



SECOND GENERATION DISTRICT PLAN

Variation 2 Additional Housing Capacity Part 2b – 3 Waters Provisions

Reporting Officer's Closing Statement

Emily McEwan

10 December 2021

(updated to reflect the outcome of ORC and DCC expert caucusing)

1.0 Introduction

1. This document provides a written summary of my closing statement for the Variation 2 hearing on 3 Waters provisions. My statement responds to key questions raised by the Panel and draws the Panel's attention to some other important points.

2.0 The Panel's Questions

2.1 Conferencing with Otago Regional Council

2. The Panel asked for conferencing between Otago Regional Council (ORC) and DCC experts to resolve the points of difference that remain between them, where possible.
3. ***Provisions have been agreed to regarding all outstanding matters listed in Appendix A to my opening statement, except regarding deletion of Policy 2.2.5.2. The agreement of Ms Anita Dawe (ORC) and I (Ms Emily McEwan) on the other matters is recorded in a signed witness statement. This includes agreement on the drafting for Rule 9.9.X for outside the NDMA, as recommended in the Section 42A Report.***
4. ***I note that Ms Dawe has stated that the ORC agrees to the notification rule, as was recommended in the Section 42A Report.***

2.2 'Greenfield' in the Context of Variation 2

5. The question of what constitutes a greenfield development site arose after a presentation by Mr Kurt Bowen regarding the application of NDMA to existing residential zoned areas of land.
6. Mr Bowen suggested that existing residential zoned areas, such as that at IN07 at 133-137 Kaikorai Valley Road, are not greenfield land. Mr Bowen also suggested that it is inappropriate to impose additional assessment matters via application of the NDMA to existing residential zoned land and RTZ land because it would frustrate the development of the sites, imposing additional costs. Mr Bowen asserted that this outcome was inconsistent with the 'overall purpose' of Variation 2 to 'make it easier to provide housing'.
7. In response, I reiterate that I am of the view that Variation 2 does not have an overall purpose. Variation 2 contains several discrete proposals which each have their own purpose. The purpose for the application of NDMA to existing residential zoned land and RTZ land is twofold:
 - Firstly, it is to ensure that the subdivision of large areas of greenfield residential land is undertaken in a way that supports best practice urban design outcomes and achieves the strategic objectives of the Plan in an integrated yet flexible way. This links to the 'Change D' group of changes addressed in the first hearing, where five new matters of discretion are added for the assessment of subdivision in NDMA's (see Rule 12.X.2.5); and
 - Secondly, it is to ensure stormwater from development of large areas of greenfield residential land will be appropriately managed, including by ensuring effects on both private and public stormwater systems, and where stormwater may directly or indirectly lead to flood hazards elsewhere, are appropriately assessed (see Rule 9.6.2.X).
8. In progressing the NDMA changes, a definition for 'large areas of greenfield residential land' was not formulated. However, the application of the NDMA to the areas identified in Variation 2 implies that planning staff consider these sites to be large areas of greenfield residential land.
9. As I stated in response to earlier questioning, I am of the view that 'greenfield' land is land that is undeveloped (irrespective of the zoning that applies). In simple terms, it is a green field.

10. I consider that the presence of infrastructure is irrelevant to whether a site is greenfield or not. Infrastructure may pass through or near many greenfield sites, but it does not follow that it is available to service that greenfield area, or that the land somehow would be viewed as being in a 'developed' state.
11. I come back to the purpose of the application of NDMA through Variation 2. This is linked to achieving the relevant strategic objectives of the Plan.
12. Of importance, achieving the objectives on providing sufficient housing (Objective 2.6.1 on housing choices and Objective 2.6.2 on adequate urban land supply) must also be balanced with other objectives on urban design and environmental outcomes. The strategic objectives relevant to the proposed NDMA provisions (as referenced in Objective 12.2.X) are:
 - Objective 2.3.3 on facilities and spaces that support social and cultural well-being;
 - Objective 2.2.3 on indigenous biodiversity;
 - Objective 2.2.2 on environmental performance and energy resilience;
 - Objective 2.4.1 on form and structure of the environment;
 - Objective 2.2.4 on a compact and accessible city; and
 - Objective 2.7.1 on efficient public infrastructure.
13. In short, it would be inappropriate in the RMA context to ignore whether the development of greenfield areas achieves these objectives by focusing only on objectives for housing choice and supply.
14. I note that the Section 32 evaluation also considered the option of applying the urban design assessment matters to subdivision in all locations (Alternative D1-Alt2; p. 73). However, it was concluded that applying the assessment matters to smaller-scale subdivisions, especially infill subdivisions within the existing urban area, would overly complicate the subdivision application process. This is because it would require assessment of matters unlikely to be relevant to these types of subdivision, detracting from Plan efficiency.
15. Two submissions sought reconsideration of this alternative option to ensure better reflection of the NPS-UD in terms of achieving well-functioning urban environments (S205.028 and S189.028). However, I recommended the submissions be rejected in the first Section 42A Report on Provisions¹ for the reasons given above.

2.3 SWMPs for Small Scale Development

16. As outlined in my Section 42A Report in response to submissions, I agree with the experts representing developers that requiring a full stormwater management plan for all development, despite its scale, would be inappropriately onerous and inefficient.
17. ***I note that ORC has agreed to the drafting recommended in the Section 42A Report for Rule 9.9.X outside the NDMA, which applies a different approach than within the NDMA. This is a development since circulation of their evidence and their presentation at the hearing.***
18. ***The agreement reached between DCC and ORC is reflective of my view that DCC 3 Waters could provide guidance outside the Plan on appropriate stormwater detention tank sizing. This would assist in addressing concerns raised by the experts representing developers.***
19. ***The link in Rule 9.9.X.4(a) to guidance on appropriate use of stormwater detention tanks outside the Plan is an efficient method to achieve objectives on stormwater management and on housing supply, in my view.***

¹ See Page 88 of the Section 42A Report on Provisions (22 August 2021).

20. I note that Variation 2 proposes rule changes that will provide for intensification of existing residential zoned areas. In many cases, this will result in infill development, such as a single section being subdivided off the rear of an existing residential site. The people who undertake these sorts of developments are more likely to be unfamiliar with the development process and have limitations on the costs they can take on to complete the subdivision process.
21. In these circumstances, it is my view that requiring a stormwater management plan, even if it has reduced requirements, would be counter-productive in terms of realising new housing.

2.4 Aurora Energy and Scope for Change

22. Two submission points from Aurora Energy Ltd (S217.005 and S217.004) were considered to be outside the scope of Variation 2 because they did not fall within the purpose of the change for Change F1-1 (see Section 4.5.2 of the Section 42A Report).
23. However, since presenting on this matter, I have looked at the purpose statements for other changes included in Variation 2 to see whether the relief sought could fall within any of those.
24. I note that the submitters raised issues particularly around provision of electricity infrastructure for infill development. Infill development would be more likely to occur because of other changes being proposed under Variation 2.
25. Therefore, my view on the scope of these submission points has progressed, and I now consider them to be within scope of the proposed rule changes and intensification rezoning.
26. I note that the purpose statement for the rule changes addressed in the first hearing provides scope as follows: "The purpose extends to making any consequential changes to Plan rules necessary to manage any adverse effects of increased density if existing rules are deemed inadequate to ensure the proposal is the most appropriate way to achieve the objectives of the Plan."
27. If substantive changes are made in response to the submissions, these will need to be limited to the areas affected by the rule changes which increase density, or the new General Residential 2 zoned areas, in a similar way as recommended earlier for changes on solid waste and heritage effects.
28. I then must turn my mind to whether the changes requested are necessary to manage adverse effects of increased density.
29. The Section 42A Report sets out that I consider the requested changes unnecessary. The reason for this is that all subdivision consents are issued with a 'catch-all' condition requiring the creation of easements as needed. Aurora has noted that it has been educating surveyors of the need to provide easements in its favour, and this appears to be proving effective.
30. After hearing the evidence of Ms Dowd regarding the example of poorly designed electricity supply at a property at Josephine Street, Dunedin, I agree that an advice note may be helpful in avoiding some similar situations in future, but likely not all. I do also note that, in that example, Ms Dowd said that Aurora did not agree to take on the asset in its unsafe and poorly designed state and is requiring a remedy. So, where issues arise, it may be that they are not insurmountable.
31. Consideration must also be made for not overly cluttering the Plan with notes about processes that sit outside the Plan.
32. On balance, I recommend rejecting the requested reference to "and associated easements" in Rule 9.3.7.X.a.
33. Regarding inclusion of an advice note, I do not think this is critical. However, if the Panel are of a mind to include an advice note, I think the wording proposed by the submitter could be streamlined into a more concise, single clause.

2.5 NDMA's over Structure Plans and/or areas with Subdivision Consent

34. I have not had time to examine the provisions of all structure plans where an NDMA is proposed to apply, or to determine the status of subdivision consents within each proposed NDMA.
35. However, I will respond to the specific example at Emerson Street, which Mr Bowen presented at the hearing. NDMA02 applies to this site.
36. The table on the following page compares the provisions for general subdivision with those in the structure plan and NDMA. Overall, I do not consider there to be unnecessary duplication by addition of the NDMA.

Table 1: Comparison of various rules that would apply at NDMA02, Emerson Street Structure Plan Mapped Area.

Topic	General Subdivision Requirement (Rule 15.11.4.1)	Structure Plan Requirement (Rule 15.8.9)	NDMA Requirement	Comment
Neighbourhood residential character and amenity	Yes	No	No	General subdivision assessment is very general and policy assessment does not cover amenity planting, public amenities or recreation spaces specifically. The NDMA provides this detail.
Amenity planting and public amenities	Could fall within assessment of residential amenity but not mentioned in policy	No	Yes	
Recreation spaces	Could fall within assessment of residential amenity but not mentioned in policy	No Shown in diagram but no rule associated with this	Yes	
Risk from natural hazard	Yes	No	No	No duplication.
Efficiency and affordability of infrastructure	Yes	3 waters infrastructure must be in place prior to dwellings	No	General subdivision assessment includes assessment guidance on stormwater management even though the policy does not mention stormwater. Standard practice of SWMP requirement as condition of consent. V2 changes for assessment of stormwater for general subdivision are intended for smaller scale subdivision. The NDMA provides this detail.
Stormwater from future development	New in V2	No	Yes	
Stormwater management	Stormwater management addressed in assessment rule for efficiency and affordability of infrastructure but not mentioned in policy	No	Yes	
Safety and efficiency of the transport network	Yes	Rules for roading layout and installation prior to dwellings	No	Structure plan provides appropriate detail for roading connections.
Energy efficient housing / solar access	Solar access mentioned in assessment rule for residential character and amenity but not in policy	No	Yes	The NDMA provides detail about solar access, including filling a policy gap.
Maintenance or enhancement of areas with significant natural environmental values	No	No	Yes	No duplication.
Efficient use of land	No	No	Yes	No duplication.

37. Regarding subdivision consents, if these are granted prior to decisions being made on application of the NDMA, the only practical impact would be regarding stormwater management for future development. Rule 9.3.7.AA requires development that creates 60m² or more of impermeable surface to be connected to a stormwater management system that services the NDMA.
38. In response to this issue, I recommend addition of a further exception to Rule 9.3.7.AA for “residential buildings on lots of less than 1000m² created by subdivision consent approved prior to [xxx date of decision on Variation 2]” or similar.
39. With the above amendment, the NDMA provisions can be retained on areas where subdivision consent is already granted. If, for whatever reason, the subdivision is not given effect to, future subdivision applications would be required to comply with the NDMA provisions. Once the land is developed to an extent that the NDMA provisions are no longer relevant, the NDMA can be uplifted through a plan change process, along with the redundant structure plan mapped area.
40. Overall, I consider that the NDMA does not introduce unnecessary duplication, and will not frustrate development of subdivision consents already granted if the recommended amendment to Rule 9.3.7.AA is made.

2.6 Multiple Landowners in NDMA's

41. Issues with multiple landowners in NDMA's being able to reach agreement to a stormwater management plan for the whole area remain a concern of landowners / developers.
42. An example provided was NDMA04 at the Bradford structure plan mapped area. This area has been assessed as having 7 landowners, although the evidence presented was that two of these sites have been sold to one purchaser. Another site appears to be an access strip.
43. Evidence provided by experts from DCC 3 Waters is that the NDMA provisions are required to ensure stormwater is adequately managed in all proposed locations. This is primarily because the stormwater effects arising from greenfield development can be substantial due to the dramatic change in land cover over large areas. The NDMA provisions require the submission of a full stormwater management plan.
44. In the absence of engineering evidence to the contrary, I continue to recommend the NDMA provisions to existing zoned residential and RTZ land for stormwater management reasons. I continue to recommend retention of the NDMA to assist in achieving good urban design outcomes, as already discussed.
45. However, I recommend amendments to the requirement for all landowners in an NDMA to agree to a stormwater management plan. This is to account for scenarios where there may be small strips of land included in an NDMA (for example, access to sites outside the NDMA) or a landowner of a smaller parcel not agreeing to the plan.
46. For example, the requirement for agreement could be imposed over ownership of 90% of the land area within the NDMA. Experts from DCC 3 Waters may advise whether this approach would be appropriate, or whether a different figure should be used.
47. Other measures outside the Plan, such as DCC assisting and potentially being party to negotiations between landowners, may help.
48. Any application presented without agreement of the relevant parties would be processed by Council and the processing planner would need to take into account the effects that the stormwater management plan would have on integrated stormwater management.
49. Aside from these mechanisms, developers could seek to acquire other parcels of land within the NDMA to facilitate a comprehensive development.
50. I note that NDMA over proposed greenfield rezoning areas will be considered at the next hearing, along with application of NDMA to sites rezoned through appeal resolution (by way of DCC submission). It is possible that NDMA's could be split into smaller units, where appropriate based on catchment information, or that

structure plan provisions could be used to override aspects of them if there is a reason to do so to achieve the objectives of the Plan.

2.7 Compulsory Acquisition of Land or Easements

51. I am not an expert in the functioning of the Public Works Act 1981. However, it is my understanding that the process of compulsorily acquiring land for public works is not straightforward. It is unclear to me whether acquiring land for a stormwater management system to service a private development area would fall within the requirements for public works.
52. I am not aware of mechanisms to compulsorily acquire easements over others' land.
53. I have not obtained legal advice on these matters.
54. I do not recommend addition of an advice note setting out that such mechanisms might be used to support private developments. There is no need to do so, and I consider there are likely to be other mechanisms to resolve issues in the development of multiple landowner NDMA, as outlined earlier.

3.0 Other Points to Note

3.1 NDMA Stormwater Provisions

55. On-site stormwater management has been assumed for greenfield areas when calculating public infrastructure network improvements. Funding allocated in the 10-Year Plan does not provide for on-site stormwater management.
56. Stormwater management provisions are not intended to resolve existing network issues. The provisions are intended to manage the additional effects from new development. This is relevant to the presentations given by Mr Kurt Bowen (who characterised the provisions as requiring developers to solve existing issues) and Ms Alice Wouters and Ms Valerie Dempster (who requested resolution of existing issues before allowing further development).
57. Stormwater management provisions are not only to manage effects on DCC public infrastructure. They are also intended to manage effects on private infrastructure on private land (e.g. as discussed in the written submission of Mr Pater Schwartz, p. 62 s42A) and on ORC infrastructure for flood protection and drainage, as presented at the hearing.
58. Stormwater management provisions are also targeted at managing stormwater quality. This aspect is not readily addressed where stormwater passes only through piped infrastructure before discharge. Water quality is relevant to DCC because of conditions on its ORC discharge consents and because of the NPS-FM which requires territorial authorities to include provisions in its plan on freshwater quality relevant to urban development (Clause 3.5(4)).
59. Experts who presented on behalf of developers seem to accept that the NDMA stormwater provisions are codifying existing practice and will not necessarily add any further burden.