

**Before a Panel Appointed by the
Dunedin City Council**

In the Matter of the Resource Management Act 1991 (**RMA**)

And

In the Matter of SUB-2023-132, LUC-2023-376 & LUC-2023-377 being
a resource consent application to subdivide an
undersized Rural zoned property located at 60 Bell
Street, Outram, into two titles (SUB-2023-132) and
land use consent for the establishment of veterinary
services (large animal practice) on Lot 1 (LUC-2023-
377) and continuance of the existing residential
activity on Lot 2 (LUC-2023-376).

Brief of Evidence of Emma Rayner Peters
on behalf of

**Mr Dean Warnock and Ms Carryn Warnock
&
Clutha Veterinary Association Incorporated
(Applicants)**

Dated 10th June 2024

Credentials:

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. I have produced evidence for hearings at councils and the Environment Court.
2. I have prepared this evidence based upon my investigations and knowledge of the Dunedin City Second Generation District Plan Appeals Version (**2GP**), Council's s42A report including reports from Council staff, the application and site visit.
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.

Application:

4. An application has been made by the applicants for resource consent to:
 - subdivide the Rural zoned property located at 60 Bell Street, Outram legally described as Lot 3 Deposited Plan 362560 contained in record of title 255260 (**site**), into two titles (SUB-2023-132); and
 - land use consent for the existing residential activity on an undersized title (LUC-2023-376); and
 - land use consent for veterinary services – large animal practice (LUC-2023-377) including contravention of any relevant performance standards.
5. The applicants **withdraw the application for subdivision consent (SUB-2023-132) which means that LUC-2023-376 is no longer needed and is also withdrawn**. The applicants continue with their application for veterinary services (LUC-2023-377). As such, this evidence only deals with matters raised in submission and s42A report in relation to the application for land use consent for the veterinary services on the

site. In the absence of any subdivision activity, it is anticipated that the existing residential activity on the site can continue under existing use rights.

S42A Report Recommendation:

6. The s42A report states¹: *"If the proposal was exclusively for a land use proposal for a veterinary clinic, then it is likely that the recommendation would be to grant consent."*

Activity Status:

7. Veterinary services (large animal practice) have an activity status of **restricted discretionary**² in the rural zone in which the site is located. The discretion of the Dunedin City Council (**Council**) is restricted to: effects on rural character and visual amenity³, effects on amenity of surrounding properties and effects on the safety and efficiency of the transport network⁴, and given the site is located in the Hazard 2 (flood) Overlay Zone and the proposed veterinary services building is more than 60m², Council's discretion is also restricted to an assessment of the risk from natural hazards⁵.
8. The earthworks required to prepare the site for the veterinary services also have an activity status of restricted discretionary in the zone including overlays in which the earthworks will be undertaken⁶. The discretion of Council is restricted to⁷: (i) effects on visual amenity, (ii) effects on amenity of surrounding properties, (iii) effects on the stability of land, buildings, and structures, (iv) effects on biodiversity values and (v) risk from natural hazards.
9. The proposed activity includes several land use performance standard contraventions as set out in both the application and the s42a report. All of these contraventions have an activity status of **restricted discretionary**.

NPS-HPL:

10. The Environment Court decision in *Gray v Dunedin City Council [2023] NZEnvC 45* provides clear dictum for how the National Policy Statement for Highly Productive

¹ Section42A report, paragraph [3].

² 2GP Rule 16.3.3.42.

³ 2GP Rule 16.10.2.1

⁴ 2GP Rule 16.10.2.6 a and b respectively.

⁵ 2GP Rule 16.10.5.12.a.

⁶ 2GP Rules 8A.5.1.2.a and 8A.3.2.3.

⁷ 2GP Rules 8A.7.2.1.a – c, 8A.7.2.2.a and 8A.7.3.5.a.

Land (**NPS-HPL**) applies to resource consenting in the interim before mapping and provisions are introduced by the Otago Regional Council. In *Gray v DCC*, the Court noted that clause 3.9 of the NPS-HPL, which requires territorial authorities to avoid the inappropriate use or development of highly productive land that is not land-based primary production, is difficult to apply in a consenting context primarily because parts of clause 3.9 are dependent on decisions yet to be made by councils as they amend their plans in response to the NPS-HPL. The Court determined that:

- The NPS-HPL provisions are among the wide range of identified matters that a consent authority must have regard to when assessing a resource consent application.
- In keeping with previous Environment Court and High Court authority, Ministry for the Environment guidance notes should be given no weight when interpreting and applying statutory instruments including the NPS-HPL.
- The proposal was not ‘inappropriate’ in terms of clause 3.9 of the NPS-HPL due to the consenting pathway within the 2GP and because the adverse effects of the proposal were no more than minor including the loss of current or future rural productivity.

11. The dictum is applicable to the current land use consent application for veterinary services because we are still within the ‘interim’ as Otago Regional Council has not yet introduced mapping and provisions to give effect to the NPS-HPL.

Assessment of Effects

12. I concur with the assessment of effects of the retained land use consent components undertaken in the s42A report with respect to the matters to which Council’s discretion is restricted, as listed in paragraphs 7 and 8 of this evidence and matters raised by the submitter where these fall within the matters to which the discretion of Council is restricted.
13. At paragraph [138] the reporting planner states: *“After considering the likely effects of this proposal above, overall, I consider it is likely that the adverse effects of the proposal can be appropriately mitigated by conditions of consent to be no more than minor and acceptable in the receiving environment. To provide greater certainty that effects will be minor and acceptable, further information and clarifications are sought from the applicant in relation to the housing of animals on*

the site, the nature of the activities to be undertaken within the building and the level of activity on the site at night and at the weekends.”

14. Clarification of these points is provided in the statement of Mr Jason Darwin, Head Dairy Veterinarian at Clutha Vets. In summary, Clutha Vets intends that:

- Any animals requiring overnight care will be housed within the veterinary services building itself.
- Full veterinary services will be provided by the veterinary service including consultations, care and surgical services; animal care products will also be retailed from the site.
- Operational hours will be Monday to Friday 8am to 5.30pm and Saturday 9.30am to 12.30pm with emergency services provided outside these hours as required.

Assessment of Objectives & Policies

15. The application includes a full assessment of the 2GP policy framework and I maintain the conclusion that, in the main, the proposed activity is consistent with the 2GP policy framework and where there is discrepancy between the 2GP policy framework and the proposed veterinary services it is an ‘inconsistent with’ rather than ‘contrary to’.
16. However, SUB-2023-132 and LUC-2023-376 have now been withdrawn. With respect to LUC-2023-377 (land use consent for the establishment of veterinary services on the site) the relevant objectives and policies are listed at Rule 16.10.2.6.i and ii as being Objective 16.2.2 and Policy 16.2.2.5.
17. Objective 16.2.2 seeks to minimise potential for conflict within rural zones and adjoining residential zones by minimising reverse sensitivity and ensuring acceptable amenity values; Policy 16.2.2.5 seeks to only allow specified activities including veterinary services where adverse amenity effects are avoided or adequately mitigated.
18. Both the reporting planner⁸ and I assess the proposed veterinary services as being consistent with Objective 16.2.2 and Policy 16.2.2.5.
19. The reporting planner comments at paragraph [164] of the section 42A report that:

⁸ See section 42a report, paragraph [159].

“...Policy 16.2.4.2 does not identify an exception for a veterinary services activity, and it appears to be captured as it is not a farming activity. In relation to a restricted discretionary rules framework for veterinary services activity, that does not allow the consideration of the adverse effects on high-class soils or productivity in its discretion, this seems a little incongruous. As a passing comment, I note that given the large areas of rural zone that would provide for establishment of a veterinary clinic on land that is not highly productive, including the consideration of highly productive land in the discretion for determining of the suitability of the location for a veterinary clinic seems sensible and would be a useful means of addressing this incongruity.”

20. I disagree with the reporting planner that there is incongruity between the policy framework and the restricted discretionary rule framework for veterinary services large animal practice. The 2GP anticipates and indeed encourages the establishment of large animal veterinary practices within rural zones and encourages this via the restricted discretionary activity status, even when located on highly productive land, because: (i) such practices support rural productivity by providing veterinary care to livestock operations within the surrounding rural zone(s); and (ii) the rural zone is the most appropriate zone in which to locate large animal veterinary practices.
21. Most importantly, Rule 16.10.2.6 does not list Objective 16.2.4 (which seeks to maintain or enhance the productivity of rural zones), or Policy 16.2.4.2 (which seeks to only allow activities other than farming on highly productive land when certain criteria are met) as being relevant to the consideration of consents for veterinary services large animal practice. Even if these policies were to be considered, the proposed activity is consistent with this objective and policy because:
 - any disturbed mapped high class soils will be retained on site and can be used for rural productive activities on the balance of the site not used for the veterinary services and existing residential activities; and
 - the area of disturbance is insignificant when compared to the extent of the high class soil mapped area within the Taieri Plain Rural zone – see map appended at Appendix 1.
22. There are no alternative locations within the Taieri Plain Rural zone (flat land) which are not classified as highly productive land, that is, LUC 1, 2 or 3, within the context

of the current iteration of the NPS-HPL. Flat land is an essential site selection criterion for Clutha Vets, as is being situated in the rural zone but near a residential area and having only a small parcel of land.

Draft Conditions of Consent:

23. A set of draft conditions of consent is detailed at Appendix 4 of the s42A report⁹. Given the withdrawal of the application for subdivision consent, only those draft conditions of consent in relation to LUC-2023-377 are now relevant but require further work.
24. If the Committee is of a mind to grant consent, I suggest that the reporting planner and I draft a set of consent conditions and advice notes for the retained land use consent components as either a response to an information request from the Committee or as part of the applicants' right of reply.

Dated this 10th day of June 2024

A handwritten signature in purple ink, appearing to read 'ERA', with a long horizontal flourish extending to the right.

Emma Rayner Peters (BA (First Class Honours), MA (Distinction), LLB)

⁹ See pages 393-399 of the agenda.

Appendix 1: High Class Soil Mapped Area within Taieri Plain Rural Zone.

Key: High class soil mapped area shown as brown lines and dotted areas. Approximate location of veterinary services shown by yellow dot (not to scale – likely dot should be smaller).

