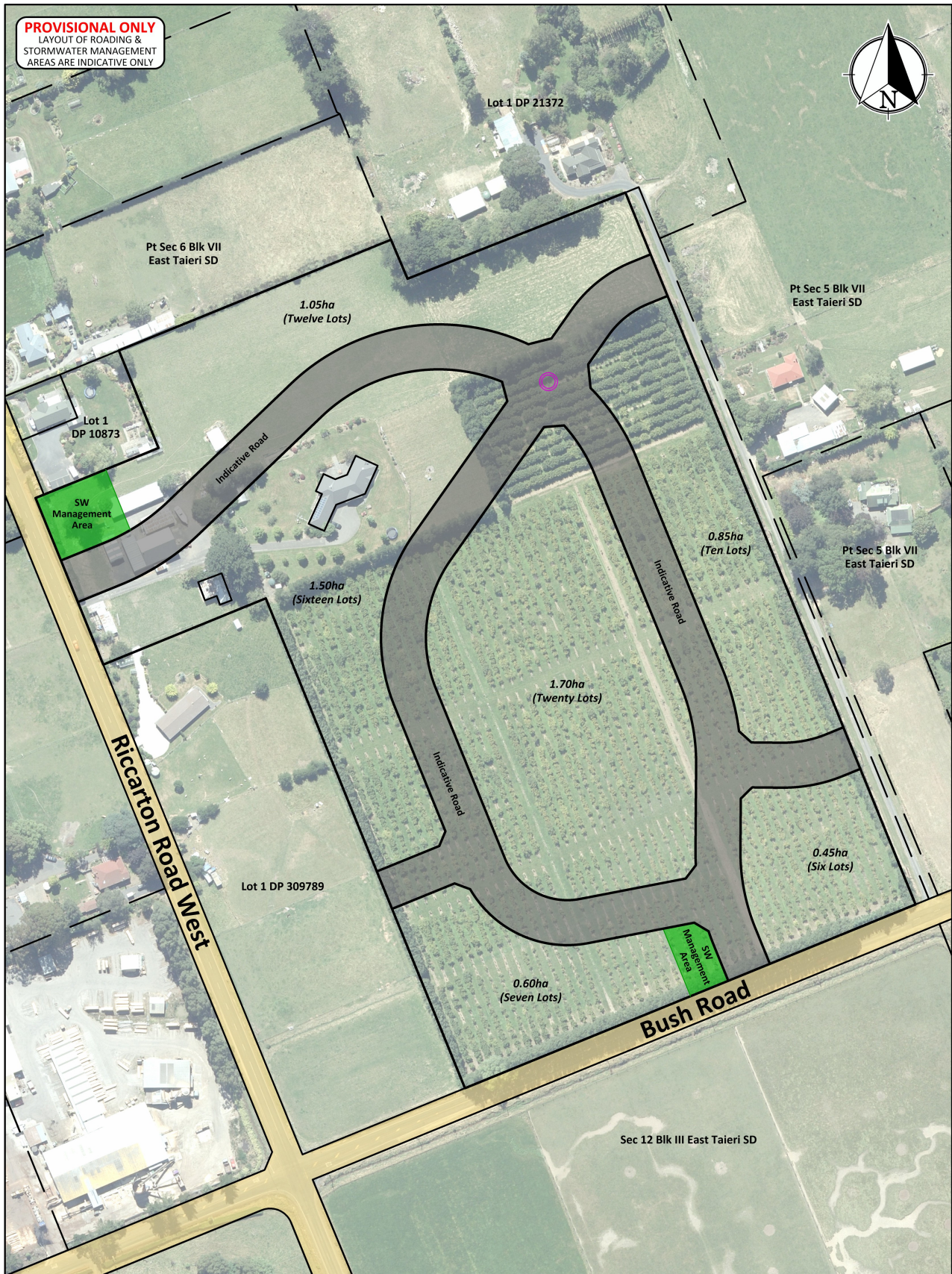


Appendix 1: Structure Plans for RS 212.



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|  <b>COOKSON</b><br>LAND SURVEYING<br><a href="http://www.cooksonlandsurveying.co.nz">www.cooksonlandsurveying.co.nz</a><br>Phone: 021 0890 9033 | <b>Large Lot Residential 1 - Structure Plan</b><br>170 Riccarton Road West, Mosgiel | PROJECT REF.<br><b>CLS198</b>         | SHEET SIZE<br><b>A3</b>      | SCALE<br><b>1:1500</b> |
|                                                                                                                                                                                                                                    |                                                                                     | DRAWN DATE<br><b>21 FEBRUARY 2021</b> | PLAN REF.<br><b>CLS198-1</b> |                        |
|                                                                                                                                                                                                                                    |                                                                                     | SHEET NO.<br><b>SHEET 1 OF 1</b>      |                              |                        |
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**PROVISIONAL ONLY**  
LAYOUT OF ROADING &  
STORMWATER MANAGEMENT  
AREAS ARE INDICATIVE ONLY









## 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**

**P** 03 477 4000 | **E** [Jenny.Lapham@dcc.govt.nz](mailto:Jenny.Lapham@dcc.govt.nz)  
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### Requester Details

|                      |                                                                              |
|----------------------|------------------------------------------------------------------------------|
| <b>Name:</b>         | Emma Peters                                                                  |
| <b>Organisation:</b> | Sweep Consultancy Limited                                                    |
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| <b>Phone:</b>        | 0274822214                                                                   |
| <b>Email:</b>        | <a href="mailto:emma@sweepconsultancy.co.nz">emma@sweepconsultancy.co.nz</a> |

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](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  
[www.sweepconsultancy.co.nz](http://www.sweepconsultancy.co.nz)

**Rebecca Murray**

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