



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 the 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 RS109, on behalf of the following submitter:

- Mark and Jacqui Taylor, 119 Riccarton Road West, Mosgiel

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 RS109 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 RS109.

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.

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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, 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 submitters 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.

One point that is raised in Ms Christmas's evidence is the identification that Council's 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).

The land contained in RS109 comprises a land area of 1.74 hectares. The submitter's inference of the statement by Ms Christmas is that the land at 119 Riccarton 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 1.74 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 to the application of the NPS-HPL for sites of limited area, specifically those under 4 hectares.

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 horizontal line that ends in a small arrowhead.

Kurt Bowen

Planner