

**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 **CC Otago Limited, Peter Doherty & Outram
Developments Limited**

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

CC Otago Limited
(Submission 308 – Requested Site 154)

Peter Doherty
(Submission 307 – Requested Site 154)

Outram Developments Limited
(Submission 305 – Requested Site 175)

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 154 and RS 175:

5. Legal submissions have been submitted to the Panel on behalf of the submitters seeking residential rezoning of RS 154 and RS 175. There remains disagreement between legal counsel, including the independent legal opinion provided by Simpson Grierson. The submitters remain of the opinion that the NPS-HPL does not apply to RS 154 and RS 175 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; in particular that the sites RS 154 and RS 175 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.

NPS-HPL

7. I largely agree with Ms Christmas that the relevant provision of the NPS-HPL is Clause 3.6. Clause 3.6 allows the Panel, 'standing in the shoes of' Council, to rezone residential RS 154 and RS 175 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.
8. The construction of Clause 3.6 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):

9. 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
10. The Housing Capacity Assessment including its updates (**HCA**) is high level report addressing development capacity and demand at a City-wide level. Evidence

from Property Economics on behalf of the submitters raises issues with the methodology of the HCA and, therefore, the conclusions reached in the HCA. In particular, the HCA utilises an assumption that long-term gain in house prices are required to generate the predicted capacity figures.

11. Furthermore, a full analysis of the HCA could not be undertaken by Property Economics because the Dunedin City Council would not release of the outputs of its model for a fine-grained analysis which would have checked the validity of the model¹.
12. The significance of the 'rate of economic' change has on feasible residential capacity assessment is identified within Table 4 of Mr Osborne's evidence. Again, I had requested but not received, access to the sensitivity assumptions to confirm the feasible capacity levels in the event house prices remain flat (or decline). If the Panel adopts the 'no economic change' model as originally described within Table 11 (2019 HBA), then shortfalls in housing capacity arise.
13. Mr Stocker presented further evidence at the hearing but has not provided the assumptions or sensitivity analysis to inform the Panel on how the model responds to the flat lining or decline of house prices.
14. Any doubt about 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. Therefore, I prefer the analysis of Mr Osborne.
15. I consider that Clause 3.6(1)(a) is satisfied.

Sub-Clause 3.6(1)(b):

16. Sub-Clause 3.6(1)(a) **must be read in light of** sub-clause 3.6.(1)(b) which 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
17. 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:

¹ Please see Appendix 1 for copy of the LGOIMA request made to and response from Council.

- (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.
18. The operative intensification provision provided by Variation 2 in relation to reducing the minimum site size to 400m² and allowing duplexes in General Residential 1 and Township and Settlement zones does not apply to the Township and Settlement zone of Outram because it has no Council provided reticulated wastewater infrastructure². Therefore, Variation 2 has not otherwise provided for the housing demand within Outram.
19. The only potential development capacity within Outram to be provided by way of 2GP appeals is ENV-2018-CHC-265. ENV-2018-CHC-265 is a 2GP appeal seeking to rezone residential land located at 94 Holyhead St, Outram which is situated between existing residential zoning of Outram, Designation 464 (SH 87) and the Taieri River (**Balmoral appeal**). This appeal has been set down for a two-day hearing in March 2023³. My understanding is that the Balmoral appeal now seeks 6 residential sites. Even if this appeal is successful, I do not consider it provides sufficient yield (development capacity) within the locality and market of Outram to meet evidenced demand.
20. I note that the HBA utilises a 'catchment' approach and Ms Christmas utilises the same concept when interpreting 'same locality and market'. With respect, I do not agree that the 'outer catchment' and 'same locality and market' are the same concept. Providing development capacity within, say for example, the Inner City or Waitati which is a rural centre with land about to be rezoned residential pursuant to mediation of 2GP appeals⁴, cannot be said to be within the 'same locality and market' as Outram.
21. Clause 3.6(3) says that development capacity is within the 'same locality and market' if it:

² See for example 2GP Rule 15.5.2.1.j.

³ See Progress Report on behalf of Dunedin City Council dated 18/11/2022 paragraph 9(c).

⁴ See Progress Report on behalf of Dunedin City Council dated 18/11/2022 which records that in relation to ENV-2018-CHC 227 and 228, a final consent memorandum has been signed by the parties with one detail to be completed (LINZ process) prior to filing of consent memorandum with the Court.

- (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).

22. The key wording is that the site is ‘**close to a location**’ where demand for additional development capacity has been identified (i.e Mosgiel). As identified above, if Mr Osborne’s critique is correct, then a shortfall of housing has been identified with the HCA.

23. This is particularly so when considering the factors in Clause 3.6(3)(b) in the context of the rural centre of Outram, where:

- There is evidence demonstrating demand for more sections and housing within Outram. In particular, demand for stand-alone housing⁵; and
- The fine-grained analysis of the recent Maungatua Views subdivision details the need for people to live in that subdivision due to working in the local (Outram and Taieri Plain including Mosgiel) and wider regional area.
- Rezoning RS 154 and RS 175 residential provides additional population support for the for the continuation of Outram School, school bus routes to highschools within both Mosgiel and Dunedin, the local pub and cafe and shops; thereby ensuring Outram is a well functioning rural centre. Rural centres are included in the definition of ‘centres’ in the 2GP⁶.

24. RS 154 and RS 175 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 in Outram.

25. I consider that Sub-Clause 3.6(1)(b) is satisfied.

Sub-Clause 3.6(1)(c):

26. Sub-Clause 3.6(1)(c) states:

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

⁶ 2GP definition of ‘centres’ states (emphasis added): “Principal, Suburban, **Rural**, Neighbourhood, Neighbourhood Convenience and Neighbourhood Destination centres zones.” The NPS-HPL includes in the definition of urban ‘settlement [centre]’ which is the equivalent for Outram given its Township and Settlement zoning pursuant to the 2GP.

- (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.
27. '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."*
28. Evidence has previously been provided to the Panel regarding the history of land use of RS 154 and RS 175 as well as the current use of sites for cut and carry and limitations for using these sites for other land based primary production.
29. All three properties involved in RS 154 and RS 175 have existing residential activity or the right to establish residential activity. RS 175 involves a property located at 85 Formby Street and contains approximately 6 hectares of land and an existing dwelling. RS 154 involves two properties: 91 Formby Street which contains approximately 1.6 hectares of land and a nearly completed dwelling⁷; and 103 Formby Street which contains approximately 2.6 hectares of land and the right to establish residential activity⁸.
30. RS 154 and RS 175 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 these sites for other than cut and carry or grazing of a few sheep or ponies is fanciful due to the limitations of the sites for more intensive land based primary production.
31. While the titles that make up RS 154 and RS 175 are zoned rural – they are effectively rural lifestyle blocks. While Clause 3.7 NPS-HPL does not strictly apply, this is exactly the type of outcome that the NPS-HPL seeks to avoid.
32. For clarity, clause 3.7 does not apply in this circumstance because re-zoning to rural-lifestyle is not being proposed. However, when assessing the 'costs and benefits' I take guidance from Policy 6 which states: *"The rezoning and development of highly productive land as rural lifestyle is avoided, except as provided in this National Policy Statement."*

⁷ Authorised by a decision granted 3 August 2021 being LUC-2017-222/A.

⁸ Authorised by a decision granted 4 March 2022 being LUC-2017-553/A.

33. The policy refers to avoiding both 'rezoning and development' of land as rural lifestyle – which is the outcome that will be cemented if the Panel declines to rezone RS 154 and RS 175 residential.
34. For these reasons, the environmental, social, cultural and economic benefits to Outram of rezoning residential RS 154 and RS 175 outweigh 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.
35. I consider that sub-clause 3.6(1)(c) has been satisfied.

Emma Peters

Appendix 1: Copy of LGOIMA Request to Council.

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

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Requester Details

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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,

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Rebecca Murray

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