



Report

TO: Hearings Committee

FROM: Kirstyn Lindsay, Senior Planner

DATE: 27 June 2016

SUBJECT: **RESOURCE CONSENT APPLICATION
LUC-2016-110
38 RICHMOND STREET
LA and RJ PRATTLE**

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 27 June 2016. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

SUMMARY OF RECOMMENDATION

- [2] For the reasons set out in paragraphs 98-104 below, I consider that the proposal in its current form does not adequately address the potential hazard risk and will have an adverse effect on the character and amenity values of the area. As a result, it is my recommendation that the proposal should be declined.

DESCRIPTION OF PROPOSAL

- [3] Resource consent is sought to establish two residential dwellings on a 438 square metre (m²) site. The proposed development will result in the removal of the existing dwelling which has been identified by heritage New Zealand as being pre-1900. The applicant states that the proposed development will result in two units which will comply with the required site coverage, outdoor amenity space, bulk and location requirements. Separate vehicle accesses will service each dwelling.
- [4] The proposed dwellings will comprise single storey town-houses and will be clad in brick veneer with a coloursteel roof and aluminium windows. Each dwelling will have a floor area of 77.3m². The subject site is legally described as Lot 18 Block XVI Deposited Plan 60 and held in Computer Freehold Register OT 16D/63.
- [5] A copy of the application, including plans of the proposal, is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [6] The subject site is located within the densely populated South Dunedin area. The properties within the Richmond Street area comprise single residential dwellings on sites which range between 350m² and 450m². The character of

the area typically features a mix of residential cottages and villas setback from the street frontage with low fences. Garages and carport in the front yard are the exception rather than the rule.

- [7] Deviation from the residential character in the immediate vicinity of the subject site takes the form of a two-unit development on the adjacent 439 m² site, a three-unit community housing development at 40 Richmond Street and two unit title flats on the corner of Richmond Street and Macandrew Road. The development at 36 Richmond Street was approved in 2009 and is owned by the applicant. The community housing was established in 1968 and unit title flats were established in 1975.
- [8] South Dunedin is typically low-lying with a high ground water table. Richmond Street was inundated in the June 2015 rainfall event and experienced surface flooding and ponding.

ACTIVITY STATUS

Operative Dunedin City District Plan

- [9] The subject site is zoned Residential 2 in the Dunedin City District Plan. Richmond Street has been identified as a local Road in the District Plan Rooding Hierarchy The following hazards have been identified for the site:

HAZARD	CLASS	SUB-CLASS
SEISMIC	INTENSIFIED SHAKING	EARTHQUAKE AMPLIFICATION LIKELY
SEISMIC	LIQUIFACTION	DOMAIN C
COASTAL	SEA LEVEL RISE	SEA LEVEL RISE PREDICTION STUDY OF HARBOURSIDE AND SOUTH CITY
FLOOD	OVERLAND FLOW PATH	FLOOD

- [10] The definition of Residential Activity within the District Plan means: "*the use of land and buildings by a residential unit for the purpose of permanent living accommodation...*"
- [11] Residential Unit is defined as "*... a building or part of a building which is self-contained at least in respect of sleeping, cooking, dining, bathing and toilet facilities, where one or more persons live together whether related or not, but excludes units where staff provide for more than 18 residents...*"
- [12] The proposal is considered to fall within the definition of Residential Activity. Rule 8.8.1(i) provides for residential activity at a density of one residential unit per 300m² of site area. In this instance, the proposal seeks to establish two units on a 438m² site. Any activity not specifically identified as permitted, controlled or discretionary by the rules in section 8.8 of the district Plan is assessed as a non-complying activity pursuant to Rule 8.8.6(iii).

Operative performance standards

- [13] As a non-complying activity, the permitted activity conditions and performance standards of the district plan do not directly apply to the activity. However, they do offer guidance as to the suitability of the proposed activity. It is noted

that the proposal generally meets the bulk and location standards applied to permitted activities, however, the proposal does not comply with the following performance standard:

Rule 8.8.2(viii) requires that residential activities meet the access requirements set out in Section 20 - Transportation of the District Plan. In this instance the proposal fails to meet Rule 20.5.7(i) which restricts the number of vehicle crossings permitted for a site which fronts a local road. The rule allows one crossing per 18m of site frontage. The proposal seeks two crossings for the 14.5m frontage.

Proposed Second Generation Dunedin City District Plan (Proposed 2GP")

- [14] The Proposed 2GP was notified on 26 September 2015. The 2GP zoning maps indicate that it is proposed that the subject site be zoned as General Residential 2. The maps also indicate that the property is within the **Hazard 3 – Coastal** overlay zone and is located within the South Dunedin Mapped area.
- [15] The Proposed 2GP was notified on 26 September 2015, and some 2GP rules have immediate legal effect. In this instance, there are no relevant 2GP rules to consider.
- [16] Overall the application is considered to be a **non-complying activity**.

NOTIFICATION AND SUBMISSIONS

- [17] The application was publicly notified in the Otago Daily Times on 7 May 2016.
- [18] Copies of the application were sent to those parties the Council considered could be directly affected by the proposal. Submissions closed on 3 June 2016.
- [19] Two submissions were received by the close of the submission period. One submission was opposed and one submission were neutral.
- [20] The submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 2.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
Otago Regional Council	Oppose	▪ Seeks for the application to be declined because of increased risk and exposure of people to natural hazards	Yes
Heritage New Zealand	Neutral	▪ Advises that the demolition of the existing building on the site requires an archaeological authority	No

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

- [21] Section 104(1)(a) of the Act requires that the Council have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in Section 3 of the Act as including-
 - a) Any positive or adverse effect; and
 - b) Any temporary or permanent effect; and
 - c) Any past, present, or future effect; and

- d) *Any cumulative effect which arises over time or in combination with other effects – regardless of the scale, intensity, duration or frequency of the effect, and also includes –*
- e) *Any potential effect of high probability; and*
- f) *Any potential effect of low probability which has a high potential impact.*

Permitted Baseline

- [22] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent in order to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the effects assessment of the activity.
- [23] In this instance, the site is used for residential activity. There is one dwelling occupying the site and one vehicle access to the site. The existing dwelling appears to comply with all bulk and location standards set out in the operative plan. It is considered that this is the appropriate baseline against which to assess the proposal.

Assessment of Effects

Operative Dunedin City District Plan

- [24] The assessment of effects is guided by the assessment matters in Sections 8.13 (Residential), 17. 20.6 (Transportation) and 17.6a (Natural Hazards) of the District Plan. Accordingly, assessment is made of the following effects of the proposal:
- Sustainability;
 - Bulk, Location, Design, Appearance and Amenity Values;
 - Transportation;
 - Infrastructure;
 - Hazards;
 - Archaeological Sites;
 - Positive Effects;
 - Cumulative Effects;

Sustainability (Assessment Matter 8.13.1)

- [25] The District Plan seeks to enhance the amenity values of Dunedin and to provide a comprehensive planning framework to manage the effects of use and development of resources. It also seeks to suitably manage infrastructure. One means by which the Plan seeks to achieve the sustainability of these matters is through the density provisions of the District Plan.
- [26] The subject site has an area of 438m². Under the relevant District Plan provisions, at least 600m² is required for the construction of two residential units. The overall density for the development will equate to one dwelling per 219m², which is at a level greater than that anticipated by the District Plan. A greater level of density has the potential to adversely affect the sustainability of the City's infrastructure, and the amenity values and character of the surrounding area. These two aspects have been discussed in greater detail below in the sections relating to the provision of water services, and amenity

values and character. It is my opinion for the reasons given below, that the proposed development in its current form will not be a sustainable development of the City's natural and physical resources. Should the Committee be of a mind to grant consent then mitigation of effects on the city's infrastructure and the character of the area should be considered.

Bulk, Location, Design and Appearance and Amenity and Character Values (Assessment Matters 8.13.3, 8.13.5 and 8.13.6)

- [27] The proposal seeks to establish two town houses within the subject site. The townhouses will contain two bedrooms and will have a floor area of 77m². The units will be clad in brick veneer, with coloursteel roof and aluminium windows.

- [28] It is noted that the applicant has identified that the application will result in a similar development to that of 36 Richmond Street also owned by the applicant. It is noted that this development was granted consent in 2009 (LUC-2009-469) with a seven conditions including among others undertaking approved landscaping and planting as per a site landscape plan (attached as Appendix 4 to this report). While assessing this application currently before the Committee, non-compliances with the conditions of the 2009 consent were identified and a site inspection by an enforcement officer has been re-scheduled for July 2016.

- [29] The application was forwarded to the Council's Urban Designer to review the design of the proposal in context of the existing character, streetscape and amenity of the area. He notes that Richmond Street is representative of the compact and historic urban form of South Dunedin and defined by a very regular grid, narrow local streets and small sites. Single story timber cottages and villas provide the suburb with a strong built character. Within the immediate vicinity of the subject site the built character is more positive than in other locations along Richmond Street, with most of the timber houses retaining in their original form although some have had minor modifications, notably the replacement of timber windows with aluminium and plaster renders over weather boards. Subtle variations of detailing and colour schemes provide houses with individual identities. Front gardens and low fences are a constant feature along the street while off street parking has been retrofitted alongside side boundaries. Some driveways access the back yards while others simply provide single car ports or pads in front yards. Overall, he considers that off street parking is discrete and does not dominate.

- [30] The Urban Designer recognises that more recent buildings include 40 Richmond (DCC flats), 51A/252 MacAndrew Road (du-plex flats) on the corner of Richmond and MacAndrew and 36 Richmond Street. It is his opinion that, typically, these buildings have been designed without too much regard to existing architecture and streetscape. They generally fit in terms of bulk, height and set back but stand apart in terms of roof shape, materials and lack of detailing.

- [31] The Urban Designer notes that this application requires the demolition of the existing house on 38 Richmond Street - a modest single bay timber villa. He believes that compared with other properties along Richmond Street, it has reduced architectural merit yet it still makes a positive contribution to the streetscape. It does not exhibit the same level of detailing some of the early houses do, such as verandahs and verandah details, bay brackets, stained glass etc. The existing villa currently separates 36 Richmond Street (recent units) and 40 Richmond Street (council flats). If it were to be replaced, as proposed, it would become part of a series of modern brick buildings along the east side of the street. The cumulative effect of this would be 45m of a built character that, in his view, would be out of context and would have negative effects on amenity and streetscape values.

- [32] It is the Urban Designer's opinion that the effects on the amenity and character of the neighbourhood could be mitigated if the applicant took design cues from the existing streetscape and incorporated these elements such as weatherboard cladding, window design and placement and roof angle/design. Furthermore, existing street boundary treatments should be replicated. Fencing should be low and decorative and part of front yard/garden scheme while fencing within the site should be reduced and soft landscape treatments used to improve amenity and provide privacy. On-site car parking spaces should be parallel with side boundaries so only the minimum width of site is given up to vehicle manoeuvring and parking spaces should be integrated into the front yard design.
- [33] Based on the Urban Designer's assessment relating to adverse effects on amenity and character, I consider that it would be difficult to support the proposed design of the townhouses as detailed in the application. Should the Committee be of a mind to grant consent, then they may wish to require the inclusion of those design elements as detailed above.

Transportation (Assessment Matter 8.13.7)

- [33] The property has a road frontage of approximately 14.5m and the application seeks to establish a second vehicle access to the site. The proposal has been assessed by Council's Transportation planner who notes that with regard to access proposed Unit 1 will have vehicle access via a new crossing on Richmond Street while proposed Unit 2 will have vehicle access via the existing vehicle crossing on Richmond Street. The proposal therefore breaches Rule 20.5.7(i) of the District Plan, which permits only a single vehicle access for the site.
- [34] Transport considers the proposed secondary vehicle access to be acceptable in this instance, noting that the proposal is for 2 x 3.0m vehicle accesses which are similar in effect to a compliant single 6.0m vehicle access.
- [35] Should consent be granted each vehicle access is required to be a minimum 3.0m formed width, hard surfaced from the edge of the carriageway of Richmond Street to a distance not less than 5.0m inside the property boundary, and be adequately drained for its duration. It is advised that the new vehicle crossing is required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Transportation). The existing vehicle crossing is acceptable to remain.
- [36] With respect of parking, manoeuvring and traffic generation, transportation operations are satisfied that the effects of the proposal will be less than minor.
- [37] With respect to the safety and functionality of the transport network, I accept the transportation planner's assessment that the overall effects will be no more than minor and if the Committee is of a mind to grant consent then conditions of consent regarding formation of the access are recommended.

Provision for Stormwater, Water and Sewerage (Assessment Matter 8.13.10)

- [38] The application was forwarded through to the Consents and Compliance Officer of Council's Water and Waste Services Business Unit for review. The officer notes that land area of this property is 438m² and that Dunedin District Plan allows one dwelling per 300m² site in the Residential 2 zone; therefore this application is over dense by a land area of 162m².
- [39] The officer states that:

"Water and Waste services do not support the approval of LUC-2016-110 due to the exceedance of density rules. The South Dunedin catchment is under significant pressure with both wastewater and stormwater, therefore any new connections to the system which are outside of the District Plan rules are not supported."

- [40] However, the officer recognises that the decision for this application rests within the hands of the Committee and has included recommended conditions of consent should the Committee be of a mind to grant. These conditions are included with the Council Officer report's attached as Appendix 3 to this report.

Hazards and safety (Assessment Matter 8.13.12, 8.13.17 and 17.6a)

- [41] The subject has been identified as subject to a flooding and liquefaction natural hazards. These hazards are touched on in the paragraphs below.
- [42] A 2014 ORC report titled "*Coastal Hazards of the Dunedin City District*" identifies the vulnerability of South Dunedin to inundation. The figure below taken from page 27 of that report shows the subject site falls with Area A:

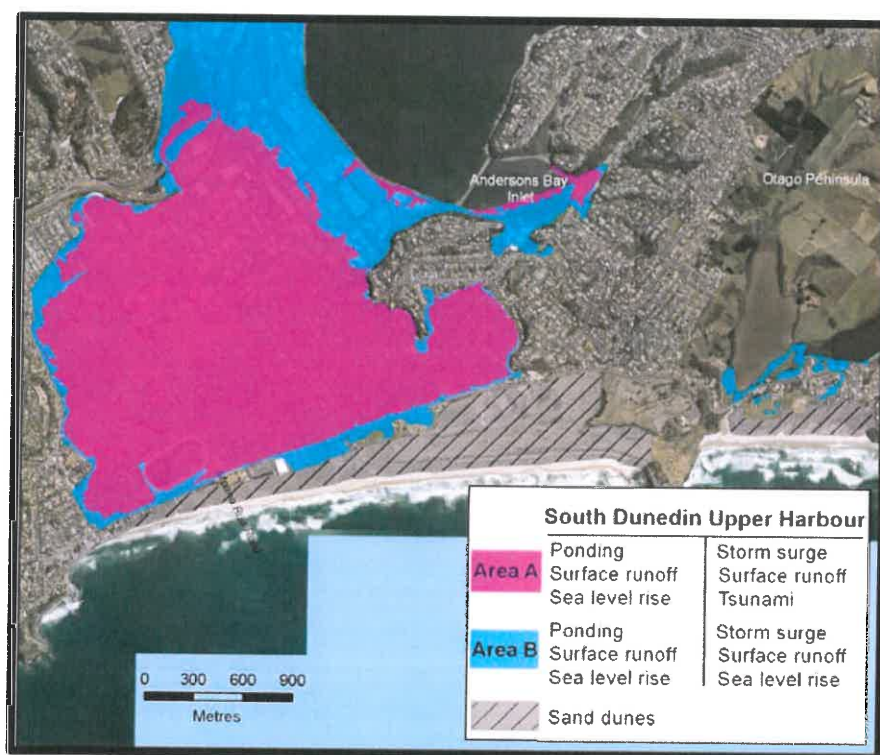


Figure 1: Mapped Natural hazard Area in South Dunedin

- [43] The immediate area adjacent to the subject site experienced flooding in the June 2015 flood event. The extent of the flooding in South Dunedin was detailed in the 2015 ORC report titled "*Coastal Otago Flood Event 3 June 2015*". The image below taken from page 18 of that report clearly shows surface flooding on Richmond Street.



Figure 2: ODT photograph Richmond Street 3 June 2015

- [44] The 2014 GNS report prepared for ORC titled "Assessment of Liquefaction Hazards within the Dunedin City District" which identifies South Dunedin as being within Domain C as shown in figure 2 below. Domain C is described as:

"The ground is predominantly underlain by poorly consolidated marine or estuarine sediments with a shallow groundwater table. There is considered to be a moderate to high likelihood of liquefaction-susceptible materials being present in some parts of the areas classified as Domain C."

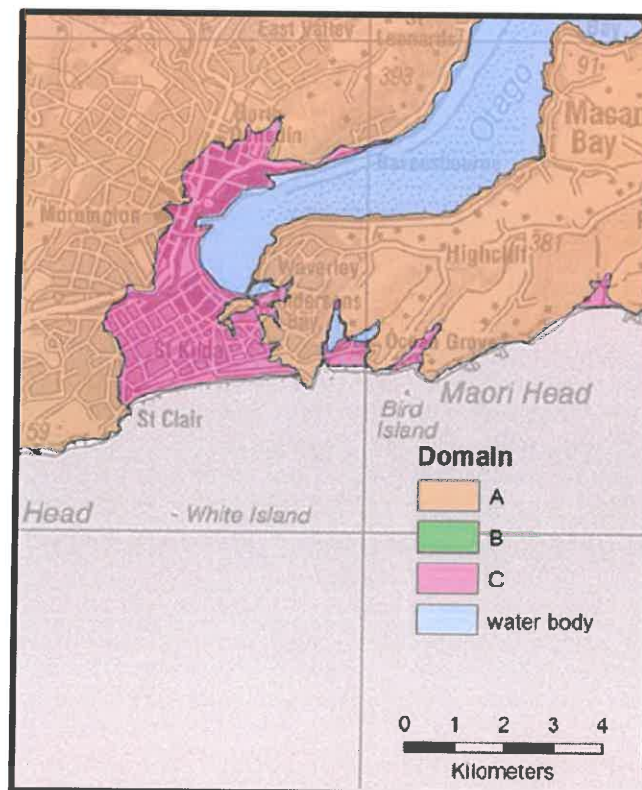


Figure 3: Extent of Domain C in relation to South Dunedin

- [45] The report suggests that the nature of the ground is such that future earthquakes may cause land damage from liquefaction. The report considers that it is salient for future planning and hazard minimisation to include geotechnical testing of areas included within Domain C because of the moderate to high likelihood of the presence of liquefaction-susceptible sediments.
- [46] The risks posed by the identified natural hazards formed the basis of the submission by the Otago Regional Council who sought that the application be declined. The reasons given for seeking a declined decision was that an increase in density would expose more people to risk, exacerbate the risk, be contrary to the proposed regulations and send a wrong signal regarding appropriate responses to natural hazard risk management.
- [47] The application was forwarded to Council's consultant engineer for an assessment of the application in respect of the natural hazard risk. The engineer's full comments are included as Appendix 3 attached to this report.
- [48] With respect to seismic events, the engineer notes that underlying soils have a potential for amplified movement and liquefaction during a significant seismic event. He considers that the cases for seismic loading are normally addressed at building control stage and recognises that Dunedin City Council Building Control Authority will ask for verification that the site is 'good ground' in accordance with NZS3604, Section 3.1. He advises that this verification may require site investigation in accordance with the standard, potentially including dynamic cone testing to 10m depth to quantify the potential for liquefaction for each dwelling.
- [49] Depending on the results of this testing, the engineer considers that specific foundation design may subsequently be required, or if the assessed potential movement is significant; specifically designed ground improvement works may be more cost effective.
- [50] The engineer advises that over the last five years a number of rain-driven flood events have affected low-lying parts of Dunedin and there are concerns associated with development in the South Dunedin area resulting from local ponding during storm water events. He considers that the proposal must address the potential associated risks to this or adjacent properties. The engineer recommends that minimum floor levels must ensure that any development meets Building Act requirements to avoid potential inundation (including flooding, overland flow, storm surge, tidal effects, and ponding) on the land on which the building work is to be carried out or adjacent landowner's property. He believes that this level should reasonably account for potential effects of sea level rise, if applicable.
- [51] The engineer also recognises that normal building requirements exist to ensure that overland storm water flows are not interrupted and the dwelling should be situated to avoid any adverse effects from local ponding during storm rainfall events. He advises that the proposed floor and ground levels must therefore address the potential for egress of water from the property via secondary flow paths, ensure that construction is not proposed in low-lying areas and that the path of storm water is not displaced from ephemeral flow paths into neighbouring properties.
- [52] While the engineer suggests that the building control department may be satisfied with the dwelling minimum floor level set 200mm above any local ponding levels, he directs that these floor levels must be confirmed with them. It is his opinion that if these risks cannot be safely mitigated with reasonable on-ground construction then the applicant might choose to adopt a suspended

floor structure, to allow for re-levelling, raising and or relocation of the building in the future.

- [53] Based on the information detailed above, it is my opinion that any decision to increase density, beyond that which is anticipated by the operative District Plan, will need to be mindful of the potential risks posed by natural hazards. If the Committee is of a mind to grant consent then they may wish to consider mitigation options such as minimum floor levels, relocatable dwellings, geotechnical testing and specific foundation design.

Archaeological Sites

- [54] Heritage New Zealand submitted on the application and a full copy of their submission is attached in Appendix 2 of this report. They have assessed the existing dwelling on the site as being pre-1900; noting specifically that historic records indicate that the house was built between 1891 and 1895. They consider that the site is an 'archaeological site' as defined in the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA). I accept Heritage New Zealand's assessment.
- [55] The Heritage New Zealand Pouhere Taonga Act 2014 provides protection for all archaeological sites, whether recorded or not and Heritage New Zealand advise that it is unlawful to modify or destroy an archaeological site without the prior authority of Heritage New Zealand. Where avoidance of an archaeological site is not possible, an Archaeological Authority will be required. An Authority is also required if there is reasonable cause to suspect that an archaeological site may be modified or destroyed. All applications for Archaeological Authorities must be made to Heritage New Zealand.
- [56] Heritage New Zealand advise that development of this site will require an archaeological authority in order to demolish the dwelling, as well as for any earthworks associated with the construction of the new units. As such they seek the following advice note be placed on the consent, should consent be granted:

"This proposal will affect an archaeological site(s). Work affecting archaeological sites is subject to a consent process under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA). An authority (consent) from Heritage New Zealand must be obtained for the work prior to commencement. It is an offence to damage or destroy a site for any purpose without an authority. The HNZPTA contains penalties for unauthorised site damage. The applicant is advised to contact Heritage New Zealand for further information. "

- [57] The proposal was assessed by Council's heritage planner who concurs with the inclusion of the advice note on the consent. I agree with both the heritage planner and Heritage New Zealand and recommend to the Committee that the above advice note be included should the Committee be of a mind to grant consent.

Positive Effects

- [58] It is noted that the applicant has not identified any positive effects arising from the development. The Committee may consider that the proposal will contribute to new housing stock, which will be built to current building code standards, within the South Dunedin area.

Cumulative Effects (Assessment Matter 8.13.13)

- [59] The concept of cumulative effects, as defined in *Dye v Auckland Regional Council & Rodney District Council* [2001] NZRMA 513, is:

"... one of a gradual build-up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration".

- [60] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.
- [61] The applicant has identified over-dense developments on neighbouring properties flanking the subject site. The Urban Designer considers that the proposed form of the development is likely to result in adverse cumulative effects when combined with these existing developments.
- [62] Furthermore, South Dunedin has been identified as being prone to natural hazards of liquefaction and flooding. An increase in density may add to the cumulative risk posed by these hazards.
- [63] The Committee will need to consider whether this application has the potential to result in cumulative effects, especially with respect to the risks posed by natural hazards and adverse effects on the streetscape.

Proposed 2GP

- [64] At time of writing, there are no applicable assessment rules, because the only 2GP rules that have legal effect currently are ones relating to rural subdivision and the clearance of indigenous vegetation. As noted above, the proposed zoning for the subject site is **General Residential 2**, and the 2GP rules for subdivisions in this zone do not yet have legal effect.

Effects Assessment Conclusion

- [65] After considering the likely effects of this proposal, as has been applied for by the applicant, it is my opinion that the effects of the proposal will be more than minor. However, should the applicant choose to amend some of the design elements relating to mitigating hazard risk and enhancing urban design then the significance of the effects could be reassessed.

OBJECTIVES AND POLICIES ASSESSMENT

Assessment of Objectives and Policies of the District Plan (Section 104(1)(b)(vi))

- [66] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Dunedin City District Plan and the proposed 2GP were taken into account in assessing the application. It is noted that no objectives and policy assessment was included with the application as required by Schedule 4(2)(2) of the RMA.

Dunedin City District Plan

- [67] The following objectives and policies of the Operative Dunedin City District Plan were considered to be relevant to this application:

Sustainability Section	
Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 4.2.1	The proposal seeks to establish two

Enhance the amenity values of Dunedin.	residential units on an undersized site. The design of the proposal has been assessed by the Council's Urban Designer who believes that, in its current form, it will not maintain and enhance the amenity values of Dunedin. Based on the Urban Designer's assessment, I consider that the proposal is inconsistent with the relevant objectives and policies of the sustainability section of the District Plan.
Policy 4.3.1 Maintain and enhance amenity values.	
Objective 4.2.3 Sustainably manage infrastructure	
Policy 4.3.5 Require the provision of infrastructure services at an appropriate standard.	The proposed application seeks to increase infrastructure demand within the South Dunedin area. As noted by Water and Waste Services this area is already experiencing significant demand in respect of waste and storm water services. As such, I consider that the provision of additional services beyond the density anticipated by the District Plan is contrary to the relevant objectives and policies of the sustainability section.

Residential Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 8.2.1 Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied and mitigated.	As discussed in the assessment of the objectives and policies of the sustainability section above, it was found that the proposal does not avoid, remedy or mitigate the adverse effects on amenity values. As such, I consider the proposal to be inconsistent with the relevant objectives and policies of residential section of the District Plan.
Policy 8.3.1 Maintain or enhance the amenity values and character of residential areas.	
Policy 8.3.4 Ensure that the density of new development does not exceed the design capacity of the urban service infrastructure.	As discussed in the assessment of the objectives and policies of the sustainability section above, it is Water and Waste Services' opinion that the provision of infrastructure to this development will exceed the design capacity for the South Dunedin area. Based on this advice, it is my opinion that the proposal is contrary to the relevant policy of the residential section of the District Plan.

Hazards Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 17.2.1 Ensure the effects on the environment of natural and technological hazards are avoided, remedied or mitigated.	The Council has an obligation to control the effects of the use and development or protection of land including avoiding or mitigating the effects of natural hazards. Intensive development in flood prone areas needs to be controlled and the ground and floor levels of new buildings need to be set such that the effects of flooding on new developments are avoided or mitigated. In this instance, the application seeks to increase the development potential of the site beyond that which is anticipated in an area which has been identified as being flood prone. As such, it is my opinion that the proposal, in its current form, is contrary to the
Policy 17.3.3 Control development in areas prone to the effects of flooding.	

	relevant objectives and policies of the hazards section of the District Plan. However, it is noted that the design of the development could be altered such that a re-assessment of the relevant objectives and policies would be warranted.
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Transportation Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 20.2.2 Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	The proposal has been assessed by the Council's transportation planner who raised no issues regarding the effect of the development on the transportation network subject to conditions of consent. As such, I consider that the proposal is consistent with the relevant objectives and policies of the District Plan.
Objective 20.2.4 Maintain and enhance a safe, efficient and effective transportation network.	
Policy 20.3.5 Ensure safe standards for vehicle access.	
Policy 20.3.8 Provide for the safe interaction of pedestrians and vehicles.	

Proposed 2GP

[68] The proposed District Plan sets out a strategic direction for the city. Specifically, Objective 2.2.1 of the strategic direction section seeks to manage the risk to people, communities, and property from natural hazards, and from the potential effects of climate change, is minimised so that the risk is no more than low. Following policies 2.2.1.1, 2.2.1.2, 2.2.1.3, 2.2.1.4, and 2.2.1.10 support the objective by seeking to managing sensitive land use and development, calculating the likelihood and consequences of risk, identifying areas of risk from flooding, coastal hazards and liquefaction. Furthermore, Policy 2.2.1.8 requires that where there is incomplete or uncertain information about natural hazards take a precautionary approach and require applicants to demonstrate that risk will be no more than low. While little weight can be given to the strategic directions policy framework, it is of note that a precautionary approach is recommended which is consistent with part 2 of the Act. The application does not demonstrate how any potential risk arising from natural hazards will be mitigated.

[69] The other relevant objectives and policies of the 2GP must also be considered alongside the objectives and policies of the current district plan. The following 2GP objectives and policies were considered to be relevant to this application:

Transportation	
Objective 6.2.3 Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.	As recognised previously, no issues regarding the effect of the development on the transportation network have been identified subject to conditions of consent. While the objectives and policies of the proposed District Plan have little weight, I consider that the proposal is consistent with these.
Policy 6.2.3.3 Require land use activities to provide adequate vehicle loading and manoeuvring space to support their operations and to avoid or, if avoidance is not possible, adequately mitigate adverse effects on the safety and efficiency of the transport network.	

Policy 6.2.3.4	
Require land use activities to provide the amount of car parking space necessary to ensure that any overspill parking effects that could adversely affect the safety and efficiency of the transport network are avoided or, if avoidance is not possible, adequately mitigated.	
Policy 6.2.3.9	
Only allow land use, development, or subdivision activities that may lead to land use or development, where there are no significant effects on the safety and efficiency of the transport network.	
Hazards zone	
Objective 11.2.1	The proposal seeks to establish new buildings for sensitive land use activities within an identified hazard area. The proposal does not discuss how the risk from natural hazards will be minimised. The applicant has not proposed a minimum floor level and the buildings are not identified as relocatable. As such, the proposal in its current form is considered contrary to the relevant objectives and policies set out for the Hazards Zone in the proposed District Plan. It is noted that the objectives and policies of the proposed District Plan have little weight at this time.
The risk from natural hazards, including climate change, is minimised, in the short to long term.	
Policy 11.2.1.8	
In the hazard 1 and 2 (flood) and hazard 3 (coastal or flood) overlay zones, require new buildings intended for sensitive activities to have a floor level that mitigates risk from flooding (including coastal flooding) and rising groundwater so that risk is no more than low.	
Policy 11.2.1.9	
In the hazard 3 (coastal) Overlay Zone, require new buildings to be used for sensitive activities to be relocatable so that as coastal hazards, including sea level rise, become more severe, these buildings can be relocated.	
Residential zones	
Objective 15.2.2	The proposed development meets the current minimum requirement for outdoor amenity open space. Outdoor amenity space requirements under the proposed District Plan are not operative and are subject to change. However, when considering the operative rules, the proposal is assessed as being consistent with the objective and policy. It is noted that the objective and policy of this section of the proposed District Plan can be given little weight.
Residential activities, development, and subdivision activities provide high quality on-site amenity for residents.	
Policy 15.2.2.1	
Require residential development to achieve a high quality of on-site amenity by: a. providing functional, sunny, and accessible outdoor living spaces that allow enough space for on-site food production, leisure, and recreation; b. having adequate separation distances between residential buildings; c. retaining adequate open space uncluttered by buildings; and d. having adequate space available for service areas.	
Objective 15.2.3	The proposed activity will comply with the current bulk and location requirements for the District Plan. The bulk and location performance standards for the proposed District Plan are not operative and are subject to change. However, when
Activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces.	
Policy 15.2.3.1	
Require buildings and structures to be of a height and setback from boundaries that	

ensures there are no more than minor effects on the sunlight access of current and future residential buildings and their outdoor living spaces.	considering the operative rules, the proposal is assessed as being consistent with the objective and policy. As such, the objectives and policies of the proposed District Plan can be given little weight.
Objective 15.2.4 Subdivision activities and development maintain or enhance the amenity of the streetscape, and reflect the current or intended future character of the neighbourhood. Policy 15.2.4.2 Require residential activity to be at a density that reflects the existing residential character or intended future character of the zone.	The proposed activity seeks to breach the current density rules identified in the operative District Plan. The proposed District Plan will address density provisions with an alternative density calculation method based on a habitable room basis and it is difficult to determine what the future character of the zone will be. However, when considering the operative density rules, the proposal is assessed as being contrary to the objective and policy. The objectives and policies of the proposed District Plan can be given little weight.
Policy 15.2.4.4 Require fences to be of a height and design that contributes positively to the streetscape amenity and character of the neighbourhood.	The plans submitted with the application show that the front unit is to be encircled in a fence. The elevations provided with the application do not show the height or material of this fence. The Urban Designer has suggested that a low and decorative front fence which is incorporated into the front yard/garden scheme should be required while additional fencing within the site should be reduced and soft landscape treatments used to improve amenity and provide privacy. Based on the Urban Designer's comments, it is assessed that the proposal is inconsistent with this policy. It is noted that the rules regarding fence height within the proposed District Plan are not operative, are subject to change and cannot be given any weight.

Overall Objectives and Policies Assessment

- [70] It is noted that the objectives and policies of the proposed District Plan have little weight at this time due to the decision-making stage of the process. As such, the objectives and policies of the Operative District Plan carry more weight. Having regard at the relevant objectives and policies individually, and considering these in an overall way, my assessment indicates that the application in its current form is **contrary** to those provisions. However, as noted above, there are design measures which may be introduced which could address some of the concerns regarding hazard risk and potential adverse effects on the character and streetscape of the area which would merit a re-assessment of the relevant objectives and policies.

Assessment of Regional Policy Statements (Section 104(1)(b)(v))

- [71] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998. Of relevance to this proposal is Chapter 11 that seeks to manage the threat of natural hazards to human life and property.

- [72] With respect to natural hazards, Objective 11.4.2 seeks to avoid or mitigate the adverse effects of natural hazards to an acceptable level. This objective is supported by Policy 11.5.2 which seeks to take action necessary to avoid or mitigate the effect of natural hazards on human life and infrastructure and property and Policy 11.5.3 which seeks to restrict development on sites or areas recognised as being prone to significant hazards unless adequate mitigation can be provided.
- [73] Overall, I consider that an increase in the development potential of the site beyond that which is currently anticipated is generally inconsistent with the relevant objectives and policies of the regional policy statement.
- [74] The proposed Regional Policy Statement for Otago has been notified and submissions have been received. Decisions have not been released at this time. The following policies of the proposed Regional Policy Statement for Otago are considered relevant Policy 3.2.4 which seeks to manage natural hazard risk, Policy 3.2.6 which seeks to avoid increased risk and Policy 3.2.7 which seeks to reduce existing natural hazard risk by discouraging activities which increase risk. ORC have submitted that the activity is inconsistent with the proposed regional policy statement. While the proposed regional policy statement can be afforded little weight, I accept ORC's assessment.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [75] When considering an application for resource consent, an assessment of the proposal is to be made subject to the matters outlined in Part 2 of the Act. This includes the ability of the proposal to meet the purpose of the Act, is set out in Section 5 and seeks to promote the sustainable management of natural and physical resources and seeks to achieve sustainable management in a way that, amongst other things, safeguards people and communities' health and safety. Furthermore, the matters of national importance in Section 6 must be recognised and provided for, and particular regard must be had to the matters listed in Section 7.
- [76] Of particular relevance to this application are Sections 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment", 6(f) "the protection of historic heritage from inappropriate subdivision, use and development", 7(c) "the maintenance and enhancement of amenity values", 7(f) "the maintenance and enhancement of the quality of the environment" and 7(i) the effects of climate change.
- [77] As discussed in the assessment of effects above, the proposed development is considered to create adverse effects on the environment that when considered in the context of the receiving environment and the provisions of the District Plan as they relate to Residential Zones. I therefore consider that the proposal in its current form will not avoid, remedy or mitigate adverse effects to a degree that satisfies the provisions of the District Plan. When considering the proposal overall. It is my opinion that the proposed development would be inconsistent with the purpose of the Act outlined in Section 5 of that legislation.
- [78] Having regard to Section 6 of the Act, the development of the site is reliant on the removal of a pre-1900 house. There are no specific rules within the Operative District Plan which control this demolition. The applicant has not made comment on the heritage value of the existing dwelling within the application. Heritage New Zealand has made a neutral submission in respect of the proposal and the application was assessed by Council's heritage Planner

who concurred with Heritage New Zealand. In this instance, it is considered that the proposal is not inconsistent with section 6(f) of the Act.

- [79] Having regard to Section 7(c) and 7(f), the application has been assessed by the Council's Urban Designer. Based on his assessment, it is my opinion that the proposed development in its current form is inconsistent with sections 7(c) and 7(f) of the Act.
- [80] With regard to section 7(i), the applicant has not made any comment regarding the effect of climate change. It is noted that in its current form the proposal does not address the existing natural hazards which pose a potential risk to the site or suggested any future proofing to protect the development from increased risk posed by climate change. In its current form, I consider that the proposal is inconsistent with section 7(i) of the Act.
- [81] Overall, I consider the proposal is generally inconsistent with those matters outlined in Part 2 of the Act.

Section 104D

- [82] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of Section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.
- [83] As discussed above in the assessment of effects, it is considered by the Council's Urban Designer that the proposal in its current form will have an adverse cumulative effect on the character of the area. Furthermore, the proposal will increase demand on infrastructure services in this area beyond that which is anticipated by the District Plan. The wastewater and stormwater network for South Dunedin are identified by Council's Water and Waste Services department as being under significant pressure. As such an increase of density at this location is also likely to result in adverse cumulative effects.
- [84] It is also of note that the subject site is identified as being prone to a number of natural hazards risks such as flooding and liquefaction. No mitigation of the hazard risk has been identified by the application.
- [85] Overall, I consider that the actual and potential effects associated with the development, as it is currently proposed, are unable to be mitigated by imposing consent conditions so as to be no more than minor. Therefore, in my opinion the first 'gateway' test of Section 104D is failed. It is noted that the applicant may be able to amend the application sufficiently to mitigate the adverse effects. If this was to occur to the Committee's satisfaction, then the Committee may be of a mind to reassess the application against the first test of section 104D.
- [86] It is noted that only one of the two tests outlined by section 104D need be met in order for Council to be able to assess the application under section 104(1)(a) of the Act. In order for a proposal to fail the second test of section 104D, it needs to be contrary to the objectives and policies of either the Dunedin City District Plan or the proposed 2GP. In order to be deemed contrary, an application needs to be repugnant to the intent of the District Plan and abhorrent to the values of the zone in which the activity was to be established. It is noted that in this instance, the proposal is assessed as being contrary to a number of the relevant objectives and policies of the Sustainability Zone, Residential Zone, and Hazards Section of the operative

District Plan. In my opinion, the proposed development also fails the second 'gateway' test outlined by Section 104D.

- [87] In summary, I consider that the application, in its current form, fails both the threshold tests in Section 104D of the Act. It is my recommendation to the Committee that the application cannot be assessed in accordance with Section 104(1)(a) of the Act and consideration cannot be given to the granting of the consent.

Section 104

- [88] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the proposed development overall will be more than minor and cannot be adequately avoided remedied or mitigated.
- [89] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be contrary with the key objectives and policies relating to the Operative Dunedin City District Plan. The objectives and policies Proposed District Plan have been afforded little weight.
- [90] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the application is inconsistent with the relevant objectives and policies of the Regional Policy Statement for Otago, in particular Objective 11.4.2, Policy 11.5.2 and Policy 11.5.3.

Other Matters

- [91] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.
- [92] The applicant has argued within the application that the surrounding land use should be taken into consideration when looking to approve this proposal and that these previous approvals set a precedent. It has been discussed earlier in this report that the adjacent development at 36 Richmond Street owned by the applicant was granted with seven conditions including a landscaping, planting and low fence requirements as shown on the approved plans. The introduction of those conditions was intended to mitigate similar adverse effects to those identified by Council's Urban Designer for this application. As such the development at 36 Richmond Street in its current form should not be accepted as a precedent. I consider that if the Committee were of a mind to accept that development as a precedent, then it is the form of the development as approved by LUC-2009-469 which must be deemed relevant. The Committee are advised that LUC-2009-469 has been passed onto the Council's monitoring and enforcement team for review.
- [93] Notwithstanding the design element assessment above, it is noted that both developments located on either side of the subject site were given approval prior to the release of the 2014 ORC report titled "*Coastal Hazards of the Dunedin City District*" which identifies the vulnerability of South Dunedin to inundation and the 2014 GNS report prepared for ORC titled "*Assessment of Liquefaction Hazards within the Dunedin City District*" which identifies South Dunedin as being within Domain C explained in the hazard section of the this report. The approvals for these earlier developments were also given prior to the Coastal Otago flood event in June 2015 which saw surface flooding and ponding in Richmond Street. As such, it is my opinion that the previous

approvals were given without the benefit of this relevant hazard knowledge and cannot be relied upon to set a precedent.

- [94] Furthermore, case law indicates that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise an undesirable precedent may be set and the integrity of the District Plan may be undermined. In this regard, I do not consider that the proposed activity is unique or has any distinguishing features which set it apart from similar applications.
- [95] For the above reasons, I consider that approval of the proposal will undermine the integrity of the Plan and I believe that the Committee is wise to be concerned about the potential for an undesirable precedent to be set in this regard.

CONCLUSION

- [96] Having regard to the above assessment, I recommend to the Committee that the application be declined.

RECOMMENDATION

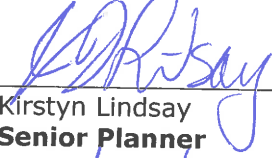
- [97] *That pursuant to Section 34A(1) and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **declines** consent to a **non-complying** activity being to establish two residential units on the site located at 38 Richmond Street, Dunedin, legally described as Lot 18 Block XVI Deposited Plan 60 (Computer Freehold Register OT 16D/63).*

REASONS FOR RECOMMENDATION

- [98] I consider that the likely adverse effects of the proposal in its current form are not adequately mitigated and will be more than minor especially when considering cumulative effects.
- [99] The proposal is considered to be contrary to the key relevant objectives and policies of the Operative Dunedin City District Plan.
- [100] The proposal is considered to be inconsistent with the objectives and policies of the Regional Policy Statement for Otago.
- [101] As the proposal is considered likely to give rise to adverse effects that will be more than minor, and is contrary with the objectives and policies of the District Plan, the proposal is considered to have failed both 'limbs' of the Section 104D 'gateway test'. Consideration cannot be given to the granting of consent to the proposal.
- [102] The proposal is not considered to be a true exception. There is nothing identified within the application which would set this proposal apart from other similar application should they be applied for.
- [103] The proposal is considered to be inconsistent with the Part 2 matters of the Resource Management Act 1991.
- [104] Overall, the proposed development has been assessed as likely to give rise to adverse effects on those elements of the Residential 2 zone that the Operative Dunedin City District Plan seeks to protect.

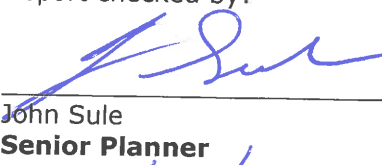
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Report prepared by:


Kirstyn Lindsay
Senior Planner

27/06/16
Date

Report checked by:


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27/06/2016
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