



22 November 2022

City Planning
Dunedin City Council
PO Box 5045
Dunedin 9054

Our Ref: D17615

Attn: Chairperson: Variation 2 Hearing Panel

Dear Sir

MINUTE 21 AND NPS-HPL

On behalf of a number of Variation 2 submitters whom we are presently acting for, we have considered the National Policy Statement (HPL), the matters raised in Minute 21, and the subsequent planning and legal submissions relating to Minute 21.

This response is submitted in relation to RS14, on behalf of the following submitters:

- Bill Hamilton, 25 McMeakin Road, Abbotsford
- Alan David, David Eric Geeves and Nicola Jane Algie, 55 McMeakin Road, Abbotsford
- Nash and Ross Ltd (Steve Ross), 42A Lambert Street, Abbotsford

Additionally, this response is submitted on behalf of Ms Emma Peters, in respect to the following submitter (of whom Ms Peter's represents):

- Wendy Campbell, 188 North Taieri Road, Abbotsford

The Panel has determined that *the sites requested for rezoning by way of submissions (that were not proposed for rezoning in the notified version of Variation 2) do not fall within the exception clause 3.5(7) of the NPS-HPL* (Minute 21, paragraph 5.b).

The application of clause 3.5(7) has been traversed comprehensively in the previous legal opinions provided, and we do not wish to elaborate on those in this response. This is a matter that is now best left to the possibility of being re-examined a later date, following the Panel's decision on Hearing 4. Suffice to say that:

- There remains disagreement between legal counsel, including the independent legal opinion provided by Simpson Grierson.
- From a planning perspective, we cannot identify whether the specific Variation 2 process was understood in the Simpson Grierson legal opinion, and in particular, that RS14 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.
- The submitters remain of the opinion that the NPS-HPL does not apply to RS14.

Clause 3.6(1)(a) of the NPS-HPL enables a territorial authority to rezone highly productive land if the urban rezoning is required to provide sufficient development capacity to meet the demand for housing to give effect to the NPS-UD, and i) that there are no other reasonably practicable and feasible options for providing sufficient capacity within the same locality, and ii) that the environmental, social, cultural, and economic benefits of rezoning outweigh the costs associated with the loss of highly productive land.

The first part of the above clause requires there to be insufficient development capacity. The expert evidence provided to the Panel by Mr Nathan Stoker submits that the total amount of development capacity in Dunedin is sufficient to meet expected demand for housing over the short, medium and long-term.

Whilst we are unable at this time to produce any evidence that contradicts Mr Stoker's conclusion that sufficient development capacity has been achieved, particularly in relation to the 'locale and market' relevant to RS14, we wish to record for the Panel that we have concerns around the accuracy of Mr Stoker's conclusion for the following reasons:

- It is valid to note that Council staff have been unwilling to release to submitters¹ the base data that has been used to arrive at the capacity figures shown in Mr Stoker's report. This makes it impossible for submitters to verify the accuracy of the capacity calculations. While submitters might have chosen to re-assess the level of housing capacity available in Dunedin by starting from scratch (using an independent consultant), this is a fairly daunting and costly exercise. Our preference would be the more efficient option of being permitted to review the modeling data developed by Council staff, however given the time constraints that now exist, any review or re-construction of housing capacity expectations will need to be undertaken following the Panel's decision on Hearing 4.
- Mr Stoker's conclusion rests upon the validity of the assumptions used in the model. These assumptions have been called into question by Property Economics in evidence for RS154 and RS175. Specifically, the HCA utilises an assumption that long-term gain in house prices is required to generate the predicted capacity figures. Submitters have been unable to test the sensitivity assumptions to confirm the feasible capacity levels in the event that 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.

Although, consideration of the two sub-parts of clause 3.6(1), i.e. 3.6(1)(b) and 3.6(1)(c), can only realistically occur following verification of the available development capacity, in light of the above two bullet -pointed matters, we consider that there is a legitimate degree of doubt about the assumptions on which the HCA relies. Any doubt about the conclusions reached in the HCA must be read by the Panel in favour of the position that a greater volume of land is required to be rezoned as a product of Variation 2, to ensure that Council properly gives effect to the National Policy Statement on Urban Development 2020.

The expert evidence report provided by Ms Emma Christmas predominantly discusses the application of Clause 3.6(1) of the NPS-HPL. Ms Christmas's views are supported by Mr Stoker's evidence (contending that there is sufficient development capacity within the City), however we consider that there is some doubt as to the validity of Mr Stoker's conclusions, as outlined above.

¹ Please see copy of LGOIMA request and response appended at Appendix 1.

Ms Christmas helpfully discusses the application of sub-clauses 3.6(1)(b) and 3.6(1)(c), although we consider that there are issues with the conceptualisation of some elements of these sub-clauses. For example, in relation to sub-clause 3.6(1)(b), Ms Christmas appears to rely on the 'catchment' approach utilised in the HBA when interpreting 'same locality and market'. With respect we do not agree that the two are necessarily the same.

Although currently located within the 'outer urban' catchment, if rezoned RS14 would be located in the 'outer suburb' catchment as shown in Figure 3.2 of the of the Dunedin City Council Housing Framework Predictions the 'Housing We'd Choose Survey' reproduced below. The outer suburb catchment stretches from Brighton at the southern end of the City region to Portobello and Port Chalmers at the northern end. This catchment includes Abbotsford, Brockville and many other established neighbourhoods. Providing development capacity within, say for example Portobello², cannot be said to be within the 'same locality and market' as RS14.

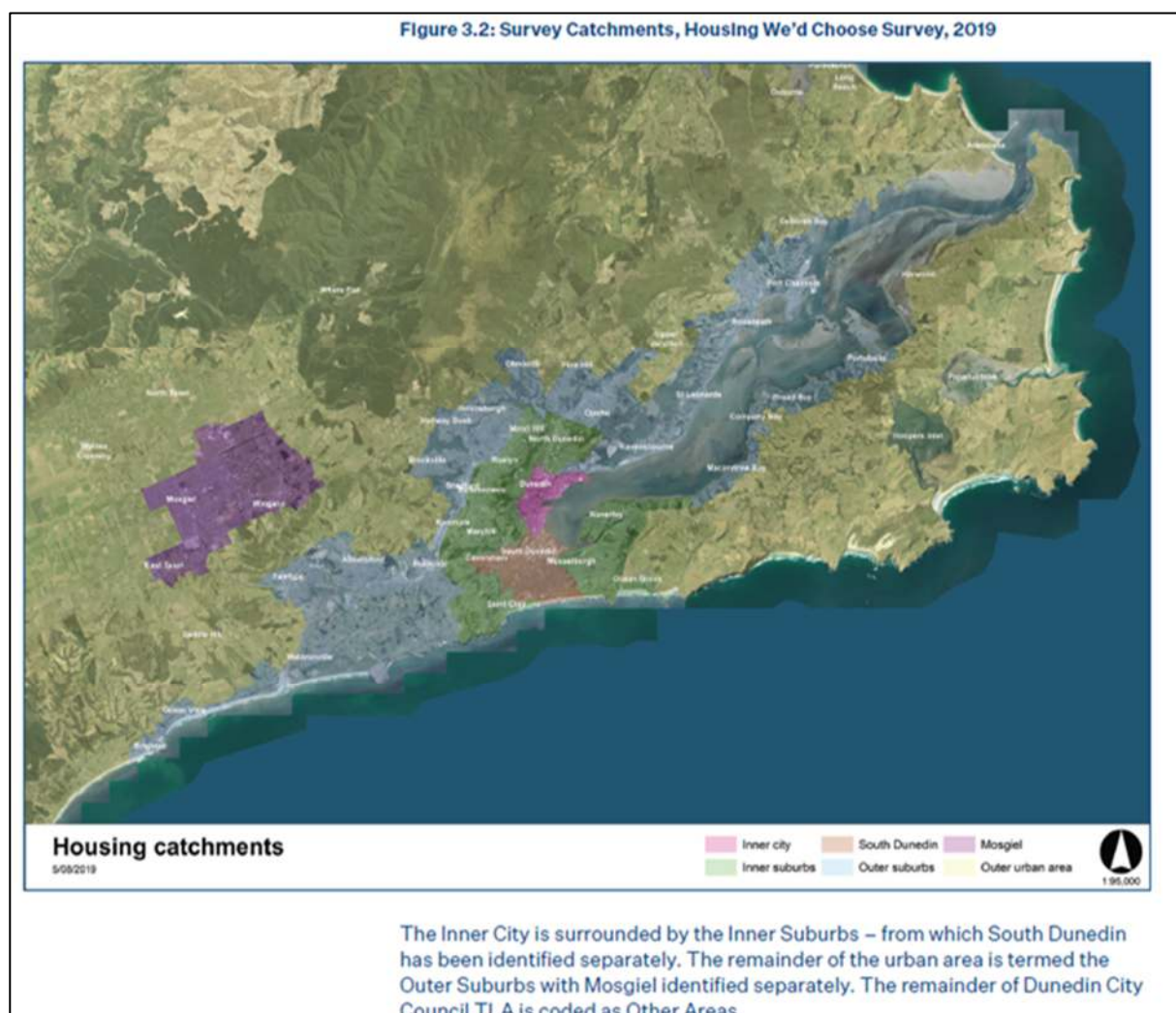


Figure 1: Copy of Figure 5 from the Property Economics / Beca Report

The submitter would like to draw the Panel's attention to Clause 3.10 of the NPS-HPL, which has not been considered by Ms Christmas's report. This clause states:

² GF15 notified for rezoning large lot residential pursuant to Variation 2.

3.10 Exemption for highly productive land subject to permanent or long-term constraints

(1) Territorial authorities may only allow highly productive land to be subdivided, used, or developed for activities not otherwise enabled under clauses 3.7, 3.8, or 3.9 if satisfied that:

- (a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years; and**
- (b) the subdivision, use, or development:**
 - (i) avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; and**
 - (ii) avoids the fragmentation of large and geographically cohesive areas of highly productive land; and**
 - (iii) avoids if possible, or otherwise mitigates, any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; and**
- (c) the environmental, social, cultural and economic benefits of the subdivision, use, or development 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.**

This clause potentially provides the Panel with the ability to enable the 'use' or 'development' of land that would not otherwise be supported by the NPS. It is relevant to note that this clause references previous clauses 3.7, 3.8 and 3.9 (and not 3.6), which is suggestive that rezoning is not an activity contemplated by this clause. However, clause 3.10 does specify qualifying activities as 'subdivision, use and development', and on this basis it might be considered that rezoning the land is a form of development (it certainly readies the land for anticipated development).

The submitter seeks consideration by the Panel of how Clause 3.10 of the NPS-HPL should be applied to the RS sites. It is the submitter's opinion that this clause is able to be applied at the discretion of the Panel.

Measuring RS14 against the sub-parts of clause 3.10, it is our determination as follows-

Measure	RS14
(a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years	LUC class 3 land is categorized as being suitable for cropping, viticulture, berry fruit, pastoralism, tree crops, and forestry (sourced from Manaaki Whenua Landcare Research's Our Environment Land Use Classification). The submitter has identified the following land constraints that restrict the ability for the above primary production activities to be carried out in a feasible manner- • <u>Cropping, Viticulture and Berry Fruits:</u> The land topography is too steep across much of the land for machinery use. Solar orientation is poor. Soil quality is poor. Lack of water for sufficient irrigation. The proximity of the land to the existing

	residential zone makes the use of sprays on crops to combat disease/pests difficult. • <u>Pastoralism</u>: Low stocking rates (5-6 stock units per hectare), which is not an efficient primary production activity. The presence of Abbots Creek passing through the land introduces difficulties with winter grazing. • <u>Tree Crops and Forestry</u>: Difficult topography for machinery use (when planting and harvesting). The proximity of the land to the existing residential zone raises the fire risk implications, has the potential to create adverse shading, landscape and visual amenity effects. There may also be transportation, noise and reserve sensitivity impacts arising from harvesting of trees. Additionally, parts of the land, particularly within the property at 42A Lambert Street have been highly modified over the years, including removal of soil and placement of fill material from off-site. These areas are unlikely to now meet the quality needed to achieve a LUC3 level. The lower-lying parts of the property, near the Abbots Creek watercourse are currently susceptible to flood events. While these can most likely be managed if the land is rezoned for a higher-value activity, it is not feasible to carry out improvement works for the purposes of supporting a primary production activity.
(b)(i) the subdivision, use, or development avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district	The proposed rezoning will avoid significant loss of productive capacity. This is discussed in further detail below, in reference to the Section 32 analysis report on productive land.
(b)(ii) the subdivision, use, or development avoids the fragmentation of large and geographically cohesive areas of highly productive land	The proposed rezoning will avoid the fragmentation of highly productive land. As the RS14 area lies on the border of an existing residential zone, the proposed rezoning will take the form of an adjustment to the zone boundary. The remaining rural land, will still comprise a large, contiguous area.
(b)(iii) the subdivision, use, or development avoids if possible, or otherwise mitigates, any potential reverse	The Section 32 analysis by Property Economics / Beca states that the rezoning may create a potential reverse sensitivity in respect to the

	sensitivity effects on surrounding land-based primary production from the subdivision, use, or development	quarry and railway line that are located to the south. The submitter considers that there is sufficient separation between these activities to avoid any significant reverse sensitivity issues.
(c)	the environmental, social, cultural and economic benefits of the subdivision, use, or development 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.	The Section 32 analysis by Property Economics / Beca states that the rezoning of this land provides for significant residential capacity with close proximity to the existing urban environment, resulting in increased amenity and highest and best use (from an economic perspective). Social benefits include the proximity of the site to a public transport route, the social cohesion that can be achieved due to the sites close proximity to existing residential housing, and schools and retail in Abbotsford, and the potential for the rezoning to create more working environments in the Abbotsford locality (which has the potential to reduce commuting times between home, work and goods and services). The section 32 report notes some costs associated with the rezoning, many of these have been resolved through the hearing considerations to-date (predominantly by the reduced rezoning region). Overall, the submitter is confident that the benefits if the rezoning will outweigh the costs.

Regarding sub-clause 3.10(2), which requires the applicant to consider whether any constraints on productive use of the land might be addressed through reasonably practicable options, such as an alternative form of land-based primary production, the submitter advises that such options have already been comprehensively considered over the years. However, the constraints described above are not easily overcome, and accordingly a more productive use of the land has not been able to be implemented.

Turning to the Dunedin Productive Land Cost Benefit Analysis Report (produced by Property Economics and Beca), which is include in the Variation 2 Section 32 analysis, we can draw the following findings in relation to the RS14 rezoning site (referred to as Site 3 in the Analysis Report):

1. The land within Site 3 (RS14) is indicated as 'Level 3 – Good Land'. This is the lowest rating of the three land levels, and we presume corresponds to and LUC rating of 'LUC3'. Furthermore, the land within Site 3 does not contain any High Class Soils mapped pursuant to the 2GP.

FIGURE 5: MAP SHOWING AREA 3

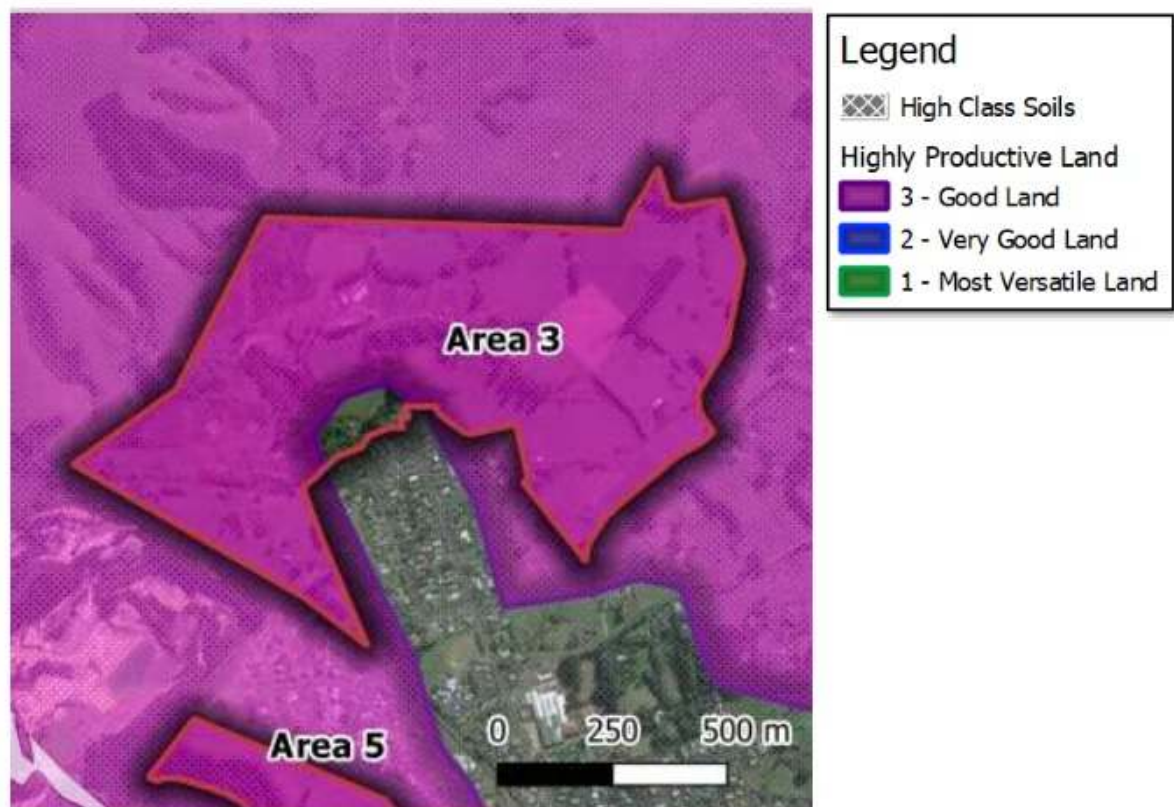


Figure 2: Copy of Figure 5 from the Property Economics / Beca Report

2. Benefits of the rezoning include-

- Provides for significant residential capacity with close proximity to the existing urban environment. Increased amenity and highest and best use.
- The site is located near a public transport route, thereby it could improve accessibility to jobs and services via public and active transport.
- Provides social cohesion due to its close proximity to existing residential housing, and schools and retail in Abbotsford.
- Due to the capacity of the site, could potentially create more working environments and therefore the potential for communities to have better access to potential places of employment, access to goods and services, and therefore the potential to reduce commuting times between home, work and goods and services.

3. Costs of the rezoning include-

- While several sites are impacted only 2 currently operate with primary production. A further site has potential for primary production.
- In total 52 productive hectares are impacted with a total expected reduction in output to 2048: \$524,000 (discounted).
- Potential erosion and sedimentation effects when developing as the site is located on a hill slope.
- Potential hazard and land instability effects arising from the residential development.
- Reduction or loss of amenity values, including public viewpoints, arising from development due to its location on a hill.

- Due to the capacity of the site, may be an increase in greenhouse gas emissions as a result of vehicle congestion.
 - May create a potential reverse sensitivity effect given there is a quarry located south of the site and the Main South Railway Line is located to the south.
4. The Property Economics / Beca report concludes (page 58) that Site 3 lies with the group of sites that will have a 'lower impact' based on relative economic costs (rather than a 'medium impact' or highest impact').

In general, we interpret the findings of the Property Economics / Beca report to be supportive of the submitters position that the land is constrained from being able to operate in an effective capacity for primary production. The land is at the lowest LUC level (the submitter believes that it does not even achieve this level, and this will need to be established when the highly productive land maps are updated by Otago Regional Council), the value of the output of production, if rezoned, is relatively low (the Property Economics / Beca report shows this to be \$849 per site, which can be compared to the average per site value for \$1,438 calculated using all of the sites assessed in the report), and the overall conclusion of the Property Economics / Beca report is that RS14 lies within the group of rezoning sites that will achieve the lowest impact.

It is for the above reasons, specifically the land constraints described and the supportive findings of the Property Economics / Beca report that features in Council's Section 32 analysis, that we believe the Panel is enabled to apply Clause 3.10 of the NPS-HPL to allow the land contained within RS14 to be rezoned as proposed in the submitter's submissions. Alternatively, the above analysis can be applied with respect to the cost-benefit analysis required by Clause 3.6(1)(c).

A final point of discussion that we consider should be made relates to the identification in Ms Christmas's evidence that Councils high-level cost benefit analysis has included an assumption that only sites with single ownership over 4 hectares are expected to have any significant productive value, unless specifically recognised (paragraph 29).

One of the component land parcels within RS14 comprises a land area of 2.66 hectares. This is the property located at 25 McMeakin Road. The submitter's inference of this statement by Ms Christmas is that the land at 25 McMeakin Road is constrained in its ability to operate an efficient primary production activity on account of its small site area. The submitter agrees that the 2.66 hectares of land held in a single ownership at this address does effectively render the site unable to accommodate an efficient, or in fact financially viable, primary production activity. The submitter seeks specific consideration by the Panel as the application of the NPS-HPL for sites of limited area, specifically those under 4 hectares, as nominated by Ms Christmas.

We trust that this submission is helpful, and we look forward to receiving the Panel's thoughts on the matters discussed.

For any further information or discussion in respect of this response, please do not hesitate to contact the author below.

Yours faithfully
PATERSON PITTS GROUP

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a long horizontal stroke.

Kurt Bowen
Planner

Appendix 1: Copy of 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
Organisation:	Sweep Consultancy Limited
Address:	P.O. Box 5724 Dunedin 9054
Phone:	0274822214
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
www.sweepconsultancy.co.nz

Rebecca Murray

**GOVERNANCE SUPPORT OFFICER
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