

Variation 1 – Minor Amendments to the Proposed Dunedin City Second Generation District Plan (2GP)

Proposed Amendments and Section 32 Evaluation

November 2019

Executive Summary

This report summarises amendments proposed by variation to the Proposed Dunedin City District Plan (2018 decisions version). It also incorporates the summary of the evaluation required by section 32 of the RMA 1991 (RMA) (s32 Evaluation Report).

The changes proposed by this variation are generally minor in nature and amend provisions for them to function in the way intended, clarify the meaning of definitions, policies and rules to avoid confusion, correct inconsistencies between provisions, or fix minor issues to improve the efficiency and effectiveness of rules. Staff have identified three areas for improvement (see Section 1.1 Purpose of Variation 1) and assessed the appropriateness of their inclusion in this Variation. Except for minor interpretation issues, if a particular aspect of a provision affected by the identified issue was also affected by any 2GP appeals it was generally deferred to the appeals process to resolve. Very minor issues, such as spelling, grammatical and formatting mistakes will be corrected through clause 16(2) of Schedule 1 of the RMA. Other more complex issues requiring further research and analysis have been left to be resolved through separate variations or plan changes. Because the 2GP is a 'live' document, any new issues discovered after the notification of this variation will be registered for future assessment and resolution, rather than included in this variation process.

Those wishing to make submissions on aspects of this variation should restrict their submission to the scope of the variation as detailed in this report, noting that many changes are not substantive, rather they are changes of clarification and the variation is not proposing to revisit the substantive aspect of the provision. Where changes are substantive, the scope of the variation is limited to the scope of the problem the variation is seeking to address. Again, it is not proposed to revisit aspects of provisions which are not considered part of the problem that the variation is addressing.

Section 2 of this document sets out the evaluation of preferred options for each provision which is being amended and includes a section 32 analysis for more substantive changes (see Section 1.2. for further information).

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Introduction

Background

The proposed 2GP was notified on 26 September 2015. This was followed by a formal submissions and further submissions period and public hearings between May 2016 and December 2017. The 2GP Hearings Panel heard from DCC planners, submitters, lawyers and technical experts.

The 2GP full plan review has been a large and complex process that has considered 1,507 submissions across 25 topics with 35 hearings. There were 29 decision reports published. The 2GP Hearings Panel made many changes to the 2GP as a result of decisions on submissions received.

Decisions on the 2GP were notified on 7 November 2018 and the period for lodging an appeal closed on 19 December 2018. At the close of the appeal period 83 appeals to the 2GP were received by the Environment Court.

A variation is a proposed set of amendments to a proposed plan before it is made fully operative. Under Clause 16A of Schedule 1 of the RMA 1991 a local authority may initiate variations to provisions in a proposed plan at any time before the approval of the plan.

Variations that correct minor issues in district plans are common throughout New Zealand because of the size, complexity and the interrelated nature of provisions within district plans. The minor issues which are proposed to be corrected through Variation 1 were identified after 2GP decisions were released. This includes issues identified through feedback from DCC consents planners, as well as by people involved in appeals on the 2GP and other regular plan users.

Purpose of Variation 1

This report summarises amendments proposed by variation to the Proposed Dunedin City Second Generation District Plan (2GP). It also incorporates the summary of the evaluation required by section 32 of the RMA 1991 (RMA) (s32 Evaluation Report). The amendments are included in the electronic plan in clearly marked content boxes (see 2GP website for an explanation of how to identify changes and the current legal status).

The purpose of Variation 1 is to make minor amendments to correct specific problems identified by plan users. The amendments proposed to resolve these problems generally focus on removing ambiguity and improving the clarity and workability of provisions.

Three areas for improvement have been identified:

- a. Minor improvements and clarifications to the wording of definitions, rules and performance standards and to fix unintentional gaps so that provisions function as intended. Minor improvements to the wording of Strategic Direction policies to more clearly describe methods used in the plan and to better align with the 2GP drafting protocol; and
- b. More substantive amendments to provisions to improve the workability and usability of the 2GP, some of which fill gaps in standards (for example Change 1.21) and in some cases to reduce unintended consent requirements (for example Change 1.34). These include changes to election sign rules based on feedback received over the recent election period; and
- c. Mapping amendments to make minor adjustments to zone or mapped area boundaries where boundaries are in the wrong place, for example the line should be moved to reflect the existing

development on a site or to correct where a scheduled heritage building is located on the 2GP Planning Map.

Variation 1 will also include two new scheduled heritage buildings, as well as a new area of significant biodiversity value.

Scope of Variation

The variation is subject to the RMA Schedule 1 process for making submissions, further submissions and the ability to appeal decisions. However, the variation is limited in scope and it is not proposed to re-open to submissions and decisions, the aspects of the 2GP that are beyond the scope of variation summaries listed in this report.

Those wishing to make submissions on aspects of this variation should restrict their submission to the scope of the variation as detailed in this report, noting that many changes are not substantive, rather changes of clarification and the variation is not proposing to revisit the substantive aspect of the provision. Where changes are substantive, the scope of the variation is limited to the scope of the problem the variation is seeking to address, again it is not proposed to revisit aspects of provisions which are not considered part of the problem that the variation is addressing.

Status of Rules

Section 86B of the RMA explains when rules in proposed plans have legal effect. In accordance with this only the following changes have immediate legal effect:

- Heritage Rule 13.3.2 (change 1.8)
- Heritage Rule 13.9 (change 1.30)
- CMU Zone Rule 18.6.2 (links to heritage Rule 13.3.1, change 1.39)
- Otago Museum Zone Rule 29.4 (notification requirements for scheduled heritage buildings, change 1.45)
- A1.1 Schedule of Protected Heritage Items and Sites (addition of two new heritage buildings and amendments to heritage entries or mapping, changes 1.48-1.57, 1.61)
- A1.2 Schedule of Areas of Significant Biodiversity Value (addition of new ASBV, change 1.58)
- High class soils mapped area (removal of small area, change 1.67)

The rest of the changes do not have legal effect until decisions on submissions relating to the rules are made and publicly notified under clause 10(4) of Schedule 1.

Under Clause 16B (1) every variation becomes part of the proposed plan as soon as the variation and proposed plan are both at the same procedural stage. This means that the proposed plan provisions will remain in effect until there have been decisions made on submissions on the variation. At that time, the provisions of the variation merge and become part of the proposed plan. If a variation substitutes for any appealed provisions of the proposed plan, those existing appeals are deemed to be against the substituted provisions included in the variation.

Section 32 and other statutory requirements

Under Section 32 of the Resource Management Act 1991 (RMA) 'Requirements for preparing and publishing evaluation reports', the Council is required to undertake an evaluation prior to the notification of Variation 1.

Under this section, this evaluation must:

- 1.

- (a) *examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
- (b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) *identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) *summarising the reasons for deciding on the provisions; and*
- (c) *contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*

An evaluation must also:

- 2.
 - (a) *identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
 - (i) *economic growth that are anticipated to be provided or reduced; and*
 - (ii) *employment that are anticipated to be provided or reduced; and*
 - (b) *if practicable, quantify the benefits and costs referred to in paragraph (a); and*
 - (c) *assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

Objectives are to be assessed as to whether they are the most appropriate to achieve the purpose of the Act. Provisions are to be assessed against whether they are the most appropriate to achieve the objectives.

No amendments are being made to the wording of 2GP objectives as part of this variation, although reference to some strategic directions are being added to some assessment rules.

Where Variation 1 amendments are minor in nature (a matter of clarification), no separate section 32 analysis has been undertaken; instead there is reliance on the section 32 process followed in the notification through to decisions on the 2GP. For the more substantive amendments (for example amendments which include additions to provisions) a section 32 analysis has been undertaken (refer Section 2 below). As no objectives are being amended as part of this Variation, this analysis has considered the reasons, efficiency and effectiveness, and appropriateness of changes in achieving the overarching objectives. The risk of acting or not acting has not been addressed in the evaluation below because there is sufficient information about the subject matter of the provisions.

Variation 1 is consistent with Part 2 of the RMA. The changes to provisions addressed in this variation achieve the purpose of the RMA because they assist with the management of the natural and physical resources of Dunedin City through addressing minor technical issues and anomalies which will lead to the more efficient and effective implementation of the 2GP.

In accordance with section 32(5) this evaluation report is being made available for public inspection at the time of notification of the proposed variation.

Consultation

External engagement has been undertaken based on responding to user feedback on perceived issues with the plan. Consultation has been undertaken with Dunedin City Council's Resource Consents Team, and Three Waters and Transport departments for certain proposed changes where relevant. Because the focus of Variation 1 is on minor inconsistencies and technical issues raised, no specific consultation with the wider community was undertaken prior to notification, though some issues may have been highlighted by customers or the public involved in consent processes.

In addition, as required by the First Schedule of the RMA consultation has also been undertaken with the Minister for the Environment and tangata whenua, in the form of advising these parties of the scope of the variation and welcoming feedback and questions.

Supporting documents

The following documents have been referenced in this report as supporting documents and may be viewed online at www.dunedin.govt.nz/2GP-variation-1-minor-amendments:

- DCC Transport Group Expert Advice (changes 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.25, 1.73)
- Urban Design Assessment Rules 18.6.1 and 19.6.1 (changes 1.37 and 1.38)
- Urban Design Assessment Rule 18.6.5.2 (change 1.40)
- Heritage NZ Letter 17 Graham Street (change 1.49)
- Heritage Assessment for St Joseph's Hall 255 Rattray Street (change 1.50)
- Heritage Assessment for Sew Hoy Building 29 Stafford Street (change 1.51)
- Heritage Assessment for Robert Lord Cottage 3 Titan Street (change 1.52)
- Heritage Assessments for 92 and 94 Filleul Street (changes 1.54 and 1.55)
- Heritage Assessments for 11 Elder Street and 95 Filleul Street (changes 1.56 and 1.57)
- Ecological Assessment for ASBV 1588 Highcliff Road (change 1.58)
- Soil Assessment for 60 Mount Grand Road (change 1.67)